



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: November 20, 2017

To: Members of the Ethics Commission

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

Subject: **Agenda Item 9: Enforcement Report for the November 27, 2017 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

The Commission received eleven new complaints since October 17, 2017. After completing a preliminary review, investigators opened seven new investigations and twenty-one complaints were dismissed because the Executive Director concurred with Staff's conclusion after preliminary evaluation that Staff did not have reason to believe a violation of law had occurred. Thirteen preliminary review reports currently await the Executive Director's review and approval. In total, 89 complaints remain in preliminary review as of November 17, 2017. Attachment 1 contains additional detail regarding matters under preliminary review. Attachment 2 contains additional detail regarding open investigations. Finally, over the last month, work has continued to resolve open investigations, including settlement negotiations where appropriate.

Update on Enforcement Regulation Revision Stakeholder Engagement

Staff met with Friends of Ethics and the Chair of the Sunshine Ordinance Task Force (SOTF) in November to obtain additional clarity regarding written and verbal public comment they provided during the Commission's stakeholder engagement process. In response to a request from the Chair of the SOTF, Staff has agreed to appear before the SOTF's Complaint Committee on Tuesday, November 28, 2017, to address questions and comments from additional members of the SOTF. Staff will then appear before the full panel of the SOTF when it meets in December, when the SOTF will consider whether it will support the Commission's effort to provide clarity in delineation of authority between the two bodies. Staff is optimistic the effort will yield positive results for open government in the City.

Staff met internally this month to address public comment regarding the Commission's current forfeiture policy. The Commission has authority to penalize candidates and

committees that fail to promptly return excess campaign contributions or improperly documented campaign contributions under Sections 1.114 and 1.126 of the Campaign Finance Reform Ordinance. Staff will continue to evaluate its forfeiture processes over the coming weeks.

Sunshine Ordinance Task Force Hearings

Complaint No. 17044. On September 6, 2017, Chair Keane and Commissioner Kopp appeared before the full panel of the Sunshine Ordinance Task Force to respond to Complaint No. 17044 against the Ethics Commission for allegedly violating Section 67.7(d) of the Sunshine Ordinance by “acting or conduction [sic] discussions on an item not appearing on the posted agenda” for the Commission’s April 24, 2017, regular meeting. Following its hearing, the SOTF determined that the Commission did not violate the Sunshine Ordinance. The SOTF’s Order and Determination dated November 10, 2017, is provided with this report as Attachment 3. Just prior to the start of the Ethics Commission’s meeting on October 23, 2017, our office received a letter from District Attorney George Gascon regarding the same material facts as STOF Complaint No. 17044. The District Attorney’s letter is provided with this report as Attachment 4.

Complaints 17088 and 17095. On October 24, 2017, Staff appeared before the SOTF Complaint Committee for a hearing on two of Ray Hartz, Jr.’s complaints against the Commission for allegedly violating the Sunshine Ordinance. With Complaint No. 17088, Mr. Hartz alleges that the Ethics Commission has violated Section 67.34 by willfully failing to enforce thirty-three SOTF Orders of Determination that were referred to the Commission. With Complaint No. 17095, Mr. Hartz alleges that Commissioner Renne violated Section 67.17 by “aiding and abetting” Commissioner Kopp in violating the Sunshine Ordinance during the Commission’s December 19, 2016, meeting. Last March, the SOTF determined that both Commissioner Kopp and the Ethics Commission had violated Section 67.15 of the Sunshine Ordinance by abridging Mr. Hartz’s public comment time by approximately seven or eight seconds. Staff will appear before the full panel of the SOTF in December on both complaints, as the Complaint Committee did not reach a recommended decision during its October hearing.

Operational Updates/Investigative Caseload Data

Investigative matters under the jurisdiction of the Ethics Commission are treated as formal complaints meriting investigation after the Executive Director’s preliminary review finds there is reason to believe a violation of law may have occurred. Once the Executive Director has made that determination, 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 17, 2017. As noted above, more detailed information about the Commission’s enforcement caseload is provided in Attachment 1. Attachment 2 offers a snapshot of the number, age, and general nature of matters in preliminary review as of November 17, 2017.

Table 1 – Summary of Pending Formal Complaints by Type as of November 17, 2017

Type	Oct. 2017	Nov. 2017
Campaign Finance	20	26
Governmental Ethics	15	18
Lobbyist Ordinance	5	5

Sunshine Ordinance	0	0
Whistleblower Ordinance (Retaliation)	2	2
Total	42	51

Referrals to Bureau of Delinquent Revenues

Table 2 – Summary of the status of accounts that remain after referral by the Ethics Commission to the City's Bureau of Delinquent Revenues.

