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## Via Electronic Mail

August 9, 2011

Hope Johnson, Chair  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

### **RE: Ethics Complaint No. 04-110607**

Dear Ms. Johnson:

On May 16, 2011, the Sunshine Ordinance Task Force ("Task Force") referred Complaint No. 10036 (Ethics Complaint No. 04-110607), alleging that Anne Kronenberg, the former Chair of the Department of Public Health's Single Room Occupancy Task Force ("SRO") violated Sunshine Ordinance section 67.21(e) by failing to send a representative to a Task Force hearing. The referral was made under section 67.30(c) of the Sunshine Ordinance.

Pursuant to section VI.D of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, staff's recommendation was submitted to the Ethics Commission for consideration to be calendared at the Regular Meeting of the San Francisco Ethics Commission on August 8, 2011. The matter was not calendared and staff's recommendation is thus accepted.

This matter originated from a complaint filed by Thomas Picarello with the Task Force on July 1, 2010. Mr. Picarello alleged that he was denied the right to public comment on a proposed action item at an SRO meeting, and that the SRO also held a seriatim meeting. On August 28, 2010, the Task Force held a hearing on the matter. No one from the SRO attended the hearing. The Task Force issued a written Order of Determination stating that the SRO violated Sunshine Ordinance sections 67.3(b), 67.5, 67.15(b). During the hearing, the Task Force noted that the complaint did not name any individual as responsible for the violation. The Task Force decided also to hold Anne Kronenberg in violation of section 67.21(e) for failing to attend the hearing because she was the Chair of the SRO. On March 22, 2011, the Task Force voted to refer the matter to the Ethics Commission. The Task Force only referred the violation of section 67.21(e) against Ms. Kronenberg.

Section 67.21 is titled “Process For Gaining Access To Public Records; Administrative Appeals.” Every subsection within section 67.21 specifically deals with the public’s right to access records. Section 67.21(e) refers entirely to the process to petition the Task Force regarding the *denial* of a *records* request, and provides the mechanism for a person to ask the Task Force for a determination on whether a requested record is public when a custodian of records does not comply with a public records request. Only where requested by the petition can the Task Force conduct a public hearing concerning the records denial. The requirement to attend a hearing specifically states that “[a]n authorized representative of the custodian of the *public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.*” (Section 67.21(e) [Emphasis added].)

The SRO did fail to send a representative to the Task Force hearing. However, the matter for the Task Force’s determination was not regarding a public records request denial; it was regarding public meeting violations. The Sunshine Ordinance does not provide any mechanism to compel an individual to attend a hearing regarding a public meeting violation. Thus, the violation of section 67.21(e) against Ms. Kronenberg is dismissed.

Although the Task Force only referred the violation of section 67.21(e), the Ethics Commission concurs with the Task Force’s original Order in which it found Mr. Picarello was denied the right to public comment. The Ethics Commission also concurs with the Task Force’s finding that a seriatim meeting occurred between the members of the SRO. However, the Task Force did not find that the violations occurred willfully, with which the Ethics Commission also concurs.

As the Task Force did not find any willful violation of the Sunshine Ordinance, the matter was referred to the Ethics Commission only under section 67.30(c). Section 67.30(c) provides that the Task Force may make referrals to a “municipal office with enforcement power.” Section 67.35 outlines the enforcement provisions under the Sunshine Ordinance. Subsection (d) is the only part of section 67.35 pertinent to the Ethics Commission, which states: “[a]ny person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.”

However, the only power granted to the Ethics Commission by the Sunshine Ordinance is to “handle” allegations of willful violations of the Ordinance under section 67.34. Section 67.34 states that the willful failure to discharge the duties of the Ordinance is deemed official misconduct; and it only allows the Ethics Commission to “handle” complaints involving allegations of willful violations by an elected official or a department head.

Sunshine Task Force referrals of a willful violation by an elected official or department head are subject to the Enforcement Regulations that currently govern all Ethics Commission complaints. If after conducting an investigation, probable cause hearing, and hearing on the merits, the Ethics Commission determines that a willful violation of the Ordinance occurred, the only recourse allowed by the Sunshine Ordinance is to invoke the provisions for suspension and removal contained in Charter section 15.105.<sup>1</sup> Under that provision, the Ethics Commission cannot

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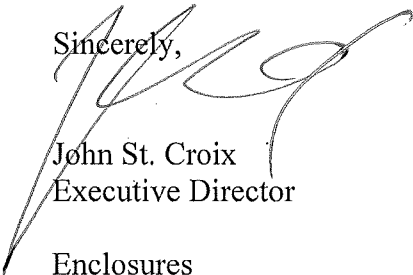
<sup>1</sup> Subsections (a) and (b) enumerate which officers are subject to suspension and removal by the Mayor. The Ethics Commission can only hold a hearing after the Mayor presents written charges to the Ethics Commission. Subsection

initiate the suspension or removal proceeding; it can only be initiated by the official's appointing authority and the Ethics Commission then follows the hearing procedures mandated by that provision. The Sunshine Ordinance does not provide any monetary or other administrative penalty.

As to Ms. Kronenberg, at the time the violations of the Sunshine Ordinance occurred she was not an elected official or department head. Even if the Task Force had made the determination that her violation was willful, the Ethics Commission could not enforce the violations. Similarly, no willful violation can be held against the SRO for the public meeting violations as an entity, because a finding of official misconduct is only applicable to individuals. However, because the Ethics Commission believes that SRO committed two violations of the Sunshine Ordinance, staff has been instructed to send a letter to Ms. Kronenberg, as well as the current SRO to advise them of the meeting requirements under the Sunshine Ordinance.

If you have any questions regarding this matter, please call enforcement staff at (415) 252-3100.

Sincerely,



John St. Croix  
Executive Director

Enclosures

Cc: Thomas Picarello, Complainant  
Anne Kronenberg, Respondent  
Rosemary Bosque, Chair SRO  
Bruce Wolfe, Vice Chair SOTF  
David Snyder, Esq., Member SOTF  
Richard Knee, Member SOTF  
Sue Cauthen, Member SOTF  
Suzanne Manneh, Member SOTF  
Allyson Washburn, Member SOTF  
James Knoebber, Member SOTF  
Jay Costa, Member SOTF  
Hanley Chan, Member SOTF  
Jackson West, Member SOTF

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(c) provides for the removal of officials not enumerated in subsection (a) and (b), but they can only be removed for the conviction of a felony crime involving moral turpitude.