

**SUNSHINE ORDINANCE  
TASK FORCE**



**City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
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April 4, 2012

San Francisco Ethics Commission

Copy to: Mr. St. Croix

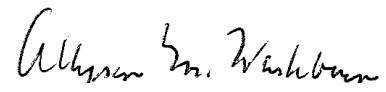
Please find attached a copy of a Memorandum from the Task Force, dated April 3, 2012, on the Ethics Commission's enforcement jurisdiction over violations of the California and San Francisco public access laws. Please send it to the members of the Ethics Commission immediately and also include it in the meeting packet for the April 13<sup>th</sup> Joint Meeting of the Commission and the Task Force's Compliance and Amendments Committee. Also please include in the meeting packet the minutes of the Ethics Commission's June 14, 2010 regular meeting as decisions were made then that are relevant to the topics for the Joint Meeting.

The Compliance and Amendments Committee would like to add several items to the joint agenda for the April 13<sup>th</sup> meeting. The new items and the one on your draft agenda are listed here in the order we believe would make sense to hear them:

- Discussion of present Ethics Commission Regulations with respect to violations of public access laws.
- Discussion of the Ethics Commission Staff's reversal of the Commission's June 2010 public meeting policy decisions regarding the Commission's Sunshine Regulations in the new proposed Regulations.
- Discussion of the issues raised in the Sunshine Ordinance Task Force's April 3, 2012 Memorandum to the Commissioners on the Ethics Commission's proposed enforcement jurisdiction over violations of the California and San Francisco public access laws.
- Discussion of draft amendments to the Ethics Commission's regulations governing the handling of compliants related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (Item on Ethics Commission's draft agenda)

The Committee also believes that the meeting should be jointly staffed and that the joint notice and agenda with supporting attachments be reposted on the Ethics Commission website and posted on the Task Force website. That way the information will reach all persons who have requested postings of meetings on both websites.

Sincerely,

A handwritten signature in black ink that reads "Allyson M. Washburn". The signature is written in a cursive, flowing style.

Allyson Washburn, Ph.D.

Chair, Sunshine Ordinance Task Force Compliance and Amendments Committee

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**MEMORANDUM**

**Date:** April 3, 2012

**To:** San Francisco Ethics Commission

**From:** Sunshine Ordinance Task Force

**Subject:** The Ethics Commission's "Enforcement" Jurisdiction: As proposed in its Staff's November 2011 Draft "Regulations for Complaints Alleging Willful Violations of the Sunshine Ordinance."

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The Sunshine Ordinance Task Force (SOTF), through its five member Compliance and Amendments Committee, has reviewed and considered Commission Staff's proposed draft "Regulations for Complaints Alleging Willful Violations of the Sunshine Ordinance" (Staff's Draft), as well as Staff's November 10, 2011 Memorandum to the Commission and SOTF members with reference to these proposed Regulations.

Overview:

SOTF's primary concern is that Staff's Draft so drastically restricts the Commission's enforcement jurisdiction over violations of the California and San Francisco public access laws t as to render such enforcement non-existent. Staff's Draft does so by limiting the Commission's enforcement jurisdiction solely and exclusively to "willful violations" of those laws and, then, only by "elected city officials and department heads." Staff's Draft effectively eliminates the Commission's jurisdiction to enforce SOTF referred violations. If Staff's Draft were adopted, there would be no State or San Francisco administrative body or office to enforce SOTF -referred violations of the public's constitutional right of access to records and meetings

Staff's Draft would also eliminate the Ethics Commission's jurisdiction over all Commissions and their staffs, even for "willful violations". Without an effective non-judicial enforcement means to deter them, a City Commissions or its staff would need to comply with the Brown Act or Article II of the Sunshine Ordinance rules for the conduct of public meetings and the related pre- and post-meeting requirements.

As Staff explains:

"Staff's revised proposals differ from its recommendations in 2010 and depart from the Commission's earlier policy decisions, particularly with regard to non-willful violations of the Ordinance and handling of complaints against managerial City employees."

Staff's Draft reverses the Commission's controlling policy decision taken in June 2010 to include SOTF referrals for enforcement within its jurisdiction. That decision was taken by a unanimous vote of the Commission, after hours of discussion and extensive public comment at a duly noticed and agendized public meeting. The minutes of that meeting demonstrate the depth of the discussion and analysis involved before the Commission voted on each of the three decision points. It is the SOTF's unequivocal position that Ethics Staff may not reverse those policy decisions on its own, without appropriate formal action by the Commission at a public meeting held in compliance with the Brown Act and the Sunshine Ordinance notice, agenda and other applicable requirements. For that reason alone, the draft Regulations could not be adopted as proposed, even if they were otherwise appropriate.

Staff's proposed Regulations cannot be adopted with the proposed jurisdiction limitations for the following additional reasons:

- (1) Staff failed to apply or consider relevant sections of the California Constitution, City Charter §15.102 and Sunshine Ordinance §67.35(d) in the proposed Regulations that would necessarily invalidate those Regulations.
- (2) Ethics Staff's legal analysis of the Commission's "limited" jurisdiction over "sunshine" matters is incomplete and flawed.
- (3) Ethics Staff's proposal would deprive almost all complainants alleging public records and public meetings violations of any remedy other than Superior Court lawsuits.
- (4) Ethics Staff, when considering the scope of the Ethics Commission's jurisdiction, failed to look at the drafters' intent, a cardinal principle in interpreting a statute.

Each of these reasons is fully discussed at length in numbered paragraphs below:

Discussion:

(1) Staff failed to apply or consider relevant sections of the California Constitution, City Charter §15.102 and Sunshine Ordinance §67.35(d) in the proposed Regulations that would necessarily invalidate those Regulations.

Ethics Staff missed much of the relevant law that governs the Commission's adoption of regulations dealing with the public's access to public records and meetings. Staff did not refer to or discuss:

First, Section (b) (1) of Article I of the California Constitution:

"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

This provision creates the constitutional right of access to public meetings and public records. Limiting the Commission's enforcement jurisdiction solely to "willful violations" and then only when committed by an extremely limited group of city employees limits this access right because the public will have less access if the SOTF finds that there has been a denial of that right and no enforcement process is available either to secure that right or to deter other violations of that right.

Second, the first sentence of Section 3(b)(2) of Article I of the California Constitution, which requires that:

“ A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.”

Staff recognizes that “there are a number of ambiguities in the enforcement provisions of the Ordinance.” Accordingly, if there are any ambiguities in the Sunshine Ordinance’s provisions, including those in §§67.30(c) or 67.35(d), those provisions must be “broadly construed” to further the people’s rights of access. Staff’s narrow construction of those ambiguities is contrary to that specific constitutional mandate.

Third, the second sentence of Section 3(b)(2) of Article I of the California Constitution requires that:

“A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.”

Ethics Staff made no attempt to satisfy this constitutional requirement. That requirement is implicated in two ways:

- (1) By eliminating the only available administrative forum for enforcement against entire groups of persons who would deny access to public records and public meetings.
- (2) By failing to provide adequate procedural and substantive “due process” protections (for the parties) and for complainants seeking public access, whether through the SOTF referrals or directly.

The comparable forum (and the only alternative offered by both the California Public Records Act (CPRA) and the Sunshine Ordinance) is a proceeding in the Superior Court, in which there are ample safeguards insuring the parties’ due process, such as testimony from non-party witnesses and access to non-privileged records. Since the limited jurisdiction and procedure in the Staff’s Draft do not meet that standard, there must be findings, as required by the constitutional provision, “demonstrating the interest protected by the limitation and the need for protecting that interest.” Staff made no such findings.

Fourth, Section 15.102 of the City Charter provides, in part:

“... the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records.”

Any regulations adopted by the Ethics Commission to “carry out the purposes and provisions” of the Sunshine Ordinance, the only City ordinance “regarding open meetings and public records”, must implement a cornerstone of that law - making the SOTF an effective body in resolving public access disputes and deterring future efforts by the City bureaucracy to obstruct such public access, by conferring jurisdiction on the Ethics Commission to enforce SOTF’s orders.

SEC. 67.1 FINDINGS AND PURPOSE describes the “purpose” of the Sunshine Ordinance that the Ethic’s Commissions rules must carry out.

“The Board of Supervisors and the People of the City and County of San Francisco find and declare:… “(e) Public officials who attempt to conduct the public’s business in secret should be held accountable for their actions. **Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public’s interest in open government.**” [Emphasis Added.]

The Ethics Commission will fail to carry out one of the essential purposes of the Sunshine Ordinance if it denies the public its only real accessible remedy to enjoy its constitutional right of access. Put differently, there is no question but that in fulfilling its responsibility to carry out the purposes and provisions of the Sunshine Ordinance, the Commission has ample authority to adopt a rule for its enforcement of SOTF referrals, by recognizing that it is the only chartered municipal office capable of doing just that.

Fifth, there is no reference to §67.35(d) in Staff’s analysis of the Commission’s power to hear enforcement actions. That section provides:

“Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.”

The effect of this section is to empower a complainant whose complaint before the SOTF or petition to the Supervisor of Records resulted in an Order to a city employee or agency that has not been acted upon (e.g. enforced) by the District Attorney or Attorney General for 40 days to have it enforced by the Ethics Commission. The significance of this section as the basis for the Commission’s jurisdiction is detailed in II below.

(2) Ethics Staff’s legal analysis of the Commission’s “limited” jurisdiction over “sunshine” matters is incomplete and flawed.

As noted, the proposed new Regulations, contrary to the Commission’s June 2010 decision, eliminate referrals from the SOTF of non-willful violations of public access laws. As described, in part, in Staff’s Summary under “1. Section I – Preamble”, at page 4:

“... Under Staff’s proposal, the Commission will handle only allegations of willful violations of the Ordinance by elected officials, department heads, or managerial City employees [Emphasis added].”

“... Staff believes the best interpretation of this provision [§67.34] is that the Commission has jurisdiction over only willful violations, and does not have jurisdiction over allegations of non-willful violations of the Ordinance. Under this interpretation, the Commission would only handle complaints or referrals that allege willful violations; Staff would reject any complaint or referral alleging a non-willful violation [Emphasis added].”

By way of further explanation, Staff adds, under IV.1 “The Role of the Commission under the Ordinance.”

“The Task Force’s recommendations appear to be premised on the notion that the Ethics Commission has two distinct roles under the Sunshine Ordinance: one with respect to the

enforcement of Task Force referrals, and the second with respect to the Ethics Commission's handling of willful violations under section 67.34. Staff does not agree.”

“As the Commission has determined in recent decisions, the Ethics Commission is not tasked anywhere in the Ordinance with enforcing orders of determination from the Task Force ... Section 67.21(d) further provides that if the custodian still fails to comply with the records request after being ordered to release the records by the Supervisor of Records, the ‘*supervisor of records* shall notify the *district attorney or the attorney general* who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance [emphasis added].’ **Under section 67.21(d), the district attorney or the attorney general—not the Ethics Commission—is specifically tasked with the enforcement of a public records request. [Emphasis added].**

“... ‘If the custodian refuses or fails to comply with any such order [of the Task Force] within 5 days, the [Task Force] *shall notify the district attorney or the attorney general* who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance [emphasis added].’ **Again, the power to enforce the public records request lies with the district attorney or the attorney general, not the Ethics Commission.**” [Emphasis added].

As Ethics Staff correctly points out, Sunshine Ordinance §67.21(e) provides that SOTF Orders for disclosure of public records are sent to the San Francisco District Attorney and the California Attorney General for enforcement. However, Ethics Staff does not recognize that failure to comply with an SOTF Order is also a “violation” of the Sunshine Ordinance, and as such would fall under §67.30(c), as the Commission had originally determined in June 2010.

Limiting recourse for enforcement of SOTF Orders regarding public records violations, as Staff proposes, to the San Francisco District Attorney or the Attorney General is illusory; neither can nor will enforce SOTF Orders. The District Attorney has no authority under either the California Government Code or the San Francisco Charter to enforce violations of public access laws. On its part, the Attorney General’s consistent position is that its office does not enforce the CPRA or local laws, having rejecting all SOTF referrals. Neither the CPRA nor the Brown Act confers enforcement power on a “municipal office”; recourse for violations of those State laws can be had only in the Superior Court.

As a result, Staff’s interpretation seems to limit the venue for enforcement of an SOTF Order or a “violation” - other than by an action in the Superior Court - to some other “municipal office with enforcement power under this ordinance...” Yet Staff does not identify any San Francisco “municipal office” with any such enforcement power under the CPRA, the Brown Act or, for that matter, the Sunshine Ordinance. There is only the Ethics Commission, whether by virtue of §67.34 or §67.35(d).

Section 67.35(d) provides:

“ Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.”

Staff considers §67.35(d) relevant only to the day the 40-day clock starts the Commission’s §67.34 power to “handle” willful violation cases. It ties §67.35(d) to the “handling” provision of §67.34 to give the Commission its jurisdiction over willful violation complaints and thus implicates the 40-day rule.

However, Staff ignore that section's substantive powers. First, it empowers the Ethics Commission to enforce an SOTF Order stemming a complaint when neither the District Attorney nor the Attorney General has taken enforcement action within 40 days of the Order's issuance. Second, it establishes the Ethics Commission as a "municipal office with enforcement power" to which the SOTF may make referrals under §67.30(c).

Each of these two provisions, §67.34 and §67.35(d), is independent of the other. Even if §67.35(d) did not exist, no one would argue that although §67.34 provides that willful violation complaints are to be "handled" by the Ethics Commission, it does not confer jurisdiction on the Commission. On the other hand, if §67.34 did not exist, no one would argue that §67.35(d) does not confer jurisdiction on the Commission to "enforce" the Sunshine Ordinance ("this act") after 40 days have elapsed from the time a complaint is filed with a city or state official. The correct interpretation requires following the text of each section without regard to the other.

There is no question about §67.34: It means what it says. "Complaints" involving a "willful violation" by any respondent in either of two categories, "elected officials or department heads" are handled by the Ethics Commission; not just any "municipal office with enforcement power" to which the SOTF refers persons who "violate" any provisions of the ordinance or the Acts, as provided in §67.30(c). That distinction makes sense. The Commission has the power to impose penalties and to find "official misconduct" and thus is the proper place for the respondents in these two categories to be brought for a proceeding on such egregious complaints. That power does not exist in any other San Francisco body.

On the other hand, §67.35(d) makes sense if it is read to provide a venue for enforcement of an aggrieved person's right, if the city or state official has not acted on it within 40 days after the [original] complaint was filed. Thus, when the Ethics Staff states that the SOTF is required to turn over non-complied with Orders to the District Attorney (a "city official") and the Attorney General (a "state official") under §67.21(e) and, therefore, the Commission is not "tasked" with enforcing those Orders, if neither official takes any action, it misses the point of §67.35(d): The aggrieved person may enforce that right (i.e., access to particular records or to public meetings) as determined by the SOTF [or the Supervisor of Records] through a proceeding in the Superior Court or in the Ethics Commission. This should be contrasted with §67.30(a), which also allows enforcement of the statutory "access right" comparable to that in the CPRA:

"Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open."

If proceedings to enforce the same statutory access "right" in a "court of competent jurisdiction" granted in §67.30(a) were involved in §67.35(d), the inclusion of "penalties" and "a court of competent jurisdiction" in §67.35(d), if no "enforcement" action is taken by a city or state official for 40 days, would not be needed.

It is noteworthy that prior to last year, that is, since the year 2000 when the Sunshine Ordinance became effective, the Ethics Commission and Mr. St. Croix "handled" all SOTF referrals – albeit improperly – whether or not the respondent was an "elected official" or a "department head" and the SOTF members, who, in the early days included several who had drafted the 1999 Sunshine Ordinance reform package (Prop G) or were actively engaged in its substantive additions to then law,



referred violations to the Ethics Commission as a matter of course. Those actions reflected the general understanding among those who were directly involved that violations of the Sunshine Ordinance, the CPRA and the Brown Act would be enforced by the Ethics Commission, the only municipal office which then had (and still has) enforcement power.

(3) Ethics Staff's proposal would deprive almost all complainants alleging public records and public meetings violations of any remedy other than Superior Court lawsuits.

Section 67.34 ("willful violations" shall be handled by the Ethic Commission), applies only to "elected officials" and "department heads." In their willingness to exclude SOTF referrals of simple violations of public access laws in favor of the willful violation requirement in §67.34, Staff failed to mention the gaping hole in coverage:

Members of all boards and commissions (and their staffs) can not be the subject of a complaint filed with the Ethics Commission under §67.34 for public meetings violations or public records violations nor can any "unelected" officials nor any number of other "custodians" of public records, including city employees who are not department heads, but hold important positions in City Departments, such as the City Administrator, the Zoning Administrator and all the various deputy directors. Given the number of boards and commissions in the City and the many important "custodians" who are not department heads, the fact that there is no remedy available to the public, other than a lawsuit, is completely untenable.

How effective would the proposed Regulations actually be in enabling the public to secure its public access rights when a City official's office a department or a commission denies them?

First, the Index pages from a 2004 Memorandum from the City Attorney to then-Mayor Gavin Newsom regarding Mayoral appointments, etc. lists all the Board and Commission, which, at that time, involved those appointments. The total is 81 Boards and Commissions, many with more than five or seven members, all probably with a Secretary (or equivalent). An estimate of the persons potentially not covered (at five or six per policy body), plus a Secretary/Administrator for each, would exceed 500. None would be covered by the proposed Regulations.

Second, within many departments, there are layers of deputies and managers of different aspects of the department's activities. For example, the Department of Building Inspection has four deputy directors, with 12 direct reports [managers, etc.], several supervisors, in addition to all the inspectors and administrative Staff. DPW has 15 "managers" and each manager may be supervising several of its activities. None of the first several layers of "management" would be covered under the proposed Regulations.

Ethics Staff recognized this problem and sought to include "managerial City employees", but the Commissioners expressed reservations about extending jurisdiction to them under §67.34.

The Commission is reminded that in the past eight years, the Commission has heard only one SOTF-referred violation. That case, in July 2011, involved Jewelle Gomez, the President of the Library Commission, as respondent. . Although the Commission found her egregious conduct in stifling public comment violated the public meetings laws, because of Staff's interpretation of the Commission's jurisdiction, the Commission was left with asking the Mayor to remove her (a request Mayor has yet to act on). Under Staff's Draft, the Commission could not even take up that case. Under the SOTF's submitted draft the Commission would have had jurisdiction and authority to penalize her in several ways.

Third, the historical record of the Commission’s disposition of SOTF referrals suggests that the chances of a finding against an “elected official” or a “department head” are slim. Of the 19 cases referred cases since April 2008, only two involved a respondent elected official or department head and both were dismissed. The other 17 did not meet this threshold requirement.

The SOTF "Referral" Log for the period 2005 - through December 5, 2011, provided by the SOTF Administrator, shows, with some duplication, a total of 35 referrals to the Ethics Commission, of which 29 were dismissed by Staff, one was heard (Cauthen vs. Library Commission/Gomez) and five were still pending. Mr. St. Croix first introduced the principle that the Commission “only handles complaints filed under §67.34” in his September 13, 2011 dismissal of the SOTF-referred Tsang case, SOTF File #10015, which cited §67.30(c) for enforcement. All eight subsequent SOTF referrals (listed in the SOTF Log) have been dismissed based, in part or entirely, on the requirements of §67.34; to wit, either the SOTF did not find a willful violation, the violation in fact not “willful” or the respondent was not an ”elected official or department head.”

(4) Ethic’s Staff, when considering the scope of the Ethics Commission’s jurisdiction failed to look at the drafters’ intent, a cardinal principle in interpreting a statute.

The rules for interpreting statutes are complex and difficult to apply, particularly where there is no “legislative” history for the legislation, as is the case with Proposition G. Fortunately there is no need to apply those complex and difficult rules here, if one assumes the drafters were creating a rational, coherent and logical structure for the Sunshine Ordinance, which, indeed they were.

The Sunshine Ordinance is organized logically into four Articles:

Article I	In General	§§ 67.1 and 67.2
Article II	Public Access to Meetings	§§ 67.3 to 67.17
Article III	Public Information and Public Records	§§ 67.20 to 67.29.7
Article IV	Policy Implementation.	§§ 67.30 to §§67.37

§§67.30(c), 67.34 and 67.35(a) through (d), inclusive, all dealing specifically with enforcement are in Article IV – “Policy Implementation.” Section 67.35, itself, is captioned “Enforcement Provisions.”

However, defying what is patently a well organized law – even with its warts and pimples - Staff extrapolated from two specific sentences in two subdivisions in one particular Section in Article III, the Article that deals broadly, but exclusively, with “Public information and Public Records, to somehow reach the conclusion that §67.34 is the only relevant ”jurisdiction” provision affecting the Ethics Commission, to the exclusion of all others in the Sunshine Ordinance, including §67.35(d).

Using its form of logic, Staff thus concluded:

“... the Commission will handle only allegations of willful violations of the Ordinance by elected officials, department heads, or managerial City employees.”

