



San Francisco Ethics Commission

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May 1, 2023

To: Members of the Ethics Commission

From: Zach D'Amico, Senior Investigator
Patrick Ford, Director of Enforcement

Subject: **Agenda Item 11: Discussion and Possible Action regarding Preliminary Matters, In the Matter of Paul Allen Taylor, SFEC Case No. 20-243 (1920-031)**

Summary and Recommended Action

This memorandum provides information regarding certain preliminary matters that must be resolved before *In the Matter of Paul Allen Taylor* can move forward to an administrative enforcement hearing. The Enforcement Division recommends that the Commission vote to appoint a member of the Commission as the "Assigned Commissioner" to resolve any preliminary matters and vote to set certain basic parameters for the preliminary matters stage.

Background

On December 26, 2022, the Executive Director issued a recommended Probable Cause Determination against Paul Allen Taylor ("Respondent") on eight counts. The Executive Director found probable cause to believe that Respondent coordinated a \$10,000 PAC expenditure as an agent of Ellen Lee Zhou for Mayor 2019 ("the Committee"). By coordinating that expenditure, Respondent caused the PAC to make a contribution far in excess of the \$500 limit; caused the Committee to accept a contribution far in excess of the \$500 limit; and caused both parties to violate City law related to contribution disclosures. The Executive Director also found probable cause to believe that Respondent failed to register as a campaign consultant. Finally, the Executive Director found probable cause to believe that Respondent inappropriately withheld information sought by the Ethics Commission in the course of a duly authorized investigation.

On December 31, 2022, the Commission ratified the Executive Director's Probable Cause Determination against Respondent on eight counts. Because probable cause has been ratified in the case, it may move forward to an administrative hearing. But, before a public hearing may take place, the Commission must resolve any preliminary matters concerning the hearing such as discovery, evidentiary questions, and other procedural issues.

Ethics Commission Enforcement Regulation 8(A) authorizes the Commission to appoint an individual Commissioner or a hearing officer to handle preliminary matters. However, the Regulations do not establish certain basic parameters of how the preliminary matters stage must be carried out. To ensure that the process can be conducted in a fair, efficient, and transparent manner, the Commission should formally decide on these parameters at the outset of the preliminary matters stage. The Enforcement Hearing Guidebook provides fuller details about the hearing process, including the steps the Commission should take when initiating preliminary matters in a case. (See Section II of the Guidebook).

Action Requested

1. The Commission must decide who will preside over preliminary matters.

The Commission has three options:

- a. Assign an individual member of the Commission as Assigned Commissioner to hear and decide preliminary matters;
- b. Appoint any licensed attorney to hear and decide preliminary matters;
- c. Hear and decide preliminary matters in public session as a full Commission.

The Enforcement Division recommends that the Commission assign an individual member of the Commission as Assigned Commissioner to hear and decide preliminary matters. The Commission can only appoint an individual to preside over preliminary matters by a full Commission vote.

2. The Commission should vote to set the deadline for the parties to submit motions to whoever is presiding over preliminary matters.

The preliminary matters stage is made up of two or three steps: (1) Motions by the parties for resolution of preliminary matters; (2) Actual determinations on such motions by whoever is presiding over preliminary matters; (3) potential Commission review of the determinations (applicable only when the Commission has appointed an individual to preside over preliminary matters).

By setting a date when motions are due, the Commission will officially begin this stage. Motions include requests for a determination on procedural matters and requests for the issuance of subpoenas.

The Enforcement Division recommends that the Commission sets the deadline for motions at 30 calendar days from the date of this meeting. This differs from the timing provisions set forth in the Enforcement Regulations, which are that motions must be made at least 15 days prior to the hearing date, responses 10 days prior to the hearing, and replies 7 days prior to the hearing. For reasons discussed more fully in the Enforcement Hearing Guidebook, this timeframe does not allow sufficient time for consideration of the requests nor for potential Commission review of the determination on the motion. The Commission may establish a different timeline for motions and should do so to ensure that motions can be fully considered and addressed.

3. The Commission should identify the way for the parties to submit motions to whoever is presiding over preliminary matters.

To ensure that the process for submitting motions for preliminary matters is clear and effective, the Commission should communicate to the parties how to submit motions. The Commission should specify the proper delivery method (email or mail) and the necessary recipients.

The Enforcement Division recommends that the Commission vote to require that all motions regarding preliminary matters be delivered via email to whoever is presiding over preliminary matters (e.g., the Assigned Commissioner) and to all opposing parties. If the Commission is presiding over preliminary matters, motions would be required to be delivered to all current sitting Commissioners.

4. If the Commission appoints an individual to preside over preliminary matters, the Commission should identify the process for Commission review procedural determinations.

Enforcement Regulation 8(A)(1) states that any determinations made by an individual presiding over preliminary matters may be reviewed by the full Commission at the request of the Executive Director or a respondent. But, the regulation does not provide further details about how the request must be made or handled. To ensure that any requests for Commission review are handled in a clear and efficient manner that the parties understand, the Commission should identify the general process by which it would like to receive requests for review. The Commission can establish requirements for requests such as the proper delivery method and recipients of the request, the deadline for the request, the timing of the review, the role of the parties at the review, and the type of action the Commission can take on a review.

The Enforcement Division recommends that the Commission vote to adopt a process that mirrors the Commission's review of a Probable Cause Determination. Under this process, any party must request review of a determination within five calendar following the issuance of that determination, and the review would take place at the Commission's next regularly scheduled meeting. The parties would be permitted to provide oral argument but no additional written argument to the Commission. The Commission would decide to overturn or ratify the determination by a majority vote.

Recommendations

To summarize the recommendations above, the Enforcement Division requests that the Commission vote to do the following regarding preliminary matters in the present enforcement case:

1. Appoint a member of the Commission as Assigned Commissioner to resolve any preliminary matters;
2. Set a deadline of 30 days after the May 5th meeting (June 5th) by which the Respondent or the Enforcement Division must submit any motions regarding preliminary matters;
3. Direct the Respondent and the Enforcement Division to submit any motions regarding preliminary matters to the Assigned Commissioner via email and to copy the other party; and
4. Identify a process for parties to request Commission review of the Assigned Commissioner's determinations that mirrors the process for reviewing the Executive Director's recommended finding of probable cause:
 - a. Requests for review must be submitted to the Commission within five calendar days of the Assigned Commissioner's determination.
 - b. The Commission will review the determination at its next regular meeting.
 - c. The parties may make oral arguments to the Commission.
 - d. The Commission will vote whether to uphold or overturn the determination.