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Minutes - September 23, 2013

Minutes of the Regular Meeting of The San Francisco Ethics Commission September 23, 2013 Room 400, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

I. Call to order and roll call.

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

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul A. Renne, Vice-Chairperson; Brett Andrews, Commissioner (arrived at 5:36 PM); Benedict Y. Hur, Commissioner. Commissioner Studley was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

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

OTHERS PRESENT: Ray Hartz; Patrick Monette-Shaw; Peter Warfield; Judson True, Legislative Aide to President Chiu; James Chaffee; Allen Grossman; Bruce Wolfe; Dr. Derek Kerr; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Hearing – Ethics Complaint 02-120402, dated June 17, 2013;
- Report and Recommendation Ethics Commission Complaint No. 02-120402 and supporting documents;
- Ethics Commission Regulations for Violations of the Sunshine Ordinance;
- Sunshine Ordinance;
- Draft Regulations related to the handling of violations of the Sunshine Ordinance and staff report, dated September 5, 2013;
- Draft Annual Report for FY 12-13;
- Draft minutes of the Commission's Regular Meeting of July 22, 2013;
- 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.

Ray Hartz stated that this commission and its members choose to do nothing. He stated that the Mayor has ignored the Commission about Jewelle Gomez.

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:

I would challenge any member of this Ethics Commission, or its staff, to point out examples of actions taken which would make City government more open to public inspection or participation. Can't do it can you? I would challenge any member of this Ethics Commission, or its staff, to point out examples of actions taken which would make City government more responsive to the public. Can't do it can you? I would challenge any member of this Ethics Commission, or its staff, to point out the actual value received for the millions of dollars spent by this body each year. Again, just can't be done! This is not to say that this Ethics Commission could not do any or all of these things. Instead this Commission and its members, appointed by the very City officials over whom it has oversight, chooses to do nothing! Worthless as teats on a bull!

Patrick Monette-Shaw agreed with Mr. Hartz's comments. He stated that the Commission has dismissed 39 cases that have been referred from the Sunshine Ordinance Task Force. He suggested the Commission hire an outside ethicist.

Peter Warfield stated that the Mayor ignored the Commission's recommendation about Jewelle Gomez. He asked about the status of that case.

III. Ethics Complaint No. 02-120402 regarding alleged willful violation of Sunshine Ordinance by elected officials (referred from the Sunshine Ordinance Task Force on April 2, 2012)

Complainant: Pastor Gavin

Respondents: David Chiu, Malia Cohen, Eric Mar, and Scott Wiener, members of the San Francisco Board of Supervisors

Executive Director St. Croix stated that, around 3 PM, Pastor Gavin sent an additional request for a continuance. He stated that at its June meeting the Commission had granted a continuance, determined not to grant another without good cause, and required any request to be submitted by by September 9, 2013.

Chairperson Hayon stated that this matter has been pending for quite some time. Commissioner Hur stated that the Commission had given sufficient notice and that he felt comfortable moving forward. Vice-Chairperson Renne stated that the Commission should not keep the matter open indefinitely, as the Complainant's request did not state a date for a hearing.

Complainant Pastor Gavin was not present.

Judson True, Legislative Aide for President Chiu, was present and represented President Chiu. He stated that changes were introduced during the Land Use Committee meeting, but that the changes were within the scope of the noticed hearing. He stated that the Committee members asked for public advice from the Deputy City Attorney present during the meeting. He stated that the advice given that day during the meeting and at all subsequent times was that it was within the noticed hearing for the Committee to proceed at that time.

Vice-Chairperson Renne asked whether the changes were subject to comments by the Committee members and members of the public when they were distributed during the Committee meeting. Mr. True stated that he personally handed out about 40-50 copies of the changes and President Chiu went through the changes. Mr. True stated that public comment occurred during the Committee meeting. Mr. True also informed the Commission that the Committee members received the changes at the same time the public received copies of the changes.

Vice-Chairperson Renne asked what would have occurred if the changes had gone beyond what the notice had stated. Mr. St. Croix stated that if the changes had been substantial, there would be a new notice and a new hearing. Commissioner Hur stated that the changes were within the noticed language and that the document distribution was a red herring. He stated that the documents did not have to be distributed ahead of time, since the policy body did not receive them ahead of time. He stated that the issue is whether the changes fit within the agenda item.