“... Staff believes the best interpretation of this provision [§67.34] is that the Commission has jurisdiction over only willful violations, and does not have jurisdiction over allegations of non-willful violations of the Ordinance. Under this interpretation, the Commission would only handle complaints or referrals that allege willful violations; Staff would reject any complaint or referral alleging a non-willful violation.”

Any reasonable interpretation of the intent of the drafters would be that the ultimate enforcement of the public's rights lay in "implementing" the "policy" of the law. And those provisions are all in Article IV, particularly §67.35(d), which expressly grants the Commission its enforcement power. It should be kept in mind that the Sunshine Ordinance was adopted pursuant to both CPRA §6523(e) and Brown Act §54953.7, which permit local agencies to adopt rules permitting greater access to records and meetings than that which the state laws provide. To suggest that so limiting access was central to the drafters intent is simply not reasonable.

When the 1993 Sunshine Ordinance was revised as Prop G in 1999, the drafters added almost all of what is now §67.21 - access to public records - including the two subdivisions on which Staff is relying - (d) and (e) - which provide for Supervisor of Records and SOTF referrals of non-complied Orders to the District Attorney and the Attorney General. The drafters also added §67.35 "Enforcement Provisions" as well. §67.35 evidenced their recognition that there were differences between §67.34, with its requirement that the Ethics Commission "handle" willful violations of both State public access laws and the Sunshine Ordinance, and §67.35's provisions for enforcement of public access rights under the Sunshine Ordinance. Thus, §67.35(d) provided two avenues of recourse available to a person after the SOTF or the Supervisor of Records had issued an Order under §§67.21(d) or (e), and both the District Attorney and the Attorney General failed to take action to enforce it. Otherwise, there would have been no reason for the drafters to add §67.35(d) in the first place.

Moreover, a common sense approach to the intent of the drafters can be found in the result of the Staff's Draft on the public's ability to remedy violations of public access laws: No municipal office with jurisdiction to enforce SOTF referrals of garden-variety public access violations (contrary to §67.30(c) in Article III); exempting even willful violations by every one of the thousands of City employees other than seven elected officials (or 25, if the Boards of Supervisors and Education are included) and the 40 or 50 City department heads; excluding every violation by a commission or other policy body of its conduct of a public meeting or any of the related administration requirements. It makes no sense that this is a result that the drafters would have intended or even sought.

## **Minutes - June 14, 2010**

### **Minutes of the Regular Meeting of The San Francisco Ethics Commission June 14, 2010 Room 408, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102**

#### **I. Call to order and roll call.**

Vice-Chairperson Harriman called the meeting to order at 5:36 PM.

COMMISSION MEMBERS PRESENT: Jamieenne Studley, Chairperson (arrived at 5:40 PM); Susan Harriman, Vice-Chairperson; Eileen Hansen, Commissioner; Benedict Y. Hur, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Chief Enforcement Officer; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Allen Grossman; Kimo Crossman; Marc Salomon; Peter Warfield; Hope Johnson; Richard Knee; and other unidentified members of the public.

#### **MATERIALS DISTRIBUTED:**

- Staff memorandum re: Regulations regarding enforcement of the Sunshine Ordinance, dated June 7, 2010.
- Letter to the Commission and the Executive Director from Allen Grossman, dated June 10, 2010, regarding staff's above memorandum.
- Staff memorandum regarding possible amendments to Ethics Commission Regulation 3.234-5, to define the term "department, board, commissioner, office or other unit of government, for which the officer or employee served" in section 3.234(a)(2) of the Government Ethics Ordinance ("GEO"), San Francisco Campaign and Governmental Conduct Code section 3.200 et seq.
- Draft Minutes of the May 10, 2010 Regular Meeting of The San Francisco Ethics Commission.
- Executive Director's Report to the Ethics Commission for the Meeting of June 14, 2010.

#### **II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

Vice-Chairperson Harriman stated that each speaker would have three minutes for public comment.

A member of the public stated that the lack of enforcement of violations of the Sunshine Ordinance has a dramatic effect both on the person filing the initial complaint and on the implementation of democratic public policy in the City. He also stated that he noticed his comments from a previous meeting were not accurately noted in the minutes; he had said "ghettoization" not "starvation." He stated that the only way to guarantee full participation from individuals is to break down the influence that money holds. He stated that the power must be balanced by rules that guarantee public participation. He stated that the public is waiting to see some of these violations enforced by the Commission.

[Chairperson Studley arrived 5:40 PM.]

Marc Salomon stated that the position of Fines Officer used to have a special condition and a policy decision to remove the condition was made last year without bringing it forward to the Commission. He stated that campaign finance laws often require interpretations by the City Attorney and the FPPC. He stated that the Fines Officer was an award-winning staffer and that he had been let go by the slip of the bureaucratic hand. He stated that the public now knows that the person in that position will not have experience in campaign finance. He suggested looking at the fiscal impact of the change, as there would be an expected change in revenues to the general fund. He suggested that all funding to the Commission be cut except for campaign finance-related work.

Kimo Crossman spoke regarding Oliver Luby. He stated there were a myriad of laws about campaign finance and expressed concerns about a new employee having no experience with campaign finance. He asked the Commission to please reinstate the special condition and rehire Mr. Luby.

### **III. Consideration of policy recommendations regarding the Commission's enforcement of Sunshine Ordinance.**

Chairperson Studley stated that the Commission has been working with staff and the Sunshine Ordinance Task Force ("Task Force"). She also stated that Commission Harriman met with Mr. Grossman. Executive Director St. Croix recommended that the Commission make policy decisions regarding its enforcement of the Sunshine Ordinance ("Ordinance") and then staff would begin drafting regulations in order to implement those policy decisions. Chairperson Studley stated that any comments or additional ideas from the Task Force would be taken into consideration.

Commissioner Harriman thanked Mr. Grossman for meeting with her and stated that the meeting was helpful. She stated that the policy decisions presented are very broad and that she would like staff to begin drafting regulations. She also stated that the Commission needed input from the Task Force.

Commissioner Hansen stated that she would be willing to discuss the policy decision points as long as there would be ongoing communication with the Task Force. Commissioner Hur stated that the Commission should discuss the decision points. Commissioner Ward stated that Mr. Grossman's request (that the Commission wait to hear from the Task Force) was reasonable, but that he saw a representative from the Task Force and hoped to hear his point of view. Commissioner Hansen asked to hear from the Task Force representative first, prior to having a discussion.

Richard Knee, the Chair of the Task Force, stated that he appreciated the Commission giving the Task Force so much time to render its opinion. He stated that he was not speaking as a member of the Task Force and only for himself. He stated that the policy decision points presented were broad and did not see any harm in discussing them. He stated that if the Commission did not act on the decision points, then they would be on the Task Force's agenda for its next meeting on June 22, 2010. He stated that the Commission may need to have another joint meeting with the Task Force regarding this issue.

Chairperson Studley stated that the Commission would discuss each decision point and then allow public comment on each decision point.

#### Decision Point 1

Commissioner Hur asked whether the policy directives stated under part III.A.3 of staff's memo (complaints brought to the Commission) were taken from section 67.35(d) of the Ordinance. Executive Director St. Croix stated that they were taken from that section. Commissioner Hur then asked whether staff suggested in its memo, under parts III.A.2 and III.A.3, that the Commission has the authority to act to both make a determination of a violation and then enforce and penalize that violation. Commissioner Harriman stated that a complainant could come to the Commission first and that section 67.35(d) provides that option. She stated that the Commission had the ability to institute proceedings, after which the Commission could make a finding and then move to determine a penalty.

#### Public Comment:

Mr. Grossman stated that there is confusion on the part of the staff between violations, willful violations, enforcement of orders, and official misconduct. He stated that language in part III.A of staff's memo – referring to “alleged” violations – is incorrect. He stated that the referrals from the Task Force are not alleged violations. He stated that the Task Force had determined that they violations took place and the referrals are necessary where the Respondent(s) do not comply with an Order of Determination issued by the Task Force. He stated that this work was serious legal work and that staff does not have the capability of doing it. He stated that the Commission needed a skilled lawyer to draft it and only then would there be a draft that has some critical understanding and explanation and articulation of the role of the Commission.

Richard Knee referred to the top of part III.A of staff's memo. He stated that staff discussed whether the alleged violation was willful in nature. He stated that the Task Force was unlikely to send or refer any violation that was not willful. He stated that the only reason that the Task Force would refer a violation is if it had found that a willful failure occurred. He also stated that a California court recently found that if a lawsuit is not frivolous and the plaintiff still loses, the plaintiff does not have to pay the City's legal fees.

Chairperson Studley asked Mr. Knee for clarification of his comments. Mr. Knee stated that when the Task Force sends a complaint to the Ethics Commission, it is only for willful violations. He stated that once the Task Force finds in favor of a plaintiff and then the Respondent refuses to comply with an Order of Determination, then that act becomes willful even if the original Respondent's act was not willful.

Commissioner Hansen asked Mr. Knee whether he would object to keeping the language of “alleged violations,” as there could be a chance that it would occur. Mr. Knee stated that he was not a lawyer and that if the Commission receives a complaint, maybe it starts from step one again. He also stated that the Task Force spends a lot of effort in its work and that it looks at evidence from both sides. He stated that the Task Force looks at the Brown Act, Sunshine Ordinance, and confers with its DCA. He stated that there was an attorney sitting on the Task Force to help the Task Force determine whether there was a violation and, if so, what the violation was.

Marc Salomon associated himself with Mr. Grossman's comments. He stated that the finding of fact and law has been made by the Task Force. He stated that the Commission is the prosecution's agent and there should be no way to re-litigate. He stated that the goal is to avoid Sunshine complaints being filed in the first place.

A member of the public stated that he would make his comments about all three decision points. He stated that he was impressed with Mr. Grossman's memo. He stated that there seems to be a deliberate attempt to

exempt elected officials and department heads. He stated that Mr. Grossman is clear; appointed officials are subject to Sunshine Ordinance. He approved of the idea to have hearings for all referrals. He stated that the public as a whole has an underlying interest in all of these violations, even if the complaint is driven by the complainant.

Hope Johnson stated that she was recently sworn in as a member of the Task Force. She stated her objection to the use of the word "alleged" in staff's memo. She stated that there should be language that emphasizes that a finding of a violation has already been made.

Peter Warfield stated that he has brought quite a number of complaints over the year, some of which have gone to the Commission as referrals. He concurred with Mr. Grossman's comments regarding "alleged" violations.

He stated that the complaints filed with the Task Force pass through a time-tested process. He stated that there are many hurdles and that there has been a finding of a violation prior to referral. He stated that there are instances of violations when representatives from departments do not appear.

Kimo Crossman stated that he supported Mr. Grossman's letter and objected to the use of the word "alleged." He stated that there is no question that the Task Force has made a determination. He stated that there is no question that there does not need to be another hearing. He mentioned the Ed Jew matter. He agreed that appointed officials should be included when they have committed a violation. He also asked that the Commission wait to hear from the Task Force after it has had a chance to meet.

Commissioner Hansen asked for clarification from Mr. Knee, as it seemed that he believed a matter could potentially be re-adjudicated upon reaching the Commission and that the others who spoke seemed to believe that was an incorrect interpretation. Mr. Knee stated that the Task Force is a quasi-judicial body, as is the Commission. He stated that if the Commission received a referral, the Commission could be in the position to want to start from the beginning. He stated that the Task Force, however, has already determined a violation occurred and that is when a referral is made.

Commissioner Harriman asked to address Mr. Knee's comments. She stated that if the Commission were to cross out the word "alleged," nothing would change in the decision point. She stated that the Task Force made a referral because it found a violation. She stated that, like anything else that is referred to the Commission, the Commission must do its job. She stated that the Commission is in the same category as a court. She stated that the burden of proof is on the Respondent, but it would still be a hearing. She stated that in the Ed Jew matter, there was still briefing and there was a hearing, as the Commission was not going to just accept the Mayor's charges. She stated that the shift of the burden of proof makes it more difficult on the Respondent and crossing out "alleged" does not change the decision point.

Commissioner Hur asked whether there was anything in the Ordinance that requires that the Task Force to refer only willful violations. Commissioner Harriman read part of section 67.30(c) of the Ordinance – "[t]he Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act." She stated that it appears the Task Force has to make that conclusion before it makes a referral to the Commission.

Chairperson Studley stated that the word "alleged" could change, but that there still may be different perspectives on what the Commission's role is regarding the referrals. Executive Director St. Croix suggested

amending the language in the decision point to delete the word "alleged.": "The Commission's jurisdiction regarding violations and alleged violations of the Ordinance."

**Motion 10-06-14-1 (Harriman/Ward): Moved, seconded and passed (5-0) that the Commission adopt decision point 1, as amended.**

Public Comment:

Kimo Crossman stated that the problem with the word "alleged" is that it would indicate that adjudication would have to occur again once reaching the Commission. He stated that re-adjudicating rather than moving to enforcement is the big problem. He stated that another series of hearings was not envisioned in the Ordinance.

Marc Salomon stated that it is a bifurcated process; once the Task Force has completed its duty, then it is referred to the Commission. He stated that Commission simply imposes punishment for violations and does not review the Task Force's finding of guilt or innocence. He asked how many times has the Commission has received Sunshine complaints directly from a complainant and not through the Task Force.

Allen Grossman stated that there is a learning curve involved. He stated that the problem starts with the City Attorney claiming that the Charter trumps the Sunshine Ordinance. He stated that the Task Force was formed by voter initiative and that it ranks equal to or higher than anything in the Charter because its function is enabled by two sections of state law, the PRA and Brown Act. He stated that the Task Force has an express responsibility created by the Ordinance. He stated that the Task Force makes findings and then goes through another process to see whether its order of determination has been complied with by the agency or official. He stated that only then does it come back to the Task Force. He stated that if the Task Force determines that there has been no compliance then the order is set in stone. He stated that the Commission cannot re-litigate it and cannot hear everything again.

Commissioner Hur asked whether it was Mr. Grossman's view that, under section 67.35(d), a person instituting a proceeding is only seeking enforcement and not a finding of fact. Mr. Grossman stated that he met the people who drafted the Ordinance and that there are fuzzy gaps. He stated that it is possible for a complainant to short circuit the proceedings and appear before the Commission, but that he did not see subsection d as significant in light of the other provisions.

Decision Point 2

Chairperson Studley asked to remove the word "lesser" from the third sentence of the second paragraph of part III.B.

Commissioner Harriman stated that the Ordinance did not give guidance regarding penalties. She stated that 67.35(d) was the only mention of penalties in the Ordinance.

Commissioner Hansen stated there was a similar issue with the use of the word "alleged" and asked whether it was intentional to leave out appointed officials. Commissioner Harriman stated there could not be penalties of an alleged violation and referred to section 67.34 regarding appointed officials.

**Motion 10-06-14-2 (Ward/Harriman): Moved, seconded and passed (5-0) that the Commission adopt decision point 2.**



Public Comment:

Marc Salomon stated that there was no language compelling production of documents that are requested. He stated that was important as that is the Commission's job. He also asked about what penalties the Commission would be permitted to impose, as there were possible labor issues. He asked what ideas have been presented and suggested that a Respondent be provided with no more than five days to produce documents.

Executive Director St. Croix stated that the regulations would clarify those matters. He stated that Commission staff will draft regulations, provide the Task Force its draft, and seek the Commissioners further review. He stated that the actual procedures will be included in the regulations itself.

Richard Knee stated that, at the time of the joint meeting of the Task Force and Commission, the Task Force was unable to give guidance regarding penalties. He stated that, after that meeting, the Compliance and Amendments Committee ("CAC") proposed an amendment to enable the Task Force to recommend fines from \$500 to \$5,000 per violation. He stated that the amendment has not yet reached the full Task Force and probably will not reach the voters in November. He also suggested removing "alleged" from the memo. He also stated that Respondents frequently argue that their failure to comply with an Order of Determination stems from their acting on advice from the City Attorney's Office. He stated that one of the Task Force's members is an attorney and that there are a number of cases where the City Attorney's advice has been erroneous. He stated that when the Task Force sends a referral in these cases, the reason is because the Task Force believes the City Attorney is incorrect. As an example of such a disagreement, he cited their opposing views with respect to the obligation to produce electronic documents in their native format.

Chairperson Studley stated that the Commission was not voting on language to include in the regulations tonight, but that the Commission would cross out the word "alleged" in part III.B.

Kimo Crossman stated that he read section 67.34 again and did not see "any managerial city employee" in the language. He encouraged the Commission to include that category. He suggested that fines be paid personally by the individual employees and not their departments. He suggested using a percentage of the net income of the person who committed the violation. He stated that Sunshine violations are not only about getting public records, but also about getting public bodies that are not allowing rights to be exercised. He stated that the Commission would potentially tell bodies to reconsider matters if action was taken without proper compliance with the Sunshine Ordinance.

A member of the public stated that the Task Force processes about three to four dozen complaints a year. He described the process a complaint goes through in the Task Force. He stated that a complaint begins at the full Task Force and then is sent to the CAC. He stated that, after the CAC, the complaint is then sent back to the full Task Force, if there has not been full compliance. He stated that only a very small subset of violations is referred to the Commission. He stated that by the time the full Task Force refers the matter, the complainant has already been through 3-5 meetings.

Peter Warfield stated that the Ordinance provides for many violations, other than document production violations. He stated that many times there are no representatives from the departments at the Sunshine meetings and that deprives the Task Force of questioning the department. He stated that the timing of production of documents is important.

Mr. Grossman stated that the way that staff has described the process of enforcement using official misconduct and penalties leaves a little to be desired. He stated that he was educated as a lawyer and spent over 55 years practicing law. He stated that this work requires a serious lawyer and that staff needs to understand what it is writing about. He stated that if a matter is referred for enforcement of an order of the Task Force, there is no investigation. He stated that the Commission would ask the department head why there has been no compliance and if the department head cannot explain why there was no compliance, then the Commission must demand delivery of the public record. He stated that if the person then does not comply, then it becomes official misconduct under the Charter. He stated that the department head could then lose his/her position or be removed or suspended. He stated that would only need to happen once and then everyone would comply.

Commissioner Hansen asked about "appointed officials" in section 67.34. Commissioner Harriman stated that the first sentence includes "other managerial city employees" and the second sentence excludes those employees. She stated that the second sentence is the one that includes the Ethics Commission and so it must be read as if it were done deliberately. Commissioner Hur suggested that the Commission could handle "other managerial city employees" but that it has exclusive jurisdiction over elected officials and department heads.

### Decision Point 3

**Motion 10-06-14-2 (Harriman/Ward): Moved, seconded and passed (3-2; Hansen and Hur dissenting) that the Commission adopt decision point 3.**

Commissioner Hur asked where the Commission obtains the authority to set the standard of review and how the Commission will adjudicate the matters presented. Commissioner Harriman stated that the Ordinance was silent on the matter. Commissioner Hansen stated that she was comfortable approving the concept of a hearing, but asked for clarification on the burden of proof. She asked to hear from the public regarding this decision point. Commissioner Hur stated his approval of a more streamlined hearing process. He agreed with shifting the burden to the Respondent, as it would give some discretion to the Commission.

Executive Director St. Croix stated that this decision point is the most responsive to the proposals presented by the Task Force. He stated that once the Commission receives a complaint, the complaint would be put on the calendar for a Commission hearing.

Commissioner Ward stated that the Respondent would appear before the Commission in a hearing and would be asked to show cause as to why s/he had not followed the Order of Determination. Commissioner Ward expressed approval of the Executive Director's idea for a referral to come directly to the Commission without staff's involvement. Commissioner Harriman stated that section 67.35(d) refers to court or the Commission. She interpreted that to mean that the Commission is able to do whatever a court is permitted to do. She stated that this part of the Ordinance creates the basis of the authority of the Commission and allows the Commission to have a hearing.

### Public Comment:

Kimo Crossman referred to page 2 of Mr. Grossman's memo, where he addressed a fast and efficient response to document requests. He stated that it was important for there to be fast resolution of these matters. He stated that the complaints spend about three to four months at the Task Force before they are referred to the Commission. He also stated his belief that Mr. Grossman misspoke and that violations have been determined

prior to arriving at the Commission. He stated he was surprised by the burden of proof provision. He stated that the Commission should determine only enforcement of the violation.

Commissioner Ward asked Mr. Crossman why the process takes so long at the Task Force. Mr. Crossman stated that there is an initial hearing, a pre-hearing, and then the matter is referred to the CAC (which occurs about two to three weeks later). He stated that the CAC reviews the status and then the matter is referred back to the full Task Force, where there is another hearing where the matter is potentially referred to the Commission. He stated that meetings occur about every two to three weeks. Commissioner Ward suggested that perhaps the process at the Task Force could be reviewed and streamlined.

Marc Salomon stated that due process occurs at the Task Force. He stated the Commission should only determine penalties. He suggested taking the third sentence of part III.C.

