

File No. 17044

Item No. 4

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: September 6, 2017

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Completed by: V. Young Date 09/01/17

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT FORM

Complainant Name (*Optional*)

Laura Clark

Date of Request:

5/2/17

Please identify the City Official(s) and/or Employee(s) against whom the complaint is being made:

All Ethics Commissioners

Please identify the Officials' and/or Employees' Board, Commission, Task Force, Department or other type of agency.

Name of the Custodian of Records tasked with providing the requested information:

- ☐ Alleged violation of public records access
☐ Alleged failure to provide information in a timely manner in accordance with the provisions of the Sunshine Ordinance
☒ Alleged violation of a public meeting
Please indicate date of meeting if known

4/24/17

Sunshine Ordinance Section(s)

(If known, please cite specific provision(s) being violated)

Please describe the alleged violation. Use additional paper if needed. Please attach any relevant documentation which supports your complaint.

Ethics Commissioners discussed and officially acted on matter not appearing on meeting agenda, despite explicit advice from the City Attorney's office and Commission's Executive Director that these actions violated the Brown Act and Sunshine Ordinance. See attached letter.

Are you requesting a public hearing before the Sunshine Ordinance Task Force?¹



yes



no

If yes, please provide 1 or more preferred method(s) of contact:

- ☐ Phone: _____ ☐ Mailing Address: _____
☐ Fax: _____
☒ Email: laura@yimbyaction.org ☐ Other: _____

Signature: Laura Clark

Date: 5/2/17

¹ NOTICE: PERSONAL INFORMATION THAT IS PROVIDED WHEN ADDRESSING A PUBLIC POLICY BODY IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE. MEMBERS OF THE PUBLIC ARE NOT REQUIRED TO PROVIDE PERSONAL IDENTIFYING INFORMATION, AND COMPLAINANTS MAY REMAIN ANONYMOUS. HOWEVER, FOR PROPER NOTICING AND PROCESSING OF A HEARING REQUEST, A RELIABLE MEANS OF CONTACT IS RECOMMENDED. PLEASE NOTE THAT THE SOTF ADMINISTRATOR WILL NOT REDACT ANY INFORMATION PROVIDED IN THESE SUBMISSIONS.



Peter Keane, Esq., Chair
Honorable Quentin Kopp
Paul Renne, Esq.
Daina Chiu, Esq.

May 2, 2017

San Francisco Ethics Commission
25 Van Ness Ave., Ste. 220
San Francisco, CA 94102-6053

RE: The Ethics Commission's "Official Misconduct" for Willful Violation
of the Brown Act and Sunshine Ordinance

Dear Commissioners:

On Monday, April 24th, 2017, you voted to have the Ethics Commission send a letter to the Planning Commission about an alleged conflict of interest. You took this action despite the explicit warnings from the City Attorney and the Commission's Executive Director that this would violate the law.¹ You took this action knowing you were violating the very laws your body is responsible for enforcing. You have knowingly violated the Brown Act and Sunshine Ordinance.

The Ethics Commission became aware of the alleged conflict of Planning Commissioner Christine Johnson at your March 27, 2017 meeting, if not sooner, when Commissioner Kopp stated in open session that the Ethics Commission should discuss legislation to respond to this specific issue at a later meeting.² Instead of placing the item on the Agenda³ (as is required by the Brown Act) and giving Commissioner Johnson an opportunity to respond to the allegations, you decided – against advice of counsel – to ignore the law and voted to take action without the slightest attempt at a fair process.

You willfully took this vote despite explicit warnings from the City Attorney and the Commission's Executive Director that the action would violate the Brown Act – a law that your very own Commission is entrusted with enforcing.

¹ Cal. Govt. Code section 54954.2; copy attached.

² S.F. Chronicle, "Skirmish at City Planning Over Vote on Affordable Housing Rate," 4/26/17; minutes attached.

³ Agenda attached.



Not only did your vote clearly violate the Brown Act and Sunshine Ordinance,⁴ your willful violation and complete disregard of these state and local laws constitutes official misconduct under the City Charter.⁵ You committed official misconduct when you recklessly ignored the advice of the City Attorney and Executive Director and brazenly voted to send a letter without proper public notice. The law prohibits your action because the matter did not appear on the meeting agenda.

The requirement to notify the public and interested parties that a governmental body will discuss and potentially take action on an item by first publicly posting the item on a meeting agenda is a fundamental and long-standing tenet of our democratic process.⁶ As activists who rely on these public postings, we are outraged that this fundamental right of the people was so willfully ignored. Because you did not comply with this basic notice requirement, Ms. Johnson, other Planning Commissioners, SPUR, and other members of the public were deprived of the opportunity to respond to the allegations or otherwise provide input on this important policy issue. You were deprived of these viewpoints before making your decision. This violates the law – *the exact law the Ethics Commission was created to enforce.*

This breach of the public trust is especially appalling given the mission and purpose of the Ethics Commission to ensure integrity and openness in City government. The Ethics Commission is entrusted with enforcing the very open meeting law which you knowingly violated. How can the public respect an enforcer that fails to follow its own rules? If you cannot respect these laws or fundamental ethical considerations, then you should not be on the Ethics Commission.

The undersigned therefore call on you to immediately resign from the Commission. In addition, by copy of this letter, we call on each of your appointing authorities to suspend you

⁴ S.F. Admin. Code section 67.5; copy attached.

⁵ Charter section 15.505(e) ["official misconduct" includes "any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law"].

⁶ Cal. Govt. Code section 54950 ["The people insist on remaining informed so that they may retain control over the instruments they have created."]; S.F. Admin. Code section 67.1 ["The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information."].



from the Commission, if you will not resign voluntarily. Your appointing authorities are permitted to remove you under the Charter due to your willful misconduct. San Francisco residents require Commissioners who will follow the laws they are entrusted to enforce.⁷ We also trust that you will cure and correct this egregious legal violation as soon as possible.

By copy of this letter, we also call on District Attorney George Gascon to prosecute you criminally, given the willful nature of your violation, as he is empowered to do under state law.⁸ Moreover, we believe that this matter should be reviewed by the Sunshine Task Force, and therefore are filing the attached complaint. Finally, given that the Ethics Commission itself has the authority to enforce the Sunshine Ordinance, an Ethics Commission complaint is also attached; we trust that the Ethics Commission will refer this complaint to the Attorney General or other uncompromised enforcement entity.

Your action at the meeting on Monday, April 24th has seriously eroded the credibility of this important Commission and your personal credibility as public servants. We hope that you appreciate the gravity of your actions and respond accordingly.

Sincerely,

Laura Clark

Sonja Trauss
Laura Fingal-Surma
Tiffany Loewenberg
Madelaine Boyd
Karin Payson
Deanna Surma

⁷ Charter section 15.105.

⁸ Cal. Govt. Code section 54959.



cc: **City Attorney Dennis Herrera** (as appointing authority for Chairman Keane)
Board Clerk Angela Calvillo (on behalf of the Board of Supervisors, as appointing authority for Commissioner Kopp)
District Attorney George Gascon (as appointing authority for Commissioner Renne and pursuant to his enforcement authority under the Brown Act)
Assessor-Recorder Carmen Chu (as appointing authority for Commissioner Chiu)
Sunshine Ordinance Task Force (see attached complaint form)
Mayor Edwin Lee
Ethics Commission Executive Director LeeAnn Pelham (see attached complaint form)
Deputy City Attorney John Givner
Deputy City Attorney Andrew Shen

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: June 15, 2017
RE: Complaint No. 17044— Clark v. San Francisco Ethics Commission

COMPLAINT

Complainant Laura Clark ("Complainant") alleges that LeeAnn Pelham ("Ms. Pelham"), Executive Director of the Ethics Commission, and the San Francisco Ethics Commission ("Commission"), violated Sections 67.7 of the Administrative Code ("the Sunshine Ordinance") by allegedly acting on an item not appearing on the agenda for the April 24, 2017 Commission meeting.

COMPLAINANT FILES THIS COMPLAINT

On May 2, 2017, Complainant filed this complaint with the Task Force regarding the Commission's alleged improper action on an un-agendized item.

JURISDICTION

The Commission is a policy body under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Sunshine Ordinance against the Commission. The Commission has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.7 provides the protocol for addressing items un-agendized for policy body meetings.

Section 54950 et seq. Cal. Gov't Code (Brown Act)

- Section 54954.2 governs the protocol for taking action on items at meetings.

APPLICABLE CASE LAW

- *None*

BACKGROUND

During the April 24, 2017 Commission meeting, Complainant alleges that the Commission voted to send a letter to the Planning Commission recommending that an exiting Planning Commission member recuse herself from a vote in which she may have a conflict of interest. Complainant alleges that this action by the Commission violated the Sunshine

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TO: Sunshine Ordinance Task Force
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Ordinance and the Brown Act because there was no agenda item for this action. In her letter to the Task Force regarding this complaint, Complainant states in part as follows:

On Monday, April 24th, 2017, you voted to have the Ethics Commission send a letter to the Planning Commission about an alleged conflict of interest. You took this action despite the explicit warnings from the City Attorney and the Commission's Executive Director that this would violate the law. You took this action knowing you were violating the very laws your body is responsible for enforcing. You have knowingly violated the Brown Act and Sunshine Ordinance.

The Ethics Commission became aware of the alleged conflict of Planning Commissioner Christine Johnson at your March 27, 2017 meeting, if not sooner, when Commissioner Kopp stated in open session that the Ethics Commission should discuss legislation to respond to this specific issue at a later meeting. Instead of placing the item on the Agenda (as is required by the Brown Act) and giving Commissioner Johnson an opportunity to respond to the allegations, you decided – against advice of counsel – to ignore the law and voted to take action without the slightest attempt at a fair process.

You willfully took this vote despite explicit warnings from the City Attorney and the Commission's Executive Director that the action would violate the Brown Act – a law that your very own Commission is entrusted with enforcing.

On May 10, 2017, in response to this complaint, Peter Keane, Chairperson of the Commission, sent a letter to the Task Force in he stated in part as follows:

The Sunshine Ordinance incorporates the California Brown Act at section 67.5 of the San Francisco Administrative Code. Section 54954.2(a)(1) of the Brown Act requires legislative bodies, such as the Ethics Commission, to post an agenda containing a brief general description of each item of business to be transacted and discussed at the meeting. Cal. Gov. Code § 54954.2(a)(1). The agency may not act or discuss any matter not appearing on the agenda, unless the legislative body decides “by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted” Id. at (b)(2).

Late Friday, April 21 or on Monday, April 24, 2017, the Planning Commission posted its agenda for its April 27 meeting, which announced the Planning Commission's upcoming vote on a matter critical to the future of housing policy within the City. That information came to light hours before the Ethics Commission's 5:30 p.m. meeting that same day, well after the Commission posted its own agenda on Thursday, April 20 to ensure compliance with applicable open meetings laws. After a rigorous

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public debate, the members of the Ethics Commission agreed with Commissioner Kopp's observation that Ms. Johnson's potential vote on the City's housing policy created a possible conflict of interest in violation of City law. The Commission unanimously decided that only immediate intervention could prevent Ms. Johnson's possible violation of conflict of interest rules. The Commission complied with the Sunshine Ordinance and Brown Act by properly invoking the immediacy exception to the 72-hour notice rule.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- When did the Commission first become aware of the potential conflict of interest at the Planning Commission?
- Did the Commission have adequate time to properly agendize an item for the action at issue after first becoming aware of it?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did the Commission violate Sunshine Ordinance Section 67.7(d) and/or the Brown Act by taking action on an item that wasn't agendized?
- Does an exception under Sunshine Ordinance Section 67.7(e) apply given the urgency to act on the un-agendized item at issue?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: June 15, 2017
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CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.**

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

THE BROWN ACT (GOVT. CODE SECTIONS 54950 *ET SEQ.*)**SECTION 54954.2**

(a)(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a

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member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 17044

Laura Clark V. Ethics Commission

Date filed with SOTF: 05/02/17

Contacts information (Complainant information listed first):

laura@yimbyaction.org (Complainant)

Pelham, LeeAnn (ETH) Blome, Jessica (ETH) ethics.commission@sfgov.org (Respondent)

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 conducting discussions on an item not appearing on the posted agenda (Ethics Commission April 24, 2017, meeting).

Administrative Summary if applicable:

Complaint Attached.

Young, Victor

From: Laura Clark <laura@yimbyaction.org>
Sent: Tuesday, June 20, 2017 5:30 PM
To: Young, Victor
Subject: Second Letter about Sunshine - Please forward to the appropriate parties.

Mr. Victor Young

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place

Room 244

San Francisco, CA 94102-4689

cc: Ethics Commissioners

Executive Director Leeann Pelhman

Attorney General Xavier Becerra

City Attorney Dennis Herrera

Board Clerk Angela Calvillo

District Attorney George Gascon

Assessor-Recorder Carmen Chu

Mayor Edwin Lee

Deputy City Attorney John Givner

Deputy City Attorney Andrew Shen

ATTACHED:

<https://sfethics.org/ethics/2017/05/minutes-april-24-2017.html>

<http://www.sfexaminer.com/ethics-commission-defends-ethics-gaffe-blew/>

<http://www.sfexaminer.com/planning-commissioners-dual-roles-spur-questions-conflict/>

<https://sfethics.org/ethics/2017/04/minutes-march-27-2017.html>

June 20, 2017

RE: Brown Act Complaint Versus Ethics Commission (Complaint No. 17044)

Dear Mr. Young:

I am writing in response to the letter submitted by Commissioner Peter Keane on May 10, 2017 regarding my Brown Act/Sunshine Ordinance complaint against the San Francisco Ethics Commission. I would like to respond to two points that Commissioner Keane made in that letter.

First: an “emergency situation” certainly did not exist on April 24, 2017.

Commissioner Keane explains the Ethics Commission’s Brown Act violation by saying that an “emergency” situation existed. This is simply not true. Government Code 54956.5 clearly says that an emergency situation is a “work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both.”

Let’s be clear: Christine Johnson participated in an advisory vote by the Planning Commission about inclusionary housing percentages on April 27, 2017. Nothing final was to be decided in that vote. (The Board of

Supervisors ultimately makes the final decision on this issue.) In other words, the Ethics Commission was hardly responding to a “crippling” activity, or some similar situation severely impairing public health or safety.

Still, Commissioner Keane’s letter says that housing policy issues are special. This is not convincing at all. Under his argument, the Ethics Commission would be free to intervene in any pending housing policy-related action by the Planning Commission without any notice. Surely the Brown Act, and the concept of public notice, does not contemplate such a situation.

Commissioner Keane’s statement suggests the true motivation for the Commission’s violation: certain commissioners believed that Christine Johnson would vote the “wrong” way, and they wanted to prevent that. Why is the Ethics Commission trying to insert itself into policy decisions in this manner?

Second: there was no need for “immediate intervention” particularly given that the Ethics Commission knew about Christine Johnson’s situation weeks before her vote.

Commissioner Keane also tries to justify the Brown Act violation by saying that “immediate intervention” was necessary. This also is untrue. Under the exception he cites, the Commission’s Brown Act violation would have been acceptable only upon a determination by a two-thirds vote of the commissioners present at the meeting both:

(1) that there was a need to take immediate action and

(2) that the need for action came to the attention of the local agency subsequent to the agenda being posted for the commission meeting.

First, the Ethics Commission never voted to determine that these criteria were present. In fact, they did not even mention (and were obviously not even aware of) this exception, which they are now using to justify their violation after the fact. Instead, they just voted to send the letter, ignoring the advice of their Executive Director and the City Attorney’s office, who stated that they would violate the Brown Act. (See attached April 24, 2017 Ethics Commission minutes, Item 2.)

Second, there obviously was no need for immediate action.^[1] The City Attorney’s office had already advised Ms. Johnson that she could legally participate in the Planning Commission vote on April 27, 2017. But the Ethics Commission voted to tell Ms. Johnson to recuse herself without even analyzing the actual law. (Watch the video at <https://sfethics.org/commission/meetings>, during Item 2, public comment.) How could this possibly require immediate action? In any case, if the City Attorney’s office was somehow wrong, Ms. Johnson can be fined by the Ethics Commission under its normal enforcement rules like everyone else.

Third, the Ethics Commission knew about the issues raised by Ms. Johnson's vote weeks before the Ethics Commission agenda was released on April 24, 2017, and could have put the matter on their agenda for that meeting if it wanted to address those issues. In fact, in a San Francisco Examiner article published on May 9, 2017 (attached), columnist Joe Fitzgerald Rodriguez put the lie to Commissioner Keane's excuses, stating:

"I talked to Kopp about Johnson weeks ago. We discussed her alleged conflicts and her upcoming votes. And Friends of Ethics co-founder Larry Bush led the rallying cry on her potential vote long before the April 24 meeting of the Ethics Commission."

"I'm cringing, because Kopp and Keane are right to sound the alarm about Johnson — but they blew it. The Ethics Commission had plenty of warning that Johnson's allegedly conflicted vote was coming up and plenty of time to agendize that discussion."

Indeed, the Examiner had published a column by Mr. Rodriguez on April 11, 2017 (attached), which included an interview with Commissioner Quentin Kopp about Ms. Johnson's situation, noting that a "hotly controversial advisory vote by the Planning Commission on dueling proposals, which address the amounts and recipients of inclusionary affordable housing in new developments, is anticipated for later this month."

In fact, Commissioner Kopp was already monitoring Ms. Johnson's activities as early as the Ethics Commission's March 27, 2017 meeting, when he publicly stated that the Commission should draft legislation to address Ms. Johnson's situation. (See attached March 27, 2017 Ethics Commission minutes, Item 11.)

So, Commissioner Kopp and the other Ethics commissioners and staff members were obviously aware of Ms. Johnson's pending "conflict" issue well before her vote and before the Ethics Commission posted its April agenda. If they wanted to send a letter, the Ethics Commission had the time to (and should have) put the issue on that agenda so the public and Ms. Johnson could comment on it.

