

Date: March 8, 2011

Item No. 4

File No. \_\_\_\_\_

### SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Ethics Commission proposed policy
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Completed by: Chris Rustom

Date: March 2, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

# ATTACHMENT A

San Francisco  
Ethics Commission



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San Francisco, CA 94102  
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DS EDITS – 2/20/2011

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

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

### DS NOTES / EDITS:

1. Generally. This draft attempts to reconcile Allen Grossman's draft of October 2010, my draft of November 2010, and the comments of the Compliance and Amendments Committee, who met and discussed these issues twice between November 2010 and February 2011.

2. What is Different. The draft restores much of the excellent work Mr. Grossman did in his original draft, but which I eliminated in my November 2010 draft. There are a few things I have not retained from Mr. Grossman's suggestions, including his provisions on what Ethics Commission records are public, discussed immediately below. I do not mean to disrespect Mr. Grossman's meticulous and creative approach – nor the extensive work he did. It merely reflects what I think should be a more minimalist approach.

Mr. Grossman and I have discussed the way Ethics Commission's regulations should define the openness of the body's investigative records. We disagree on this. I think the committee should discuss this issue, and our disagreement, as a first priority. Here's my attempt to describe our differences. Mr. Grossman's approach is very robust and aggressive – his definition essentially says that all investigative records are public, period. My definition is more cautious or measured (however you want to put it). My definition basically says that the investigatory files are public according to public records laws. My reasoning is that the Ethics Commission can't override state law on what constitutes a public record. It can't, for example, make public attorney-client privileged documents or attorney work product. In my view, there can be no harm, for sunshine purposes, to simply say: everything in the Commission's investigatory files is public according to state law. Mr. Grossman's

view, on the other hand, is that the commission's regulations should not leave it to the Executive Director's discretion to guess what might be nondisclosable under state law. Since we have no power to actually pass these regulations, I think we should give the Ethics Commission a draft that is more measured. In my opinion, it is just not credible (or enforceable) to say in the Ethics Commission regulations that ALL paper in their file is public, necessarily and regardless of what state (or local) law might say.

**Our differing definitions.** Mr. Grossman's draft combated the Ethics Commission's draft's very broad assertion of secrecy by saying: "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 by the Code of Civil Procedure . . .), in the custody of the Commission and its staff, including internal notes taken by the Executive Director or any staff member contain fully disclosable public information and accordingly constitute fully disclosable non-exempt public records."

This says, in essence: "Everything the Commission touches in its investigation is a public record." It think we can accomplish almost all of this by simply incorporating existing sunshine law into the regulations. (I also don't think that the Ethics Commission, comprised largely of lawyers, is going to go for a regulation which explicitly says that all attorney work product or attorney-client privileged information is discloseable – no matter how sunshine-friendly they are, they're still lawyers.) So my suggestion, as you will see below in Section IV.B and VI.B., is to say: "All Complaints, investigative records of whatever nature or description, and all information contained therein, including any work product, shall be public records in accordance with the Sunshine Ordinance, the California Public Records Act and the United States Constitution."

In my view, our primary goal here should be to prevent the Ethics Commission from passing regulations which are directly antithetical to the goals of sunshine. Their current draft is that. It is a bad set of regulations (although better than what they were doing before). The attached draft attempts, in minimalist fashion, to remedy the most egregious oversights.

3. **What is New.** This draft attempts to create something of a two-track process. On one track are SOTF Referrals. On the other are Complaints. See Section III – V, below. Section IV, on investigations, applies ONLY to Complaints, not to SOTF Referrals. What our draft regulations propose is that the Ethics Commission do NO independent investigating of SOTF Referrals. As for Complaints, however, this draft proposes we change almost nothing about how the Commission investigates those. This is in keeping with what was (I think) the consensus of the Compliance and Amendments Committee (and Mr. Grossman) at our last meeting. Let them have their procedures for Complaints, the thinking went. We can't control that anyway.