Mr. Grossman stated that he assumed there must be a type of hearing once the referral reached the Commission. He stated that this hearing would be for the Respondent to show why the Order of Determination should not be enforced, not to hear evidence again. He suggested that the referral could follow this process at the Commission: calendar the referral once received; allow Respondent to show cause; permit time for Respondent to comply; and, if the Respondent does not comply, schedule the penalty phase for the next meeting. He stated that the Task Force goes out of its way to accommodate Respondents. He stated that perhaps Respondents may have something new to explain why the Order was not followed.

Commissioner Hansen stated that if the Commission holds a show cause hearing, then the burden is on the Respondent. Mr. Grossman stated that the Respondent would not be able to revisit the initial complaint, but could try to present something that was not presented earlier. He stated that, if there is no other excuse given, the order should be entered and the violation would constitute official misconduct under section 15.105 of the City Charter, not under section 67.34 of the Ordinance.

Richard Knee noted that Commissioner Hur bears no resemblance to Charlton Heston. He responded to a query from Commissioner Ward regarding the complaint process at the Task Force. He stated that the Task Force meets once a month and consists of volunteers. He stated that the complaint process has worked quite well and that sometimes complaints never reach the Task Force because the Administrator is able to resolve the matter. He stated that sometimes an Order of Determination alone is enough to resolve the matter, but other times, it is not. He stated that some Respondents need more time to comply with an Order of Determination. He stated that all parties are given ample time and only then does the full Task Force make a referral to the Commission.

Peter Warfield stated that the Task Force bends over backwards for the parties, especially for the Respondents. He stated that a Respondent may ask for a continuance because of vacation or other reasons and so the matter is postponed for another month. He stated that an enforcement hearing as presented in part III.C is an improvement over staff handling the matter. He stated that he once had a Sunshine matter referred to the Commission and never heard anything from the Commission. He stated that he read a dismissal letter, which was addressed to the Task Force, that there was a finding of no violation. He suggested that the process for these violations be more open, so that everyone may understand the process.

Hope Johnson stated that she disagreed with the third sentence of part III.C as well. She stated that it was inappropriate to allow new evidence, as is the case in an appeal from a trial court's decision. She stated that

allowing new evidence would be unfair to the original complainant, as s/he would have no knowledge of the new evidence.

Commissioner Hur stated that the Commission could create a simple mechanism for these cases, like enforcing a settlement agreement. He stated that the proceedings in front of the Commission should be narrower and more summary. He stated that cases involving official misconduct should have a full hearing and the Commission should be satisfied that there has been a violation.

Chairperson Studley asked staff to begin drafting regulations with these policy decision points in mind. She stated that the Task Force will have the opportunity to give its input and that the Commission would continue communicating and working with them while staff develops the regulations. Chairperson Studley and Commissioner Hansen thanked Commissioner Harriman, Mr. Grossman, and staff regarding their work on this complicated issue. They also thanked the members of the public in attendance for their commitment to this matter.

[Break at 7:45 PM.]

[Return from break at 7:52 PM.]

#### **IV. Consideration of possible amendments to Ethics Commission Regulation 3.324-5, to define the term “department, board, commission, office or other unit of government, for which the officer or employee served” in section 3.234(a)(2) of the Government Ethics Ordinance (“GEO”), San Francisco Campaign and Government Conduct Code section 3.200 et seq.**

Deputy Director Ng stated that GEO was amended in 2009 and the one-year post-employment ban applies to employees who have transferred between two City departments, as well as persons who have left City employment altogether. She stated that the language of this amendment conforms to the language of section 3.234 itself. Chairperson Studley read the amended language: “officer or employee served, including those in another agency and those who have served and departed.” Commissioner Hansen noted a typographical error in the regulation language at (B)(2): “for which *an* officer or employee...”

**Motion 10-06-14-4 (Harriman/Hur): Moved, seconded and passed (5-0) that the Commission adopt the proposed amendment, as amended.**

Public Comment:

None.

#### **V. Consideration of education and communication with the public.**

Chairperson Studley stated that there were no members of the public present, but suggested setting a timeframe for this issue. She suggested introducing ideas, but recognizing that the Commission needs input from interested members of the public. She stated that there may be other people, other than those who are actively interested, who may care about the Commission’s work and possibly be able to provide perspective to the Commission.

Commissioner Hansen thanked Chairperson Studley for her willingness to include her and this topic onto the agenda. She stated that she believed that there were people interested in the Commission’s work. She stated her interest in taking staff’s time into consideration and that she was interested in expanding the group of people who are interested in the Commission’s work. She suggested expanding the number of interested persons’

meetings and the topics covered in those meetings. She suggested adding people to the interested persons list, by specifically reaching out to individuals, clubs, and organizations that are engaged in the political process. She stated her interest in obtaining more dialogue on more topics discussed during Commission meetings.

Chairperson Studley agreed with Commissioner Hansen's interests, but suggested presenting ideas that may be accomplished with minimal resources.

Commissioner Hansen stated her interest in bringing more people to Commission meetings. She stated that the dialogue that occurred with members of the public during the earlier item was helpful. She stated that her second area of concern was about how the Commission conducts itself and relates to the public in meetings. She stated her approval that the Commission is getting a clock for the public, so that each person is aware of how much time has passed during their comment period. She stated that she has heard far too many comments that the Commission is not a friendly body. She stated that the Commission has been rude to people in the public and that the Commission has not listened or responded to members of the public. She stated her interest in responding to members of the public when they speak at meetings. Chairperson Studley stated that it could be difficult to determine where to draw the line, when a topic is not on the agenda.

Chairperson Studley asked the Executive Director how the interested persons list was generated. Mr. St. Croix stated that the list was self-generated and that if people do not ask to receive something, staff does not send it. He stated that most people on the list are online, but there are some who ask for mailings. He stated that clubs could be contacted, if the Commissioners suggest particular clubs and staff could input addresses onto the list. He stated that, in terms of outreach, the Commission always encourages people to ask questions and all meeting summaries are sent to the interested persons list, media, and all office holders.

Chairperson Studley suggested speaking with Commissioner Hansen outside of the meeting about possible ideas and groups to add to the list. She stated that she would bring names for staff to add to the list. Commissioner Hansen stated that she would be happy to meet with Chairperson Studley and asked that staff add all of the political clubs to the list, as they are engaged more often than not in the elections. She stated that various clubs have expressed interest to her in the Commission's work.

Commissioner Hansen stated that she would like the Commission to respond to a member of the public after a comment is made or a question is asked during public comment. She stated that when nothing happens, that does not generate respect for the Commission.

#### **VI. Minutes of the Commission's regular meeting of May 10, 2010.**

Commissioner Hansen asked whether Marc Salomon received the documents he requested, as noted in the minutes. Executive Director St. Croix stated that there were some documents which he was allowed to view and others that were not disclosed.

**Motion 10-06-14-5 (Harriman/Hur): Moved, seconded and passed (5-0) that the Commission adopt the minutes of the May 10, 2010 meeting, with typographical corrections.**

#### **VII. Executive Director's Report.**

Executive Director St. Croix stated that the Commission will require temporary staff during the campaign season and that he was looking for student interns. He stated that the first budget hearing was in two days and that

there had been no challenges from the budget analyst so far. He stated that the Mayor needs to restore \$6.2M to the election campaign fund.

Commissioner Hansen expressed her concern about the removal of the special condition for the fines officer. She expressed concern that someone in the position would have no experience and that Mr. Luby had years of experience. Chairperson Studley stated that this was a personnel matter as well as a management issue. She stated that possible consequences of the personnel shift could be discussed, but not a specific employee, as that is a personnel matter.

Commissioner Hansen stated that the decision was made without the Commission's concurrence and now there is someone in that position with no experience. She asked what projections staff has made regarding any loss of revenue due to that person's lack of experience. Mr. St. Croix stated there was no expectation of loss of revenue at all. He stated that everyone has the same learning curve when hired and that he does not like the bumping system. He stated that his job is to ensure the Commission does the best with what it has available.

#### **VIII. Items for future meetings.**

Commissioner Hansen asked to review the issue of fundraising for the Democratic County Central Committee ("DCCC") races. She stated that there were tremendous amounts of money spent on candidates running for DCCC, who are also running for Supervisor. She stated that there appeared to be a loophole allowing candidates to raise money for the DCCC race that could not be raised for a supervisorial race. She stated that lobbyists and others give money to these candidates with more of an interest in potentially influencing supervisorial races.

Executive Director St. Croix stated that the deadline for electioneering communications is 90 days from the election. Chairperson Studley stated that the Commission would address its authority over this type of behavior.

#### **IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

#### **X. Adjournment.**

**Motion 10-06-14-2 (Studley/Harriman): Moved, seconded and passed (5-0) that the Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 8:32 PM.

Respectfully submitted,

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Catherine Argumedo



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: November 10, 2011

To: Members, Ethics Commission  
Members, Sunshine Ordinance Task Force

From: John St. Croix, Executive Director  
By: Catherine Argumedo, Investigator/Legal Analyst  
Garrett Chatfield, Investigator/Legal Analyst

Re: Regulations regarding Enforcement of Sunshine Ordinance Complaints

## **I. Background**

On June 7, 2010, staff presented to the Ethics Commission ("Commission") a memorandum regarding possible regulations governing the Commission's handling of complaints alleging a violation of the Sunshine Ordinance, San Francisco Administrative Code Chapter 67 ("Ordinance"). At its June 14, 2010 meeting, the Commission discussed and adopted the following three policy directives:

1. The Commission's jurisdiction regarding violations and alleged violations of the Ordinance includes: a) alleged willful violations of the Ordinance by elected officials and department heads; b) referrals of violations of the Ordinance from the Sunshine Ordinance Task Force ("Task Force"); and c) complaints brought directly to the Commission alleging a violation of the Ordinance.
2. The Commission has jurisdiction to establish penalties for violations of the Ordinance, including whether to impose monetary fines or other penalties or to find official misconduct by elected officials and department heads.
3. For all referrals from the Task Force, the Commission will hold an enforcement hearing. The real party in interest (the original complainant) and the Respondent may appear. Because the Task Force will have already determined that the Respondent violated the Ordinance, the Respondent will have the burden of proof to show that he or she did not violate the Ordinance.

Guided by these three policy directives, staff drafted a set of regulations and forwarded the draft to the Task Force for review and comments on August 17, 2010. The Task

Force responded in writing with its own proposed regulations to the Ethics Commission on August 1, 2011.

After considering the Task Force's recommendations, reviewing the Commission's resolution of Sunshine complaints in the past year, and refocusing on the language of the Ordinance, staff now proposes a revised set of regulations. Staff's revised proposals differ from its recommendations in 2010 and depart from the Commission's earlier policy decisions, particularly with regard to non-willful violations of the Ordinance and handling of complaints against managerial City employees.

## **II. Relevant Provisions of the Sunshine Ordinance**

There are a number of ambiguities in the enforcement provisions of the Ordinance, which was drafted and adopted by the voters in 1999. Under the Charter, the Commission has the authority to adopt regulations reasonably interpreting these ambiguities. Specifically, five provisions of the Sunshine Ordinance are relevant here. They are set forth below.

1. ***From S.F. Administrative Code section 67.30(c):***  
The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.
  
2. ***S. F. Administrative Code section 67.34:***  
The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.
  
3. ***S.F. Administrative Code section 67.35:***
  - (a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.
  - (b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.
  - (c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.
  - (d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city official or state official 40 days after a complaint is filed.



4. ***S.F. Administrative Code section 67.21(d):***

If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

5. ***S.F. Administrative Code section 67.21(e):***

If the custodian [of a public record] refuses, fails to comply, or incompletely complies with a [public records] request . . . or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

### **III. Summary of Proposed Regulations**

The Regulations proposed by staff aim to reconcile the ambiguities in the Sunshine Ordinance and to outline a standard procedure to handle all complaints that allege willful violations of the Sunshine Ordinance – whether referred by the Task Force, initiated by staff, or filed by a complainant directly with the Commission. The proposed Regulations also aim to reconcile concerns expressed by the Task Force regarding the Commission's handling of complaints. The main changes that the proposed regulations would achieve are to:

- a) Establish that the Commission will handle complaints alleging willful violations of the Sunshine Ordinance by elected officials, department heads, and managerial City employees;
- b) Ensure that complaints are handled and resolved in an expeditious manner;
- c) Ensure that the hearing process is open to the public; and
- d) Allow the Commission to impose monetary fines for willful violations of the Sunshine Ordinance.

The remainder of this section of the memo sets forth the new regulations proposed by staff. Rather than review the proposed regulations line-by-line, this memo presents a series of decision points for the Commission's consideration, followed by a final decision point to adopt the regulations in whole.

### 1. Section I – Preamble.

The proposed Regulations' Preamble establishes the purpose of the regulations and the jurisdiction of the Commission regarding complaints alleging violations of the Sunshine Ordinance. Under staff's proposal, the Commission will handle only allegations of willful violations of the Ordinance by elected officials, department heads, or managerial City employees.

Administrative Code section 67.34 provides that “[c]omplaints involving allegations of *willful* violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission (emphasis added).” Staff believes the best interpretation of this provision is that the Commission has jurisdiction over *only* willful violations, and does not have jurisdiction over allegations of non-willful violations of the Ordinance. Under this interpretation, the Commission would only handle complaints or referrals that allege willful violations; staff would reject any complaint or referral alleging a non-willful violation.

Although section 67.34 states that the Commission “shall handle” allegations of willful violations by elected officials and department heads, staff recommends that handling allegations against managerial City employees is consistent with the intent of the law. Oftentimes elected officials or department heads are not directly involved in responding to records requests, and staff recommends that it is appropriate to hold managerial City employees in those instances accountable for compliance with the Ordinance regarding responses to records requests. The term “managerial City employee” will be defined within these regulations as “a City employee with final decision-making authority in determining a response to the identified record requested.”

**Decision Point 1:** Shall the Commission enforce or review only allegations of willful violations of the Sunshine Ordinance by elected officials, department heads, and managerial City employees?

## 2. Section III – Complaints Alleging Willful Violations of the Sunshine Ordinance.

Section III specifies the process by which the Commission will handle complaints involving alleged willful violations of the Sunshine Ordinance by an elected official, department head, or managerial City employee.

Under Section III.A., any person may file a complaint with the Commission; the Task Force may make a referral to the Commission; and Commission staff may initiate a complaint.

If the Task Force refers or a complainant makes a complaint that does not allege a willful violation of the Ordinance, the Commission will return the referral or complaint with a letter explaining that the Commission does not have jurisdiction to handle non-willful complaints. In addition, if the Task Force refers or a complainant makes a complaint or alleges a violation of the Ordinance by an individual who is not an elected official, department head, or managerial City employee, the Commission will return the referral or complaint with a letter explaining that the Commission does not have jurisdiction to handle the complaint.

**Decision Point 2(a):** Shall the Commission approve the process set forth in Section III.A, as set forth on page 2 of the proposed regulations?

Under Section III.B., upon receipt of a complaint the Executive Director must schedule a hearing before the Commission. Section 67.35(d) requires a 40-day waiting period before the initiation of enforcement proceedings before the Commission, but the Ordinance does not state what starts the 40-day clock ticking. Staff proposes to resolve this ambiguity in the Ordinance with the following procedure: For complaints that have been considered by the Task Force or Supervisor of Records,<sup>1</sup> the date of the Commission's hearing must be at least 40 days from the date that the Task Force or Supervisor of Records received the matter. For staff-initiated complaints or complaints filed only with the Commission, no 40-day clock applies.

Upon receiving or initiating a complaint, the Executive Director must provide notice to each Respondent and original Complainant. The Executive Director will also send the Task Force a courtesy notice.

A regulatory requirement for the Commission to hold a public hearing on each complaint within its jurisdiction will ensure that no such complaint will be dismissed in closed session or without a hearing. It addresses the Task Force's concern that all complaints regarding Sunshine Ordinance violations should be deliberated in public by the Ethics Commission. A public hearing allows the Ethics Commission to hear from the Complainant(s) and Respondent(s) and make findings after hearing and reviewing the evidence and considering public comment.

As proposed in section V of this memo, staff envisions that the public hearing will be an expedited process.

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<sup>1</sup> The Sunshine Ordinance designates the City Attorney as the "Supervisor of Records." Separate from the complaint process, a member of the public may request that the City Attorney's Office review a department's decision to withhold records. The City Attorney's Office investigates and responds to these requests. The Supervisor of Records does not hold a public hearing or impose penalties against any City officers or employees.

**Decision Point 2(b):** Shall the Commission approve the proposals in Section III.B., as set forth on page 3 of the proposed regulations?

### **3. Section IV – Investigation and Recommendation.**

Section IV outlines the process for investigating alleged willful violations of the Sunshine Ordinance.

Under Section IV.A., the Executive Director’s investigation may include, but is not limited to, interviewing the Respondent(s) and any witnesses and reviewing documentary and other evidence. This proposal tracks the language used in the Commission’s current regulations for non-Sunshine complaints, and provides staff the flexibility and discretion it needs to conduct thorough investigations. Additionally, this section adopts the Task Force’s recommendation that the investigation be completed within 30 days of the receipt of a complaint, unless the Executive Director shows why it cannot be concluded within 30 days.

**Decision Point 3(a):** Shall the Commission approve the proposals in Section IV.A., as set forth on page 3 of the proposed regulations?

Under Section IV.B., the Executive Director must prepare a written recommendation, which will include a summary of factual and legal findings after concluding his or her investigation. The report must also include the Executive Director’s disposition recommendation, which will be one of the following: a) that the Respondent willfully violated the Sunshine Ordinance; b) that the Respondent violated the Sunshine Ordinance but the violation was not willful; or c) that the Respondent did not violate the Sunshine Ordinance. The recommendation must be delivered to the Commission, Complainant, and Respondent in advance of the hearing.

**Decision Point 3(b):** Shall the Commission approve the proposals in Section IV.B., as set forth on pages 3 – 4 of the proposed regulations?

Section IV.C. provides that the Complainant and Respondent may submit a response to the Executive Director’s recommendation; it also sets the time frame and procedure for submitting the response.

**Decision Point 3(c):** Shall the Commission approve the proposals in Section IV.C, as set forth on page 4 of the proposed regulations?

### **4. Section V – Public Hearing; Deliberations and Findings; Administrative Orders and Penalties; Warning Letters.**

Section V.A. outlines the hearing process. Although patterned after the regulations which govern the hearing process for non-Sunshine complaints, there are several key differences. For instance, staff will not play a prosecutorial role in Sunshine hearings, the Commission will not hold a probable cause hearing or issue a formal accusation, and presentation of the evidence will be more limited. The primary features of the proposed hearing structure are:

- 1) The hearing, including the Commission’s decision-making process, will be public.

- 2) The Complainant will have an opportunity to speak before the Commission, as will the Respondent. No other live testimony will be permitted unless the Chair determines otherwise.

**Decision Point 4(a):** Shall the Commission approve the proposals in Sections V.A., as set forth on pages 4 – 5 of the proposed regulations?

Section V.B. requires the Commission to deliberate the merits of the allegations in public. It also provides that any finding of a willful or non-willful violation of the Sunshine Ordinance must be supported by conclusions of law and fact based on the entire record.

Section V.B. also outlines the relevant circumstances that the Commission must consider when making a determination whether a Respondent willfully violated the Sunshine Ordinance.

**Decision Point 4(b):** Shall the Commission approve the proposals in Section V.B, as set forth on page 5 of the proposed regulations?

Section V.C sets forth the remedies the Commission may order. Under the proposal, the Commission may order a Respondent to produce a public record; refer the matter to the Mayor with a recommendation to initiate official misconduct proceedings under Charter section 15.105; order a penalty payment of up to \$5,000 per violation; and/or order a notice of the violation to be posted on the Commission's website. Section V.C.2 lists factors that the Commission may consider in determining appropriate penalties, including: the severity of the violation; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was an isolated incident or part of a pattern; and whether the Respondent has a prior record of violations of the Sunshine Ordinance.

Section V.C.3 allows for remedies when the Commission determines that Respondent violated the Sunshine Ordinance, but the violation was not willful. In such cases, the Commission may issue warning letters urging the Respondent(s) to cease and desist the violation. The Commission may also order the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance.

**Decision Point 4(c):** Shall the Commission approve the proposals in Section V.C, as set forth on pages 5 – 6 of the proposed regulations?

## **5. Finding of No Violation.**

Section V.D outlines that if the Commission determines that a Respondent has not committed a violation of the Ordinance, it shall publicly announce that determination.

**Decision Point 5:** Shall the Commission approve the proposals in Section V.D., as set forth on page 6 of the proposed regulations?

**6. Sections VI and VII – Miscellaneous Provisions; Severability.**

Modeled after the Regulations for all other complaints within the Commission’s jurisdiction, Section VI contains provisions to address issues such as ex parte communications, access to complaints and deliberations, and continuance requests. Section VI.B. provides that no records related to complaints may be disclosed except as necessary to the conduct of the investigation or as required by the California Public Records Act or the Sunshine Ordinance. In order to provide for the integrity of the investigation, internal staff notes may not be disclosed until the Commission has issued its final decision following the hearing. Section VI.F permits any Complainant or Respondent to request a continuance and also provides that the Commission may reschedule hearings for good cause. Section VI.H establishes a statute of limitations period. Section VII provides for severability of any invalid regulation.

