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BHC Annual Retreat Meeting - December

Saturday, December 17, 2022

Overview

BHC Annual Retreat Meeting

Agenda

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Date & Time

Saturday, December 17, 2022
10:00 am to 2:00 pm

Online

BHC Annual Retreat Planning Meeting

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Agenda

Annual Report 2022

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City and County
of San Francisco

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October 10, 2022

Deleted: August 18

Lila LaHood, Chair
Compliance and Amendments Committee
Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 244
San Francisco, California 94102-4689

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Sent via email to sotf@sfgov.org

Dear Committee Chair LaHood:

In response to your email of July 10, 2022, announcing an hearing before the Compliance and Amendments Committee ("CAC") of the Sunshine Ordinance Task Force ("SOTF") on Aug. 23, 2022, on the topic of the Behavioral Health Commission's ("BHC's") compliance with the Task Force's order of Apr. 6, 2022, I have compiled the following summary of violations thereof occurring since that date.

Summary of Recent SOTF Actions Regarding BHC

On Oct. 6, 2021, The SOTF ruled against the Behavioral Health Commission on file nos. 20100 and 20143, combined into 20100.

On Feb. 2, 2022, the SOTF reaffirmed its Oct. 6, 2021, decision in all respects.

On Apr. 6, 2022, the SOTF ruled against the Behavioral Health Commission on file nos. 21021, 21036, 21087, 21095, 21099, 21103, and 21118.

On Apr. 8, 2022, SOTF Administrator Cheryl Leger sent an email to me and the BHC with subject line "SOTF – Motion on Item 8, Consent Agenda; SOTF April 6, 2022" to the BHC (emph. in orig.):

Mr. Hillier and Mr. Grier: Below is the motion from Wednesday night's Sunshine Task Force hearing:

Member Hyland moved approve [sic] the consent agenda for file [sic] 21021, 21036, 21087, 21095, 21099, 21103, 21118 as presented for violations each noted and Order of Determination for each item, second, Vice-Chair Yankee.

Vice-Chair Yankee provided amendments to the motion.

Moved by Vice-Chair Yankee to include the motion from the March 8, 2022, Education, Outreach and Training Committee hearing and put it into the Order of Determination. The EOTC [sic] is ordered to provide a manual of their practices and procedures as listed above. [sic]

Moved by Chair Hyland, seconded by Member Yankee, to recommend that the SOTF, via Consent Agenda, find that the BHC and its Committees, at various meetings that occurred from period [sic] September 8, 2020, through April 13, 2021, violated one or more of the following Sunshine Ordinance Sections:

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The EOTC further requests that the SOTF refer the matter to the Compliance and Amendments Committee to review future agendas/meetings of the BHC, no earlier than the issue date of the Order of Determination, and not to extend beyond three months, regarding compliance with the Sunshine Ordinance Sections listed above or related violations.

The EOTC further requests that the BHC provide their manual or description of their procedures/practices implemented to address the violations listed above. In an effort to document compliances [sic] with posting requirements of the Sunshine Ordinance, the EOTC requests that

the BHC maintain a log of when agendas and supporting documents are posted along with any other relevant data.

On Apr. 19, 2022, Ms. Leger sent a second email to me and the BHC, this time with "Subject" line "SOTF – April 6, 2022 Sunshine Task Force actions", as follows:

Mr. Hillier and Mr Grier: Per the Sunshine Task Force [*sic*], the actions from the April 6, 2022 Sunshine Task Force [*sic*] regarding the [*sic*] Item 8, the Consent Agenda hearing [*sic*] are below.

Action: Moved by Member Hyland, seconded by Vice Chair Yankee to approve the consent agenda for File Nos. 21021, 21036, 21087, 21095, 21099, 21103, 21118, as presented for violations each noted and that and that an Order of Determination is drafted for each item for the following violations against the Behavioral Health Commission for meetings that occurred for the period of September 8, 2020, through Apr. 13, 2021, for violations of one or more of the following Sunshine Ordinance Sections (with the Respondent plea of "No Contest"):

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The SOTF further requests that the matter is referred to the Compliance and Amendments Committee no earlier than the issue date of the Order of Determination. The SOTF further requests that the BHC provide their manual or description of their procedure/practices implemented to address the violations listed. In an effort to document compliance with posting requirements of the Sunshine Ordinance, the SOTF requests that the BHC maintain a log of when agendas and supporting documentation are posted along with any other relevant data.

The minutes for the meeting on Apr. 6, 2022, had additionally reported the following information:

The motion PASSED by the following vote:

Committee Chair LaHood

October 10, 2022

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Ayes: 7 – Hyland, Yankee, Wolfe, Padmanabhan, Schmidt, Stein,
Neighbors

Noes: 0 – None

Absent: 2 – Wong, LaHood

On July 6, 2022, I appeared before the SOTF at their regular meeting and requested that the referenced Order of Determination and another, regarding file no. 20100, issue, citing continuing desultory compliance and continuing violations by BHC. I was told at the meeting that the above emails were orders of determination, that staff was to have provided an email regarding file no. 20100, and that you were to schedule an hearing in CAC for monitoring and compliance.

On July 11, 2022, I received email from you, cc'd to the BHC and SOTF, relevantly stating the following (emph. in orig.):

Dear Mr. Hillier,

When the Sunshine Ordinance Task Force finds a violation and orders compliance, that **order of determination is effective immediately**. We expected that the Behavioral Health Commission would be taking steps to comply with our order right after it was issued in April.

I will ask Ms. Leger to **schedule a hearing on this matter for our next Compliance and Amendments Committee meeting in August**.

I would recommend that a representative from the **Behavioral Health Commission follow up with Ms. Leger and let her know what they have been doing to comply with our order of determination** in advance of that meeting.

Best regards,

Lila

At the time, the next meeting of the Compliance and Amendments Committee was scheduled for Aug. 23, 2022.

On July 15, 2022, Ms. Leger sent the following email to myself, the Behavioral Health Commission, and Mr. Grier, with the subject line, "SOTF – Matter No. 20100 per Mr. Hillier's request" (ellipses added):

Mr. Hillier, Behavioral Health Commission and Mr. Grier: Per Mr. Hillier's request, below is the October 6, 2021 Sunshine Task Force [*sic*] motion on matter 20100.

File No. 20100: Complaint filed by Wynship Hillier against the Behavioral Health Commission, formerly known as the Mental Health

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Board for allegedly violating, Section 67.7(a) failing to post the Agenda 72 hours in advance and failing to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(d) failure to take action on any item not on the Agenda [*sic*]; 67.7(g) failing to allow public comment; 67.9(a) failure to post relevant documents on the internet.

Chair Wolfe noted that both items 7 and 8 were heard by different Committees and suggested a motion to combine the items.

Both Petitioner and Respondent agreed to combining the two matters.

Action: Moved by Chair Wolfe, seconded by Member Hyland, to combine items 7 and 8, File Nos. 20100 and 20143, respectively. (File No. 20143 combined into 20100)

Public Comment:

....

The motion PASSED by the following vote:

Ayes: 8 – Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Yankee

Absent: 1 – Wong

Member Wong was noted present at 6:06 PM.

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Action: Moved by Member Stein, seconded by Member Schmidt, to find that the Behavioral Health Commission Violated Administrative Code, Sunshine Ordinance, Section(s) 67.7(a) by failing to provide an adequate description of agenda items; 67.7(b) failing to post supporting documents on-line or make them available as soon as they are available [*sic*], 67.7(g) failing to include notices of rights under the Sunshine Ordinance on the agenda, and 67.9(a) failing to post supplementary documents for the meeting on the internet.

Public Comment:

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The motion PASSED by the following vote:

Ayes: 9 – Stein, Schmidt, Wolfe, Hyland, Padmanabhan, Lahood, Neighbors, Yankee, Wong

Noes: 0 – None

Action: Moved by Chair Wolfe, seconded by Vice-Chair Yankee, to continue the matter to the Call of the Chair to review the status of the Behavioral Health Commission as to whether it falls under the jurisdiction of the Ordinance under 67.3(d) and to further review how the holdover provisions apply.

Public Comment:

None

The motion PASSED by the following vote:

Ayes: 9 – Wolfe, Yankee, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Wong

Noes: 0 – None

Action: Moved by Vice-Chair Yankee, seconded by Chair Wolfe, to find that the Behavioral Health Commission violated Administrative Code (Sunshine Ordinance), Section(s) 67.7(a) by failing to post their agenda 72 hours in advance the meeting [sic].

Public Comment:

....

....

The motion PASSED by the following vote:

Ayes: 8 – Yankee, Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Neighbors, Wong

Noes: 1 – Stein

The meeting was recessed from 8:27 to 8:37 PM.

File No. 20143: Complaint filed by Wynship Hillier against the Behavioral Health Commission for allegedly violating Administrative Code (Sunshine Ordinance),

Sections 67.7(a) by failing to post the Agenda 72 hours in advance of the meeting and failure to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(g) failing to allow public comment; 67.7(g) failing to include notices of rights under the Sunshine Ordinance on the agenda; 67.7(h) failing to include contact information and the Administrator's name on the agenda; 67.9(a) failure to post relevant documents on the internet; 67.15(c) failing to allow public comment; and 67.21(b) failing to make files available to the public.

File No. 20143 combined into File No. 20100.

BHC'S COMPLIANCE WITH THE SAN FRANCISCO SUNSHINE ORDINANCE SINCE THE SOTF'S ORDER OF APR. 6, 2022, HAS BEEN POOR.

BHC has shown improvement in only two of the seven areas in which SOTF found violations on Apr. 6, 2022. In one area, they have been including SOTF messages in all of their meeting notices, even in notices for meetings of committees new since the Apr. 6, 2022, order. In the one other area in which they showed improvement, their performance in the area had previously been so bad that, even with improvement, their compliance in this one area is still poor. We ask for findings of willful noncompliance in several areas because, not only did BHC have a ruling from the SOTF citing these very violations in front of them at the time that they were repeating them, but, in many instances (noted below), BHC proceeded with violations despite advance email warnings from me that the violations were apparent from the notice or the circumstances surrounding its posting and were either way incurable. Yet, they proceeded with the noticed meetings and actions anyway, knowing that they could not fail to commit violations of the law thereby. This is "willful noncompliance."

Since the hearing before this committee on Aug. 23, 2022, BHC has engaged in a number of evasive behaviors. They have noticed weekly meetings of two *ad hoc* committees extending over two months. These meetings have been poorly-noticed, many of them not meeting the 72-hour requirement, but we do not report them here because they were not *per se* violations, due to lack of quorum. Lack of quorum, nevertheless, rarely prevented these committees from proceeding with their meetings and conducting business in "discussion-only mode." The sizes and membership rosters of these committees also constantly changed, through actions by the co-chairs, made in the background, outside of the public view. Indeed, the Co-Chairs have become a committee unto themselves, requiring noticed meetings. The implementation of the new website occurred on Sept. 30. This has not resulted in any greater compliance. BHC has yet to post a single piece of explanatory correspondence, and the new website has made it harder for the public to find other documents relevant to meetings. To find the minutes of the Sept. meeting of the Commission to be approved at the Oct. meeting, which meetings are consistently labeled meetings of the "BHC Committee" on the new website, one must navigate up from the Oct. meeting, then down to past meetings, then (past a slough of meetings of *ad hoc* committees) down again to the Sept. meeting, where the minutes are labeled as minutes of the Executive

Committee. None of this has been reported below. The Commission's standing committees, of which six meetings were noticed since the last meeting of this committee, none of the meetings occurred, except for one which was apparently held at a different meeting ZOOM than the one announced. Two were cancelled under strange circumstances. Three more failed to attract quora. All of them exhibited the same repetitive agendas we have reported previously, but we report none of them here because none of them were "meetings" under the Ordinance, except for the one held at a meeting ZOOM not available to the public, of which I was not informed until after the fact. Also during this period, one of the Co-Chairs (the other is a full-time graduate student at UC Berkeley, rents an apartment there, and has not been removed from the Commission for violation of S.F. Charter § 4.101(b), requiring residency) announced a pronounced interest in "informal work groups" not subject to open meeting requirements, has spoken of the desire to move business from *ad hoc* committees into these work groups, and appears to have converted one of the *ad hoc* committees into such a work group by personal fiat, which he imagines to have allowed it to meet privately. At the meeting on Oct. 19, it was announced that separate "training sessions" with Commission counsel and the Deputy Director of Behavioral Health Services, both regarding conduct of meetings by the Commission, would be upcoming on uncertain dates. We also note for amendment purposes that the Commission has conducted a training session, under my advice, without notice to the public, and that they were only able to do so because the training was conducted remotely. In other words, the COVID-19 restrictions are making possible meetings without notice that would have been prohibited without them, because the provisions in the Sunshine Ordinance for remote meetings are looser than those for in-person meetings, compare S.F. Admin. Code § 67.3(b)(1) and (b)(3), under the expectation that S.F. Admin. Code § 67.6(b) required all meetings to be held in person, with exceptions in S.F. Charter § 4.104(b).

In the remainder of this document, we break down the SOTF's Apr. 6, 2022, order into its component findings. Under each finding, in italicized type, we quote the black letter of the law for the relevant part of the code section cited, quote any other sections of law relevant to the finding, and discuss any issues of interpretation. (We assume that the SOTF did not mean to limit its orders to regular meetings, even if the specific code sections they cited only applied to regular meetings. In these circumstances, we cite or quote the code section responsible for analogous special meeting requirement. We also assume that the SOTF orders were intended to cover all BHC committees, including ones created after the order.) Then, because each provision of each section may be violated in a number of different ways, we list each of those ways and discuss how the referenced act or omission constitutes a violation of the referenced provision, as well as aggravating and mitigating factors, if any. Finally, we provide bullet points, one for each meeting in which the referenced act or omission occurred. Within each bullet point, we reference items on the agenda in which the referenced act or omission occurred and describe the act or omission.

Item No. 1: "67.7(a) by failing to provide an adequate description of the agenda items:"

S.F. Admin. Code § 67.7(a) states as follows, in relevant part (sq. brackets, ellipsis added): “[A] policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the [regular] meeting. Agendas shall specify for each item of business the proposed action or a statement that the item is for discussion only. . . .” (Note: S.F. Admin. Code § 67.7(b) states as follows, in pertinent part (ellipsis added): “A description is meaningful if it is sufficiently clear 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. . . .” (Note: Cal. Gov’t Code § 54952.6, part of the Brown Act, in pari materia with the Sunshine Ordinance, states in full: “As used in this chapter, ‘action taken’ means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”) (Note: S.F. Admin. Code § 67.6(f) specifies that (sq. brackets, ellipses added), “[t]he notice [of a special meeting] shall specify . . . the business to be transacted. No other business shall be considered at such meetings. . . .”)

Failure to Include “a Meaningful Description”

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda for a regular meeting, that each item on the agenda include a “meaningful description” of the item to be transacted or discussed. The description must be detailed enough that a member of the public whose interests may be affected by the item would be able to tell from the description of it whether or not to attend the meeting. *Id.* § 67.7(b).

- The agenda for the May 10, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 15, contained a meaningless description. Item No. 2.4 was “**Follow up on RFP:** Dr. Kunins update on MHSF for 5/18/22. What about the RFP?” was insufficient to inform someone whose interests were affected of whether they should attend the meeting. During the discussion of this item, it was revealed that this item was actually about a proposal to have a member of BHC sit on an extant BHS panel to evaluate proposals by new programs seeking funding from BHS, and maybe visit their sites. This information should have appeared on the agenda. We complained about this in an email, attached hereto as EXHIBIT 11. They went ahead with the meeting anyway. We ask for a finding of willful noncompliance.
- The agenda for the May 10, 2022, regular meeting of the Executive Committee, attached hereto as EXHIBIT 16, did not contain any entry for two discussions listed on it. The item called was “**ITEM 1.0 COMMISSIONER’S [sic] REPORTS [¶] Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives**”. It is ambiguous, what “in on” and “the distribution of budget initiatives” mean, but, in any event, it is clear that this item is the new place for the *Bylaws*-required reports of committees to the Executive Committee.

(These used to have at least a marker on the agenda, as they do during the reporting period at the Commission level.) Nothing whatsoever to do with “the distribution of budget initiatives,” whatever that was supposed to mean, was discussed here. Instead, a “report” of the Implementation Committee was given here. This was a seven-minute discussion between committee members and non-committee Commissioners on grievance processes at BHC sites and what to do about them. Furthermore, it was proposed to put this on the meeting of the Commission the following week, apparently as a discussion item, “just to get it heard by the administration.” As mentioned elsewhere, it is ambiguous whether this item (at this meeting) was for discussion only or action was taken, because any member may put discussion items on the agenda for the Commission and no vote was taken. Either way, there was not even ambiguously any notice whatsoever on the agenda for this item, nor did the proposed action, which was to *recommend that the Commission discuss the item at its meeting the following week*, appear on the agenda. Item 2.5 was dismissed by staff as “overkill” (apparently, they they are over-noticing in order to avoid violations) and skipped by the committee chair, but the description for this item, “MSA to be on June 15, 2022 agenda for presentation, vote if necessary [action item]” was an inadequate description because it did not state the topic of the presentation. I had complained via email about this item in advance of the meeting, attached hereto as EXHIBIT 12. While no violation occurred, for purposes of compliance and monitoring, the reason for skipping the item appears to have been other than the violation it would have entailed. Had the facts been otherwise, a violation may have occurred.

- The agenda for the regular meeting of the Commission held on May 18, 2022, attached hereto as EXHIBIT 32, contains no notice whatsoever of an item introduced immediately after roll call; Commissioners Wynn and Murawski, both newly added to the Commission, were asked to introduce themselves, and they did. It also contained no notice whatsoever of a motion to create an *ad hoc* committee to revise the *Bylaws*, which motion was introduced concurrently with the motion to approve the *Bylaws* under Item No. 3.4. Please make no mistake; this was not a secondary motion to *Commit or Refer* that would have temporarily disposed of the approval of the revised *Bylaws* and prevented final action on them by referring it to a committee; such a secondary motion to *Commit or Refer* would have required no notice on the agenda. This was a *main motion* to *Commit or Refer* the newly approved *Bylaws* to an *ad hoc* committee. Thus, it needed notice on the agenda. “Action taken” in *Cal. Gov’t Code* § 54952.6 includes *all main motions*, even secondary motions that are moved as main motions because they are moved when no other business is pending. See, RONR (12th ed.) 6:9 and 13:6 (incidental main motion to *Commit or Refer*) To reiterate, on this day, the Commission took action on a compound motion to: a) adopt revised *Bylaws* and b) form an *ad hoc* committee to revise them yet again. Only the motion to adopt the revised *Bylaws* was on the agenda; the committee to revise them still further was added because the motion to revise the *Bylaws* did not pass, the first time, and so they added it on (but staff announced the added

motion at the beginning of the meeting during “agenda changed,” as if this had all been choreographed in advance, hmmm.) This agenda also lacks a meaningful description of Item No. 3.3, “BHC to review, discuss, and vote on the motion put forth by Co-Chair Vigil – see pasted below [action item]” “Motion” is just about paradigmatic of an inadequate description. The direction to “see . . . below” was neither helpful because there were two motions pasted below that lacked reference on the agenda. We informed them of this defect via email in advance of the meeting, email attached hereto as EXHIBIT 27, and they proceeded to discuss it without ruling it out of order.

Consequently, we request a finding of willful noncompliance.

- The agenda for the June 7, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 40, contains meaningless descriptions of items. Specifically, “1.3 Vote to appoint a Chair for the onetime bylaws non-public workgroup meeting – [action item]” This entry on the agenda would make no sense whatsoever to someone of average intelligence and education who took the time to read the *Bylaws* and rules of the Commission. First of all, such a person would know that appointment of the members of an *ad hoc* committee (incl. designation of the committee chair) is never distinct from the creation of the committee. *Id.* 13:15 (“**Naming Members to a Special Committee.**” “When a motion to refer to a special committee had been adopted, no business except privileged matters can intervene until selection of the committee members is completed.”). Secondly, they would know that the designation of a committee chair is never distinct from the appointment of members to the committee except when the motion to refer specifies an appointing power other than the chair of the assembly. RONR (12th ed.) 13:18 (“**Designating the Committee Chairman.**” “If the chair appoints or nominates the committee, he has the duty to select its chairman . . . The chair should specifically mention as chairman the first committee member he names, but if he neglects to state this fact, the designation nevertheless is automatic . . .”). Even when the appointing power is other than the assembly chair and it fails to specify the committee chair, then is it the responsibility of the committee to elect its chair. *Id.* 13:18 (“If a chairman is not designated when the committee is appointed, the committee has the right to elect its own chairman. . .”). Thirdly, they would know that no referral to any committee of a motion to refer to an *ad hoc* had occurred, nor could any committee effectively recommend such a motion, since the Commission had defectively referred the matter of *Bylaws* revision to an *ad hoc* committee at its May 18, 2022, meeting. Thereby, it precluded other motions the topic except *Rescind or Amend Something Previously Adopted*, until a motion to *Discharge a Committee* had been passed. Finally, they would know that the *Bylaws*, Art. VIII, § 1, ¶ 4, requires that all *ad hoc* committees be created by the Co-Chair, with the approval of the Executive Committee. The Implementation Committee is not involved and cannot be involved. Whoever wrote this agenda item was deeply confused as to the difference between creating a committee and appointing its members, and the identity of appointing its members and appointing the committee chair. Discussion under this item disclosed that it had been placed on the agenda “by staff”.

