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June 22, 2014

Angela Calvillo
Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Potential Violation of Statement of Incompatible Activities (SIA) by Sunshine Ordinance Task Force Member David Pilpel

Dear Ms. Calvillo,

This is a formal complaint that on April 28, Sunshine Task Force member David Pilpel appears to have violated the Statement of Incompatible Activities (SIA) applicable to Task Force members when he spoke during a public meeting of the Ethics Commission in probable violation of the Sunshine Ordinance Task Force's applicable SIA. It appears that this is not the only time Mr. Pilpel has violated the SIA by attending Ethics Commission hearings and representing himself as a member of the Task Force when testifying about Sunshine referrals being deliberated by the Ethics Commission.

On April 28, Mr. Pilpel held himself out to the Ethics Commission as an agent of, or representative of, the Task Force. He had not been, and was not, authorized by SOTF to act on, discuss, or represent the SOTF or its Order of Determination and referral to Ethics during that Ethics Commission hearing. It appears members of the Ethics Commission relied on Pilpel to respond to their questions about the referral on behalf of, or as an "agent" of, the SOTF. Pilpel did not make it clear to the Ethics Commission that he was speaking as a private citizen, nor did he note that he was not authorized by the SOTF to speak on its behalf.

Jurisdiction

The SIA for the Board of Supervisors indicates that as the Clerk of the Board, you are the "decision-maker" regarding incompatible activities by members of the Sunshine Ordinance Task Force, and you are designated to accept this complaint against Task Force member David Pilpel regarding an apparent SIA violation.

San Francisco's Campaign and Governmental Conduct Code (SF C&GCC or Conflict of Interest Code) — a.k.a., the San Francisco "Ethics Ordinance" — was amended by voters November 4, 2003, under Proposition "E" to strengthen Ethics rules.

Ethics Ordinance §3.218 adopted at least 53 separate departmental-specific SIA's for City departments, and various boards and commissions, on October 8, 2008, each of which 53 SIA's include the general prohibition for each City department, and boards and commissions, that:

*"No officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as **incompatible** in a statement of incompatible activities."*

On October 8, 2008, the Ethics Commission approved the Board of Supervisors SIA dated September 10, 2008, which is applicable to all Sunshine Task Force members as "officers" of the City. San Francisco Administrative Code §1.50, *Officers of the City and County*, includes members of the Sunshine Ordinance Task Force in the definition of "officers."

Board of Supervisors SIA Provisions

The Board of Supervisor's SIA applicable to Sunshine Task Force members states in Section IV, Restrictions on Use of City resources, City Work-product and Prestige, Sub-Section C, Use of Prestige of the Office, paragraph 3, "Holding Oneself Out, Without Authorization, as a Representative of the Board, Clerk of the Board, Youth Commission or [Sunshine] Task Force":

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“No officer or employee may hold himself or herself out as a representative of the Board, Clerk of the Board, Youth Commission or Task Force, or as an agent acting on behalf of the Board, Clerk of the Board, Youth Commission or Task Force, unless authorized to do so.

Example:

*An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee’s neighborhood. The employee may attend the meeting and speak during public comment, **but should make clear that he is speaking in his private capacity and not as a representative of the Board, Clerk of the Board, Youth Commission, or [Sunshine] Task Force.** [emphasis added]*

The Board of Supervisor’s SIA adopted this provision of San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) Section 3.218. Engaging in activities prohibited by a governing SIA may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. All City employees and appointees to City boards, commissions, task forces, and advisory bodies are required to re-read their applicable Department’s unique SIA’s annually.

Mr. Pilpel must surely be aware of this annual requirement, and that he is prohibited from holding himself out as an “agent” from SOTF during Ethics Commission meetings, since neither the SOTF nor the Board of Supervisors have authorized him to do so, and Pilpel has not sought a waiver in which to do so.