As for SOTF Referrals, these regulations envision an extremely limited role for the Ethics Commission. There are no procedures for investigations of SOTF Referrals because, as this draft now notes, "[T]he Commission's sole determinations at a hearing on an SOTF Referral shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s)." Section V.B.4. This is Mr. Grossman's language. I just made it more prominent in that section.

4. **Disclaimer.** I am sure I have left some thing(s) out. I re-read Mr. Grossman's notes and memos, and my notes from the Compliance and Amendments Committee meeting, but I am sure I

neglected some points, maybe important ones. Let me know, and let's try to make these regs Sunshine friendly and effective. Please forgive any typos or egregious errors. I've done my best to proofread this, but I have never claimed to be a good, or even competent, copy editor.

REF

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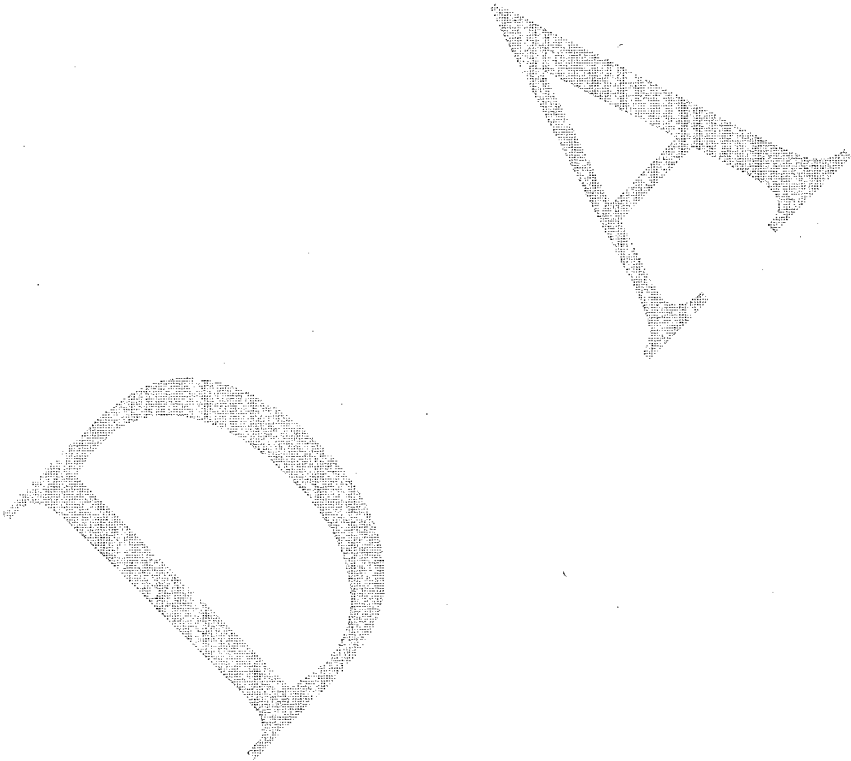
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## I. PREAMBLE

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 only to complaints alleging violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force. 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 written document filed with the Commission in any form of media, including any electronic format, alleging a willful violation of the Sunshine Ordinance filed with the Commission by an elected official or department head of the City and County of San Francisco. "Complaint" does not refer to SOTF Referrals, defined below.
- E. "Complainant" means a person or entity that files a complaint Complaint.
- 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.~~
- G. "Enforcement Action" means an 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) an SOTF Order of Determination that is not the subject of an SOTF Referral or (2) a Supervisor of Records Order that has not been complied with by the Respondent to whom issued.
- H.I. ~~"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. "Mitigating information" means information tending to excuse or reduce the culpability of the Respondent's conduct.~~

~~K. "SOTF Order of Determination" means a final recommendation an Order issued by the Task Force concerning a violation of the Sunshine Ordinance.~~  
~~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 and requiring the Respondent to correct the violation.~~

MK. "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.

L. "Respondent" means a person who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

~~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.~~

OM. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

N. "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.

PN. "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 / SOTF REFERRALS / ENFORCEMENT PETITIONS

A. Any person or entity may file a Complaint with the Commission. Each Complaint shall be heard and administered in accordance with Section [ ] 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.