Committee/ Filer	ID #	Treasurer/ Responsible Officer	Referral	Original Amount Referred	Last Month's Balance	Current Balance	Status
Chris Jackson	1347066	Chris Jackson	7/12/13	\$6,601	\$6,601	\$5,100.99	Writ of Execution filed in Superior Court of San Francisco, CSM-15 848938. In process of verifying the debtor place of employment.
Committee to Elect Norman for Supervisor	14-131112	Jacqueline Norman	5/01/15	\$9,000	\$9,000	\$9,000	BDR Legal to file abstract per judgment received from Superior Court of San Francisco
Isabel Urbano	SFO-153993	Isabel Urbano	3/23/16	\$7,000	\$6,850	\$6,850	Pending for payment. BDR received \$225.
Chris Jackson	22-12119	Chris Jackson	9/26/16	\$6,100	-	\$6,100	BDR Legal to file abstract per judgment received from Superior Court of San Francisco.
Lynette Sweet	3544713	Lynette Sweet	12/29/16	\$74,408.19	--	\$74,408.19	Debtor filed for bankruptcy protection in N.D.Ca on 10/17/2017. Meeting of the Creditors on 12/20/2017.
Total: \$101,459							

Status of Outstanding Penalty Installment Plans

Table 3 – Summary of penalty installment plans as of November 17, 2017

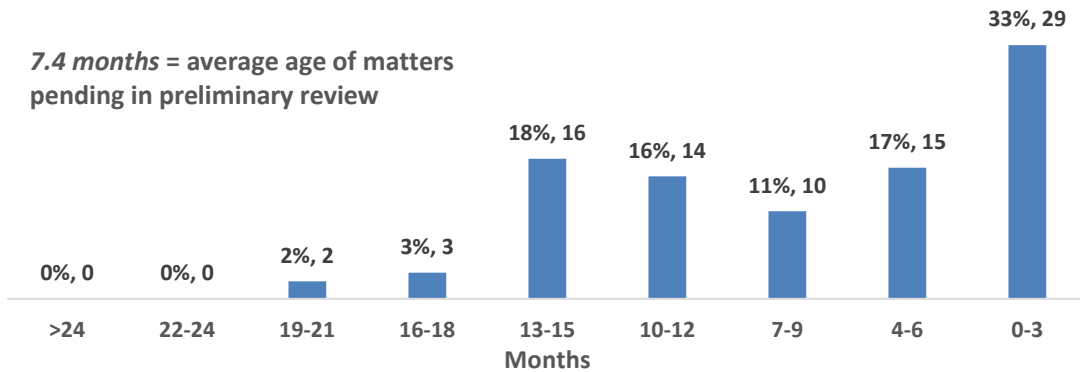
Name	FPPC No.	Total Owed	Payment Amount	Last Received	Outstanding Balance	Current: Yes/No
Kim Shree Maufas	1284567	\$2,575	\$50	11/13/17	\$100	yes
Kim Shree Maufas	1328923	\$2,000	\$50	11/13/17	\$100	yes

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

Agenda Item 9, Attachment 1

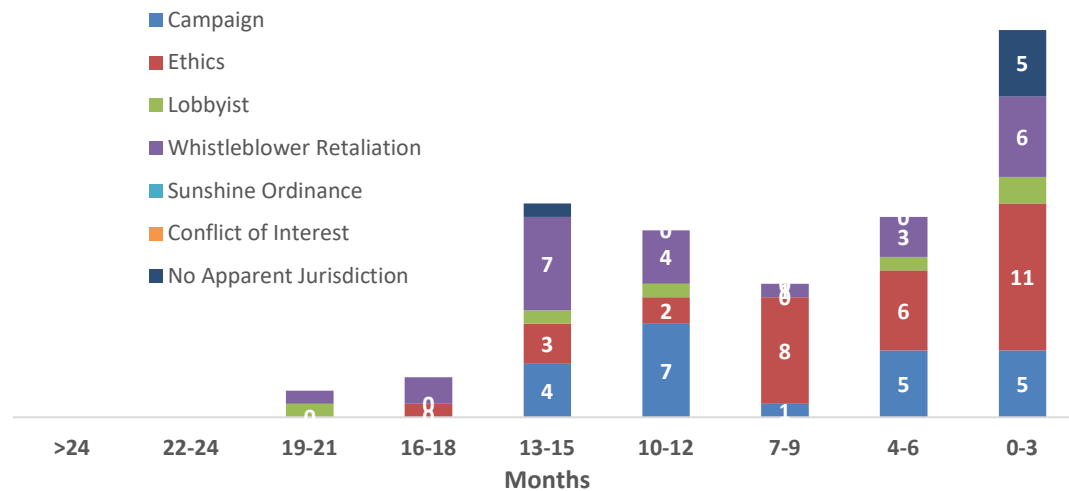
Age of Matters in Preliminary Review as of November 17, 2017 (n=89)