Violation of SIA

On April 28, 214, the Ethics Commission held a hearing on a Sunshine Ordinance Task Force referral for enforcement regarding Sunshine complaint #12-058 against the Recreation and Park Department, with an Order of Determination that as the department head, General Manager Phil Ginsburg had willfully violated the Sunshine Ordinance.

As shown in Table 1 below, a partial transcript of the Ethics Commission’s April 27 hearing, at fifty-two minutes into the hearing when the Ethics Commission opened public comment for that particular agenda item, Task Force member David Pilpel clearly — and frankly, brazenly — introduced himself by stating “David Pilpel, member of the Sunshine Ordinance Task Force,” implying he was speaking as an “agent” of the Task Force.

The Ethics Commission had not invited Pilpel to its April 28 meeting in order to make a formal presentation about the Ginsburg case on the Commission’s agenda that day. By inference, it was clear Pilpel was deliberately trying to make himself look good, tattling on his fellow SOTF members in order to make them look bad. Everything he reported to Ethics was potentially insider information about a matter the Ethics Commission was discussing. Pilpel was not authorized to speak on behalf of the full Task Force to present his personal “minority opinion.”

Pilpel is not authorized to present his personal opinions under the guise of his SOTF membership regarding a concluded SOTF Order of Determination referring a given Sunshine complaint referred to Ethics for enforcement. The Statement of Incompatible Activities (SIA) for San Francisco Board of Supervisors, Clerk of the Board, Youth Commission, and Sunshine Ordinance Task Force unequivocally prohibits Pilpel from misrepresenting that he is attending Ethics Commission meetings as any sort of “emissary” from the SOTF.

Pilpel has neither applied for, nor been granted, an SIA exemption — an “Advance Written Determination” — from either the Board of Supervisors, or directly from the Ethics Commission at any time during his term on the Task Force between May 2012 and today. The Board of Supervisors Clerk of the Board confirmed on June 2 that Pilpel had never applied for an advance written determination, and the Ethics Commission confirmed on Friday, June 6 that it, too, has no record of Pilpel ever submitting, or having been granted, an advance written determination request from Ethics seeking an exemption to activities prohibited in the SIA governing his activities.