In short, Commissioner Keane offers after-the-fact justifications which do not excuse the Ethics Commission's Brown Act violations. The Ethics Commission took an improper last-minute action at their April 24 meeting to prevent Ms. Johnson from voting to endorse a policy that certain Ethics commissioners may dislike. The Commission should not insert itself into these issues and should at least give people a chance to respond to allegations before jumping to legal conclusions. And of course, the Ethics Commission should follow the Brown Act, which it is entrusted with enforcing. It did not do that at its meeting on April 27, 2017.

Sincerely,

Laura Clark

[1] The parallel provision of the **San Francisco Sunshine Ordinance (Section 67.7)**, which was also violated, has a higher standard and allows an exception to the agenda requirement only if “immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting.” As described, a purely speculative guess that a conflict of interest exists, without any real review of the law, does not rise to this level as it does not “threaten serious injury” to the public interest.

Laura Foote Clark

Executive Director | Pronouns: she/her



c. (415) 489-0197

e. laura@yimbyaction.org

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Keep the pro-housing movement going - **Become a member!**

17044

From: Art Agnos artagnos@yahoo.com
Subject: Re: Fwd: Mayor response re:Christine Johnson
Date: April 21, 2017 at 2:49 PM
To: LARRY BUSH sfwtrail@mac.com

can not open

From: LARRY BUSH <sfwtrail@mac.com>
To: Art Agnos <artagnos@yahoo.com>
Sent: Friday, April 21, 2017 2:48 PM
Subject: Fwd: Mayor response re:Christine Johnson

Just arrived in response to my Sunshine request to the mayor's office on Christine Johnson.
Note the criteria related to issues "impactful to the Administration."
The attorney is Andrew Shen, also attorney at Ethics

Tsang, Francis

From: Elliott, Nicole (MYR)
Sent: Wednesday, January 25, 2017 10:22 AM
To: Tsang, Francis; Rich, Ken (ECN)
Subject: RE: Christine Johnson

Francis,

Can you please set this up? I don't know why Ken has to do it – ultimately this is about whether or not this Commissioner stays on and whether or not she will have to recuse herself on issues that are impactful to the Administration.

Thanks.

Nicole A. Elliott
Director, Legislative & Government Affairs
Office of Mayor Edwin M. Lee
(415) 554-7940

From: Tsang, Francis
Sent: Wednesday, January 25, 2017 10:15 AM
To: Rich, Ken (ECN) <ken.rich@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: RE: Christine Johnson

Works for me, can you confirm with her that it works.

From: Rich, Ken (ECN)
Sent: Wednesday, January 25, 2017 9:55 AM
To: Tsang, Francis <francis.tsang@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: Christine Johnson

Hi Francis and Nikki –

Can we get something on the calendar with Andrew Shen next week? I promised Christine we would all meet with the City Attorney next week to discuss in more depth the likelihood of her having to recuse herself from items at

the Planning Commission once she joins SPUR staff. Thanks.

I'm open at 11am next Thursday the 2nd (probably a good time for Christine). I'm going to have Andrew Shen hold that time. Let me know if that works for you.

Thanks.

Ken Rich
Director of Development
Office of Economic and Workforce Development
(415) 554-5194

Young, Victor

From: Laura Clark <laura@yimbyaction.org>
Sent: Tuesday, August 29, 2017 3:20 PM
To: SOTF, (BOS); Blome, Jessica (ETH); Pelham, Leeann (ETH)
Subject: Submission to Task Force regarding Ethics Commission - Complaint #17044
Attachments: ReComplaint#17044.pdf

Dear Victor,

I am submitting this email and its attachments to the Task Force regarding my complaint (#17044) against the Ethics Commission. They should accompany both my complaint letter of May 2, 2017 and my follow-up email of June 20, 2017. (Please let me know if you need me to send any of those prior documents again.)

The attachments further demonstrate that there was no need for immediate action at the Ethics Commission hearing on April 24, 2017 because the Ethics Commission knew about Christine Johnson **weeks before** the Ethics Commission April 24, 2017 agenda was released, and could have put the matter on their agenda if it wanted to address those issues:

- Municipal Law Handbook (Sec. 2.6) showing that **staff knowledge alone** about Ms. Johnson's issues in early April precluded the Commission from acting as they did.
- Ethics Commission staff emails and attachments from **April 10-11, 2017** showing awareness by staff and Commissioner Kopp of alleged Christine Johnson conflicts and her upcoming votes.
- Larry Bush email to Ethics Commissioner Renne providing notice on **March 26, 2017** about the "apparent conflict of interest for Planning Commissioner Christine Johnson."
- May 9, 2017 article by Joe Fitzgerald Rodriguez in the SF Examiner: "I talked to Kopp about Johnson **weeks ago**. We discussed her alleged conflicts and her upcoming votes."

As Joe Fitzgerald Rodriguez said in his article, the Ethics Commission "blew it." They knew about these issues weeks before the Planning Commission vote. To say there was a "need for immediate action" on April 24 is just wrong. Despite the advice of both their attorney and Executive Director, the

Ethics Commission acted on an unagendized matter in violation of the Brown Act simply because they thought that the rules did not apply to them.

Please note that I made a Sunshine Ordinance request to the Ethics Commission for records relevant to this matter **on July 13, 2017**. Some records were provided on August 8 and 23. **But more than six weeks after my original request over 100 emails to and from Commissioner Peter Keane have still not been provided to me, hindering my ability to make my case.** This is itself a violation of the Sunshine Ordinance.

Thank you,
Laura

Laura Foote Clark

Executive Director | Pronouns: she/her



c. [\(415\) 489-0197](tel:(415)489-0197)

e. laura@yimbyaction.org

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persons with a disability. Many cities request receiving this notice in advance (from 1 to 5 days) to allow them to make the appropriate arrangements. Such arrangements include providing listening devices, making an audio recording, or providing documents in large print.

§2.23 e. No Discussion or Action on Matters Not on Agenda

Except as provided in Govt C §54954.2(a)-(b), no discussion or action may occur about any item not appearing on the posted agenda. Govt C §54954.2(a)-(b).

f. Exceptions to Requirements for Agenda Contents

§2.24 (1) Brief or Limited Communications

Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed under Govt C §54954.2(a) as follows:

- Brief responses by members of the legislative body and staff to statements or questions posed by the public;
- Questions for clarification;
- References to staff or other resources for factual information;
- Requests to staff to report back on an issue at a subsequent meeting;
- Requests to agendaize a matter of business for some future meeting; and
- Brief announcements by members of the body or staff and brief reports on their activities.

PRACTICE TIP Responses, reports, and directions to staff should be brief and not entail lengthy discussion. If there is disagreement over whether to place a matter on a future agenda or whether to have staff return with a report, the matter should be put to an immediate vote without discussion. Note that the provisions allowing individual members of the body to give direction to staff do not override the city's procedural rules governing the authority of individual members to give such directions. Govt C §54954.2(a)(2).

§2.25 (2) Emergencies

Discussion and action on an item not appearing on the posted agenda may occur if a defined statutory emergency situation is determined to exist by a majority vote of the legislative body. Govt C §54954.2(b)(1). See also Govt C §54956.5.

§2.26 (3) Need for Immediate Action

Discussion and action on an item not appearing on the posted agenda may

occur if immediate action is necessary. This necessity is determined if the legislative body establishes by a two-thirds vote of the members of the legislative body present at the meeting (or a unanimous vote if less than two-thirds of the members are present) that both of the following requirements exist (Govt C §54954.2(b)(2); see also *Cohan v City of Thousand Oaks* (1994) 30 CA4th 547):

- The need exists to take action immediately; and
- The need for action came to the attention of the agency after the agenda was posted.

PRACTICE TIP ➤ Government Code §54954.2(b)(2) requires both (1) the need for immediate action, and (2) that the need for action “came to the attention of the local agency” after the agenda was posted. In this context, “local agency” does not mean the same thing as “legislative body.” Matters for which the need to take action were known to staff before the agenda was posted, but that were not known to the legislative body, are precluded from being discussed or acted on under this exception.

§2.27 (4) Items on Agenda for Prior Meetings

Discussion and action on an item not appearing on the posted agenda may occur if the item was posted for a prior meeting that occurred not more than 5 days earlier and the item was continued to the meeting at which the action is taken. Govt C §54954.2(b)(3).

2. Special Meetings

§2.28 a. Twenty-Four-Hour Posting and Personal Notice Requirements

At least 24 hours before a special meeting, a notice that contains the time and place for the meeting, with a statement of the business to be transacted and an opportunity for the public to address the legislative body on that item, must be posted in a location freely accessible to the public. The notice must be delivered personally or by any other means to all members of the legislative body (unless waived in writing before the meeting) and to any newspaper, radio, or television station that has requested notice in writing, and received at least 24 hours before the time of the meeting. Govt C §54956.

In addition, the special meeting notice must be posted on the local agency's website, if one exists, at least 24 hours before the meeting. Govt C §54956(a). This requirement applies only to agendas for meetings of the governing body of the local agency, or other legislative bodies of the local agency when the members of those bodies are compensated for their appearance and one or more of the members is also a member of the governing body. Govt C §54956(c).

From: Pelham, Leeann (ETH)
To: ETH-Staff
Subject: Articles, FYI
Date: Tuesday, April 11, 2017 9:14:08 AM

<http://www.sfexaminer.com/planning-commissioners-dual-roles-spur-questions-conflict/>

<http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-national-anti-pot-group-faces-fines-for-1491849434-htmlstory.html>

https://www.washingtonpost.com/news/the-fix/wp/2017/04/10/brought-down-by-an-affair-alabama-gov-robert-bentley-expected-to-resign-today-according-to-news-reports/?hpid=hp_hp-top-table-main_alabama-510pm%3Ahomepage%2Fstory&utm_term=.3207abda00e7

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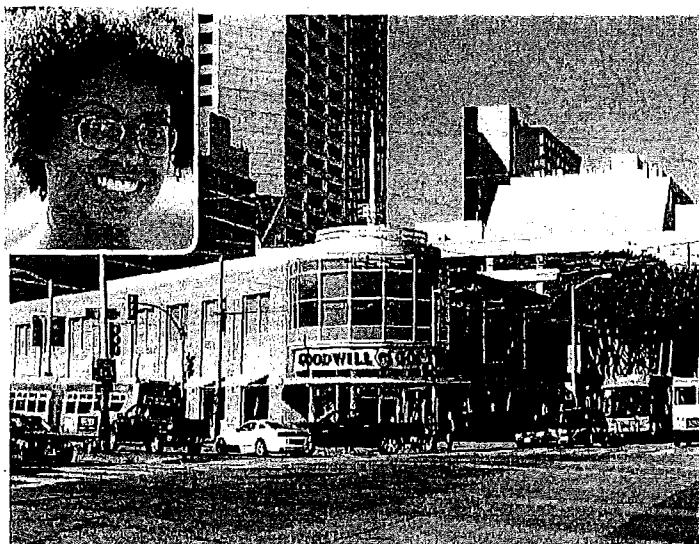
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Thursday August 24, 2017.

The City > News Columnists > On Guard

Planning commissioner's dual roles spur questions of conflict



Planning Commissioner Christine Johnson, who also serves as SPUR's San Francisco director, voted to approve an environmental impact report to clear a massive housing project at 1500 Mission St. pictured. The developer of the project, Related California Urban Housing, was one of SPUR's donors in 2016. (Courtesy photos)

By Joe Fitzgerald Rodriguez on April 11, 2017 1:00 am

Trending Articles

Feds grant permit for 'Free Speech' rally at Crissy Field

Leaked National Park Service email says law enforcement guaranteed at Crissy Field on Saturday, regardless of rally

Joey Gibson, organizer of controversial Patriot Prayer rally in SF, speaks out

'White supremacist' patriot rally coming to San Francisco — counter-protest already planned

Brunch is canceled this weekend



ON GUARD

It is a newspaper's duty to print the news and raise hell.

Imagine you sat on a city commission charged with approving multimillion-dollar housing projects. If I donated \$10,000 to your place of employment, would you vote in favor of my project?

If you said "darn right," then — ding, ding, ding! — you've identified a major conflict of interest at the San Francisco Planning Commission. One of its commissioners, Christine Johnson, just started working for the policy think tank SPUR as its San Francisco director in early March.

SPUR's website describes Johnson's role as a fundraiser responsible for "city-level decisions" in San Francisco. So, she'll be a leader in asking for big bucks from the titans in local housing projects.

Shorenstein Company, LLC. Emerald Fund, Inc. Kilroy Realty Corporation. Lennar Corporation. Forest City Enterprises, Inc. Webcor Builders. Related California Urban Housing.

That's a short list of businesses that have sought approval from, or are working on projects that have sought approval from, the Planning Commission, which Johnson has sat on since 2014. It's also a list of SPUR's business members and donors, via its 2016 annual report.

Johnson said in an email Monday that working at SPUR is a "dream come true ... a chance to work full time on solving some of the larger challenges that San Francisco faces."

She also said the City Attorney's Office reassured her there would not be a conflict, so long as SPUR doesn't advocate directly to the Planning Commission while she is a member.

Well, at least one member of the San Francisco Ethics Commission thinks Johnson's dual roles are an obvious conflict of interest: Quentin Kopp.

Kopp told On Guard he plans to introduce at the Ethics Commission's next meeting legislation "to bar service on a city commission of anyone whose salary or independent contract income is derived partially, or fully, from entities or individuals with applications for permits."

"She sits on the Planning Commission, and her salary is paid by SPUR," Kopp said. "It's got to be stopped. What's going to happen when, let's suppose, Shorenstein comes in with an application for a building permit? Or an [environmental impact report] has to be approved, and she's a vote?"

In fact, such a situation has already happened.

SPUR announced Johnson's role as San Francisco director on March 2. But at a March 23 Planning Commission meeting, Johnson voted to approve an environmental impact report to clear a massive housing project at 1500 Mission St.

The developer of that 39-story, 560-unit tower (the current site of a Goodwill store) is Related California, one of SPUR's donors. SPUR's 2016 annual report doesn't list the donation amount, and, as a nonprofit, it is not required to disclose the amount.

Kopp's legislation would first need a vote by the Ethics Commission, then a subsequent vote by the Board of Supervisors — but there's a catch.

A hotly controversial advisory vote by the Planning Commission on dueling proposals, which address the amounts and recipients of inclusionary affordable housing in new developments, is anticipated for later this month.

One proposal, by supervisors Ansha Safai and London Breed, targets middle-income earners at the expense of lower-income earners. The other proposal, by supervisors Aaron Peskin and Jane Kim, prioritizes lower-income earners with affordable housing.

As one of four appointees of Mayor Ed Lee to the Planning Commission — the Board of Supervisors has three appointees — Johnson may be a key vote on that issue.

Johnson wrote to me Monday, "Before accepting the role at SPUR, I agreed to transition off the Planning Commission when a suitable replacement was approved and confirmed."

But Johnson didn't say when exactly she would leave.

It doesn't take a rocket scientist to see Safai and Breed's proposal, which the Mayor's Office supports, would be imperiled if Johnson left before May.

When asked when Johnson would be replaced, the Mayor's Office wrote to me, "We are in the process of finding a replacement for Christine Johnson, and given the importance of the Planning Commission, this action is something the Mayor takes very seriously."

Johnson's would be a reliable vote, as she has already shown strong loyalty to the Mayor's Office.

Two years ago, I uncovered through a public records request a text message exchange between Johnson and the Mayor's Office, showing she changed her Planning Commission vote on a key provision to tighten regulations on Airbnb after she was rebuked by a mayoral staffer.

In short, Johnson voted in favor of tightening the regulations, received a few texts, apologized to the Mayor's Office for her vote and swiftly changed her vote.

Kopp is right on the money to tackle this issue, and it will be interesting to see which supervisors vote to tighten loopholes against — perceived or real — pay-to-play activity.

Still, it looks like his effort may not be in time.

On Guard prints the news and raises hell each week. Email Filtz at joe@sfexaminer.com, follow him on Twitter and Instagram @FiltztheReporter, and Facebook at [Facebook.com/FiltztheReporter](https://www.facebook.com/FiltztheReporter).

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From: Joe Fitzgerald Rodriguez
To: Pelham, Leeann (ETH); Blome, Jessica (ETH)
Subject: Media Inquiry -- planning commissioner
Date: Monday, April 10, 2017 11:50:17 AM

Jessica, LeeAnn,

Hello both. Joe Fitz from the SF Examiner here. Hope you two are well.

At the last commission meeting, Commissioner Kopp discussed a matter brought up by public commenter Marc Solomon, about the apparent conflict of interest of SPUR San Francisco Policy Director Christine Johnson also serving on the planning commission, since, as Kopp put it,

"SPUR is a major conduit for money from developers. Which pays a salary of that planning the commissioner. That seems to me to be right and is ripe for action legislatively of primitive conflict of interest."

Did commissioner Kopp direct staff to develop something regarding this matter, yet? What rules exist now for mayoral appointees as far as conflict of interest, and is it possible the SPUR employment of Ms. Johnson falls within those rules?

Thanks kindly. My deadline is 2:30 p.m.

--

Joe Fitzgerald Rodriguez
Staff Writer
SF Examiner
joe@sfmediaco.com
[REDACTED]
[@Fitzthereporter](#)

From: Pelham, Leeann (ETH)
To: Joe Fitzgerald Rodriguez
Subject: RE: Media Inquiry -- planning commissioner
Date: Monday, April 10, 2017 12:53:48 PM
Attachments: [SF Conflicts Provisions.docx](#)
[SIA - Planning Dept and Commission.pdf](#)

Hi Joe --

Thanks for the question, happy to chat. I'll give you a call but also thought the attached (though admittedly voluminous) may be of use as background if you didn't have them already.

