

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 26, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:33 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Beverly Hayon, Commissioner; Peter Keane, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Joshua White, Deputy City Attorney (DCA); Andrew Shen, DCA.

OTHERS PRESENT: Peter Warfield; Allen Grossman; Larry Bush; Anita Mayo, Pillsbury Winthrop Shaw Pittman; Robert van Ravenswaay; Jonathan Mintzer, Sutton Law Firm; Elli Abdoli, Nielsen Merksamer; Kevin Heneghan; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Show Cause Hearing – Ethics Complaint No. 01-140107, and supporting documents;
- Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance;
- Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code;
- Staff Memorandum, including Exhibits, re: Proposed Amendments to the Campaign Finance Reform Ordinance, dated January 16, 2015;
- Letter from Larry Bush for Friends of Ethics;
- Letter from James Sutton, Sutton Law Firm, re: Proposed Amendments to San Francisco Campaign Finance Reform Ordinance, dated January 23, 2015;
- Letter from Nancy Warren, Vice President – Legislation, California Political Treasurers Association, and Principal of Warren & Associates, dated January 25, 2015;
- Staff Memorandum re: Fiscal Year 2015/2016 Budget Request, dated January 21, 2015;
- Draft Minutes of the Ethics Commission’s Special Meeting of December 16, 2014;
- Executive Director’s Report.

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

A member of the public stated that he heard a recording of Commission Keane praising a man for the successful prosecution of a Sunshine matter. He repeated Commissioner Keane's statements and asked how everyone else who is unsuccessful feels knowing they are not competent enough to pursue a successful ethics complaint. He asked whether the Commission wants an Ethics complaint to be the most exclusive complaint in town. He stated that the public wants decency and fairness.

Commissioner Keane stated that his comments were not made with a degree of pride. He stated that he had a tremendous amount of admiration for a gentleman who persevered through a Kafkaesque nightmare. He stated that the process is shameful.

Peter Warfield stated that he made a complaint to the Sunshine Ordinance Task Force about ten years ago. He stated that after a Civil Grand Jury report, the Ethics Commission heard a complaint concerning the then-President of the Library Commission. He stated that the Commission was unable to "unseat" her and recommended to the Mayor that she lose her appointment. He stated that the Commission sent another letter to the Mayor a year later. He stated that about a year ago, the Mayor did not reappoint Jewelle Gomez or Lee Munson.

III. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance.

Executive Director St. Croix stated that, as this matter is being considered under Chapter Two of the Regulations, staff did not conduct an investigation and is not making a recommendation in this case. He stated that the Court of Appeals heard Mr. Grossman's arguments and made its ruling. He stated that the City continues to spend resources on this matter and respectfully asked the Commission to find there was no violation.

Chairperson Hur asked how the documents were withheld if he stated that he had never read them. Director St. Croix stated that he had discussed the matter with staff and the City Attorney's Office. He stated that he had accepted the documents as reviewed and did not look at them until the original lawsuit was filed.

Allen Grossman addressed the Commission's conflict. He stated that the Commission cannot hear this matter. He stated that Director St. Croix recognized the conflict issue because he previously proposed amending the Sunshine Regulations to exclude the handling of complaints made against Commission members, Director, and staff. He stated that the Court only considered one issue and there were two other violations from the Sunshine Ordinance Task Force, which remains to be enforced. He stated that the Director has failed to enforce Sunshine Orders and the trust given to the Commission to enforce public access has been broken. He stated that the Commission must repudiate Director St. Croix's actions or amend its by-laws to state that it will not enforce open government laws.

Commissioner Renne asked how Mr. Grossman could argue that Director St. Croix violated open government laws when the Court of Appeal ruled against Mr. Grossman on that question. Mr. Grossman conceded that the provision in the Ordinance is no longer enforceable. He stated that the matter involves two other violations, but that the Commission should not even be hearing this

case. Chairperson Hur asked Mr. Grossman what the other two violations were. Deputy Executive Director Mainardi referenced the Task Force's referral letter to the Commission from November 2013.

Public Comment:

A member of the public stated that he was gratified that Commissioner Keane recognized the obstacles in pursuing a violation of open government laws. He stated that the City Attorney turned over records to Mr. Grossman after he filed the lawsuit.

Peter Warfield stated that there are many conflicts and specifically noted that Commissioner Hayon had previously granted an extension for this matter. Mr. Warfield read the three violations and objected to Director St. Croix's statement that departments are not required to create a document.

