

Petersen, Patricia (ETH)

From: Pelham, LeeAnn (ETH)
Sent: Wednesday, July 20, 2016 2:54 PM
To: Petersen, Patricia (ETH)
Cc: Massey, Steven (ETH)
Subject: FW: Item #6 July 25,2016 Meeting
Attachments: AG's Public Comment on EC Mtg Agenda # 6.pdf

-----Original Message-----

From: Allen Grossman [mailto:]
Sent: Wednesday, July 20, 2016 2:50 PM
To: Massey, Steven (ETH) <steven.massey@sfgov.org>
Cc: Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>
Subject: Item #6 July 25,2016 Meeting

Mr. Massey,

Because of my previously noted health issues, I doubt I can attend the Commission's next meeting and wait while until Item #6 (the proposed bylaw amendment) is reached and is open for public comment. So I am forwarding my attached public comments for distribution to the Commissioners prior to the meeting. I believe they should also be available to the persons attending the meeting.

Those comments if read during public comment, should take less than three minutes to complete.

Thanks in advance for your help.

Allen Grossman

Allen Grossman's Public Comment on Ethics Commission Meeting Agenda Item 6.

The proposed amendment to the Commission's by-laws does not address or redress the two core public access problems created by its former Executive Director with the assistance of the City Attorney. Those are well known to the Commission.

The two are, first, the invalidation of the Sunshine Ordinance provision that eliminated the attorney-client privilege for any communication concerning the state and local public access laws and, second, by reason of that invalidation, the City Attorney can ignore the Sunshine Ordinance provision that prevents the City Attorney from using the privilege to cloak the City Attorney's actions that would otherwise be barred. That provision prevents the City Attorneys from acting as legal counsel for any city employee having custody of any public record for purposes of denying access to the public.

The proposed bylaw also creates an additional problem. By enshrining in its bylaws the continued validity of the attorney-client privilege contrary to the two relevant Sunshine Ordinance provisions, the Commission will violate its own basic bylaw that it will comply with all applicable laws, including the Sunshine Ordinance. Suppose the Commission decided to amend that basic bylaw by adding: "except as otherwise provided in these bylaws." It simply wouldn't work.

A direct and honest remedy is called for to remedy the problem. Since the route taken by your former ED was kept secret from you, was never blessed by you nor was there any public discussion of it until it was too late, the Commission has every right to and, indeed, should disown that bad decision.