7.4 months = average age of matters
pending in preliminary review

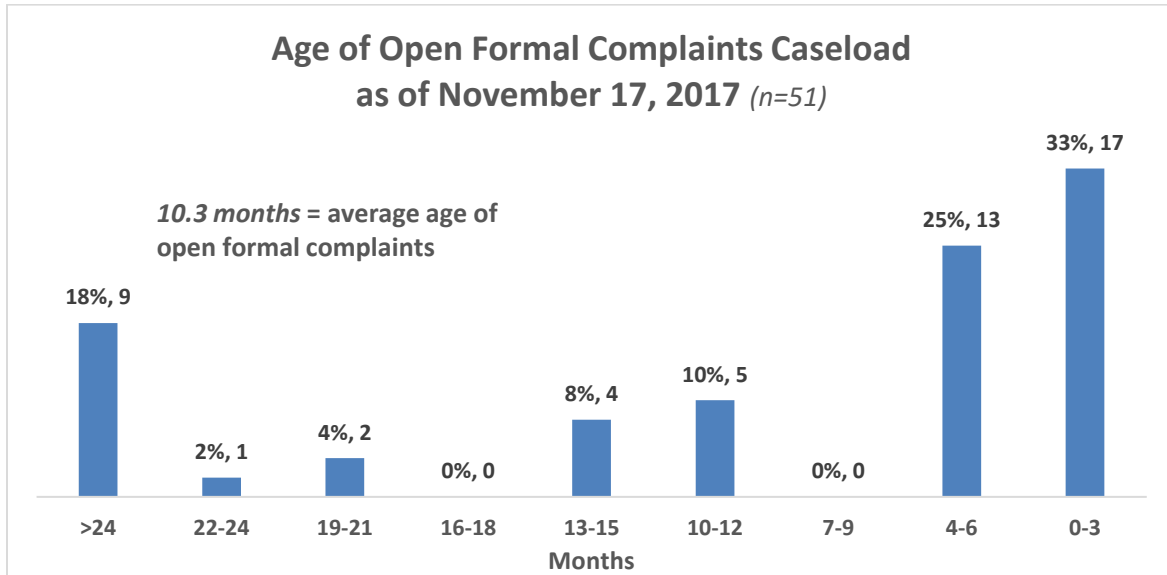


Type	#	Avg. Age
Campaign	22	8.0
Ethics	31	5.8
Lobbyist	6	9.2
Whistleblower Retaliation	24	9.5
Sunshine Ordinance	0	0.0
No Apparent Jurisdiction	6	3.2

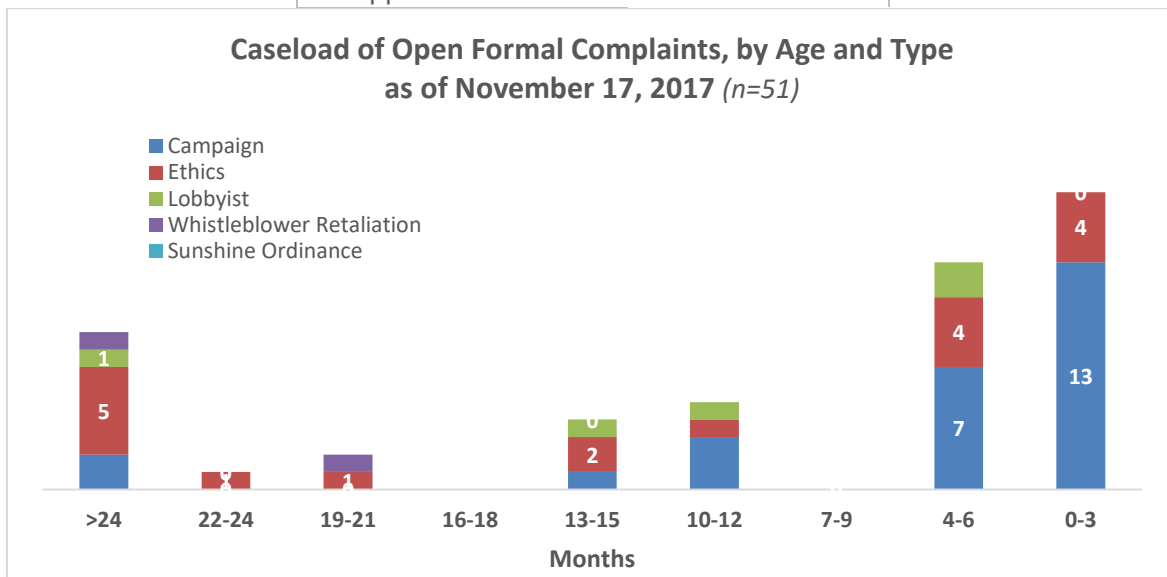
Caseload of Matters Under Preliminary Review, by Age and Type as of November 17, 2017 (n=89)