Table 1: Partial Transcript of Ethics Commission Testimony, April 28, 2014¹

Time on Audiotape	Remarks	Commentary
0:52:14	When Ethics Commissioner Ben Hur called for Public Comment on April 28 on the agenda item involving a Sunshine complaint against Phil Ginsburg referred to the Ethics Commission by the Task Force, Mr. Pilpel introduced himself saying “David Pilpel, member of the Sunshine Ordinance Task Force.”	Pilpel didn’t qualify his remarks that he was speaking as a private citizen; instead he held himself out as speaking on behalf of the Sunshine Ordinance Task Force, in clear violation of the SIA governing the Task Force.
0:52:30	Pilpel said “[Referring to] First, whether there was a violation of the Ordinance and whether it was willful, and second [if] Mr. Ginsburg was the correct actor and did the Task Force follow the correct procedures to bring him before you?”	
0:52:53	Pilpel said “I do believe there was a violation of the ordinance ... but I don’t believe that that violation was willful.”	Pilpel creatively neglected to note during the Ethics Commission’s hearing on April 28, 2014, that on October <u>November</u> 6, 2013, Mr. Pilpel had, himself, also voted in favor of forwarding complaint #12-058 against Ginsburg to the Ethics Commission on the Task Force’s 8-0 vote to do so, by including finding a violation of §67.34, the willful violation provision, which Pilpel voted had occurred. Ostensibly, on April 28, 2014, Pilpel sought a “do-over” of his October <u>November</u> 6, 2013 vote finding willful violation by Ginsburg referring the matter to Ethics.
0:53:43	Pilpel stated “I’m not sure, quite frankly, if Mr. Ginsburg is the right actor, and if the Task Force got to him correctly.”	
1:31:46	Ethics Commission president Ben Hur said “I have a question for Mr. Pilpel.” Hur asked Pilpel: “You said it was your view at the Task Force that there was a problem naming the [respondent], Mr. Ginsburg ...”	
1:32:23	Pilpel responded, saying “The matter [case against the Recreation and Park Department] was continued to give him [General Manager Phil Ginsburg] notice via the e-mail so that his due process was addressed. I’m not sure if that [e-mail notice] was sufficient.”	Pilpel creatively neglected to note during the Ethics Commission’s hearing on April 28, 2014, that on October 2 <u>September 4</u> , 2013, he seconded a motion to provide <u>direct</u> notice to Ginsburg that he was being asked to attend the Task Force’s hearing, <u>along with Sarah Ballard, on October 2</u> .
1:32:42	Pilpel stated “I think we need to have some better clarity between this [Ethics] Commission, [Ethics Commission] staff, and the Task Force about what steps need to happen for things to be perfected and properly put [Sunshine complaints brought] before you.”	Pilpel again creatively neglected to note during the Ethics Commission’s hearing on April 28, 2014, that on October <u>November</u> 6, 2013, Mr. Pilpel had, himself, also voted in favor of forwarding complaint #12-508 against Ginsburg to the Ethics Commission on the Task Force’s 8-0 vote to do so, <u>specifically naming Ginsburg as being responsible</u> .
1:32:57	Pilpel stated “I’ve tried all I can at the Task Force ... I’m fighting a losing battle over there [at the Sunshine Task Force] on these issues. If we’re not getting the right facts and the right information before you, then obviously things are going to fail, and I understand that. As I said earlier, I think there was a violation. I don’t think it was willful, and I’m not sure that Mr. Ginsburg was the proper person.”	Pilpel again withheld informing the Ethics Commissioner’s that he [Pilpel] had voted on October <u>November</u> 6 to refer the case to Ethics as willful, under §67.34.

¹ The audio recording of the hearing is available at www.sfethics.org/ethics/2011/12/ethics-commission-meeting-recordings.html

Time on Audiotape	Remarks	Commentary
1:33:20	Ethics Commissioner Hur asked “Why wasn’t that notice enough? If he [Ginsburg] got e-mail notice that he was [expected to attend the hearing] ...”	
1:33:26	Pilpel replied: “That’s a question for you [the Ethics Commission] to decide. Whether the ‘due process concerns’ [for Ginsburg] have been quieted and whether you’ve gotten sufficient grounds to make the determination that was just explained ... [regarding willful or non-willful violation] on Mr. Ginsburg’s part.”	<p>Pilpel did not acknowledge to the Ethics Commissioner’s that he was mixing his role as a member of the SOTF, with his other role of being a member of the public speaking.</p> <p>Here we have Pilpel presenting his personal “due process” concerns that had not been an issue with the full Task Force, after having held himself out as a representative of the Task Force, raising his “minority opinion” concerns about Phil Ginsburg’s “due process” rights, when in fact, the due process rights were not of concern of the full Task Force. Pilpel sought to replace concerns of the Task Force, with his own personal concerns about “due process” — <i>after</i> he had voted to refer the matter to the Ethics Commission.</p>
1:33:50	Pilpel stated “I’ve spent a huge amount of time after ... between ... the [SOTF’s the] hearings preparing findings and [exculpatory] explanations that I think would have been helpful as part of the referral and transmittal [of the Ginsburg referral to the Ethics Commission]. The Chair [of the Task Force, Kitt Grant] elected not to use that [Pilpel’s “findings” research].”	<p>Here, Mr. Pilpel may have been alluding to having performed research to find “exculpatory” evidence <i>after the time</i> SOTF had voted to forward the matter to Ethics, and when Chair Grant actually transmitted the case to Ethics. He caught himself, and changed “<i>after</i>” to “<i>between</i>.” Pilpel was apparently unhappy that Ms. Grant had decided against forwarding Pilpel’s extracurricular “findings” to Ethics that had not been presented to, or discussed, by the full Task Force at the time it arrived at its determination.</p>
1:34:10	Pilpel stated “And so what you have before you is the information that was before the Task Force, which really doesn’t tell the full story. Doesn’t tell it well.” Pilpel concluded “We have some procedural problems here.”	<p>Pilpel claimed the referral to Ethics forwarded by the Full Task Force considered to be the official referral hadn’t forwarded the full story, implying the Task Force had somehow withheld the full story. Pilpel is not authorized to make any such allegation against the full Task Force, and certainly not without the full Task Force’s explicit permission to so claim.</p>
1:34:40	<p>Ethics Commissioner Ben Hur asked Ethics Commission staff, “What is the due process violation if we find a non-willful violation?”</p> <p>Ethics Commission Director John St. Croix responded that Ginsburg had not initially been the named respondent when the Sunshine complaint was filed.</p> <p>Hur then asked if [Ginsburg] had not [initially] been named as a respondent, [if Ginsburg] didn’t really have [sufficient due process] notice.”</p>	
1:34:45	DCA Joshua White interrupted, saying he had a “different view” on whether the case involved a due-process violation, as Pilpel had sought to interject <i>after</i> the Sunshine Task Force has advanced the case to Ethics. ... In a lengthy response, White indicated “due process” is triggered only when there is a “liberty or property interest by a government action.”	<p>Although Pilpel had to have been fully aware of DCA White’s official advice to the Ethics Commission that “due process” did not apply in the complaint against Ginsburg, Pilpel continued to blab on May 15 at the Rules Committee hearing where he was seeking re-appointment to the Task Force, that members of the SOTF didn’t understand where “due process attaches.”</p>
1:36:30	White went on to say that even if assuming a “reputational	