(then both Grier and Gray). Staff are not members of the Implementation Committee. They are members of the public with respect to the Implementation Committee and have no right to place things on its agenda. The committee agenda is for committee members *only* to put items on, and the committee must protect itself from attempts by staff to abuse their responsibilities for posting committee agendas online and at the Government Information Center by usurping this privilege. Item No. 2.4, "**Follow up on RFP: Dr. Kunins update on MHSF for 5/18/22. What about the RFP?**" also violated this section of the Ordinance because it is unintelligible. In fact, nothing was discussed under this item at this meeting. It was a "cud-chewer," thrown in for the committee equivalent of rumination, without any real purpose, in case something might come up, in order to violate the Ordinance if it did, and so no violation may be said to have actually occurred. (This meeting proceeded without a quorum, so no actual violations occurred at it, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, contains meaningless descriptions. The description of Item No. 1.0 was "Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives. . . ." Under this item, Commissioner Murawski, not a member of the committee, introduced the issue of practitioner/client ratios. This discussion was taken up by others, including the chair of the committee. A person whose interests would be affected by the item would not have known to attend the meeting from the notice on the agenda. Item No. 2.3 was a "complete consolidated resolution," referring to, actually, two resolutions, the larger one of which had previously been passed early this year. This was not a meaningful description because what was actually discussed under this item was a transmittal letter, not yet written, to send this resolution to the Board of Supervisors, to be drafted by the authors of the resolution. Furthermore, at the end of Item No. 2.5 but before 3.0 (no period for public comment is listed on the agenda between these two items), Commissioner Murawski, not a member of the Executive Committee, called upon a member of the public who "had his hand up for a long time" to speak. This member of the public asked two questions of the committee and made a statement, and received responses to each, one at a time. The questions were relevant to Item No. 2.2 on the agenda. The answers consisted of where SFMHEF had given presentations, how they had promoted them, and additional details about their promotional activities. All of the questions were answered by a member of the Executive Committee who was also a member of SFMHEF. Staff (Grier), who was also Executive Director of SFMHEF at the time, added to the last response. Other members of the public were not given an opportunity to speak. Neither the description for Item No. 2.5, "MHSA to be on June 15, 2022 agenda for presentation, vote if necessary [action item]" nor that for Item No. 3.0, "**New BHC Business,**" was adequate for this exchange. Finally, during Item No. 3.0

“New BHC Business”, a member of the Commission but not of the Executive Committee spoke about the activities of her nonprofit regarding COVID-19 testing. Another non-member of the Executive Committee Commissioner asked her a question, and she answered it. The notice on the agenda was not sufficient to notify someone whose interests would be affected of whether they should attend the meeting. Finally, after final public comment (in which I mentioned this committee’s responsibility for granting excusals), it was alleged that the meeting was adjourned without a declaration to this effect by the chair, and then excusal for Commissioner Klain was discussed between several Commissioners. (Klain was not a member of this committee, but the Commission has delegated the granting of excusals from meetings of the Commission to this committee through its *Bylaws*, Art. III, § 14.) The chair sadly said that he had not even seen her letter requesting excusal, while staff continued to bellow at every meeting that she was excused, from then to the time of the submission of this report. This did not have any notice on the agenda.

- The agenda for the June 15, 2022, regular meeting of the Commission, attached hereto as EXHIBIT 43, suffers from a special problem. Item No. 3.0(a) under “**ITEM 3.0 ACTION ITEMS**,” is listed as “Presentation by the San Francisco Mental Health Education Funds (SFMHEF)” No further detail is given. Normally, this would be sufficient. The notice and public address requirements apply only to “items to be transacted or discussed,” and a presentation is neither of these. However, SFMHEF has a special relationship with the Commission. From the previous century until 2020, SFMHEF provided staff to the Commission. A recent ordinance severed this link, moving the staff responsibility to DPH/BHS effective only this year. However, SFMHEF still has other ties to the Commission. Previously, a certain number of SFMHEF board members were required to be Commissioners. As far as I know, this is still the case. In any event, several members of the Commission are also currently on the SFMHEF board, and one is a former member of the SFMHEF board. Furthermore, the presenter on behalf of SFMHEF was also a member of the Commission at the time of the meeting. Consequently, question-and-answer was an exchange between Commissioners, and, also for other reasons, this really *was* a discussion item, requiring better notice of the topic. Discussion ranged far beyond the specific activities of SFMHEF and reached the activities of the Commission. Another Commissioner than the presenter, which Commissioner was also on the board of SFMHEF, frequently answered questions by Commissioners to the presenter. Commissioner Bohrer, formerly on the SFMHEF board, announced as “question” for the “presenter” that the Commission currently lacks representation by the Asian community. As “a brief announcement” by a Commissioner, exempt from the notice requirement of the Brown Act through *Cal. Gov’t Code* § 54954.2(a)(3) but no analogous exemption from the Sunshine Ordinance applying, *see*, *S.F. Admin. Code* § 67.7(d), this announcement, which was followed by a response by a Commissioner who was also a member of SFMHEF, required its own notice on the agenda, and violated the Ordinance. In response to a question from a member of the

public to the “presenter,” the member of the public was partly directed to Commission staff (Gray) for an answer, and partly answered directly. The referral to Gray was no longer appropriate, as Gray was new as of March and never employed by SFMHEF. However, if it had been appropriate, it would have fallen under one of the exemptions from the notice requirement under *S.F. Admin. Code* § 67.7(d). The direct address to the member of the public was legal to the extent that the Commissioner/SFMHEF member was speaking on behalf of SFMHEF, but not legal to the extent that they were speaking on behalf of the Commission. Normally, the requirement that remarks by the public be relevant to the item being discussed makes any sort of response by the policy body to a public comment appropriate, because it is just more discussion of an item already adequately noticed. As just mentioned, this item was not adequately noticed for discussion, and so the Commission’s responses to the commentator violated the notice requirement to the extent that the exemptions of *S.F. Admin. Code* § 67.7(d) did not cover them. Things got still more complicated after that, as Commissioner Murawski, not on the board of SFMHEF, questioned SFMHEF about a flyer apparently distributed by SFMHEF that allegedly listed the Commission on it. Reference was made to a “contract” and an “order,” apparently regulating the relationship between the two organizations. Even the meeting chair was confused by this and asked that it be brought up as an item at a future meeting. At any event, it concerned BHC enough to be more than a “question” to the “presenter,” and the chair did not move fast enough to prevent a response from Commissioner Jackson-Lane, also on the SFMHEF board, and further dialogue by Murawski. There was not adequate notice on the agenda for this, and a violation occurred.

- The agenda for the July 12, 2022, regular meeting of the Site Visit Committee, attached hereto as EXHIBIT 61, contains meaningless descriptions. Specifically, Item No. 1.4 says as follows, “Strategic planning around Conard Housing [*sic*] and mental health complaints [**action items**]”. “Strategic planning” is meaningless administrative doublespeak. What was actually discussed under this item was a Site Visit to Conard House (the second in three years), and the agenda should have stated this (as well as the actions proposed to be taken, whatever they were (none were in fact taken or even moved at the meeting)). Nothing was mentioned about “mental health complaints” other than that Conard House had pulled out of giving a presentation at this meeting because of them, but the presentation too was on the agenda (Item 1.3)! (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the July 12, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 62, contains meaningless descriptions of items. Specifically, Item No. 1.2, “Review progress of the onetime bylaws non-public workgroup meeting,” is not a meaningful description, as evidenced by the fact that even the chair of the committee present at the meeting did not know what it was. It appears to

refer to a single meeting, but then it purports to “review the progress” of this meeting, as if the meeting were ongoing, during the meeting of the Implementation Committee! Also, the fact that the meeting is characterized as “non-public” is cause for concern. A minority of the members of a policy body are allowed to meet privately and discuss matters within the subject-matter jurisdiction of the policy body. However, such meetings can have no official recognition by the parent body (nor any of its “official” committees), or else it becomes a committee of the parent body, regardless of the use of words such as “non-public workgroup” to describe it. As a committee, it is then subject to open meeting requirements, and a majority of its members may not meet outside of a meeting noticed to the public. It cannot report to the parent body. Only a member thereof can introduce its results as a motion and speech in debate. Furthermore, no instruction had been given to this committee to report to the Implementation Committee, nor had it done so of its own accord. In order for a description to be “meaningful”, it must make some kind of sense with respect to the rules of order of the Commission and its *Bylaws* and other rules. Finally, even as a committee, this “non-public workgroup” had not been created according to *Bylaws*, which led to confusion among the members of the Implementation Committee as to what this item was supposed to be about. The confusion of a member of the public could only have been greater. Item No. 2.4, “Establish Ad Hoc Committee for the Annual Report” also fails to make sense in terms of the rules of the Commission. Specifically, its *Bylaws*, Art. VIII, § 1, ¶ 4, requires that *ad hoc* committees be created “by the Chair or Co-Chairs, with concurrence of the Executive Committee . . .” The Implementation Committee has no part in it, nor can they have any part in it, and a member of the public familiar with the *Bylaws* would be utterly confused by this item. Anyone familiar with the rules of order of the Commission would be additionally confused by it, because it does not include specifics as to the size and method of appointment of the members of the committee, nor its membership directly, nor any special instructions, such as the schedule for regular meetings, required to be established by the Commission under *Cal. Gov’t Code* § 54954(a), RONR (12th ed.) 13:8 describes these as “necessary details for the motion”. (Without them it is impossible to determine quorum.) A member of the public might want to attend on the basis of who was named to be on this committee, or who was to make the appointments thereto, and this shades into “the proposed action”, addressed below. Finally, Item No. 2.5, “**Follow up on RFP**: Co-Chairs will discuss with Dr. Kunins on how commissioners can participate in the RFP process,” is ambiguous. It would appear that Dr. Kunins would be present for a discussion with the Co-Chairs that would occur at the meeting. Actually, what was meant was an announcement that the Co-Chairs would be having a private discussion with Dr. Kunins “offline” as part of their liaison responsibilities, *see, Cal. Welf. & Inst. Code* § 5604.5(d) (“The local mental health board shall develop bylaws to be approved by the governing body which shall do all of the following: [¶¶] (d) Establish that the chairperson of the mental health board be in consultation with the local mental health director.”), about how the Commission could be involved with RFP’s, and thus

learn about and be involved with new programs “on the ground floor,” as had been announced at previous meetings. But even this was not in fact the subject of the report or announcement that actually occurred under this item. When this item came up, it was announced or reported that there was a specific RFP “for the tenderloin,” and that, somehow (it was not clear), BHC involvement with this RFP would get it “a new Commissioner.” This information, and not what appeared there, was required to be included under Item No. 2.5.

- At the July 12, 2022, meeting of the Executive Committee, agenda attached as EXHIBIT 63, members thereof brazenly added discussion items to the agenda. During item no. 1.2, members of the committee proposed a new agenda item 1.6, which was a 10-minute discussion regarding an anticipated special meeting for training, and a new item no. 1.7, which was a 15-minute discussion regarding annual reports. Both discussions were in fact held later during the meeting. The Executive Committee does not seem to understand that nothing within the subject-matter jurisdiction of the Executive Committee may be discussed at a meeting among a quorum of its members without notice on the agenda. For discussion-only items, there are no exceptions. Under the Commission’s new *Bylaws*, attached hereto as EXHIBIT 29, § 2, ¶ 1.b, as well as the old, annual reports are within the express subject-matter jurisdiction of the Executive Committee. Neither the special meeting, nor the training proposed thereat, were within the subject-matter jurisdiction of the Executive Committee, but it is certainly within the subject-matter jurisdiction of the Commission, liberally construed. As discussed under Item No. 2, below, this supposed meeting of the Executive Committee was really a meeting of the Commission because a quorum of the Commission was in attendance, etc. The description of the first part of item no. 2.3 is so vague that it does not meet the standard of a meaningful description. “Vote to have Conard House placed on the July 20, 2022, full Commission agenda. . . .” It cannot be a presentation, because the same item proposes that Conard House give a presentation at the September meeting of the Commission (really, this is two items). It can neither be the question of whether Conard House should present in September, because any Commissioner could put that on the agenda. All the public is told is that the (first part of the) item has something to do with Conard House and the July 20 meeting. “Placed” is vague and hides the substance of the action. What action was to be placed on the agenda for the July 20 meeting? This would not be sufficient to inform someone whose interests may be affected of whether they should attend the meeting.
- At the July 20, 2022, meeting of the Commission, the agenda for which is attached hereto as EXHIBIT 71, Co-Chair Banuelos, who was not the chair for this particular meeting, added an item during “Agenda Changes” to the agenda. In fact, staff (Grier) said that the item would be called up later on, as if they had this authority. In fact, they could not pass the necessary finding that the item was unknown to the Commission at the time of the posting of the agenda, required by *Cal. Gov’t Code* § 54954.2(b)(2), because they had discussed it in committees the previous week. In fact, the reason why it was not on the

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agenda was that I had anticipated that it would be on the agenda and had sent the Commission correspondence about the item well in advance of the posting of the agenda, and insisted that the agenda include a reference to this correspondence, per local law. See Item No. 3, *infra*. The same thing had happened last year, as well: I sent correspondence in advance of the posting of the agenda, demanding reference to the correspondence in the agenda; the item was omitted from the agenda altogether; at the meeting, the item was illegally added back in. As a matter of fact, the item was never called, but only after much argument by the Co-Chair, who thought that, since they would only be discussing the matter, and not taking action, that it would not violate the law. No actual violation occurred, but, for compliance and monitoring purposes, Co-Chair Banuelos was in ignorance of the law, and tried rather hard to violate it. He even said, "but you let me do it at the Executive Committee!" (see previous bullet point.)

- At the *ad hoc* committee on the creation of an annual report held on Aug. 26, 2022, agenda attached hereto as EXHIBIT 87, during Item No. 2, "The Co-Chairs will guide commissioners in work distribution regarding the 2021-2022 Annual Report," the discussion strayed into current activities that would be covered in the 2022-2023 annual report, such as site visits that were currently wrapping up or in progress, and asking a Commissioner who was present to give a presentation at the next meeting at a specific "open ended" item on the agenda. This was a meeting of an *ad hoc* committee, but the Commission had, at its July meeting, proposed compound assignments to two *ad hoc* committees, including this one. Furthermore, the agenda for this meeting included topics that were not assigned to this committee, even as compound items. Normally, it would not be a violation to discuss matters outside the jurisdiction of an *ad hoc* committee, because, with respect to these matters, it would be a discussion among less than a quorum of members of the parent body, of matters within the subject matter jurisdiction of the parent body. However, even taking these odd agenda items as an expansion or compounding of the *ad hoc* matter assigned to this committee, is it a violation of the law to discuss matter that is on the agenda, but under another item? The strict letter of the law would say no: the law only requires that each item to be transacted or discussed appear (somewhere) on the agenda. A liberal construction, on the other hand, would dictate that the discussion be corralled within the corresponding items, called in the sequence in which they appear (with the exception of parliamentary motions such as secondary motions to *Postpone Definitely* or *Lay on the Table* to move items forward on the agenda or to the next meeting, or *Suspend the Rules* to hear a future item immediately). The off-topic discussion here was relevant to these other items on the agenda. This off-topic discussion began approx. 30 minutes into the meeting and continued until adjournment at 4:10, although it briefly returned to the subject of annual reports in general, without reference to a specific period. This was a complete violation because, although the meeting began with just two members of this five-member committee, a third member turned up in the audio at 3:45 p.m. and said that she had been listening for some time before then.

Deleted: At the meeting of the *ad hoc* committee on the creation of an annual report held at 3:00 p.m. on Aug. 5, 2022, agenda attached hereto as EXHIBIT 78, the meeting began with a lengthy 20-minute presentation by one of the committee members that, with questions asked by other members of the committee after the presentation, later devolved into a discussion between committee members. Even if it had not so devolved, a presentation by a member, even without questions from the body, is a discussion under open meetings laws and requires notice on the agenda. There was no notice on the agenda that any presentations at all would be given, far less the one that actually was given, which reviewed the requirements for annual reports, with reference to the 2019-2020 annual report, in violation of this section. At the

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- The *ad hoc* committee to compose an annual report met on Sept. 9, 2022, agenda attached hereto as EXHIBIT 88, did not include a meaningful descriptions of the first two of the three items listed as bullet points following Item No. 3.2. "Site Visit Report" and "Liza's Resolution" do not contain enough detail for someone whose interests may be affected by the item to know whether to attend the meeting.
- At the Sept. 21, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 89, an off-topic discussion occurred under Item No. 1.0, which appeared to be only an heading, i.e., "Chair's Report," but was turned into an item by the chair, who gave a nearly-ten-minute talk about the recent training session by CALBHBC in which Brown Act compliance was discussed, which training was on the agenda for the meeting, but much farther down, at no. 3.5, where it was in fact discussed a second time, but with different material, i.e., only future meeting dates were discussed under 3.5. At least this first discussion included interaction with another member of the Commission. This first item should have been labeled with the material that was in fact discussed here, i.e., regarding compliance with the 72-hour notice requirement and whether *ad hoc* committees are covered by open meetings laws in San Francisco, which were the subjects of the training and of this discussion noticed unhelpfully as "Chair's Report."
- At the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, the agenda contains a number of different items. During Item No. 2.0, which was noticed as the 2021-2022 annual report, discussion repeatedly took very lengthy detours into current issues and practices of the Commission, with no effort by the committee chair to rein them in. These had no notice on the agenda for this item, nor adequate notice elsewhere on the agenda. It was even admitted at the end of the meeting when these items were called that all of the items on the agenda except Nos. 1.1.a., 3.0, and 3.2 had in fact been discussed during Item No. 2.0.
- At the Sept. 30, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 91, Item No. 2.0 includes a rather lengthy description: "Annual Report Committee Co-Chair will guide commissioners in work distribution regarding the 2021-2022 Annual Report. This includes a review and update to Commission activities (site visits, resolutions, presentations, and/or individuals and/or organizations who should receive a tribute). Review draft portions of the report (e.g. site visits and resolution, list of commissioners and staff, and the outline for the chair's welcome letter [sic], to make necessary revisions." During this period, Commissioner Murawski, member of the committee, gave a report, to which staff made further contributions and committee chair Stevens and member Banaelos joined in, over a period of several minutes, on a site visit completed earlier the same week as the meeting, of Citywide Case Management, and issues regarding Grier's participation in the visit. The report listed on the agenda was for FY 2022, which ended on June 30, 2022. There was no way that it could encompass this visit, which took place on Sept. 28, during FY 2022-2023, though the visit had been discussed during FY 2022 as a prospect. A person whose interests would be affected by the item would not know to attend the meeting from this

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notice. This item mentioned nothing about Citywide Case Management nor this specific visit to it. Also, repeatedly, during Item No. 2.0, the discussion on what the 2021-2022 report should say were priorities for 2022-2023 veered off into what the priorities for 2022-2023 *should be*, always at the instigation of member Murawski, and there was no notice of this on the agenda for the meeting. Staff also made "a brief announcement" regarding a recent change to the Brown Act, during Item No. 2.0. This announcement is not exempt from the Sunshine Ordinance's notice requirements and should have appeared on the agenda.

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- At the Oct. 19, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 92, at the end of the presentation of the BHS Director, Dr. Kunins, Item No. 2.0, the description of which is "boilerplate," copied mindlessly from one month's agenda to the next, Commissioner Murawski did more than ask questions of the presenter for clarification, make referrals to staff for factual information, or request staff to report back on any matter. Murawski made reports of her own activities that led into questions to the presenter that were requests for information beyond what the presenter had presented, rather than for clarification of what had been presented. She also made a request for a future presentation and told the presenter what she should have presented in place of what she had presented. Treating Dr. Kunins's presentation as testimony by a member of the public on matters within the subject-matter jurisdiction of the Commission but not on that day's agenda (Kunins is not a member of the BHC), these statements and requests did not fit any of the exemptions from the notice requirement in *S.F. Admin. Code § 67.7(d)*. Treating the presentation instead as a discussion item, the description contained insufficient detail for someone whose interests may be affected by the item to know whether to attend the meeting, and, if it had been sufficiently specific, Murawski's comments would have gone beyond it.

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Use of "Boilerplate" Infinitely-Repeatable Agenda Items

The temptation to create an agenda by first copying all of the items from the previous agenda must be irresistible. However, it has to stop. Not only does it lead to desultory meetings that proceed by way of the chair calling out discussion topics that are the same from one meeting to the next ("Any discussion on Topic A this month? No? How about topic B? Topic C?"), but the anticipation of doing so leads committee and Commission chairs to formulate agenda topics in a bland and general way. The practice is insidiously self-perpetuating, because then members refrain from submitting their specific discussion-only items to the secretary or chair, in anticipation that the agenda will include everything from the previous month, and they will be able to cram it under one of the general topics previously announced. Finally, it contributes to a whimsical air in discussion material, an attitude of, "Well, it is questionable whether this is on topic. I wouldn't want to submit this as an item for the written agenda, but since I can just spontaneously blurt it out during General Topic C without going on paper, I'll wait until that comes up at the meeting and see how I feel about it then!" The results are agenda items that

inform no one of whether anything will be discussed that affects their interests, because their interests are *specific* and the agenda topics are *general*.

This problem has actually gotten worse during the reporting period, rather than better. Once any item or topic of discussion is conceived, it appears on every agenda of two committees, as well as the Commission, for ongoing “updates.” I.e., the conversation continues forever, and in triplicate. Even if no one has anything meaningful to report about a topic, the topic stays on the agenda forever, as if the Commission were a therapy group and the point were to air everyone’s ongoing feelings about a subject. This is as bad as no notice of an item, because the public is required to attend every meeting of a body and each of two of its committees because a vaguely-worded and perpetually-included item might, at any given meeting, have material under it, which might include something in which they have an interest. In this sense, it is worse than no notice at all.

Some of these topics are so broad that they were not even inspired by a specific topic in the beginning. Rather, they have been engineered to exploit perceived gaps in open meetings laws to nearly the maximum possible extent. All of these perceived gaps are, however, illusory. Item 5.1 on all Commission agendas during the reporting period, “Suggestions of people, programs, or both that Commissioners believe should be acknowledged or highlighted by BHC” is intended to exploit the exemption from the notice requirement of the Sunshine Ordinance for “purely commendatory” actions, but the Commission always neglects the requirement that these items must still pass a complicated supermajority vote as to whether the Commission learned of them after the agenda had been posted, *S.F. Admin. Code* § 67.7(e)(2)(B), to say nothing of the Brown Act requirement for a finding of urgency, *Cal. Gov’t Code* § 54954.2(b)(2), presumably because these conditions typically do not obtain, and these items would need no notice at all if they did. Violation is also avoided by Commissioners simply not voting on these items. If a Commissioner names a program during 5.1, staff issues a commendation on behalf of the Commission, as if the Commission itself had spoken. (Site Visits are handled the same way—if a Commissioner names one, correspondence goes to the site stating that “the Commission” has chosen their site for a visit, when no vote was taken, even at the committee level!) Item 5.2 on these agendas, “Report by members of the Commission on their activities on behalf of the Behavioral Health Commission as authorized” is nonsense—authorization has never once been given!—and is intended to exploit the exemption from notice requirement of the Brown Act for “a brief report on his or her own activities . . .” *Cal. Gov’t Code* § 54954.2(a)(3), which would also require no notice at all on the agenda. However, there is no analogous exemption from the Sunshine Ordinance for such reports, *see, S.F. Admin. Code* § 67.7(d), and so each report must have specific notice on the agenda. Item 6.0, “Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners” is intended to exploit the exemption from the notice requirement of the Brown Act for “take action to direct staff to place a matter of business on a future agenda,” *id.*, only it is unsuccessful even at this because a) BHC has adopted no special rule of order allowing for automatic referrals, b) the exemption is obviously for *postponing* matters to future meetings of the same body, not

referring them to other bodies, and c) again, even if the exemption applied, there is no analogous exemption from the Sunshine Ordinance. BHC has continued their inclusion of these items on agendas going back to 2006, despite our complaining about it in file no. 20100 regarding their meeting on July 15, 2020, now over two years ago. BHC's continued inclusion of these items on their agendas is an open invitation to their membership to violate the Sunshine Ordinance by spontaneously giving brief reports, making automatic referrals, or making "purely commendatory" requests under them. Certain committee agendas carry similar "boilerplate" items.