**Decision Point 6:** Shall the Commission approve the proposals in Section VI.A -L. and Section VII, as set forth on pages 6 – 9 of the proposed regulations?

**7. Section II – Definitions**

Section II contains the definitions relevant to the regulations. Included is the definition of “managerial City employee” which is not defined in the Sunshine Ordinance. Staff proposes defining the term to mean “a City employee with final decision-making authority in determining a response to the identified record requested.”

The definitions section also clarifies who is a complainant, and establishes that a finding of a willful violation by the Task Force in an Order of Determination will be treated as a recommendation to the Ethics Commission that a willful violation occurred.

**Decision Point 7:** Shall the Commission approve the proposals in Section II, Definitions, as set forth on pages 1 – 2 of the proposed regulations?

**9. General Adoption of Regulations**

**Decision Point 8:** Shall the Commission adopt the “Ethics Commission Regulations for Complaints Alleging Willful Violations of the Sunshine Ordinance” as set forth on pages 1 – 9 of the proposed regulations?

**III. Clean-up Language for Existing Regulations**

If the Commission adopts the proposed Sunshine Regulations, it should also amend the existing Enforcement Regulations, which will continue to apply to all enforcement matters that do not involve allegations of Sunshine violations. The proposed amendments would: a) clarify that all complaints alleging a violation of the Sunshine Ordinance will be governed by the new Sunshine enforcement regulations; b) delete references in the existing Regulations to violations of the Sunshine Ordinance; and c) amend the definition of “business day” by adding the language “or a day on which the Commission office is closed for business” to conform with the definition in the proposed Sunshine regulations.

**Decision Point 9(a):** Shall the Commission approve the addition of Section III.D. as set forth on page 3 of the current Regulations?

**Decision Point 9(b):** If the answer to Decision Point 9(a) is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the current Regulations? (*See strikethrough language in Attachment B, pages 2, 7, 15, and 16.*)

**Decision Point 9(c):** Shall the Commission approve the amended definition of “business day” of Section II.A. on page 1 of the current Regulations?

#### **IV. Task Force Recommendations Not Included in Staff’s Proposed Regulations**

While staff has incorporated some of the Task Force recommendations into the proposals discussed above, there were several provisions that staff did not include.

##### **1. The Role of the Commission under the Ordinance.**

The Task Force’s recommendations appear to be premised on the notion that the Ethics Commission has two distinct roles under the Sunshine Ordinance: one with respect to the enforcement of Task Force referrals, and the second with respect to the Ethics Commission’s handling of willful violations under section 67.34. Staff does not agree.

As the Commission has determined in recent decisions, the Ethics Commission is not tasked anywhere in the Ordinance with enforcing orders of determination from the Task Force. Section 67.21(d) permits a requestor to petition the Supervisor of Records (the City Attorney’s Office) for a determination of whether a record is public when a City department fails to comply with a public records request. If the Supervisor of Records determines that the record is public, he or she must order the department to comply with the records request. Section 67.21(d) further provides that if the custodian still fails to comply with the records request after being ordered to release the records by the Supervisor of Records, the “*supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance [emphasis added].*” Under section 67.21(d), the district attorney or the attorney general—not the Ethics Commission—is specifically tasked with the enforcement of a public records request.

Along with the right to petition the Supervisor of Records, a person also has the right to petition the Task Force under section 67.21(e) “for a determination whether the record requested is public.” Section 67.21(e) further provides that if the Task Force makes “the determination that the record is public, the [Task Force] shall immediately order the custodian of the public record to comply with the person’s request. If the custodian refuses or fails to comply with any such order within 5 days, the [Task Force] *shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance [emphasis added].*” Again, the power to enforce the public records request lies with the district attorney or the attorney general, not the Ethics Commission.

**2. The Task Force proposed to define “willfully” using the California Penal Code.**

The Task Force recommended that the Ethics Commission adopt the definition of “willfully” as defined in section 7 of the Penal Code. That definition, according to the Task Force, is “the word ‘willfully,’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to injure another, or to acquire any advantage.”

The Ethics Commission has determined that the term “willful” under the Ordinance includes a purposeful failure to carry out mandatory duties of office. In the context of the Sunshine Ordinance, a willful violation would occur if a Respondent purposefully withheld public documents or violated public meeting requirements knowing that the Sunshine Ordinance required otherwise.

**3. The Task Force proposed to allow testimony from individuals other than the parties in interest.**

The Task Force recommended the elimination of any restriction on persons who can provide testimony in support of a Respondent or Complainant in order to maintain a level playing field.

Staff proposes to permit only the Respondent and Complainant to provide live testimony. This process ensures that these parties have the right to present their case; it also expedites the hearing process. There is nothing that limits a Respondent or Complainant from permitting another individual to use their time allotted to provide supporting testimony. The draft regulations allow for additional testimony at the Chair’s discretion. In addition, there will be public comment as part of every hearing.

**4. The Task Force proposed that any monetary penalties imposed should be paid out of “non-City funds.”**

The Task Force recommended that when the Ethics Commission imposes a monetary penalty on a Respondent, the penalty should be not less than \$500 and not more than \$5,000 for each willful violation. The Task Force also recommended that these monetary penalties be paid from the Respondent’s personal funds and not City funds. The California Tort Claims Act governs the indemnification of City employees for acts taken within the course and scope of their employment.

**5. The Task Force proposed that the Sunshine Ordinance supersedes the City Charter.**

Another consideration for the Commission is the interpretation of section 67.36 of the Ordinance. This section states “[t]he provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.”

In its August 1, 2011 response to the Commission, the Task Force concluded that “the Sunshine Ordinance has primacy over any other inconsistent local laws in the aspects of open government



that it covers.” However, this section does not state that the provisions of the Sunshine Ordinance supersede all local laws. The Ethics Commission and the Office of the City Attorney have repeatedly concluded that the Sunshine Ordinance does not supersede the City’s Charter.

The Task Force has concluded in the past that the Sunshine Ordinance supersedes the City Charter, specifically when a City department has asserted that documents were confidential based upon a Charter provision. Staff recommends that the Commission make a final determination regarding this issue.

# ATTACHMENT A

San Francisco  
Ethics Commission



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## ETHICS COMMISSION REGULATIONS FOR COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE

*Effective Date:* \_\_\_\_\_, 2011

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## **I. PREAMBLE**

Pursuant to San Francisco Charter section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations shall apply to complaints alleging willful violations of the Sunshine Ordinance by elected officials, department heads, and managerial City employees pursuant to S.F. Administrative Code section 67.34. Any allegations regarding non-willful violations of the Sunshine Ordinance, or willful violations committed by individuals other than elected officials, department heads, or managerial City employees, shall not be handled by the Ethics Commission. All allegations of violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

## **II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco.
- C. "Commission" means the Ethics Commission.
- D. "Complaint" means a Task Force referral or a written document submitted directly to the Ethics Commission, alleging a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial city employee.
- E. "Complainant" means a person or entity that filed the original complaint alleging a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee with the Task Force, Supervisor of Records, or Commission. "Complainant" shall also mean the Commission if the complaint was initiated by the Commission staff.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.
- G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force or a Respondent or Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson, designated Commissioner or hearing officer may order that the delivery of briefs or other materials be accomplished by e-mail.

- H. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.
- I. "Exculpatory information" means information tending to show that the respondent is not guilty of the alleged violations.
- J. "Managerial City Employee" means a City employee with final decision-making authority in determining a response to the identified record requested.
- K. "Mitigating information" means information tending to excuse or reduce the culpability of the Respondent's conduct.
- L. "Order of Determination" means a final recommendation issued by the Task Force that a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee occurred.
- M. "Referral" means a recommendation from the Task Force to the Commission that a willful violation of the Sunshine Ordinance has occurred.
- N. "Respondent" means an elected official, department head, or managerial City employee who is alleged or identified in a complaint to have committed a willful violation of the Sunshine Ordinance.
- O. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.
- P. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.
- Q. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

### **III. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE.**

**A. Filing Complaints.** Any person or entity may file a complaint with the Commission alleging a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee. Commission staff may also initiate a complaint alleging the willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee.

Any complaint or referral that is filed with the Commission that does not allege a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee will be returned to the complainant or Task Force with a letter explaining the Commission's jurisdiction.

**B. Scheduling of Hearing.**

- 1) When the Executive Director receives a complaint or a referral alleging a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee, the Executive Director shall schedule a public hearing at a regular meeting of the Commission at least 15 business days after the conclusion of his or her investigation.
- 2) For complaints that have been considered by the Task Force or Supervisor of Records prior to the initiation of a complaint with the Commission, the Commission may not conduct a hearing until at least 40 days after the date that the Task Force or Supervisor of Records received the matter. For complaints initiated by Commission staff, no 40-day waiting period applies.

At least 15 business days in advance of the hearing date, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to section IV to each Commission member, each Respondent, and each Complainant of the date, time and location of the hearing.

- 3) In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the staff recommendation to the Task Force.

**IV. INVESTIGATION AND RECOMMENDATION**

**A. Factual Investigation.** Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the recommendation to the Ethics Commission.

**B. Report and Recommendation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation, including any exculpatory and mitigating information. In the recommendation, the Executive Director may present statements including hearsay, declarations of

investigators or others relating to the statements of witnesses, or the examination of any other evidence. The recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following: a) that Respondent(s) willfully violated the Sunshine Ordinance; b) that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or c) that Respondent(s) did not violate the Sunshine Ordinance. The recommendation shall be delivered to the Commission, Complainant and Respondent pursuant section III.B.

### **C. Response to the Report and Recommendation.**

1. Each Complainant and Respondent may submit a written response to the report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the parties in interest and the Executive Director, a response may be distributed by e-mail.

## **V. PUBLIC HEARING.**

### **A. General Rules and Procedures.**

#### 1. Public Hearing

The hearing shall be open to the public. The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing.

Each Complainant and Respondent may speak on his or her behalf, subject to a time limit determined by the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer. At his or her discretion, the Commission Chairperson, the Commission member assigned to hold the hearing, or the hearing officer may allow additional testimony. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. The Complainant and each Respondent may submit any document to the Commission to support his or her position. Any documents so provided shall also be provided to the opposing party.

Commissioners may question each party regarding the allegations. Complainants and Respondents may not directly question each other.

2. Standard of Proof

The Commission may determine that an elected official, department head, or managerial City employee has committed a willful violation of the Sunshine Ordinance only if a person of ordinary caution and prudence would so conclude, based on a preponderance of the evidence.

3. Role of the Executive Director.

Except when a complaint is staff-initiated, the Executive Director's role at the hearing will be limited to providing the recommendation containing the legal and factual basis for his or her recommendation to the Commission.

**B. Deliberations and Findings.**

The Commission shall deliberate the merits of the allegations in public. Public comment on the matter shall be allowed for each hearing.

The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

To determine whether a violation of the Sunshine Ordinance is willful, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) whether the Respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame;
- (b) the volume of records requested, and the extent to which they were practically accessible; and/or
- (c) whether the Respondent consulted with counsel or relied on the advice of other City employees prior to committing the alleged violation.

**C. Administrative Orders and Penalties; Warning Letters.**

1. If the Commission finds that a Respondent committed a willful violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring any or all of the following:

- (a) the Respondent(s) to cease and desist the violation and/or produce the public record(s);



(b) the Executive Director to refer the matter to the Mayor with the Ethics Commission's recommendation to initiate of the suspension and removal proceedings pursuant to San Francisco City Charter section 15.105 against the Respondent(s);

(c) the Respondent's department, commission, or board to pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation; and/or

(d) the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) willfully violated the Sunshine Ordinance.

2. When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

(a) the severity of the violation;

(b) the presence or absence of any intention to conceal, deceive, or mislead;

(c) whether the violation was an isolated incident or part of a pattern; and

(d) whether the Respondent has a prior record of violations.

3. If the Commission finds that the Respondent(s) has violated the Sunshine Ordinance but has not committed a willful violation, the Commission may issue a warning letter urging the Respondent(s) to cease and desist the violation. The Commission may also order the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance.

#### **D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission shall take no further action on the complaint.

### **VI. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed with the Commission or referred by the Task Force, no Commissioner shall engage in oral or written communications outside of a Commission

meeting regarding the merits of an enforcement action with the Commission's staff, the Respondent, the Complainant, any member of the Task Force or any person communicating on behalf of the Respondent, Complainant, or any member of the Task Force, except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

**B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

**C. Oaths and Affirmations.**

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

**D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

**E. Powers and Duties of Individual Commissioners and Hearing Officers.**

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

**F. Extensions of Time and Continuances.**

Any Complainant or Respondent may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson 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 ten business days before the

date of the hearing. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request upon a showing of good cause.

The Commission or Commission Chairperson or the individual Commissioner or hearing officer may reschedule a hearing in their discretion for good cause.

**G. Recordings.**

Every hearing shall be electronically recorded.

**H. Statute of Limitations.**

No action alleging a willful violation of the Sunshine Ordinance by an elected official, department head, or managerial City employee shall be commenced more than one year after the date on which the alleged willful violation occurred. The date on which the Executive Director delivers a recommendation regarding an alleged willful violation to the Ethics Commission, as required by these Regulations, shall constitute the commencement of the action.

**I. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
2. Whenever these Regulations require delivery to a Respondent, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection G, to:
  - a. If the Respondent is a City employee, to the employee's City office address or to the address listed with the (Controller/ Payroll) as the employee's current address.
  - b. If the Respondent is a former City employee, to the address listed with the City's retirement system.
  - c. If neither subsections (a) nor (b) are applicable, to an address reasonably calculated to give notice to and reach the Respondent.
3. Delivery is effective upon the date of delivery, not the date of receipt.

4. All delivery requirements to deliver documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

**J. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 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 12 point type. Each page and any attachments shall be consecutively numbered.

**K. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the last date on which the Commission hears argument or testimony in the proceeding.

**L. Proceedings under Charter section 15.105.**

Members of the Commission shall not be precluded from participating in any proceeding initiated under Charter section 15.105 because of his or her participation in any hearing held pursuant to these Regulations.

**VII. 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 shall not be affected thereby.

# **ATTACHMENT B**

San Francisco  
Ethics Commission



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San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

## **ETHICS COMMISSION**

### **REGULATIONS FOR INVESTIGATIONS**

### **AND ENFORCEMENT PROCEEDINGS**

*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; and amendments effective January 8, 2010*

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## **I. PREAMBLE**

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

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 ethics violations;
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. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

## **II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, ~~or~~ City holiday, *or a day on which the Commission office is closed for business.*
- B. "City" means the City and County of San Francisco
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Credible" means offering reasonable grounds for being believed.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.

G. “Deliver” means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. “Enforcement action” means an action pursuant to San Francisco Charter section C3.699-13.

I. “Exculpatory information” means information tending to show that the respondent is not guilty of the alleged violations.

J. “Executive Director” means the Executive Director of the Commission or the Executive Director’s designee.

K. “Mitigating information” means information tending to excuse or reduce the significance of the respondent’s conduct.

L. “Probable cause” means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. “Respondent” means a person or entity that is alleged in a complaint to have committed a violation of law.

N. “Stipulated order” means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. “Violation of law” means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and 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; ~~*the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67;*~~ 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.

### **III. COMPLAINTS**

#### **A. Formal Complaints.**

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the



Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:

- (a) the name and address of the respondent;
- (b) the provision(s) of law allegedly violated;
- (c) the facts constituting the alleged violation(s);
- (d) the names and addresses of witnesses, if any; and
- (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.

2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.

3. The Executive Director shall process and review all formal complaints, following the process described in Section IV.

**B. Informal Complaints.** Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

**C. Complaints Initiated by the Executive Director.** The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

**D. Complaints Alleging a Willful Violation of the Sunshine Ordinance. Any complaint that alleges a willful violation of the San Francisco Sunshine Ordinance by an elected official, department head, or managerial City employee shall be governed by the Ethics Commission Regulations for Complaints Alleging Willful Violations of Sunshine Ordinance. The Commission shall inform any complainant alleging non-willful violations of the Sunshine Ordinance or willful violations by any other City official other than an elected official, department head, or managerial City employee that the Ethics Commission does not have the jurisdiction to handle those allegations.**

#### **IV. REVIEW OF COMPLAINTS**

**A. Preliminary Review.** The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

**B. Dismissal of Complaint.** Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.
2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.
3. The complaint contains an expression of opinions, rather than specific allegations.
4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

**C. There is Reason to Believe a Violation May Have Occurred.** If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

## **V. CONDUCT OF INVESTIGATIONS**

**A. Factual Investigation.** The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

**B. Subpoenas.** During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

**VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Executive Director Determination and Calendaring.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

**B. Commission Decision Not to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

**C. Commission Decision to Dismiss.** If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

**D. Commission Decision Not to Calendar.** If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

**VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED**

**A. Probable Cause Report.** When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written “probable cause report” and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

**B. Delivery of Probable Cause Report and Notice of Probable Cause Hearing.** The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

**C. Response to the Probable Cause Report.**

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

**D. Rebuttal .** The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

**VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS**

**A. General Rules and Procedures.**

1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.

2. ~~*Except for hearings regarding alleged willful violations of the Sunshine Ordinance, the*~~ hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public. ~~*Probable cause hearings regarding alleged willful violations of the Sunshine Ordinance shall be held at a public meeting unless otherwise provided in state or local law.*~~

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.

4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

**B. Probable Cause Determination.**

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.

2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

(a) the respondent had requested and obtained a written opinion from the Commission;

(b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;

(c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and

(d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

**C. Determination How to Proceed with Hearing on Merits.**

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

**D. Amending Probable Cause Determination.**

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

**IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS**

**A. Issuance of Accusation.**

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

**B. Scheduling and Notice of Hearing on Merits.**

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall 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 accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and 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 books, documents or other things by applying to the Commission on or before (date).”

**X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.**

**A. Discovery.** The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

**B. Resolution of Preliminary and Procedural Matters.**

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

- (a) procedural matters;
- (b) disqualification of any member of the Commission from participation in the hearing on the merits;
- (c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;
- (d) discovery motions; and
- (e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the



assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

### **C. Hearing Briefs.**

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent

who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

**D. Issuance of Hearing Subpoenas.**

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits. The request shall 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 shall 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 Commissioner or hearing officer designated by Section VIII, subsection C(2).

**XI. DISCOVERY OF EXCULPATORY INFORMATION AND DISMISSAL OF COMPLAINT PRIOR TO HEARING ON THE MERITS**

**A. Discovery of Exculpatory Information.** Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

**B. Dismissal Recommendation.** After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

**C. Commission Consideration of Dismissal Recommendation.** The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If two or more members of the

Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

**D. Dismissal or Removal of Specific Charges.** After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

## **XII. HEARING ON THE MERITS**

### **A. General Rules and Procedures.**

#### 1. Public Hearing

The hearing on the merits shall 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 witnesses.

#### 2. 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 the violation.

#### 3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall 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.

#### 4. Exhibits

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

5. Witnesses

Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

6. Oral Argument

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

**B. Finding of Violation.**

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she 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.

**C. Administrative Orders and Penalties.**

1. 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:

- (a) cease and desist the violation;
- (b) file any reports, statements or other documents or information required by law; and/or
- (c) 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 five thousand dollars (\$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.

2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

(a) the severity of the violation;

(b) the presence or absence of any intention to conceal, deceive, or mislead;

(c) whether the violation was deliberate, negligent or inadvertent;

(d) whether the violation was an isolated incident or part of a pattern;

(e) whether the respondent has a prior record of violations of law; and

(f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

#### **D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

### **XIII. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

#### **B. Access to Complaints and Related Documents and Deliberations.**

1. *Except as described in subsection 3 for complaints alleging violations of the San Francisco Sunshine Ordinance, nN*o complaint, response thereto, investigative file

or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.

2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the conduct of the investigation. 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, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.

~~3. For complaints alleging willful violations of the San Francisco Sunshine Ordinance (S.F. Administrative Code Ch. 67), no complaint, investigative file or information contained therein, or Commissioner or staff deliberations shall be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. Deliberations by the Commission regarding such a complaint shall be conducted at a public meeting. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff shall not be disclosed until after the dismissal of a complaint or the Commission has issued its final decision following the hearing on the merits.~~

43. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

#### **C. Oaths and Affirmations.**

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

#### **D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the

Executive Director shall notify the Commission of the designation no later than the next business day.

**E. Powers and Duties of Hearing Officers.**

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).

3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

**F. Statute of Limitations.**

1. Unless otherwise stated in local 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 Executive Director delivers the probable cause report.

2. 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 events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

**G. Extensions of Time and Continuances.**

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an

extension of time. Requests for extensions of time may be made 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 ten business days before the deadline to complete an act or produce materials. The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

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 ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the 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.

#### **H. Referrals to Other Enforcement Agencies.**

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

#### **I. Recordings and Transcripts.**

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.



**J. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. 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.

d. If subsections (a) through (c) 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.