Time on Audiotape	Remarks	Commentary
	<p>interest,” that is not sufficient to trigger ... a notice for hearing. White continued “So I have serious concerns about whether this would be an actual constitutional “due process” violation for the Ethics Commission to proceed on.”</p>	<p>Pilpel withheld telling Supervisors Yee and Tang on May 15 that just 17 days earlier when Pilpel raised the “due process” issue during a Sunshine complaint hearing before the Ethics Commission, Deputy City Attorney Josh White, who advises the Ethics Commission, had to interject and inform the Ethics Commissioners that “due process” didn’t apply.</p> <p>Pilpel appears to have misled both the Ethics Commissioners on April 28, and 17 days later, members of the Board of Supervisors Rules Committee. Pilpel creatively forgot to mention to the Rules Committee that DCA White had dismissed the idea that “due process” had been applicable, and kept spouting the “due process” nonsense even after DCA White advised Ethics Commissioners that Pilpel was barking up the wrong tree.</p>
<p>1:42:34</p>	<p>Ray Hartz, Jr. testified to the new Ethics Commissioners: “As [since] Mr. Pilpel has, basically, appeared [here tonight] in behalf of the defense [Mr. Ginsburg], I would like to make a couple of things very clear.” ... “Mr. Pilpel, while a member of the Sunshine Ordinance Task Force often comes to meetings like this saying he’s a member [of SOTF] and then undercutting decisions of the Task Force [had made] about matters with which he disagreed during the initial discussion. I would suggest you look at the decision issued by the Task Force [regarding the referral of Ginsburg to Ethics] ... and not depend on a biased opinion from someone who will always, always side with the City. And he’s [Pilpel has] been in the process here [tonight] of giving advice to the City’s representatives, while he’s up here trying to give advice to you. That is not in any way a fair situation.”</p>	
<p>1:45:20</p>	<p>Commissioner Keane followed up with a question regarding how much notice had been provided to the complainant in the case, Mr. Dominic Maionchi, had been provided prior to the April 28 Ethics Commission hearing. Ethics Commission staff member Garrett Chatfield responded indicating the notices provided to both the complainant and respondent [Mr. Ginsburg] had been “noticed” by e-mail on April 4, Mr. Maionchi was mailed notice [apparently by U.S. Mail] on April 4, and Mr. Ginsburg was sent the notice via interoffice mail. Chatfield noted he had personally reminded them both the previous Friday that the hearing was “tonight” [on April 28].</p>	
<p>1:46:10</p>	<p>Commissioner Hur stated “I presume the City Attorney [DCA Josh White, who advises the Ethics Commission], finds the notice to both parties was sufficient?”</p>	
<p>1:46:15</p>	<p>DCA White stated, “Yes, based on what Mr. Chatfield just said.”</p>	<p>DCA White again asserted that both parties had been given sufficient “due process” notice, dismissing the red herring Pilpel had raised in an attempt to find exculpatory excuses to let Ginsburg off the hook.</p>
<p>1:52:39</p>	<p>In a lengthy comment regarding “due process,” Commissioner Keane noted that there have been several</p>	