The problem is exacerbated still further by the fact that discussion items outnumber *true* action items by an order of magnitude at Commission and committee meetings, and discussion items are inherently more ambiguous as to the relevancy of any discussion to the item. When an action item is before a policy body, relevance of discussion is generally not a problem, because each speech must be for or against the proposed action. Discussion items are another story, and their equivalency in *S.F. Admin. Code* § 67.7(a) is deceptive. RONR (12th ed.) 4:8n6 ("It was found in the House of Lords of England that, when there was no definite motion pending, it was not possible to tell whether debate was germane . . ."). Although *S.F. Admin. Code* § 67.7(a) pretends to restrict discussion to a specified topic, the distinction between relevance and irrelevance is much less clear than with respect to a concrete proposal, and the agenda requirement only half-solves the problem. We favor a strict interpretation, as discussion-only items are supposed to be *disfavored* by policy bodies. RONR (12th ed.) 4:7 ("Under parliamentary procedure, strictly speaking, discussion of any subject is permitted only with reference to a pending motion. . . .") and 4:8 ("For a member to begin to discuss a matter while no question is pending . . . implies an unusual circumstance and requires permission of the assembly . . . in addition to obtaining the floor. . . ."). While this rule is relaxed in meetings of fewer than 13 people (the Commission had at most 12 during the reporting period), "[t]he general rule against discussion without a motion is one of parliamentary procedure's powerful tools for keeping business 'on track,' and *an observance of its spirit* can be an important factor in making *even a very small meeting* rapidly moving and interesting.⁶" *Id.* (emph. added). Otherwise, the Commission stands to be renamed "The San Francisco Taxpayer-Supported Behavioral Health Chit-Chat Society," because this is substantially all it does.

For all that, we stop short of eliminating all repetitious items. If a Commissioner wishes to discuss the same issue month after month, and they are at least willing to obtain the floor and give more or less the same address each month, they must be allowed to do so, and a repeated agenda item would be in order. After all, an action item might be postponed from one meeting to the next unchanged, and debate under it might be range widely. The touchstone is always whether someone whose interests would be affected would know whether to attend the meeting. We note regarding this standard that there is no question of whether someone's interests would be affected by the item. It is, for instance, impossible to imagine that anyone's interests would be affected by the go-live date for the Commission's new website changing from July to September. However, the language of the law states the standard as, *assuming that* someone's

interests *were* affected, the notice must be sufficient. And so the notice must summarize the specific content of the address, i.e., “The go-live date for the Commission’s new website has changed from end of July to end of September,” or “the Commission’s new website will allow staff to post material directly, without an intermediary,” not “Commission websites, old and new.” If the meeting is made superfluous by the agenda in some respects and members of the public forego attendance therefor, nothing is lost. It is not the purpose of the agenda to incite curiosity or draw spectators! Furthermore, many items contain a level of subject specificity that should be included on the agenda but was not. For example, “progress on RFP’s” versus a specific RFP; a member of the public might not be interested in RFP’s in general but might very well be interested in an RFP specific to their neighborhood, and so the detail is required to be included.

For this reason, BHC practices need to change. BHC needs to start each agenda with a blank sheet of paper, not the agenda for the previous month’s meeting. If staff wants to put an item on the agenda, they must find a member of the body who is willing to sponsor the item by asking the chair or secretary for its inclusion on the agenda on behalf of staff, and make the announcement themselves, on behalf of staff. Anything not so sponsored should be ruled out of order when it comes up. If it is not known that there is a *Commissioner or committee member who themselves wants to speak on an item* at that particular meeting, an agenda item must not be listed for it, and if there is new material, the item must be specific to the new material. Demands for “ongoing discussions” must therefore be suppressed; a new request must be made every month. Members must not be asked to discuss matters on which none of them have anything they want to say. Members will have to get into the habit of, if they find out about or think of something during the month that they would like to discuss at a meeting, asking the chair or secretary to commit their specific matter or issue to the written agenda, rather than waiting during a meeting for a call-out on a general topic that will hopefully be on the agenda and maybe speaking at that time, maybe not. They must also get into the habit of, if they want to speak with the voice of the Commission or the committee, whether it is for a commendation or a site visit, putting their matter on the agenda in the form of a resolution, substantially in final form. If it is out of order for any reason, such as a doubt about its relevancy to the powers and duties of the Commission, then it should go on the agenda and be ruled out of order when it comes up, so that Commissioners or committee members will have the opportunity to challenge the ruling of the chair at that time.

The Commission’s underlying rules of order allow any member of a policy body to get on the agenda for any regular meeting thereof.

[A] notice [of a motion] can . . . be sent to every member with the call of the meeting at which the matter is to come up for action, in cases where there is a duty . . . of issuing such a call. In such cases, the member desiring to give the notice writes to the secretary alone, requesting that the notice be sent with the call of the next meeting, and the secretary then does this at the expense of the society.

RONR (12th ed.) 10:51 (sq. brackets added). In the context of open meetings laws, which prohibit anything from being transacted *or discussed* without written notice on the agenda, this rule embodies a fundamental principle of parliamentary law, that “[e]ach individual or subgroup has the right to make the maximum effort to have his, her, or its position declared the will of the assembly to the extent that can be tolerated in the interests of the entire body.” *Id.* p. xlix. Thus, this rule cannot be suspended, even by a unanimous vote of the assembly. *Id.* 25:9 (“Rules which embody *fundamental principles of parliamentary law* . . . cannot be suspended, even by a unanimous vote. . . .” *emph. in orig.*). Members should get used to exercising it. (Nevertheless, the Commission has not only suspended this rule, but, in a frenzy of authoritarian feeling, has adopted a contrary rule that violates this fundamental principle. *Bylaws* Art. VIII, § 2, ¶ 1.a. (allowing ExCom to approve agendas for regular meetings of the Commission). This provision also violates another fundamental parliamentary principle that “a deliberative body is a free agent—free to do what it wants to do with the greatest measure of protection to itself and of consideration for the rights of its members,” RONR (12th ed.) p. 1, because it allows the Executive Committee, a minority of the Commission, to bind the larger remainder of the membership to sit through presentations that the Executive Committee alone may choose.) This may lead to drastically shorter agendas, which would not be saying much.

This characteristic type of violation of the meaningful description requirement occurred on the following dates, in the following ways:

- The agenda for the regular meeting of the Commission held on Apr. 20, 2022, attached hereto as EXHIBIT 4, contained three “boilerplate” items that actually had nothing under them or the Co-Chair allowed no parliamentary procedure on these so-called “[**action items**]”. The first item under Item No. 3.2, “Approve the minutes of the Behavioral Health Commission meeting of February 16, 2022 . . .” and 3.3, “BHC to review, discuss and vote on the motion put forth by Co-Chair Vigil – **see posted below [action item]**” were carryovers from previous agendas. Both items in total were skipped by the Co-Chair, after I had orally commented on the minutes in addition to my written comments on them. They were otherwise not even discussed and should have been left off the agenda entirely. The Commission lacked the necessary supermajority to pass Item No. 3.5 at this meeting. However, it was neither postponed with a motion and vote nor downgraded to “for discussion only” status. It, too, was simply not called up, and no Commissioner objected.
- The agenda for the regular meeting of the Site Visit Committee held on May 10, 2022, attached hereto as EXHIBIT 14, contained “boilerplate” items, specifically Item No. 2.1, “Opening comments by the Chair, Bahlam Javier Vigil.” This agenda item contained substantially no useful information, and should have been dropped from the agenda. Possibly because I sent email complaining of this fact in advance of the meeting, attached hereto as EXHIBIT 9, this item was not called up.
- The agenda for the regular meeting of the Implementation Committee held on May 10, 2022, attached hereto as EXHIBIT 15, contained “boilerplate” items. Specifically, Item

Nos. 3.1, "Members report on their research and actions" and 4.1 "Discussion developing follow-up research, presenters to the committee and action item [*sic*]". These are analogous to Item Nos. 5.2 and 6.0 on agendas for the Commission (discussed above). We warned the committee in writing in advance of the meeting that these items were inadequate. EXHIBIT 11. Nothing was brought up under these items at the meeting, and so no violations occurred (but they remain on the agenda as an open invitation to violations, despite my repeated admonishments over email and "in person", including at this meeting, during "FINAL PUBLIC COMMENT").

- The agenda for the regular meeting of the Executive Committee held on May 10, 2022, attached hereto as EXHIBIT 16, contained several "boilerplate" items. Specifically, Item Nos. 1.2, "BHS/BHC Websites, Old & New: Discussion and possible action", 2.2, "Vote to approve unadopted minutes from March 9, 2022 Executive Committee meeting [action item]," and 2.4, "Vote to move the newly revised By Laws [*sic*] on to the full BHC for review and potential adoption [action item]" had all been copied from the agenda for the Apr. 12 meeting of this committee, at which Items 2.2 and 2.4 had been approved. At this particular meeting, under Item No. 1.2, it was related that the website included the ability to post "live" media streams, and also would allow staff to post agendas directly (thus to correct errors in the posting of documents, such as had occurred in the posting of the Implementation Committee meeting earlier that day), and was scheduled to go live in June. This is what needed to appear in the description for this item. We informed them of this defect via email in advance of the meeting, attached hereto as EXHIBIT 12, and we ask for a finding of willful noncompliance. As for the other items, Item 2.2 was quickly discussed and 2.4 skipped. Both should have been left off of the agenda entirely.
- The agenda for the Commission's regular meeting on May 18, 2022, attached hereto as EXHIBIT 32, included meaningful descriptions of neither Item Nos. 5.1, 5.2, nor 6.0 (described *supra*). BHC adjourned the meeting before reaching these items, and so no violation occurred.
- The agenda for the regular meeting of the Site Visit Committee on June 7, 2022, attached hereto as EXHIBIT 39, included a "boilerplate" description for item no. 2.1, "**ITEM 2.0 Chair's Report / Discussion:** Report on site visits and strategy / **2.1** Opening comments by Chair, Bahlam Javier Vigil" The report included (in addition to an item present elsewhere on the agenda) the proposed addition of Commissioner Murawski to the committee, and this should have appeared on the agenda (though Edgewood was listed with one other site under item 2.4). We complained of this in an email sent to the committee prior to the meeting, and our complaint was ignored. We ask for a finding of willful violation. Item No. 2.2, "Implementation of the strategy of every commissioner participating in site visits among the 140 agencies, that the Department of Public Health and Behavioral Health Services manage," contained no information; it was skipped, and should have been dropped from the agenda. Item No. 2.3, "Discuss the importance of the Behavioral Health Commission legislative mandate: Review and evaluate the City and County's mental health needs, services, facilities, and special problems" contained only

an announcement by staff of the importance of contacting staff when planning a site visit. This had nothing to do with *the importance of BHC's* legislative mandate, and should have had specific notice on the agenda, except that staff are not members of the committee and have no right to get on the agenda with their own items. It should have been dropped from the agenda.

- The agenda for the regular meeting of the Implementation Committee on June 7, 2022, attached hereto as EXHIBIT 40, included several "boilerplate" items. Item No. 1.2, "BHS/BHC Websites, Old & New: Discussion and possible action" is repeated from one agenda to the next, even across meetings on the same day. At this particular meeting was to be given a demonstration of the new website. However, this was unsuccessful. Nevertheless, it should have been on the agenda. Item No. 2.3 "**2.3 Review the 2022 Data Notebook:** Discussion on BHC participation on How to do the Data Notebook for 2022" was one. Commissioner Murawski, not even a member of the committee and who should thus have been prevented from speaking until public comment, *id.* 50:27, characterizing her address as "on all the items under 2.0," returned to the topic of grievance procedures, Item No. 2.1 on the day's agenda, which had already been closed. The committee chair did not even discourage this. To the contrary, he and another member of the Commission nonmember of the committee joined in the discussion! Anyone interested only in Item No. 2.1 would have hung up after it had been closed the first time, and would not have been notified by the agenda of this significant additional discussion, actually longer than the one that had been correctly noticed, under a different item. Item No. 3.1 "**3.0 COMMITTEE MEMBERS [sic] REPORTS [¶¶] 3.1** Members report on their research and actions" essentially mirrors Item No. 5.2 on agendas for Commission meetings (see above). Item No. 4.1, "**4.0 NEXT ACTION ITEMS FOR COMMITTEE MEMBERS [¶¶] 4.1** Discussion developing follow up research, presenters to the committee, and action item [sic]" mirrors Item No. 6.0 on agendas for Commission meetings (see above). Because the computer automatically ended this meeting at 5:00 p.m., these items were not reached at this meeting, and so no material was introduced under them and no violations occurred, but they appear on every agenda of this committee. (This meeting also proceeded without a quorum, so no violations could have occurred if the meeting had reached these items, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the regular meeting of the Executive Committee on June 7, 2022, agenda attached hereto as EXHIBIT 41, included several "boilerplate" items. "**ITEM 3.0 New BHC Business**" was intended to exploit the exemption from the notice requirement of the Brown Act for directing staff to place an item of business on a future agenda. *Cal. Gov't Code* § 54954.2(a)(3). However, there is no analogous exemption from the Sunshine Ordinance, *see, S.F. Admin. Code* § 67.7(d), and so items of new business must be submitted in advance and included on the agenda individually (with periods for the

public to address the committee). They had planned to discuss the data notebook during this item because they apparently forgot that they had already agendaized it under Item No. 1.0 (second sentence). During this item, Commissioner Wynn advertised her nonprofit's involvement in COVID testing in her neighborhood. We ask for a finding of willful noncompliance because we had told them during public comment on Item No. 2.2 because they had been talking about using Item No. 3.0 as a dumping ground for motions that were not on the agenda (such as recommendation to the Executive Committee from the Implementation Committee in "assembly-line" fashion), and they did not rule Commissioner Wynn's "motion" out of order. Item No. 1.2 on this agenda also lacked a meaningful description. During Item No. 1.2, "BHS/BHC Websites, Old & New: Discussion and possible action," Staff (Grier) announced that the new BHC website would be "very basic," but would allow the Commission to implement "things such as grievances." This is what should have appeared on the agenda, because the description that did appear is copied from one agenda to the next without thinking, while the actual content changes. The public should be able to tell which meeting to attend based on the content specific to that meeting. Item No. 2.3, "Vote to move complete consolidated resolution, authored by Co-Chair Vigil and Commissioner Murawski previously viewed and voted on. A carry over from the April 20, 2022 meeting [action item]" is not a meaningful description because there were three motions attached to the agenda, and only two items on the agenda referring to them. We complained to the committee about this in advance of the meeting, EXHIBIT 37. However, they ignored our email, and so we ask for a finding of willful violation.

- The agenda for the Commission's regular meeting on June 15, 2022, attached hereto as EXHIBIT 43, included meaningful descriptions of neither Item Nos. 5.1, 5.2, 6.0, nor any of the items under "ITEM 4.0 REPORT FROM THE COMMITTEES [sic]." The items under 4.0 are copied from one agenda to the next and are insufficient to alert someone whose interests may be affected by the item, no matter what is actually transacted or discussed under them. "Implementation Committee, Chair Stephen Banuelos / Discuss focus of Implementation Committee" is a placeholder for discussing whatever was brought up at that committee that month which specific content needs to appear on the agenda. Same for "Site Visit Committee, Chair Vigil / Report on Site Visit Strategy in completing selected site evaluations," and for "Strategic Planning Ad Hoc Committee, Commissioner Bohrer - / Update on the progress of the current draft of the strategic plan - See attached below" (Note: The "Strategic Planning Ad Hoc Committee has not met since Oct. 7, 2020!) Item Nos. 5.1, 5.2, and 6.0 were as described in the header for this section. The chair unilaterally adjourned the meeting before reaching these items at this meeting, and so nothing was discussed or transacted under them. Consequently, no violations occurred due to these items.
- The agenda for the regular meeting of the Site Visit Committee on July 12, 2022, attached hereto as EXHIBIT 61, included the following "boilerplate", recyclable item descriptions: Item 2.1, "Opening Comments by Chair," 2.2, "Implementation of the

strategy of every commissioner participating in site visits among the 140 agencies, that the Department of Public Health and Behavioral Health Services manage,” and 2.3, “Discuss the importance of the Behavioral Health Commission legislative mandate: Review and evaluate the City and County’s mental health needs, services, facilities, and special problems.” These are the same items that have appeared on every agenda since this committee was formed in Oct. 2020. These descriptions did not adequately describe the matters discussed under them. Item 2.1 was a vapid and contentless description. What was actually announced under it were site visits to Citywide and Edgewood, which at least had notice elsewhere on the agenda, under Item 2.4. Under Item No. 2.2, they actually discussed sending out emails asking for Commissioners to pick three sites to visit, but then settled on the idea of, instead, announcing the request at the meeting the following week and sending out an email in advance of the meeting (both of which any Commissioner has the power to do, the former with notice on the agenda). No votes were taken. Although these fit under the general rubric described on the agenda, the agenda should have described the specific proposals being “discussed” and an order to staff is an action item. RONR (12th ed.) 10:24 (“**Orders (Instructions to Employees)**” “In organizations with employees, the assembly or the board can give instructions to an employee in the form of an *order*, which is written just as a resolution except that the word ‘*Ordered*’ is used in place of the word ‘*Resolved*.’ . . .” emph’s in orig.). Under Item No. 2.3, what was actually discussed was one of the Co-Chairs’ (not even on the Committee) proposals to “piggyback” BHC site visits on BHS site visits, a proposal which has been discussed on and off since 2021. The agenda should have contained this specific information, which was not, in fact, anything whatsoever to do with *the importance of BHC’s very broad legislative mandate*. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the meeting of the Implementation Committee on July 12, 2022, attached hereto as EXHIBIT 62, included meaningful descriptions of neither Item Nos. 1.2, “Review progress of the onetime bylaws non-public workgroup meeting,” 2.1, “**Follow up on Grievance Procedures**, Update on BHC strategy to improve Grievance Procedures,” 2.2, “**Strategic Plan Status**, This is an ongoing item on the Implementation Committee agenda and will allow the committee/BHC to have an ongoing sense of our progress on meeting goals (updates if any),” 2.3, “**Review the 2022 Data Notebook**: Discussion on BHC participation in How to do the Data Notebook for 2022,” 2.7, “**MHSA Presentation to BHC**: discuss questions about the MHSA draft.” 3.1, “Members report on their research and actions,” nor 4.1, “Discussion developing follow-up research, presenters to the committee and action item [*sic*]”. These are “cud-chewing” items. It is now known whether there is anything to discuss under any of them, but there once was, at least, and this is enough for the committee to endlessly regurgitate and “chew the cud” regarding them, then swallow, repeat. It also makes the committee

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look terribly busy to endlessly cycle through them, which is the ultimate objective to be achieved. Where there is something new, it does not appear on the agenda. Regarding item 1.2, also discussed in the previous section, "reviewing progress" of anything is hardly specific enough for an agenda item. The specific progress to be reviewed must appear on the agenda. When this item was called, it was revealed that the committee in question had never even met. Item 2.1 is noticed using the words "follow up" and "update". These are words used by the Commission when it doesn't have anything to say and is putting something on the agenda for the sake of reserving a space in time during which something specific, not included in the agenda, might be discussed, if any. Under this item, Commissioner Bohrer announced that she was on a committee on homeless shelters, that they had recognized that something needed to be done about the discharge process, and had asked BHS Director Dr. Kunins to do something about it, were waiting to hear back, and suggested that the Commission ask Kunins to report on it at the Commission meeting the following week (which should have required a motion). It is questionable what or whether this had anything to do with "the grievance process," as advertised, it should have been its own item, and should have been introduced at the Commission level. Also under this item, Co-Chair Banuelos announced the results of his conference with Kunins on the item and that she was aware that there was no BHS Ombudsman currently. Banuelos announced an idea to get peer-to-peer services involved in "maneuvering" complaints that he planned to bring up with Kunins, as well as asking for reinstatement of an Ombudsman position. Certainly, the advisements to Kunins should have been an action item on its own and introduced at a meeting of the Commission. Otherwise, Co-Chair Banuelos is using his position to bring his own personal peeves and ideas before the BHS Director. None of this was on the agenda, but all of it clearly would make a difference as to whether a member of the public would attend the meeting. Item 2.2 actually announces that it is a "boilerplate" agenda item. The strategic plan covers everything that the Commission does. Consequently, "updates" to the strategic plan is simply too vague to be of any use to a member of the public trying to decide whether to attend the meeting. Moreover, anything under this item is likely to be redundant to other activity at a meeting. At the very least, an effort needs to be made on someone's part to find out in advance of the meeting whether anything will be introduced under this item, and, if so, the specifics of whatever new material needs to be placed on the agenda. In fact, under this item, it was announced that information was needed for the plan about the next item on the agenda! Item 2.3 was this item. What was actually discussed hurriedly under this item was that the data notebook was the responsibility of staff, and that Commission Bohrer would be the "go to" person for this item (and she would go to staff). This should have been on the agenda. Item 2.7 was in fact an "empty" item; nothing was announced or discussed under it. It should have been left off of the agenda. Item 3.1 is analogous to Item 5.2 on agendas for Commission meetings (see above). Item 4.1 is analogous to Item 6.0 on agendas for Commission meetings (see above). No one volunteered announcements or reports under items 3.1 or

4.1 at this meeting, so it cannot be said that material was introduced under these items without adequate notice. On the other hand, these items are fairly meaningless and would not have been adequate for anything announced or reported under them. They clutter up the agenda, and over-noticing of this sort can serve to obscure agenda items that are actually meaningful, as well as give the appearance of business when the committee is actually doing very little, which is, I suspect, their true purpose.