Public Comment:

Ray Hartz stated that there were substantive changes made and that the Commission has again found in favor of the City. He stated that the Supervisors did not want the bad publicity of people coming to the meeting and objecting to the changes.

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:

I would like everyone to note that I am reading from a summary prepared in advance of this hearing. The findings and actions of this Ethics Commission are so predictable, it makes me feel clairvoyant. The only thing I'm unclear about is whether this hearing amounts to covering the Supervisors backsides or kissing them? Then again, what difference does it make? The end result is this Ethics Commission finding in favor of the City and against the values and interests of the citizens of San Francisco! In this particular case, the Board of Supervisors managed to discriminate against and violate the rights of so many protected classes that it's impossible to enumerate them all in this brief summary. This includes, but is not limited to, the elderly, single parents, people of color, veterans, the disabled, and the list goes on. And this commission today puts its imprimatur on those actions.

Patrick Monette-Shaw stated that the Commission never discusses the Task Force's rationale of why referrals are sent to the Commission. He stated that the Commission does not take the Task Force's findings into consideration.

Chairperson Hayon reminded the public that the meeting is aired on public television and asked the public to mind the language.

A member of the public stated that the words "substantive" and "substantial" are not synonyms. He stated that the public should have had the opportunity to comment again, as the policy body needs to be informed of the judgment of its citizens in order to make a determination. He stated that the citizens had been disenfranchised.

Peter Warfield stated that he was disappointed that Pastor Gavin was not given a chance to state her case. He stated that the Commission should discuss the substance of the changes submitted by President Chiu. He stated that Supervisor Mar should have continued the Committee meeting.

Allen Grossman stated that a Deputy City Attorney is not the best person to determine whether the changes were substantive. He stated that the Sunshine Ordinance Task Force had two lawyers at the time its determination was made.

Vice-Chairperson Renne stated that he was disturbed philosophically that changes could be introduced without the public having an opportunity to see and digest them. He suggested discouraging that practice. He stated that he was not prepared to say that the Supervisors willfully violated the Sunshine Ordinance, but he also was not prepared to say that their conduct was consistent with the way the Board should operate.

Commissioner Andrews asked about the process to submit documents to the Committee members, under normal

circumstances. Mr. True stated that it depends on the type of legislative item. He stated that the development agreement was covered by the agenda and the changes did not require a continuance. He stated that the public had a full opportunity to comment, especially as the item had been continued from the Board from earlier in the year.

Motion 13-09-23-1 (Hur/Andrews) Moved, seconded, and passed (3-1; Renne dissented and Studley excused) that the four Supervisors did not violate the Sunshine Ordinance as alleged.

IV. Draft regulations related to the handling of violations of the Sunshine Ordinance.

Executive Director St. Croix stated that the proposed changes were to clarify language in the current regulations.

Decision Points 1a & 1b

Commissioner Hur stated that he agreed with the changes, except for allowing parties to bring documents to the meeting. He suggested leaving that option to the discretion of the Chair and encouraging the parties to submit documents earlier.

Public Comment:

Ray Hartz stated that it was highly questionable that multiple Respondents be permitted to make multiple comments and multiple Complainants are not given the same opportunity.

Allen Grossman stated that he has not had time to examine the proposal. He stated that the Task Force has not reviewed these proposed changes.

Patrick Monette-Shaw stated that Mr. Grossman's testimony touched on sleeping watchdog.

Motion 13-09-23-2 (Hur/Renne) Moved, seconded, and passed (4-0; Studley excused) that the Commission accept decision point 1a, add the word "each" before complainant in decision point 1a, accept the change in decision point 1b regarding "five business days" and reject the remainder of decision point 1b.

Decision Points 2a & 2b

The Commissioners discussed these decision points and agreed not to change the regulations at this time.

Decision Point 3a

The Commissioners discussed the possible withdrawal of complaints and agreed not to change the regulations at this time.

Decision Point 3b

The Commissioners addressed complaints made against the Ethics Commission, its Director, or its staff. Chairperson Hayon stated that it would be awkward for the Commission to be investigating itself. Vice-Chairperson Renne asked whether the Commission could refer the matter to another agency. Commissioner Hur stated that there is no good solution. He stated that if the Commission hears the matters, there is an appearance of impropriety; if the Commission does not, then people say the Attorney General or District Attorney will not act. Commissioner Andrews suggested that a Commissioner work with the District Attorney or City Attorney.

