



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

PETER KEANE
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DAINA CHIU
COMMISSIONER

VACANT
COMMISSIONER

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.

Item 6 -- Attachment 1

San Francisco
Ethics Commission



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

San Francisco Ethics Commission By-Laws
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ARTICLE I - Identification

Section 1: Name

The San Francisco Ethics Commission

Section 2: Office¹

25 Van Ness Avenue, Suite 220

City and County of San Francisco, California 94102

or such address where the Commission may be located from time to time

Telephone Number: (415) 252-3100²

Fax Number: (415) 252-3112

Web Page: www.sfgov.org/ethics

E-mail address: ethics.commission@sfgov.org³

Section 3: Authority, Statutory Requirements, other Laws and Policies

The Commission shall comply with all applicable laws, including, but not limited to, the San Francisco Charter, San Francisco Sunshine Ordinance (Administrative Code sections 67.01 *et seq.*), the Ralph M. Brown Act (Government Code sections 54950 *et seq.*), the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*), the Prohibition on Contracting with the City (S.F Campaign and Governmental Conduct Code section 3.222), the Prohibition on Representing Private Parties Before City Board and Commissions - Compensated Advocacy (S.F. C&GC Code section 3.224), Conflict of Interest and other Prohibited Activities (S.F. C&GC Code section 3.200), and the Improper Government Activities Ordinance (S.F. C&GC Code section 4.100 *et seq.*).⁴

ARTICLE II - Mission Statement

The Mission of the Ethics Commission is to practice and promote the highest standards of ethical behavior in government and to promote a work environment that values health, wellness and diversity.⁵

In order to accomplish the Mission of the San Francisco Ethics Commission, the Commission shall:

1) clearly inform candidates for public office, public employees, and other officials and members of the public of existing ethics laws and rules

2) actively enforce all ethics laws and rules, including campaign finance and open government laws

3) recommend new laws, rules, and programs that will lead to ethics compliance

4) serve as a model for other elected and appointed officials and government employees

5) faithfully adhere to its own Code of Ethics

ARTICLE III - Ethics Commission

Section 1: Number, Appointing Authority and Qualifications⁶

The Ethics Commission shall consist of five members. The mayor, the board of supervisors, the city attorney, the district attorney and the assessor each shall appoint one member of the commission. The member appointed by the mayor shall have a background in public information and public meetings. The member appointed by the city attorney shall have a background in law as it relates to governmental ethics. The member appointed by the assessor shall have a background in campaign finance. The members appointed by the district attorney and the board of supervisors shall be broadly representative of the general public.

Section 2: Term of Appointment⁷

The term of each commissioner shall be six years. The new commissioners appointed to take office on February 1, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and on the expiration of these and successive terms of office, the appointments shall be made for six-year terms. In the event a vacancy occurs, the officer who appointed the commissioner vacating the office shall appoint a qualified person to complete the remainder of the term. No person may serve more than one full six-year term as a member of the Ethics Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six year term. Any term served prior to the February 1, 2002 shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term.

Section 3: Conditions of Appointment⁸

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

(a) Restrictions on Holding Office. No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

Section 4: Vacancy and Removals⁹

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. A commissioner may be removed only for misconduct pursuant to charter section 15.105. Any member of the Ethics Commission guilty of official misconduct or convicted of a crime involving moral turpitude must be removed by the appointing authority.

Section 5: Compensation¹⁰

Commissioners shall serve without compensation other than City benefits.

Section 6: Oath of Public Office

Acceptance of the Oath of Public Office constitutes a Commissioner's sworn responsibility to public trust. Members are required to serve well and to faithfully discharge their duties and responsibilities diligently and consistent with the laws of the City and County of San Francisco, and all pertinent state and federal laws.

Section 7: Function

The Ethics Commission shall have responsibility for the impartial administration, implementation and/or enforcement of San Francisco laws relating to the provisions of the Charter, statutes and ordinances concerning campaign finance, lobbying, conflicts of interest, open meeting and public records laws, and governmental ethics.

Section 8: Duties and Responsibilities¹¹

The Commission shall:

(a) Issue opinions regarding City Ethics in government laws, provided that the City Attorney and District Attorney shall have the right to indicate whether they concur with such opinions; adopt, amend and rescind rules and regulations consistent with, and related to carrying out the purposes and provisions of the Charter and ordinances related to campaign finance, conflicts of interest, lobbying and governmental ethics, and governing procedures of the commission.

