

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
November 10, 2017**

DATE ISSUED
September 6, 2017

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

FACTS OF THE CASE

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

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

HEARING ON THE COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSION OF LAW

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

ORDER OF DETERMINATION

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

The motion FAILED by the following vote:

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

Noes: 3 – J. Wolf, Hinze, Hyland

Absent: 2 – Chopra, B. Wolfe

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



Chris Hyland, Vice-Chair
Sunshine Ordinance Task Force



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

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