Chairperson Hur asked the DCA whether there is a conflict in the Commission adjudicating this matter. DCA White stated that the Commission is not reviewing its own actions; it is reviewing what staff did. He stated that the City Attorney does not believe there is a conflict in this matter. He stated that, under the Charter, staff has the authority to conduct the department's day-to-day affairs. Commissioner Keane asked whether staff had the authority to defend itself in litigation without the permission of the Commission. DCA White says that in this instance, staff had the authority because the allegations made by Mr. Grossman did not involve the Commission and thus there was no obligation to seek the Commission's approval before defending itself in litigation.

Mr. Grossman disagreed with DCA White's statements. DCA White stated that Mr. Grossman raised this argument before the Court of Appeal and it was rejected. Chairperson Hur stated that the issue was adjudicated and the Court of Appeal did not find in Mr. Grossman's favor. He stated that the Court of Appeal also addressed the issue of whether the Commission was required to authorize the lawsuit.

Motion 15-01-26-01 (Renne/Hayon): Moved, seconded and passed (5-0) that the Ethics Commission find there is no basis to find that Executive Director St. Croix violated his obligations and that the Commission is bound by the finding of the Court of Appeals that his actions were consistent with San Francisco open government ordinances.

IV. Discussion and possible action regarding the approval of proposed amendments to San Francisco Campaign Finance Reform Ordinance, which are intended to update and streamline certain reporting disclaimer requirements, as well as to repeal certain contribution limits.

Motion 15-01-26-02 (Keane): Moved and not seconded that the Ethics Commission continue this item to the Commission's next meeting.

Commissioner Keane moved to continue the item. He stated that Mr. Mainardi did an excellent job, but that he has not digested everything in light of all of the other materials. Chairperson Hur stated that it would be useful for the Commission to have a discussion. Commissioner Hayon

stated that she would like to hear from the people who attended the meeting. Commissioners Renne and Andrews agreed. Commissioner Keane then proposed to add the item to the next meeting for any additional issues.

Deputy Executive Director Mainardi introduced the item and briefly outlined the three main proposals presented in staff's memorandum.

Decision Point 1 – repeal of two contribution limitations

Mr. Mainardi stated that, for the sake of clarity and by virtue of case law, staff has proposed the repeal of two provisions of the contribution limit sections - section 1.114(a)(2) and section 1.114(c).

Public Comment:

Larry Bush stated, on behalf of Friends of Ethics, that the Commission has never, as a body, decided to take up the issues addressed by staff's proposed amendments. He also stated that he had sent a memo to the Commission and none of the issues he raised was included in staff's draft.

Anita Mayo, from Pillsbury Winthrop Shaw Pittman, applauded staff's efforts to clean up the contribution limits, as it would conform with prevailing case law.

Chairperson Hur stated that these proposals seem clear and that the Commission should not have to deal with all CFRO changes in one meeting. He stated that if there are things the Commission has not addressed, then the Commission should address those, but it should not hold up all of the proposed changes.

Motion 15-01-26-03 (Renne/Keane): Moved, seconded and passed (5-0) that the that the Ethics Commission approve Decision Point 1 and repeal sections 1.114(a)(2) and 1.114(c) as set forth in Appendix A.

Decision Point 2 – consolidating, streamlining, and enhancing third-party disclosure

Deputy Executive Director Mainardi explained that the second set of amendments relates to disclosure requirements for third parties who are involved in supporting or opposing local candidates.

Chairperson Hur asked which proposal from pages 7-10 received the most negative feedback. Mr. Mainardi mentioned four criticisms from the Friends of Ethics letter. Commissioner Keane asked about the issue of member communications. Mr. Mainardi explained that it is difficult for some organizations, such as labor unions, to determine how much of each individual's membership dues is attributable to a particular mailer and that no jurisdiction at any level requires such disclosure of membership dues.

Public Comment:

Larry Bush discussed the four issues raised in his letter. He stated that non-profits are involved in ballot measure campaigns and that there should not be an exemption for 501(c)(3) organizations. He stated that his group wants disclosure of groups' membership. He also suggested adding a 24-hour reporting requirement for expenditures made on Election Day, as it is not the practice now.

Robert van Ravenswaay stated that he was on the Civil Grand Jury last year. He stated that the amendments need to say how they would further the purpose of the Ordinance. He also wondered how the changes would affect the datasets currently available on the Commission's website.

