

**SUNSHINE ORDINANCE
TASK FORCE**



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

San Francisco Ethics Commission

Copy to: Mr. St. Croix

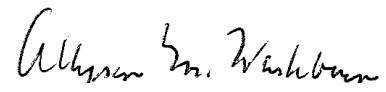
Please find attached a copy of a Memorandum from the Task Force, dated April 3, 2012, on the Ethics Commission's enforcement jurisdiction over violations of the California and San Francisco public access laws. Please send it to the members of the Ethics Commission immediately and also include it in the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

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

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

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

Sincerely,

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

Allyson Washburn, Ph.D.

Chair, Sunshine Ordinance Task Force Compliance and Amendments Committee

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MEMORANDUM

Date: April 3, 2012

To: San Francisco Ethics Commission

From: Sunshine Ordinance Task Force

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

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

Overview:

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

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

As Staff explains:

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

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

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

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

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

Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 67.35(d) provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Sunshine Ordinance is organized logically into four Articles:

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

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

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

Using its form of logic, Staff thus concluded:

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

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

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

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

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

Minutes - June 14, 2010

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

I. Call to order and roll call.

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

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

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

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

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

MATERIALS DISTRIBUTED:

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

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

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

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

[Chairperson Studley arrived 5:40 PM.]

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

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

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

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

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

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

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

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

Decision Point 1

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

Public Comment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public Comment:

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

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

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

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

Decision Point 2

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

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

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

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

Public Comment:

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

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

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

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

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

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

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

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

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

Decision Point 3

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

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

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

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

Public Comment:

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

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

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

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

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

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

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

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

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

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

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

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

[Break at 7:45 PM.]

[Return from break at 7:52 PM.]

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

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

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

Public Comment:

None.

V. Consideration of education and communication with the public.

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

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

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

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

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

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

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

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

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

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

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

VII. Executive Director's Report.

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

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

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

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

VIII. Items for future meetings.

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

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

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

None.

X. Adjournment.

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

Public Comment:

None.

Meeting adjourned at 8:32 PM.

Respectfully submitted,

Catherine Argumedo