~~A. Any person, including Commission staff, may file a complaint with the Commission or the Task Force alleging a violation of the Sunshine Ordinance. When the Executive Director receives 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 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.

~~When the Executive Director receives a referral from the Task Force, the Executive Director shall B. When the Executive Director receives an SOTF Referral or an Enforcement Petition, the Executive Director shall (1) immediately schedule a hearing at the next regular meeting of the Commission to be held more than 21 days after receipt thereof, provided that: and (2) the Executive Director issue a written give notice to each Respondent and the original Complainant (as the real party in interest) 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.~~

C. No enforcement action shall be taken on an SOTF Referral or an Enforcement Petition 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 an Enforcement Petition.

CD. 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.

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

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

~~**B. — Report of Investigation.**~~

~~1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report summarizing his or her factual and legal findings. The report shall contain a summary of the legal provisions cited by the complaint and the evidence gathered through the Ethics Commission's investigation, including any exculpatory and mitigating information. In the report, 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.~~

~~2. The report shall also include the Executive Director's recommendation, which shall be comprised of one of the following: a) a finding that Respondent violated the Sunshine Ordinance and proposed penalties; b) a finding that Respondent violated the Sunshine Ordinance and a proposed stipulation, decision and order; or c) a finding of no violation of the Sunshine Ordinance and dismissal. The report shall be delivered to the Commission.~~

~~a. **Finding of Violation 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.~~



~~b. **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 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.~~

~~A Commissioner's request to calendar the matter 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.~~

~~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.~~

~~c. **Finding of No Violation of Sunshine Ordinance and Dismissal.** If the report recommends a finding of no violation and dismissal, the Executive Director shall so inform the Commission. Thereafter, any two or more Commissioners may cause 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 dismissal recommendation. During the meeting at which the Commission considers the dismissal recommendation, 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 dismissal recommendation; 2) reject the dismissal recommendation and instruct staff to seek a settlement; or 3) reject the dismissal recommendation and instruct staff to schedule a hearing pursuant to Section IV.C. of these Regulations.~~

~~A Commissioner's request to calendar the matter 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.~~

~~If two or more members of the Commission do not request the matter to be calendared, the Executive Director shall take no further action except that he or she~~

shall inform the Complainant and the Respondent of the finding of no violation and dismissal.

**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 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.

**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.

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.

**V. — HEARING**

**A. Scope.** This section shall apply only to Complaints, not to SOTF Referrals.

**[LEAVE TEXT AS IT WAS IN EC RECOMMENDATIONS, OR DELETE ALL AND INSERT RECOMMENDATIONS HERE OR IN INTRO MEMO?]**

**V. HEARINGS**

**A. General Rules and Procedures -- Complaints.**

1. Public Hearing

**[LEAVE TEXT AS EC HAD IT? OR DELETE ENTIRELY AND ADD OUR COMMENTS HERE?]**

**B. General Rules and Procedures – SOTF Referrals / Enforcement Petitions**

~~The hearing~~ 1. All hearings on SOTF Referrals and Enforcement Petitions shall be open to the public. The Commission may ~~shall~~ hold the hearing, or the Commission may assign one of its members or a hearing officer 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.

~~a. For Task Force referrals, the following parties~~ 2. 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 Commission policy.

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

4. The Commission's sole determinations at a hearing on an SOTF Referral or Enforcement Petitions shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s). At or prior to a hearing on an SOTF Referral or Enforcement Petition, 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.

5. No formal rules of evidence shall apply to testimony given at a hearing or to documents or records submitted as exhibits, but the Commission may require that all testimony taken in a hearing be given under oath and any exhibits presented properly authenticated.

- ~~i. Original Complainant (real party in interest); and~~
- ~~ii. Respondent(s).~~
- ~~iii. No other live testimony shall be permitted.~~

~~b. For complaints alleging a violation of the Sunshine Ordinance, the following parties have the right to appear and speak on his or her own behalf:~~

- ~~i. Executive Director; and~~
- ~~ii. Respondent(s).~~
- ~~iii. No other live testimony shall be permitted.~~

~~2. Standard of Proof~~

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.