First are provisions of City law that are intended generally to ensure officials avoid conflicts between their personal financial interests or other relationships and their city duties. They appear in the attached Word doc --

For example City law: incorporates the state's Political Reform Act conflicts provisions; has certain revolving door restrictions; requires disclosure on the public record of certain relationships in some instances; and includes restrictions on the disclosure of confidential information.

It also places certain restrictions on compensated advocacy by city officers with other city officers. See Sec 3.224 (a) and (b).

In addition, each department is required to identify (and circulate annually notice of) certain outside activities defined as "incompatible activities". A Department's Statement of Incompatible Activities (or SIA) identifies non-City activities that the department has concluded are "inconsistent, incompatible, or in conflict with" the duties of the officers and employees of that department. I believe SIAs were first enacted in 2008 or 2009. They allow for a waiver process. The current template also includes reminders of other ethics-related provisions, but not all, that apply under the law.

The Planning Department's SIA is attached as a pdf for your reference.

I'll call you shortly.

Thanks,
LeeAnn

From: Joe Fitzgerald Rodriguez [mailto:joe@smediaco.com]
Sent: Monday, April 10, 2017 11:50 AM
To: Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>; Blome, Jessica (ETH) <jessica.blome@sfgov.org>

Subject: Media Inquiry -- planning commissioner

Jessica, LeeAnn,

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Thanks kindly. My deadline is 2:30 p.m.

--
Joe Fitzgerald Rodriguez
Staff Writer
SF Examiner
joe@sfmediaco.com
[REDACTED]
[@Fitzthereporter](#)

Paul Renne

From: LARRY BUSH <[REDACTED]>
Sent: Saturday, March 25, 2017 12:00 PM
To: Hulda Garfalo; Oliver Luby; Joseph Kelly; Charles Marsteller; Elena Schmid; Paul H.Melbostad; Marc Saloman; Bob Planthold; Joe Julian; Sharyn Saslafsky; alleggra Fortunati; John Sinclair; Zach Goldfine; Robert van Ravenswaay; bob dockendorff; Ben Willson; Derek Kerr
Subject: Friends Agenda for Sunday, March 26
Attachments: FoE Agenda.docx; Untitled attachment 00035.htm

Attached as document and embedded in this email

FRIENDS OF ETHICS AGENDA

MARCH 26, 2017

Tentative agenda, covering items generated by Friends of Ethics and items from the Ethics Commission agenda for the March 27 meeting

1. "New" Proposition J to be introduced by Commission President Peter Keane. Attached chart comparing old and new Prop J, links to Keane/Bush op-ed and link to Chronicle editorial endorsing action. FoE to speak in favor of moving forward to IP meetings. Oliver Luby and Elena Schmid will try to attend, but both are arriving from trips out of town.

QUESTION: Who will speak at the Monday meeting? Who will do outreach and to whom?

2. Planning Department Issues. Marc Salomon has researched whether development project sponsors are properly disclosed (they are not), which hinders oversight of developers seeking approvals also making contributions. Sue Hestor raises apparent conflict of interest for Planning Commissioner Christine Johnson, just named full-time to be SPUR's first director of San Francisco actions. SPUR is a major conduit for funds from developers, which pays her salary.

QUESTION: Should FoE raise a conflict of interest issue at Ethics? Who will do that?

3. Ethics staff report on public financing in the last election includes questions on whether adjustments are needed. This is also an issue that Charlie Marstaller has tried repeatedly have examined.

"The experience of these nine elections suggests that there may be some value in further assessing whether the current mechanics for publicly financed candidates to respond to third-party spending could be simplified. This may be one example of a provision that could be improved to help strengthen candidate participation in the future. Other questions that may warrant more detailed analysis and discussion include:

Are there ways the public financing program should be strengthened to better balance its benefits for non-incumbent candidates?

Do current timeframes for candidates to receive the public funding make sense?

Should a different formula for the initial grant and/or rates of matching be examined to determine if they are currently maximizing the program's benefits to qualified candidates?

How might the mechanics of the public financing program be improved to better engage voters in City elections? "

QUESTION: FoE to urge re-examining Charlie's points. FoE to urge other changes, e.g., greater outreach by publicly-funded candidates such as email in addition to one debate, should FoE urge reinstatement of the Voter Handbook statement that candidates accepting the spending limit be identified?

4. Resignation of Mayoral appointee Beverly Hayon from the Commission, effective immediately. The term is until February 2018. The mayor is required to appoint a commissioner "with a background in public information and public meetings."
5. Staff report on audit policy review. Staff recommends changes from the current "luck of the draw" to determine which candidates and campaigns will be audited. Friends of Ethics has recommended other changes in the past that are relevant to this agenda item. Should the audit categories now include "Major Donors" (those who contribute \$10,000 or more in an election, dropped by St. Croix) and Slate Makers (which Ethics will urge be transferred to Ethics from Elections)? Should priority be given to any candidate or committee who has been served with legal notice of violations by city, state or federal agencies (as was not done after FBI indictments in Ed Lee fundraising)? Should there be priority for any candidate or committee who fails to include donor occupation or address for 20 percent or more of the donors (one approach to investigating money laundering).

QUESTION: Should Friends raise these issues? Who will speak at Monday meeting on these points?

6. Enforcement Review by Ethics Staff. The review includes a time lag of a considerable period, averaging 8 months, to determine whether to act on a complaint. Should Ethics adopt a target for this process? Should priority be given to complaints where the potential penalty would be removal from office (Ed Jew case took two years from complaint until action)? Ethics recently adopted a standard for returning a complaint to Ethics if the CA and DA don't act within a specific time. Should there not be a similar deadline for Ethics itself? Should there be a priority on cases involving a candidate to resolve the complaint before the candidate takes office (which would allow two months, and would allow for Ethics to determine a candidate should not take office under the charter terms)?

QUESTION: Does FoE want to raise these issues? Who will speak to them at Monday's meeting? Is it better to raise that we will submit additional issues in writing, and simply raise that fact? Should we have a prepared statement to submit to save time now?

7. Pending legislation:

*Whistleblower case remains with Board Pres London Breed with background discussions with HR, Controller and Ethics. So far FoE does not see the amendments we want, nor is there a schedule for Ethics to have an additional hearing with a final document.

* Peskin legislation on land use process, as well as behest payments. Waiting for updates. Some overlap with proposed Prop J

8. Future Commission meeting

- Tracking and reporting gifts of admission, etc by city agencies to selected people. This has engaged the interest of Commissioner Kopp, and Exec Dir Pelham says she will add this to Ethics list. It comes to about \$1 million a year in "lost" revenue in perks to city officials and their friends and families.
- Review of contribution disclosures during final weeks before Election and month afterwards. Current law keeps that hidden, although it can be a way to hide controversial donors or influence-seekers after the votes are tallied. Ben Wilson from Represent.US is developing a data review to put facts to this issue.
- Ethics budget/staffing. The mayor has not stepped back from the proposal to cut some Ethics funding that would impact its ability to investigate complaints and to provide transparency.
- Document retention policy is set to be updated, but not yet on the calendar. It needs to take into account recent court decisions on private cell phone "documents" and the need for immediate release.
- CGOBOC term for Larry Bush ends in August, and there is interest in the current civil grand jury to replace me with a new person. This would interrupt an agenda that pushes for greater disclosure and transparency. Good news: CGOBOC voted 7-1 to begin putting its meetings on sfgovtv, reversing an earlier failure to approve this step.
- QUESTION: Will a member of FoE address any of these issues, and if so, who on which ones?

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Thursday August 24, 2017

Editor's Picks > The City > News Columnists > On Guard

Ethics Commission defends ethics gaffe — but they blew it



Planning Commissioner Christine Johnson listens to public comment during an April 27 meeting at City Hall (James Chan/Special to S.F. Examiner)

By Joe Fitzgerald Rodriguez on May 9, 2017 1:00 am

The City's moral watchdog-and purveyors of governmental principles, the San Francisco

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Ethics Commission, may have violated ethics law. Now, two commissioners are pushing back, citing statewide ethics law in their

defense.



See Also

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Let's break it down (and take a shot every time you read the word "ethics."):

Commissioners Quentin Kopp and Chair Peter Keane previously aimed to stop Planning Commissioner Christine Johnson from serving, due to an alleged ethical conflict.

Johnson's new job, raising money and lobbying for nonprofit think tank SPUR, may allegedly influence her votes on the Planning Commission to approve multimillion dollar housing developments. In fact, as this column revealed weeks ago, Johnson has already voted to approve an environmental impact report to clear a massive housing project at 1500 Mission St.

Related California, the developer of that 39-story, 560-unit tower, is one of SPUR's donors, though the nonprofit's 2016 annual report doesn't list the donation amount.

The City Attorney's Office cleared Johnson to vote on matters before the Planning Commission, but the attorneys advise on the letter of the law, not its spirit.

And, frankly, her votes smelled fishier than Pier 39.

Worth noting is the larger fight between moderates and progressives over inclusionary housing proposals: Supervisors Ahsha Safai and London Breed's inclusionary proposal is geared more to the middle class, and supervisors Jane Kim and Aaron Peskin's proposal is geared more toward lower incomes.

Johnson was seen as a key advisory vote between those two proposals.

On April 24, at the Ethics Commission's regular meeting, Kopp and Keane voted to send a letter on behalf of the Ethics Commission asking Johnson to step down before that vote — but the vote was not put on an agenda beforehand.

A Deputy City Attorney in the ethics meeting warned the commissioners were in conflict with the California Brown Act — key open meeting laws that guarantee government transparency to the public.

YIMBY leader Laura Clark, a staunch ally of Johnson, filed an official complaint to the District Attorney's Office alleging the Ethics Commission did just that.

So are these watchdogs out of whack?

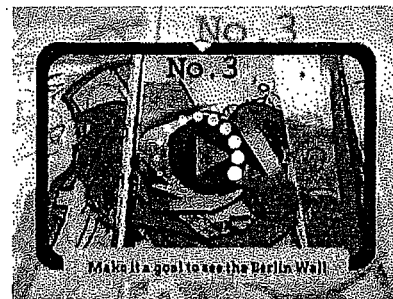
Unsurprisingly, the ethics commissioners say "no."

"The complaint has no merit," Keane wrote Monday in a letter to the District Attorney's Office.

The DA's Office would only say, "It's been referred to us, and we're looking into it."

Keane's letter admits that the matter considered was not "formally on the agenda of the meeting" but argues that the commission was unaware Johnson was set to vote on a matter in conflict with her role at SPUR — inclusionary housing — in only three days.

Therefore, Keane argued, the Ethics Commission voted under the Brown Act "emergency" provision (Section 54954.2), which states governmental bodies may take action on business not posted to their agenda "upon determination that an emergency



situation exists."

When I told Clark about the letter, she snorted. "Is my official response allowed to be 'Oh, please?'"

Sadly, I'm inclined to agree with Clark on that point.

I talked to Kopp about Johnson weeks ago. We discussed her alleged conflicts and her upcoming votes. And Friends of Ethics co-founder Larry Bush led the rallying cry on her potential vote long before the April 24 meeting of the Ethics Commission.

I'm cringing, because Kopp and Keane are right to sound the alarm about Johnson — but they blew it. The Ethics Commission had plenty of warning that Johnson's allegedly conflicted vote was coming up and plenty of time to agendize that discussion.

Whether they violated the law or not by failing to agendize their vote, the Ethics Commission ceded the moral high ground.

And in San Francisco politics, missteps are oft-used as fodder to blow away an opponent's critique — even if it's worth talking about.

It's time for every neighborhood to pony up to help the homeless, according to Supervisor Jane Kim. Just last week, said she would introduce a resolution calling for geographic equity in homeless services.

As the Board of Supervisors discussed a temporary homeless navigation center opening in the Mission, supervisors Hillary Ronen, Malla Cohen and Kim discussed the need for services to spread through The City.

"Homelessness isn't a single district issue and the entire city has to be a part of the solution," Kim said in a statement. "My constituents are homeowners, seniors, business-owners, families, and are some of the most compassionate and generous people in the City — but we need to see the rest of the City step up because my district already has the most homeless-serving shelters and services."

So, readers, would you support a homeless shelter or other services in your neighborhood? Get to typin'! I want to hear what you think.

On Guard prints the news and raises hell each week. Email Filz at joe@sfexaminer.com, and follow him on Twitter and Instagram @FilztheReporter.

The San Francisco Examiner

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California LEGISLATIVE INFORMATION

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54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrivable, downloadable, indexable, and electronically searchable by commonly used Internet search applications,

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(Amended by Stats. 2016, Ch. 265, Sec. 1. Effective January 1, 2017.)



San Francisco Administrative Code

**SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC;
APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



**Ethics Commission
City and County of San Francisco**

Minutes – March 27, 2017

**Minutes of the Regular Meeting of
The San Francisco Ethics Commission
March 27, 2017
Room 400 – City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
(Approved April 24, 2017)**

1. Call to order and roll call.

Chairperson Keane called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Peter Keane, Chairperson; Dafna Chiu, Vice-Chairperson; Paul Renne, Commissioner; Quentin L. Kopp, Commissioner. Note: Commissioner Beverly Hayon resigned in the days prior and was not present at this Meeting.

STAFF PRESENT: LeeAnn Pelham, Executive Director; Jessica Blome, Deputy Director; Johnny Hosey, Campaign Finance Assistant; Eric Willett, Auditor.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney.

OTHERS PRESENT: Larry Bush; Charles Marsteller; Ray Hartz; Marc Salomon; Elena Schmid; Marljane Pierson; Richard Peterson; Oliver Luby; Allegra Fortunati; Craig Weber; Kirin Lau; Louis Dillon; other unidentified members of the public.

MATERIALS DISTRIBUTED:

- February 27, 2017, draft minutes.
- March 23, 2017, Staff report on Limited Public Financing Program for the November 2016 Election and attachments.
- March 22, 2017, Staff report on Proposed Revised Method for Selection of Campaign Audits for the 2016 Audit Cycle and attachments.
- March 22, 2017, Commissioner Keane's Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.
- March 22, 2017, Education and Compliance Report and attachments.
- March 22, 2017, Enforcement Report and attachments.
- March 22, 2017, Executive Director's Report and attachments for the March 27, 2017, Regular Meeting.

2. Public comment on matters appearing or not appearing on the agenda.

Larry Bush expressed appreciation for former Commissioner Hayon's service to the Ethics Commission.

Charles Marsteller expressed appreciation for former Commissioner Hayon's service to the Ethics Commission.

Ray Hartz, Director of San Francisco Open Government, stated his belief that there is an ongoing fraud being perpetrated on the citizens of San Francisco by the Office of the Mayor.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

So, we are talking about the ongoing fraud being perpetrated on the citizens of San Francisco by the Office of the Mayor! From the findings of the FPPC: "Respondent, Luis Herrera, while serving as City Librarian for the San Francisco Public Library, failed to report gifts received from The Friends of the San Francisco Public Library on annual Statements of Economic Interests for calendar years 2009, 2010, and 2011 in violation of government code section 87300." He signed those statements with the following declaration: "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct." So, a City Department Head, appointed by the Mayor, perjured himself by lying year, after year, after year! Almost \$15,000 over those three years! And, at that point, it had become a custom for more than a decade! Did he do this knowingly and willfully?"

Mark Salomon stated the data provided on the Planning Department website was deficient as it pertains to Proposition J. Commissioner Kopp asked Chairperson Keane whether the issues raised by Mr. Salomon would be addressed in part by the Proposition J legislative proposal that evening. Chairperson Keane responded in the affirmative.

3. Discussion and possible action on draft minutes for the Commission's February 27, 2017, meeting.

Commissioner Renne made a spelling correction to the minutes.

Public Comment:

Ray Hartz stated his support for public commenters submitting 150 word summaries for inclusion within the minutes of Commission meetings.

Motion 170327-01 (Kopp/Renne): Moved, seconded, and passed (4-0) that the Commission approve the minutes for the February 27, 2017, regular meeting, as amended by Commissioner Renne.

4. Presentation and discussion of staff report on public financing in the 2016 City election.

Executive Director Pelham presented information summarizing the staff report on the Limited Public Financing Program for the November 2016 Election and attachments.

Commissioner Kopp asked clarifying questions regarding the maximum amount funding the Public Financing program per fiscal year. Executive Director Pelham confirmed \$7 million was the maximum amount allowable to fund the Public Financing program per fiscal year.

Commissioner Kopp asked how staff was going to determine the estimate of funds needed to fund the Public Financing program for the 2017-2018 fiscal year. Executive Director Pelham stated that an allocation formula based on \$2.75 per resident determines the funds necessary so long as the fund is not already at its maximum. She also noted the fund was currently at its maximum.

Commissioner Chiu asked whether the questions raised on page nine of the report would be addressed when the Ethics Commission was fully staffed. Executive Director Pelham confirmed that these questions, along with others raised in the Executive Director's report, will be addressed this Spring when the Policy team is fully staffed.

Commissioner Kopp asked whether suggestions made by participants of the program were integrated into the questions raised by page nine of the report. Executive Director Pelham responded in the affirmative and added that additional outreach efforts were forthcoming.

Public Comment:

Charles Marsteller, representing Friends of Ethics, expressed appreciation of the comprehensiveness of the report and drew attention to the *Arizona Freedom Club PAC vs. Bennett* case. He also stated there are provisions repealed by the Ethics Commission that Friends of Ethics were going to raise at upcoming Interested Persons Meetings.

Larry Bush, representing Friends of Ethics, expressed support for the reinstatement of identifying publicly financed candidates within the voter handbook and suggested an email be sent to every voter within a jurisdiction with publicly financed candidates to encourage voter participation.

Mark Salomon suggested that a control be put in place that prevents publicly financed candidates who are not elected from being awarded executive positions in City government within two years of the election.

