

DRAFT
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 12, 2009
Room 408, City Hall

I. Call to order and roll call.

Vice-Chairperson Gusukuma called the meeting to order at 5:31 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Vice-Chairperson; Eileen Hansen, Commissioner; Commissioner Jamiene Studley. Chairperson Susan Harriman and Commissioner Charles Ward were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Director; Paul Solis, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Mollie Lee, Deputy City Attorneys.

OTHERS PRESENT: Meghan Wallace, Office of the Mayor; Kristen Chu, Sunshine Ordinance Task Force; David Waggoner; Peter Bagatelos; Kimo Crossman; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Memorandum from Executive Director to Ethics Commission re: Preliminary Budget Discussion, January 12, 2009
- Memorandum from Executive Director to Ethics Commission re: Proposed Regulations to Clarify Sunshine Ordinance Declaration Filing, January 5, 2009
- Draft formal order in Re Ethics Complaint No. 24-050928, In the Matter of The Friends of Tony Hall for Supervisor (ID# 1221830) and Tony Hall, Candidate, Respondents
- Memorandum from Executive Director to Ethics Commission re: Feedback from Persons Involved in the November 4, 2008 Election, January 7, 2009
- Draft Comments to FPPC re: Regulation 18247.5
- Draft Minutes of the October 6 and 27, 2008 Special Meetings; and November 10, 2008 and December 8, 2008 Regular Meetings
- Executive Director's Report to the Ethics Commission for the Meeting of January 12, 2009

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

Peter Bagatelos stated that at the Commission's last meeting, the Commissioners went to great lengths to reprimand his client, Tony Hall. He stated that Commissioners did not properly address certain actions taken by Olivia Scanlon and asked the Commission to look into possible ethics violations by Ms. Scanlon.

Sophie Johnson discussed false identifications and school programs.

Kimo Crossman stated that he agreed with Mr. Bagatelos' comments regarding Ms. Scanlon and asked for a full investigation by the District Attorney, City Attorney and Civil Service Commission.

David Waggoner stated that the proposed findings of fact and conclusions of law and order did not accurately discuss inconsistencies with the probable cause report. He stated that the Chairperson had previously required the probable cause report to be consistent with the proposed findings.

III. Consideration of a formal order in Re Ethics Complaint No. 24-050928, In the Matter of The Friends of Tony Hall for Supervisor (ID# 1221830) and Tony Hall, Candidate, Respondents

Commissioner Gusukuma thanked both staff and Mr. Hall for cooperating throughout the process of adjudicating the matter and discussed the formal order. Commissioner Gusukuma also thanked Chairperson Harriman for her assistance in guiding the hearing on the merits process. She stated that Chairperson Harriman has reviewed the order and supports it.

She stated in the order, the word "accusation" has been substituted with "probable cause report" for consistency's sake. She stated this does not affect any substantive aspect of the order. She also stated that a paragraph would be added discussing the Respondent's payment requirements.

Commissioner Hansen thanked Deputy City Attorney Lee for her assistance in drafting the order. She then made the following proposed changes to the draft order: pg. 3, para. 6, substituting "great reluctance" for "fair amount of reluctance"; pg. 7, para. 16 and pg. 13, para. 46, inserting "the maximum amount is higher than the proposed amount"; striking pg. 14, para. 50; and lastly, she requested that "Tony Hall" be used throughout the order as opposed to "Anthony Hall." Commissioner Hansen stated that she was on the record as being troubled by Ms. Scanlon's testimony.

Commissioner Studley stated that she concurred with Commissioner Hansen's proposed changes. She also inquired whether, on pg. 3, line 5 of the order, the Commission had a broader concern with Ms. Scanlon's testimony, rather than simply with the timing of the checks. Both Commissioner Gusukuma and Commissioner Hansen agreed that the order should reflect a broader concern.

The Commissioners agreed on a payment deadline for the Respondent. The payment would be due within 30 calendar days of the order's approval by the Commission.

Commissioner Gusukuma noted a typographic error on pg. 2, line 4 and summarized the proposed changes made by the Commissioners.

Public Comment:

Kimo Crossman asked whether the payment would be due in 30 calendar days or 30 business days.

David Waggoner stated that if the Commission recommended striking pg. 14, para. 50, then pg. 3, paras. 5 and 6 should be stricken because they are also not relevant to the charges.

Motion 09-01-12-1 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission approve the order as amended.

IV. Receipt of comments from candidates, treasurers and other persons who participated in the November 4, 2008 election, including nineteen (19) candidates received public financing in the November 2008 election.

Assistant Deputy Director Shaikh introduced the memorandum regarding receipt of public financing comments.

Commissioner Hansen stated that the full list of committees providing comments would be helpful. She also asked if an interested persons meeting was considered on this issue. Ms. Shaikh stated that gathering feedback via a questionnaire was the best method immediately following the election. Executive Director St. Croix stated that staff receives feedback throughout the election and that after the election, there is election fatigue so an interested persons meeting may not be effective.