3. — Burden of Proof

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.

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.

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 shall have the right to introduce exhibits and to rebut any evidence presented.

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.

7. — Failure to Appear

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

**BC. Finding of Violation.**

If the Commission conducts the hearing, the 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 is concluded, as described in section VI.E of these Regulations. 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 the Sunshine Ordinance.

The votes of at least three Commissioners are required to find that a Respondent has committed a violation of the Sunshine Ordinance. The finding of a 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. 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; Warning Letters.**

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation of the Sunshine Ordinance.

2. 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 for good cause;

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

(c) whether the Respondent consulted with counsel prior to committing the alleged violation.

3. If the Commission finds that Respondent committed a willful violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring the Respondent to:

(a) immediately cease and desist the violation;

(b) cure and correct the willful violation through whatever action is necessary;

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

(c) pay a monetary penalty to the general fund of the City in an amount ~~up to~~ not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000) for each violation. The Respondent may not use City monies to pay such penalties.

4. If the Commission finds that an elected official or a department head committed a willful violation of the Sunshine Ordinance, the Commission may also issue a finding of official misconduct and ~~so inform the Mayor or appointing authority~~ proceed in accordance with the applicable provisions of Article XV of the City Charter.

5. 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;
- (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 any willful violation, the Commission may issue warning letters urging the Respondent to:

- (a) cease and desist the violation; and/or
- (b) disclose any documents or records required by law.

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.

**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. 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.~~

**VI. MISCELLANEOUS PROVISIONS**

**A. Ex Parte Communications.**

~~Once a complaint Complaint is filed with the Commission or referred an SOTF Referral is received by the Task Force Commission, no Commissioner shall engage in oral or written communications of any kind 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. the Complaint or SOTF Referral.

**B. Public Records.**

All Complaints, investigative records of whatever nature or description, and all information contained therein, including any work product, shall be public records in accordance with the Sunshine Ordinance, the California Public Records Act and the United States Constitution.

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

1. 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 and the United States Constitution. 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.

**CD. 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.~~

**~~(a) 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.~~

**GE. Recordings.**

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

**HF. 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.

#### **(i) 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.

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Date & Time	2/28/2011 8:36:26 AM
Comparison Time	12.13 seconds
compareDocs version	v3.3.2.63

Sources	
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Modified Document	[#403317032] [v2] DS Draft 2 - Ethics Sunshine Regs (clean copy).doc

Comparison Statistics	
Insertions	47
Deletions	41
Changes	26
Moves	10
TOTAL CHANGES	124

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<del>Deletions</del>	
<u>Moves</u> / <del>Moves</del>	
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Deleted cells	
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Changed lines	Mark left border.
Comments color	ByAuthor
Balloons	False

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Open Comparison Report after Saving	General	Always
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Include Field Codes	Word	False
Include Moves	Word	True
Show Track Changes Toolbar	Word	False
Show Reviewing Pane	Word	False
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	End
Document View	Word	Print
Remove Personal Information	Word	False

## ATTACHMENT A

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

DS EDITS – 2/20/2011

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

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

#### DS NOTES / EDITS:

1. **Generally.** This draft attempts to reconcile Allen Grossman's draft of October 2010, my draft of November 2010, and the comments of the Compliance and Amendments Committee, who met and discussed these issues twice between November 2010 and February 2011.

2. **What is Different.** The draft restores much of the excellent work Mr. Grossman did in his original draft, but which I eliminated in my November 2010 draft. There are a few things I have not retained from Mr. Grossman's suggestions, including his provisions on what Ethics Commission records are public, discussed immediately below. I do not mean to disrespect Mr. Grossman's meticulous and creative approach – nor the extensive work he did. It merely reflects what I think should be a more minimalist approach.