3. Delivery is effective upon the date of delivery, not the date of receipt.

**K. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a “page” means one side of an 8½ inch by 11 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 12 point type. Each page and any attachments shall be consecutively numbered.

**L. Public Summary of Dismissed Complaints.**

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

**M. Conclusion of Hearing on the Merits.**

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

**XIV. STIPULATED ORDERS**

**A.** At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- (2) the respondent knowingly and voluntarily waives any and 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 referring the matter to, cooperating with, or assisting any other government agency with regard to 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 shall 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 shall be disqualified because of prior consideration of the stipulation.

**B.** The stipulated order shall 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.

**C.** Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

**D.** Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

**XV. 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 shall not be affected thereby.

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# ATTACHMENT C

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

August 1, 2011

San Francisco Ethics Commission  
Commissioner Benedict Hur, Chair  
Commissioner Jamiene Studley, Vice Chair  
Commissioner Beverly Hayon  
Commissioner Dorothy Liu  
Commissioner Charles Ward

**Re: Sunshine Ordinance Task Force Recommendations re Proposed  
Regulations for Enforcement of Sunshine Complaints and Referrals**

Dear Commissioners,

The Sunshine Ordinance Task Force respectfully submits the enclosed recommended amendments to the Ethics Commission staff's June 2010 proposed regulations for the Commission's handling of Sunshine Ordinance complaints and Task Force referrals. An explanatory memorandum and redlined draft comparing changes have been included to clarify the advised amendments.

The Task Force regrets its delayed response to the proposed regulations, however, comprehensive discussions among Task Force members, open government advocates and experts, and members of the public were necessary to ensure such an important policy matter received a thorough review.

Thank you for the opportunity to participate in the development of the Ethics Commission's Sunshine Ordinance enforcement procedures. In order to facilitate the adoption of constructive and mutually agreeable regulations, the Task Force requests a joint open hearing between its Compliance and Amendments Committee and the Ethics' Commissioners to fully discuss the proposed regulations and submitted amendments. Please contact Chris Rustom, the Sunshine Ordinance Administrator, to arrange a joint hearing and discuss potential hearing dates.

Task Force members trust these recommended amendments will prove useful to the Commissioners' ongoing discussions and look forward to working with you more on this project. Please do not hesitate to contact the Task Force with any questions or concerns regarding these suggestions.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hope Johnson". The signature is written in black ink and is positioned above the printed name and title.

Hope Johnson  
Sunshine Ordinance Task Force Chair

Encls.

cc: John St. Croix, Ethics Commission Executive Director

SUNSHINE ORDINANCE  
TASK FORCE



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San Francisco 94102-4689  
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MEMORANDUM

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**Date:** July 26, 2011  
**To:** Ethics Commission  
**From:** Sunshine Ordinance Task Force  
**Subject:** Ethics Commission Staff's August 17, 2010 draft "Regulations for Complaints Alleging Violations of the Sunshine Ordinance."

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Introduction:

The Sunshine Ordinance Task Force (SOTF), through its five member Compliance and Amendments Committee<sup>1</sup> has reviewed, considered, and adopted suggested changes to the Commission staff's August 17, 2010 draft "Regulations for Complaints Alleging Violations of the Sunshine Ordinance" (Staff's Draft) Developed during many meetings of the Committee, some devoted almost exclusively to that task, the suggested changes also reflect extensive public comments taken at those meetings.

A paramount consideration for the SOTF was the need to distinguish between the Commission's two distinct roles under the regulations. One is its role with respect to SOTF referrals to the Commission for enforcement of non-compliance with SOTF Orders. The other, its role in "handling" specific complaints filed directly with the Commission for willful violations of the Sunshine Ordinance against "elected officials" and "department heads." In addition, as it moved through the process, the Committee concluded that editing and making additions or other major changes to the Staff's Draft, such as deleting and/or moving sentences and paragraphs, would likely result in a document difficult to follow and cumbersome to the point that the purpose of some of the changes would be lost to the reader. As a result, it prepared a redraft called "Regulations for Enforcement of the Sunshine Ordinance" (SOTF Draft), which is submitted with this Memorandum that is intended to explain the changes and the reasons for those changes.

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1 That Committee's members were the SOTF Chair, its Vice-Chair, its member attorney, a former President of the League of Women Voters of San Francisco, and an experienced paralegal.

Statutory Background:

The Ethics Commission's authority to issue rules and regulations with respect to open government matters is found in Article XV, §15.02 of the City Charter:

"The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. **In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records.**" (Emphasis Added.)

The San Francisco Sunshine Ordinance (Sunshine Ordinance) is only City "ordinance" that deals with the open government matters. Accordingly, any Regulations issued by the Ethics Commission (Commission) must implement "the purposes and provisions" of the Sunshine Ordinance.

The Regulations adopted by the Commission must be consistent with the Sunshine Ordinance for two reasons: (1) the Commission, in its By-laws, has undertaken to comply with the Sunshine Ordinance<sup>2</sup> and (2) by virtue of Section 67.36,<sup>3</sup> the Sunshine Ordinance has primacy over any other inconsistent local laws in the aspects of open government that it covers.

The Commission's Jurisdiction:

In its covering August 17, 2010 Memorandum to the Commission, the Staff noted that at "its June 14, 2010 meeting, the Commission ... adopted the three decision points", the first of which was:

"The Commission's jurisdiction regarding violations and alleged violations of the Ordinance includes: a) alleged willful violations of the Ordinance by elected officials

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<sup>2</sup> Article I, Section 3: Authority, Statutory Requirements, other Laws and Policies.

"The Commission shall comply with all applicable laws, including, but not limited to, the San Francisco Charter, San Francisco Sunshine Ordinance (Administrative Code sections 67.01 et seq.), the Ralph M. Brown Act (Government Code sections 54950 et seq.)..."

<sup>3</sup> **SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement that would result in greater or more expedited public access to public information shall apply.



and department heads; b) referrals of violations of the Ordinance from the Sunshine Ordinance Task Force (“Task Force”); and c) complaints brought directly to the Commission alleging a violation of the Ordinance.”

For that reason, the Staff’s Draft is based on these three jurisdictional grounds. However, the Commission’s jurisdiction is limited only to the first two: “a) alleged willful violations of the Ordinance by elected officials and department heads; and “b) referrals of violations of the Ordinance from the Sunshine Ordinance Task Force ...” The Commission does not have jurisdiction for “c) complaints brought directly to the Commission alleging a violation of the Ordinance.”

Staff’s position that the Commission has jurisdiction over complaints alleging non-willful violations of the Ordinance is based on its mistaken reading of subdivision (d) of Section 67.35<sup>4</sup> of the Ordinance:

“(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city official or state official 40 days after a complaint is filed.”

While Section 67.34 is explicit that “complaints involving allegations of **willful violations** ... by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission”, subdivision (d) of Section 67.35 refers to enforcement “proceedings” before either the Commission or a court of competent jurisdiction, not to original “complaints”.<sup>5</sup> (Emphasis Added.) If subdivision (d) authorizes the filing of complaints with the Commission or a “court of competent jurisdiction”, subdivision (a) of the same Section 67.35 would not be needed:

“(a) Any person may institute proceedings ... in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.”

Further, the SOTF has original jurisdiction to hear and decide complaints alleging violations of the Ordinance under provisions of Section 67.21 and 67.37, to wit:

<sup>4</sup> References to Sections in this Memorandum are to Sections of the Sunshine Ordinance.

<sup>5</sup> At the hearing on the quoted decision points, the Ethics Commission discussed how to implement subdivision (d) of Section 67.34 and what “order” or “finding” would be enforced became an issue. The SOTF concluded and has incorporated in its draft, that it is either an SOTF order referred by SOTF to an official, such as the Attorney General who declines to enforce it, or an order issued by the Supervisor of Records pursuant to §67.21(d).

§67.21(e) “If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner... of its determination whether the record requested, or any part of the record requested, is public. ... Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request...”

§67.37(c) “...The Task Force shall make referrals to a municipal office with enforcement power under this ordinance ... whenever it concludes that any person has violated any provisions of this ordinance...”

As a matter of overall policy, the SOTF is the body logically suited to handle simple “violation” complaints; it is designated to handle these complaints, its 11 public members representing various segments of the open government “community”; and a ten-year history of experience, knowledge and time-developed procedures for doing so. On the other hand, given the Commission’s extensive substantive responsibilities for enforcing and monitoring multiple laws under the Charter and under its own Regulations, the use of the Commission’s limited resources to determine, for example, whether or not a particular public record is exempt would not seem justified, particularly as its hearing procedures are formal and carefully spelled out.

As a practical matter, if the Commission had concurrent jurisdiction with the SOTF on simple violation complaints, contrary determinations from each could result should a complainant file with both the SOTF and the Commission, with obvious undesirable implications, particularly in the event of the SOTF’s referral to the Commission for enforcement of its Order. Moreover, as noted below, the procedure followed by the SOTF and that proposed by your Staff (in the Staff’s Draft) are fundamentally different, both procedurally and substantively.

Comparison of Non-Willful Violation Complaint Procedures.

The procedure proposed in the Staff’s Draft for “handling” non-willful violation complaints is rigidly structured, detailed and proscribed. The Executive Director becomes the real party or *de facto* complainant and the procedure for handling them is much the same as a complaint involving the other laws the Commission enforces. The Executive Director conducts a full investigation (with some investigative records held “confidential”), and recommends to the Commission a finding of either “no violation”, or “a violation and proposed penalties” or “a violation with an agreed stipulation” by the Respondent. The recommendation automatically becomes the Commission’s official action without a hearing unless, within five days after the recommendation is sent, at least two Commissioners request that the matter be agendaized for its next meeting. If it is heard, the original complainant has no right to speak at the hearing (§V.A.1.b); while the

Respondent is allowed to be represented by counsel (§IV.C.) - undoubtedly the City Attorney, directly contrary to §67.21(i) of the Sunshine Ordinance.

The procedure before the SOTF is quite different. While structured to comply with the mandate of the Ordinance for prompt disposition of these complaints, the procedure is informal and conducted with complete public access to all filings and records. The parties are the complainant and the Respondent official, department or agency. Each files written support for its positions. Neither the SOTF nor its Administrator "investigates" complaints. Unless there is a jurisdictional issue, the complaint is promptly scheduled for hearing before the full SOTF. At the hearing, the parties (and any supporters) present their respective positions and answer questions posed by the SOTF members, followed by public comment. Motions are discussed without time limit, followed by public comment. If one or more violations are found, an Order of Determination is issued to the Respondent that the records be disclosed (or some other action taken) within five days. The decision on the complaint is resolved at this single hearing. It is not unusual for as many as 10 complaints be heard at a SOTF meeting:

Changes to Staff's Draft in the SOTF Draft:

First: Given that the Commission does not (and probably should not) have concurrent jurisdiction over non-willful violation complaints, all references to such complaints, and the investigations, hearings and other provisions that would relate to them are eliminated in the SOTF Draft. As a result, the SOTF Draft only deals two kinds of cases: (1) SOTF references to the Commission for enforcement of SOTF Orders and (2) willful violation complaints filed with the Commission.

Second: Due to the inherent difference between these two types of cases, the SOTF Draft creates separate paths, one for SOTF and other person enforcement referrals/proceedings and the other for willful violation complaints. These two separate paths are reflected throughout the SOTF Draft. For example, a significant difference in the drafts respective definitions, e.g. Ethics Staff: "Complaint" compared to the SOTF Draft: "Enforcement Action".

Third: The SOTF Draft reflects the SOTF's strong conviction that because these are open government cases, all actions taken and records related to them, including the Staff's investigatory files, are to be fully accessible to the public at all times. There is neither a legal basis for keeping any of them "confidential" nor any policy supporting "confidentiality" in an open government setting, as these cases are. The only exceptions are public records whose disclosure is prohibited by the California Public Records Act or some other state law.

Fourth: Ethics Staff's proposal to simply shift the 'burden of proof' in enforcement hearings, effectively allowing the Respondent to retry the case, has been eliminated. The SOTF Draft limits the hearing on enforcement cases to a "penalty" phase summary

hearing, precluding any new "evidence" on the original violation or on the Respondent's refusal to comply, allowing only evidence that will fully remedy the original violation or provide some basis not to penalize the Respondent or to minimize the penalty. An added provision prohibits introduction of any evidence that was presented to the SOTF or the Supervisor of Records prior to issuance of the SOTF or the Supervisor of Records Order being enforced.

Fifth: Ethics Staff's proposal to define "willfully" and to provide "outs" for willful violations through definitions of "exculpatory information" and "mitigating information" have been eliminated in favor of the California Penal Code's statutory definition of "willfully."<sup>6</sup> In addition, the SOTF draft eliminates the provision in the Ethics draft that sought to make the "confidentiality" of a non-disclosed public record under the Charter but disclosable under the Ordinance, a complete defense to any claimed violation. As noted above, the Regulations have to be consistent with the San Francisco Sunshine Ordinance.

Sixth: All other provisions in the Staff's Draft that go to the Commission's decision making, such as "circumstances surrounding the case," have been eliminated. The Commission presently has five members, four of whom are lawyers. They are well qualified to determine on their own what the "circumstances" should be.

Seventh: All restrictions on persons who can testify or provide support for a Respondent or Complainant at a hearing have been eliminated and ample time for public comment added. Any restrictions of that kind are unacceptable as a matter of fairness and in maintaining a level playing field.

Eighth: The provisions relating to outside "hearing officers" have been eliminated, given the importance of an enforcement or willful violation hearing, the need for the Commission to be directly involved, and the potential serious adverse consequences for the Respondent. Rather, the SOTF believes the full Commission or a panel of three Commissioners should hear these cases. The SOTF enforcement hearings should be relatively short since little new evidence (if any) will be introduced – the hearing will be essentially a "sentencing" one, while the "willful violation" hearing carries with it penalties and, possibly, an official misconduct finding.

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<sup>6</sup> "Willfully" is defined in section 7 of the Penal Code as: "the word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to injure another, or to acquire any advantage."

Ninth: Because public policy is to provide fast and efficient access to public records, under the SOTF Draft, where appropriate, time periods for actions have been shortened and prompt resolution has been called for.<sup>7</sup>

Tenth: The Investigation and Hearing provisions in Sections IV and V of Staff's Draft with reference to willful violation "Complaints" have been edited to improve the flow of the investigative, reporting and hearing procedures involved and eliminating those specific provisions identified above.

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Attachment A:

SOTF Proposed Revised Version of Staff's Draft.

Attachment B:

Auto Generated Compared Document showing changes (in blue) in the SOTF Draft from the Ethics Staff's Draft, with italicized and highlighted (yellow) comments.

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<sup>7</sup> This is demonstrated by CPRA §6258 "...*The times for responsive pleadings and for hearings in these [injunctive or declarative relief or writ of mandate] proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.*" CPRA §6259(c), "...*an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure ... shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.*" Sunshine Ordinance §67.21(c), "...*The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.*"

**ATTACHMENT A**  
**to SOTF Memorandum**

SOTF Proposed Revised Version  
[JUNE 14, 2011]

**ETHICS COMMISSION REGULATIONS FOR ENFORCEMENT OF  
THE SUNSHINE ORDINANCE**

*Effective Date:* \_\_\_\_\_, 2011

**DRAFT**

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- VII. Administrative Orders and Penalties
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DRAFT

**I. PREAMBLE**

Pursuant to San Francisco Charter § 5.102, the San Francisco Ethics Commission promulgates these Regulations in order to carry out the purposes and provisions of the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations apply only to complaints alleging willful violations of the Sunshine Ordinance and actions for enforcement of orders issued by the Sunshine Ordinance Task Force and the Supervisor of Records. All matters involving alleged violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

**II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco.
- C. "Commission" means the Ethics Commission.
- D. "Complaint" means a document filed with the Commission in any form of media, including any electronic format, alleging one or more willful violations of the Sunshine Ordinance by an elected official or department head of the City and County of San Francisco.
- E. "Complainant" means, as applicable, a person or entity that files a Complaint or who was the original complainant in a SOTF Referral or an Enforcement Petition.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.
- G. "Enforcement Action" means a SOTF Referral or Enforcement Petition, as applicable.
- H. "Enforcement Petition" means a petition filed by a Complainant pursuant to Section 67.35 (d) of the Sunshine Ordinance to commence a proceeding for enforcement of (1) a SOTF Order of Determination that is not the subject of a SOTF Referral or (2) a Supervisor of Records Order that has not been complied with by the Respondent to whom issued.
- I. "Executive Director" means the Executive Director of the Commission.
- J. "Hearing Panel" means a panel of three Commissioners assigned to conduct a hearing on a Complaint.
- K. "Order" means either a SOTF Order of Determination or a Supervisor of Records Order, as applicable.



L. "Respondent" means either (1) an elected official or department head who is alleged in a Complaint to have willfully violated the Sunshine Ordinance or (2) the official, department head, or other person who has failed to comply with an Order.

M. "SOTF Order of Determination" means an Order issued by the Task Force to a Respondent finding a violation of the Sunshine Ordinance and requiring the Respondent to correct the violation.

N. "SOTF Referral" means a referral from the Task Force to the Commission for the enforcement of a SOTF Order of Determination that has not been complied with by the Respondent to whom issued.

O. "Sunshine Ordinance" means San Francisco Administrative Code §§67.1, et seq., as amended from time to time, or any ordinance replacing it.

P. "Supervisor of Records Order" means an order issued by the Supervisor of Records to a Respondent pursuant to Section 67.21(d) of the Sunshine Ordinance.

Q. "Task Force" means the Sunshine Ordinance Task Force, established in accordance with the Sunshine Ordinance.

### **III. COMPLAINTS / SOTF REFRRALS / ENFORCEMENT PETITIONS**

A. Any person or entity may file a Complaint with the Commission. Each Complaint shall be administered in accordance with Section IV of these Regulations. Upon receipt of a Complaint, the Executive Director shall immediately notify and forward a copy thereof to the District Attorney and the California Attorney General.

B. When the Executive Director receives a SOTF Referral or an Enforcement Petition, the Executive Director shall immediately (1) schedule a hearing on it at the next regular meeting of the Commission to be held more than 21 days after receipt thereof and (2) give notice to the Respondent and the Complainant (as the real party in interest) and, in the case of a SOTF Referral, the Task Force, of the date, time, and location of the hearing. Section V of these Regulations shall otherwise govern the SOTF Referral and Enforcement Petition, to the extent applicable.

C. No enforcement action shall be taken on a SOTF Referral or an Enforcement Petition nor any action taken by the Commission with respect to a Complaint unless at least 40 days have elapsed after the date the District Attorney and the California Attorney General shall have been notified by the Task Force of the filing of the complaint resulting in the SOTF Referral or by the Executive Director in the case of a Complaint or Enforcement Petition, as the case may be.

### **IV. COMPLAINT INVESTIGATIONS, REPORT, AND RECOMMENDATION**

A. The Executive Director shall thoroughly investigate each Complaint. The investigation (a) shall be completed within 30 days after the Complaint is filed, (b) shall include interviews of the Complainant and the Respondent and a review of all documentary and other evidence submitted by the Complainant and Respondent, or by other persons on their respective behalves,

in support of or in opposition to the allegations in the Complaint, and (c) may include interviews of any other persons and the review of any other documentary and other evidence deemed relevant. All interviews shall be audio recorded and maintained as part of the investigative files.

B. After the investigation of the Complaint is completed, the Executive Director shall prepare a draft report with proposed factual findings. The draft report shall contain a summary of (a) the evidence gathered through the investigation, (b) the provisions in the Sunshine Ordinance relevant to the Complaint and the proposed findings, and (c) the Executive Director's recommendation, which shall be either: (1) a finding that Respondent willfully violated the Sunshine Ordinance with a proposed order and any proposed penalties; (2) a finding that Respondent willfully violated the Sunshine Ordinance and a proposed settlement (in the form of a stipulation among the Complainant and Respondent) satisfactory to the Executive Director, or (3) a finding that the Respondent has not willfully violated the Sunshine Ordinance and a recommendation that the Complaint be dismissed.

C. The draft report shall be delivered to the Complainant and the Respondent, each of whom, within 20 days after receipt of the draft report, may submit comments and proposed changes to the draft report to the Executive Director and to the other. Within 10 days after receipt of any such comments and proposed changes, the Executive Director shall meet and confer with the submitting party regarding them. Following such meetings the Executive Director may revise and shall complete the report and submit it to the Commission, the Complainant, and the Respondent. The Complainant and Respondent may each submit to the Commission written exceptions to the report at least 10 days before the meeting at which the report is scheduled to be heard. Copies of such exceptions shall also be sent to the Executive Director and the other party.

D. If the Executive Director's report recommends a finding of willful violation(s) and proposes any order and/or the imposition of any penalties, the Executive Director shall schedule a hearing by the full Commission at its next regular meeting to be held no sooner than 20 days after the date the Commission receives the report.