Agenda Item 9, Attachment 2



Type	#	Avg.Age
Campaign	26	6.1
Ethics	18	13.9
Lobbyist	5	13.8
Retaliation	2	23.5
Sunshine	0	0.0
No Apparent Jurisdiction	0	0.0



**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
November 10, 2017**

DATE ISSUED
September 6, 2017

CASE TITLE – Laura Clark v. Ethics Commission (File No. 17044)

FACTS OF THE CASE

On May 2, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17044: Complaint filed by Laura Clark against the Ethics Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(d), by acting or conduction discussions on an item not appearing on the posted agenda (Ethics Commission April 24, 2017, meeting).

HEARING ON THE COMPLAINT

On June, 2017, the Education, Outreach and Training Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Laura Clark (Complainant) provided an overview of the complaint and requested the Committee to find violations. Ms. Clark stated that the Ethics Commission was informed of a possible issue related to potential conflict of interest for a member of the Planning Commission prior to the preparation of the Ethics Commission agenda and that the issue should have been noticed and agenized before acting on the matter. Ms. Clark stated that the issue in question was not an emergency and the process for addressing emergency issues should not have been used. Ms. Clark stated that she believed that action was taken at the last moment in order to create negative publicity. There were no speakers on behalf of the Complainant. Chair Peter Keane, Ethics Commission (Respondent), provided a summary of the department's position. Chair Keane stated that a member of the public, speaking during general public comment, brought the potential conflict of interest by a member of the Planning Commission to the attention of the Ethics Commission. Chair Keane stated that the Ethics Commission believed the issue to be urgent and voted to send a cautionary letter regarding the potential conflict of interest. Chair Keane stated that the Ethics Commission could not wait until their next monthly meeting to agenize the matter as the Planning Commissioner was due to vote on the issue

in three days. In addition, Chair Keane stated that the members of the Ethics Commission were not aware of the issue prior to finalizing of their agenda. Chair Keane stated that with a two-thirds vote of the body the Ethics Commission may take action on items not listed on the agenda if the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if act were deferred (Sunshine Ordinance, Section 67.7(e)(2)). The following parties spoke on behalf of the Respondent:

Commissioner Quentin Kopp, Ethics Commission, stated that he was the person who made the motion to send the cautionary letter, described why it was an urgent issue and read relevant portions of the meeting transcripts.

Ray Hartz expressed support of the Ethics Commission's actions and stated that the codes allow for a vote to take immediate emergency action. Larry Bush stated that he was the public commenter that brought the issue to the attention of the Ethics Commission during the meeting and summarized the issue.

Bob Planthold commented on the duties of SPUR members which may conflict with the duties of the Planning Commissioners.

Charles Marsteller provided a historic perspective on the intent of the Ethics Commission and stated that it must be assumed that there is an emergency. Mr. Marsteller stated the code provide a mechanism for bodies to take immediate emergency action.

A question and answer period followed. The Complainant and Respondent were provided an opportunity for rebuttals. Ms. Clark stated that a conflict of interest did not exist, there was no emergency and that the Ethics Commission did not vote to declare an emergency. Mr. Keane stated that the Ethics Commission did not take a roll call vote regarding the emergency but agreed to the action silently or by acclamation (Mr. Keane read portions of the Ethics Commission meeting transcription related to the issue).

On September 6, 2017, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Laura Clark (Petitioner) provided a summary of the complaint and requested the Task Force to find violations. Ms. Clark stated that the Ethics Commission was aware of the potential conflict well in advance of the meeting date and that the actions were politically motivated. Ms. Clark stated that the justification for the action taken by the Ethics Commission was not developed until after the action occurred. Ms. Clark stated that there was no threat to public interest and the vote in question was only advisory and additional meetings were scheduled on the matter. There were no speakers on behalf of the Petitioner.