Mr. Grossman and I have discussed the way Ethics Commission's regulations should define the openness of the body's investigative records. We disagree on this. I think the committee should discuss this issue, and our disagreement, as a first priority. Here's my attempt to describe our differences. Mr. Grossman's approach is very robust and aggressive – his definition essentially says that all investigative records are public, period. My definition is more cautious or measured (however you want to put it). My definition basically says that the investigatory files are public according to public records laws. My reasoning is that the Ethics Commission can't override state law on what constitutes a public record. It can't, for example, make public attorney-client privileged documents or attorney work product. In my view, there can be no harm, for sunshine purposes, to simply say: everything in the Commission's investigatory files is public according to state law. Mr. Grossman's view, on the other hand, is that the commission's regulations should not leave it to the Executive Director's discretion to guess what might be nondisclosable under state law. Since we have no power

to actually pass these regulations, I think we should give the Ethics Commission a draft that is more measured. In my opinion, it is just not credible (or enforceable) to say in the Ethics Commission regulations that ALL paper in their file is public, necessarily and regardless of what state (or local) law might say.

**Our differing definitions.** Mr. Grossman's draft combated the Ethics Commission's draft's very broad assertion of secrecy by saying: "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 by the Code of Civil Procedure . . .), in the custody of the Commission and its staff, including internal notes taken by the Executive Director or any staff member contain fully disclosable public information and accordingly constitute fully disclosable non-exempt public records."

This says, in essence: "Everything the Commission touches in its investigation is a public record." It think we can accomplish almost all of this by simply incorporating existing sunshine law into the regulations. (I also don't think that the Ethics Commission, comprised largely of lawyers, is going to go for a regulation which explicitly says that all attorney work product or attorney-client privileged information is discloseable – no matter how sunshine-friendly they are, they're still lawyers.) So my suggestion, as you will see below in Section IV.B and VI.B., is to say: "All Complaints, investigative records of whatever nature or description, and all information contained therein, including any work product, shall be public records in accordance with the Sunshine Ordinance, the California Public Records Act and the United States Constitution."

In my view, our primary goal here should be to prevent the Ethics Commission from passing regulations which are directly antithetical to the goals of sunshine. Their current draft is that. It is a bad set of regulations (although better than what they were doing before). The attached draft attempts, in minimalist fashion, to remedy the most egregious oversights.

3. **What is New.** This draft attempts to create something of a two-track process. On one track are SOTF Referrals. On the other are Complaints. See Section III – V, below. Section IV, on investigations, applies ONLY to Complaints, not to SOTF Referrals. What our draft regulations propose is that the Ethics Commission do NO independent investigating of SOTF Referrals. As for Complaints, however, this draft proposes we change almost nothing about how the Commission investigates those. This is in keeping with what was (I think) the consensus of the Compliance and Amendments Committee (and Mr. Grossman) at our last meeting. Let them have their procedures for Complaints, the thinking went. We can't control that anyway.

As for SOTF Referrals, these regulations envision an extremely limited role for the Ethics Commission. There are no procedures for investigations of SOTF Referrals because, as this draft now notes, "[T]he Commission's sole determinations at a hearing on an SOTF Referral shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s)." Section V.B.4. This is Mr. Grossman's language. I just made it more prominent in that section.

4. **Disclaimer.** I am sure I have left some thing(s) out. I re-read Mr. Grossman's notes and memos, and my notes from the Compliance and Amendments Committee meeting, but I am sure I neglected some points, maybe important ones. Let me know, and let's try to make these regs Sunshine friendly and effective. Please forgive any typos or egregious errors. I've done my best to proofread this, but I have never claimed to be a good, or even competent, copy editor.

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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 only to complaints alleging violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force. 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 a willful violation of the Sunshine Ordinance by an elected official or department head of the City and County of San Francisco. "Complaint" does not refer to SOTF Referrals, defined below.
- E. "Complainant" means a person or entity that files a Complaint.
- 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 an 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) an SOTF Order of Determination that is not the subject of an 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. "SOTF Order of Determination" means an Order issued by the Task Force finding a violation of the Sunshine Ordinance and requiring the Respondent to correct the violation.