Time on Audiotape	Remarks	Commentary
	<p>U.S. Supreme Court cases regarding “due process” and “reputational harm,” Keane noted “There has to be some actual injury that’s addressed to it [a due process]. And I don’t go to the threshold point that there’s any reputational tarnishing of Mr. Ginsburg by using saying “not willful, but they violated the Sunshine Ordinance.”</p>	
<p>1:56:05</p>	<p>Keane said “I would like to follow up with what the Chair [Ben Hur] just said, and put it in the form of a motion, that [The Ethics Commission] finds that the Sunshine Ordinance was violated by the ... by Mr. Ginsburg as [department] head of the Department of Recreation and Parks, and that it was a non-willful violation, and that in regard to this particular instance, the information [sought by the complainant] should be disclosed.”</p> <p>Keane’s motion was seconded, but failed on a 2 to 3 vote. Subsequently, the Ethics Commission deliberated that they believed a violation of the Sunshine Ordinance had in fact occurred, but that the Task Force may not have named the proper respondent.</p>	
<p>2:07:08</p>	<p>Commissioner Andrews introduced a motion to move the complaint back to the Task Force for more factual information. Commissioner Hur seconded the motion, and called for a vote.</p>	
<p>2:07:27</p>	<p>Pilpel, speaking without being recognized, said “Can I clarify?” and asked for Ethics Commission guidance on what the Task Force would be asked to do.</p>	
<p>2:07:43</p>	<p>Commissioner Hur informed Pilpel that the Task Force would need to go through its customary processes and send the matter back to Ethics, or not.</p>	
<p>2:08:13</p>	<p>After Pilpel pushed further, Commissioner Hur, sounding exasperated, finally stated “[Mr. Pilpel,] nobody is soliciting your input at this point, thank you.”</p> <p>On the vote on the motion, the Ethics Commission voted 3 to 2 to return the matter to the Task Force, possibly after Pilpel had already inappropriately biased the Ethics Commission’s deliberations.</p>	<p>Why it took Commissioner Hur fully two hours and eight minutes into the Ethics Commission hearing to inform Pilpel that nobody was soliciting Pilpel’s input is not known, and Hur should not have permitted Pilpel to provide any “input” at all during the hearing after Pilpel held himself out in his official capacity as a member of the Sunshine Task Force.</p> <p>Since all departmental SIA’s required the approval of the Ethics Commission before implementation in 2008, Commissioner Hur should have known that Pilpel was likely in violation of the Board of Supervisors SIA by holding himself out as a member of the Task Force inappropriately, and without authorization to do so.</p> <p>And DCA White should have interjected at 52 minutes into the hearing to inform Ethics Commissioners that Pilpel had clearly and intentionally violated his SIA.</p>

Unethical and Egregious Adverse Impacts of Pilpel’s Violation of the Board of Supervisors SIA

Adverse Impact on Complainants Who Initiate Sunshine Ordinance Complaints

Because complainants — in the instant case, Mr. Dominic Maionchi — are never provided advance notice that Mr. Pilpel intends to attend Ethics Commission hearings on the complainant’s referrals to the Ethics Commission, and that Pilpel

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intends to hold himself out to the Ethics Commissioners as a member of the Sunshine Task Force, they are deprived of due process notice that Pilpel may intend to undercut and advocate for overturn of prior decisions that the Full Task Force had ruled were appropriate.