- The agenda for the meeting of the Executive Committee on July 12, 2022, attached hereto as EXHIBIT 63, included meaningful descriptions of item nos. 1.0, "Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives. Discuss commissioner input on how to do the Data Notebook for 2022," 1.1, "Governor's Care Court Proposal update," 1.3, "Discuss progress of BHC complaint process," 1.4, "Covid testing being discontinued," and 3.0, "New BHC Business," i.e., many of the very same items also considered by the Implementation Committee during the previous hour, making the committee process into a pointless subterfuge. Under Item No. 1.0, specific proposals for intervening in the budget process were discussed, i.e., that staff attend Board of Supervisors meetings. This was not "discussion of the need," but a proposal to meet that need and an order to staff. It should have been an action item. RONR (12th ed.) 10:24 (*supra*). They also discussed the MHSA hearing they were required to hold the following week as a way to meet this need. It was these that should have been put on the agenda. The Data Notebook was not in fact discussed, and should have been left off the agenda. Under item 1.1, the update that was given was strictly on state action regarding the bill. The agenda was not specific enough, as it implied that the Commission, as opposed to the State Legislature, may be taking some action regarding the care court proposal. This committee had previously discussed taking action under the same agenda item at earlier meetings. Under item 1.3, it was only announced that the director of BHS had been made aware that the position of Ombudsman for complaints was unfilled, and the agenda should have contained this. Under Item 1.4, Discontinued funding for testing specifically for the African-American community in Bayview/Hunter's Point was discussed, and this should have appeared on the agenda. Under Item No. 3.0, "New BHC Business," the committee chair stated that all such business should be sent via email in advance of the meeting for specific inclusion on the agenda, but this committee chair is currently prevented by law from continuing to serve on the Commission, and it remains to be seen whether this practice will continue. This was the first time such an announcement had been made.
- The agenda for the July 20, 2022, meeting of the Commission, attached hereto as EXHIBIT 72, includes a number of "boilerplate" agenda items. Specifically, all of the items under "ITEM 4.0 REPORT [*sic*] FROM THE COMMITTEES" are carried over from one meeting to the next, and say absolutely nothing about what will be discussed at this particular meeting. The first of them, "Implementation Committee, Chair Stephen Banuelos / Discuss focus of the Implementation Committee," says nothing except the name of the committee and the name of the reporting member. In fact, no report was

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even given under this heading, and so it should have been left off of the agenda. The second report, "**Site Visit Committee, Chair Vigil / Report on Site Visit strategy in completing selected site evaluations,**" also says nothing except the names of the committee and its reporting member. The report under this heading was a regurgitation of what had been discussed at the meeting of this committee the previous week, i.e., how hard it is to set these up, the efforts that staff were making, and the provisional assignments to site visit teams. The assignments were creations of committees and therefore action items. If they were premature because staff had not been successful in actually contacting the sites, then this item should have been dropped from the agenda. Unfortunately, the Commission's *Bylaws*, attached hereto as EXHIBIT __, require that each committee report at every meeting of the Commission and its Executive Committee, Art. VIII, § 1, ¶ 3.f, so desultory reports are required. The agenda should have specified the actual contents of the report, i.e., what the provisional teams and sites selected were. (The sites selected should also have been an action item, since no instruction was ever given to this committee to select sites on behalf of the Commission, and this should have occurred before staff attempted first contact. Staff actually sends out correspondence beginning with a statement that the Commission has selected them for a site visit as the first contact.). The third report, "**Strategic Planning Ad Hoc Committee, Commissioner Bohrer** –/ Update on progress of the current draft of the Strategic Plan – see attached," is similarly uninformative and repeated from one agenda to the next. Again, no report was actually given under this heading, and the item should have been dropped. As usual, this agenda included the reports discussed at the beginning of this section, under the usual Item Nos. 5.1, 5.2, and 6.0, all of which are repeated from one agenda to the next without alteration. Under Item 5.1, Co-Chair Banuelos attempted to bring his unagendized discussion topic on ending the meeting regularly at 8:00 p.m. (really an action item, since it requires a vote) and was shut down by staff and another Commissioner. As noted in the previous section, notice needed to appear on the agenda. Under this item, Commissioner Bohrer "highlighted" Lieutenant Mario Molina of the Crisis Intervention Team of the SFPD. This needed to be on the agenda. Even if it was "purely commendatory" action (there was no vote), it would still need findings of urgency and that no one on the Commission learned of it until after the agenda had been posted, adopted by specific supermajorities. *Cal. Gov't Code* § 54954.2(b)(2). Under Item No. 5.2, nothing was proposed and the item should have been dropped from the agenda. Under Item No. 6.0, Co-Chair Banuelos reported that Dr. Kunins had reported no ideas on how to get the Board of Supervisors to appoint a Sitting Supervisor to the Commission. This was "a brief report on his or her own activities," exempt from the notice requirement of the Brown Act, but not that of the Sunshine Ordinance, and it should have had notice on the agenda and an opportunity for the public to address the Commission. Also under this item was a discussion between Commissioner Parks and the others regarding her proposed attendance at MHSF Working Group meetings. This could have been formalized as a motion to commit to Commissioner Parks, or else it was

a discussion. Either way, it needed notice on the agenda. Public comment was called at this point, but in fact Commissioners were not through with the item. Commissioner Murawski asked to put a presentation on the agenda for the following meeting. This should have been on the agenda for a vote and an opportunity for the public to speak. Murawski then proposed to have the Controller present to the Commission regarding patient/staff ratios. This too should have been on the agenda for an opportunity for the public to speak and a vote. Finally, Murawski proposed a "roundtable" with the Office of Police Accountability, which also should have been agendaized with an opportunity for public input and a vote. We complained to the Commission via email sent in advance of the meeting of these violations apparent from the agenda, email attached as EXHIBITS 66 and 67, and the chair failed to rule them out of order at the meeting. Consequently, we ask for a finding of willful noncompliance.

- The agenda for the *ad hoc* committee to propose an annual report, in their agendas for Aug. 1 and 5, 2022, attached hereto as EXHIBITS 76 and 78, contained a "boilerplate" "ITEM NO. 4.0 NEW BUSINESS [Discussion only]" This item further specified, "Suggestions for further agenda items to be referred to the Executive Committee and for future trainings and orientations of future Commissioners." This was not adequate to inform someone whose interests would be affected by the item of whether they should attend the meeting, and thus violated *S.F. Admin. Code* § 67.7(a). This item was not called at the meeting on Aug. 1.
- The agenda for the Sept. 21, 2022, meeting of the Commission, attached hereto as EXHIBIT 89, included the usual "boilerplate" item nos. 5.1, 5.2, and 6.0, described at the beginning of this section, as well as "boilerplate" committee reports under item No. 4.0, mindlessly copied from one agenda to the next, despite my announcing the SOTF's decision in my favor regarding these at multiple committee meetings in August and September, as well as at this meeting. Nothing was transacted or discussed under these items at this meeting, except that chair Banelos made a referral to the Executive Committee of a motion to approve an *ad hoc* committee to compose an agenda for the annual retreat in December. Notice of this should have appeared on the agenda. Because the Commission has ignored so many of my verbal warnings, we ask for a finding of willful noncompliance. These items continue to be mindlessly copied from one agenda to the next, an open invitation to violate the Sunshine Ordinance, to begin again just as soon as I stop monitoring compliance.
- Item No. 3.3 on the agenda, attached hereto as EXHIBIT 91, for the Sept. 30, 2022, meeting of the *ad hoc* committee to compose the annual report, explicitly stated, "Site Visit Report – update," where the chair introduced the site visit conducted earlier the same week and covered earlier in the meeting under Item No. 2.0. Member Murawski, who is now also chair of the Site Visit Committee, then gave a preview of meetings in two weeks, at which sites would be selected to visit, Commissioners assigned to them, etc. Member Banelos then asked whether he had a conflict of interest in visiting a site with which Murawski claimed she had a conflict of interest because she previously lived

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there or at another property under the control of the same organization, and Banuelos had previously worked on their contract with BHS. This agenda item, mindlessly copied from one agenda to the next, did not include these requisite specifics, and what appeared was insufficient to alert someone whose interests would be affected of whether they should attend the meeting. I ask for a finding of willful noncompliance because I told them that this item and others under Item No. 2.0 lacked the requisite detail, citing this section and describing its requirements, and they went ahead and gave the report under this inadequate description anyway. The report or discussion was not timed exactly but appeared to have lasted over five minutes.

- At the meeting of the Commission on Oct. 19, 2022, agenda attached hereto as EXHIBIT 92, During Item No. 1.1, which was labeled only "Report from the Commission Co-Chair and the Executive Committee," Co-Chair Banuelos discussed three standing orders and special rules of order which he was apparently making unilaterally, without a vote from the Commission: 1) That public comment would be limited to two minutes and would be called at the middle of the item, with a second public comment before the vote on actions to be taken (in conflict with S.F. Admin. Code § 67.15(c), requiring that the Commission adopt a special rule of order allowing each member of the public up to three minutes to address the Commission); 2) That there would be informal work-groups as well as ad hoc committees, which work groups would be advisory only and would report to the Commission; and 3) Public commenters on presentations would not be allowed to ask questions of the presenter. He said that meetings would be more like the meetings of the Health Commission with these changes. These announcements took approx. three minutes, but did not fit any of the exemptions from the notice requirement listed under S.F. Admin. Code § 67.7(d). The agenda for this meeting continued to include the usual "boilerplate" agenda items 4.0, 5.1, 5.2, and 6.0, the latter three of which are discussed above, at the beginning of this section. During Item No. 4.0, the report of the Site Visit Committee, labeled only "ITEM 4.0 REPORT FROM THE COMMITTEES / Site Visit Committee, Chair Vigil / Report on Site Visit strategy in completing selected program reviews," the results of a recent Site Visit to Conard House was reported without notice on the agenda. Also during this item, an account was given of a presentation by Citywide Case Management to this committee during the meeting this week, at which one member of the Commission, who was ex officio member of the committee, attended. Also under this item was "Implementation Committee, Chair Stephen Banuelos / Discuss focus of implementation Committee." During this report, a discussion was held as to whether the agenda for the December retreat should be taken up by this committee, and also an announcement that the 2021-2022 had listed a number of issues as ongoing issues to be taken up by this committee moving forward. Also under this item was "Strategic Planning Ad Hoc Committee, Commissioner Bohrer / Update of progress of the current draft of the Strategic Plan – see attached below." Under this report, Commissioner Bohrer stated that her committee hadn't met, that she had no members, and a discussion was held regarding its tasks and relationship to the

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Implementation Committee, and whether the informal work group planning the retreat (the strategic plan is usually a topic at the retreat) could do its work. During Item No. 6.0, labeled only "ITEM 6.0 NEW BUSINESS (Discussion only) / Suggestions for future agenda items to be referred to the Executive Committee and for future training and orientation of future Commissioners," Co-Chair Vigil announced that a persistent problem he had noticed during site visits was the shortage of staff, high level of burnout, and low pay among both contractors and BHS. Also during this item, volunteers were solicited for an informal work group to advise the chair on an agenda for the December retreat.

Failure to Include "the Proposed Action"

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda, that items on which action is proposed to be taken by the policy body include the proposed action. BHC and its committees violated this requirement on the following dates, in the following ways:

- At the regular meeting of the Implementation Committee held on May 10, 2022, the agenda for which is attached hereto as EXHIBIT 15, action probably was taken on Item No. 2.3, "**Review of the Care Court Proposal:** Discussion on State Care Court Proposal; what shall BHC do?" but no action was listed on the agenda. A decision may have been made to "take" the issue to the Executive Committee for presentation to the Commission (however, the item was already on the agenda for this meeting). No vote was taken, but the definition of "action taken" in *Cal. Gov't Code* § 54952.6 encompasses informal agreements. Action may similarly have been taken on Item No. 2.4, "**Follow up on RFP:** Dr. Kunins update on MHSF for 5/18/22. What about the RFP?" During this item, Co-Chair Banuelos agreed to "bring it up at exec" (as a non-agendized item during the meeting immediately following – but this did not in fact occur, perhaps due to my objections during public comment) for presentation to the full commission. (It should be noted that the committee also would have been reticent to take action at this meeting in order to avoid criminal penalties from violation of the Brown Act, *Cal. Gov't Code* § 54959 (action knowingly taken in violation of the Brown Act incurs misdemeanor guilt), but they consider this to mean only a formal vote. See, Item No. 2, under which the failure to post the agenda physically is described, and also EXHIBIT 11, warning them of this fact.) Whether decisions were made is not clear, because any member of the ExCom, which included the chair of this committee, may place items on the ExCom agenda, and this agenda is posted in advance of the meeting of the Implementation Committee anyway. Furthermore, regular reports of the Implementation Committee to the ExCom are mandatory under both old and new *Bylaws*, regardless of whether the Implementation Committee authorizes them or not. (This is a very questionable practice. It turns committee reports into spontaneous observations of the committee on the part of the reporting member. The reporting member is thus put in the position of a scientific observer of the committee, which is reduced to an object,

instead of the reporting member being its faithful servant. It destroys the distinction between taking action and not taking action at the committee level, since the committee is advisory and the report may be the same whether action is taken on any item or not, nor whether the action is yes or no. All that matters is what the committee chair *qua* reporting member thinks. By destroying the distinction, and taking reporting—the only function of an advisory committee—out of the control of the committee, it deprives advisory committees of taking action. Consequently, an advisory committee at the Commission is just a group of people that is forced to meet regularly and yak on pre-assigned topics, to spit up and reveal what they know, like slaves or laboratory specimens with no power of self-determination. Even the power to put business on the agenda of the committee meeting becomes only the power to speak, perhaps in vain, and hope for favor from the committee chair (also a Co-Chair) like medieval courtiers. If the all-powerful Co-Chair does not look favorably upon one's speech at the committee and report it to the Commission, then one speaks into a void, action taken or no, action yes or action no. Even if the committee chair does report it, committee reports are second-to-last on agendas of Commission meetings. One can get on the agenda by oneself (hopefully) and earlier on the agenda than the reports anyway. Furthermore, because the committee reports are only the reports of individuals, not authorized by their committees, they mean no more than other items submitted by individuals. The reason for having committees is thus destroyed, beyond better informing the Co-Chairs (who are also the committee chairs). They are effectively Co-Chair enslavements. Consequently, the experience of them is degrading. It contributes to similar feelings at the Commission level, and possibly explains the ready acceptance and even enthusiastic adoption of other authoritarian practices at the Commission. I would not want to serve on a BHC committee for this reason, and other members of the public may be similarly disgusted.) Enforcing the distinction between proposed-action vs. discussion-only items highlights the nonsensical and authoritarian nature of how committees are organized at the Commission, which in turn explains the Commission's poor observance of the distinction. If the items complained-of here were not action to advise the parent body (or some other body), then they were for discussion only, and should have included the required statements to this effect (see following section). In addition, the proposed action on Item No. 1.1 was not included on the agenda. Although these were minutes, and there was a posting on the website of minutes for the meeting of this committee on "April 10" (the April meeting was on Apr. 12), the file actually contained the minutes for the March meeting of the committee, which had already been approved at the April meeting, the minutes for which were needed. We gave advance written notice of the inadequacy of Item Nos. 2.3 and 2.4, attached as EXHIBIT 11 and the committee ignored our warnings and discussed or acted upon these items regardless. Therefore, we ask for a finding of willful noncompliance.

- At the regular meeting of the Executive Committee on May 10, 2022, the agenda of which is attached hereto as EXHIBIT 16, Item No. 1.1, "Governor's Care Court

Proposal: Discussion and possible action" was taken up. This discussion was clearly in regard to whether this item should be included on the agenda for the meeting of the Commission during the following week. No vote was taken, and there was even disagreement among members of the committee as to whether it should be included in the agenda for the meeting of the Commission, but, because any member may place an item on the agenda for a meeting of the Commission, there must have been a sense of futility about the decision. A decision was made *by staff* to put it on the agenda for the meeting of the Commission the following week, apparently because at least one member wanted it. This member, also a Co-Chair, wanted it on the agenda "even if we ignore it, *to throw out some comment* before it becomes a dead issue in Sac." As questionable as this motive was with respect to the perceived methods of the Commission, it needed to be on the agenda that this was *a proposed action to put this item on the agenda for the next meeting of the Commission* for discussion only, i.e., as reported by the Executive Committee. A vote should have been taken. The individual proponent could have put it on just the same if they lost the vote, but the noncommittal "Discussion and possible action" is unlawful and should not have been used.

- At its regular meeting on May 18, 2022, the Commission took action on an item not on the agenda for the meeting, attached hereto as EXHIBIT 32. After the Commission took a final vote on its proposed revised *Bylaws*, which vote they failed to pass, a member spontaneously made a motion to pass the *Bylaws* as before, but combined this with another motion to create an *ad hoc* committee to further revise them. This motion eventually passed. No notice of this second motion appeared on the agenda, and the action violated *S.F. Admin. Code* § 67.7(a); in just the way that the SOTF had previously noted.
- On June 7, 2022, at the regular meeting of the Implementation Committee, the agenda for which is attached hereto as EXHIBIT 40, Item No. 1.1, "Vote to adopt May 10, 2022 minutes [action item]" was not the action which was not only proposed but approved at the meeting. The action that was both proposed and approved was an order to staff to rewrite the minutes and resubmit them for passage at the next meeting. RONR (12th ed.) 10:24 (*supra*). Again, the committee had plenty of time to review the minutes and put this motion on the agenda in advance of the meeting, because *S.F. Admin. Code* § 8.16 required that staff post draft minutes of a meeting within 10 days of the meeting to which they pertained. Item No. 2.3, "**Review the 2022 Data Notebook:** Discussion on BHC participation on How to do the Data Notebook for 2002" also violated this section. It began with an order to staff to print out and distribute relevant pages from *surveymonkey.com*, which should have been an action item, RONR (12th ed.) 10:24 (*infra*). (This meeting also proceeded without a quorum, so no violations could have occurred if the meeting had reached these items, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- Item 2.3 on the agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, made reference to “complete consolidated resolution, authored by Co-Chair Vigil and Commissioner Murawski, previously viewed and voted on. A carry-over from the April 20, 2022 meeting. [sic]” However, there were three resolutions attached to the agenda, and none of them identified themselves by their co-authors, nor made mention of the April 20, 2022, meeting. Only one of the resolutions could be attributed to one of the other agenda items, and, in fact, only the larger of the two remaining resolutions was intended by this agenda item. Item 1.1 on the same agenda, “Governor’s Care Court Proposal: Discussion and possible action,” was also insufficiently descriptive because it didn’t include the proposed action, which was to recommend that the Executive Committee approve creation an *ad hoc* committee to address this issue. In fact, we complained about this item in advance of the meeting, correspondence attached hereto as EXHIBIT 37. The chair should have ruled it out of order. We ask for a finding of willful violation therefor.
- On June 15, 2022, the Commission took action on an item without the proposed action being on the agenda. Under Item No. 3.5, “Review Complaint from BHS client – commissioners to review letter submitted by Mary Savannah and determine how BHC can support the grievance – see attached [possible action item],” it was moved to invite Conard House to give a presentation at the July meeting of the Commission. The motion had a dispositive vote, which is “action taken” as defined in *Cal. Gov’t Code* § 54952.6, even though the vote was to reject the proposed presentation. The motion did not appear on the agenda.
- On July 12, 2022, the Implementation Committee, agenda attached hereto as EXHIBIT 62, violated this rule in two ways: Item No. 1.1 specified that minutes were up for approval. This was not the action taken. Instead, the Chair complained that the minutes were not in the correct form, and wanted staff to compose a new document. Instead of voting the minutes down, as they should, they ordered staff to redo them, and characterized this still further wrongly as a postponement to the next meeting, which would have been in order under the notice on the agenda (but would not have been adequate for their needs, as it would have resulted only in the very same draft minutes being proposed for adoption at the next meeting). An order to staff to redraft the minutes, on the other hand, is a distinct motion which needed to be on the agenda. RONR (12th ed.) 10:24 (*supra*). They had time to review the minutes and get such a motion on the agenda because staff are responsible for publishing proposed minutes for a meeting within ten days after it occurs, *S.F. Admin. Code* § 8.16, and this meeting, at which they were to be approved, was a month later. They also failed to include the proposed action by not including the necessary details of the motion to “Establish Ad Hoc Committee for the Annual Report,” Item no. 2.4 on the agenda (we also complained of this two sections back). Specifically, either the number of members and the method of their appointment or the names of the initial members are required to be included. RONR (12th ed.) 13:8(d). (The reference does not say it, but, without this information, whether a quorum was

present at a meeting of this committee cannot be determined.) Because we are entitled to a presumption that the Implementation Committee would follow its binding rules, *Cal. Evid. Code* § 664, the proposed action does not appear on the agenda. Only a truncated version of it does. (In fact, no action was taken on this item at this meeting because the Implementation Committee has nothing to do with the creation of committees, nor did they “push it forward” to Exec., because no vote was taken, nor was any motion made, etc. Any such “pushing forward” would have been dilatory anyway because the ExCom met immediately after this committee was to adjourn and was required to post its agenda in advance of the meeting of the Implementation Committee. It had the right to put this motion on its agenda itself because it is required by the *Bylaws* to approve the creation of *ad hoc* committees and was required to do so in order to determine it.)

- On July 12, 2022, the Executive Committee of the Commission violated this rule by failing to specify an proposed action for items that clearly proposed action. Specifically, item nos. 2.3 through 2.8 on the agenda for the meeting, attached hereto as EXHIBIT 63, did not include the proposed action. Item 2.3 does not even meet the standard for a reasonable description (see above). Item 2.4 says only, “Discuss commissioner input on How to do the Data Notebook for 2022- [*sic*] [action item]” (first square brackets added). It is obvious that this item fails to state the proposed action. Item 2.5 says, “Discuss questions for MHSA presentation, vote if necessary [action item]” This item makes implicit reference (for those who know) to *Cal. Welf. & Inst. Code* § 5848(b), which requires as follows:

The mental health board shall review the adopted [Mental Health Services Act or MHSA] plan or update and make recommendations to the local mental health agency or local behavioral health agency, as applicable, for revisions. The local . . . behavioral health agency . . . shall provide an annual report of written explanations to the local governing body and the State Department of Health Care Services for any substantive recommendations by the local mental health board that are not included in the annual plan or update.

Subd. (f) states as follows, “For purposes of this section, ‘substantive recommendations made by the local mental health board’ means any recommendation that is brought before the board and approved by a majority vote of the membership present at a public hearing of the local mental health board that has established its quorum.” This item reveals that, in fact, at the time of posting, the Commission had *no proposals* for recommendations to Behavioral Health Services regarding the proposed MHSA update. Consequently, the item should have been dropped from the agenda, because any proposal introduced at the meeting would have been a substantive amendment. (In any event, like many BHC committee actions, this one was dilatory, as any member could put a motion to make a recommendation to BHS regarding the MHSA plan on the agenda for the meeting of the Commission, such recommendations are not even within the subject-matter jurisdiction

of the Executive Committee, and the Commission would have to vote on any recommendation anyway.) Items 2.6 and 2.7 proposed the creation of *ad hoc* committees. However, the specifications of these committees include little more than a name for one and the tasks which the other was to perform (n.b., *ad hoc* committees are not to be given names, they are simply referred to by their tasks). A minimally viable specification for a committee must include either the names of the members of which it shall consist (including its chair) or the number of members and the method by which they are to be determined. RONR (12th ed.) 13:8(c) (“**Necessary Details of the Motion**”). To add these at the meeting would be a substantive amendment to the motion, not allowable under this section. Item 2.8 made reference to a motion attached to the agenda. However, there were not one but two motions that were not attributable to other items on the agenda. They differed substantially, and this section is to be interpreted liberally in favor of public disclosure. The public has a right to a reference to a specific motion, not an hodgepodge of motions through which to sort and guess at. It would be bad enough that members of the public would have to match all of the motions attached to the agenda to their respective agenda items. In fact, it is worse, because the agenda item references a “BHOC” motion, but that acronym appears nowhere in either of the two motions attached to the agenda that are not attributable to any other agenda item.

