



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEE ANN PELHAM
EXECUTIVE DIRECTOR

Date: July 15, 2016

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: **AGENDA ITEM 6 – Discussion and possible action on proposed amendment to the Ethics Commission’s bylaws to establish a process regarding requests for public records directed toward Members of the Ethics Commission and a notification requirement for its Executive Director**

Summary This memo proposes an Ethics Commission bylaws amendment addressing requests for public records directed toward Members of the Ethics Commission and creating a notification requirement for its Executive Director

Action Requested That the Commission consider and take action on the proposal at its next Regular Meeting on July 25, 2016

Background

The Commission’s bylaws do not specifically address how the Commission, or the staff, should address public records requests directed towards the members of the Commission. At its regular meeting on June 27, 2016¹ the Commission requested the staff to prepare a draft bylaws amendment for its consideration and possible action at its next Regular Meeting on July 25, 2016. Specifically, the Commission requested that the amendment address requests for public records directed toward the Members of the Ethics Commission, and create a notice requirement when the Staff has withheld documents in response to a public records request by claiming attorney-client privilege.

The Charter provides that a board or commission may adopt rules and regulations, including bylaws governing its activities and operations. Charter § 4.104(a)(1). Exercising this authority, the Ethics Commission has adopted bylaws and periodically adopted amendments to those bylaws, although not since 2011.

Pursuant to Article XII of its bylaws, the Ethics Commission may amend its bylaws “at any regular meeting of the Commission by majority vote of those present, provided such proposed amendments are circulated in writing to all Commissioners at least ten (10) days prior to such meeting, and ten days *[sic]* public notice shall be posted.” This memo was posted and circulated to all Commissioners on July 15, 2016 to enable the Commission’s action on July 25th, should it desire to do so. In addition, separate public notice of the Commission’s possible action to amend its Bylaws was also posted on July 15, 2016.

¹ See Item 9 at <http://www.sfethics.org/files/9---bylaws-amendments-for-public-records-requests-final.pdf>.

Proposed Bylaws Amendment

Staff proposes that Article IV, Section 3 of the Ethics Commission bylaws be amended to add the following:

Upon receipt of a public records request for documents that may be in the custody of the members of the Commission, the Executive Director must promptly forward any such request to the Chairperson. As the Chairperson deems appropriate, in consultation with the Executive Director and the City Attorney's Office, the Chairperson may respond on behalf of the Commission. The Chairperson may also, in his or her discretion, calendar any such request for the next Commission meeting to allow for further consideration by the entire Commission.

On a monthly basis, the Executive Director shall notify the Chairperson of the number of public records requests that the Commission Staff has received that month for which any responsive document was withheld by claiming attorney-client privilege.

This approach would establish and clarify the Commission's process for handling responses for documents that may be in the custody of Commission members. It provides flexibility for the Chair to act on the body's behalf, and at the same time provides a process for the Chair to bring requests to the full Commission for its consideration. It also provides a mechanism for the Executive Director to provide information to the Chair regarding the frequency of records request responses that have invoked attorney-client privilege pursuant to applicable laws.

This approach builds on existing specific responsibilities of the Ethics Commission Chair outlined in Commission bylaws. As noted in Article IV, Section 3:

The Chairperson shall preside at all meetings of the Commission and is an ex-officio non-voting member of all standing committees except a nomination committee, if one is convened. The Chairperson is accountable to the Commission as a whole in setting policy and shall also perform such other duties as may be assigned by the Commission. The Chairperson (and/or her/his designee) serves as the liaison to the media, the Sunshine Ordinance Task Force and other department/agency committees as necessary.

At the end of the fiscal year the Chairperson, along with the Executive Director, shall submit a written annual report to the Commission for approval, summarizing the activities, accomplishments and budgetary needs of the Ethics Commission during the term of office.

For ease of reference, a copy of the Commission's current Bylaws appears at Attachment 1.