E. If the Executive Director's report recommends a finding of willful violation(s) and approval of a proposed settlement in the form of a stipulation signed by the Complainant and the Respondent, the Executive Director shall schedule a hearing by the full Commission at its next regular meeting to be held no sooner than 20 days after the date the Commission receives the report. Following the hearing, the Commission, by the majority vote, shall either: (a) approve the proposed settlement and enter any orders and/or impose any penalties consistent with it; (b) reject the proposed settlement and instruct the Executive Director to seek a different settlement; or (c) reject the proposed settlement and instruct the Executive Director to schedule a hearing by the full Commission at its next regular meeting. If the Commission approves the settlement, the stipulation shall be and become fully enforceable and the order(s) and penalties provided for therein shall be deemed orders issued and penalties imposed by the Commission, effective the date of such approval with the same force and effect as an order issued or penalty imposed by the Commission.

F. If the Executive Director's report recommends a finding that the Respondent has not willfully violated the Sunshine Ordinance and dismissal of the Complaint, the Executive Director shall schedule a hearing by the full Commission at its next regular meeting to be held no sooner

than 20 days after the date the Commission receives the report. Following the hearing on the report, the Commission, by a majority vote, shall either: (a) enter an order dismissing the Complaint; (b) reject the dismissal recommendation and instruct the Executive Director to seek a settlement; or (c) reject the dismissal recommendation and instruct the Executive Director to schedule a hearing on the Complaint by the full Commission at its next regular meeting. If a hearing is scheduled, the Executive Director shall notify the Respondent and Complainant of the date, time, and location of the hearing at least 28 days in advance of the hearing date.

G. At any time after the Commission receives a Complaint, the Executive Director may enter into negotiations with Respondent and the Complainant for the purpose of settling the allegations in a Complaint, the terms of which, including a proposed Commission order and/or penalties, would be incorporated into a stipulation.

1. Any stipulation, shall explicitly state that:

(a) The Respondent knowingly and voluntarily waives any and all procedural rights under law and these Regulations;

(b) The Respondent understands and acknowledges that neither the settlement nor any terms in the stipulation are binding on any other agency or body, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other agency or body with regard to the matter, or any other matter related to it; and

(c) In the event the Commission does not approve the proposed settlement and, accordingly, a hearing before the Commission or a Hearing Panel on the Complaint becomes necessary, no Commissioner shall be disqualified because of prior consideration of the stipulation.

2. The stipulation shall set forth the pertinent facts and may include an agreement by Respondent as to any order issued or penalty imposed by the Commission for a willful violation of the Sunshine Ordinance.

H. All written submissions to the Commission or any Hearing Panel shall be on one side of letter size pages with margins of at least one inch at the left, right, top, and bottom of the page, double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

## **V. HEARINGS: GENERAL**

A. All hearings on Complaints and Enforcement Actions shall be public hearings. The Commission shall hold the hearing, unless the hearing is on a Complaint, in which case, it may assign a Hearing Panel to hold the hearing.

B. Except as otherwise provided herein, whenever the Commission assigns a Hearing Panel to hear a Complaint, the assigned Hearing Panel shall have the same authority, subject to the same restrictions, as the Commission.

C. A Hearing Panel shall submit its report to the Commission, no later than 30 days after the date the Complaint hearing is concluded. The report shall include proposed findings of fact, proposed conclusions of law, and any proposed orders or penalties. Upon receipt of the report, the Executive Director shall (a) deliver copies to the Complainant and each Respondent and (b) schedule a hearing on the report at the next regular Commission meeting to be held which is more than 15 days after the date the report is received by the Commission.

D. At hearings on Enforcement Actions, the Complainant (as the real party in interest) and Respondent(s) shall have the right to appear and speak on his or her own behalf. In addition, other individuals may testify in support of either of them. At the conclusion of the testimony, public comment shall be had in accordance with the Commission policy.

E. At hearings on Complaints, the Executive Director, the Complainant, and the Respondent(s) shall each have the right to appear and speak on his or her own behalf. In addition, other individuals may testify in support of either the Complainant or Respondent(s). At the conclusion of the testimony, public comment shall be had with a maximum of five minutes per speaker and otherwise in accordance with the Commission policy.

F. For the purposes of these Regulations, a hearing concludes on the last date on which the Commission or the Hearing Panel hears argument or testimony in the proceeding and closes the hearing.

G. At or prior to a hearing on an Enforcement Action, no evidence presented, heard, or considered in connection with (1) its hearings on the original complaint or subsequent proceedings before the Task Force prior to the SOTF Referral or (2) the petition to the Supervisor of Records giving rise to its Order, as the case may be, shall be admissible or considered by the Commission, all of which Orders shall be deemed final and conclusive for all purposes hereunder. The Commission's sole determinations shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s).

H. No formal rules of evidence shall apply to testimony given at a hearing or to documents or records submitted as exhibits, but the Commission or a Hearing Panel may require that all testimony taken in a hearing be given under oath and any exhibits presented be properly authenticated. When hearing a Complaint, the Commission or a Hearing Panel may examine *in camera* any public record that a Respondent asserts is wholly exempt from disclosure under a specifically identified exemption available under the Sunshine Ordinance.

I. A Respondent who fails to appear at a hearing on a Complaint shall be deemed to have willfully violated the Sunshine Ordinance as alleged in such Complaint.

## **VI. DETERMINATION OF WILLFUL VIOLATIONS**

A. When determining whether a Respondent's actions constitute a "willful violation" of the Sunshine Ordinance, the Commission shall apply the definition of "willfully" in Penal Code section 7. [Note: "Willfully" is defined in section 7 of the Penal Code as: "the word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to injure another, or to acquire any advantage."]

B. The Commission shall determine, no later than 30 days after (a) the date a hearing on a Complaint conducted by it is concluded or (b) the date it receives the report and recommendation of the Hearing Panel that conducted a hearing on a Complaint, whether the Respondent(s) has committed a willful violation of the Sunshine Ordinance.

C. The vote of at least three Commissioners shall be required to find that a Respondent has willfully violated the Sunshine Ordinance. A finding of a willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law. Prior to taking the vote, a Commissioner who did not attend the hearing held by the Commission or by the Hearing Panel shall certify that he or she reviewed the entire record of the proceedings, including an audio recording of the hearing.

## **VII. ADMINISTRATIVE ORDERS AND PENALTIES**

A. The majority vote of at least three Commissioners shall be required to (a) dismiss a Complaint or (b) issue any order or impose any penalties (1) for a willful violation of the Sunshine Ordinance or (2) enforcing a SOTF Order of Determination, or an Order of the Supervisor of Records.

B. The Commission may issue an order to and/or impose penalties on a Respondent who willfully violated the Sunshine Ordinance or who is the subject of an Enforcement Action requiring such Respondent to (a) immediately cease and desist the willful violation or comply with the order, (b) cure and correct the willful violation through whatever action is necessary, (c) immediately comply with (1) the Complainant's request that was the subject of the Complaint or (2) the SOTF Order or the Supervisor of Records Order that was the subject of the SOTF Referral or the Enforcement Petition, as the case may be, and/or (d) as a penalty, pay (out of non-City funds) to the general fund of the City within 30 days from the date of imposition an amount not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each willful violation or failure to comply with a SOTF Order of Determination or Supervisor of Records Order. In addition, the Commission may refer a Respondent who willfully violated the Sunshine Ordinance to the San Francisco District Attorney for possible criminal action.

C. If the Commission finds that a Respondent who is an elected official or a department head willfully violated the Sunshine Ordinance, the Commission may find official misconduct by such Respondent and proceed in accordance with the applicable provisions of Article XV of the City Charter.

## **VIII. MISCELLANEOUS PROVISIONS**

A. Once a Complaint is filed with the Commission or an Enforcement Action is received by the Commission, no Commissioner shall engage in communications of any kind outside of a Commission meeting or Hearing Panel hearing regarding the merits of the Complaint or the Enforcement except for procedural communications.

B. All Complaints, investigative records of whatever nature or description, as well as all records relating to Enforcement Actions, in whatever form, and all information contained therein, including any work product (as defined in Code of Civil Procedure §2018.030), in the

custody of the Commission and its staff, including internal notes taken by the Executive Director or any staff member, constitute public information and are fully disclosable non-exempt public records, except and solely to the extent disclosure thereof is specifically prohibited pursuant to any provision of the California Public Records Act or of any other State law, *provided that* the specific statutory authority for such withholding is cited in writing in accordance with subdivision (b) of Section 67.27 of the Sunshine Ordinance.

C. The Commission and individual Commissioners assigned to conduct hearings may administer oaths and affirmations.

D. The Executive Director, the Complainant or any Respondent may request the continuance of the date of a scheduled hearing on a Complaint. The Respondent or the Complainant in an Enforcement Action may request the continuance of the date of a scheduled hearing on the Enforcement Action. The request shall be submitted to the Executive Director and copies provided to all other parties no later than 14 days before the date of the scheduled hearing. The Commission Chair or the Chair of the Hearing Panel, as the case may be, shall approve or deny a timely request within seven days of the submission of the request and, in addition, shall have the discretion to consider and rule on untimely requests for continuances.

E. Every hearing on a Complaint and Enforcement Action shall be electronically audio recorded and made available on the Commission's website within 48 hours after the hearing ends.

F. All notices and other communications hereunder (any of which is a "notice") to be effective shall be in writing. Notice shall be delivered by one or more of the following means: (a) personally, including delivery by a recognized national overnight courier with a signed acknowledgement of receipt, (b) if mailed, by priority first class certified mail, return receipt requested, postage prepaid, or (c) by confirmed facsimile, electronic, or digital means other than email (any of which shall be deemed a "writing" for purposes hereof), in each case as follows:

1. To the Commission, any of the Commissioners, or the Executive Director at the Commission office.

2. To a Respondent, (a) if the Respondent is then a City Official or other City employee, to such Respondent's City office address, if any, and if none, to the address listed with the Controller/ Payroll as such Respondent's current address or (b) if the Respondent is a former City official or other employee, to the address listed for such Respondent in the City's retirement system or (c) if the Respondent is neither a current nor former City official or other City employee, to such Respondent's last known residence address or an address that is reasonably believed to reach the Respondent.

3. To a Complainant in a Complaint, to the address given in the Complaint for receipt of notices and other communications relating to the Complaint.

4. To a Complainant in an Enforcement Action, to the address given in the original complaint filed with the Task Force or in the Petition filed with the Supervisor of Records, as the case may be.

G. At the time a Complaint or Enforcement Action is filed with or received by the Executive Director, the address for receipt of notices of each of the affected parties shall be confirmed by the Executive Director. Any affected party to any Complaint or Enforcement Action may supplement or change the address for notice by giving notice conforming to the above to the other affected parties.

H. All notices shall be deemed delivered on the business day received or on the business day received when received by confirmed facsimile. Any notice received after 5:00 P.M. on a business day shall be deemed received the next business day.

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**ATTACHMENT B**  
**to SOTF Memorandum**

**SOTF Proposed Revised Version**  
**[May 19, 2011]**

***SOTF Additions are in bold blue/Deletions are red strike throughs.***  
***Comments are bold blue italicized and highlighted.***

**ETHICS COMMISSION REGULATIONS FOR COMPLAINTS**  
**ALLEGING VIOLATIONS ENFORCEMENT OF THE SUNSHINE**  
**ORDINANCE**

***Effective Date:*** \_\_\_\_\_, **20102011**

**DRAFT**



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## I. PREAMBLE

Pursuant to San Francisco Charter ~~section 4~~ § 5.102, the San Francisco Ethics Commission promulgates these Regulations in order to ~~ensure compliance with~~ carry out the purposes and provisions of the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations ~~shall apply only to complaints alleging willful violations of the Sunshine Ordinance and referrals from~~ actions for enforcement of orders issued by the Sunshine Ordinance Task Force, and the Supervisor of Records. All matters involving alleged violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

**Comment: See §III (pages 3-4) explaining why non-willful complaints are not subject to the Commission's jurisdiction and the inclusion of Supervisor of Records Orders.**

## II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco.
- C. "Commission" means the Ethics Commission.
- D. "Complaint" means a written document alleging a violation of the Sunshine Ordinance filed with the Commission, in any form of media, including any electronic format, alleging one or more willful violations of the Sunshine Ordinance by an elected official or department head of the City and County of San Francisco.

**Comment: Makes clear that a "complaint" can be only for a willful violation. See §III.**

- E. "Complainant" means, as applicable, a person or entity that files a complaint or who was the original complainant in a SOTF Referral or an Enforcement Petition.

**Comment: Because the original complainant in a referral is the real party in interest, the definition has been broadened.**

- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

- G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity.

The Commission, the Executive Director, the Task Force or a Respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson, designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

"Enforcement Action" means a SOTF Referral or Enforcement Petition, as applicable.

*Comment: Using a defined term to distinguish a referred enforcement case and a "Complaint" filed with the Commission. See §V, pages 9-11.*

H. "Enforcement Petition" means a petition filed by a Complainant pursuant to Section 67.35 (d) of the Sunshine Ordinance to commence a proceeding for enforcement of (1) an SOTF Order of Determination that is not the subject of a SOTF Referral or (2) a Supervisor of Records Order that has not been complied with by the Respondent to whom issued.

*Same comment.*

I. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

*Comment: Given the responsibilities involved in these cases, only the ED should be allowed to make the decisions assigned to the ED.*

J. "Hearing Panel" means a panel of three Commissioners assigned to conduct a hearing on a Complaint.

*Comment: Using outside Hearing Officers has been eliminated as the SOTF believes the nature of these cases requires the direct involvement of the Commissioners at hearings.*

K. "Order of Determination" means a final recommendation issued by the Task Force concerning a violation of the Sunshine Ordinance.

"Order" means either a SOTF Order of Determination or a Supervisor of Records Order, as applicable.

L. "Referral" means a reference for enforcement and/or penalties from the Task Force to the Commission, after the Task Force has issued an Order of Determination finding a violation of the Sunshine Ordinance. "Respondent" means either (1) an elected official or department head who is alleged in a Complaint to have willfully violated the Sunshine Ordinance or (2) the official, department head or other person who has failed to comply with an Order.

*Comment: Another clarification of the difference between the Respondent in an enforcement case and one who is subject to a willful violation claim.*

M. "Respondent" means a person who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance. "SOTF Order of Determination" means an Order issued by the Task Force to a Respondent finding a violation of the Sunshine Ordinance and requiring the Respondent to correct the violation.

N. "Stipulated order" means an order regarding a complaint, the terms of which have been agreed to by both the Executive Director and the Respondent. "SOTF Referral" means a referral from the Task Force to the Commission, for the enforcement of an SOTF Order of Determination that has not been complied with by the Respondent to whom issued.

O. "Sunshine Ordinance" means San Francisco Administrative Code section §§67.1, et seq., as amended from time to time, or any ordinance replacing it.

P. "Supervisor of Records Order" means an order issued by the Supervisor of Records to a Respondent pursuant to Section 67.21(d) of the Sunshine Ordinance.

*Comment: See footnote 5, page 3 of the Memorandum.*

Q. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

Q. "Willful violation" means a violation where an individual intentionally violated the Sunshine Ordinance and acted or failed to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

### III. COMPLAINTS ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE. COMPLAINTS/SOTF REFERRALS/ENFORCEMENT PETITIONS.

A. Any person, including Commission staff, or entity may file a complaint. Complaint with the Commission or the Task Force alleging. Each Complaint shall be administered in accordance with Section IV of these Regulations. Upon receipt of a violation of the Sunshine Ordinance. When Complaint, the Executive Director receives shall immediately notify and forward a complaint that the Task Force has not yet considered or that is still pending at the Task Force, the Executive Director may handle the complaint pursuant copy thereof to Section IV of these Regulations or may, in his or her discretion, take no action until after the Task Force has issued an Order of Determination or a final recommendation regarding the complaint. the District Attorney and the California Attorney General.

*Comment: This paragraph A and the next paragraph B establish the two separate paths that are followed depending on whether there is a "Complaint" filed for a willful violation (¶A) or an "enforcement" referral (¶B). See §V (pages, 9-11).*

B. When the Executive Director receives a referral from the Task Force, SOTF

Referral or an Enforcement Petition, the Executive Director shall immediately (1) schedule a hearing on it at the next regular meeting of the Commission, provided that: 1) the Executive Director issue a written notice to each be held more than 21 days after receipt thereof and (2) give notice to the Respondent and the original Complainant (as the real party in interest) and, in the case of a SOTF Referral, the Task Force, of the date, time and location of the hearing, at least 15 days in advance of the hearing date. The Executive Director shall also provide a courtesy notice to the Task Force. Such hearings shall otherwise be governed by the provisions of Section V of these Regulations. Section V of these Regulations shall otherwise govern the SOTF Referral and Enforcement Petition, to the extent applicable.

**See prior comment. In addition, this paragraph removes the ED as a party, limiting his or her role to that of an administrator.**

C. If the Task Force or a Complainant notifies the District Attorney or California Attorney General of a violation or alleged violation of the Sunshine Ordinance, the Executive Director shall not take action on the referral or complaint regarding that violation or alleged violation until at least 40 days after the notification date. No enforcement action shall be taken on a SOTF Referral or an Enforcement Petition nor any action taken by the Commission with respect to a Complaint unless at least 40 days have elapsed after the date the District Attorney and the California Attorney General shall have been notified by the Task Force of the filing of the complaint resulting in the SOTF Referral or by the Executive Director, in the case of a Complaint or Enforcement Petition, as the case may be.

**Comment: Rephrasing of the paragraph Staff included to satisfy the 40-day threshold in Section 67.35(d), as explained in Staff's Memorandum, page 4, re this Section III.C.**

#### **IV. COMPLAINT INVESTIGATIONS; REPORT AND RECOMMENDATION**

**Comment: This Section IV deals solely with Complaints for willful violations.**

A. **Factual Investigation.** The Executive Director's investigation may include, but shall not be limited to, the interview of the Respondent(s) and any witnesses, and the review of documentary and other evidence. The Executive Director shall thoroughly investigate each Complaint. The investigation (a) shall be completed within 30 days after the Complaint is filed, (b) shall include interviews of the Complainant and the Respondent and a review of all documentary and other evidence submitted by the Complainant and Respondent, or by other persons on their respective behalves, in support of or in opposition to the allegations in the Complaint and (c) may include interviews of any other persons and the review of any other documentary and other evidence deemed relevant. All interviews shall be audio recorded and maintained as part of the investigative files.

**Comment: This section has been reworked to emphasize the need for prompt completion of the investigation, its completeness and ensure the information obtained**

is available to the parties and the public.

investigation shall be conducted in a confidential manner, pursuant to San Francisco Charter, Appendix C, section C3.699-13.

**B. Report of Investigation.**

B. After the

1. After the Executive Director has investigation of the Complaint is completed his or her investigation, the Executive Director shall prepare a written draft report summarizing his or her with proposed factual and legal findings. The draft report shall contain a summary of the legal provisions cited by the complaint and (a) the evidence gathered through the Ethics Commission's investigation, including any exculpatory and mitigating information. In investigation, (b) the provisions in the Sunshine Ordinance relevant to the report, Complaint and the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of any other evidence. The report shall not exceed 10 pages excluding attachments.

proposed findings and (c) the Executive Director's recommendation, which shall be comprised of one of the following: either: (1) a finding that Respondent willfully violated the Sunshine Ordinance with a proposed order and any proposed penalties; b(2) a finding that Respondent willfully violated the Sunshine Ordinance and a proposed settlement (in the form of a stipulation, decision among the Complainant and order; Respondent) satisfactory to the Executive Director or c(3) a finding of no violation of that the Respondent has not willfully violated the Sunshine Ordinance and dismissal. The recommendation that the Complaint be dismissed.

**Comment: While some members of Staff may be lawyers, the SOTF believes that the staff's investigation and factual findings should be the extent of their report to the Commission. If an attorney's explanation of applicable law is needed, the DCA assigned to the Commission can provide it, much as the DCA assigned to the SOTF does with respect to each complaint filed with it. Since the report will be short or long depending on the extent and complexity of the investigation, a page limit seems inappropriate.**

C. The draft report shall be delivered to the Commission.

a. **Finding of Violation** Complainant and the Respondent, each of whom, within 20 days after receipt of **Sunshine Ordinance and Penalties**. If the report recommends a finding of violation and penalties, the Executive Director shall schedule a hearing pursuant to Section IV.C. of these Regulations.

**Finding of Violation of Sunshine Ordinance and Proposed Stipulation, Decision and Order.** If the report recommends a finding of violation and settlement, the Executive Director shall so inform the Commission. Thereafter, any two or more Commissioners

may cause the draft report, may submit comments and proposed changes to the draft report to the matter to be calendared for consideration by the full Commission in open session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the proposed stipulation, decision and order. During the meeting at which the Commission considers the proposed stipulation, Commissioners may ask staff questions and shall take one of the following actions, each of which requires the vote of three Commissioners: 1) accept the proposed stipulation; 2) reject the proposed stipulation and instruct staff to seek a different settlement amount; or 3) reject the proposed stipulation and instruct staff to schedule a hearing pursuant to Section IV.C. of these Regulations. Executive Director and to the other. Within 10 days after receipt of any such comments and proposed changes, the Executive Director shall meet and confer with the submitting party regarding them. Following such meetings the Executive Director may revise and shall complete the report and submit it to the Commission, the Complainant and the Respondent. The Complainant and Respondent may each submit to the Commission written exceptions to the report at least 10 days before the meeting at which the report is scheduled to be heard. Copies of such exceptions shall also be sent to the Executive Director and the other party.