(b) Conduct audits, investigations and enforcement proceedings on matters relating to campaign finance, conflicts of interest, lobbying, campaign consultants and other governmental ethics laws; operate the whistle blower hot line and administer the provisions of the city's improper government activities ordinance; and, in connection with these duties, subpoena witnesses and records.

(c) Develop educational programs which inform agencies, public officials, city employees, candidates, lobbyists and campaign consultants about city, state, and federal ethics laws and the Sunshine Ordinance, and the importance of ethics to the public's confidence in municipal government.

(d) Prepare and publish manuals and instructions setting forth methods of bookkeeping, preservation of records to facilitate compliance with and enforcement of laws relating to campaign finance, conflicts of interest, lobbying, campaign consulting and governmental ethics.

(e) Perform the other duties as set forth in the charter amendment creating the commission. (See appendix.)

Section 9: Excused Absences

Membership on the Ethics Commission is a serious and important civic function. Members of the Ethics Commission recognize that, among their obligations in service, attendance at monthly and special meetings is an important component. It is the policy of the Ethics Commission that all Commissioners strive to attend meetings whenever possible and that, when absence from scheduled meetings is necessary, that staff be notified as far in advance as feasible.¹² Prior notification of absence from Commission and Committee meetings constitutes an excused absence.

Section 10: Post-employment restrictions¹³

Members and employees of the Ethics Commission are subject to the post-employment restrictions set forth in San Francisco Campaign and Governmental Conduct Code section 3.234.

ARTICLE IV - OFFICERS

Section 1: Officers

The Officers of the Commission are a Chairperson and Vice-Chairperson.

Section 2: Term of Office¹⁴

The term of each office is one year, from March 1 to February 28. No office holder shall serve for more than two consecutive one-year terms.¹⁵

Section 3: Chairperson

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.¹⁶ 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.

Section 4: Vice Chairperson

The Vice Chairperson shall perform the duties and responsibilities that may be delegated by the Chairperson, and the assignments traditionally assigned to that office. In the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties as described in Article IV, Section 3.

ARTICLE V - Commission Staff

Section 1: Executive Director

The Executive Director is appointed by and serves at the pleasure of the Commission. The Executive Director shall be the chief executive of the department and shall have all the duties and powers which are set forth in the Charter of the City and County of San Francisco, and shall serve as the administrator and parliamentarian to the Commission.

Section 2. Other Employees¹⁷

The Executive Director shall have the authority to hire and remove other employees within constraints set forth by the Civil Service Commission, the Department of Human Resources, and the Commission's budget.

Section 3: Restrictions on Activities of Executive Director and Staff¹⁸

The staff of the Ethics Commission, including the Executive Director, are subject to the same conflict of interest provisions as members of the Commission, described in Article III, Section 3.

Section 4: Legal Advisor¹⁹

The City Attorney shall be the legal advisor to the Commission. When the Commission or the Executive Director believes that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with respect to the subject matter of a particular representation, the Executive Director or the Commission may present a written request to the City Attorney to retain the services of outside counsel. If the City Attorney does not consent to the request, the Executive Director or the Commission may refer the matter to a hearing officer under the procedures provided in Charter section 6.102.

ARTICLE VI - Committees

Section 1: Committee Chairs

It is the policy of the Ethics Commission to appoint individual commissioners to perform specific tasks or functions. With respect to committees that are formed, the Chairperson shall appoint commissioners to serve as Committee Chair for a period of one (1) year.

Section 2: Committee Meetings

Committees shall meet at the call of their Chairs, or as deemed necessary by a majority of the Committee membership. All meetings must comply with public notice requirements.

Section 3: Committee Quorum

A majority of the members of a committee is a quorum.

Section 4: Finance Committee

In conjunction with the Executive Director, this Committee shall be responsible for developing, recommending and monitoring all financial matters, budgets and policies.

Section 5: Personnel Committee

Meets semi-annually to complete the annual performance evaluation of the Executive Director pursuant to the requirements of the Civil Service Commission and the Human Resources Department.

Section 6: Other Committees

The Chairperson and/or the Commission, at its discretion, may establish other committees to perform discrete tasks or functions as necessary.