- At the July 20, 2022, meeting of the Commission, agenda attached as EXHIBIT 72, Item Nos. 3.2 through 3.6 did not include “the proposed action.” We complain in the next section that Item Nos. 3.2, 3.4, and 3.6 were “downgraded” to “discussion only” status at the meeting because no vote was taken on them. The remaining Item Nos. 3.3 and 3.5 were approved on July 20, 2022. However, the measures approved substantially did not appear on the agenda. Item No. 3.3 appeared on the agenda as “**Establish Ad Hoc Committee for the Annual Report: The BHC Annual Reports are due for 2021-2022 in September [action item]**” The motion passed at the meeting was never stated by the chair, but appears to have been to form an *ad hoc* committee to propose an Annual Report for 2021-2022, identify 3-4 potential resolutions and have them ready to share at the July 2022 Commission meeting, and identify 4-5 programs that the Commissioners want to review and prepare to share, consisting of four people named in the motion (as stated by Banuelos): Vigil (committee chair), Bohrer, Stevens, and Banuelos. The two “identify” clauses were modified from Item No. 3.5 by Word document on-screen by staff at the meeting without anyone even moving for an amendment. This is what needed to be on the agenda for Item No. 3.3 and was not. Item no 3.5 appeared on the agenda as “**The creation of the Oversight Ad-Hoc Committee: to establish an Ad Hoc committee to review BHC mandates which include the Annual Report, specifically to (1.) Identify 3-4 potential resolutions and have them ready to share at the July 2022 Commission meeting [sic].** These resolutions would include key issues the Commissioners want to send to the Board of Supervisors, Health Commission, and Mayor’s Office [sic], (2.) **Identify 4-5 programs that the Commissioners want to review and prepare to share them at the July 2022 Commission meeting [sic].** The Commissioners can conduct

virtual site reviews or use the BHC COVID Survey form." What was passed was never stated by the chair, but appears to have been: create an ad hoc committee to review grievances, complaints, and BHC mandates, which include the Annual Report, consisting of Vigil (Chair), Wynn, and Murawski. This is, of course, what needed to be on the agenda, and was not. We complained about items 3.3 and 3.5 via email, attached hereto as EXHIBITS 66 and 67, in advance of the meeting and our complaints were ignored. Therefore, we ask for a finding of willful noncompliance on these items.

- The agenda for the meeting of the *ad hoc* committee to revise the *Bylaws*, held at 4:00 p.m. on Aug. 5, 2022, agenda attached hereto as EXHIBIT 79, failed to contain the proposed actions. Item No. 2.0 was labeled, "REVIEW RECENTLY PASSED BY-LAWS" "The chair will guide Commissioners in reviewing the by-laws for changes, amendments and potential adoptions." One might conclude that this was the motion to recommend revised *Bylaws* to the parent body. However, what, then, would item 3.2 be? "ITEM 3.0 ACTION ITEMS" "3.2 Review attached By-Laws and sample markups: discussion and possible action item on shared items [action item]." Shared items? Potential adoptions? Sounds like an orphanage! One of these items, and only one, should have been a motion to recommend revised *Bylaws* to the parent body. At the meeting, 2.0 was treated as the motion to recommend, and *seriatim* consideration proceeded under it. Item 3.2 was not reached.
- The agenda for the meeting of the *ad hoc* committee to revise the *Bylaws*, held at 4:00 p.m. on Aug. 12, 2022, agenda attached hereto as EXHIBIT 85, failed to contain the proposed actions. Item No. 2.0 was labeled, "REVIEW RECENTLY PASSED BY-LAWS" "The chair will guide Commissioners in reviewing the by-laws for changes, amendments and potential adoptions." One might conclude that this was the motion to recommend revised *Bylaws* to the parent body. However, what, then, would item 3.2 be? "ITEM 3.0 ACTION ITEMS" "3.2 Review attached By-Laws and sample markups: discussion and possible action item on shared items [action item]." This actually threw me for quite a loop. I had prepared a lengthy public comment for the *Bylaws* revision item, and I thought it would be 3.2. Consequently, I neglected to comment on Item No. 2.0 at all. This ended up being the item under which they proceeded *seriatim* through their recently-adopted *Bylaws*. They spent an hour on Item No. 2.0. I didn't get to deliver my prepared comment until near the end of the meeting, at which point I proceeded to tell them that they were breaking state-law in three different ways, local law in two different ways, and were violating a special rule of order in the very *Bylaws* they were setting about to revise, by proceeding at all. The value of my comment was significantly degraded by the confusion and resultant delay in delivering it. Although the same activity occurred at the meeting of this same body on the previous week, the previous meeting was chaired by a different and less experienced member.
- At the Sept. 9, 2022, meeting of the *ad hoc* committee on the composition of an annual report, agenda attached hereto as EXHIBIT 88, a couple of action items did not include imposed actions. Specifically, item no. 3.0, "Vote on time and frequency of meetings

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[action item]" does not include any proposal for what the meeting times and frequency should be, which was what was required. Also, the third bullet point under Item No. 3.2, "Draft 2020-2021 Annual Report with List of BHC Commissioners and Staff [see attached draft], does not contain a verb. Was the committee going to discuss it, recommend that the Executive Committee pass it, send it to the Board of Supervisors, make it into a paper airplane, what? A quorum of this committee was present at the meeting. At the Oct. 19, 2022, meeting of the Commission, attached hereto as EXHIBIT 92, action was taken on an item without notice on the agenda. During Item No. 6.0, labeled only "ITEM 6.0 NEW BUSINESS (Discussion only) / Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners," the matter of discharging the ad hoc committee to revise the bylaws was referred to the Executive Committee.

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Failure to Label Discussion-Only Items With a Statement That They Are For Discussion Only

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S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda, that that discussion items (for which no action is proposed to be taken) be labeled with a statement that the item is for discussion only. This is a rule for the violation of which BHC implicitly takes solace in the fact that items on agendas of the Sunshine Ordinance Task Force have included the ambiguous statement "for discussion and possible action" which the Commission often copies onto its own agendas. It is important to appreciate that "for discussion and possible action" is ambiguous, defeats the purpose of the rule, and is in fact unnecessary. *It is always possible to determine in advance of the meeting whether or not action is proposed to be taken on each item on the agenda.* It not that no prediction can be made as to whether action will *in fact* be taken, as "action taken" is defined in *Cal. Gov't Code § 54952.6*, *in pari materia* with the Sunshine Ordinance, that gives rise to the perceived need to violate this section with ambiguous labels. A *proposed* action may fail to be taken for any number of reasons, such as the action being out of order, a temporary disposition of the proposal occurring before action is taken, such as laying the item on the table, postponing it to the next meeting, or referring it to a committee, staff, or counsel, or the item being subject to a successful motion to avoid its determination, such as a motion to *Postpone Indefinitely* or *Object to the Consideration of the Item*. For all this, it is no less an item for which action was proposed to be taken. Proposing an item for action sets into motion the parliamentary machinery that finally or temporarily determines every proposal for action one way or another. By contrast, a discussion-only item has no determination. "Discussion" merely occurs, continues until it peters out, and is without consequence. It fills up time. This notation tells the public whether the parliamentary machinery will be used on a concrete proposal (which must itself appear on the agenda), or whether they can instead expect a desultory exchange of views on a topic. For better or for worse, the local requirement that items be segregated into action items and discussion-only items prevent meetings from being used as "brainstorming sessions" at which a brilliant idea may be hatched and acted upon at the same

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meeting. At best, a discussion at one meeting may lead to a proposal for action later being placed on the agenda for the following meeting, and the effort to cheat this process through ambiguously labeling items as “for discussion and possible action” defeats the purpose of the rule. This requirement protects the public from surprises resulting from specific action being taken on an item that would normally be a boring and inconsequential discussion, so that the public may focus their scarce time and attention on items that count, at the cost of less room for spontaneity at meetings on the part of the local agency. To this end, it works in tandem with the rule that proposed action appear itself on the agenda. Each item must be either one or the other.

In some cases, BHC “downgrades” items labeled on the agenda with the proposed action to “discussion only” status at a meeting. They do this for a single very inauspicious reason: If no action is taken on an item, it cannot be the basis for a criminal violation of the Brown Act under § 54959. Often such a violation is thought to extend to an entire meeting. “Downgrading” then allows *all* of the action items to be addressed in serial discussions. Often, this has the same result as actually deciding the items. The discussion is pronounced to have veered in a particular direction, for or against, and the members get by without having to disclose their real positions by a vote. Nor do they need to suffer the pressure of a final determination. Action is presumed to have been taken without the legal consequences thereof. The alternative to “downgrading” in the face of legal violations would be to rule the items out of order for specific violations of the Brown Act and not address them at the meeting. This has the significant disadvantages of admitting that the violation in fact occurred and providing for significantly less hot-air-blowing to prop up the egos of the participants, who are already insecure about whether they are accomplishing anything at all at these meetings. By contrast, “Downgrading” to “discussion-only mode” makes it appear that the body is continuing to do significant work while neither admitting to faults nor failing to hedge against violations that are only vaguely suggested. It allows uncertainty about applicable law to thrive, prevail, and even be wielded as a cudgel. (There is in fact no rule of order adopted by the BHC for “downgrading” items to “discussion only” status once they are proposed for action, nor would the Sunshine Ordinance generally allow such a rule.) BHC and its committees violated this requirement on the following dates, in the following ways:

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- On Apr. 20, 2022, at the BHC regular meeting, Item No. 3.4 on the agenda for this meeting, attached hereto as EXHIBIT __, was not labeled with a statement that it was for discussion only, as the law requires. This item was not introduced by the chair as a “proposed action,” despite the moniker to this effect appearing on the agenda. It was introduced as an item for discussion only, upon which the chair would allow BHC to take no action. Staff said that a supermajority was necessary to pass the item. However, rather than moving and voting to postpone it to the next meeting, the item was “stepped down” to a “discussion-only” item. A member of the public whose interests would be affected by the item might have been enticed to attend the meeting by the promise of action being proposed (which adds considerable pressure to debate), only to be

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disappointed. In this case, had the item been labeled correctly, such a member of the public would have known that they could safely forego attendance at the meeting.

- The agenda for the regular meeting of the Implementation Committee on May 10, 2022, attached hereto as EXHIBIT 15, showed Items Nos. 1.2 and 2.1 through 2.5 as “for discussion and possible action[s], and 3.1 and 4.1 as “for discussion and action.” None of them included a proposed action, and no action was taken under any of them except maybe 2.3 and 2.4, described in the previous section. When Item No. 1.3 was called, committee chair Banuelos asked staff what it was about (apparently, it had been placed there by staff). Grier said it was a duplicate and to “move on,” but it did not duplicate anything on the agenda. Banuelos moved on to the next item. If this was “discussion,” then this item needed a statement that it was for discussion only. Instead, it was labeled as an “[action item]”. Item 2.2 was a “cud-chewer” item placed on the agenda for ongoing regurgitation, chewing, and re-swallowing. No action was taken on it. During the item, staff (Gray) asked if this was the approval of minutes from March 9 (Item. No. 2.2 on the agenda of the meeting of the Executive committee immediately following, but also the minutes mistakenly placed in the file mislabeled as the minutes for the “April 10” meeting of this committee (the previous meeting was on Apr. 12).). Staff (Grier) answered “not there yet” and the committee chair called the next item. This item needed a statement that it was for discussion only. Item 2.5 contained only a discussion by staff about the new website’s promised capabilities, i.e., possible inclusion of “live links,” and a possible go-live in June. It was for discussion only and needed a statement to this effect. We warned the committee of the inadequacy of the description of Item No. 2.2 in writing, attached as EXHIBIT 11.
- The agenda for the regular meeting of the Executive Committee on May 10, 2022, attached hereto as EXHIBIT 16, marked Item Nos. 1.1 and 1.2 with “Discussion and possible action,” and 2.1, 2.2, 2.3, and 2.5 as “[action item]”, under the heading “**ITEM 2.0 ACTION ITEMS – Discussion on action items,**” but no action was taken on any of these items at the meeting. Consequently, each of them should have included a statement that the item was for discussion only. (If action really was planned to be taken on each of these items, then they needed to be labeled with the proposed action, and each of them should have had either a final vote or another (voted) disposition at the meeting.) As mentioned under the previous section and the Implementation Committee meeting for this date, this distinction is causing problems for the Commission, and for a very good reason, but this committee differs to some extent. At this point in time, this committee had no power to put *Orders of the Day*, including, mainly, lengthy presentations, on the agenda for the Commission, but this did not stop it from usurping such power anyway, and it formally gained this power later in the month. For this reason, the mentioned comments regarding the Implementation Committee require some modification – the Executive Committee has the power to force the Commission to sit through long presentations. This makes its actions not gratuitous, but only in this one area.

- The agenda for the regular meeting of the Site Visit Committee on June 7, 2022, attached hereto as EXHIBIT 39, Items 2.1 through 2.4 are all substantially the same as on the July 12, 2022, agenda, with the subtraction of “Conard House” from Item No. 2.4, and the same comments apply thereto (*see, infra*).
- On the agenda for the regular meeting of the Implementation Committee held on June 7, 2022, attached hereto as EXHIBIT 40, use of the illegal and noncommittal “for discussion and possible action” label was extensively made, and no actions were taken on the items. This label appeared on Item Nos. 1.0, 1.2, 2.0, 3.0, and 4.0. Item Nos. 1.2, 1.3, 2.1-2.5, 3.1, and 4.1 all should have included statements that they were for discussion only, because no actions were proposed to be taken under any of them (3.1 and 4.1 were not reached). Item No. 2.3, which said that it was a “discussion”, is inadequate. It must say discussion only, as discussion may, should, and usually does occur with proposed action. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- On the agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, Item Nos. 2.3, 2.4, and 2.5 were all “downgraded” to discussion-only items at the meeting, and no votes were taken on them. This was for various reasons: Item No. 2.3 had already been passed earlier in the year; Item No. 2.4 was simply not put up for a vote; Item No. 2.5 was realized to have been put on the agenda by mistake – the MHSA hearing was not ready to present, and would not be ready until July. “1.1 Governor’s Care Court Proposal: Discussion and possible action” also lacked a statement that this item was for discussion only. Although an action was proposed to create an *ad hoc* committee (which did not appear on the agenda), I suppose to recommend to the Executive Committee, it wasn’t *really* proposed. It was only discussed. Consequently, the item should have been so labeled. “1.2 BHS/BHC websites, Old & New: Discussion and possible action,” also lacked a proposal for action (which also did not appear on the agenda). On June 15, 2022, the Commission met, agenda attached as EXHIBIT 43. At this meeting, they failed to take action on Item Nos. 3.2, 3.3, and 3.4 on the agenda, which should therefore have been labeled with a statement that they were for discussion only. All of these items were under the heading for Item 3.0 on the agenda, “**ITEM 3.0 ACTION ITEMS.**” The first of them was Item No. 3.2, “**Data Notebook 2022 – Discussion on input from the BHC [action item]**” Although this description contains the word “Discussion,” it also contains indicia that action was proposed to be taken. It is ambiguous. Furthermore, discussion is normally included in action items. It is called “debate.” This is why that law requires “a statement that the item is for discussion only.” The word only is missing and cannot be inferred. No vote was taken on this item, and, even if a vote had been taken on it, the proposed action was not on the agenda, as the law requires. Item 3.3 on the agenda, “**Resolution for BHOCC – BHC to review, discuss, and vote on the BHOCC motion put forth by Co-**

Chair Vigil – see attached below [action item],” did not get a dispositive vote. A post-vote discussion revealed that Commissioners were unsure of what they were voting on because of lax parliamentary practices by the chair, but my notes show clearly that a secondary motion to postpone to the next meeting had been made. It was not stated by the chair, but nothing is ever stated by the chair. It was neither seconded, but a second is not necessary in a meeting of this size. The motion to postpone failed. Debate should have returned to the main motion. However, after the post-vote discussion on why some Commissioners had voted “no” or (illegally) “abstain,” the item was not pursued further; no dispositive vote was taken. Therefore, it was effectively “downgraded” to an item for discussion only, the vote to postpone notwithstanding, and should have been labeled as such on the agenda. Item 3.4, “**Appoint Chair to the Ad Hoc Bylaw Committee – establish the bylaw oversight ad hoc committee [action item],**” was called, and comments from Commissioners and the public were called, but no Commissioners had any comments, and it was passed over without a vote. It was for discussion only, and should have been labeled so on the agenda.

- With respect to the agenda for the regular meeting of the Site Visit Committee on July 12, 2022, notice of which is attached hereto as EXHIBIT 39, Item Nos. 2.1 through 2.4 all appear under the heading, “**Discussion: Report on site visits and strategy**” It is not clear what “reporting” on “strategy” would entail. In any event, Item No. 2.2, “Implementation of the strategy . . .” seems to go beyond mere “reporting,” and so it is unclear what significance the heading has at all. Although Item No. 2.3 directs to “Discuss the Importance . . .” and the remaining items have lesser statements, none state explicitly that they are for discussion *only*, which is what was required. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- With respect to the agenda of the regular meeting of the Implementation Committee on July 12, 2022, notice of which is attached hereto as EXHIBIT 62, Item No. 1.2 appears under the heading “**1.0 BUSINESS – Discussion and possible action out of the topics discussed.**” Item Nos. 2.1 through 2.7 all appear under the blanket label, “**2.0 ITEMS FOR DISCUSSION AND POSSIBLE ACTIONS**”. Of these, only item 2.4 even includes a defective action of some kind. Presumably, the rest are “for discussion only.” None of them contains a statement to this effect, though item no. 2.3 does say that it is a “discussion.” The law requires more.
- With respect to the regular meeting of their Executive Committee on July 12, 2022, the notice of which is attached hereto as EXHIBIT 63, BHC again “downgraded” Item Nos. 2.2, 2.4, 2.5, 2.6, 2.7, and 2.8, advertised on the agenda as “action items,” to “discussion-only items” during the meeting, again in order to avoid criminal penalties from violation of the Brown Act, though not the ones I had alleged in my warning to them of the various violations of open meetings laws apparent from the agenda. Other items on the agenda

for this meeting were not “downgraded” from “action item” status, but were not labeled with “for discussion only” either, as the law requires. Specifically, all seven of the items appearing under the heading “Item 1.0 Commissioner’s [sic] Reports” contained neither the proposed action nor a message that the items were for discussion only. Some of them were ambiguously labeled by “Discussion and possible action.” As related above, this defeats the purpose of the law. Action was in fact taken on none of these items, possibly due to the circumstances of the meeting involving imagined violations of the Brown Act.

- At the regular meeting of the Commission on July 20, 2022, the agenda attached hereto as EXHIBIT 72, a number of items on the agenda were “downgraded” from proposed actions to items “for discussion only” at the meeting. Item No. 3.2, “**Data Notebook 2022 – Discussion on input from the BHC [action item]**” neither lists the proposed action nor a statement that the item is for discussion only. The word “discussion” without more is not enough, because action items commonly also include debate, which may also be termed discussion. From the label “[action item],” and the placement of this item under “**ITEM 3.0 ACTION ITEMS,**” I suppose that action was contemplated. None, however, occurred at the meeting, and this item should have contained a statement that it was for discussion only. Item No. 3.4, “**Appoint Chair to the Ad-Hoc [sic] ByLaw [sic] Committee: establish the bylaw ad hoc committee [action item]**” appears to be an action item. However, this item had no disposition. It was not postponed, laid on the table, committed, nor finally disposed. Therefore, it was, in fact, a discussion-only item. It was required to have been labeled on the agenda as such. Item No. 3.6, “**BHC Commissioner Training: notify the commissioners of the scheduled commissioner virtual training on August 17, 2022 from 5 – 7 pm [action item]**” is similarly ambiguous. Nevertheless, no action was taken on this item at the meeting. It should have included a statement that it was for discussion only. We complained to the Commission via email sent in advance of the meeting, attached hereto as EXHIBITS 66 and 67, about these violations and the chair did not rule them out of order. Therefore, we ask for a finding of willful noncompliance.
- At the Sept. 9, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 38, the committee met with quorum, but several items appear on the agenda, including Item Nos. 3.0, 3.1, the two items under 3.2, and the three bullet-points under Item No. 3.2, none of which were subject to temporary or permanent disposition by the committee, nor a ruling by the committee chair, but neither did any of them include a statement that the item was for discussion only, as was required by law.
- At the meeting of the Commission on Sept. 21, 2022, attached hereto as EXHIBIT 59, Item Nos. 3.1 through 3.5 were labeled as “action items”, but in fact no action was proposed to be taken at the meeting on any of them. This was not due to a decision not to take action at this meeting, but was apparently due to mislabeling of these items on the agenda. All of them should have been labeled “for discussion only.”

- At the meeting of the *ad hoc* committee to compose an annual report on Sept. 23, 2022, agenda attached hereto as EXHIBIT 90, Item Nos. 2.0, 3.0, 3.1, 3.3, 3.4, and 3.5 included neither a proposed action nor a statement that the item was for discussion only. In fact, no motion was made, nor any called up, during Item No. 2.0, and so it should have been labeled "for discussion only."
- The agenda for the Sept. 29, 2022, meeting of the *ad hoc* committee on the revision of bylaws, attached hereto as EXHIBIT 93, shows Item 1.1.a, as being an action item. However, no vote was called on this item. An announcement regarding it was made by staff, and the chair neither ruled it out of order, nor did the committee dispose of it in any way. Therefore, it was an item for discussion only, and it was required to include a statement to this effect.
- The agenda for the Sept. 30, 2022, meeting of the *ad hoc* committee to compose an annual report, attached hereto as EXHIBIT 91, shows Item Nos. 3.1 through 3.5. The chair did not rule any of these out of order, and no motions were made nor disposed under these items. Therefore, they were for discussion only, and lacked the required statement on the agenda to this effect.
- The agenda for the Oct. 19, 2022, meeting of the Commission, attached hereto as EXHIBIT 92, contains a number of items which were in fact for discussion only, but were not labeled as such on the agenda. Specifically, item nos. 2.0, 3.0, 3.2 through 3.5, 4.0 were all for discussion only. No motions were made under any of these items. Far less did the chair rule them out of order, nor were they disposed through a vote. For all this, none of them included the required statement that they were for discussion only.