5. Discussion and possible action on staff proposed revised method for selection of campaign audits for the 2016 audit cycle.

Executive Director Pelham presented information summarizing the staff report on a Proposed Revised Method for Selection of Campaign Audits for the 2016 Audit Cycle and attachments.

Commissioner Kopp asked whether Executive Director Pelham recommended continuing with an audit selection process that is discretionary rather than statutory. Executive Director Pelham responded that she supported a discretionary selection process.

Commissioner Chiu asked clarifying questions regarding the best practices of other Ethics Commissions in determining the percentage of committees audited and percentage of activity. Executive Director Pelham stated that an ordinance required the Los Angeles Ethics Commission to audit all committees with activity over a certain level.

Commissioner Kopp asked Executive Director Pelham to confirm whether she felt continuing an audit selection process that was at staff's discretion was the preferred method. Executive Director Pelham stated she did not currently have enough information to make a recommendation for statutory changes to the audit selection process.

Commissioner Chiu expressed support for the proposed audit selection process targeting committees with a higher level of financial activity.

Commissioner Renne expressed support for the proposed audit selection process targeting committees with a higher level of financial activity.

Public Comment:

Larry Bush suggested Major Donors be subject to audit as well as any committee that leaves 20 percent or more of its contributor information blank, and committees that have been served with a formal legal notice of violation by a City, State, or Federal agency.

Commissioner Renne asked a clarifying question regarding Mr. Bush's suggestion to audit Major Donors.

Larry Bush recommended a facial audit be conducted to determine whether Major Donor forms were properly filled out and submitted.

Ray Hartz expressed support for targeting the top 20 percent of committees for audit that have failed to file timely and/or properly during the election cycle.

Oliver Luby expressed support for a targeted audit selection process and made clarifying remarks regarding facial audits of Major Donors.

Mark Salomon expressed support for an audit selection process that engenders support from the community by proving the Ethics Commission was working for, and not against, the electorate.

Charles Marsteller brought to the attention of the public that slate mailers were under the purview of the Department of Elections and were not audited by the Ethics Commission.

6. Discussion and possible action on legislative proposal by Chairperson Keane to restore various contribution related restrictions enacted by Proposition J in November, 2000.

Chairperson Keane presented background information leading to the development of the Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.

Oliver Luby and Larry Bush presented information summarizing the Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.

Commissioner Renne asked a clarifying question regarding the determination of a \$50,000 threshold in section 1.126. Oliver Luby stated the amount was an existing threshold in section 1.126, which also mirrored that of a current proposal with regard to land use made by a member of the Board of Supervisors. He also recommended the City's disclosure system with the Ethics Commission be switched to an integrated campaign finance and City contract database to automate the filing process.

Commissioner Renne asked a clarifying question about the definition of Board on which an individual serves and how it applies to a Commissioner who is not elected. Oliver Luby replied he felt the definition in the original law was meant to refer to the Board of Supervisors specifically or possibly a State appointee.

Commissioner Renne asked a clarifying question regarding debarment in section G and whether a debarment notice was an automatic disqualification for an individual going forward with a contract. Oliver Luby replied that it was his understanding the ultimate decision moving forward in this case rested with the contracting officer, which was very similar to the Los Angeles law on which it is based. Commissioner Renne expressed concern that this allowed for a contractor to be found in violation and yet still be approved by a City agency that determined the contractor was too important. Oliver Luby stated that this situation had occurred to him as well, that he hoped Executive Director Pelham's time with the Los Angeles Ethics Commission would help provide an understanding of the reasoning behind the disbarment section, and that there may be situations where there are legal problems if debarment is automatic.

Commissioners Renne and Kopp thanked Mr. Luby.

Public Comment:

Ray Hartz stated his agreement that the definition of Board related to the Board of Supervisors who would select members of the Board of Supervisors to serve as Commissioners on other Boards. He also stated that the bodies which authorize these types of arrangements will go to immense lengths to hide and withhold public records that document wrongdoing.

Oliver Luby defined Board as something on which an individual serves to also include the Board of Education and Community College Board. He also stated the reason the term exists is because some contracts are approved by an elected official and some contracts are approved by a Board of elected officials.

Mark Salomon stated that politics in San Francisco centers around land use, where all the money and action is. He expressed concern that contracting for development projects and campaign contributions have shaped his community and led to displaced residents in the Mission District. He also expressed support for reinstating Proposition J to include the consultants of the developers, the attorneys of the developers, and various other people who exist to assist project expedition.

Charles Marsteller stated that 80 to 90 percent of campaign finance is connected to land use and that there were only a handful of key players running land use in San Francisco. He also expressed support for the broadening of Proposition J to address how land use and contracting affect campaign finance and the decisions made by elected officials.

Craig Weber drew attention to an appeal brought by a non-profit organization against Lennar Corporation to block development by them and Access Development in the Mission District. He felt that the San Francisco Chronicle editorial did not address the role of non-profit organizations that will block or provide support for members of the Board of Supervisors.

Kirin Lau, a member of RepresentUS, expressed support for implementing changes that slow down profit-driven development in favor of building families and communities in San Francisco.

Elena Schmid expressed support for a transparent process to reinstate various provisions of Proposition J.

Commissioner Kopp expressed a desire to submit this legislative proposal to the Board of Supervisors, but acknowledged legislative process must be followed.

Commissioner Renne echoed Commissioner Kopp and stated he wanted to take tentative action before sending the legislative proposal to the public and final approval by the Commission.

Executive Director Pelham reminded the Commission of the success of Proposition T, which was facilitated by the Commission conducting a thorough vetting of the proposal, and requested a timeframe for conducting interested persons meetings and appraisal by Staff and the City Attorney's office.

Chairperson Keane stated the interested persons meetings should take place over the next few weeks, that staff and the City Attorney's office should have a finished proposal to be voted on by the Commission during the April or May Commission meeting.

Commissioner Renne asked whether the Board of Supervisors should be included in this process as well.

Chairperson Keane stated that the intention was to present the proposal to the Board of Supervisors for adoption within 90 days, with the caveat that if it was not substantially adopted it will be put on the ballot in 2018.

Deputy City Attorney White requested additional time for the City Attorney's office to conduct a thorough legal analysis of the legislative proposal.

Commissioner Kopp and Chairperson Keane replied that the Commission may have to move forward without the City Attorney's office's assistance.

Commissioner Chiu proposed Staff and the City Attorney's office move as expeditiously as possible by conducting work in the following month for presentation at the April Commission meeting.

7. Discussion of Education and Compliance Report. A periodic update on various programmatic and operational highlights of the Education and Compliance division.

Executive Director Pelham highlighted the various outreach efforts and trainings regarding the April 3, 2017, Statement of Economic Interests Form 700 filing deadline.

Commissioner Chiu asked whether the number of people filing the Form 700 by paper would stay in the thousands or decrease as more people transitioned to electronically filing the Form 700. Executive Director Pelham answered the number of people filing the Form 700 by paper would stay the same.

Public Comment:

Ray Hartz stated his belief that there is a no penalty for filing false statements or for lying on the Form 700.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

The fatal flaw in this training effort regarding Statements of Economic Interest (Form 700) Annual Filings is that there appears to be no discussion of penalty for filing false statements. Documents are submitted under penalty of perjury, as we saw in my earlier comments, but there is no penalty for lying! City Librarian Luis Herrera, a City Department Head, was brought to the attention of the Ethics Commission which ignored the complaint. Individual citizens had to take Herrera to the FPPC in Sacramento to get action. Of the 33 Orders of Determination I hold from the SOTF, two thirds concern "The Friends of the SFPL." The findings regard either the withholding of public records or the interference with public discussion of this fraud being perpetrated on the citizens of San Francisco! I just want to make all of those required to file aware that they can lie without consequence!

Charles Marsteller expressed support for expanding the Form 700 filing requirement to include all parties and not just the top strata and asked the Commission if it was prepared to take this expanded filing requirement to the ballot if it failed at the Board of Supervisors.

Larry Bush expressed support for increasing, at the local level, the penalty for late filings of the Form 700.

8. Discussion of Enforcement Report. An update on various programmatic and operational highlights since the last monthly meeting.

Deputy Director Blome stated she has been attending 24-hour Plus trainings for supervisors put on by the City, researching the enforcement policies of the FPPC and FEC to develop new complaints procedures to shorten investigation timeframes, and attended a Sunshine Ordinance Task Force hearing on a complaint brought by Ray Hartz. She stated the Task Force found Mr. Hartz's public comment time was abridged by about seven or eight seconds and found the Commission in violation of the Sunshine Ordinance. She also stated a new case management system would be reviewed with the Controller's Office this week.

Commissioner Chiu asked a clarifying question regarding the possibility of installing a new case management system with funds available this fiscal year. Executive Director Pelham stated the procurement process may take longer, but Staff were aggressively pursuing a new system and funds were included in the new budget in addition to the possibility of funds available this fiscal year.

Commissioner Renne asked clarifying questions regarding the ruling by the Sunshine Ordinance Task Force.

Deputy City Attorney White stated the Commission's best practice would be to allow the speaker to have their allotted public comment time before asking clarifying questions. He also stated it is the view of the City Attorney's office that clarifying questions may be asked during the public comment time so long as the question and answer period did not subtract from the public commenter's allotted time.

Commissioner Renne asked a clarifying question regarding the proper procedure for a matter referred by the Sunshine Ordinance Task Force on a matter concerning the Ethics Commission.

Deputy City Attorney White confirmed the Ethics Commission would not hear a matter referred to it by the Sunshine Ordinance Task Force on a matter concerning the Ethics Commission and that in the such matters were referred to the Oakland Ethics Commission.

Commissioner Kopp asked a clarifying question regarding whether a statute of limitations pertained to items on page three of the report in the delinquent accounts section. Deputy Director Blome stated a collections statute of limitations did not apply to the Ethics Commission, but that she was unsure of the collections statute of limitations of the Bureau of Delinquent Revenue (BDR).

Public Comment:

Larry Bush urged the Commission to adopt a standard for action on complaints and recommended complaints of an official about to take office become a priority.

Ray Hartz stated he was the complainant in the Sunshine Ordinance Task Force case.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

This Ethics Commission is comprised of five members, four of whom are attorneys, with one being Dean Emeritus of Golden Gate Law School and another a former Superior Court Judge! I have repeatedly identified the comments that members of the public make at these meetings as "Constitutionally protected political free speech." Not once has any member of this body raised an objection! Thomas Aquinas teaches that "Willful ignorance of what one ought to know is a mortal sin." Instances where members of this body have either interfered with or attempted to censor public comment can be viewed as nothing other than willful And the behavior of other members, sitting in silence as it happens, can be viewed as nothing less than violations of their oaths of office! Interfering with or censoring public comment is bad enough, but, is truly egregious when those actions are both "knowing and willful"

Louis Dillon stated he filed a complaint with the Sunshine Ordinance Task Force for the closure of the stables in Golden Gate Park and brought the matter to previous Ethics Commission meetings to no avail. Mr. Dillon stated he plans to bring this matter to the attention to the current Commission.

9. Discussion of Executive Director's report.

Executive Director Pelham highlighted various areas of the report and mentioned meeting with newly sworn-in members of the Board of Supervisors to introduce the Commission and identify areas of shared interest.

Commissioner Chiu asked a clarifying question about the Behest Payments ordinance. Executive Director Pelham confirmed the ordinance becomes operative on January 1, 2018, and stated this date was when a system must be up and running to accept Form 803 payments.

Commissioner Kopp expressed concern regarding the length of time that has elapsed without a full complement of investigators on staff at the Ethics Commission and provided public notice of his intention to eliminate this situation. Chairperson Keane stated that he supports Commissioner Kopp's remarks.

Public Comment:

Larry Bush requested the following items be added to the policy agenda: a discussion of the criteria and cost to taxpayers of items reported on Form 803, the addition of timelines for the disclosure of contributions in the 10-day period after the second pre-election report, and the document retention policy to address cell phone usage.

Ray Hartz drew attention to pending legislation to strengthen the Whistleblower ordinance.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

On the matter of the Whistleblower Program I would refer the public to comments made by Dr. Derek Kerr included in the Ethics minutes of February 27, 2017 under agenda item eight. As a recipient of a very large settlement from the City of San Francisco for multiple violations of the program he is certainly well-positioned to speak to the issue. When Dr. Kerr states that "the burden of proof is stacked against whistleblowers," he is exactly right! In considering his argument I would also like for you to consider the following: "You may consider the ability of each party to produce evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence." The City is always in the position of providing stronger evidence, but, it is always in their interest to withhold such evidence even if doing so is unlawful.

Louis Dillon stated there was a disconnect between the people of the City and the people running the City and that he supported the opportunity to provide public comment.

Charles Marsteller expressed support for the budget process of the New York Ethics Commission, which allows the Commission to submit its budget to the Mayor's Office for comment and then send it to the City Council for full discussion in open session. He also expressed support for the Commission to receive a portion of the designated funds supplied by those applying for conditional use.

10. Discussed and invited public comment on whether to meet in closed session regarding the status of complaints received or initiated by the Ethics Commission, and took no action to enter into closed session.

Commissioner Kopp stated that since the investigator team consisted solely of Deputy Director Blome, he did not see anything new in the document that he would learn in closed session.

Commissioner Renne asked a clarifying question regarding the status of the continuation of show-cause hearings. Executive Director Pelham stated the show-cause hearings were further continued due to her inability to sit down with Deputy Director Blome.

Commissioner Renne stated he did not see the need to conduct a closed session or discussion regarding item 10 of the agenda.

Commissioner Kopp asked whether the 90-day rule with the District Attorney's office was being followed. Deputy Director Blome responded in the affirmative.

Public Comment:

None.

11. Discussion and possible action on items for future meetings.

Commissioner Kopp stated he had a number of items to supplement the Proposition J subject matter and reflect the time and effort of Friends of Ethics. He stated the following items must take the form of legislative action by the Board of Supervisors and/or a charter amendment submitted by the Commission: existing or proposed legislation to ensure a conflict of interest prohibition exists to prevent occurrences such as a member of the Planning Commission also being an officer of SPUR; recipients of Public Financing should be required to participate in three debates and candidates in receipt or not in receipt of Public Financing should be identified as such in the voter handbook; audit policy considerations should include slate matters being under the Ethics Commission rather than the Department of Elections and audit selection priority given to violators of campaign finance regulations as well as those that fail to disclose contributor information on their campaign statements; a regulation imposing a six month deadline to complete investigations of claimed violations; a charter amendment preventing an elected candidate currently under investigation from taking office; tickets to entertainment events given to public officials represent lost revenue for the City and should be prohibited; finalizing the document retention policy to include cell phones; action to calendar these suggestions for the April or May Commission meetings; the addition of a 10-day reporting period after the second pre-election report; an appointed officer or employee of the City shall automatically forfeit their position as a City employee when he/she becomes a candidate for election; non-profit housing entities should be prevented from using cash-out proceeds to finance campaigns.

Public Comment:

Ray Hartz stated he has thirty-three orders of determination from the Sunshine Ordinance Task Force and felt the Commission was ignoring them.

Louis Dillon expressed support for the changes he feels are going to take place in the Ethics Commission and the statements made by its Commissioners. He also stated he would be bringing to the Commission materials concerning his complaints and orders of determination regarding the stables in Golden Gate Park.

12. Additional opportunity for public comment on matters appearing or not appearing on the agenda pursuant to Ethics Commission Bylaws Article VII Section 2.

Commissioner Kopp recognized Bradley J. Kopp in attendance.

Public Comment:

None.

13. Adjournment.

Motion 170327-2 (Chiu/Kopp): Moved, seconded, and passed (4-0) that the Commission adjourn.

The meeting was adjourned at 8:30 PM.

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Local

Skirmish at City Planning over vote on affordable housing rate

By J.K. Dineen | April 26, 2017 | Updated: April 26, 2017 6:41pm

3

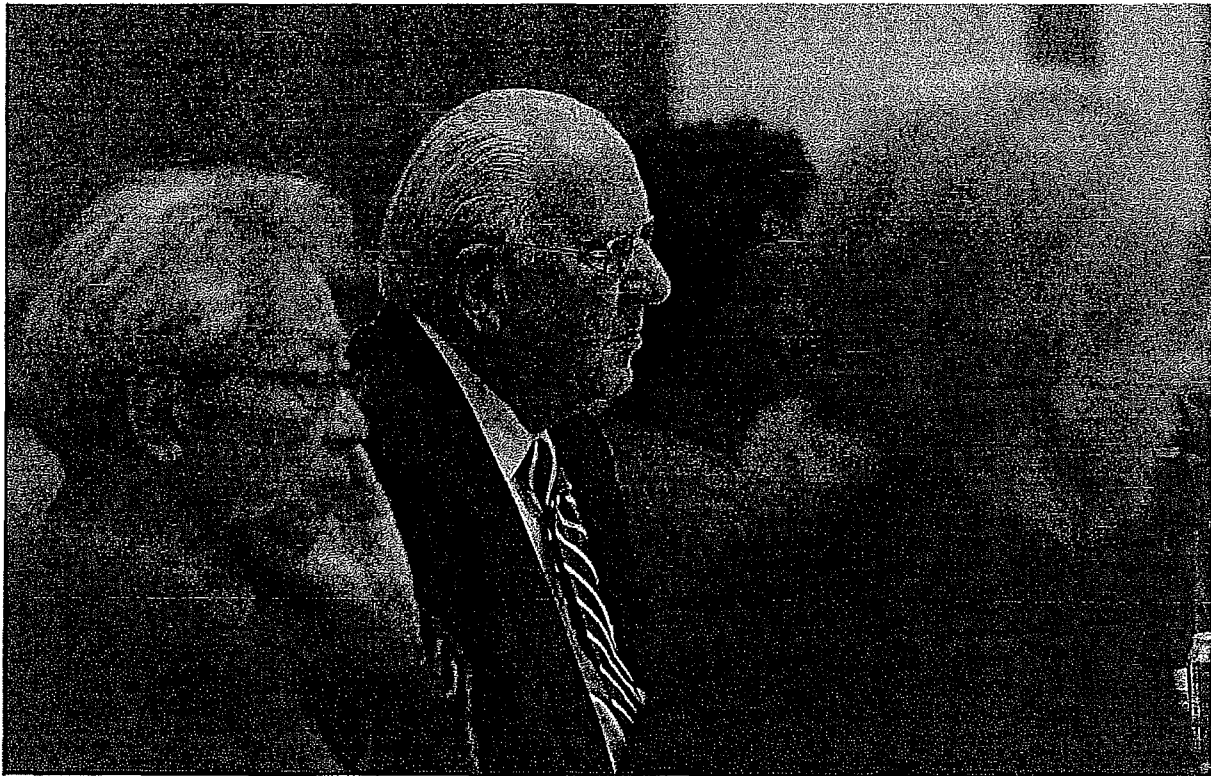


Photo: Michael Macor, The Chronicle

San Francisco planning commissioners (l to r) Hisashi Sugaya, Michael Antonini, Christine Johnson and Kathrin Moore, listen to public comments to Supervisor David Chiu's proposed Airbnb legislation at their weekly meeting in City Hall on Thursday August 7, 2014, in San Francisco, Calif.