Commissioner Studley suggested inviting a wide array of groups to submit feedback on elections, including the press. Mr. St. Croix stated that currently staff does its best to invite comment from many groups actively covering elections in San Francisco.

Public Comment:

Kimo Crossman stated that the Commission should adopt an interactive web-based approach to feedback, much like change.gov. He also suggested holding a conference call to allow people to submit comments anonymously.

Commissioners Gusukuma and Hansen supported the idea of a conference call. Commissioner Hansen also stated that the report should explicitly state that committees were allowed to submit the questionnaire anonymously.

V. Consideration of the Commission's communications with other departments, boards and commissions and members of the public

Kristin Chu, on behalf of the Sunshine Ordinance Task Force (SOTF), stated that Ethics staff has patiently taken part in SOTF processes but difficulty still arises. She stated that she hopes to improve cooperation in the future. She suggested: SOTF policies to complement Ethics Commission policies and regular communication with Commissioners about interpretation of Sunshine laws.

Commissioner Hansen suggested holding joint meetings between the SOTF and the Commission because challenges have increased between the two bodies, to which Ms. Chu agreed.

Executive Director St. Croix stated that he and Ms. Chu will hold meetings to discuss the matters raised.

Public Comment:

Kim Crossman stated that the Ethics Commission should respond to records request in electronic, pdf format. He also stated that when the Mayor referred the Ed Jew matter to the Commission, the Commission went straight to a hearing; yet when the SOTF refers a matter to the Commission, the Commission re-investigates the matter.

Commissioner Hansen stated that she sees the agenda item as being broader than simply relations with the SOTF. She stated that she hopes the Commission will specifically address issues relating to the SOTF sometime in the future. Commissioner Hansen stated that communication with the public is also important in addressing this agenda item because the public should become more involved in Ethics matters. For example, she suggested a higher level of engagement between Commissioners and the public, during public comment time at meetings. She also stated that documents should be readily available at every meeting for public view.

VI. Budget discussion

Executive Director St. Croix introduced the memorandum concerning the Commission's budget matters and options for budget action. Meghan Wallace, on behalf of the Mayor's Budget and Finance Office, stated that although the City is currently in a major budget crunch, the Mayor's office recognizes that Ethics is an independent agency.

Commissioner Hansen asked whether the Commission's current budget cuts are significant to the Mayor's Office. Ms. Wallace stated that those cuts have been recognized but problems still exist City-wide that require further cuts. Commissioner Hansen stated that although it is a City-wide issue, it is critical that the Ethics Commission be viewed as an independent agency.

Commissioner Hansen asked whether there could be any way that no staff member would be removed and replaced by an employee from another department. Ms. Wallace stated that it may be an issue for Human Resources. Commissioner Hansen stated that she believed that it was important to retain as many staff members as possible.

Commissioner Studley agreed with Commissioner Hansen's views. She stated that if the Commission adopted option 1 (increasing funding as planned), it may suggest a lack of awareness for budget difficulties. She stated that option 2 (submitting budget request at the current year's figures) may be a proper compromise.

Executive Director St. Croix stated that staff will experience its first personnel loss starting in February. He recommended that the Commissioner adopt option 2.

Commissioner Hansen requested that staff prepare a detailed memo regarding the budget request. She stated that the Mayor's Office and the Board of Supervisors should know that staff reductions will hurt the Commission and the City as a whole. She also suggested forming a budget committee that works with staff in developing a budget and volunteered to be a part of the committee. Commissioner Hansen stated that the Commission should also discuss future

priorities within the budget. She stated that she would also like to know why revenues are down.

Executive Director St. Croix stated that he expects revenues to be down because more educational programs and trainings are being conducted by Commission staff. He stated that this outreach lowers the amounts of late fees and penalties.

Public Comment:

None.

Motion 09-01-12-2 (Studley/Hansen) Moved, seconded and unanimously passed (3-0) that the Ethics Commission submit a budget request at this year's current figures.

Commissioner Hansen inquired about the formation of a budget committee and asked one to be formed. Deputy City Attorney Givner stated that the Commission's bylaws already discuss the formation of a finance committee but that the bylaws are not clear as to how the committees are formed. He stated that the practice of other commissions is to allow the Chair to appoint members rather than voting as a whole on appointments.

Commissioner Gusukuma stated that she would not take any appointment actions while the Chairperson Harriman was absent. Commissioner Studley stated that the Commission could relay the issues discussed to the Chair for consideration at a future meeting.

Commissioner Hansen stated that a budget committee would provide a forum for specific attention to budgetary issues. She stated that she has previous experience as a chair of a budget committee on the Planning Commission. She also stated that because the Commission may face large policy decisions on the budget, a committee would assist in those tasks, to which Commissioner Studley stated that the Commission as whole should consider those matters. Commissioner Hansen then responded that the committee would make recommendations to the whole Commission on policy issues. Commissioner Gusukuma stated that she was uncertain about her support the formation of a budget committee.