ARTICLE VII - Meetings

Section 1: Quorum

At all meetings of the full Commission, the presence of a majority (3) of the members shall constitute a quorum for all purposes. The act of the majority of the members of the Commission shall be the act of the full membership.

Section 2: Public Input

All interested persons shall be allowed to express their views (oral and/or written) at Commission meetings regarding matters within the jurisdiction of the Commission.

All Commission meetings shall provide opportunity for public comment on items not on the agenda but within the jurisdiction of the Commission. Such opportunities for public comment shall appear on the agenda immediately following the call to order and again prior to adjournment. Each person wishing to speak on such items shall be allowed to do so and only if time constraints necessitate, may the Commission limit the individual and total time for public comment according to limits imposed by the Sunshine Ordinance.

Public comment shall be invited on each agenda item, before any vote or action is taken by the Commission on an item. Each person wishing to speak on an item may do so and only if time constraints necessitate, may the Commission limit the individual and total time for public comment according to limits allowed by the Sunshine Ordinance.

The Commission shall urge the public, in the strongest terms possible, not to make complaints at public meetings since the public disclosure of such complaints may undermine any subsequent investigation undertaken.

Section 3: Meeting Minutes²⁰

Minutes shall be taken at every regular and special Commission and committee meeting and shall be approved by majority vote of the Commission. Approved minutes shall be posted on the Commission's web page within 48 hours.

Section 4: Regular Meetings

Regular meetings shall be held on the fourth Monday of each month at 5:30 p.m., except in the case of a City recognized holiday, when the meeting shall be held on the closest practicable day.

Meetings shall be held at City Hall, One Dr. Carlton B. Goodlett Place, Room 400, in the city of San Francisco.²¹

Section 5: Notice of Meetings²²

Notices and agendas of all regular and special Commission meetings shall be posted at the San Francisco Main Library, on the Commission's web page, and mailed to each Commissioner and any person who files a written request for such notice with the Commission. Notice of regular meetings shall be posted at least 72 hours before the meeting. Notice of special meetings shall be posted at least 72 hours before the meeting. In the case of a special meeting held at a location other than the regular Commission meeting place (City Hall), 15 days notice shall be provided.

Section 6: Closed Sessions

The Commission is authorized to hold closed (non-public) sessions at regular and special meetings for purposes of confidential discussions, such as the discussion of job performance, or dismissal of employees, or pending litigation. Upon consultation with the legal advisor from the City Attorney's office, and the determination that a closed session is both authorized and appropriate under the circumstances, the Chairperson of the Commission may call for a closed session. Appropriate notice will be given of all closed sessions.

Section 7: Special Meetings

The Chairperson of the Commission may call special meetings to address specific matters pursuant to public notice requirements.

Section 8: Televising Meetings²³

The Commission's regular and special meetings shall be televised where technically feasible, except for portions of meetings that are held in closed session or otherwise required to be confidential.

ARTICLE VIII -Agenda Requirements

Section 1: Agenda Preparation

The agenda is prepared through the joint effort of the Chairperson and the Executive Director. The Executive Director shall work with the Commission Chairperson and Committee Chairs to develop the agenda for all meetings. The agenda shall contain a meaningful descriptions of each item to be transacted or discussed at the Commission meeting so as to alert a person of average intelligence whose interests may be affected by the item that he or she may have reason to attend the meeting or seek more information about the item.

Section 2: Consent Calendar

A consent calendar is the portion of the printed agenda which lists routine matters that are expected to be non-controversial and on which there are no questions. There will be no separate discussions on a Consent Calendar item unless a request is made by a Commission member or the public, in which event the matter shall be removed from the consent Calendar and considered as a separate item.

ARTICLE IX - Voting

Section 1: Voting and Abstention

Each member present at a commission or Committee meeting shall vote on all matters put to a vote, unless the member is excused from voting by a motion adopted by a majority of the members present, or unless the member has been advised by the City Attorney that he or she may have a conflict of interest regarding the item.

Section 2: Voting by Proxy

Voting by proxy is prohibited.

ARTICLE X - Parliamentary Procedure

Section 1: Robert's Rules of Order (Newly Revised)

Except where the Charter or other rules provide to the contrary, or in the case of emergency, meetings shall be governed by Robert's Rules of Order (newly revised).

