ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: November 17, 2016

To: Members of the Ethics Commission

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **AGENDA ITEM 5 – Enforcement Program Report for the November 28, 2016, Commission Meeting**

Summary: This report highlights programmatic information and operational updates related to the Enforcement Program.

Action Requested: No action is required by the Commission, as this item is only for informational purposes.

Programmatic Highlights

In an ongoing effort to enhance public transparency and understanding of the Ethics Commission's enforcement duties and responsibilities, this month's Enforcement Report provides information about the Commission's authority for handling Sunshine Ordinance violations and summarizes the Ethics Commission's Regulations for Handling Violations of the Sunshine Ordinance. [1]

Processes Related to Handling Sunshine Ordinance Violations

The Sunshine Ordinance provides for Ethics Commission enforcement power over provisions of that law in two circumstances:

(1) To "handle" complaints involving allegations of willful violations of the Sunshine Ordinance, Brown Act, or Public Records Act by elected officials and department heads under Section 67.34; and

(2) If enforcement action is not taken by a city or state official 40 days after a complaint is filed under Section 67.35(d).

---

[1] As separate agenda items this month, the Commission will consider five Sunshine Ordinance matters under Agenda Items 6-9.

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: http://www.sfethics.org

On January 25, 2013, the Commission adopted Regulations for Handling Violations of the Sunshine Ordinance. An overview of the two regulatory processes contemplated by the Sunshine Regulations is described here.

Chapter Two Referrals: The Sunshine Regulations are frequently described as having two "tracks" for investigations. The first track—complaints that fall under Chapter Two of the regulations—governs referrals from the Sunshine Ordinance Task Force (SOTF) for enforcement of matters involving willful violations by city officers or employees or non-willful violations by anyone. Sunshine Regulations, Chap 2(I)(1). As a part of its separate process, the SOTF refers matters to the Ethics Commission for enforcement only after it has conducted a review of the complainant's evidence, held at least one committee hearing, interviewed or received evidence from the respondent, and issued an order of determination. [2]Most of the complaints received by the Commission fall into this "track."

Upon receipt of these referrals, Staff reviews the SOTF's findings, evidence, and order. Staff may then prepare a memorandum for the Commission's consideration if we believe further analysis would prove beneficial. These matters must be considered by the Commission at its "next regular Commission meeting" during a "Show Cause Hearing" that is open to the public. Sunshine Regulations, Chap 2(II). The Respondent has the burden of proving that she did not commit a violation of the Sunshine Ordinance. Sunshine Regulations, Chap 2(II)(D)(2). In other words, the Respondent has the burden of proving that the SOTF was wrong to refer the matter to the Commission for enforcement of the Sunshine Ordinance.

To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, "based on a preponderance of the evidence, the respondent did not commit a violation of the Sunshine Ordinance." *Id*. The Commission must consider all relevant circumstances surrounding the case. *Id.* The votes of at least three Commissioners are required to make a finding that a respondent has committed a violation of the Sunshine Ordinance.

Chapter Three Investigations: The second "track" for investigations—complaints that fall under Chapter Three of the regulations—governs matters involving (1) willful violations by elected officials and department heads, (2) review of any orders issues by the SOTF or custodian of records that the district and city attorneys failed to enforce, and (3) Staff-initiated complaints for violations of the Sunshine Ordinance against any city officer or employee. Sunshine Regulations, Chap III(I)(A). The Sunshine Ordinance itself gives the Commission authority to handle the first two categories of complaints. *See* Sunshine Ordinance, § 67.34; 67.35(d). Staff finds no authority for the Commission to initiate its own complaints unless the allegations involve willful violations by elected officials or department heads.

Because these complaints are not referrals from the SOTF, Staff must undertake a complete and comprehensive investigation in order to determine whether a violation of the Sunshine Ordinance has been committed. These investigations are resource intensive and involve the review of produced public records to determine whether redactions are proper, evaluating request/production timelines to

[2] *See* SOTF Public Complaint Procedure, *available at* http://sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18689-SOTF%20-% 20Complaint%20Procedure%202014-11-05%20Final.pdf.

determine whether records were improperly destroyed to prevent disclosure, etc. Chapter Three of the Sunshine Regulations provides the framework for Staff's investigation, including deadlines for Staff's determination, the production of Staff's report and recommendation, respondent's opportunity for rebuttal, and procedures for the public hearing.

Like referrals under Chapter Two, as soon as Staff determines that a violation of the Sunshine Ordinance has occurred, it must schedule a hearing for the "next regular Commission meeting." Historically, Staff has not received many requests for Staff-initiated complaints under Chapter Three; however, over the past three months, Staff has handled five of these complaints. Our recommendations for Commission action on each complaint will be presented and considered Agenda Items 5.1, 5.2, 5.3, and 5.4 during the November meeting.

Available Relief: If the Commission determines that the respondent committed a violation of the Sunshine Ordinance, whether under Chapter Two or Chapter Three, the Commission may issue an order requiring any or all of the following:

A. The respondent to cease and desist the violation and/or produce the public records;
B. The Executive Director to post on the Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance;
C. The Executive Director to issue a warning letter to the respondent and inform the respondent's appointment authority of the violation.

Operational Updates/Investigative Caseload Data

Investigative matters under the jurisdiction of the Ethics Commission are treated as formal complaints if, based on the allegations and Executive Director's preliminary review, the Executive Director determines there is reason to believe a violation of law may have occurred. Once the Executive Director has determined that she has reason to believe a violation of law may have occurred, that complaint is logged as a formal complaint. Table 1 summarizes the number of pending formal complaints within the Ethics Commission's jurisdiction that remained pending as of November 15, 2016.

Table 1 – Summary of Pending Formal Complaints, by Type, as of November 15, 2016

Type	**Number**
Campaign Finance	10
Conflict of Interest	7
Governmental Ethics	4
Lobbyist Ordinance	3
Campaign Consultant Ordinance	1
Sunshine Ordinance	2
Whistleblower Ordinance (Retaliation)	3
Total	30

Active Bureau of Delinquent Revenues (BDR) Referrals

The following chart summarizes the status of accounts that remain active that have been referred by the Ethics Commission to the City's Bureau of Delinquent Revenues:

Committee/Filer	ID #	Treasurer or Responsible Officer	Date Referral Effective	Original Amount Referred	Last Month's Balance	Current Balance	Status
Chris Jackson	1347066	Chris Jackson	7/12/13	$6,601	$6,601	$6,601	Judgement issued 11/18/15 Small Claims Court
Committee to Elect Norman for Supervisor	1327771	Jacqueline Norman	5/01/15	$9,000	$9,000	$9,000	
Bob Squeri for District 7	1346150	Bob Squeri	5/01/15	$2,000	$2,000	$2,000	
Isabel Urbano	153993	Isabel Urbano	3/23/16	$7,000	$7,000	$7,000	
Chris Jackson	1347066	Chris Jackson	9/26/16	$6,100	-	$6,100	
					Total	**$24,601**	

I look forward to answering any questions you might have at the upcoming Commission meeting.