Deputy City Attorney Givner stated that Robert's Rules of Order provided the Chairperson with authority to appoint committee members. Commissioner Studley stated that she envisions complexities in forwarding recommendations to the Commission, from a budget committee. Commissioner Gusukuma stated that if a committee was not formed, she would be comfortable holding special meetings to consider the budget.

Commissioner Hansen inquired about a budget point person and asked that the Chair decide how to move forward on these matters. Executive Director St. Croix stated that he will discuss these matters with the Chairperson.

VII. Consideration of draft regulation to Sunshine Ordinance to clarify that a City officer or employee who assumes office and who is required to file a Form 700 Statement of Economic Interests with the Ethics Commission must file a Sunshine Ordinance Declaration with the Commission within 30 days of assuming office, and

an employee or officer who assumes office between October 1 and March 30 and timely files a Declaration need not file another Declaration on the April 1 immediately following assumption of office

Deputy Director Ng introduced the memorandum concerning changes in regulations. Commissioner Hansen asked whether members of the SOTF are required to file form 700, to which Ms. Ng responded that they were.

Motion 09-01-12-3 (Studley/Hansen) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt the Sunshine regulation proposed by staff.

VIII. Consideration of comments to Regulation 18247.5 proposed by the Fair Political Practices Commission (FPPC) to clarify the statutory definitions of primarily formed and general purpose committees, and to provide more specific guidance regarding the definitions of state, county and City general purpose committees

Deputy Director Ng introduced the draft comments concerning the regulation under consideration by the FPPC. Commissioner Hansen stated that she agreed with staff's proposed comments and asked why a 70% figure was implemented in the regulation. Ms. Ng responded that the figure comes from previous FPPC advice letters and Commissioner Gusukuma stated that primarily formed committees must operate with higher thresholds. Commissioner Hansen also asked if "local" committee was sufficiently defined in the comments. Ms. Ng responded that the word "local" was used because it is unclear whether county committees are within the Commission's jurisdiction.

Public Comment:

None.

Motion 09-01-12-4 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt staff's proposed comments to Regulation 18247.5 proposed by the FPPC.

IX. Minutes of the Commission's special meeting of October 6 and 27, 2008, and regular meetings of November 10 and December 8, 2008

The Commissioners agreed that Commissioner Gusukuma's entrance should be noted after the motion in Agenda Item VI because she arrived during consideration of the vote, but did not vote herself.

Public Comment:

None.

Motion 09-01-12-5 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt the minutes of the special meeting of October 6, 2008, as amended.

Public Comment:

None.

Motion 09-01-12-6 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt the minutes of the special meeting of October 27, 2008.

Public Comment:

None.

Motion 09-01-12-7 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt the minutes of the regular meeting of November 10, 2008.

Commissioner Hansen stated that the minutes should reflect that the Respondent was found to be culpable regarding the gasoline purchases only.

Public Comment:

None.

Motion 09-01-12-8 (Hansen/Studley) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adopt the minutes of the regular meeting of December 8, 2008, as amended.

X. Executive Director's Report

Executive Director St. Croix stated that he has spoken with most of the Board of Supervisors concerning the budget, including the new budget committee chair. He also stated the November 2008 public financing program required extensive work and that most candidates were pleased with staff's work.

Commissioner Hansen stated that staff should exercise extreme caution in granting waivers due to budget issues, inquiring specifically about a waiver request from "People for Tony Hall" committee. Commissioner Hansen stated that a comparison to last year's revenue would be helpful in assessing this year's budget. She also stated that the Commission should look into whether the Commission should review stipulations and orders before they are agreed upon. Commissioner Hansen then inquired about lobbyist reporting status, to which Executive Director St. Croix stated he is not aware of any delinquent filers. She next inquired about what information is redacted from lobbyist reports. Deputy Director Ng stated that, to her knowledge, only personal information was redacted. Commissioner Hansen stated that it was important to know whether all information was reported. She then stated that there should be significant outreach, specifically to political clubs, to bring attention to the upcoming interested persons meeting on the Lobbyist Ordinance. Commissioner Hansen suggested posting SEI filing officer reports on the Commission website.

Public Comment:

None.

XI. Items for Future Meetings

Commissioner Hansen requested that the Commission take Peter Bagatelos' comments under advisement. Executive Director St. Croix stated that he disagreed. Commissioner Hansen stated that the Commission should be able to inform a member of the public that his or her comments are not within the jurisdiction of the Ethics Commission.

XII. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

None.

XIII. Adjournment

Public Comment:

None.

Motion 09-01-12-9 (Studley/Hansen) Moved, seconded and unanimously passed (3-0) that the Ethics Commission adjourn.

The meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Paul Solis
Investigator/ Legal Analyst