- K. "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.
- L. "Respondent" means a person who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.
- M. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.
- N. "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.
- N. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

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

- A. Any person or entity may file a Complaint with the Commission. Each Complaint shall be heard and administered in accordance with Section [ ] 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 an SOTF Referral or an Enforcement Petition, the Executive Director shall (1) immediately schedule a hearing at the next regular meeting of the Commission to be held more than 21 days after receipt thereof, and (2) give notice to each Respondent and Complainant (as the real party in interest) of the date, time and location of the hearing. The Executive Director shall also provide notice to the Task Force. Such hearings shall otherwise be governed by the provisions of Section [ ] of these Regulations.
- C. No enforcement action shall be taken on an SOTF Referral or an Enforcement Petition 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 an Enforcement Petition.
- D. 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.

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

- A. **Scope.** This section shall apply only to Complaints, not to SOTF Referrals.



**[LEAVE TEXT AS IT WAS IN EC RECOMMENDATIONS, OR DELETE ALL AND INSERT RECOMMENDATIONS HERE OR IN INTRO MEMO?]**

**V. HEARINGS**

**A. General Rules and Procedures -- Complaints.**

**[LEAVE TEXT AS EC HAD IT? OR DELETE ENTIRELY AND ADD OUR COMMENTS HERE?]**

**B. General Rules and Procedures – SOTF Referrals / Enforcement Petitions**

1. All hearings on SOTF Referrals and Enforcement Petitions shall be open to the public. The Commission shall hold the hearing.

2. 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 Commission policy.

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

4. The Commission's sole determinations at a hearing on an SOTF Referral or Enforcement Petitions shall be the nature and scope of the penalties or other enforcement actions against the Respondent(s). At or prior to a hearing on an SOTF Referral or Enforcement Petition, 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.

5. No formal rules of evidence shall apply to testimony given at a hearing or to documents or records submitted as exhibits, but the Commission may require that all testimony taken in a hearing be given under oath and any exhibits presented properly authenticated.

**C. Finding of Violation.**

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.

The votes of at least three Commissioners are required to find that a Respondent has committed a violation of the Sunshine Ordinance. The finding of a 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. 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; Warning Letters.**

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation of the Sunshine Ordinance.

2. 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 for good cause;

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

(c) whether the Respondent consulted with counsel prior to committing the alleged violation.

3. If the Commission finds that Respondent committed a willful violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring the Respondent to:

(a) immediately cease and desist the violation;

(b) cure and correct the willful violation through whatever action is necessary;

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

(c) pay a monetary penalty to the general fund of the City in an amount not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000) for each violation. The Respondent may not use City monies to pay such penalties.

4. If the Commission finds that an elected official or a department head committed a willful violation of the Sunshine Ordinance, the Commission may also issue a finding of official misconduct and proceed in accordance with the applicable provisions of Article XV of the City Charter.

5. 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;
- (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 any willful violation, the Commission may issue warning letters urging the Respondent to:

- (a) cease and desist the violation; and/or
- (b) disclose any documents or records required by law.

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.

## **VI. MISCELLANEOUS PROVISIONS**

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

Once a Complaint is filed with the Commission or an SOTF Referral is received by the Commission, no Commissioner shall engage in communications of any kind outside of a Commission meeting regarding the merits of the Complaint or SOTF Referral.

### **B. Public Records.**

All Complaints, investigative records of whatever nature or description, and all information contained therein, including any work product, shall be public records in accordance with the Sunshine Ordinance, the California Public Records Act and the United States Constitution.

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

1. Complaints, investigative files and information contained therein shall be disclosed as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance and the United States Constitution.

### **D. Oaths and Affirmations.**

The Commission may administer oaths and affirmations.