Item No. 2: "67.7(a) by failing to post their Agenda 72 hours in advance of the meeting:"

S.F. Admin. Code § 67.7(a) states, in relevant part (ellipsis, square brackets added): "At least 72 hours before a regular meeting, a policy body shall post an agenda . . . In addition, a policy body shall post a current agenda on its Internet [sic] site at least 72 hours before a regular meeting." (Note: There are no physical or internet posting requirements in the S.F. Sunshine Ordinance for special meetings. Agendas thereof are required to be sent to the members of the policy body and media who have made written requests for notice 72 hours before the meeting. S.F. Admin. Code § 67.6(f). This is still relevant to notice to the public beyond media because Cal. Gov't Code § 54954.1, in pari materia with the Sunshine Ordinance, requires that agenda packets or notices of meetings be sent to each member of the public who requests such in writing at the time that the notice is posted to the public or sent to members of the legislative body, whichever is earlier. We in fact made such a request on Jan. 2 of this year for meetings of the Commission and all of its committees.) S.F. Admin. Code § 67.3(b)(3) states that "A 'meeting' shall mean any of the following: (b) (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or (b) (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to

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become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

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Failure to Post on the Commission Website at Least 72 Hours in Advance of the Meeting

This section requires that notices of meetings of the Commission and its committees be posted on the Commission website 72 hours in advance of the meeting. The Commission and/or its committees violated this requirement on the following dates:

- With respect to their June 15, 2022, regular meeting, BHC originally posted their notice with a date of June 7, 2022. See EXHIBITS 43, attached. Only after I complained via email the following Monday, June 13, attached as EXHIBIT 44, did they then revise their notice to state the correct date. The public had no notice whatsoever of the correct date of the meeting until BHC revised their notice, less than 52 hours before the meeting. EXHIBIT 45.
- With respect to the regular meetings of their Site Visit Committee, Implementation Committee, and Executive Committee on July 12, 2022, BHC formulated the notices with the correct date on them, but each was posted on the BHC website under a link labeled prominently "July 17, 2022". See EXHIBIT 64, attached hereto. BHC contends that IT staff not under its control formulated the link, but this is no excuse. No matter who was at fault, the meetings were not properly noticed. A member of the public checking the website would think that BHC had scheduled a weekend meeting and may have forgone downloading it until later, or ignored the date on the notice. The notice requirement must be interpreted liberally. _____. In the current context, this means that *all* meeting dates related to the notice must be correct. Again, I warned BHC of the problem via email eight hours in advance of the meeting, advising them that all agenda items would be out of order therefor. Two hours later (to my chagrin, since this reflected BHC's will to hold the meetings in violation of the law), I saw that the dates had been repaired. All three meetings were held on schedule, with no items being ruled out of order, when all of them in fact were out of order. We ask for a finding of willful noncompliance because BHC was informed of the violations, which were incurable, and they proceeded to hold the meetings regardless. (The meeting of the Site Visit Committee proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- On Aug. 1, 2022, the Commission's *ad hoc* committee to propose annual reports met without a notice stating the time and place of the meeting. The meeting ZOOM on the notice that was posted, attached hereto as EXHIBIT 76, was unusable, and no meeting occurred there. As shown by the email chain attached as EXHIBIT 77, an alternative location had to be set for the meeting. The same email chain shows that I warned them not to hold this meeting. Even if the purpose of the meeting at the new location had been

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limited to setting a date for a future meeting, as advertised, it was nevertheless a meeting under the Sunshine Ordinance, if not also the Brown Act, liberally construed, and was held without notice to the public. (It was not in fact so limited in subject matter.) We ask for a finding of willful noncompliance because we warned them not to hold the meeting.

- On August 5, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose an annual report met, but the notice had not been posted on the Commission website 72 hours in advance of the meeting. Specifically, the website did not show posting of the notice of this meeting on the evening of Tuesday, August 2, 2022, printout attached as EXHIBIT 81. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law.
- On August 5, 2022, at 4:00 p.m., the Commission's *ad hoc* committee to propose revised *Bylaws* met, but notice of the meeting, attached hereto as EXHIBIT 79, had not been posted on the Commission's website 72 hours in advance of the meeting. Specifically, the website did not show posting of the notice for this meeting at 5:00 p.m. on Tuesday, August 2, 2022, printout attached to EXHIBIT 81. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law. Furthermore, I spoke during the first opportunity for the public to address the committee, which came early during the meeting, and informed them of the fact. Staff countered that they had sent the item on July 30, but that posting had failed due to matters beyond their control. I mentioned that it would have been impossible for them to have sent the notice on July 30, because the acting committee chair had announced at a meeting of another committee on Aug. 1, 2022, that the meeting for this committee would be held on Aug. 4, 2022, at 4:00 p.m., i.e., the previous day. At the request of the committee chair, I sent evidence of the late posting on the Commission's website to staff, attached hereto as EXHIBIT 81 and staff claimed to display some evidence of their having sent their request to IT staff within the required time. The acting committee chair said that the committee could not be held responsible for failures arising beyond the Commission's own staff, and ruled that the meeting should continue. We ask for a finding of willful violation because the meeting proceeded despite my informing them through verbal address and through evidence submitted via email at their request during the meeting, while they stated that "a matter of hours" (even 20 of them!) made no difference and that their work was too important to delay on account of failures beyond their control, and the SOTF had ruled against them on this very issue last year. I told them that it was the position of the SOTF that they should not hold the meeting under the circumstances, and they proceeded to hold it. I did not say at the meeting that the Commission had committed the same error at least on July 15, 2020, again claiming that they had timely asked IT staff to post, but IT staff did not timely execute, and that we complained in file no. 20100 of the fact, the Commission promised that it would not happen again, and the SOTF ruled in our favor on the issue, as disclosed in Ms. Leger's email of July 15, 2020, above. Staff contended at the end of the meeting that, because no action had been taken at the meeting, no violation had occurred, again confusing the Brown Act requirement for criminal penalties

with civil violation. A mitigating factor is that the acting chair was serving without notice, she was appointed to the Commission this May, and it was possibly her first time chairing a meeting of any kind, certainly first time chairing a meeting of the Commission, including any committee thereof.

- The Ad Hoc Committee to propose revised Bylaws posted a notice of a meeting at 3:00 p.m. on Sept. 8, 2022, attached hereto as EXHIBIT 94. This meeting notice was not posted on the Commission website until after 4:30 p.m. on Sept. 6, 2022, no more than 46 hours before the meeting, as shown by the website capture attached hereto as EXHIBIT 95. Furthermore, when the meeting time arrived, at least part of San Francisco was subject to a blackout, presumably due to high temperatures. No meeting was held at the ZOOM link on the meeting agenda. However, at appx 3:45 p.m., after the power had come back on where I was located, I received email of a ZOOM "emergency meeting" of the Ad Hoc committee to revise the Bylaws, attached hereto as EXHIBIT 96. The word "emergency" was apparently intended to invoke the provisions of Cal. Gov't Code § 54956.5(b)(1), which applies to "the case of an emergency situation involving matters upon which prompt action is necessary due to disruption or threatened disruption of public facilities . . ." exempting a legislative body from the requirement for posting notices of special meetings. Even if this requirement had been fulfilled (which it certainly was not), this was not a special meeting in the sense that the date and time for it had been the same on the previous two weeks. Only the place had been changed to a ZOOM location not available to the public. The meeting began with only two members of the four-person committee present at appx. 3:45 p.m. and proceeded to informally discuss a matter on the agenda. Unusually for committees of the Behavioral Health Commission, there were no staff present, nor nonmembers of the committee who were members of the Commission, nor members of the public other than myself. At appx. 4:18 p.m., a third member of the committee arrived at the meeting, creating a quorum. I then asked a self-selected one of the members to please hang up or log out, because there was no public notice of the meeting ZOOM, nor was there any notice of this ZOOM attached to the meeting ZOOM that was noticed to the public on the website, and this was now a "meeting" subject to open meetings laws because a quorum was present and they were discussing matters within the subject-matter jurisdiction of the ad hoc committee, namely the subject-matter that had been referred to them. A member complained that the meeting had begun without quorum and that there had been agreement at that time to proceed in "discussion only mode," and that discussing matters within the subject-matter jurisdiction was acceptable among a quorum of the body without notice to the public if no votes were taken. I tried to correct her, to no avail. I then said that I would be placing myself on "mute" because I chose not to involve myself in their violation of the Sunshine Ordinance, nor the Brown Act, that I would be reporting the incident to the Sunshine Ordinance Task Force, and that I expected that the SOTF would support me because the Brown Act prohibits discussion as well as voting among a quorum of a legislative body, and the Sunshine Ordinance prohibits exchanges of views among the same, outside of a

meeting noticed to the public. There followed a short discussion, during which the committee chair said that she did not care what the SOTF would say about it, and they chose to continue. The meeting continued until 5:03 p.m. and was recorded. I request a finding of willful noncompliance because I explained the law to them and how they were in violation and they chose to continue to hold the meeting.

- The *ad hoc* committee to compose an annual report posted a notice to meet on Sept. 9, 2022, at 3:00 pm, attached hereto as EXHIBIT 88. A screen capture of the website at appx. 4:30 pm on Sept. 6, less than 72 hours before the meeting, attached hereto as EXHIBIT 95, showed that the notice had not been posted. I informed the committee that the meeting did not meet the notice requirements during the first opportunity to address them at the meeting, Item 1, I.a. They proceeded to hold the meeting and discussed matters within their subject-matter jurisdiction until 4:30 pm. They were a five-member committee, of which four of the members were present. We ask for a finding of willful noncompliance because they continued to hold the meeting after I warned them about the violation and told them that it affected every item on the agenda.
- The Executive Committee scheduled a regular meeting on Sept. 13, 2022, agenda attached hereto as EXHIBIT . However, no meeting occurred at the meeting ZOOM on the agenda. Staff announced to one of the chairs of the committees that met earlier that day to say that all meetings that day had been cancelled, and just to be sure I called ZOOM and tried to access the meeting at 5:41pm, when the meeting was scheduled to begin at 5:00 and was told that the meeting had not started. On Oct. 11, during the informal discussion that occurred—the regular meeting had been scheduled for that date, but failed to attract a quorum—it was disclosed that vice-chair Vasconez had in fact held a meeting of this committee at an undisclosed meeting ZOOM on that date. It is uncertain who attended, or whether the meeting attracted a quorum, but, if it did, a violation occurred because there was no notice of the meeting ZOOM available to the public.
- The *ad hoc* committee to revise the bylaws posted a notice to meet on Sept. 29, 2022, at 3:00 pm, attached hereto as EXHIBIT 93. A screen capture of the website at appx. 4:00 pm on Sept. 27, 2022, 47 hours before the meeting, attached hereto as EXHIBIT 98, shows that the notice had not been posted. I announced this during an unagendized public comment taken at the start of the meeting. There was not a quorum at this time, but the chair was present and quorum was obtained shortly afterwards. I announced that the meeting would be illegal once that member was added, while they were in the process of logging in. They continued with the meeting anyway, simply omitting to vote on one amendment in order to avoid criminal penalties under *Cal. Gov't Code* § 54959. Commissioners present were Bohrer, Wynn, and Murawski. I asks for a finding of willful noncompliance because they continued with their meeting after I told them about the violation of the notice requirement, and they even acknowledged that this violation had occurred.

- The *ad hoc* committee to compose an annual report posted a notice to meet on Sept. 30, 2022, at 3:00 pm, attached hereto as EXHIBIT 91. A screen capture of the website at appx. 4:01 pm on Sept. 27, 2022, 70 hours before the meeting, attached hereto as EXHIBIT 98, shows that the notice had not been posted. I pronounced this during an unagendized period for public comment taken at the start of the meeting, and that every item on the agenda would violate this section of the Sunshine Ordinance, that the chair should rule the next item—approval of the AB 361 motion—out of order as well as the other items on the agenda. There was a quorum at the meeting at this time. The chair went through the agenda without ruling anything out of order and the meeting lasted for over two hours. I ask for a finding of willful noncompliance because the committee continued with their meeting after I warned them that they were violating this section and they ignored me and continued to hold the meeting.
- The *ad hoc* committee to compose an annual report seems to have met on Oct. 7 without notice on the website. At their previous meeting on Sept. 30, they did not approve the final report and more changes remained to be made, nor was there a motion to rise, and when a member complained about this, another member said that they should just “meet as a work group” and not hold a noticed meeting, as if they were not required to do so by law. Apparently, this actually occurred, because a final report was up for approval at the Oct. 11 meeting of the Executive Committee, required by *owlaws* to give their final approval on the item.

Failure to Post Physically at the Government Information Center at Least 72 Hours in Advance of the Meeting

This section requires physical posting of the agenda and notice of meeting in a place accessible to the public with 72 hours advance notice of the meeting. BHC violated this requirement on the following dates, in the following ways:

- With respect to the regular meeting of their Implementation Committee on May 10, 2022, agenda attached hereto as EXHIBIT 15, the Commission failed to post notice at the Government Information Center 72 hours before the meeting. Specifically, the notice that they sent had the date “April 12, 2022” as the date of the meeting, as shown in the exhibit. The Government Information Center does not post notices of meetings that occurred in the past, and so this meeting was not noticed physically. I warned the members of the committee in advance of the meeting by email of the lack of physical posting, the email attached hereto as EXHIBIT 11. They proceeded to hold the meeting anyway, and did not rule each item on the agenda out of order. We ask for a finding of willful noncompliance.
- With respect to their June 15, 2022, regular meeting, BHC originally posted their notice with a date of June 7, 2022. See EXHIBIT 43, attached. Only after I complained via email the following Monday, June 13, attached as EXHIBIT 44, did they then revise their notice to state the correct date. As may be seen from EXHIBIT 45, the notice was not

received by the Government Information Center until less than 52 hours before the meeting. The printout shows that the notice was received at 2:07 pm on June 13. Staff had in fact timely sent Library staff the notice for this meeting, but, because the notice advertised a date that had already passed, Library staff did not post it, nor could they have known where to post it, as notices are posted in order by the date and time of the meeting. Despite my email warning sent to all BHC members, attached as EXHIBIT 44, BHC proceeded to revise their notice inside the 72 hour window to include the correct date, and to actually hold the meeting in violation of the law. We ask for a finding of willful noncompliance for this violation because we warned BHC of the violation in advance of the meeting, making clear that the violation could not be cured, and they proceeded to hold their meeting regardless of our warning.

- On Aug. 1, 2022, the Commission's *ad hoc* committee to propose annual reports met with neither 72 hours' notice, nor a notice stating the time and place of the meeting. As shown by the email chain in EXHIBIT 77, the meeting ZOOM on the notice, attached hereto as EXHIBIT 76, was unusable, and no meeting occurred there. As shown by the email chain, an alternative location had to be set for the meeting. An earlier email in the chain shows that I warned them not to hold this meeting. That they met at a new location, regardless of my advice. Even if the purpose of the meeting at the new location had been limited to setting a date for a future meeting, as advertised, it was nevertheless a meeting under the Sunshine Ordinance, if not also the Brown Act, liberally construed. (It was not in fact so limited.) Since they met after our warning, we ask for a finding of willful noncompliance.
- On August 5, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose an annual report met, but the notice had not been posted on the Commission website 72 hours in advance of the meeting. Specifically, the posting at the Government Information Center did not show posting of the notice of this meeting on the evening of Tuesday, August 2, 2022, printout attached as EXHIBIT 80. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law. However, because they did not allow the public to address them at any time during the meeting, I was not able to inform them of this fact.
- On August 5, 2022, at 4:00 p.m., the Commission's *ad hoc* committee to propose a revision of its *Bylaws* met, but the notice had not been posted at the Government Information Center 72 hours in advance of the meeting. Specifically, the Government Information Center's document had a stamp indicating that it has been received at 2:00 p.m. on Aug. 3, 2022, printout attached as EXHIBIT 80. This was well within the 72-hour window and in violation of the law. I informed them of this fact at the first opportunity for the public to address the committee, at which point the staff claimed that they had sent timely notice to the public library. The committee chair asked for evidence from both sides, and I sent the printout attached as EXHIBIT 80 via email also attached, directing them to the second page of the file. This was allegedly displayed at the meeting, at which point the acting committee chair took issue with the crossed-out date,

which showed the date that staff claimed that they had sent the document. However, as discussed above, staff could not have noticed the public library on July 30 as claimed, because the acting committee chair had, at a meeting of another committee on Aug. 1, 2022, announced that the *Bylaws* committee was to meet on Thurs., Aug. 4, 2022, at 4:00 p.m. So, if notice had been given on July 30, it had been for the Aug. 4, 2022, meeting date, and not the current date.

- On Aug. 26, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose several annual reports met, but the notice of the meeting had not been posted at the Government Information Center 72 hours in advance of the meeting. I visited the Government Information Center and checked their binder on the night of August 24. There were no agendas for either this meeting or the meeting of the *ad hoc* committee on proposed *Bylaws* held the previous day. (I am not listing the meeting of the *ad hoc* committee on proposed *Bylaws* under this item, because they did not have a quorum – only one member attended.) Present at this meeting, after a delay for one of the members, were: Stevens, Mason, Murawski. It was disclosed during the meeting that Bohrer had been removed from the membership and Mason and Murawski added (*see infra*, regarding this action taken out of the public eye). Therefore, the membership was, at this time: Vigil (chair), Stevens, Banielos, Mason, Murawski (5 members, with a quorum of three). Consequently, a meeting occurred within the definition in the Act and the Ordinance.
- The *Ad Hoc* Committee to propose revised *Bylaws* posted a notice of a meeting on Sept. 8, 2022, the cover page of which is attached hereto as EXHIBIT 94. As may be seen from the timestamp thereon, this meeting notice was not posted at the Government Information Center until Sept. 6, 2022, only two days before the meeting. Furthermore, when the meeting time arrived, at least part of San Francisco was subject to a blackout, presumably due to high temperatures. No meeting was held at the ZOOM link printed on the meeting agenda. However, at approx 3:45 p.m., after the power had come back on where I was located, I received email of a ZOOM "emergency meeting" of the *Ad Hoc* committee to revise the *Bylaws*, attached hereto as EXHIBIT 96. What transpired at that meeting is described in substantial detail in the previous section, to which the reader is now referred. We again ask for a finding of willful noncompliance because the participants proceeded with the meeting despite my warnings that to do so would violate the Sunshine Ordinance, notwithstanding their lack of quorum when the meeting started, and notwithstanding their "decision" to proceed without taking any votes.
- The *ad hoc* committee to compose the annual report posted a notice of a meeting on Sept. 9, 2022, the cover page of which is attached hereto as EXHIBIT 85. As may be seen from the timestamp, the Government Information Center did not post the agenda until the morning of Sept. 7, two days before the meeting. The Government Information Center told me on a previous occasion that they do not post items received after 4:30 p.m. on weekdays, and do not post items at all on weekends (and holidays). Sept. 5 was Labor Day. As mentioned in the previous item, I informed the committee of this problem at the meeting, simply telling them that the 72 hour requirement had not been met, without

breaking it down into website and physical components, and they proceeded to hold the meeting anyway, with four of their five members, and continued to meet until 4:30 pm, discussing matters within the subject-matter jurisdiction of the committee. We ask for a finding of willful noncompliance because we aried them about the violation and told them that it affected every item on the agenda and they proceeded to hold the meeting against our admonition.

- The Executive Committee scheduled a regular meeting on Sept. 13, 2022, agenda attached hereto as EXHIBIT 99. However, no meeting occurred at the meeting ZOOM on the agenda. Staff announced to one of the chairs of the committees that met earlier that day to say that all meetings that day had been cancelled, and just to be sure I called ZOOM and tried to access the meeting at 5:41 pm, when the meeting was scheduled to begin at 5:00 and was told that the meeting had not started. On Oct. 11, during the informal discussion that occurred—the regular meeting had been scheduled for that date, but failed to attract a quorum—it was disclosed that vice-chair Vasconez had in fact held a meeting of this committee at an undisclosed meeting ZOOM on that date. It is uncertain who attended, or whether the meeting attracted a quorum, but, if it did, a violation occurred because there was no notice of the changed meeting ZOOM available to the public.
- The ad hoc committee to revise the bylaws posted a notice to meet on Sept. 29, 2022, at 3:00 pm, a cover page of the agenda for which is attached hereto as EXHIBIT 100. As shown by the timestamp on the cover page of the agenda, this notice was not posted at least 72 hours before the meeting. It was posted 51 hours before the meeting. I announced this during an unagendized public comment taken at the start of the meeting. There was not a quorum at this time, but the chair was present and quorum was obtained shortly afterwards. I announced that the meeting would be illegal once that member was added, while they were in the process of logging in. They continued with the meeting anyway, simply omitting to vote on one amendment in order to avoid criminal penalties under Cal. Gov't Code § 54959. Commissioners present were Bohrer, Wynn, and Murawski. I asks for a finding of willful noncompliance because they continued with their meeting after I told them about the violation of the notice requirement, and they even acknowledged that this violation had occurred.
- The ad hoc committee to compose an annual report seems to have met on Oct. 7 without notice on the website. At their previous meeting on Sept. 30, they did not approve the final report and more changes remained to be made, nor was there a motion to rise, and when a member complained about this, another member said that they should just "meet as a work group" and not hold a noticed meeting, as if they were not required to do so by law. Apparently, this actually occurred, because a final report was up for approval at the Oct. 11 meeting of the Executive Committee, required by bylaws to give their final approval on the item.

Serial Meetings

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The Commission met serially on the following dates by exchanging views via telephone or email. These were special meetings of the Commission or its committees of which we received no notice via email, as required by the Sunshine Ordinance in conjunction with the Brown Act, or were perhaps regular meetings.

- Prior to the May 18, 2022, regular meeting of the Commission, staff (Grier) called up Commissioners to ensure their attendance because the *Bylaws* were agendized for approval and needed 12 "yes" votes to pass under the Commission's "interpretation" (encouraged by the *Good Government Guide*) of *S.F. Charter* § 4.104(b), and the Commission had only 12 members at the time. While making these calls, Grier asked how the Commissioners were planning to vote. A Commissioner who was planning to vote "no" was told that they would be the sole dissenting voice. This was "a series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of such members become involved in such gatherings ..." *S.F. Admin. Code* § 67.3(b)(2).
- A the Sept. 9, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 88, Co-Chair Banuelos said that he "had told other Commissioners" about the grievance issue (recently heard by the Commission), and that he was "identifying problems and getting people to follow up", apparently through some media other than public meetings. It is clear that this was "a series of gatherings, each of wih involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of such members become involved in such gatherings ...," and thus a violation of *S.F. Admin. Code* § 67.3(b)(2).

Meetings via Email

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- Commissioners often use email to send one another drafts of documents for comments by other Commissioners, also over email. These, too, were meetings, whether regular or special, without the required notice to the public. These are distinguished from the previous item by being meetings characterized by broadcast email to the entire policy body allowing responses by individual recipients, rather than piecemeal contacts with individual members amounting to a gathering of a majority of the members.At the Aug. 12, 2022, regular meeting of the *ad hoc* committee to revise *Bylaws*, Commissioner Wynn mentioned exchanging notes via email with the other members of the committee in advance of their regular meeting on the following week regarding paragraphs of the *Bylaws* forthcoming to be decided. Even if no violation actually occurred, for compliance and monitoring purposes, the speech revealed an intent to violate the Ordinance.Commissioner Wynn mentioned the above emails as having been sent at the Sept. 7, 2022, meeting of the *ad hoc* committee on the formulation of *Bylaws*.

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- At the Sept. 9, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 88, Co-Chair Banuelos (a member, but not chair of the committee) announced that he would "send something to Harriette and Vigil this weekend" regarding the content of the welcome letter by the Co-Chair to be attached to the annual report. Harriette Stevens, Banuelos, and Vigil are all on this committee, and it is a five-person committee, so this would be a "use of . . . communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon," and thus an illegal, unnoticed meeting as defined by *S.F. Admin. Code* § 67.3(d)(3).