The Planning Commission is expected to weigh in Thursday on the highly charged fight over how much affordable housing builders should be required to include in market-rate

developments.

But before the hearing could even start, a pregame skirmish broke out over whether one of the seven commissioners should be allowed to vote.

Critics say that **Christine Johnson**, one of four commissioners appointed by Mayor **Ed Lee**, should recuse herself because she recently took a job with SPUR, the urban think tank that mostly, but not always, takes positions favored by the city's development community.

Johnson told Lee in February that she planned to step down from the commission, but she agreed to stay on until the mayor found a replacement. In the meantime, she sought the advice of City Attorney **Dennis Herrera**, who sources say has determined that there is no conflict that would prevent Johnson from voting on the affordable housing policy legislation.

In an unusual act, the San Francisco Ethics Commission on Monday voted to send a letter asking that Johnson recuse herself. The vote was taken despite the action being a violation of the Brown Act, which regulates open meeting laws for legislative bodies in California. Under the Brown Act, those bodies are forbidden from taking action on items not on the agenda — the Johnson matter was not on the agenda.

During the hearing, Commissioners **Peter Keane** and **Quentin Kopp** both said the Brown Act violation was justified because with the Planning Commission vote Thursday it was imperative the letter be sent right away.

MORE FROM S.F. INSIDER



City wants some answers from PG&E about big SF blackout

More than a year out, Sheehy has competition in 2018 supes race

Ethics Commission Executive Director **LeeAnn Pelham** cautioned the commission against violating open-meeting laws, suggesting individual commissioners write personal letters to Johnson. Those letters would get the same message across “without compromising the commission’s commitment to open government processes, which we do believe is important, of course.”



Supes eye jail time for deceptive landlords

Johnson did not return calls or emails, but sources said she would release a statement Thursday at the Planning Commission meeting.

As for the inclusionary housing vote, it pits a group of moderate supervisors — **London Breed, Katy Tang and Ahsha Safai** — against stalwarts of the progressive wing **Aaron Peskin and Jane Kim**.

The vote is a follow-up “trailing ordinance” triggered by Proposition C from June 2016, which required developers to make 25 percent of units affordable. Peskin and Kim favor a law that requires developers of big projects to designate 24 percent of rental units as affordable — 15 percent for low-income earners and 9 percent for moderate-income earners.

Breed, Safai and Tang want to require builders to make 18 percent of on-site units affordable, but want to make a higher percentage of units available to moderate-income households.

Planning staff support the more moderate plan, which is in keeping with a city controller report on the percentage of affordable units that is economically feasible given the cost of land, labor, materials and capital.

“We agree with the controller’s analysis, which we think was a solid piece of work,” said

Planning Director **John Rahaim**. “We have had a number of developers say that 25 percent doesn’t work, that it’s too high.”

— *J.K. Dineen*

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J.K. Dineen
Reporter

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Young, Victor

From: Blome, Jessica (ETH)
Sent: Tuesday, August 29, 2017 3:24 PM
To: Laura Clark; SOTF, (BOS); Pelham, Leeann (ETH)
Subject: RE: Submission to Task Force regarding Ethics Commission - Complaint #17044

Mr. Young & Laura,

Our staff assistant completed her review for redaction of personally identifying information from Ethics Commission Chair Peter Keane today. The documents are too voluminous to email, so she is placing them on a CD. Laura may pick them up by tomorrow at noon at our office at 25 Van Ness, Ste. 220. If she does not appear by noon, we will mail the CD to her.

The Commission consents to Ms. Young providing the emails to the SOTF members at any point prior to the hearing on September 6 as long as she also provides a copy of the email she is producing to us.

Sincerely,

Jessica

Jessica L. Blome
Deputy Director, Enforcement & Legal Affairs
San Francisco Ethics Commission
(415) 252-3100
sfethics.org | jessica.blome@sfgov.org

Confidentiality Notice: This communication and its contents may contain confidential and/or legally privileged information. This communication contains information solely for the use of the intended recipient. Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws, including the San Francisco Charter, section C3.699-13. If you are not the intended recipient, please contact the sender immediately and destroy all copies of this communication.

From: Laura Clark [mailto:laura@yimbyaction.org]
Sent: Tuesday, August 29, 2017 3:20 PM
To: SOTF, (BOS) <sotf@sfgov.org>; Blome, Jessica (ETH) <jessica.blome@sfgov.org>; Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>
Subject: Submission to Task Force regarding Ethics Commission - Complaint #17044

Dear Victor,

I am submitting this email and its attachments to the Task Force regarding my complaint (#17044) against the Ethics Commission. They should accompany both my complaint letter of May 2, 2017 and my follow-up email of June 20, 2017. (Please let me know if you need me to send any of those prior documents again.)

The attachments further demonstrate that there was no need for immediate action at the Ethics Commission hearing on April 24, 2017 because the Ethics Commission knew about Christine Johnson **weeks before** the

Ethics Commission April 24, 2017 agenda was released, and could have put the matter on their agenda if it wanted to address those issues:

- Municipal Law Handbook (Sec. 2.6) showing that **staff knowledge alone** about Ms. Johnson's issues in early April precluded the Commission from acting as they did.
- Ethics Commission staff emails and attachments from **April 10-11, 2017** showing awareness by staff and Commissioner Kopp of alleged Christine Johnson conflicts and her upcoming votes.
- Larry Bush email to Ethics Commissioner Renne providing notice on **March 26, 2017** about the "apparent conflict of interest for Planning Commissioner Christine Johnson."
- May 9, 2017 article by Joe Fitzgerald Rodriguez in the SF Examiner: "I talked to Kopp about Johnson **weeks ago**. We discussed her alleged conflicts and her upcoming votes."

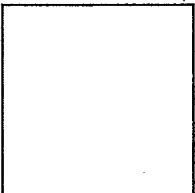
As Joe Fitzgerald Rodriguez said in his article, the Ethics Commission "blew it." They knew about these issues weeks before the Planning Commission vote. To say there was a "need for immediate action" on April 24 is just wrong. Despite the advice of both their attorney and Executive Director, the Ethics Commission acted on an unagendized matter in violation of the Brown Act simply because they thought that the rules did not apply to them.

Please note that I made a Sunshine Ordinance request to the Ethics Commission for records relevant to this matter **on July 13, 2017**. Some records were provided on August 8 and 23. **But more than six weeks after my original request over 100 emails to and from Commissioner Peter Keane have still not been provided to me, hindering my ability to make my case.** This is itself a violation of the Sunshine Ordinance.

Thank you,
Laura

Laura Foote Clark

Executive Director | Pronouns: she/her



c. [\(415\) 489-0197](tel:(415)489-0197)

e. laura@yimbyaction.org

[Check out our podcast INFILL](#)

Keep the pro-housing movement going - Become a member!

Young, Victor

From: Blome, Jessica (ETH)
Sent: Wednesday, May 10, 2017 1:18 PM
To: SOTF, (BOS)
Cc: laura@yimbyaction.org; Calvillo, Angela (BOS)
Subject: RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 17044
Attachments: 2017-05-10, SFEC Response to SOTF No. 17044 Final.pdf; Exhibit 1, Email, Christine Johnson, Shen Mtg..pdf; Exhibit 2, SFEC Ethics Letter - Johnson_PlanningComm.pdf

Victor,

The Ethics Commission's response to Complaint No. 17044 is attached. We understand that Commission Chair Peter Keane intends to personally appear before the Sunshine Ordinance Task Force when this matter is heard. Please confirm when the Task Force will hear this matter, so Mr. Keane can plan accordingly.

Sincerely,

Jessica L. Blome

Deputy Director, Enforcement & Legal Affairs
San Francisco Ethics Commission
(415) 252-3100
sfethics.org | jessica.blome@sfgov.org

From: SOTF, (BOS)
Sent: Wednesday, May 3, 2017 10:58 AM
To: Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>; Blome, Jessica (ETH) <jessica.blome@sfgov.org>; Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Cc: laura@yimbyaction.org; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint No. 17044

Good Morning:

The Ethics Commission has been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force. Please respond to the following complaint/request within five business days.

The Respondent is required to submit a written response to the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. This is your opportunity to provide a full explanation to allow the Task Force to be fully informed in considering your response prior its meeting.

Please include the following information in your response if applicable:

1. List all relevant records with descriptions that have been provided pursuant to the Complainant request.
2. Date the relevant records were provided to the Complainant.
3. Description of the method used, along with any relevant search terms used, to search for the relevant records.
4. Statement/declaration that all relevant documents have been provided, does not exist, or has been excluded.
5. Copy of the original request for records (if applicable).

Please refer to the File Number when submitting any new information and/or supporting documents pertaining to this complaint.

The Complainant alleges:

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 conducting discussions on an item not appearing on the posted agenda (Ethics Commission April 24, 2017, meeting).


Complaint Attached.

Both parties (Complainant and Respondent) will be contacted once a hearing date is determined. Attached is the Sunshine Ordinance Task Force's complaint procedures.

Thank you.

Victor Young
Administrator

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

PETER KEANE
CHAIRPERSON

DAINA CHIU
VICE-CHAIRPERSON

PAUL A. RENNE
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

May 10, 2017

Victor Young
Administrator
Sunshine Ordinance Task Force
victor.young@sfgov.org
By email only

RE: Sunshine Ordinance Task Force Complaint No. 17044
Laura Clark v. Ethics Commission

Dear Mr. Young:

I am the Chair of the Ethics Commission. Today, I write on behalf of the members of the Commission in response to Sunshine Ordinance Task Force Complaint No. 17044 in which Laura Foote Clark alleges that the Ethics Commission violated section 67.5 of the Sunshine Ordinance. For the reasons set forth below, the Commission denies Ms. Clark's allegations.

Relevant Facts

On Monday, April 24, 2017, the Commission met for its regular meeting. During public comment for Agenda Item 2, "Public comment on matters appearing or not appearing on the agenda," Friends of Ethics member Larry Bush advised the Commission that Planning Commissioner Christine Johnson intended to vote on a significant and controversial development matter at the Planning Commission's Thursday, April 27, regular meeting—just three days later. Mr. Bush submitted a copy of an email he had obtained from the Mayor's Office, which he said indicated that the City Attorney's Office advised Ms. Johnson she could vote on the matter even though she had recently accepted a position as San Francisco Director for the San Francisco Bay Area Planning and Urban Research Association (SPUR). A copy of the email Mr. Bush submitted to the Commission is attached as Exhibit 1. SPUR is a private organization run by developers who have expressed opinions about the City's housing policy. SPUR frequently takes pro-development positions relating to actions by San Francisco City government, many of which require decisions by the Planning Commission.

Mr. Bush relayed that the Planning Commission announced its decision to vote on the concerning matter in its agenda for the April 27 meeting, which had been posted that same day. SPUR had taken a position on the matter, and SPUR was vigorously lobbying the Planning Commission to vote in accordance with that position. In light of her dual role as Planning Commissioner and SPUR employee, Mr. Bush said Ms. Johnson would likely violate the City's Conflict of Interest Code if she voted on agenda items involving housing development. Yet,

according to Mr. Bush, despite urging from several concerned San Francisco citizens, Ms. Johnson has refused to resign.

The Commission was deeply concerned about the apparent conflict of interest posed by Ms. Johnson's potential vote at the Planning Commission meeting. After some discussion, Commissioner Quentin Kopp moved that the Commission send a letter to Ms. Johnson urging her to recuse herself from voting on matters that concern housing or development. Vice Chair Daina Chiu seconded the motion. Deputy City Attorney Andrew Shen and Executive Director LeeAnn Pelham then advised the Commission that voting to act on a matter that did not appear on the agenda may violate public notice requirements of the San Francisco Sunshine Ordinance or California Brown Act.

I noted Deputy City Attorney Shen's remarks for the record but explained that the Planning Commission meeting was only three days away, and the subject matter of Ms. Johnson's potential violation of the City's conflict of interest laws was clearly within the purview of the Commission. Before taking a vote, I called for public comment. Members of the public then expressed support for the Commission's decision. After public comment, Commissioner Kopp stated that the Commission must act; if the Commission waited until its next meeting, then the Commission would have missed its opportunity to express its view to Ms. Johnson about her conflict of interest before she voted. I agreed and called for a vote. Commissioner Kopp's motion passed unanimously 4-0, and I worked with Staff to draft and send a letter to Ms. Johnson the following day. A copy of the letter I sent Ms. Johnson is attached as Exhibit 2.

Response

The Sunshine Ordinance incorporates the California Brown Act at section 67.5 of the San Francisco Administrative Code. Section 54954.2(a)(1) of the Brown Act requires legislative bodies, such as the Ethics Commission, to post an agenda containing a brief general description of each item of business to be transacted and discussed at the meeting. Cal. Gov. Code § 54954.2(a)(1). The agency may not act or discuss any matter not appearing on the agenda, unless the legislative body decides "by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted" *Id.* at (b)(2).

Late Friday, April 21 or on Monday, April 24, 2017, the Planning Commission posted its agenda for its April 27 meeting, which announced the Planning Commission's upcoming vote on a matter critical to the future of housing policy within the City. That information came to light hours before the Ethics Commission's 5:30 p.m. meeting that same day, well after the Commission posted its own agenda on Thursday, April 20 to ensure compliance with applicable open meetings laws. After a rigorous public debate, the members of the Ethics Commission agreed with Commissioner Kopp's observation that Ms. Johnson's potential vote on the City's housing policy created a possible conflict of interest in violation of City law. The Commission unanimously decided that only immediate intervention could prevent Ms. Johnson's possible violation of conflict of interest rules. The Commission complied with the Sunshine Ordinance and Brown Act by properly invoking the immediacy exception to the 72-hour notice rule.

Furthermore, the Commission has the authority to act, even if a matter does not appear on the agenda, when a majority of commissioners determine that an "emergency" situation exists. *Id.* at (b)(1)

Section 54956.5 of the Brown Act defines emergency as an “activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.” Any decision related to housing policy in the City invokes policy considerations such as homelessness, earthquake preparedness, and City sanitation services. Ms. Johnson’s potential violation of San Francisco’s conflict of interest rules, therefore, almost certainly constitutes an emergency under the Brown Act because the consequences of her decision could impair public health, safety, or both.

Thank you for the opportunity to respond to Ms. Foote Clark’s complaint. If you have any questions, please contact me at (415) 252-3100.

Sincerely,

/s/ Peter Keane

Peter Keane, Chairperson

San Francisco Ethics Commission

C: Laura Foote Clark
 Members of the Ethics Commission

Tsang, Francis

From: Elliott, Nicole (MYR)
Sent: Wednesday, January 25, 2017 10:22 AM
To: Tsang, Francis; Rich, Ken (ECN)
Subject: RE: Christine Johnson

Francis,

Can you please set this up? I don't know why Ken has to do it – ultimately this is about whether or not this Commissioner stays on and whether or not she will have to recuse herself on issues that are impactful to the Administration.

Thanks.

Nicole A. Elliott
Director, Legislative & Government Affairs
Office of Mayor Edwin M. Lee
(415) 554-7940

From: Tsang, Francis
Sent: Wednesday, January 25, 2017 10:15 AM
To: Rich, Ken (ECN) <ken.rich@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: RE: Christine Johnson

Works for me, can you confirm with her that it works.

From: Rich, Ken (ECN)
Sent: Wednesday, January 25, 2017 9:55 AM
To: Tsang, Francis <francis.tsang@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: Christine Johnson

Hi Francis and Nikki –

Can we get something on the calendar with Andrew Shen next week? I promised Christine we would all meet with the City Attorney as soon as possible to discuss in more depth the likelihood of her having to recuse herself from items at the Planning Commission once she joins SPUR staff. Thanks.

I'm open at 11am next Thursday the 2nd (probably a good time for Christine). I'm going to have Andrew Shen hold that time. Let me know if that works for you.

Thanks.

Ken Rich
Director of Development
Office of Economic and Workforce Development
(415) 554-5194



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

By Electronic Mail

PETER KEANE
CHAIRPERSON

April 25, 2017

DAINA CHIU
VICE-CHAIRPERSON

Ms. Christine Johnson
Commissioner, San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

PAUL A. RENNE
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

Dear Commissioner Johnson:

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

The Ethics Commission has become aware through recent published news articles that you are serving as a Member of the City's Planning Commission while also serving as the Executive Director of the San Francisco chapter of the Bay Area Planning and Urban Research Association, or SPUR. We believe that serving in these dual roles may be incompatible and that actions you may take in your capacity as a Planning Commissioner on matters on which SPUR has an interest may violate the City's conflict of interest provisions (See San Francisco Campaign and Governmental Conduct Code Sections(s) 3.206, 3.214, *et al.*). As Planning Commissioner, your actions are subject to Article III, Chapter 2 of the City's Conflict of Interest provisions.