### **E. Recordings.**

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

**F. 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.
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.

**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.

ATTACHMENT A

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

SOTF Proposed Revised Version

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

Effective Date: \_\_\_\_\_, 2010

REVISION

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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) 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.
- 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 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 §§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 REFERRALS/ENFORCEMENT PETITIONS.**

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A. Any person or entity may file a Complaint with the Commission. Each Complaint shall be administered in accordance with Section [---] 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. The SOTF Referral and Enforcement Petition shall otherwise be governed by Section [---] of these Regulations.

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 pursuant to Section [---] of these Regulations.

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 in accordance with to Section [---] of these Regulations. 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 the majority vote, shall either: (a) enter an order of 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 in accordance Section [--] of these Regulations. 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 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.

#### 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 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 majority 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 (\$500.00) nor more than five thousand dollars (\$5,000) for each willful violation or failure to comply with an SOTF Order of Determination or Supervisor of Records Order.

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 contain fully disclosable public information and accordingly constitute fully disclosable non-exempt public records.

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.

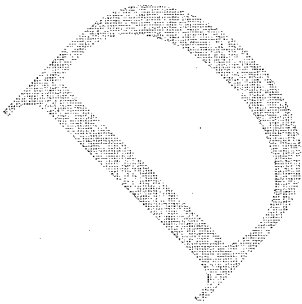
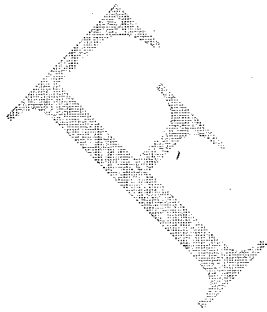
E. Every hearing on a Complaint and Enforcement Action shall be electronically audio recorded and made available on the Commission's website within 48 hours after the hearing ends.

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 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 A**

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

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

*Effective Date:* \_\_\_\_\_, 2010

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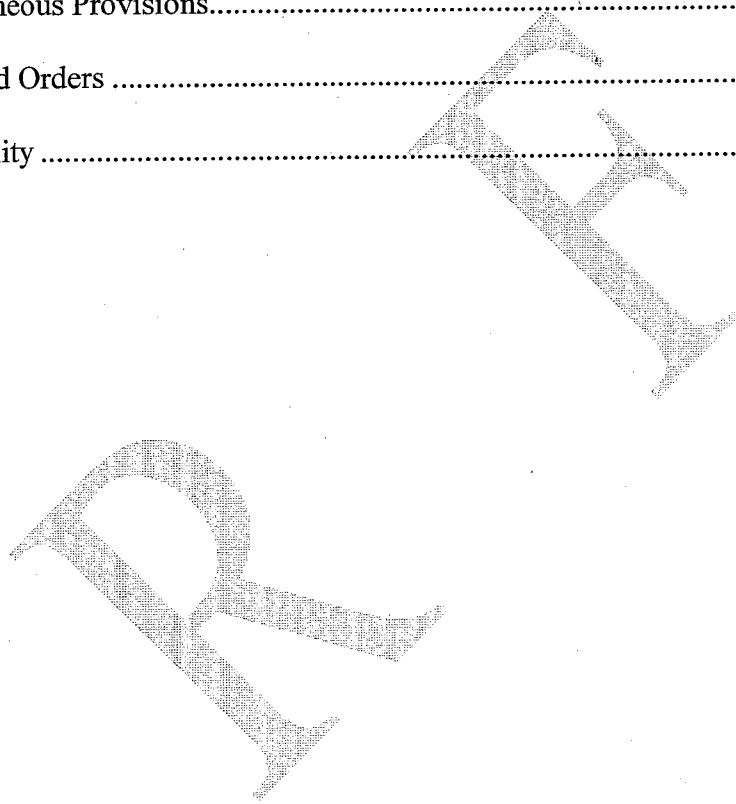
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## **I. PREAMBLE**

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 only to complaints alleging violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force. 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 written document alleging a violation of the Sunshine Ordinance filed with the Commission.
- E. "Complainant" means a person or entity that files a complaint.
- 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.
- 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. "Mitigating information" means information tending to excuse or reduce the culpability of the Respondent's conduct.
- K. "Order of Determination" means a final recommendation issued by the Task Force concerning a violation of the Sunshine Ordinance.
- 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.
- M. "Respondent" means a person who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.
- 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. "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 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.**