**Comment: The changes to this paragraph are intended to give the parties an opportunity to review the draft report for errors and convince the ED to modify it before it goes to the Commissioners.**

D. If the Executive Director's report recommends a finding of willful violation(s) and proposes any order and/or the imposition of any penalties, the Executive Director shall schedule a hearing by the full Commission at its next regular meeting to be held no sooner than 20 days after the date the Commission receives the report.

If two or more members of the Commission do not request the matter to be calendared, the Executive Director shall: 1) sign the stipulation; 2) have the Commission Chairperson sign the stipulation; 3) have the Respondent sign the stipulation; and 4) inform the Complainant of the finding of violation and stipulated order.

**Comment: This paragraph ensures that there will be a hearing whenever the ED recommends a finding of willful violation and penalties. The Respondent is entitled to a hearing, as the consequences are potentially too severe not to have the Commission itself make the final decision.**

E. If the Executive Director's report recommends a finding of willful violation(s) and approval of a proposed settlement in the form of a stipulation signed by the Complainant and the Respondent, the Executive Director shall schedule a hearing by the full Commission at its next regular meeting to be held no sooner than 20 days after the date the Commission receives the report. Following the hearing, the Commission, by the vote of at least three Commissioners, shall either: (a) approve the proposed settlement and enter any orders and/or impose any penalties consistent with it; (b) reject the proposed settlement and instruct the Executive Director to seek a different settlement; or (c) reject the proposed settlement and instruct the Executive Director to schedule a

hearing in by the full Commission at its next regular meeting. If the Commission approves the settlement, the stipulation shall be and become fully enforceable and the order(s) and penalties provided for therein shall be deemed orders issued and penalties imposed by the Commission, effective the date of such approval with the same force and effect as an order issued or penalty imposed by the Commission.

**Comment: This paragraph generally follows the Staff's, with some further specifics regarding the hearing since the fact of a "willful violation" by an Official or department head requires the Commission's attention, although a complaint may be satisfied.**

~~b. **Finding of No Violation of Sunshine Ordinance and Dismissal.** If the Executive Director's report recommends a finding of no violation and that the Respondent has not willfully violated the Sunshine Ordinance and dismissal of the Complaint, the Executive Director shall so inform the Commission. Thereafter, any two or more Commissioners may cause the matter to be calendared for consideration schedule a hearing by the full Commission in open session at the its next Commission regular meeting to be held no sooner than ten 20 days after the date the Executive Director informs Commission receives the Commission of report. Following the dismissal recommendation. During hearing on the meeting at which report, the Commission considers the dismissal recommendation, Commissioners may ask staff questions and, by the majority vote, shall take one of either: (a) enter an order of dismissing the following actions, each of which requires the vote of three Commissioners: 1) accept the dismissal recommendation; 2) Complaint; (b) reject the dismissal recommendation and instruct the Executive Director to seek a settlement; or (c) reject the dismissal recommendation and instruct staff to seek a settlement; or 3) reject the dismissal recommendation and instruct staff the Executive Director to schedule a hearing pursuant to Section IV.C. of these Regulations.~~

~~A Commissioner's request to calendar on the matter for consideration Complaint by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.~~

~~at its next regular meeting. If two or more members of the Commission do not request the matter to be calendared, a hearing is scheduled the Executive Director shall take no further action except that he or she shall inform the notify the Respondent and Complainant and the Respondent of the finding of no violation and dismissal.~~

**Comment: This paragraph ensures that there will be a hearing whenever the ED recommends a finding of no willful violation. The complainant is entitled to a day in court and the maintaining of a level playing field is too important not to have the**



Commission itself make the final decision.

**C. — Delivery of Report and Notice of Hearing.** If a hearing is scheduled pursuant to section IV.B., the Executive Director shall deliver to each Respondent and the Complainant a copy of the report summarizing the Ethics Commission's investigation, with written notice of the date, time and location of the hearing, at least 45~~28~~ days in advance of the hearing date. The notice shall inform each Respondent that he or she has the right to be present and represented by counsel at the hearing.

**Comment: As noted in the Memorandum, under the Sunshine Ordinance, the City Attorney may be disqualified from representing the respondent.**

**G.** At any time after the Commission receives a Complaint, the Executive Director may enter into negotiations with Respondent and the Complainant for the purpose of settling the allegations in a Complaint, the terms of which, including a proposed Commission order and/or penalties, would be incorporated into a stipulation.

**D. — Response to the Report.**

1. If a hearing is scheduled, each Respondent may submit a written response to the report. The response may contain legal arguments, a summary of evidence, and any mitigating information. The response shall not exceed 10 pages excluding attachments. Any stipulation, shall explicitly state that:

2. If any Respondent submits a response, he or she must deliver the response no later than 20 days prior to the date of the hearing. The Respondent must deliver eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response(s) to the Commission. The Respondent must deliver one copy of the response to every other Respondent named in the report.

**E. — Rebuttal.**

1. The Executive Director may submit a written rebuttal to any response. If the Executive Director chooses to do so, the Executive Director must deliver the rebuttal to the Commission and each Respondent named in the report no later than seven days prior to the date of the hearing. The rebuttal shall not exceed five pages excluding attachments.

(a) The Respondent knowingly and voluntarily waives any and all procedural rights under law and these Regulations;

(b) The Respondent understands and acknowledges that neither the settlement nor any terms in the stipulation are binding on any other agency or body, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other agency or body with regard to the matter, or any other matter related to it; and

(c) In the event the Commission does not approve the proposed settlement and, accordingly, a hearing before the Commission or a Hearing Panel on the Complaint becomes necessary, no Commissioner shall be disqualified because of prior consideration of the stipulation.

2. The stipulation shall set forth the pertinent facts and may include an agreement by Respondent as to any order issued or penalty imposed that anything by the Commission for a willful violation of the Sunshine Ordinance.

H. All written submissions to the Commission or any Hearing Panel shall be on one side of letter size pages with margins of at least one inch at the left, right, top and bottom of the page, double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

*Comment: These "stipulation" provisions were moved to this part of Section V and generally follow the Staff's Draft.*

## V. HEARINGS: GENERAL

### A. General Rules and Procedures

#### 1. Public Hearing

The hearing shall be open to the public. All hearings on Complaints and Enforcement Actions shall be public hearings. The Commission may shall hold the hearing, or the Commission unless the hearing is on a Complaint, in which case, it may assign one of its members or a hearing officer a Hearing Panel to hold the hearing and submit a report and recommendation to the Commission. If the Commission holds the hearing, the Commission may assign an outside hearing officer as the presiding officer at the hearing, as set forth in section VI.E.3.

For Task Force referrals, the following parties have the right to appear and speak on his or her own behalf:

a. B. Except as otherwise provided herein, whenever the Commission assigns a Hearing Panel to hear a Complaint, the assigned Hearing Panel shall have the same authority, subject to the same restrictions, as the Commission.

#### Original

C. A Hearing Panel shall submit its report to the Commission, no later than 30 days after the date the Complaint hearing is concluded. The report shall include proposed findings of fact, proposed conclusions of law and any proposed orders or penalties. Upon receipt of the report, the Executive Director shall (a) deliver copies to the Complainant (and each Respondent and (b) schedule a hearing on the report at the next regular Commission meeting to be held which is more than 15 days after the date the report is received by the Commission.

i. D. At hearings on Enforcement Actions, the Complainant (as the real party in interest); and Respondent(s) shall have the right to appear and speak on his or her own behalf. In addition, other individuals may testify in support of either of them. At the conclusion of the testimony, public comment shall be had in accordance with the Commission policy.

E. At hearings on Complaints, the Executive Director, the Complainant and the Respondent(s):

ii. ~~— No other live testimony shall be permitted.~~

For complaints alleging a violation of the Sunshine Ordinance, the following parties each have the right to appear and speak on his or her own behalf: In addition, other individuals may testify in support of either the Complainant or Respondent(s). At the conclusion of the testimony, public comment shall be had with a maximum of five minutes per speaker and otherwise in accordance with the Commission policy.

**Comment: The forgoing paragraphs open up the hearing to the public and the parties so that the concept of an open and full hearing, as is the practice of the SOTF, is emulated. The restrictions on speakers, including the public is not consistent with that concept.**

**Executive Director; and**

i. F. For the purposes of these Regulations, a hearing concludes on the last date on which the Commission or the Hearing Panel hears argument or testimony in the proceeding and closes the hearing.

ii. ~~— Respondent(s).~~

iii. ~~— No other live testimony shall be permitted.~~

G. At or prior to a hearing on an Enforcement Action, no evidence presented, heard or considered in connection with (1) its hearings on the original complaint or subsequent proceedings before the Task Force prior to the SOTF Referral or (2. — Standard of Proof) the petition to the Supervisor of Records giving rise to its Order, as the case may be, shall be admissible or considered by the Commission, all of which Orders shall be deemed final and conclusive for all purposes hereunder. The Commission's sole determinations shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s).

**Comment: This new section reflects the principle that an "enforcement" hearing cannot be used to retry the underlying facts that lead to the Enforcement Order that has not been complied with. Staff's proposal to simply shift the burden of proof – see paragraph 3 below -- reopens the entire process when the complaint was one for a non-willful violation. It is because of the respondent's inaction, after several hearings before the SOTF, that the case is being heard by the Commission.**

The Commission may determine that a Respondent has committed a violation of the Sunshine Ordinance only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the Respondent has committed the violation.

*Comment: This provision was eliminated, as the SOTF believes the Commissioners can determine for themselves what level of proof or standard is suitable.*

H. No formal rules of evidence shall apply to testimony given at a hearing or to documents or records submitted as exhibits, but the Commission or a Hearing Panel may require that all testimony taken in a hearing be given under oath and any exhibits presented properly authenticated. When hearing a Complaint, the Commission or a Hearing Panel may examine *in camera* any public record that a Respondent asserts is wholly exempt from disclosure under a specifically identified exemption available under the Sunshine Ordinance.

*Comment: The provision to apply the Administrative Procedure Act to hearings has been dropped. (See paragraph 4 below.) Since complainants are not expected to know those rules and the evidence is generally simple and not controverted, giving the Commission the right to decide how much of it should meet some evidentiary standard seemed sufficient.*

3. — Burden of Proof. A Respondent who fails to appear at a hearing on a Complaint shall be deemed to have willfully violated the Sunshine Ordinance as alleged in such Complaint.

*Comment: This provision was moved from Section VI.A.7 below.*

If the matter is a Task Force referral, the Respondent will bear the burden of proof to show that he or she did not violate the Sunshine Ordinance. In such cases, the Respondent must refute or rebut the evidence to show that he or she did not violate the Sunshine Ordinance.

#### VI. DETERMINATION OF WILLFUL VIOLATIONS.

If the matter is not a Task Force referral, the Executive Director bears the burden of proof and must meet the standard set forth in Section V.A.2. of these Regulations in order for the Commission to find that the Respondent has committed a violation of the Sunshine Ordinance.

A. When determining whether a Respondent's actions constitute a "willful violation" of the Sunshine Ordinance the Commission shall apply the California Penal Code definition of "willfully" currently California Penal Code section 7.

*Comment: See Memorandum.*

4. — Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California

Administrative Procedure Act shall be admissible in the hearing. The Executive Director or the original Complainant (for Task Force referrals) and each Respondent and shall have the right to introduce exhibits and to rebut any evidence presented.

*Comment: See Comment to Section V.H. above.*

5. — Exhibits

Where the Executive Director or the original Complainant (for Task Force referrals) and the Respondent stipulate to the admissibility of an exhibit, they shall so advise the Commission in advance of the hearing. For all other exhibits, either the Executive Director or the original Complainant (for Task Force referrals) or the Respondent may move to admit a particular exhibit at the hearing, and the non-moving party shall have an opportunity to object prior to the Commission ruling on the admission.

6. — Oral Argument

At the hearing, the Executive Director or original Complainant (for Task Force referrals) and each Respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

*Comment: The rules for the conduct of the hearing can be adopted ad hoc by the Commission or in its By-laws, rather than being spelled out in detail in the Regulations, based on its experience hearing these cases.*

7. — Failure to Appear

A Respondent who fails to appear may be deemed to have admitted the violation(s) brought against him or her.

**B. Finding of Violation.**

If the Commission conducts the ~~The Commission shall determine, no later than 30 days after (a) the date a hearing, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the Respondent has committed a violation of the Sunshine Ordinance. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing on a Complaint conducted by it is concluded, as described in section VI.E of these Regulations. Thereafter, the Commission shall determine, no later than 45 days after or (b) the date it receives the date report and recommendation of the report and recommendation is delivered~~ Hearing Panel that conducted a hearing on a Complaint, whether the Respondent(s) has committed a willful violation of the Sunshine Ordinance.

C. ~~The votes~~ vote of at least three Commissioners ~~are~~ shall be required to find that a Respondent has ~~committed a violation of~~ willfully violated the Sunshine Ordinance. ~~The~~ A finding of a willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law ~~and shall be based on~~. Prior to taking the entire record of the proceedings. Each vote, a Commissioner who participates in ~~did not attend the hearing held by the decision shall certify on~~ Commission or by the record ~~Hearing Panel shall certify~~ that he or she 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, including an audio recording of the hearing.

C. ~~Administrative Orders and Penalties; Warning Letters.~~  
**VII. ADMINISTRATIVE ORDERS AND PENALTIES**

1.A. ~~The votes~~ majority vote of at least three Commissioners ~~are~~ shall be required to ~~(a) dismiss a Complaint or (b) issue any order or impose orders and~~ any penalties (1) for a willful violation of the Sunshine Ordinance.

~~or (2. To determine whether a violation) enforcing a SOTF Order of Determination or an Order of the Sunshine Ordinance is willful, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited~~ Supervisor of Records.

B. ~~The Commission may issue an order to:~~

~~(a) whether the and/or impose penalties on a Respondent complied with all aspects of the Sunshine Ordinance, but failed who willfully violated the Sunshine Ordinance or who is the subject of an Enforcement Action requiring such Respondent to (a) immediately cease and desist the willful violation or comply with the order, (b) cure and correct the willful violation through whatever action is necessary, (c) immediately comply within the appropriate time frame for good cause;~~

~~(b) the volume of records requested, and the extent to which they were practically accessible; and/or~~

~~(c) whether with (1) the Complainant's request that was the subject of the Complaint or (2) the SOTF Order or the Supervisor of Records Order that was the Respondent consulted with counsel prior to committing subject of the alleged violation.~~

3. ~~If the Commission finds that Respondent committed a willful violation of SOTF Referral or the Enforcement Petition, as the Sunshine Ordinance, the Commission may issue orders and penalties requiring the Respondent to:~~

~~(a) cease and desist the violation;~~

~~(b) disclose any documents or records required by law; and/or~~

~~(e) — case may be and/or (d) as a penalty, pay a monetary penalty (out of non- City funds) to the general fund of the City inwithin 30 days from the date of imposition an amount up to not less than five hundred (\$500.00) nor more than five thousand dollars (\$5,000) for each violation. The Respondent may not use City monies to pay such penalties.willful violation or failure to comply with an SOTF Order of Determination or Supervisor of Records Order. In addition, the Commission may refer a Respondent who willfully violated the Sunshine Ordinance to the San Francisco District Attorney for possible criminal action.~~

~~4C. If the Commission finds that a Respondent who is an elected official or a department head committed a willful violation of~~willfully violated the Sunshine Ordinance, the Commission may also ~~issue a finding of~~find official misconduct ~~by such Respondent and so inform the Mayor or appointing authority.~~

~~5. — When deciding penalties, proceed in accordance with the applicable provisions of Article XV of the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:~~City Charter.

*Comment: Most of these paragraphs have been edited for better understanding, with no significant changes in their substantive effect. The exception is the requirement in paragraph 5 to "consider all the relevant circumstances" which, with its subparagraphs, has been eliminated. See §V).*

~~(a) — the severity of the violation;~~

## VIII. MISCELLANEOUS PROVISIONS

~~(b) the presence or absence of any intention to conceal, deceive, or mislead;~~

~~A. — Once a Complaint is filed with the Commission or an Enforcement Action is received by the Commission, no Commissioner shall engage in communications of any kind outside of a Commission meeting or Hearing Panel hearing regarding the merits of the Complaint or the Enforcement except for procedural communications.~~

~~(e) whether the violation was an isolated incident or part of a pattern;~~

~~(d) whether the Respondent has a prior record of violations; and~~

~~(e) the degree to which the Respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.~~

~~6. — If the Commission finds that Respondent has violated the Sunshine Ordinance but has not committed~~B. All Complaints, investigative records of whatever nature or

description, as well as all records relating to Enforcement Actions, in whatever form, all information contained therein, including any work product (as defined in Code of Civil Procedure §2018.030), in the custody of the Commission and its staff, including internal notes taken by the Executive Director or any willful violation, the Commission may issue warning letters urging the Respondent to:

(a) cease staff member constitute public information and desist the violation; , fully disclosable non-exempt public records, except and/or

(b) disclose solely to the extent disclosure thereof is specifically prohibited pursuant to any documents provision of the California Public Records Act or records required by of any other State law; , provided that the specific statutory authority for such withholding is cited in writing in accordance with subdivision (b) of Section 67.27 of the Sunshine Ordinance.

*Comment: See §V (5) of the Memorandum. The confidentiality provisions of the City Charter relied on by Staff in the draft – see the last deleted paragraph in deleted Section VI below - do not apply to open government cases “investigated” by the Commission or to any individual Respondent, who is required to be familiar with the Sunshine Ordinance provisions that broaden the public’s access to public records and meetings.*

7. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the Respondent within 90 days of the Commission's decision

C. The Commission and individual Commissioners assigned to conduct hearings may administer oaths and affirmations.

D. Finding of No Violation. The Executive Director, the Complainant or any Respondent may request the continuance of the date of a scheduled hearing on a Complaint. The Respondent or the Complainant in an Enforcement Action may request the continuance of the date of a scheduled hearing on the Enforcement Action. The request shall be submitted to the Executive Director and copies provided to all other parties no later than 14 days before the date of the scheduled hearing. The Commission Chair or the Chair of the Hearing Panel, as the case may be, shall approve or deny a timely request within seven days of the submission of the request and, in addition, shall have the discretion to consider and rule on untimely requests for continuances.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may but need not include findings of law and fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each Respondent and the Complainant or original Complainant (for Task Force referrals) of the Commission's determination.



The application of any of the confidentiality provisions of the San Francisco Charter, including but not limited to sections Appendix C, section C3.699-13, and Appendix F, sections F1.107, F1.110, and F1.111, unless such provision conflicts with an express non-confidentiality provision in California Government Code section 6250 et seq. (California Public Records Act) or section 54950 et seq. (Ralph M. Brown Act), is a defense against an alleged violation of the Sunshine Ordinance.

*Comment: See above Comment and Memorandum.*

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Ex Parte Communications.**

Once a complaint is filed with the Commission or referred by the Task Force, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of an enforcement action with the Commission's staff, the Respondent, the Complainant, original Complainant (for Task Force referrals), any member of the Task Force or any person communicating on behalf of the Respondent, Complainant, original Complainant (for Task Force referrals) or any member of the Task Force except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

### **B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein shall not be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until one of the following has occurred:

1. the Commission has accepted staff's dismissal recommendation;
2. the Commission has approved a stipulation, decision and order; or
3. the Commission has issued its final decision following the hearing.

### **C. Oaths and Affirmations.**

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

### **D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the

Executive Director shall notify the Commission of the designation no later than the next business day.

**E. Powers and Duties of Individual Commissioners and Hearing Officers.**

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to conduct a hearing under these Regulations, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, each Respondent, and the original Complainant (for Task Force referrals) no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

3. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

**F. Extensions of Time and Continuances.**

The Executive Director or original Complainant (for Task Force referrals) 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 ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five business days of the 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.

**G. Recordings.**

Every hearing shall be electronically recorded.

**H. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a Respondent, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection G, to:

a. If the Respondent is a City employee, to the employee's City office address or to the address listed with the (Controller/Payroll) as the employee's current address.

b. If the Respondent is a former City employee, to the address listed with the City's retirement system.

c. If neither subsections (a) nor (b) are applicable, to an address reasonably calculated to give notice to and reach the Respondent.

3. Delivery is effective upon the date of delivery, not the date of receipt.

**I. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 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 12 point type. Each page and any attachments shall be consecutively numbered.

**J. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the last date on which the Commission hears argument or testimony in the proceeding.