Public Comment:

Patrick Monette-Shaw stated that the Commission staff is attempting to overturn the will of the voters. He stated that it is the Commission's responsibility to investigate co-Commissioners. He stated that it was an outrageous

recommendation from staff.

Bruce Wolfe stated that this suggestion creates a slippery slope. He stated that the Commission could not cherry pick cases and could not exempt Ethics staff when no other City employee has the same privilege.

A member of the public stated that the Commission has an obligation to be a foundation of ethical and good government findings.

Allen Grossman stated that there is no exception in the Sunshine Ordinance for the Commission, its Director, or its staff. He stated that the California Constitution governs and that the Commission cannot adopt this without violating the Sunshine Ordinance and the Constitution.

Peter Warfield agreed with the previous speakers.

Ray Hartz stated that he has never seen staff recommend a finding of a violation. He stated that the Commission has disrespected the Task Force and that staff says that the Task Force is wrong. He stated that he was opposed to this proposal.

Dr. Derek Kerr stated that there have only been three complaints made against staff since the Sunshine Ordinance was passed. He suggested referring complaints against staff to outside agencies.

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

Sunshine complaints against Ethics staff are rare. There's no need to dodge them. In 2004, the Oakland Ethics Commission handled Oliver Luby's complaint against Directors Ginny Vida and Mabel Ng. Last year, a San Jose Elections Commission attorney handled Patrick Monette-Shaw's complaint against Mr. St. Croix. Now, Allen Grossman filed against Mr. St. Croix. That's, just 3 cases in 13 years since the Sunshine Ordinance passed. You know that; -the Attorney General rejects Sunshine cases as "local matters". – the DA hasn't acted – or responded in writing, to your referrals. – it's much harder for citizens to retain Sunshine attorneys, than for you to retain Ethics agencies

Please continue referring Sunshine complaints against your staff to Ethics agencies because; -such cases are relevant to them. – they have actually assessed cases diligently. – conflicts of interest are reduced if Commissioner, rather than staff, approach outside agencies. – imposition is reduced by offering reciprocity.

Commissioner Hur suggested that the Commissioners would be able to recuse themselves if there were a conflict and then the matter would not be adjudicated by the Ethics Commission. Chairperson Hayon stated that the issue is perception of conflict of interest. The Commission agreed not to change the regulations at this time.

Decision Point 4

The Commissioners addressed a grammatical correction of the title.

Public Comment:

Ray Hartz stated that there is a conspiracy as the Commission has found in favor of the City in every case. He stated that the Commission ignores the facts and says the Task Force is wrong. He stated that the Commission is biased.

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 actions of this Ethics Commission and its staff constitute a pattern so blatant that I have no trouble labeling it a conspiracy! For years, the commission allowed the staff to dismiss referrals from the Sunshine Ordinance Task Force (SOTF) with any “bullshit” excuse provided. Then this commission spent more than two years pretending to “confer with” the Task Force, only to completely exclude them from the finalization of the regulations. Once the regulations were in place, this commission not only found in favor of the City and against the citizens in every case, but found it necessary to actually vote that SOTF findings were wrong. Talk about adding insult to injury! The members of this Ethics Commission have shown themselves to be so blatantly “in the pocket” of those who appoint them, I would think they would be embarrassed to show their faces! From the Good Government Guide:

Peter Warfield opposed adding the word “handling” and proposed adding “dismissing” instead.

Patrick Monette-Shaw opposed the change since the word “handling” is rude.

Allen Grossman stated that it is important that the Commission understand how the Sunshine Ordinance works.

A member of the public opposed the change.

Motion 13-09-23-3 (Renne/Andrews) Moved, seconded, and passed (4-0; Studley excused) that the Commission accept decision point 4 and amend the title as proposed.

V. Annual Report for Fiscal Year 2012-2013.

Executive Director St. Croix stated that the portions of the report that were italicized are from last year’s report. He also stated that there is no statutory deadline for the report. Chairperson Hayon suggested that the Commissioners forward comments on the report via e-mail. Commissioner Andrews asked about the organizational chart and Mr. St. Croix stated that the “special projects assistant” is a temporary position. Commissioner Hur thanked staff as the Commission has made progress in several areas. Commissioner Andrews concurred. The Commission took no further action on this item.

Public Comment:

Ray Hartz suggested changes to the report.