The Ethics Commission understands from the SPUR website that your duties as a San Francisco SPUR Director include "media inquiries, SPUR policies and positions, fundraising and city-level decisions in San Francisco." City law, however, prohibits "[a]n Officer or employee of the City from participating in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest."

The Members of the Ethics Commission unanimously urge you to recuse yourself from any and all actions as Planning Commissioner that may relate to SPUR or its activities in San Francisco. Specifically, we further urge you to recuse yourself from any discussion or actions related to housing or other development projects at the San Francisco Planning Commission Meeting of Thursday, April 27 2017, and during all such times that you are a Member of the Planning Commission.

Sincerely,

Peter Keane

Peter Keane
Chair, Ethics Commission



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

By Electronic Mail Only

PETER KEANE
CHAIRPERSON

May 3, 2017

DAINA CHIU
VICE-CHAIRPERSON

Ms. Laura Foote Clark
Executive Director
YIMBY Action

PAULA A. RENNE
COMMISSIONER

1390 Market Street Suite 200
San Francisco, CA 94102

QUENTIN L. KOPP
COMMISSIONER

By email: laura@yimbyaction.org

VACANT
COMMISSIONER

RE: Complaint Against San Francisco Ethics Commission

LEEANN PELHAM
EXECUTIVE DIRECTOR

Dear Ms. Clark,

I am writing to confirm receipt of your complaint against the members of the San Francisco Ethics Commission alleging violations of the Sunshine Ordinance and Brown Act, which you filed with our office by email on May 2, 2017.

Because the Commission is the subject of your complaint, and I am listed as a witness, our office is forwarding your complaint to the California Attorney General's Office and San Francisco District Attorney's Office for their consideration under section 54960 of the Brown Act. The Commission itself will take no further action regarding this matter due to the inherent conflict of interest present when any organization is asked to investigate itself.

If you have any questions, please contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "LeeAnn Pelham", with a long horizontal flourish extending to the right.

LeeAnn Pelham
Executive Director

cc: Members of the San Francisco Ethics Commission
Mayor Ed Lee
San Francisco Assessor Recorder Carmen Chu
Deputy City Attorney John Givner
Board Clerk Angela Calvillo
Steve Flaherty, Office of the San Francisco Controller
Sunshine Ordinance Task Force Administrator Victor Young



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

PETER KEANE
CHAIRPERSON

DAINA CHIU
VICE-CHAIRPERSON

PAULA A. RENNE
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

May 3, 2017

The Honorable Xavier Becerra, Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

District Attorney George Gascon
Investigations Department
850 Bryant Street, Rm 301
San Francisco, CA 94112

RE: Referral of Complaint Alleging Brown Act Violations by the San Francisco Ethics Commission

Dear Attorney General Becerra and District Attorney Gascon,

I am writing to refer to your offices a complaint filed yesterday with the San Francisco Ethics Commission against the members of the Commission for alleged violations of the San Francisco Sunshine Ordinance and California Brown Act.

Because the Commission is the subject of the Brown Act complaint and the complainant lists me as a witness, we are forwarding the complaint to your offices for any action you deem warranted per California Government Code Section 54960. The Commission itself will take no further action regarding this matter due to the inherent conflict of interest present when any organization is asked to investigate itself.

If you have any questions, please contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "LeeAnn Pelham", is written over the word "Sincerely,".

LeeAnn Pelham
Executive Director

cc: Members of the San Francisco Ethics Commission
Mayor Ed Lee
San Francisco Assessor Recorder Carmen Chu
Deputy City Attorney John Givner
Board Clerk Angela Calvillo
Steve Flaherty, Office of the San Francisco Controller
Sunshine Ordinance Task Force Administrator Victor Young

Blome, Jessica (ETH)

From: Pelham, Leeann (ETH)
Sent: Tuesday, May 2, 2017 5:10 PM
To: Blome, Jessica (ETH)
Subject: FW: Official complaint: Outrageous conduct by the city's "Ethics" Commission
Attachments: EthicsCommncomplaintformLFC.pdf; SunshineTaskForcecomplaintformLFC.pdf; UnethicalEthicsCommission.pdf; Letter Attachments.pdf

From: Laura Clark [mailto:laura@yimbyaction.org]
Sent: Tuesday, May 2, 2017 5:09 PM
To: Keane, Peter (ETH) <peter.keane@sfgov.org>; Renne, Paul (ETH) <paul.renne@sfgov.org>; Chiu, Daina (ETH) <daina.chiu@sfgov.org>; Kopps, Quentin (ETH) <quentin.kopps@sfgov.org>
Cc: dennis.herrera@sfgov.org; Cote, John (CAT) <john.cote@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; angela.cavillo@sfgov.org; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; District Attorney, (DAT) <districtattorney@sfgov.org>; Gascon, George (DAT) <george.gascon@sfgov.org>; Chu, Carmen (ASR) <carmen.chu@sfgov.org>; Lee, Mayor (MYR) <mayoredwinlee@sfgov.org>; Givner, Jon (CAT) <jon.givner@sfgov.org>; Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>; Shen, Andrew (CAT) <andrew.shen@sfgov.org>
Subject: Official complaint: Outrageous conduct by the city's "Ethics" Commission

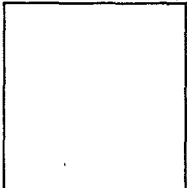
Dear appointed and elected public servants,

I was deeply disturbed to watch the Ethics Commission so brazenly break the law in relation to Commissioner Christine Johnson's alleged conflict of interest.

As an activist who relies upon the (inadequate) system of public notice, who rallies the community to speak at (inconvenient) hearings, it was disheartening to watch a Commission ignore it's duty to the public so outrageously.

Please find an official letter of complaint along with supporting documentation.

Thank you,
Laura Foote Clark
Executive Director | Pronouns: she/her



c. (415) 489-0197
e. laura@yimbyaction.org



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT FORM

Complainant Name (Optional)

Laura Clark

Date of Request:

5/2/17

Please identify the City Official(s) and/or Employee(s) against whom the complaint is being made:

All Ethics Commissioners

Please identify the Officials' and/or Employees' Board, Commission, Task Force, Department or other type of agency.

Name of the Custodian of Records tasked with providing the requested information:

- ☐ Alleged violation of public records access
☐ Alleged failure to provide Information in a timely manner in accordance with the provisions of the Sunshine Ordinance
☒ Alleged violation of a public meeting
Please indicate date of meeting if known

4/24/17

Sunshine Ordinance Section(s)

(If known, please cite specific provision(s) being violated)

Please describe the alleged violation. Use additional paper if needed. Please attach any relevant documentation which supports your complaint.

Ethics Commissioners discussed and officially acted on matter not appearing on meeting agenda, despite explicit advice from the City Attorney's office and Commission's Executive Director that these actions violated the Brown Act and Sunshine Ordinance. See attached letter.

Are you requesting a public hearing before the Sunshine Ordinance Task Force? ¹

☒ yes ☐ no

If yes, please provide 1 or more preferred method(s) of contact:

- ☐ Phone: _____ ☐ Mailing Address: _____
☐ Fax: _____
☒ Email: laura@yimbyaction.org ☐ Other: _____

Signature: Laura Clark

Date: 5/2/17

¹ NOTICE: PERSONAL INFORMATION THAT IS PROVIDED WHEN ADDRESSING A PUBLIC POLICY BODY IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE. MEMBERS OF THE PUBLIC ARE NOT REQUIRED TO PROVIDE PERSONAL IDENTIFYING INFORMATION, AND COMPLAINANTS MAY REMAIN ANONYMOUS. HOWEVER, FOR PROPER NOTICING AND PROCESSING OF A HEARING REQUEST, A RELIABLE MEANS OF CONTACT IS RECOMMENDED. PLEASE NOTE THAT THE SOTF ADMINISTRATOR WILL NOT REDACT ANY INFORMATION PROVIDED IN THESE SUBMISSIONS.

**San Francisco
Ethics Commission**



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**San Francisco Ethics Commission
Complaint Form**

Please type or print legibly, and attach additional pages if necessary.

Complainant Information*

Name of Complainant

Laura Clark

Address

4024 23rd Street

Zip

94114

Home Phone

Work Phone

415-489-0197

** If you wish to remain anonymous, do not complete this section or the verification below.*

Respondent Information

Name of Respondent

Peter Keane, Quentin Kopp, Paul Renne & Dalna Chiu

Business Title

Commissioners

City Department

Ethics Commission

Business Address

Work Phone

☐ *If more space is needed to list additional complainants or respondents, please check this box and attach additional sheets as necessary.*

Type of Allegation(s)

Check the appropriate box(es) below indicating the type of allegation(s) stated in this complaint.

- ☐ Campaign Finance Reform Ordinance
- ☐ Campaign Consultant Ordinance
- ☐ Lobbyist Ordinance
- ☒ Sunshine Ordinance (The Ethics Commission can only investigate alleged violations of the Sunshine Ordinance if: 1) you notified the Respondent of the alleged violation at least 40 days before filing a complaint with the Ethics Commission; and 2) the Respondent did not cure the alleged violation).
- ☐ Multiple Campaign Accounts
- ☐ False Endorsements on Campaign Literature
- ☐ Political Activity by City Officers and Employees
- ☐ Acceptance of Gifts, Contributions and Future Employment by Public Officials Who Approve Contracts and Other Public Benefits
- ☐ Contracts Between Members of Boards and Commissions and the City
- ☐ Dual Officeholding for Compensation
- ☐ City Officers Representing Private Parties Before City Boards and Commissions
- ☐ Intimidation or Retaliation by a City Officer or Employee Against Persons Who File Complaints with the Ethics Commission
- ☐ Financial Conflicts of Interest by City Officers and Employees
- ☐ Payment for Appointment to City Service or Employment
- ☐ Disclosure of Confidential Information by City Officers and Employees
- ☐ City Officer or Employee Appearing Before Former Board or Agency
- ☐ Private Compensation of City Officers and Employees for City Service
- ☐ City Officers or Employees Voting on Own Character or Conduct
- ☐ Decisions Involving Family Members
- ☐ Disclosure of Personal, Business or Professional Relationships
- ☐ Referrals
- ☐ Other** _____

*** Complaints that allege that a City officer or employee engaged in some form of misconduct that is not within the Commission's authority to resolve will be forwarded to the appropriate agency for review and possible enforcement.*

Description of Facts

Provide a specific description of the facts constituting the violation(s), including any relevant dates. Attach additional sheets as necessary.

Ethics Commissioners discussed and officially acted on matter not appearing on meeting agenda, despite explicit advice from the City Attorney's office and Commission's Executive Director that these actions violated the Brown Act and Sunshine Ordinance. See attached letter.

Witnesses

Provide the following information about person(s) you believe may have information that would assist the Commission in its evaluation of this complaint.

| | |
|--|---|
| Name of Witness | LeeAnn Pelham, Ethics Comm'n Executive Director |
| Address | |
| Phone | |
| Information you believe this person can provide to support the allegations stated in this complaint | Ms. Pelham advised the Ethics Commissioners during the 4/24/17 meeting that their actions would violate the Brown Act and Sunshine Ordinance. |

| | |
|--|---|
| Name of Witness | Andrew Shen, Esq., Deputy City Attorney |
| Address | |
| Phone | |
| Information you believe this person can provide to support the allegations stated in this complaint | Mr. Shen advised the Ethics Commissioners during the 4/24/17 meeting that their actions would violate the Brown Act and Sunshine Ordinance. |

- ☐ *If more space is needed to list additional witnesses, please check this box and attach additional sheets as necessary.*

Documentation

Attach copies of any documents in your possession that relate to the allegations stated in this complaint. In addition, indicate below whether there are other records, not in your possession, that you believe may assist the Commission in its evaluation of this complaint.

Additional Information

Provide any additional information that you believe may assist the Ethics Commission in its evaluation of this complaint.

Related Complaints

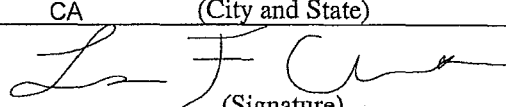
Have you made the same or similar allegations to another agency or court? Yes ☒ No ☐

If yes, identify the agency or court and attach a copy of any complaint or other written description of the allegations submitted to that agency or court.

Sunshine Task Force, District Attorney's office

Verification***

I certify under penalty of perjury under the laws of the State of California that the above statements are true and correct.

| | |
|--|---|
| Executed: 5/2/17 (Date) | At: San Francisco, CA (City and State) |
| By: Laura Clark (Typed or printed name) |  (Signature) |

*** Complaints need not be verified. Complainants who wish to remain anonymous should not complete the verification section above. However, please be advised that the Commission is not required to process or respond to unverified complaints.



Peter Keane, Esq., Chair
Honorable Quentin Köpp
Paul Renne, Esq.
Daina Chiu, Esq.

May 2, 2017

San Francisco Ethics Commission
25 Van Ness Ave., Ste. 220
San Francisco, CA 94102-6053

RE: The Ethics Commission's "Official Misconduct" for Willful Violation
of the Brown Act and Sunshine Ordinance

Dear Commissioners:

On Monday, April 24th, 2017, you voted to have the Ethics Commission send a letter to the Planning Commission about an alleged conflict of interest. You took this action despite the explicit warnings from the City Attorney and the Commission's Executive Director that this would violate the law.¹ You took this action knowing you were violating the very laws your body is responsible for enforcing. You have knowingly violated the Brown Act and Sunshine Ordinance.

The Ethics Commission became aware of the alleged conflict of Planning Commissioner Christine Johnson at your March 27, 2017 meeting, if not sooner, when Commissioner Köpp stated in open session that the Ethics Commission should discuss legislation to respond to this specific issue at a later meeting.² Instead of placing the item on the Agenda³ (as is required by the Brown Act) and giving Commissioner Johnson an opportunity to respond to the allegations, you decided – against advice of counsel – to ignore the law and voted to take action without the slightest attempt at a fair process.

You willfully took this vote despite explicit warnings from the City Attorney and the Commission's Executive Director that the action would violate the Brown Act – a law that your very own Commission is entrusted with enforcing.

¹ Cal. Govt. Code section 54954.2; copy attached.

² S.F. Chronicle, "Skirmish at City Planning Over Vote on Affordable Housing Rate," 4/26/17; minutes attached.

³ Agenda attached.

1390 Market Street Suite 200 - San Francisco, CA 94102 | hello@yimbyaction.org | 415.489.0197

YIMBY Action empowers community stakeholders to advocate for affordable and market rate housing, with the goal of bringing down the cost of housing in San Francisco and the Bay Area.



Not only did your vote clearly violate the Brown Act and Sunshine Ordinance,⁴ your willful violation and complete disregard of these state and local laws constitutes official misconduct under the City Charter.⁵ You committed official misconduct when you recklessly ignored the advice of the City Attorney and Executive Director and brazenly voted to send a letter without proper public notice. The law prohibits your action because the matter did not appear on the meeting agenda.

The requirement to notify the public and interested parties that a governmental body will discuss and potentially take action on an item by first publicly posting the item on a meeting agenda is a fundamental and long-standing tenet of our democratic process.⁶ As activists who rely on these public postings, we are outraged that this fundamental right of the people was so willfully ignored. Because you did not comply with this basic notice requirement, Ms. Johnson, other Planning Commissioners, SPUR, and other members of the public were deprived of the opportunity to respond to the allegations or otherwise provide input on this important policy issue. You were deprived of these viewpoints before making your decision. This violates the law – *the exact law the Ethics Commission was created to enforce.*

This breach of the public trust is especially appalling given the mission and purpose of the Ethics Commission to ensure integrity and openness in City government. The Ethics Commission is entrusted with enforcing the very open meeting law which you knowingly violated. How can the public respect an enforcer that fails to follow its own rules? If you cannot respect these laws or fundamental ethical considerations, then you should not be on the Ethics Commission.

The undersigned therefore call on you to immediately resign from the Commission. In addition, by copy of this letter, we call on each of your appointing authorities to suspend you

⁴ S.F. Admin. Code section 67.5; copy attached.

⁵ Charter section 15.505(e) ["official misconduct" includes "any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law"].

⁶ Cal. Govt. Code section 54950 ["The people insist on remaining informed so that they may retain control over the instruments they have created."]; S.F. Admin. Code section 67.1 ["The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information."].

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from the Commission, if you will not resign voluntarily. Your appointing authorities are permitted to remove you under the Charter due to your willful misconduct. San Francisco residents require Commissioners who will follow the laws they are entrusted to enforce.⁷ We also trust that you will cure and correct this egregious legal violation as soon as possible.

By copy of this letter, we also call on District Attorney George Gascon to prosecute you criminally, given the willful nature of your violation, as he is empowered to do under state law.⁸ Moreover, we believe that this matter should be reviewed by the Sunshine Task Force, and therefore are filing the attached complaint. Finally, given that the Ethics Commission itself has the authority to enforce the Sunshine Ordinance, an Ethics Commission complaint is also attached; we trust that the Ethics Commission will refer this complaint to the Attorney General or other uncompromised enforcement entity.

Your action at the meeting on Monday, April 24th has seriously eroded the credibility of this important Commission and your personal credibility as public servants. We hope that you appreciate the gravity of your actions and respond accordingly.

Sincerely,

Laura Clark

Sonja Trauss

Laura Fingal-Surma

Tiffany Loewenberg

Madelaine Boyd

Karin Payson

Deanna Surma

⁷ Charter section 15.105.