- A. Any person, including Commission staff, may file a complaint with the Commission or the Task Force alleging a violation of the Sunshine Ordinance. When the Executive Director receives 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 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.
- B. When the Executive Director receives a referral from the Task Force, the Executive Director shall schedule a hearing at the next regular meeting of the Commission, provided that: 1) the Executive Director issue a written notice to each Respondent and the original Complainant (real party in interest) 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.

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.

#### IV. INVESTIGATIONS; REPORT AND RECOMMENDATION

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

#### B. **Report of Investigation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report summarizing his or her factual and legal findings. The report shall contain a summary of the legal provisions cited by the complaint and the evidence gathered through the Ethics Commission's investigation, including any exculpatory and mitigating information. In the report, 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.

2. The report shall also include the Executive Director's recommendation, which shall be comprised of one of the following: a) a finding that Respondent violated the Sunshine Ordinance and proposed penalties; b) a finding that Respondent violated the Sunshine Ordinance and a proposed stipulation, decision and order; or c) a finding of no violation of the Sunshine Ordinance and dismissal. The report shall be delivered to the Commission.

a. **Finding of Violation 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.

b. **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 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.

A Commissioner's request to calendar the matter 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.

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.

- c. **Finding of No Violation of Sunshine Ordinance and Dismissal.** If the report recommends a finding of no violation and dismissal, the Executive Director shall so inform the Commission. Thereafter, any two or more Commissioners may cause 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 dismissal recommendation. During the meeting at which the Commission considers the dismissal recommendation, 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 dismissal recommendation; 2) reject the dismissal recommendation and instruct staff to seek a settlement; or 3) reject the dismissal recommendation and instruct staff to schedule a hearing pursuant to Section IV.C. of these Regulations.

A Commissioner's request to calendar the matter 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.

If two or more members of the Commission do not request the matter to be calendared, the Executive Director shall take no further action except that he or she shall inform the Complainant and the Respondent of the finding of no violation and dismissal.

**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 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.

#### **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.
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.

### **V. 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 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.

- a. For Task Force referrals, the following parties have the right to appear and speak on his or her own behalf:
  - i. Original Complainant (real party in interest); and
  - ii. Respondent(s).
  - iii. No other live testimony shall be permitted.
- b. For complaints alleging a violation of the Sunshine Ordinance, the following parties have the right to appear and speak on his or her own behalf:
  - i. Executive Director; and
  - ii. Respondent(s).
  - iii. No other live testimony shall be permitted.

## 2. Standard of Proof

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.

## 3. Burden of Proof

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.

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.

## 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 shall have the right to introduce exhibits and to rebut any evidence presented.

## 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.

## 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 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 is concluded, as described in section VI.E of these Regulations. 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 the Sunshine Ordinance.

The votes of at least three Commissioners are required to find that a Respondent has committed a violation of the Sunshine Ordinance. The finding of a 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. 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; Warning Letters.**

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation of the Sunshine Ordinance.
2. 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 for good cause;
  - (b) the volume of records requested, and the extent to which they were practically accessible; and/or
  - (c) whether the Respondent consulted with counsel prior to committing the alleged violation.
3. If the Commission finds that Respondent committed a willful violation of 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

(c) pay a monetary penalty to the general fund of the City in an amount up to five thousand dollars (\$5,000) for each violation. The Respondent may not use City monies to pay such penalties.

4. If the Commission finds that an elected official or a department head committed a willful violation of the Sunshine Ordinance, the Commission may also issue a finding of official misconduct and so inform the Mayor or appointing authority.

5. 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;
- (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 any willful violation, the Commission may issue warning letters urging the Respondent to:

- (a) cease and desist the violation; and/or
- (b) disclose any documents or records required by law.

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.

#### **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. 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.

## **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.