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:

I would only suggest a few minor modifications for acceptance of this Annual Report. In the first paragraph, strike the words “the citizens of San Francisco.” I would suggest that this same change be made throughout the report, wherever “citizens of San Francisco” may appear. Same paragraph, insert the word “not” before the word “enforcing.” In the second paragraph, on the fourth line, insert the words “fails to” before the words “raises public awareness of ethics laws.” On page 16, under Advice and Opinions, change “answers public inquiries” to read “evades public inquiries.” Everything else in this report amounts to nothing more than “rearranging deck chairs on the Titanic.” The Ethics Commission and its staff expend all of their resources, amounting to millions each year, only to finally fail in enforcement and even provide exemptions from the regulations. This commission serves exclusively City employees, elected officials and appointed officials.

Dr. Derek Kerr stated that the draft report is better than recent ones, particularly in the investigation section. He thanked staff for the work that went into it.

Peter Warfield stated that he had not reviewed the report, but suggested adding a table of contents.

VI. Public Employee Performance Evaluation: Executive Director John St. Croix

Public Comment:

Ray Hartz opposed the Commission conducting the evaluation in closed session.

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:

Wouldn't I like to be "a fly on the wall" in this closed session? My real feeling is that neither Executive Director St. Croix nor the Ethics Commissioners would ever want documents produced in the closed session to see the light of day! Neither would they want any member of the public to overhear the discussion! I'm certain the ED (double entendre intended) has, for another year, successfully evaded any real enforcement of ethics in this City of San Francisco. One only has to look at the public record to see that year, after year, after year, nothing changes! City employees, elected and appointed officials, or anyone in city government does what they want without fear of repercussion! What we really need is a ballot initiative to change the appointment of Ethics Commissioners, away from the persons who they oversee, to direct election by the citizens of San Francisco.

Peter Warfield stated that Mr. St. Croix's actions has diminished public interest and the law and his methods are dishonest.

A member of the public stated that Mr. St. Croix has treated others with incompetence and nothing but arrogance. He suggested getting a new Executive Director.

Motion 13-09-23-4 (Andrews/Hur) Moved, seconded, and passed (4-0; Studley excused) that the Commission enter into closed session.

[The Commission entered closed session at 7:54 PM. The four Commissioners and Executive Director St. Croix were present. Mr. St. Croix left the closed session at 8:15 PM and returned to the closed session at 8:35 PM. Deputy Director Ng, DCA White, and Ms. Argumedo returned to closed session at 8:50 PM and the Commission moved into open session.]

Motion 13-09-23-5 (Renne/Andrews) Moved, seconded, and passed (4-0; Studley excused) that the Commission not disclose its closed session deliberations re: public employee performance evaluation.

Public Comment:

None.

VII. Minutes of the Commission's meeting of July 22, 2013.

Motion 13-09-23-6 (Andrews/Renne) Moved, seconded, and passed (4-0; Studley excused) that the Commission approve the minutes as written.

Public Comment:

None.

VIII. Executive Director's Report.

Executive Director St. Croix highlighted an attachment to the report regarding the Socrata open data portal. He stated that the portal makes the information easier to understand for the public.

Commissioner Andrews stated that professional development is important and should be a high priority. He asked about the Commission's training budget. Mr. St. Croix stated that certain staff members have to get CLE trainings and other staff members get regular trainings. He stated that due to the recent budget problems, the City offers fewer trainings. Commissioner Andrews suggested that Mr. St. Croix attend a future training in Canada, if possible.

IX. Items for future meetings.

Commissioner Andrews asked about the status of the proposed lobbying legislation, as there have been recent community forums. DCA White stated that the proposed legislation is being amended after the input from non-profits, but that he is unsure when the legislation will be re-introduced.

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

None.

Vice-Chairperson Renne stated that it had been a rough evening on staff and Mr. St. Croix. He stated that, on behalf of the other Commissioners, he did not want staff or Mr. St. Croix to take the criticism to heart and it is not the way the Commissioners feel and those who know what the staff is really doing. He suggested that the Commission devise a method in order to answer some of the accusations that have been mentioned. He stated that they were all unfounded comments. Chairperson Hayon agreed. Chairperson Hayon congratulated Mr. St. Croix on his hard work and stated for him not to take the comments personally or to heart.

Motion 13-09-23-7 (Hur/Renne) Moved, seconded, and passed (4-0; Studley excused) that the Commission adjourn.

Public Comment:

None.

The meeting adjourned at 9:01 PM.