⁸ Cal. Govt. Code section 54959.



cc: **City Attorney Dennis Herrera** (as appointing authority for Chairman Keane)
Board Clerk Angela Calvillo (on behalf of the Board of Supervisors, as appointing authority for Commissioner Kopp)
District Attorney George Gascon (as appointing authority for Commissioner Renne and pursuant to his enforcement authority under the Brown Act)
Assessor-Recorder Carmen Chu (as appointing authority for Commissioner Chiu)
Sunshine Ordinance Task Force (see attached complaint form)
Mayor Edwin Lee
Ethics Commission Executive Director LeeAnn Pelham (see attached complaint form)
Deputy City Attorney John Givner
Deputy City Attorney Andrew Shen



California LEGISLATIVE INFORMATION

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64954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrivable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(III) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(IV) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (I), (II), and (III) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(I) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(II) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(Amended by Stats. 2016, Ch. 265, Sec. 1, Effective January 1, 2017.)



San Francisco Administrative Code

**SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC;
APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



**Ethics Commission
City and County of San Francisco**

Minutes – March 27, 2017

**Minutes of the Regular Meeting of
The San Francisco Ethics Commission
March 27, 2017
Room 400 – City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
(Approved April 24, 2017)**

1. Call to order and roll call.

Chairperson Keane called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Peter Keane, Chairperson; Dalna Chiu, Vice-Chairperson; Paul Renne, Commissioner; Quentin L. Kopp, Commissioner. Note: Commissioner Beverly Hayon resigned in the days prior and was not present at this Meeting.

STAFF PRESENT: LeeAnn Pelham, Executive Director; Jessica Blome, Deputy Director; Johnny Hosey, Campaign Finance Assistant; Eric Willett, Auditor.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney.

OTHERS PRESENT: Larry Bush; Charles Marsteller; Ray Hartz; Marc Salomon; Elena Schmid; Marljane Plerson; Richard Peterson; Oliver Luby; Allegra Fortunati; Craig Weber; Kirin Lau; Louis Dillon; other unidentified members of the public.

MATERIALS DISTRIBUTED:

- February 27, 2017, draft minutes.
- March 23, 2017, Staff report on Limited Public Financing Program for the November 2016 Election and attachments.
- March 22, 2017, Staff report on Proposed Revised Method for Selection of Campaign Audits for the 2016 Audit Cycle and attachments.
- March 22, 2017, Commissioner Keane's Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.
- March 22, 2017, Education and Compliance Report and attachments.
- March 22, 2017, Enforcement Report and attachments.
- March 22, 2017, Executive Director's Report and attachments for the March 27, 2017, Regular Meeting.

2. Public comment on matters appearing or not appearing on the agenda.

Larry Bush expressed appreciation for former Commissioner Hayon's service to the Ethics Commission.

Charles Marsteller expressed appreciation for former Commissioner Hayon's service to the Ethics Commission.

Ray Hartz, Director of San Francisco Open Government, stated his belief that there is an ongoing fraud being perpetrated on the citizens of San Francisco by the Office of the Mayor.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

So, we are talking about the ongoing fraud being perpetrated on the citizens of San Francisco by the Office of the Mayor. From the findings of the FPPC: "Respondent, Luis Herrera, while serving as City Librarian for the San Francisco Public Library, failed to report gifts received from The Friends of the San Francisco Public Library on annual Statements of Economic Interests for calendar years 2009, 2010, and 2011 in violation of government code section 87300." He signed those statements with the following declaration: "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct." So, a City Department Head, appointed by the Mayor, perjured himself by lying year, after year, after year! Almost \$15,000 over those three years! And, at that point, it had become a custom for more than a decade! Did he do this knowingly and willfully?"

Mark Salomon stated the data provided on the Planning Department website was deficient as it pertains to Proposition J. Commissioner Kopp asked Chairperson Keane whether the issues raised by Mr. Salomon would be addressed in part by the Proposition J legislative proposal that evening. Chairperson Keane responded in the affirmative.

3. Discussion and possible action on draft minutes for the Commission's February 27, 2017, meeting.

Commissioner Renne made a spelling correction to the minutes.

Public Comment:

Ray Hartz stated his support for public commenters submitting 150 word summaries for inclusion within the minutes of Commission meetings.

Motion 170327-01 (Kopp/Renne): Moved, seconded, and passed (4-0) that the Commission approve the minutes for the February 27, 2017, regular meeting, as amended by Commissioner Renne.

4. Presentation and discussion of staff report on public financing in the 2016 City election.

Executive Director Pelham presented information summarizing the staff report on the Limited Public Financing Program for the November 2016 Election and attachments.

Commissioner Kopp asked clarifying questions regarding the maximum amount funding the Public Financing program per fiscal year. Executive Director Pelham confirmed \$7 million was the maximum amount allowable to fund the Public Financing program per fiscal year.

Commissioner Kopp asked how staff was going to determine the estimate of funds needed to fund the Public Financing program for the 2017-2018 fiscal year. Executive Director Pelham stated that an allocation formula based on \$2.75 per resident determines the funds necessary so long as the fund is not already at its maximum. She also noted the fund was currently at its maximum.

Commissioner Chiu asked whether the questions raised on page nine of the report would be addressed when the Ethics Commission was fully staffed. Executive Director Pelham confirmed that these questions, along with others raised in the Executive Director's report, will be addressed this Spring when the Policy team is fully staffed.

Commissioner Kopp asked whether suggestions made by participants of the program were integrated into the questions raised by page nine of the report. Executive Director Pelham responded in the affirmative and added that additional outreach efforts were forthcoming.

Public Comment:

Charles Marsteller, representing Friends of Ethics, expressed appreciation of the comprehensiveness of the report and drew attention to the *Arizona Freedom Club PAC vs. Bennett* case. He also stated there are provisions repealed by the Ethics Commission that Friends of Ethics were going to raise at upcoming Interested Persons Meetings.

Larry Bush, representing Friends of Ethics, expressed support for the reinstatement of identifying publicly financed candidates within the voter handbook and suggested an email be sent to every voter within a jurisdiction with publicly financed candidates to encourage voter participation.

Mark Salomon suggested that a control be put in place that prevents publicly financed candidates who are not elected from being awarded executive positions in City government within two years of the election.

5. Discussion and possible action on staff proposed revised method for selection of campaign audits for the 2016 audit cycle.

Executive Director Pelham presented information summarizing the staff report on a Proposed Revised Method for Selection of Campaign Audits for the 2016 Audit Cycle and attachments.

Commissioner Kopp asked whether Executive Director Pelham recommended continuing with an audit selection process that is discretionary rather than statutory. Executive Director Pelham responded that she supported a discretionary selection process.

Commissioner Chiu asked clarifying questions regarding the best practices of other Ethics Commissions in determining the percentage of committees audited and percentage of activity. Executive Director Pelham stated that an ordinance required the Los Angeles Ethics Commission to audit all committees with activity over a certain level.

Commissioner Kopp asked Executive Director Pelham to confirm whether she felt continuing an audit selection process that was at staff's discretion was the preferred method. Executive Director Pelham stated she did not currently have enough information to make a recommendation for statutory changes to the audit selection process.

Commissioner Chiu expressed support for the proposed audit selection process targeting committees with a higher level of financial activity.

Commissioner Renne expressed support for the proposed audit selection process targeting committees with a higher level of financial activity.

Public Comment:

Larry Bush suggested Major Donors be subject to audit as well as any committee that leaves 20 percent or more of its contributor information blank, and committees that have been served with a formal legal notice of violation by a City, State, or Federal agency.

Commissioner Renne asked a clarifying question regarding Mr. Bush's suggestion to audit Major Donors.

Larry Bush recommended a facial audit be conducted to determine whether Major Donor forms were properly filled out and submitted.

Ray Hartz expressed support for targeting the top 20 percent of committees for audit that have failed to file timely and/or properly during the election cycle.

Oliver Luby expressed support for a targeted audit selection process and made clarifying remarks regarding facial audits of Major Donors.

Mark Salomon expressed support for an audit selection process that engenders support from the community by proving the Ethics Commission was working for, and not against, the electorate.

Charles Marsteller brought to the attention of the public that slate mailers were under the purview of the Department of Elections and were not audited by the Ethics Commission.

6. Discussion and possible action on legislative proposal by Chairperson Keane to restore various contribution related restrictions enacted by Proposition J in November, 2000.

Chairperson Keane presented background information leading to the development of the Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.

Oliver Luby and Larry Bush presented information summarizing the Proposals to Restore Provisions of Proposition J (2000) cover memo and attachments.

Commissioner Renne asked a clarifying question regarding the determination of a \$50,000 threshold in section 1.126. Oliver Luby stated the amount was an existing threshold in section 1.126, which also mirrored that of a current proposal with regard to land use made by a member of the Board of Supervisors. He also recommended the City's disclosure system with the Ethics Commission be switched to an integrated campaign finance and City contract database to automate the filing process.

Commissioner Renne asked a clarifying question about the definition of Board on which an individual serves and how it applies to a Commissioner who is not elected. Oliver Luby replied he felt the definition in the original law was meant to refer to the Board of Supervisors specifically or possibly a State appointee.

Commissioner Renne asked a clarifying question regarding debarment in section G and whether a debarment notice was an automatic disqualification for an individual going forward with a contract. Oliver Luby replied that it was his understanding the ultimate decision moving forward in this case rested with the contracting officer, which was very similar to the Los Angeles law on which it is based. Commissioner Renne expressed concern that this allowed for a contractor to be found in violation and yet still be approved by a City agency that determined the contractor was too important. Oliver Luby stated that this situation had occurred to him as well, that he hoped Executive Director Pelham's time with the Los Angeles Ethics Commission would help provide an understanding of the reasoning behind the disbarment section, and that there may be situations where there are legal problems if debarment is automatic.

Commissioners Renne and Kopp thanked Mr. Luby.

Public Comment:

Ray Hartz stated his agreement that the definition of Board related to the Board of Supervisors who would select members of the Board of Supervisors to serve as Commissioners on other Boards. He also stated that the bodies which authorize these types of arrangements will go to immense lengths to hide and withhold public records that document wrongdoing.

Oliver Luby defined Board as something on which an individual serves to also include the Board of Education and Community College Board. He also stated the reason the term exists is because some contracts are approved by an elected official and some contracts are approved by a Board of elected officials.

Mark Salomon stated that politics in San Francisco centers around land use, where all the money and action is. He expressed concern that contracting for development projects and campaign contributions have shaped his community and led to displaced residents in the Mission District. He also expressed support for reinstating Proposition J to include the consultants of the developers, the attorneys of the developers, and various other people who exist to assist project expedition.

Charles Marsteller stated that 80 to 90 percent of campaign finance is connected to land use and that there were only a handful of key players running land use in San Francisco. He also expressed support for the broadening of Proposition J to address how land use and contracting affect campaign finance and the decisions made by elected officials.

Craig Weber drew attention to an appeal brought by a non-profit organization against Lennar Corporation to block development by them and Access Development in the Mission District. He felt that the San Francisco Chronicle editorial did not address the role of non-profit organizations that will block or provide support for members of the Board of Supervisors.

Kirin Lau, a member of RepresentUS, expressed support for implementing changes that slow down profit-driven development in favor of building families and communities in San Francisco.

Elena Schmid expressed support for a transparent process to reinstate various provisions of Proposition J.

Commissioner Kopp expressed a desire to submit this legislative proposal to the Board of Supervisors, but acknowledged legislative process must be followed.

Commissioner Renne echoed Commissioner Kopp and stated he wanted to take tentative action before sending the legislative proposal to the public and final approval by the Commission.

Executive Director Pelham reminded the Commission of the success of Proposition T, which was facilitated by the Commission conducting a thorough vetting of the proposal, and requested a timeframe for conducting interested persons meetings and appraisal by Staff and the City Attorney's office.

Chairperson Keane stated the interested persons meetings should take place over the next few weeks, that staff and the City Attorney's office should have a finished proposal to be voted on by the Commission during the April or May Commission meeting.

Commissioner Renne asked whether the Board of Supervisors should be included in this process as well.

Chairperson Keane stated that the intention was to present the proposal to the Board of Supervisors for adoption within 90 days, with the caveat that if it was not substantially adopted it will be put on the ballot in 2018.

Deputy City Attorney White requested additional time for the City Attorney's office to conduct a thorough legal analysis of the legislative proposal.

Commissioner Kopp and Chairperson Keane replied that the Commission may have to move forward without the City Attorney's office's assistance.

Commissioner Chiu proposed Staff and the City Attorney's office move as expeditiously as possible by conducting work in the following month for presentation at the April Commission meeting.

7. Discussion of Education and Compliance Report. A periodic update on various programmatic and operational highlights of the Education and Compliance division.

Executive Director Pelham highlighted the various outreach efforts and trainings regarding the April 3, 2017, Statement of Economic Interests Form 700 filing deadline.

Commissioner Chiu asked whether the number of people filing the Form 700 by paper would stay in the thousands or decrease as more people transitioned to electronically filing the Form 700. Executive Director Pelham answered the number of people filing the Form 700 by paper would stay the same.

Public Comment:

Ray Hartz stated his belief that there is a no penalty for filing false statements or for lying on the Form 700.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

The fatal flaw in this training effort regarding Statements of Economic Interest (Form 700) Annual Filings is that there appears to be no discussion of penalty for filing false statements. Documents are submitted under penalty of perjury, as we saw in my earlier comments, but there is no penalty for lying! City Librarian Luis Herrera, a City Department Head, was brought to the attention of the Ethics Commission which ignored the complaint. Individual citizens had to take Herrera to the FPPC in Sacramento to get action. Of the 33 Orders of Determination I hold from the SOTF, two thirds concern "The Friends of the SFPL." The findings regard either the withholding of public records or the interference with public discussion of this fraud being perpetrated on the citizens of San Francisco! I just want to make all of those required to file aware that they can lie without consequence!

Charles Marsteller expressed support for expanding the Form 700 filing requirement to include all parties and not just the top strata and asked the Commission if it was prepared to take this expanded filing requirement to the ballot if it failed at the Board of Supervisors.

Larry Bush expressed support for increasing, at the local level, the penalty for late filings of the Form 700.

8. Discussion of Enforcement Report. An update on various programmatic and operational highlights since the last monthly meeting.

Deputy Director Blome stated she has been attending 24-hour Plus trainings for supervisors put on by the City, researching the enforcement policies of the FPPC and FEC to develop new complaints procedures to shorten investigation timeframes, and attended a Sunshine Ordinance Task Force hearing on a complaint brought by Ray Hartz. She stated the Task Force found Mr. Hartz's public comment time was abridged by about seven or eight seconds and found the Commission in violation of the Sunshine Ordinance. She also stated a new case management system would be reviewed with the Controller's Office this week.

Commissioner Chiu asked a clarifying question regarding the possibility of installing a new case management system with funds available this fiscal year. Executive Director Pelham stated the procurement process may take longer, but Staff were aggressively pursuing a new system and funds were included in the new budget in addition to the possibility of funds available this fiscal year.

Commissioner Renne asked clarifying questions regarding the ruling by the Sunshine Ordinance Task Force.

Deputy City Attorney White stated the Commission's best practice would be to allow the speaker to have their allotted public comment time before asking clarifying questions. He also stated it is the view of the City Attorney's office that clarifying questions may be asked during the public comment time so long as the question and answer period did not subtract from the public commenter's allotted time.

Commissioner Renne asked a clarifying question regarding the proper procedure for a matter referred by the Sunshine Ordinance Task Force on a matter concerning the Ethics Commission.

Deputy City Attorney White confirmed the Ethics Commission would not hear a matter referred to it by the Sunshine Ordinance Task Force on a matter concerning the Ethics Commission and that in such matters were referred to the Oakland Ethics Commission.

Commissioner Kopp asked a clarifying question regarding whether a statute of limitations pertained to items on page three of the report in the delinquent accounts section. Deputy Director Blome stated a collections statute of limitations did not apply to the Ethics Commission, but that she was unsure of the collections statute of limitations of the Bureau of Delinquent Revenue (BDR).

Public Comment:

Larry Bush urged the Commission to adopt a standard for action on complaints and recommended complaints of an official about to take office become a priority.

Ray Hartz stated he was the complainant in the Sunshine Ordinance Task Force case.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by the Ethics Commission:

This Ethics Commission is comprised of five members, four of whom are attorneys, with one being Dean Emeritus of Golden Gate Law School and another a former Superior Court Judge! I have repeatedly identified the comments that members of the public make at these meetings as "Constitutionally protected political free speech." Not once has any member of this body raised an objection! Thomas Aquinas teaches that "Willful ignorance of what one ought to know is a mortal sin." Instances where members of this body have either interfered with or attempted to censor public comment can be viewed as nothing other than willful. And the behavior of other members, sitting in silence as it happens, can be viewed as nothing less than violations of their oaths of office! Interfering with or censoring public comment is bad enough, but, is truly egregious when those actions are both "knowing and willful!"

Louis Dillon stated he filed a complaint with the Sunshine Ordinance Task Force for the closure of the stables in Golden Gate Park and brought the matter to previous Ethics Commission meetings to no avail. Mr. Dillon stated he plans to bring this matter to the attention of the current Commission.

9. Discussion of Executive Director's report.

Executive Director Pelham highlighted various areas of the report and mentioned meeting with newly sworn-in members of the Board of Supervisors to introduce the Commission and identify areas of shared interest.

Commissioner Chiu asked a clarifying question about the Behested Payments ordinance. Executive Director Pelham confirmed the ordinance becomes operative on January 1, 2018, and stated this date was when a system must be up and running to accept Form 803 payments.

Commissioner Kopp expressed concern regarding the length of time that has elapsed without a full complement of investigators on staff at the Ethics Commission and provided public notice of his intention to eliminate this situation. Chairperson Keane stated that he supports Commissioner Kopp's remarks.

Public Comment:

Larry Bush requested the following items be added to the policy agenda: a discussion of the criteria and cost to taxpayers of items reported on Form 803, the addition of timelines for the disclosure of contributions in the 10-day period after the second pre-election report, and the document retention policy to address cell phone usage.