Mr. Mainardi stated that the proposed amendment language currently states how the amendments would further the purpose of the Ordinance. He also stated that the disclosure would be made on state forms and that they would be easier to read than they currently are and would be available electronically.

Johnathan Mintzer, Sutton Law Firm, stated that the firm had submitted a letter on Friday and urged the Commission to adopt the amendments without delay. He stated that the laws are currently complex and there is no reason to have multiple state and local disclosure requirements. He stated that the amendments would increase compliance and disclosure.

Elli Abdoli, Nielsen Merksamer, stated that her firm represented a number of campaigns in San Francisco and that the firm supports the recommended changes. She stated that the amendments would also improve the database. She also stated that she did not hear objections to the content of staff's proposals, only that the Commission should do more. She stated that she supports the Commission doing more, but that it should clean up what is there now. She encouraged the Commission not to delay.

Kevin Heneghan stated that he has not had a chance to review the amendments line by line, but that there are times during an election cycle that he reviews a mail piece and there may be eight or nine filings for a mailing that costs about \$4,000. He stated that the Commission is just one step in the process to amend CFRO. The proposals would then need to move to a Board Committee, then the full Board, subject to the 30-day rule. He suggested that the Commission move forward.

Commissioner Keane expressed concern that there are a number of items that the Commission has discussed in the past that were not incorporated in the proposed changes. Mr. Bush stated that the Commission agreed to amend CFRO to increase the contractor contribution ban from six to twelve months. He stated that the Commission had also asked staff for an amendment to cover draft committees. He stated the Commission also discussed requiring specific language on contribution forms. Mr. Mainardi offered to go through the concerns raised by Mr. Bush and Commissioner Keane suggested not to do so, but to provide a memorandum with respect to those concerns for the next meeting. Mr. Mainardi agreed and stated that the Commission had passed draft committee rules but no one on the Board of Supervisors agreed to present it to the Board.

Chairperson Hur stated that he wanted to make sure that, if there is consensus among the Commissioners on the proposals, then the Commission should not postpone its vote. Commissioner Keane stated that he was satisfied with the discussion, with the understanding that the Commission will hear the matter on the next agenda for possible augmentation.

Commissioner Hayon asked about the deadline for the proposed changes, when taking the November 2015 election into consideration. DCA Shen stated that there is a timing issue, as there is a minimum of two months for the Board process after the Commission approves a final version of changes. He stated that would be the timing if the Board has no additional amendments. He stated if the Board has additional changes, then it would add another month or two. He suggested that the Commission approve changes soon. He stated that if the Commission approves changes during its February 2015 meeting, it would be a close call.

Motion 15-01-26-04 (Keane/Renne): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 2.

Decision Point 3 – Standardizing and improving disclaimer requirements

Deputy Executive Director Mainardi reviewed staff's proposals and referenced page 12 of staff's memo. He stated that staff's proposals looked to what is required in state law and then augmented it.

Public Comment:

A member of the public stated that anonymous donations are funding campaign communications and suggested the Commission require disclosure of anonymous donations.

Jonathan Mintzer stated that the proposed changes to the disclaimers will strengthen, not weaken the current system. He stated that there is currently overlapping regulation and the proposed changes would make compliance easier.

Commissioner Keane asked Mr. Mainardi to analyze the issue of anonymous donors. Mr. Mainardi referenced a portion of staff's memorandum devoted to this issue. He explained that there is no need for this type of disclosure at the local level, as the disclosure requirements are different from federal law, and that San Francisco has an existing electioneering communication rule that requires disclosure of donors.

DCA Shen stated that under state law, that there could not be anonymous donors, and that the issue is more applicable to federal elections. Mr. Heneghan stated that there is no way an anonymous donor could fund an independent expenditure in San Francisco or California. He stated that the forms mentioned in Decision Point 2 would be required to be filed within 24 hours of an expenditure being made and all contributors of \$100 or more would be disclosed.

Chairperson Hur asked why staff was proposing omitting the requirement to include the total cost of the mailer in the disclosure. Mr. Mainardi stated that staff proposed to make the same rules for all communications, and that rule only applied to mailers. He also stated that staff proposed that the disclosure include a reference to the Commission's website so that more

information would be provided. The Commissioners then discussed changes in the font size of disclaimers.

Motion 15-01-26-05 (Keane/Hayon): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 3.

Decision Point 4 – overall approval of the draft amendments

Public Comment:

Larry Bush commented on Decision Point 2. He stated he was sorry to see the vendor payments removed.