**VII. STIPULATED ORDERS**

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with Respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

(1) the proposed stipulation, decision and order is subject to approval by the Commission;

(2) the Respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;

(3) the Respondent understands and acknowledges that the stipulation is not binding on any other agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other agency with regard to 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 shall become null and void; and

(5) in the event the Commission rejects the proposed stipulation and a full hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. — The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under section V, subsection C of these Regulations.

C. — Once the Executive Director enters into a stipulation with a Respondent, the Executive Director shall inform the Commission of this stipulation and shall place the matter on the agenda at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement.

D. — Stipulations must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

#### IX. 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 shall not be affected thereby.

E. Every hearing on a Complaint and Enforcement Action shall be electronically audio recorded and made available on the Commission's website within 48 hours after the hearing ends.

F. All notices and other communications hereunder (any of which is a "notice") to be effective shall be in writing. Notice shall be delivered by one or more of the following

means: (a) personally, including delivery by a recognized national overnight courier with a signed acknowledgment of receipt, (b) if mailed, by priority first class certified mail, return receipt requested, postage prepaid or (c) by confirmed facsimile, electronic or digital means other than email (any of which shall be deemed a "writing" for purposes hereof), in each case as follows:

1. To the Commission, any of the Commissioners or the Executive Director, at the Commission office.

2. To a Respondent, (a) if the Respondent is then a City Official or other City employee, to the such Respondent's City office address, if any, and if none, to the address listed with the (Controller/ Payroll) as such Respondent's current address or (b) if the Respondent is a former City official or other employee, to the address listed for such Respondent in the City's retirement system or (c) if the Respondent is neither a current or former City official or other City employee, to such Respondent's last known residence address or an address that is reasonably believed to reach the Respondent.

3. To a Complainant in a Complaint, to the address given in the Complaint for receipt of notices and other communications relating to the Complaint.

4. To a Complainant in an Enforcement Action, to the address given in the original complaint filed with the Task Force or in the Petition filed with the Supervisor of Records, as the case may be.

C. At the time a Complaint or Enforcement Action is filed with or received by the Executive Director, the address for receipt of notices of each of the affected parties shall be confirmed by the Executive Director. Any affected party to any Complaint or Enforcement Action may supplement or change the address for notice by giving notice conforming to the above to the other affected parties.

5. All notices shall be deemed delivered on the business day received, or on the business day received when received by confirmed facsimile. Any notice received after 5:00 P.M. on a business day shall be deemed received the next business day.

# ATTACHMENT D

Print

San Francisco Charter

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**ARTICLE XV:  
ETHICS**

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- Sec. 15.100. Ethics Commission.
- Sec. 15.101. Executive Director and Commission Staff.
- Sec. 15.102. Rules and Regulations.
- Sec. 15.103. Conflict of Interest.
- Sec. 15.105. Suspension and Removal.
- Sec. 15.107. Reporting of Campaign Financing.

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**SEC. 15.100. ETHICS COMMISSION.**

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointments shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

- (a) Restrictions on Holding Office. No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.
- (b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.
- (c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office.

For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(Amended November 2001; November 2002; November 2003)

### **SEC. 15.101. EXECUTIVE DIRECTOR AND COMMISSION STAFF.**

The Commission shall appoint and may remove an Executive Director. The Executive Director shall have a background in campaign finance, public information and public meetings and the law as it relates to governmental ethics. The Executive Director shall be the chief executive of the department and shall have all the powers provided for department heads. Subject to the civil service provisions of this Charter, the Executive Director shall have the power to appoint and remove other employees of the Commission. In addition to any other conflict of interest provisions applicable to City employees, the Executive Director and all other employees of the Commission shall be subject to the conflict of interest provisions in Section 15.100, except that the post-employment restrictions contained therein shall apply only to the Executive Director and management-level employees.

(Amended November 2001)

### **SEC. 15.102. RULES AND REGULATIONS.**

The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records. The Commission shall transmit to the Board of Supervisors rules and regulations adopted by the Commission within 24 hours of their adoption. A rule or regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of this 60- day period two-thirds of all members of the Board of Supervisors vote to veto the rule or regulation.

The City Attorney shall be the legal advisor of the Commission.

Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.

(Amended November 2001)

### **SEC. 15.103. CONFLICT OF INTEREST.**

Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.

(Amended November 2003)

### **SEC. 15.104.**

(Repealed November 2003)

### **SEC. 15.105. SUSPENSION AND REMOVAL.**

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be



suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or

employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(c) **OFFICIAL MISCONDUCT.** Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

(Amended November 2001; March 2002; November 2003)

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## **SEC. 15.106.**

(Repealed November 2003)

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## **SEC. 15.107. REPORTING OF CAMPAIGN FINANCING.**

The Board of Supervisors shall, by ordinance, prescribe requirements for campaign contributions and expenditures and any limitations thereon with respect to candidates for elective office and ballot measures in the City and County.

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## **SEC. 15.108.**

(Repealed November 2003)

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# ATTACHMENT E

Print

San Francisco Charter

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**APPENDIX C:  
ETHICS PROVISIONS \***

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- C3.699-10 Administration and Implementation
- C3.699-11 Duties
- C3.699-12 Requests for and Issuance of Options; Advice
- C3.699-13 Investigations and Enforcement Proceedings
- C3.699-14 Commission Funding
- C3.699-15 [Repealed]
- C3.699-16 Transfer of Position
- C8.105 [Repealed]
- C3.699

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**C3.699-10 ADMINISTRATION AND IMPLEMENTATION**

The Commission shall have responsibility for the impartial and effective administration and implementation of the provisions of this charter, statutes and ordinances concerning campaign finance, lobbying, conflicts of interest and governmental ethics.

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**C3.699-11 DUTIES**

The ethics commission shall have the following duties and responsibilities:

1. To administer the provisions of the San Francisco Municipal Elections Campaign Contribution Control Ordinance, and Proposition F, adopted by voters at the June 1986 election, which appears as Appendix K to this charter or any successors to these ordinances.
2. To receive documents required to be filed pursuant to, and to otherwise administer, the provisions of the City's lobbyist registration ordinance.
3. To act as the filing officer and to otherwise receive documents in any instance where the clerk of the board of supervisors, the registrar of voters and, with respect to members of the boards and commissions, department heads would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code sections 81000, et seq.), as amended.
4. To audit campaign statements and other relevant documents and investigate alleged violations of state law, this charter and City ordinances relating to campaign finance, governmental ethics and conflicts of interest and to report the findings to the district attorney, City attorney and other appropriate enforcement authorities. Commission investigation of alleged violations of state law shall be conducted only after the commission has provided to the district attorney and City attorney the information set forth in Section 3.699-12 and the district attorney and City attorney notify the commission that no investigation will be pursued.
5. To provide assistance to agencies, public officials and candidates in administering the provisions of this charter and other laws relating to campaign finance, conflicts of interest and governmental ethics.
6. To make recommendations to the mayor and the board of supervisors concerning (a) campaign finance reform, (b) adoption of and revisions to City ordinances laws related to conflict of interest and lobbying laws and governmental ethics and (c) the submission to the voters of charter amendments relating to campaign finance, conflicts of interest and governmental ethics. The commission shall report to the board of supervisors and mayor annually concerning the effectiveness of such laws. The commission

shall transmit its first set of recommendations to the board of supervisors and mayor no later than July 1, 1995.

7. To maintain a whistleblower hot line and administer the provisions of the City's improper government activities ordinance.

8. To annually adjust any limitation and disclosure thresholds imposed by City law to reflect any increases or decreases in the Consumer Price Index. Such adjustments shall be rounded off to the nearest hundred dollars for the limitations on contributions.

9. To assist departments in developing and maintaining their conflict of interest codes as required by state law.

10. To advocate understanding of the charter and City ordinances related to campaign finance, conflicts of interest, lobbying, governmental ethics and open meetings and public records, and the roles of elected and other public officials, City institutions and the City electoral process.

11. To have full charge and control of its office, to be responsible for its proper administration, subject to the budgetary and fiscal provisions of the charter.

12. To prescribe forms for reports, statements, notices and other documents required by this charter or by ordinances now in effect or hereafter adopted relating to campaign finance, conflicts of interest, lobbying and governmental ethics.

13. To prepare and publish manuals and instructions setting forth methods of bookkeeping, preservation of records to facilitate compliance with and enforcement of the laws relating to campaign finance, conflicts of interest, lobbying and governmental ethics, and explaining applicable duties of persons and committees.

14. To develop an educational program, including but not limited to the following components:

(a) Seminars, when deemed appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, and lobbyists with City, state and federal ethics laws and the importance of ethics to the public's confidence in municipal government.

(b) Annual seminars for top-level officials, including elected officers and commissioners, to reinforce the importance of compliance with, and to inform them of any changes in, the law relating to conflicts of interest, lobbying, governmental ethics and open meetings and public records.

(c) A manual which will include summaries, in simple, non-technical language, of ethics laws and reporting requirements applicable to City officers and employees, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable City, state and federal laws governing the ethical conduct of City employees.

(d) A manual which will include summaries, in simple, non-technical language, of City ordinances related to open meetings and public records, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable City ordinances related to open meetings and public records.

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### **C3.699-12 REQUESTS FOR AND ISSUANCES OF OPINIONS; ADVICE**

(a) Any person may request the commission to issue a written opinion with respect to that person's duties under provisions of this charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics. The commission shall, within 21 days, transmit its proposed opinion to the City attorney and district attorney, provided that the commission, or its executive director, can extend this time for good cause. Within ten working days of receipt of the proposed opinion, the City attorney and district attorney shall advise the commission whether they concur in the proposed opinion. If either the City attorney or district attorney do not concur with the proposed opinion, he or she shall inform the commission in writing concerning the basis for disagreement. No person who acts in good faith on an opinion issued by the commission and concurred in by the City attorney and district attorney shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published.

(b) The commission may authorize its staff to issue informal oral advice to any person with respect to that person's duties under provisions of this charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics. Reliance on such oral advice shall not be a defense in any enforcement proceeding.

(c) Subject to the civil service provisions of this charter, the commission may employ individuals who have graduated from a state accredited law school for the purpose of assisting the commission prepare opinions and providing advice under this section.

These employees shall have no authority to provide advice to or represent the City and County or any of its officers or employees.

(d) Nothing in this section shall be construed to prevent City and County officers and employees from seeking advice from the City attorney concerning conflict of interest and governmental ethics laws.

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### **C3.699-13 INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS**

The commission shall conduct investigations in accordance with this subdivision of alleged violations of this charter and City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.

(a) Investigations.

If the commission, upon the receipt of a sworn complaint of any person or its own initiative, has reason to believe that a violation of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest or governmental ethics has occurred, the commission immediately shall forward the complaint or information in its possession regarding the alleged violation to the district attorney and City attorney. Within ten working days, after receipt of the complaint or information, the district attorney and City attorney shall inform the commission in writing regarding whether the district attorney or City attorney has initiated or intends to pursue an investigation of the matter

If the commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics. A complaint filed with the commission shall be investigated only if it identifies the specific alleged violations which form the basis for the complaint and the commission determines that the complaint contains sufficient facts to warrant an investigation.

Within 14 days after receiving notification that neither the district attorney nor City attorney intends to pursue an investigation, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reasons for such action or non-action. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. Any member or employee of the commission or other person who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be deemed guilty of official misconduct. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

(b) Findings of Probable Cause.

No finding of probable cause to believe that a provision of this charter or City ordinances relating to campaign finance, lobbying, conflicts of interest or governmental ethics has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have committed the violation is notified of the alleged violation by service of process or registered mail with return receipt requested, is provided with a summary of the evidence, and is informed of his or her right to be present in person and to be represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person committed the violation. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or, if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private to the extent permitted by state law unless the alleged violator files with the commission a written request that the proceeding be public.

(c) Administrative Orders and Penalties.

(i) When the commission determines there is probable cause for believing a provision of this charter or City ordinance has been violated, it may hold a public hearing to determine if such a violation has occurred. When the commission determines on the basis of substantial evidence presented at the hearing that a violation has occurred, it shall issue an order which may require the violator to:

- (1) Cease and desist the violation;
- (2) File any reports, statements or other documents or information required by law; and/or

(3) Pay a monetary penalty to the general fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever

is greater. Penalties that are assessed but uncollected after 60 days shall be referred to the bureau of delinquent revenues for collection.

In addition, with respect to City officers other than those identified in Section 8.107 of this charter, when the commission determines on the basis of substantial evidence presented at the hearing that a violation has occurred, the commission may recommend to the appointing officer that the officer be removed from office.

When the commission determines that no violation has occurred, it shall publish a declaration so stating.

(d) In addition to any other penalty that may be imposed by law, any person who violates any provision of this charter or of a City ordinance relating to campaign finance, lobbying, conflicts of interest or governmental ethics, or who causes any other person to violate any such provision, or who aids and abets any other person in such violation, shall be liable under the provisions of this section.

(Amended November 2001)

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### **C3.699-14 COMMISSION FUNDING**

The ethics commission may impose fees related to the administration and enforcement of ordinances and provisions of this charter related to campaign finance, lobbying, campaign consultants and governmental ethics. The fees shall become effective 30 days after their approval by the commission unless the board of supervisors, by a vote of two-thirds of all of its members, disapproves the fees within this 30 day period.

(Amended November 2001)

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### **C3.699-15**

(Repealed November 2001)

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### **C3.699-16 TRANSFER OF POSITION**

Upon the effective date of this section, the civil service commission immediately shall conduct a study to classify a position and determine the proper salary for the ethics commission employee who will be primarily responsible for administering and enforcing the City's Improper Government Activities Ordinance. Effective July 1, 1994, the mayor and board of supervisors shall transfer from the mayor's office to the ethics commission one position. This transfer will be effected as follows. The mayor and board of supervisors will adopt an ordinance eliminating one position in the mayor's office. The position eliminated shall be the position with the salary that most closely approximates the salary determined by the civil service commission for the employee who will be primarily responsible for administering and enforcing the City's Improper Government Activities Ordinance. At the same time, the mayor and board of supervisors shall adopt an ordinance creating and funding the position of the ethics commission employee who will be primarily responsible for administering and enforcing the City's Improper Government Activities Ordinance.

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### **C8.105**

(Repealed November 2003)

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# ATTACHMENT F



Print

San Francisco Administrative Code

**CHAPTER 67:  
THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999**

**Article**

- I. IN GENERAL
- II. PUBLIC ACCESS TO MEETINGS
- III. PUBLIC INFORMATION AND PUBLIC RECORDS
- IV. POLICY IMPLEMENTATION

**ARTICLE I:  
IN GENERAL**

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

**SEC. 67.1. FINDINGS AND PURPOSE.**

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the

public, has the right to an open and public process.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**SEC. 67.2. CITATION.**

This Chapter may be cited as the San Francisco Sunshine Ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**ARTICLE II:  
PUBLIC ACCESS TO MEETINGS**

- Sec. 67.3. Definitions.
- Sec. 67.4. Passive Meetings.
- Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
- Sec. 67.6. Conduct of Business; Time and Place For Meetings.
- Sec. 67.7. Agenda Requirements; Regular Meetings.
- Sec. 67.7-1. Public Notice Requirements.
- Sec. 67.8. Agenda Disclosures: Closed Sessions.
- Sec. 67.8-1. Additional Requirements for Closed Sessions.
- Sec. 67.9. Agendas and Related Materials: Public Records.
- Sec. 67.10. Closed Sessions: Permitted Topics.
- Sec. 67.11. Statement of Reasons For Closed Sessions.
- Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
- Sec. 67.13. Barriers to Attendance Prohibited.
- Sec. 67.14. Video and Audio Recording, Filming and Still Photography.
- Sec. 67.15. Public Testimony.
- Sec. 67.16. Minutes.
- Sec. 67.17. Public Comment By Members of Policy Bodies.

**SEC. 67.3. DEFINITIONS.**

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
  - (1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)\* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the Charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

**Editor's note**

*\*The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.*

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**SEC. 67.4. PASSIVE MEETINGS.**

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with State or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in Subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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**SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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**SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.**

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 67.7(c), and mailed notice if sufficient time permits.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## **SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.**

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER  
THE SUNSHINE ORDINANCE  
(Chapter 67 of the  
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION  
ON YOUR RIGHTS UNDER THE SUNSHINE  
ORDINANCE OR TO REPORT A VIOLATION  
OF THE ORDINANCE, CONTACT THE  
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

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## **SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.**

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

(Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

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## **SEC. 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

\_\_\_\_\_ applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: \_\_\_\_\_ Terms of payment: \_\_\_\_\_ Both: \_\_\_\_\_

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL Existing litigation:

\_\_\_\_\_ Unspecified to protect service of process  
\_\_\_\_\_ Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: \_\_\_\_\_ As defendant \_\_\_\_\_ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR

COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

\_\_\_\_\_ Police officers, firefighters and airport police

\_\_\_\_\_ Transit Workers

\_\_\_\_\_ Nurses

\_\_\_\_\_ Miscellaneous Employees

Anticipated issue(s) under negotiation:

\_\_\_\_\_ Wages

\_\_\_\_\_ Hours

\_\_\_\_\_ Benefits

\_\_\_\_\_ Working Conditions

\_\_\_\_\_ Other (specify if known)

\_\_\_\_\_ All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**SEC. 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.**

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

(Added by Proposition G, 11/2/99)

**SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**



(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.10. CLOSED SESSIONS: PERMITTED TOPICS.**

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

## **SEC. 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this Article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this Article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this Article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## **SEC. 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) **Real Property Negotiations:** Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in Subdivision (b) of this Section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) **Litigation:** Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) **Settlement:** A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice

or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this Section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by Subdivision (b) of this Section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this Section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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### **SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon

as possible thereafter, review the provisions of this subsection.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

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## **SEC. 67.14. VIDEO AND AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.**

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site ([www.sfgov.org](http://www.sfgov.org)) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99; Ord. 80-08, File No. 071596)

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## **SEC. 67.15. PUBLIC TESTIMONY.**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.16. MINUTES.**

The clerk or secretary of each board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.**

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, revoke or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

# **ARTICLE III: PUBLIC INFORMATION AND PUBLIC RECORDS**

- Sec. 67.20. Definitions.
- Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.
- Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.
- Sec. 67.22. Release of Oral Public Information.
- Sec. 67.23. Public Review File—Policy Body Communications.
- Sec. 67.24. Public Information that Must Be Disclosed.
- Sec. 67.25. Immediacy of Response.
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27. Justification of Withholding.
- Sec. 67.28. Fees for Duplication.
- Sec. 67.29. Index to Records.
- Sec. 67.29-1. Records Survive Transition of Officials.

- Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.
- Sec. 67.29-3.
- Sec. 67.29-4. Lobbyist On Behalf of the City.
- Sec. 67.29-5. Calendars of Certain Officials.
- Sec. 67.29-6. Sources of Outside Funding.
- Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

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## **SEC. 67.20. DEFINITIONS.**

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).
- (c) "Supervisor of Records" shall mean the City Attorney.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

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## **SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- (c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- (d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.
- (e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is

denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. 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.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

## **SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.**

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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## **SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.**

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.23. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.**

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly



chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## **SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

### **(a) Drafts and Memoranda.**

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

### **(b) Litigation Material.**

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) **Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

**(d) Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

**(e) Contracts, Bids and Proposals.**

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the

Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) **Budgets and Other Financial Information.** Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

## **SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however,

the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.28. FEES FOR DUPLICATION.**

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in Subdivision (b) and the 10 cent presumptive fee in Subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.29. INDEX TO RECORDS.**

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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### **SEC. 67.29-1. RECORDS SURVIVE TRANSITION OF OFFICIALS.**

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.**

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.29-3.**

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall

allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record.

(Added by Proposition G, 11/2/99)

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#### **SEC. 67.29-4. LOBBYIST ON BEHALF OF THE CITY.**

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

(Added by Proposition G, 11/2/99)

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#### **SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.**

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no City business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

(Added by Proposition G, 11/2/99)

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#### **SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.**

No official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City.

(Added by Proposition G, 11/2/99)

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#### **SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.**

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall

disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.

(Added by Proposition G, 11/2/99)

## ARTICLE IV: POLICY IMPLEMENTATION

- Sec. 67.30. The Sunshine Ordinance Task Force.
- Sec. 67.31. Responsibility for Administration.
- Sec. 67.32. Provision of Services to Other Agencies; Sunshine Required.
- Sec. 67.33. Department Head Declaration.
- Sec. 67.34. Willful Failure Shall be Official Misconduct.
- Sec. 67.35. Enforcement Provisions.
- Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.
- Sec. 67.37. Severability.

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### **SEC. 67.30. THE SUNSHINE ORDINANCE TASK FORCE.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall

be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, 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.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

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### **SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.**

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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### **SEC. 67.32. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.**

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.33. DEPARTMENT HEAD DECLARATION.**

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the



Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.

(Added by Proposition G, 11/2/99)

### **SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

(Added by Proposition G, 11/2/99)

### **SEC. 67.35. ENFORCEMENT PROVISIONS.**

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.

(Added by Proposition G, 11/2/99)

### **SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

(Added by Proposition G, 11/2/99)

### **SEC. 67.37. SEVERABILITY.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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