Ray Hartz drew attention to pending legislation to strengthen the Whistleblower ordinance.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

On the matter of the Whistleblower Program I would refer the public to comments made by Dr. Derek Kerr included in the Ethics minutes of February 27, 2017 under agenda item eight. As a recipient of a very large settlement from the City of San Francisco for multiple violations of the program he is certainly well-positioned to speak to the issue. When Dr. Kerr states that "the burden of proof is stacked against whistleblowers," he is exactly right. In considering his argument I would also like for you to consider the following: "You may consider the ability of each party to produce evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence." The City is always in the position of providing stronger evidence, but, it is always in their interest to withhold such evidence even if doing so is unlawful.

Louis Dillon stated there was a disconnect between the people of the City and the people running the City and that he supported the opportunity to provide public comment.

Charles Marsteller expressed support for the budget process of the New York Ethics Commission, which allows the Commission to submit its budget to the Mayor's Office for comment and then send it to the City Council for full discussion in open session. He also expressed support for the Commission to receive a portion of the designated funds supplied by those applying for conditional use.

10. Discussed and invited public comment on whether to meet in closed session regarding the status of complaints received or initiated by the Ethics Commission, and took no action to enter into closed session.

Commissioner Kopp stated that since the investigator team consisted solely of Deputy Director Blome, he did not see anything new in the document that he would learn in closed session.

Commissioner Renne asked a clarifying question regarding the status of the continuation of show-cause hearings. Executive Director Pelham stated the show-cause hearings were further continued due to her inability to sit down with Deputy Director Blome.

Commissioner Renne stated he did not see the need to conduct a closed session or discussion regarding item 10 of the agenda.

Commissioner Kopp asked whether the 90-day rule with the District Attorney's office was being followed. Deputy Director Blome responded in the affirmative.

Public Comment:

None.

11. Discussion and possible action on items for future meetings.

Commissioner Kopp stated he had a number of items to supplement the Proposition J subject matter and reflect the time and effort of Friends of Ethics. He stated the following items must take the form of legislative action by the Board of Supervisors and/or a charter amendment submitted by the Commission: existing or proposed legislation to ensure a conflict of interest prohibition exists to prevent occurrences such as a member of the Planning Commission also being an officer of SPUR; recipients of Public Financing should be required to participate in three debates and candidates in receipt or not in receipt of Public Financing should be identified as such in the voter handbook; audit policy considerations should include state matters being under the Ethics Commission rather than the Department of Elections and audit selection priority given to violators of campaign finance regulations as well as those that fail to disclose contributor information on their campaign statements; a regulation imposing a six month deadline to complete investigations of claimed violations; a charter amendment preventing an elected candidate currently under investigation from taking office; tickets to entertainment events given to public officials represent lost revenue for the City and should be prohibited; finalizing the document retention policy to include cell phones; action to calendar these suggestions for the April or May Commission meetings; the addition of a 10-day reporting period after the second pre-election report; an appointed officer or employee of the City shall automatically forfeit their position as a City employee when he/she becomes a candidate for election; non-profit housing entities should be prevented from using cash-out proceeds to finance campaigns.

Public Comment:

Ray Hartz stated he has thirty-three orders of determination from the Sunshine Ordinance Task Force and felt the Commission was ignoring them.

Louis Dillon expressed support for the changes he feels are going to take place in the Ethics Commission and the statements made by its Commissioners. He also stated he would be bringing to the Commission materials concerning his complaints and orders of determination regarding the stables in Golden Gate Park.

12. Additional opportunity for public comment on matters appearing or not appearing on the agenda pursuant to Ethics Commission Bylaws Article VII Section 2.

Commissioner Kopp recognized Bradley J. Kopp in attendance.

Public Comment:

None.

13. Adjournment.

Motion 170327-2 (Chiu/Kopp): Moved, seconded, and passed (4-0) that the Commission adjourn.

The meeting was adjourned at 8:30 PM.

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<https://sfethics.org/ethics/2017/04/minutes-march-27-2017.html>

Local

Skirmish at City Planning over vote on affordable housing rate

By J.K. Dineen | April 26, 2017 | Updated: April 26, 2017 6:41pm

3

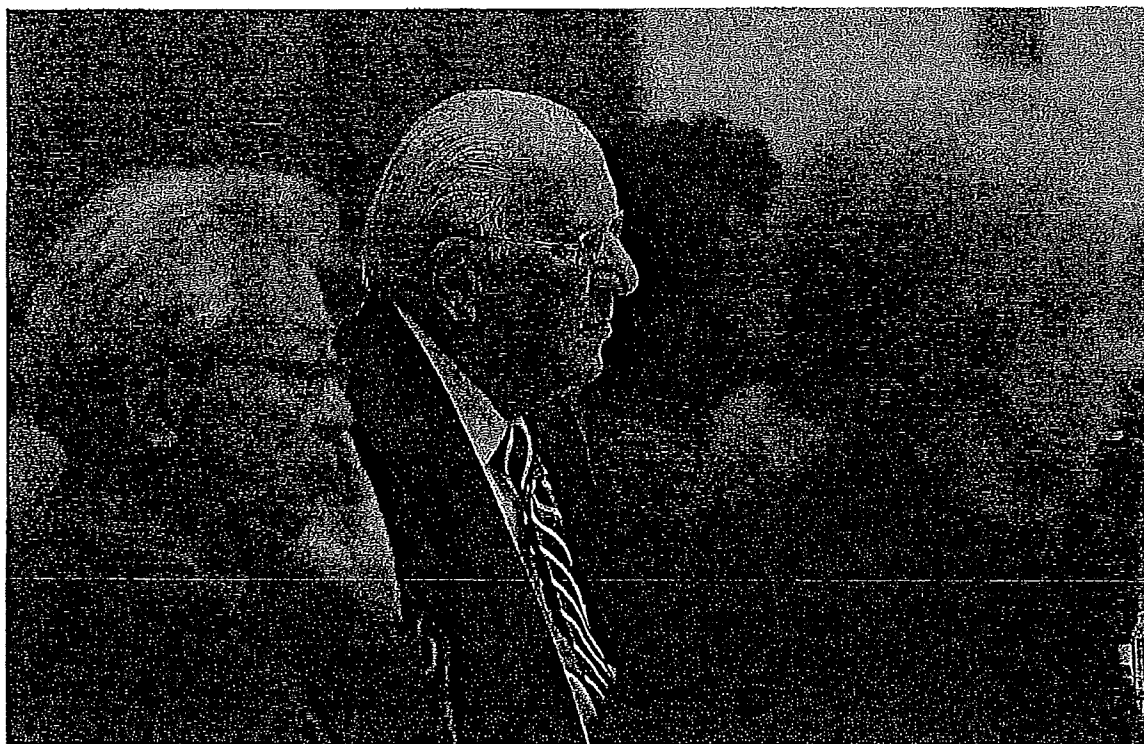


Photo: Michael Macor, The Chronicle

San Francisco planning commissioners (l to r) Hisashi Sugaya, Michael Antonini, Christine Johnson and Kathrin Moore, listen to public comments to Supervisor David Chiu's proposed Airbnb legislation at their weekly meeting in City Hall on Thursday August 7, 2014, in San Francisco, Calif.

The Planning Commission is expected to weigh in Thursday on the highly charged fight over how much affordable housing builders should be required to include in market-rate

developments.

But before the hearing could even start, a pregame skirmish broke out over whether one of the seven commissioners should be allowed to vote.

Critics say that **Christine Johnson**, one of four commissioners appointed by Mayor **Ed Lee**, should recuse herself because she recently took a job with SPUR, the urban think tank that mostly, but not always, takes positions favored by the city's development community.

Johnson told Lee in February that she planned to step down from the commission, but she agreed to stay on until the mayor found a replacement. In the meantime, she sought the advice of City Attorney **Dennis Herrera**, who sources say has determined that there is no conflict that would prevent Johnson from voting on the affordable housing policy legislation.

In an unusual act, the San Francisco Ethics Commission on Monday voted to send a letter asking that Johnson recuse herself. The vote was taken despite the action being a violation of the Brown Act, which regulates open meeting laws for legislative bodies in California. Under the Brown Act, those bodies are forbidden from taking action on items not on the agenda — the Johnson matter was not on the agenda.

During the hearing, Commissioners **Peter Keane** and **Quentin Kopp** both said the Brown Act violation was justified because with the Planning Commission vote Thursday it was imperative the letter be sent right away.

MORE FROM S.F. INSIDER



City wants some answers from PG&E about big SF blackout

More than a year out, Sheehy has competition in 2018 supes race

Ethics Commission Executive Director **LeeAnn Pelham** cautioned the commission against violating open-meeting laws, suggesting individual commissioners write personal letters to Johnson. Those letters would get the same message across “without compromising the commission’s commitment to open government processes, which we do believe is important, of course.”



Supes eye jail time for deceptive landlords

Johnson did not return calls or emails, but sources said she would release a statement Thursday at the Planning Commission meeting.

As for the inclusionary housing vote, it pits a group of moderate supervisors — **London Breed, Katy Tang and Ahsha Safai** — against stalwarts of the progressive wing **Aaron Peskin and Jane Kim**.

The vote is a follow-up “trailing ordinance” triggered by Proposition C from June 2016, which required developers to make 25 percent of units affordable. Peskin and Kim favor a law that requires developers of big projects to designate 24 percent of rental units as affordable — 15 percent for low-income earners and 9 percent for moderate-income earners.

Breed, Safai and Tang want to require builders to make 18 percent of on-site units affordable, but want to make a higher percentage of units available to moderate-income households.

Planning staff support the more moderate plan, which is in keeping with a city controller report on the percentage of affordable units that is economically feasible given the cost of land, labor, materials and capital.

“We agree with the controller’s analysis, which we think was a solid piece of work,” said

Planning Director **John Rahaim**. "We have had a number of developers say that 25 percent doesn't work, that it's too high."

— *J.K. Dineen*

Email: cityinsider@sfchronicle.com, jdineen@sfchronicle.com Twitter: [@sfcityinsider](https://twitter.com/sfcityinsider); [@sfjkdineen](https://twitter.com/sfjkdineen)



J.K. Dineen
Reporter

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

PETER KEANE
CHAIRPERSON

May 3, 2017

DAINA CHIU
VICE-CHAIRPERSON

The Honorable Xavier Becerra, Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

PAULA A. RENNE
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

District Attorney George Gascon
Investigations Department
850 Bryant Street, Rm 301
San Francisco, CA 94112

VACANT
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

RE: Referral of Complaint Alleging Brown Act Violations by the San Francisco Ethics Commission


Dear Attorney General Becerra and District Attorney Gascon,

I am writing to refer to your offices a complaint filed yesterday with the San Francisco Ethics Commission against the members of the Commission for alleged violations of the San Francisco Sunshine Ordinance and California Brown Act.

Because the Commission is the subject of the Brown Act complaint and the complainant lists me as a witness, we are forwarding the complaint to your offices for any action you deem warranted per California Government Code Section 54960. The Commission itself will take no further action regarding this matter due to the inherent conflict of interest present when any organization is asked to investigate itself.

If you have any questions, please contact me. Thank you for your attention to this matter.

Sincerely,


LeeAnn Pelham
Executive Director

cc: Members of the San Francisco Ethics Commission
Mayor Ed Lee
San Francisco Assessor Recorder Carmen Chu
Deputy City Attorney John Givner
Board Clerk Angela Calvillo
Steve Flaherty, Office of the San Francisco Controller
Sunshine Ordinance Task Force Administrator Victor Young

17044

From: Art Agnos artagnos@yahoo.com
Subject: Re: Fwd: Mayor response re:Christine Johnson
Date: April 21, 2017 at 2:49 PM
To: LARRY BUSH sfwtrail@mac.com



can not open

From: LARRY BUSH <sfwtrail@mac.com>
To: Art Agnos <artagnos@yahoo.com>
Sent: Friday, April 21, 2017 2:48 PM
Subject: Fwd: Mayor response re:Christine Johnson

Just arrived in response to my Sunshine request to the mayor's office on Christine Johnson.
Note the criteria related to issues "impactful to the Administration."
The attorney is Andrew Shen, also attorney at Ethics

Tsang, Francis

From: Elliott, Nicole (MYR)
Sent: Wednesday, January 25, 2017 10:22 AM
To: Tsang, Francis; Rich, Ken (ECN)
Subject: RE: Christine Johnson

Francis,

Can you please set this up? I don't know why Ken has to do it – ultimately this is about whether or not this Commissioner stays on and whether or not she will have to recuse herself on issues that are impactful to the Administration.

Thanks.

Nicole A. Elliott
Director, Legislative & Government Affairs
Office of Mayor Edwin M. Lee
(415) 554-7940

From: Tsang, Francis
Sent: Wednesday, January 25, 2017 10:15 AM
To: Rich, Ken (ECN) <ken.rich@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: RE: Christine Johnson

Works for me, can you confirm with her that it works.

From: Rich, Ken (ECN)
Sent: Wednesday, January 25, 2017 9:55 AM
To: Tsang, Francis <francis.tsang@sfgov.org>; Elliott, Nicole (MYR) <nicole.elliott@sfgov.org>
Subject: Christine Johnson

Hi Francis and Nikki –

Can we get something on the calendar with Andrew Shen next week? I promised Christine we would all meet with the City Attorney to discuss in more depth the likelihood of her having to recuse herself from items at

City Attorney as soon as possible to discuss in more depth the likelihood of her having to recuse herself from items at the Planning Commission once she joins SPUR staff. Thanks.

I'm open at 11am next Thursday the 2nd (probably a good time for Christine). I'm going to have Andrew Shen hold that time. Let me know if that works for you.

Thanks.

Ken Rich
Director of Development
Office of Economic and Workforce Development
(415) 554-5194

1

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Ken Rich
Director of Development
Office of Economic and Workforce Development
(415) 554-5194

Young, Victor

From: SOTF, (BOS)
Sent: Friday, June 09, 2017 11:14 AM
To: 'Bob Planthold'; 'laura@yimbyaction.org'; Pelham, Leeann (ETH); Blome, Jessica (ETH); 'Ray'; Calvillo, Angela (BOS); 'Jason Grant Garza'; Sarieh, Nancy (MYR); Acosta, Linda (DPH); Garcia, Barbara (DPH); Chawla, Colleen (DPH); Katzenberger, Philip (DPH); Price, Basil (DPH); 'Michael Gray'; Waaland, Kathryn (POL); Walton, Briseida (POL); Callahan, Micki (HRD); PublicRecords, DHR (HRD); Greene, Paul (HRD)
Cc: Ng, Wilson (BOS); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing - Education, Outreach and Training Committee: June 20, 2017, 3:30 p.m.

Good Morning:

Notice is hereby given that the Education, Outreach and Training Committee of the Sunshine Ordinance Task Force shall hold hearings on complaints listed below to: 1) determine if the Task Force has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force.

Date: June 20, 2017

Location: City Hall, Room 408

Time: 3:30 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints/Hearings:

File No. 17006: Hearing - Development of support and training for policy and advisory bodies regarding procedures for posting agendas and minutes and the disconnect between the clerks who generate agenda and the webmasters who post the agendas.

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).

File No. 17048: Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (March 14, 2017 and March 21, 2017).

File No. 17049: Complaint filed by Jason Grant Garza against Director Barbara Garcia, Philip Katzenberger and Basic Price, Department of Public Health, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25 and 67.34, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

File No. 17060: Complaint filed by Michael Gray against the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

File No. 17063: Complaint filed by Michael Gray against Micki Callahan and the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

Documentation (evidence supporting/disputing complaint)

For a additonal document to be considered, it must be received at least five (5) working days before the hearing. For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, **June 13, 2017**.

Victor Young
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

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Young, Victor

From: SOTF, (BOS)
Sent: Wednesday, August 23, 2017 1:58 PM
To: 'Laura Clark'; Blome, Jessica (ETH); Pelham, Leeann (ETH); 'mpetrelis@aol.com'; Sheehy, Jeff (BOS); 'Thomas Busse'; Calvillo, Angela (BOS); 'Tamera Wong'; 'Ray'; Herrera, Luis (LIB); Blackman, Sue (LIB); Updike, John; Venegas, Claudine
Cc: Colla, Nicholas (CAT); 'Bob Planthold'; Barnes, Bill (BOS); Ng, Wilson (BOS); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - September 6, 2017

Good Afternoon,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: September 6, 2017

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints -

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).

File No. 17071: Complaint filed by Michael Petrelis against Supervisor Jeff Sheehy, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and complete manner.

File No. 17039: Complaint filed by Thomas Busse against the San Francisco Public Finance Authority for allegedly violating Administrative Code (Sunshine Ordinance), Chapter 67, by failing to notice and conduct public hearings and failing to respond to request for public records.

SPECIAL ORDER

The hearings on File Nos. 17084, 17085 and 16117 will not begin earlier than 5:30 p.m.

File No. 17084: Complaint filed by Ray Hartz against John Updike and the Department of Real Estate for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(e), 67.25 and 67.29(a)(c), by failing to respond to an Immediate Disclosure Request in a complete manner or failing to maintain required records.

File No. 17085: Complaint filed by Ray Hartz against Luis Herrera and the Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(e), 67.25 and 67.29(a)(c), by failing to respond to an Immediate Disclosure Request in a complete manner or failing to maintain required records.

File No. 16117: Complaint filed by Ray Hartz against City Librarian Luis Herrera and the Public Library for violating Administrative Code (Sunshine Ordinance), Section 67.29-6, by failing to maintain a written agreement with entities collecting/maintaining funds for the purpose of carry out or assisting any city function to abide by the Sunshine Ordinance.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion in the agenda packet, supplemental/supporting documents must be received by **5:00 pm, August 29, 2017.**

**Victor Young
Administrator**

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org



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