Chair Peter Keene, Ethics Commission (Respondent), provided a summary of the department's position. Chair Keene stated that he was not aware of the

potential ethical issue and the potential need to act until after a member of the public brought the issue to the attention of the Ethics Commission during the meeting. Chair Keene described the situation and stated that, while a formal vote was not taken, the Ethics Commission members unanimously agreed to invoke the emergency provision which allow for actions on items not listed on the agenda. In addition, Chair Keene stated that the Ethics Commission unanimously agree to send out a cautionary letter regarding a possible ethics violation. Chair Keene acknowledged that a formal vote to declare an emergency should have been taken but he was not aware of the specific requirements when the rare situation occurred. The following speakers support in support of the Respondent:

Quentin Kopp, Ethics Commission Member, provided background information and a summary of the events in question.

Bob Planthold questions the process used to declare an emergency, comment on the past practice of accepting votes by acclimation and stated that the city attorney should not be working against their own clients.

Larry Bush described his actions in informing the parties of the potential conflict of interest.

Marc Salomon stated that there was an emergency and provided a description of target organization (SPUR).

Ray Hartz stated that the Ethics Commission was in compliance and were appropriately performing their job.

George Watting stated that law allows for exceptions and that in this case it is evident that was an appearance of conflict of interest.

Michael Petrelis was informed that he should speak during Public Comment.

Bruce Brugman stated that there is an exception for hearing items not on the agenda and thank Chair Keene and Member Kopp for their service.

Dr. Derek Kerr expressed support for the Ethics Commission as watchdogs and stated that their concerns were well founded.

Charles Marsteller commented on the actions of the Ethics commission and point out information listed on SPUR's website. Mr. Marsteller stated it was clear that Ethics was being proactive in advising of the possible conflict.

A question and answer period followed. The Respondent and Petitioner were provided the opportunity for rebuttals.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that the Ethics Commission did not violate Administrative Code (Sunshine Ordinance), Section 67.7.

ORDER OF DETERMINATION

Member Maass, seconded by Member Tesfai, moved to find the Ethics Commission in violation of Administrative Code (Sunshine Ordinance), Sections 67.7, by acting on an item not appearing on the posted agenda.

The motion FAILED by the following vote:

Ayes: 5 – Eldon, Tesfai, Maass, Cannata, Fischer

Noes: 3 – J. Wolf, Hinze, Hyland

Absent: 2 – Chopra, B. Wolfe

(As the motion failed no violations were found by the Task Force.)



Chris Hyland, Vice-Chair
Sunshine Ordinance Task Force



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Laura Clark (Petitioner/Complainant)
Ethics Commission (Respondent)

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



GEORGE GASCÓN
District Attorney

FILED

2017 OCT 23 PM 4:33

SAN FRANCISCO
ETHICS COMMISSION

October 18, 2017

LeeAnn Pelham, Executive Director
Ethics Commission
City and County of San Francisco
25 Van Ness Ave., Suite 220
San Francisco, CA 94102

Dear Executive Director Pelham:

My office has now completed its investigation into allegations that the Ethics Commission violated the Brown Act at its April 24, 2017 meeting when it voted on a matter not on the posted agenda. As discussed below, we have concluded that the vote did violate the Brown Act. Accordingly, we request that the Commission cease and desist from taking any similar action in the future.

At the regular meeting of the Ethics Commission on April 24, 2017, Commissioner Kopp introduced a motion to have the Ethics Commission send a letter urging San Francisco Planning Commissioner Christine Johnson to recuse herself from participating in a Planning Commission vote that was scheduled to occur on April 27, 2017. The Ethics Commission voted unanimously to adopt the motion.

This issue was not on the posted agenda for the April 24, 2017 Ethics Commission meeting. The Brown Act prohibits government commissions from discussing or acting on items not appearing on the posted agenda, unless a statutory exception to this prohibition applies. Cal. Gov. Code § 54954.2(a)(3), (b).

Here, none of the statutory exceptions apply. The only potentially relevant statutory exception requires that the government body in question, before acting on the item that did not appear on the agenda, make a determination by a two-thirds vote of the body¹ that immediate action is required, and the need for immediate action came to the attention of the body after the meeting agenda was posted. *See* Cal. Gov. Code § 54954.2(b)(2). No such vote was held by the Ethics Commission prior to the commission acting upon the motion at issue. The Ethics Commission's action therefore violated the Brown Act.

We request that the Ethics Commission cease and desist from taking action on items of business not appearing on the posted agenda. If circumstances arise where the Commission believes that a statutory exception to this prohibition applies, we request that the Commission make the determinations required by Government Code section 54054.2(b), and make them in the manner specified by that section.

¹ If less than two-thirds of the members are present, then the findings must be made by a unanimous vote of the members present.

If you would like to discuss this further, please contact Assistant District Attorney Evan Ackiron at 415-551-9560.

Very truly yours,



GEORGE GASCON
District Attorney