Failure to Notice Meetings as Meetings of the Correct Policy Body

This section requires that each policy body post notices of each of its meetings as a meeting of the policy body (and not some other policy body). It repeats a similar requirement in the Brown Act that applies to legislative bodies (and policy bodies through *S.F. Admin. Code* § 67.5 (first sentence)). See, *Cal. Gov't Code* §§ 54954.2(a)(1) and 54956(a). This requirement has been interpreted to mean that a committee of a legislative body may not hold a meeting attended by a majority of the members of its parent. An opinion of the California Attorney General, 79 *Ops. Cal. Atty. Gen.* 69, *69, *74 (6-10-1996), held that a majority of the members of a parent body may not attend a meeting of their committee, even as (partially) members of the public, because, if they did, the meeting would be a meeting of the parent body. We ask that the analogous requirement in the Sunshine Ordinance be interpreted as this requirement in the Brown Act is. This is because the two laws are *in pari materia*, which is to say that they deal with the same subject matter, and each should be interpreted with implicit reference to the other. The amendment to the Brown Act was only affirming a reasonable interpretation of the notice requirement, which is the same in both laws, with respect to the coverage of each law. If anything, the Sunshine Ordinance, lacking the allowance of attendance "as observers" prohibits even attendance of a majority of the members of the parent body at a meeting of a committee.

- On July 12, 2022, at 5:00 p.m., the Executive Committee of the BHC held a regular meeting. By 5:23 pm, attendance included the following ten people:

Bahlam Javier Vigil (*Commissioner and Committee Chair*)
Stephen Banuelos (*Commissioner and Committee Member*)
Genesis Vasconez (*Commissioner and Committee Member*)
Carletta Jackson-Lane (*Commissioner and Committee Member*)
Lisa Williams (*Commissioner and Committee Member*)
Lisa Wynn (*Commissioner*)
Terezie Bohrer (*Commissioner*)
Toni Parks (*Commissioner*)
Kescha S. Mason (*Commissioner*)

Harriette Stallworth Stevens (*Commissioner*)

Even by the dubious standard of the *Good Government Guide*, this was a “majority of the members” of the Behavioral Health Commission, which has 17 members “designated by law, rather than the number of seats actually filled.” Members of the Commission who were not members of the Executive Committee participated in the discussion, both during “public comment” and otherwise. It was therefore a meeting of the Commission. No notice was ever posted of a meeting of the Commission at this date and time. Therefore, this meeting was held without notice. We ask for a finding of willful noncompliance because we sent the Commission an email regarding the similar Brown Act limitation (which we have repeated on numerous occasions) shortly before the meeting, attached hereto as EXHIBIT 60, and they violated that, too.

Failure to Issue Any Notice of a Meeting Inferred From Actions Taken at a Noticed Meeting

This section also requires that each policy body post notices of all of its meetings. BHC and its committee in fact make decisions over email and at meetings without notice to the public. *S.F. Admin. Code* § 67.3(b)(3) defines “meeting” as including “Any . . . use of . . . communications media that could permit a majority of the members of a policy body to become aware of an item of business and the views or positions of other members with respect thereto, and to negotiate consensus thereupon.” The Commission and its committees violated this rule on the following dates in the following ways:

- At the May 10, 2022, regular meeting of the Implementation Committee, the agenda for which is attached hereto as EXHIBIT 15, the meeting proceeded despite the presence of only three members: Banuelos (committee chair), Mason, and Jackson-Lane. Co-Chair Vigil, though not a member of this committee, was present, and, according to the *Bylaws* that were in force at the time, attached as EXHIBIT __, Art. VII, § 1, was an ex-officio voting member of all committees. However, the Commission’s parliamentary authority states that ex-officio voting members are counted towards neither quorum nor the quorum requirement. RONR (12th ed.) 50:16 (“When the bylaws provide that the president shall be ex officio member of all committees . . . the president . . . is not counted in determining the number required for a quorum or whether a quorum is present at a meeting.”). This committee was created in January of 2019 with six named members. I informed them of the lack of quorum during public comment at the meeting immediately before Item No. 1.3, and they ignored me. (This was the first opportunity to give public comment at this meeting as Item Nos. 1.1 and 1.2 were “crossed out” during the meeting, 1.1 because the minutes had not been posted, 1.3 because it duplicated Item No. 2.5.) The *Bylaws* then in force required standing committees (of which this was one) be established “after hearing the advice of the Executive Committee . . .” Art. IX, § 1.a. Therefore, modification must require it, and none was given at an open and public meeting. Consequently, we presume that the Executive Committee advised the Chair

regarding revising the size of the Implementation Committee down from six to five (quorum of four to quorum of three) at a meeting never announced to the public. *Cal. Evid. Code* § 664 (presumption that official duties are regularly carried out).

- At the May 10, 2022, regular meeting of the Executive Committee, the agenda of which is attached hereto as EXHIBIT 16, it was revealed that Commissioner Jackson-Lane had been added to the committee (see “COMMISSIONER’S [sic]:”). She was required by the *Bylaws* to have been “named by the Chair, following consultation with the Executive Committee. . . .” Art. VIII, § 1, but this consultation did not occur at any public meeting. Consequently, she must have been added at a meeting illegally not noticed to the public, in violation of this section.
- At the June 15, 2022, regular meeting of the Commission, Commissioner Klain was reported as an “Excused” absence. However, pursuant to *Bylaws*, Art. III, §§ 14 and 16, such excusal may be granted only by the BHC or its Executive Committee. Neither granted such excusal at any public meeting. *Cal. Evid. Code* § 664 entitles us to a presumption “that official duty has been regularly performed. . . .” and that the required excusal was in fact given. Consequently, it could only have been granted at a meeting which was never announced to the public, in violation of this section.
- At the July 12, 2022, meeting of the Implementation Committee, agenda attached hereto as EXHIBIT 62, Commissioner Bohrer gave a report on the status of the *ad hoc* Bylaws revision committee, under item 1.2, “Review the progress of the onetime bylaws non-public workgroup meeting.” The approval of the Executive Committee was required in order to create this *ad hoc* committee. *Bylaws*, Art. VIII, § 1, ¶ 4, attached hereto as EXHIBIT 29. Such approval did not appear on the agenda for any meeting of the Executive Committee and in fact did not occur at any public meeting. *Cal. Evid. Code* § 664 entitles us to a presumption “that official duty has been regularly performed. . . .” and that the required approval was in fact given. Consequently, it could only have occurred at a meeting which was never announced to the public, in violation of this section.
- The *ad hoc* committee to revise *Bylaws* met on Aug. 5, 2022, agenda attached as EXHIBIT 79. This agenda and meeting are cumulative evidence of the existence of this committee, which had never been created or approved at any meeting of the Commission, nor its other committees. Presumably, then, approval of its creation by the Co-Chair was given at an illegal secret meeting of the Executive Committee. *Bylaws* Art. VIII, § 1, ¶ 4 (requiring such). *Cal. Evid. Code* § 664 (official acts presumed regularly carried out). However, other circumstances around the referral of *Bylaws* revision suggest that another violation also took place. The Commission had passed a defective motion at its May 18, 2022, meeting to refer the revision of its newly-adopted *Bylaws* top to bottom to an *ad hoc* committee, since it had naïvely passed them with *seriatim* consideration at neither at the committee nor the plenary levels. RONR (12th ed.) 57:6 (“**Procedure of Consideration.** A revision of bylaws . . . should be considered *seriatim* . . .”). This, the Commission had not the authority to do, since only the Co-Chairs have the power to create these, but the chair did not rule the motion out of order, and it stands until

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challenged by a member. Since this motion failed to create the committee to which the referral was to refer, the question may be asked what effect, if any, did it have? Since the motion at least specified a subject matter for referral, we think that the preclusive effects of the referral are the only effects it may have, i.e., no further discussion, nor any action regarding that matter may thenceforth proceed. RONR (12th ed.) 36:2 (“So long as a question is in the hands of a committee, the assembly cannot consider another motion involving practically the same question.”). The Commission never passed a complete motion to create this committee, nor had it passed a motion to *Rescind or Amend Something Previously Adopted*, nor had it passed a motion to *Discharge a Committee*. Consequently, we are justified in assuming that an action to *Rescind or Discharge a Committee*, or else a *Point of Order* raised against the referral, occurred at an illegal, secret meeting of the Commission, in order to clear the way for creation of the committee by the Co-Chair, for approval by the Executive Committee, also at an illegal, secret meeting, as previously described.

- At the Aug. 5, 2022, meeting of the *ad hoc* committee to propose an annual report, the agenda thereof attached as EXHIBIT 78, the meeting was set to end at 4:00 p.m., an hour after it started. This was not specified in the motion that created the committee, and the meeting in fact ended at this time, regardless of the fact that the agenda was not even close to having been exhausted, and without a motion or a vote. Consequently, an instruction to this committee to end at 4:00 p.m. must have been passed by the Commission (which actually created this committee, in violation of *Bylaws*), or its executive committee, which, by *Bylaws*, was supposed to have given approval to the creation of this committee. However, no such instruction had been given at any open and public meetings thereof. Consequently, it must have been given at a closed and secret meeting.
- At the Aug. 12 meeting of the *ad hoc* committee to revise the *Bylaws*, agenda attached hereto as EXHIBIT 85, it was disclosed by staff that Commissioner Wynn had been added to the committee. This addition changed the size of the committee from three to four. It is presumed that this change in size had been approved by the Executive Committee. *Bylaws* Art. VIII, § 1, ¶ 4 (requiring ExCom approval of creation of *ad hoc* committees). *Cal. Evid. Code* § 664 (official duties presumed to be regularly carried out). Of course, approval of a committee of size three would be pointless if one could then change the size to four later on without approval, so the ExCom must have approved the change. RONR (12th ed.) 13:8(c) (“**Necessary Details of the Motion.**” “the motion [to *Commit or Refer* to an *ad hoc* committee] should specify the number of committee members, and the method of their selection . . . or, if preferred, the motion can name the members of the special committee. . . .”). However, this did not occur at any public meeting of the ExCom, because I attended all of them. It had to have occurred at a secret meeting held during the week prior to Aug. 12, 2022. (It is also questionable whether this committee was created with the power of the chair to make appointments to it—all committees created on the public record since May 2018 had their members named in the

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acts creating them, but this must be assumed or else the secret meeting also determined appointments.) It had been announced by Vigil at the July 20 meeting of the Commission, Item 3.4, that the members were Bohrer, Murawski, Wynn, but Vigil he was not sure and referred to an email he said he had sent out. However, at the Aug. 5 and 12 meetings of this *ad hoc* committee, Mason was treated as a member. At the Aug. 5 meeting, this committee was said to have consisted of: Bohrer, Muawski and Mason, i.e., three members, with a quorum of two. At the Aug. 12 meeting: Bohrer, Murawski, Mason, and Wynn, i.e., four members, with a quorum of three.

- At the Aug. 12 regular meeting of the *ad hoc* committee to revise *Bylaws*, it was moved and approved that the committee would meet further on Thurs., Aug. 18 and Thurs., Aug. 25. However out of order these motions may have been, they stood until challenged, and they were not challenged at this or any other meeting open to the public. However, as of this letter no notice has been posted of the Aug. 18 meeting on the website. Either a secret meeting, closed to the public, was held and the Aug. 12 motion rescinded or challenged there, or else the Aug. 18 meeting will be held without the required notice. If the Aug. 18 meeting is noticed very late and held, the committee will still not have broken the law if the committee chair immediately rules everything on the agenda for the meeting out of order for violation of the notice requirements. However, we think this is unlikely. We opt for the secret meeting explanation. The Commission typically does its business in this fundamentally dishonest way. Doing their real business behind closed doors in this fashion gives them an out whereby they never have to account for what they do there. They will never have to account for why they didn't hold the Aug. 18 meeting as planned. They may give some explanation during debate or a "Chair's report" during some other meeting, but it will be *obiter dicta* and deniable. The public is due an act performed at the meeting which is to be cancelled. The chair needs to open the meeting and then *rule everything on the agenda out of order*, giving a *reason* for doing so, which must be accurately recorded in the minutes. "[T]he inability to transact business [at a regular or properly called meeting] does not detract from the fact that the society's rules requiring the meeting to be held were complied with and the meeting was convened—even though it had to adjourn immediately." RONR (12th ed.) 40:6 (sq. brackets added). The pain of immediate adjournment will also cement the importance of meeting all legal requirements before posting an agenda, without the necessity of enforcement. If the reason for immediate adjournment is because the meeting is being held in violation of open meetings laws, *they need to say so, and say which ones, which is exactly what they do not want to do*. They do not want to take responsibility for their actions and responsibility for abiding by the law. They would much rather proceed as innocent little lambs who persist in violating the law out of pretended ignorance, when the reality is that they connive to challenge the validity of the law, or even law in general, because law puts people with mental illness in prisons and jails. There ought to be no reason why public meetings cannot be opened at all, especially when they may all be held via teleconference under newly-relaxed state law. The only reason I can conceive of why this meeting

would legitimately not be opened is a disaster so terrible that telecommunications or ZOOM servers are down, or, as has recently occurred, some technical glitch otherwise prevents the meeting even from being started. Under such circumstances, the meeting would still be noticed. This meeting, not being noticed at all, must have been canceled through action taken out of the public eye. We are due a presumption that this was done at a meeting of the body that established the schedule to begin with or its superior, as the rules and laws require. *Cal. Evid. Code* § 664. A secret meeting therefore must have occurred.

- On Aug. 26, 2022, at 3:00 p.m., the *ad hoc* committee to propose annual reports met, agenda attached as EXHIBIT 87. When this meeting had been created the previous month in violation of *Bylaws*, which required it to be created by the Co-Chair with the approval of the Executive Committee, it was created with the membership Vigil (chair), Stevens, Bohrer, Banuelos (four members, quorum of three). During the meeting, it was announced that Bohrer had been removed from the committee and Mason and Murawski added. So, the membership was: Vigil (chair), Stevens, Banuelos, Mason, Murawski, five members, quorum of three). *Bylaws* require that *ad hoc* committees be created by the Co-Chair with the approval of the Executive Committee. Art. VIII, § 1, ¶ 4. Therefore, changes, such as to the size of the committee, must also be so approved, or the requirement that creation be approved would be superfluous. In addition, the agenda included items for current site visits and "Liza's resolution," which had not been assigned to this committee at the July meeting of the Commission. Neither of these changes had been made at any meeting of the Commission or its Executive Committee open to the public. Indeed, the Executive Committee did not publicly meet between the July 20 meeting of the Commission and this meeting. *Cal. Evid. Code* § 664 entitles us to a presumption that official duties are regularly carried out, which means in this case that the Commission or its Executive Committee met and approved this change. Therefore, the meeting must have been held in secret, without any notice to the public.
- At the Sept. 21, 2022, meeting of the Commission, during roll-call, it was announced that Kescha Mason's was an "excused" absence. According to local law, *S.F. Admin. Code* § 15.13(d), the Commission may grant such absences, and, according to the Commission's *Bylaws*, these absences may be granted by the Commission and by its Executive Committee, inconsistently. Either way, this excusal, like that of Commissioner Klein, earlier, was granted at no public meeting of either body. Thereby, it had to have been granted at a secret meeting, closed to the public. The Commission may have been encouraged to this by the *Good Government Guide*, which says that "procedural matters," such as whether a quorum will be present at a meeting or the vote needed for a special meeting declared by the majority of a policy body may be conducted in secret. We think that this is very unfortunate counsel, because it uses the word "procedural" in a way that we think is inconsistent with law, and is furthermore ambiguous enough to swallow just about anything. "Procedural" is used in *S.F. Charter* § 4.104(b) to denote certain votes that may be taken on the basis of the number of members present at a meeting, rather than

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the number of members overall, if the body passes a rule authorizing this. There, it has a precise contrast to "action taken," defined in Cal. Gov't Code § 54952.6, in pari materia with it; whatever is not "action taken" is procedural, and this would include motions to Suspend the Rules, to Postpone Definitely and make something a special order, motions for the Previous Question, and other motions that are sharply limited in scope and effect, and which are apart from the apparent legislative intent of this provision, which is to prevent "false positives," i.e., "actions taken," that are really artifacts of who happened to show up at a particular meeting. These procedural motions cannot happen outside of a noticed meeting, because they are all, by definition, secondary motions, most of which cannot be moved without a motion on the floor to which they pertain, and which must appear on the agenda, absent exigent circumstances. The Good Government Guide muddies these clear waters a great deal, by making the calling of a special meeting, and the prediction of whether there will be a quorum into "procedural" matters. The prediction of a quorum is unfortunate, because this would be done strictly as a matter of convenience. Thus it gives the message that convenience is a good enough reason to subvert burdensome open meetings requirements and opens the door to just about anything else. The calling of a special meeting is especially worrisome because this would be without any doubt an "action taken" and a main motion, requiring notice on the agenda, publication of the action and the vote of each member present for the meeting thereon, etc. If no agenda and no minutes are required of such an action taken, then it is difficult to say why anything at all needs to occur at an open and public meeting. We understand that special meeting might need to be called if there is some emergency pursuant to Cal. Gov't Code § 54956.5 and the chair is unavailable, but this section contemplates that not even a majority would be sufficient to convene such a meeting; the presiding officer or designee thereof is required. *Id.*, subd. (b)(2). The reason for a special meeting being called by a majority of the membership seems to be, then, that these would be cases where the cause is so weak that not even the chair's assent can be obtained. It is hard to imagine, then, that any harm would be done by requiring the majority to so act at an open and public meeting, and the case for allowing them to do otherwise seems like a particular poor one for which to breach the entire structure of open meetings laws. At this meeting, also, Item No. 3.0 was a presentation by the Client Council. Per bylaws, Art. VII, § 2, ¶ 1.a., this item was able to be added to the agenda by the Executive Committee, but the public meeting of the Executive Committee scheduled for Sept. 13 was not convened and it occurred at no other public meeting. This item was neither moved to be put on the agenda for this meeting at any previous meeting of the Commission. It is to be presumed that a motion to put this item on the agenda was made and carried somewhere, because to do otherwise would contradict a fundamental principle of parliamentary law, that the commission "is a free agent—free to do what it wants to do with the greatest measure of protection to itself and of the consideration for the rights of its members." RONR (12th ed.) p. 1. Putting a presentation on the agenda without a motion violates the rights of its members, who then are required to sit through

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it. Absences from meetings are carefully monitored and punishable by removal from the Commission. S.F. Admin. Code § 15.13(d). Commissioners may raise a Point of Order which should be well-taken against such an usurpation. Indeed, one raised against the Executive Committee scheduling a presentation on their behalf should be well-taken, because their delegation of this power to them violates the fundamental principle mentioned. Anyway, the fact that neither the Executive Committee nor the Commission raised this issue at any public meeting means that it must have been conducted behind the public's back, in violation of this section.

- At the Oct. 11 meeting of the Executive Committee without quorum, members Jackson-Lane, Murawski, and Vigil, all absent, were all declared to have been excused for their absences. However, bylaws require such excusals to be granted by the Executive Committee or the Commission (it is not clear which). None were granted by either body at any public meeting. Therefore, one of them must have met privately, in violation of this section.
- At the Oct. 19, 2022, meeting of the Commission, it was disclosed that Judith Klein and Genesis Vasconez had "excused" absences. Klein had previously requested, had been granted, and had used up, the maximum four months of absence allowed by bylaws. Therefore, this excusal must have been the result of a new request and a new grant. Vasconez's excusal also was the result of a new request and grant. However, the Executive Committee had not met publicly since July and the Commission did not grant these excusals at any public meeting. Consequently, both grants must have occurred at a meeting of one of these bodies closed to the public, in violation of this section.

Item No. 3: "67.7(b) by failing to provide a clear description of the matters:"

S.F. Admin. Code § 67.7(b) provides as follows, in relevant part (ellipses added): *"The description . . . 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 . . ."*

Failure to Reference Correspondence or Reports Distributed to a Majority of the Members of the Policy Body on the Agenda for the Meeting at Which They Are to Be Discussed or Acted Upon

I commonly send email correspondence to the Commission in advance of the notice for the meeting. When I do so, I usually request that they reference the correspondence in the meaningful description of the item in the notice for the meeting. As of yet, after years of this practice, they continue to refuse to do so, giving no explanation for their refusal. Even material provided by other people is not so referenced.

- At the regular meetings of the Site Visit and Implementation Committees on May 10, 2022, agendas attached hereto as EXHIBITS 14 and 15, it was anticipated that the minutes for the Apr. 12 meetings of these committees would be discussed. Consequently, I sent correspondence to the Commission regarding these items,

attached hereto as EXHIBITS 5 and 6, in advance of their posting of the agendas for these meetings. The Commission subsequently posted the agendas for these meetings, attached hereto as EXHIBIT 40 and 41 without referencing this correspondence. Item No. 1.2 on the Site Visit Committee agenda. Item No. 1.1 on the Implementation Committee agenda. It is to be remarked that, though a file labeled "April 12, 2022 – Site Visit Committee Meeting" appeared on the website under "2022 Minutes," when I downloaded this file on May 6, 2022, it contained minutes for the March 9 meeting of this committee. Consequently, approval of these minutes had to be delayed until the June meeting, upon the agenda for which, attached hereto as EXHIBIT 39, it also appears as Item No. 1.2.