Ironically, while Pilpel was extremely concerned that Mr. Ginsburg may have been denied due process (which argument the Ethics Commissioners eventually rejected as a false claim), Pilpel shows absolutely no concern that he may be depriving Sunshine complainants of due process notice that he intends to re-adjudicate Task Force decisions before the Ethics Commission. This is completely egregious behavior, clearly violative of the applicable SIA governing his conduct.

Adverse Impact on Other Members of the Sunshine Ordinance Task Force

Because Mr. Pilpel fails to inform his co-members of the Sunshine Task Force in advance that he intends to attend Ethics Commission hearings regarding Sunshine complaints referred to the Ethics Commission for enforcement, and intends to undercut decisions reached by majority vote of the Task Force, he is depriving members of the Task Force of foreknowledge that he intends to substitute his minority, “dissenting opinion” for the Task Force’s “majority opinion” by presenting oral testimony to the Ethics Commission in an attempt to overturn the Task Force’s Orders of Determination previously reached by consensus of the full Task Force.

This is egregious precisely because Pilpel appears to believe he is entitled to submit his personal dissenting opinions by disrespecting the will of the full Task Force and without prior approval of the Task Force, signaling that he feels he is above the law — and above the governing SIA, somehow being “exempt” from the prohibition of holding himself out as an agent of the Task Force in the absence of having an Advance Written Determination authorizing him to do so — when it comes to decisions made by the full Task Force. This is extremely egregious, precisely because it’s totally disrespectful of decisions reached by the full Task Force, which decisions Pilpel appears to believe he is entitled to undermine at Ethics.

Adverse Impact on Board of Supervisors Rules Committee

To the extent that Pilpel sought to sway the Rules Committee into re-appointing him to the Sunshine Task Force on May 15 by blabbing his wild assertion that members of the SOTF didn’t understand where “due process attaches,” he may have gamed re-appointment to the Task Force by withholding informing Supervisors Yee and Tang on May 15 that just 17 days earlier when Pilpel had raised the “due process” issue during the Sunshine complaint hearing involving Phil Ginsburg before the Ethics Commission, Deputy City Attorney Josh White who advises the Ethics Commission, had to interject and inform Ethics Commissioners that “due process” didn’t apply.

It is completely egregious that Pilpel — who must have fully understood DCA White’s clear City Attorney advice — withheld DCA White’s advice from Tang and Yee, and repeated the “due process” misinformation that White had shot down, during his testimony seeking re-appointment to the Task Force. Indeed, it could be argued that by ignoring DCA White’s “City Attorney opinion,” and repeating due process misinformation, Pilpel had failed Katy Tang’s “litmus test” of undying fealty to City Attorney “advice” as a condition of appointment to the Task Force.

How much more egregious can this get, if only because Pilpel was alleging by inference that the full Task Force may be ignoring due process protections, and by so alleging may have caused, however unintentionally, “reputational harm” to his co-members of the Task Force?

Pilpel appears to have misled both the Ethics Commissioners, and 17 days later, members of the Board of Supervisors Rules Committee. Pilpel creatively forgot to mention to the Rules Committee that DCA White had dismissed the idea that “due process” had been applicable, and kept spouting the “due process” nonsense even after DCA White advised Ethics Commissioners that Pilpel was barking up the wrong tree.