Commissioner Keane suggested that the issue be revisited during the next meeting. DCA Shen stated that the decision point summarizes technical changes that are already in the version presented to the Commission and public.

Motion 15-01-26-06 (Hayon/Keane): Moved, seconded and passed (5-0) that the Ethics Commission approve Decision Point 4.

[The Commission recessed at 7:48 PM and returned to open session at 7:59 PM.]

V. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix stated that there is no requirement that the Commission make any cuts this year. He stated that he would like to enhance the responsibilities of campaign finance staff, as there has been and will be more electronic filing. He stated that the responsibilities are more sophisticated and he would therefore like to alter the requirements for future positions. He stated that the request would fund the vacant investigator position and he hopes to get two new auditors. He stated that, if the Commission were to get the requested funding, staff would use its entire workspace and would need to look for a new office for Commission staff. He also stated that the Commission would like to get additional funds to pay for the migration of Forms 700 filed directly with departments, so that all 3000+ other employees' forms would be available through the Commission's website.

Commissioner Keane asked about the status of making the Commission's materials available in other languages. Director St. Croix stated that he is working with the City to address translations and that he does not know yet what the cost, if any, will be.

Commissioner Andrews asked whether the Commission staff would be required to be in a City-owned building. Director St. Croix stated that he doubted the City would provide rent where there is City space available. Commissioner Andrews asked to see an organization chart, with the proposed additional positions.

Chairperson Hur asked whether staff has checked to see if the NetFile contract is still a good deal and expressed concern that the Commission be able to keep a contract at a reasonable cost.

Public Comment:

Larry Bush stated that he was delighted to hear that Forms 700 will be searchable. He stated that information on the forms is being missed since they are difficult to review. He suggested that the Commission use any additional funds for a part-time Commission Secretary.

Motion 15-01-26-07 (Hayon/Andrews) Moved, seconded and passed (5-0) that the Ethics Commission approve the budget request.

VI. Discussion and possible regarding action regarding a complaint received or initiated by the Ethics Commission.

Public Comment:

Larry Bush asked whether the complaints involved campaigns. Deputy Executive Director Mainardi read the agenda item.

Motion 15-01-26-08 (Renne/Keane) Moved, seconded and passed (5-0) that the Ethics Commission move into closed session.

The Commission entered closed session at 8:16 PM. All members of the public left the hearing room. The members of the Ethics Commission, Executive Director St. Croix, Deputy Executive Director Mainardi, DCA White, Kevin Heneghan, and Ethics Commission staff members Ms. Argumedo and Mr. Chatfield remained in the hearing room. Mr. Mainardi and Mr. Heneghan left the hearing room at 9:28 PM. Mr. Mainardi returned at 9:30 PM. The Commission returned to open session at 9:37 PM.

Motion 15-01-26-09 (Renne/Keane) Moved, seconded and passed (5-0) that the Ethics Commission keep confidential the matters discussed in closed session, except for an announcement.

Executive Director St. Croix made an announcement. He stated that, in the matter of Ethics Complaint Number 19-131115, the Ethics Commission made a determination that there is probable cause to believe eight violations of the California Government Code and two violations the San Francisco Campaign and Governmental Conduct Code occurred (including California Government Code sections 84200(a) and 84104, and San Francisco Campaign and Governmental Conduct Code section 1.118); and that the Respondents, Lynette Sweet and Sweet for Supervisor 2010, committed them. Each Commissioner who participated in the decision to find probable cause certified on the record that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings. Executive Director St. Croix stated that the Respondents are presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

Public Comment:

None.

VII. Discussion and possible action on the minutes of the Commission's special meeting of December 16, 2014.

Public Comment:

None.

Motion 15-01-26-10 (Renne/Keane): Moved, seconded and passed (5-0) that the Ethics Commission adopt the minutes of the Commission meeting of December 16, 2014, as written.

VIII. Discussion of Executive Director's Report.

Executive Director St. Croix stated that BDR had obtained a judgment in favor of the City in the second case.

Public Comment:

None.

Commissioner Andrews asked about any surplus funds raised by the Commission during the fiscal year. Director St. Croix stated that the funds are returned to the City's general fund.

IX. Items for future meetings.

Public Comment:

None.

X. Adjournment.

Motion 15-01-26-11 (Hayon/Keane): Moved, seconded and passed (5-0) that the Ethics Commission adjourn.

Public Comment:

None.

The Ethics Commission adjourned the meeting at 9:44 PM.