ARTICLE XI - Standards of Conduct

Section 1: Code of Ethics²⁴

In accepting the Oath of Office, Commissioners shall maintain the highest standards of professional and personal conduct. They shall support the mission, goals and objectives of the San Francisco Ethics Commission; instill in the public a sense of confidence about the Commissioners' conduct and intentions; uphold all laws and regulations; refrain from using their official positions to secure special advantage or benefit for themselves or others.

In order to set the highest standards of conduct, including the appearance of propriety in the operation of government, and in order to assure public confidence in governing institutions, the San Francisco Ethics Commission commits itself to:

Encouraging and promoting integrity in government by education and example

Fairly and objectively enforcing the city's ethics laws and regulations

Being accountable for its rules of procedure and decisions, and stimulating accountability of all elected and appointed officials and government employees

Creating reform within the political process to ensure fair and equitable consideration to public policy issues

Treating all staff, members of the public, and colleagues with courtesy, respect, objectivity, and fairness

Assuring honesty in all matters that come before the Commission, both individually and collectively

Conducting all business in a timely manner and in public meetings, with full disclosure of policies, procedures, and decision-making processes, except in those matters as specified by the Brown Act and the San Francisco Sunshine Ordinance that may be dealt with in closed session

Reviewing its actions, recommendations, and procedures periodically to determine if the Commission has adhered to its Code of Ethics and Mission in all respects

Section 2: Representation of the Commission

Whenever the Commission learns that a view, position or opinion of the Ethics Commission as a whole has been misinterpreted or misrepresented in the media, at a hearing, or in a public forum, the Commission, through the Chair or the Chair's appointed representative, shall make every reasonable effort to clarify the Commission's true position as soon as practicable.

Whenever a Commissioner communicates with the news media, or appears at a public hearing or before another City Department to discuss existing or proposed legislation or policy, the Commissioner will make every reasonable effort to explain to the Commissioner's audience whether the Commissioner is expressing an opinion, view or position that is the individual Commissioner's or a view, position or opinion of the Ethics Commission as a whole.

ARTICLE XII - Bylaw Amendments

These bylaws shall be reviewed annually or as necessary. They may be amended 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 public notice shall be posted.

¹ Amended 1/8/96 to indicate new location; amended 4/17/00 to indicate fax number, web page address and e-mail address; amended 11/30/00 to indicate new location; amended 2/12/07 to indicate new location.

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- ² Amended 2/12/07 to indicate new telephone and facsimile number.
- ³ Amended 9/11/06 to indicate new web page and email address.
- ⁴ Amended 3/22/02 and 2/12/07 to clarify laws that apply to members of Ethics Commission.
- ⁵ Amended 10/6/08 to incorporate commitment to diversity and employee health and wellness, pursuant to Executive Directive 05-11 (Shape Up At Work Strategies).
- ⁶ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ⁷ Amended 5/13/96 to limit service to two consecutive terms. Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ⁸ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001; amended 4/11/05 to reflect changes made by Proposition E, adopted by voters in November 2003.
- ⁹ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ¹⁰ Amended 4/17/00 to include City benefits.
- ¹¹ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ¹² Added 9/11/06 to set forth attendance policy for members.
- ¹³ Added 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001; amended 4/11/05 to reflect changes made by Proposition E, adopted by voters in November 2003.
- ¹⁴ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ¹⁵ Amended 5/13/96 to limit service to two consecutive terms.
- ¹⁶ Amended 11/13/00 to clarify that the Commission may not necessarily convene a nominations committee.
- ¹⁷ Amended 3/22/02 to delete reference to former section 2, to reflect changes made by Proposition E, adopted by voters in November 2001.
- ¹⁸ Added 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001; amended 10/6/08 to delete inconsistent language regarding the applicability of post-employment restrictions to employees of the Commission.
- ¹⁹ Amended 3/22/02 to reflect changes made by Proposition E, adopted by voters in November 2001.
- ²⁰ Amended 4/17/00 to require posting of minutes on web page.
- ²¹ Amended on 10/19/11 to change the date and location of the Commission's meetings; amended on 11/13/00 to identify the location of the Commission's meetings, and on 3/22/02 and 9/12/02 to identify the time of the Commission's meetings.
- ²² Amended 4/17/00 to require posting of notice on web page and increase time of notice for special meetings.
- ²³ Added 10/19/11 to provide for the televising of the Commission's meetings.
- ²⁴ Amended 1/8/96 to include full Code of Ethics.