Pilpel may have intentionally misrepresented events to both the Ethics Commission and the Board of Supervisors, and by so doing, may have intentionally misled both bodies. Pilpel had voted to sustain the SOTF referral of Ginsburg to the Ethics Commission, then denounced his own affirmative vote to do so, both before the Board and before Ethics. After DCA White advised the Ethics Commission — and by extension advised Pilpel — that there had been no due process violation “attached” to Ginsburg, Pilpel subsequently appears to have intentionally misrepresented events by continuing to assert an event that hadn’t occurred, had. Were Pilpel’s statement made under oath, observers suspect such statements would have approximated perjury.

Pilpel’s probable clear violation of the Board of Supervisors SIA at Ethics on April 28 should have been sufficient evidence for the Rules Committee to deny recommending him on May 15 for re-appointment to the Sunshine Task Force, and sufficient evidence that the full Board of Supervisors should *not* have re-appointed him on May 20.

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Adverse Impact on Reputation and Independence of the Sunshine Task Force

As a quasi-judicial adjudicatory body charged with hearing complaints between San Franciscans seeking access to public records and access to public meetings that San Francisco officials seek to withhold, Sunshine Ordinance §67.1, *Findings and Purpose*, states:

“The Board of Supervisors and the people of the City and County of San Francisco find and declare that:

- (a) Government’s duty is to serve the public, reaching its decisions in full view of the public.*
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.*
- (f) The people of San Francisco enact these [Sunshine Ordinance] amendments to assure that the people of the City remain in control of the government they have created.”*

The Sunshine Ordinance, enacted 20 years ago in 1993 and amended by voters in 1999, sought to create a Task Force that would investigate violations of public records laws by public officials.

Ironically, Mr. Pilpel’s probable clear violation of the requirements of Ethics Ordinance §3.218 prohibiting incompatible activities undermines the very trust San Franciscans believe necessary for local government transparency and accountability.

And it now raises the disturbing phenomena that a Task Force member installed to investigate violations of open government laws may possibly have, himself, more than likely violated a key provision of City Ethics Law §3.218 by holding himself out as an agent of the Task Force and above our Ethics laws, when he is expressly prohibited from doing so. This can only cause reputational harm to the Task Force itself, and should be considered sufficient grounds for his immediate dismissal from this adjudicatory body.

Recommendation and Remedy Sought

Indeed, both the Board of Supervisors and the full membership of the Sunshine Task Force should discipline Pilpel for his unauthorized appearances at public meetings of the Ethics Commission — holding himself out as an agent of the Task Force without any authorization or advance approval to do so. Pilpel intentionally presents his personal, “dissenting opinions” regarding votes adopted by the full Task Force during Ethics Commission hearings, to purposefully undermine — and adversely impact — the full Task Force’s “majority opinion” being deliberated by the Ethics Commission for enforcement. Pilpel appears to believe he is entitled to engage in this type of subterfuge by virtue of his seat on the Task Force.

Ethics Commission Regulation 3.218-5 provides that the applicable department, in this case the Board of Supervisors, shall investigate complaints alleging violation of the Board of Supervisors SIA. If the department, board or commission determines that the activity is inconsistent, incompatible or in conflict with the employee’s duties, the department, board or commission may impose discipline as appropriate.

Given the egregious nature of the conduct of Task Force Member David Pilpel, I respectfully request, Ms. Calvillo, that as the “decision-maker” regarding incompatible activities by members of the Sunshine Ordinance Task Force, you find and determine that Mr. Pilpel’s discipline should be immediate removal from the Sunshine Ordinance Task Force.

And given the history of the Sunshine Ordinance, and the intent of Ethics Commission-approved SIA’s incorporated into San Francisco’s Ethics Law, it would be the only appropriate determination.

[signed]

Patrick Monette-Shaw

Columnist/Reporter

Westside Observer Newspaper

cc: Ethics Commission President Ben Hur and Ethics Commission Members
Sunshine Ordinance Task Force Members
Board of Supervisors Rules Committee Members