- At the regular meetings of the Executive Committee on May 10, 2022, agenda attached hereto as EXHIBIT 16, it was anticipated that the minutes for the Apr. 12 meetings of this committee would be discussed. Consequently, I sent correspondence to the Commission regarding this item, attached hereto as EXHIBIT 7, in advance of their posting of the agenda for this meeting. As a result, the Commission left an item for approval of the minutes of the Apr. 12 meeting of this committee of their May 10 agenda, attached hereto as EXHIBIT 16. We note that failing to post a draft agenda violates *S.F. Admin. Code* § 8.16, which is outside of the SOTF's jurisdiction, but failing to reference correspondence related to it on an agenda for an upcoming meeting is not. Action to cover up evidence of an illegality is admissible as evidence that the illegality occurred. The agenda for the June 7 meeting of this committee, attached hereto as EXHIBIT 42 includes an item, Item No. 2.1, for approval of these minutes without referencing this attachment, in violation of this section. This is "temporization," i.e., the delaying of commitment of a violation in the hope that the delay will prevent notice of thereof.
- At the regular meeting of the Executive Committee on May 10, 2022, the agenda for which attached hereto as EXHIBIT 16, a motion was passed during Item No. 2.3, "Vote to move complete consolidated resolution, authored by Co-Chair Vigil and Liza Murawski (a member of the public) previously viewed and voted on. A carry over from the April 20, 2022 meeting [action item]" This item made no reference to a document that was included with the agenda, containing the text of the motion. Moreover, there were three other such documents appended to the agenda, only two of which were traceable to other items thereon. The text of this item was not sufficient to identify to which of the remaining two resolutions it related. Furthermore, the inclusion of the word "consolidated" suggested that both such items were intended. In fact, only the second one was. We ask for a finding of willful noncompliance, because I informed them of this problem via email in advance of the meeting, attached hereto as EXHIBIT 12, and they proceeded to act on it anyway. Consequently, those on the committee knew what

- was happening, but the public did not. They could have handled the situation by amending the “compound” resolution by deleting the first part.
- In the agenda for the regular meeting of the Commission on May 18, 2022, attached hereto as EXHIBIT 32, under Item 3.1, the Commission failed to reference correspondence I had sent to them for distribution to all Commissioners in reference to this item, attached hereto as EXHIBITS 19 and 20. They also failed to reference correspondence I had submitted in reference to Item No. 3.4, attached hereto as EXHIBITS 21, 22, 23, 24, 25, and 26. In EXHIBITS 23, 24, 25, and 26, I asked expressly for such reference, citing this section in support. Consequently, we request a finding of willful noncompliance. The Commission also failed to reference correspondence I had submitted into both of the above items, Item Nos. 3.3, 5.1, 5.2, and 6.0, as well as all of the items on the agenda, attached hereto as EXHIBIT 27.
 - The agenda for the regular meeting of the Implementation Committee held on June 7, 2022, attached hereto as EXHIBIT 15, makes mention of approval of the minutes of the previous meeting under item no. 1.1. During the discussion of this item, it was disclosed that staff (Grier) had “distributed a template” of how the minutes should be written. This item was required to reference the template in the agenda. (This meeting proceeded without a quorum, so no actual violation occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
 - The regular meeting of the Commission to be held on June 15, agenda attached hereto as EXHIBIT 43, contains no reference to our correspondence attached hereto as EXHIBIT 50, which was relevant to Item No. 3.1, approval of minutes, despite our requesting the reference and citing this section in the first paragraph. We therefore request a finding of willful noncompliance.
 - The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 41, Item No. 2.3, contains no reference to our correspondence of July 2, attached hereto as EXHIBIT 56, nor our postscript sent the same date, attached hereto as EXHIBIT 57, despite our request for such a reference in the first paragraph of the letter, and our citation of this section. Consequently, we request a finding of willful noncompliance. The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 63, Item No. 2.5, contains no reference to our correspondence of June 17, attached hereto as EXHIBIT 47, nor our correspondence and postscript of July 8, attached hereto as EXHIBITS 59 and 60, in violation of this section.
 - The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 63, Item No. 2.8, contains a reference to neither our correspondence of June 30, attached hereto as EXHIBIT 54, nor our postscript of July 1, attached hereto as EXHIBIT 55, despite our request for such a reference in the first paragraph of the letter, citing this section. We therefore request a finding of willful noncompliance.
 - Well in advance of the posting of the agenda for the regular meeting of the Commission on July 20, 2022, attached hereto as EXHIBIT 72, I sent the Commission correspondence

relevant to one of the items anticipated to be transacted at the meeting, i.e. a motion to end meetings of the Commission at 8:00 p.m., attached hereto as EXHIBITS 66-68. The issue of time-limiting the meetings of the Commission had been discussed at the meeting of the Executive Committee the previous week as Item No. 1.5. No formal motion had been made to put it on the Commission agenda, but this was true of everything on the ExCom agenda (all action items were “downgraded” to “for discussion only” in order to escape criminal Brown Act violations, see Item No. 1, *supra*), many of which ended up on the agenda for the Commission meeting. E.g., Item No. 2.6 on the ExCom agenda became Item No. 3.5 on the Commission agenda; Item No. 2.7 on the ExCom agenda, also Item No. 2.4 on the Impl. Com. agenda, became Item No. 3.3 on the Commission agenda; Item No. 2.4 on the ExCom agenda, also Item No. 2.3 on the Impl. Com. agenda, became Item No. 3.2 on the Commission agenda; Item No. 1.2 on the Impl. Com. agenda became Item No. 3.4 on the Commission agenda. The discussion had been favorable and I expected to see it on the Commission agenda. The item was dropped from the agenda because of the need to reference my correspondence, as evidenced by the Co-Chair Banelos’s attempt to add it back in during “agenda changes.” See Item No. 1, *supra*. No actual violation occurred, but, for compliance and monitoring purposes, it shows law-avoiding activity involving an attempt to discuss a matter without notice on the agenda, which matter did not meet any of the exemptions therefrom.

- At the Aug. 5, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached as EXHIBIT 78, Commissioner Stevens disclosed she had created a markup copy of one of the annual reports. Commissioner Murawski objected that it should have been attached to the agenda. Commissioner Stevens stated that she did not want it to be made public. It should have been referenced on the agenda.
- At the meeting of the *ad hoc* committee to revise the *Bylaws* held on Aug. 5, 2022, it was announced that a copy of the *Bylaws* marked up by counsel had been distributed among the members. The *ad hoc* committee for the revision of *Bylaws* was originally formed at the May 2022 meeting of the Commission. (This action was null and void, but so are absolutely all of the acts of the Commission, many times over, due to the Commission’s very lax compliance with open meetings requirements, other governing laws, rules of order, and even their own *Bylaws*, of which only the very few violations addressed by the SOTF are described here. This particular action was also defective because it failed to name the initial members of the committee, nor state its size and how the members would be appointed, such that it would be impossible to determine a quorum or whether the committee had even met! The rules of order state that no other action can take place until these details are filled in, RONR (12th ed.) 13:11, but Commissioners heartily scoff at these, to say nothing of all other laws, and hardly feel that it is worth their time to even glance at them. The status of this committee, and whether it even needs to be discharged, is very much in doubt.) At this time, it was announced that the purpose of the committee was to go over a copy of the *Bylaws* that the author of this report had marked up. Agenda item 3.2, “Review attached By-Laws [*sic*] and sample markups: . . .” did not make

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reference to either of these documents in distinction to the other one. The public needs to know that there are multiple documents, if there are, and how many, and what each document is, so that they can know that they have copies of all of them, one way or another. The situation is exacerbated by the inclusion of unmarked bylaws with the agenda for the meeting, and a lot of other extraneous material, such as the objectives of the Commission, the strategic plan, and a draft meeting schedule for the Commission and its standing committees.

- Prior to the posting of the agenda for the Sept. 1, 2022, meeting of the *ad hoc* committee for the reformulation of *Bylaws*, attached hereto as EXHIBIT _____, I sent the clerk an email for distribution to the committee, relevant to an item anticipated to be transacted or discussed at its next meeting, citing this section and asking that it be referenced on the agenda. As is apparent from the exhibit, it was not. I request a finding of willful noncompliance because I cited the section and specifically asked for compliance, and was refused.
- On Sept. 1, 2022, at 5:20 p.m., well in advance of the posting of the agenda for the meeting on Sept. 8, 2022, of the *ad hoc* committee on the revision of *Bylaws*, attached hereto as EXHIBIT 94, I sent the clerk an email for distribution to the committee, relevant to the item which had been referred to the committee, attached hereto as EXHIBIT 101, citing this section and requesting that the relevant item on the agenda be annotated to make reference to this item. I request a finding of willful noncompliance because I cited this section and asked for specific compliance, and was refused.
- On Sept. 11, 2022, at 4:34 and 4:41 pm. and on Sept. 22, 2022, and at 11:20 am on Sept. 23, 2022, well in advance of the deadline for posting the notice for the Sept. 29, 2022, meeting of the *ad hoc* committee to revise the bylaws, I sent four emails to the committee, attached hereto as EXHIBITS 102, 103, 104, and 105, relevant to an item anticipated to be discussed at the following meeting, namely, the proposed bylaws. No reference to any of these pieces of correspondence appeared on the agenda for the Sept. 29 meeting, in violation of this section, as apparent from the agenda attached as EXHIBIT 93, nor on those of any of the intervening meetings of the committee. (There was a meeting noticed for Sept. 22, agenda attached as EXHIBIT 106, but only one person showed up, not even the chair, and the meeting was adjourned immediately.) I ask for a finding of willful noncompliance because I cited this section in each email and expressly asked for compliance in each email, and they complied in none of the cases.
- On Sept. 23, 2022, well in advance of the deadline for posting the notice for the Oct. 19, 2022, meeting of the Commission, I sent an email to the Commission, attached hereto as EXHIBIT 107, relevant to an item anticipated to be discussed at the Oct. 19 meeting, namely, the minutes for the June meeting of the Commission, which had never been approved, and the approval of which had been postponed from the July meeting but not even agendaized, far less approved, at the September meeting. The item for approval of the June minutes on the agenda for the Oct. 19, meeting, attached hereto as EXHIBIT 92, made no reference to this email correspondence, in violation of this section. We request

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a finding of willful noncompliance, because the email cited this section and specifically described and requested this compliance.

- On Oct. 1, 2022, well in advance of the deadline for posting the agenda for the Oct. 7, 2022, meeting of the *ad hoc* committee to compose an annual report, I sent email relevant to an item anticipated to be discussed at the next meeting of the committee, attached hereto as EXHIBIT 108, i.e., the approval of the minutes of the Sept. 23, 2022, meeting of the committee, which had been discussed at the Sept. 30, 2022, meeting of the committee but no action had been proposed to be taken, because of a question of whether it was necessary to report the votes of each member of the committee present for the approval of other minutes at the Sept. 23, 2022, meeting. I only sent the email to staff and to the chair of the committee. I did not send it, or ask it to be sent, to the entire committee. Nevertheless, it was, in some sense, "provided to the policy body in connection with an agenda item . . ." and reference to it should have appeared on the agenda for the next meeting of the committee on Oct. 7, attached hereto as EXHIBIT . . . No such reference appeared, in violation of this section. On Oct. 7, 2022, at 9:52 a.m., well in advance of the posting deadline for the Oct. 11 meeting of the Executive Committee at 4:30 p.m., I sent email relevant to an item anticipated to be discussed at the next meeting of this committee, attached hereto as EXHIBIT 110, i.e., the proper creation of the *ad hoc* committee to revise the bylaws. In fact, the agenda for this meeting, attached hereto as EXHIBIT 111, showed item 2.4 as "The status of the BY Law [sic] Ad Hoc Committee, i.e [sic] should it continue? [action item]" This issue of whether the *ad hoc* committee should continue assumes that it had been properly created, which creation was the subject of my email. Consequently, this item on the agenda was required to reference the email, which did not occur, in violation of this section.

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Item No. 4: "67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;"

In relevant part, S.F. Admin. Code § 67.7(b) states as follows (sq. brackets added):
"[Explanatory] 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."

The provision of this section requiring posting of documents deals only with documents of one page in length. These are to be posted "adjacent to" the agenda. The language strongly suggests that these documents are to be posted physically next to the agenda on a bulletin board. Here in San Francisco, with over 150 local government boards and commissions, we have too many local bodies to post their notices of meetings on a bulletin board. They are instead kept in a binder at the Government Information Center of the Public Library. By contrast, posting on the Commission's web page is addressed by section 67.9(a).

Deleted: While some of the documents we have submitted relevant to items on agendas for the BHC may have been one page in length, and we often check to make sure that physical notices of meetings are posted at the Public Library, we have not checked these postings to see whether they have included the one-page correspondence sent relevant to items on the agenda. While we are inclined to think that they are not, because BHC sends these notices to the Public Library via email, they send the same document that they post on the website and send out to the Commissioners, and they have never included any correspondence in the notices that they post on the website, we are unsure. ¶

Failure to Attach Document to the Minutes When Only One Page in Length

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It is rare that I have correspondence for distribution to the Commission and/or its committees that is of less than one page in length, in which case it is to be "posted adjacent to the agenda," but it happened on the following occasions:

- Prior to the posting of the agenda for the Aug. 1, 2022, meeting of the *ad hoc* committee for the revision of *Bylaws*, attached hereto as EXHIBIT . . . I sent correspondence that was less than one page in length, and it was not posted adjacent to the agenda for the meeting.
- On Oct. 1, 2022, well in advance of the deadline for posting the agenda for the Oct. 7, 2022, meeting of the *ad hoc* committee to compose an annual report, I sent email relevant to an item anticipated to be discussed at the next meeting of the committee, attached hereto as EXHIBIT 108, i.e., the approval of the minutes of the Sept. 23, 2022, meeting of the committee, which had been discussed at the Sept. 30, 2022, meeting of the committee but no action had been proposed to be taken, because of a question of whether it was necessary to report the votes of each member of the committee present for the approval of other minutes at the Sept. 23, 2022, meeting. I only sent the email to staff and to the chair of the committee. I did not send it, or ask it to be sent, to the entire committee. Nevertheless, it was, in some sense, "provided to the policy body in connection with an agenda item . . ." and it should have been "posted adjacent to" the agenda for the next meeting of the committee on Oct. 6, attached hereto as EXHIBIT . . . It was not, in violation of this section.
- On Sept. 22, 2022, well in advance of the deadline for posting the notice for the Sept. 22, 2022, meeting of the Commission, I sent an email to the Commission, attached hereto as EXHIBIT 107, relevant to an item anticipated to be discussed at the Oct. 19 meeting, namely, the minutes for the June meeting of the Commission, which had never been approved, and the approval of which had been postponed from the July meeting but not even agendaized, far less approved, at the September meeting. The agenda for the Oct. 19, meeting, attached hereto as EXHIBIT 92, did not include this email correspondence, which was one page in length, in violation of this section. We request a finding of willful noncompliance, because the email cited this section and specifically described and requested this compliance.

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Item No. 5: "67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;"

BHC has complied with this provision.

Item No. 6: "67.9(a) by failing to post supplementary documents for the meeting on the internet;"

S.F. Admin. Code § 67.9(a) states as follows, in full (sq. brackets added): "*Agendas of meetings and any other documents on file with the clerk of the policy body, when*

intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall be made available through the policy body's Internet site [sic]. However, this disclosure need not include any material exempt from public disclosure under this ordinance."

We frequently send email correspondence to BHC regarding items anticipated to be discussed or actually appearing on a published agenda before a meeting, and they have never once posted any of it on their website, whether with their meeting notices (when timely received) or otherwise.

- On Apr. 16 and 20, 2022, we sent correspondence relevant to Item Nos. 3.5 and 4.0, anticipated to be discussed the Apr. 20, 2022, regular meeting of the Commission, both attached hereto as EXHIBIT 3, and they were never posted on the Commission's website.
- On Apr. 20, we sent correspondence relevant to both of the items shown under Item No. 3.2 on the agenda for the Apr. 20, 2022, meeting of the Commission, attached hereto as EXHIBIT 4, and these were never posted on the Commission's website.
- On May 6, we sent correspondence relevant to items anticipated to be discussed on the agendas of the Site Visit and Implementation Committees on May 12, 2022, attached hereto as EXHIBITS 5 and 6, and the Commission never posted them on their website.
- Also on May 6, we sent correspondence related to an item anticipated to be discussed at the May 12 meeting of the Executive Committee, attached hereto as EXHIBIT 7, and the Commission never posted it on their website.
- On May 9, we sent correspondence relevant to items anticipated to be discussed at the Executive Committee on May 10, 2022, attached hereto as EXHIBIT 8, and the Commission never posted it on their website.
- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Site Visit Committee on May 10, 2022, attached hereto as EXHIBIT 9, and the Commission never posted it on their website.
- Also on May, 9, we sent correspondence relevant to an item anticipated to be discussed at the same meeting as the last item, attached hereto as EXHIBIT 10, and the Commission never posted it on their website.
- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Implementation Committee on May 10, 2022, attached hereto as EXHIBIT 11, and the Commission never posted it on their website. In the second sentence of this email, we referenced this section and informed them of the requirement that they post it on their website "to the extent possible." Consequently, we ask for a finding of willful noncompliance.

- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Executive Committee on May 10, attached hereto as EXHIBIT 12, and the Commission never posted it on their website. In the first sentence of this email, we referenced this section and informed them of the requirement that they post it on their website. They subsequently failed to do so, and they did not rule the items we had referenced out of order, and so we ask for a finding of willful noncompliance.
- Also on May 9, we sent correspondence relevant to all items anticipated to be discussed at the meeting of the Implementation Committ on May 10, attached hereto as EXHIBIT 13, and the Commission never posted it on their website.
- After the committee meetings on May 10, we sent out correspondence relevant to all action items at future meetings, attached hereto as EXHIBIT 17, and the Commission never posted it on their website.
- Also on May 10, we sent out correspondence relevant to the all action items at future meetings, attached hereto as EXHIBIT 18, and the Commission never posted it on their website.
- On May 11, we sent out correspondence relevant to the minutes anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBIT 19, and the Commission never posted it on their website, despite our request that they do so.
- Also on May 11, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBITS 20 and 21, and the Commission never posted them on their website, in violation of this section.
- On May 12, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBITS 23, 24, and 25, and the Commission never posted it on their website, in violation of this section. All three pieces cited this section and requested posting in the first paragraph, and we request a finding of willful violation.
- On May 13, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBIT 26, and the Commission never posted it on their website, in violation of this section. This correspondence cited this section and requested posting in the first paragraph, and we request a finding of willful violation.
- On May 15, we sent two pieces of correspondence relevant to various items and the proposed April minutes anticipated to be discussed under Item No. 3.1 at the May 18 meeting of the Commission, attached hereto as EXHIBITS 27 and 28, and the Commission never posted it on their website, in violation of this section. The latter correspondence cited this section and requested posting in the first paragraph, and we request a finding of willful violation.

- On May 16, we sent correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission under Item No. 3.4, attached hereto as EXHIBIT 29, and the Commission never posted it on their website, in violation of this section.
- On May 17, we sent correspondence relevant to the proposed *Bylaws* anticipated to be discussed under Item No. 3.4 at the May 18 meeting of the Commission, attached hereto as EXHIBITS 30 and 31, and the Commission never posted them on their website, in violation of this section. In the first paragraph of the first of these correspondences, we requested such posting, citing this section, and request a finding of willful violation.
- On May 18, we sent correspondence relevant to all action items at all meetings, attached hereto as EXHIBIT 33, and the Commission never posted it on their website, in violation of this section.
- On May 19, we sent two pieces of correspondence, both relevant to all action items at all meetings, attached hereto as EXHIBITS 34 and 35, and the Commission never posted them on their website, in violation of this section.
- On May 31, we sent correspondence relevant to the formation of an *ad hoc* committee to revise *Bylaws*, anticipated to be discussed at the subsequent meeting of the Executive Committee, attached hereto as EXHIBIT 36, and the Commission never posted it on their website, in violation of this section.
- On June 7, we sent correspondence regarding various matters anticipated to be discussed at all three of the committee meetings scheduled for this day, attached hereto as EXHIBIT 37, and the committee never posted it to the Commission website, in violation of this section.
- Also on June 7, we sent correspondence regarding the minutes, Item No. 1.2 on the agenda for the Site Visit Committee to be approved that day, attached hereto as EXHIBIT 38, and the committee never posted it to the Commission website, in violation of this section.
- On June 9, we received fulfillment of a public records request by the Commission regarding an email from Commissioner Murawski that was relevant to an item distributed to the members of the Commission and anticipated to be discussed at the June 7 meeting of the Implementation Committee, Item No. 1.3, attached hereto, with my reply, as EXHIBIT 42, and the committee never posted it to the Commission website, in violation of this section.
- On June 15, we sent correspondence to the Commission regarding all action items anticipated to be discussed by any body, as well as adjournments, attached hereto as EXHIBIT 46, and the Commission never posted it on their website, in violation of this section.
- On June 17, we sent correspondence to the Commission regarding the MHSA public hearing anticipated to be discussed at the July 12 meeting of the Executive Committee and the July 20 meeting of the Commission, attached hereto as

EXHIBIT 47, and the Commission never posted it on their website, in violation of this section.

- On June 22, we sent correspondence to the Commission regarding all anticipated action items of any body, a copy of which is attached hereto as EXHIBITS 46 and 47, and the Commission never posted them on their website, in violation of this section.
- On the same day, we sent correspondence to the Commission regarding the minutes to be passed by the Commission at its July meeting, a copy of which is attached hereto as EXHIBIT 50, and the Commission never posted it on their website, in violation of this section. We asked for it to be posted and cited this section in the first paragraph, and so we request a finding of willful violation.
- On the same day, we sent correspondence to the Commission regarding all items at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 51. The Commission never posted it to their website, despite our request that they do in the first paragraph, and in violation of the law.
- On the same day, we sent correspondence to the Commission regarding all items of business at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 52. The Commission never posted it to their website, despite our request that they do in the first paragraph, and in violation of the law.
- On June 27, we sent correspondence to the Commission regarding all items of business at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 53. The Commission never posted it to their website, in violation of the law.
- On June 30, we sent correspondence to the Commission regarding a motion anticipated to be discussed by the Executive Committee and the Commission, attached hereto as EXHIBIT 54. The Commission never posted it to their website, despite our request that they do so and our citation of this section in the first paragraph, in violation of the law. We request a finding of willful noncompliance, therefor.
- On July 1, we sent a postscript to the previous letter, attached hereto as EXHIBIT 55. The Commission never posted it to their website, in violation of the law.
- On July 2, we sent correspondence and a postscript to the Commission regarding a matter anticipated to be discussed by the Executive Committee, attached hereto as EXHIBITS 54 and 55. The Commission never posted them on their website, despite our request that they do so and our citation of the law in the first paragraph of the letter. We request a finding of willful noncompliance therefor.
- On July 8, we sent correspondence and a postscript to the Commission regarding a matter anticipated to be discussed by the Executive Committee, attached hereto

as EXHIBITS 59 and 60. The Commission never posted them on their website, in violation of this section.

- On July 12, we sent correspondence to the Commission regarding all matters anticipated to be discussed at the three committee meetings that day, attached hereto as EXHIBIT 60. The Commission never posted it on its website, in violation of this section.
- On July 13, we sent correspondence to the Commission, one item regarding all matters anticipated to be discussed at any meeting of any body of the Commission and three others regarding a specific matter anticipated to be discussed at the July 20 regular meeting of the Commission, attached hereto as EXHIBITS 66, 67, 68 and 69, resp. The Commission never posted these on its website, in violation of this section.
- On July 16, we sent correspondence and a postscript to the Commission regarding various matters anticipated to be discussed at the regular meeting of the Commission at the regular meeting on July 20, attached hereto as EXHIBITS 70 and 71. The Commission never posted these on its website, in violation of this section.
- On July 20, we sent another postscript to the messages described in the previous paragraph and a message regarding a matter anticipated to be discussed at all meetings of the Commission and its committees, attached hereto as EXHIBITS 72 and 74. The Commission never posted these on its website, in violation of this section.
- On July 21, we sent two additional postscripts to the second of the two messages described in the previous paragraph, attached hereto as EXHIBITS 75 and 76. The Commission never posted these on its website, in violation of this section.
- On Aug. 1, we sent correspondence regarding everything anticipated to be transacted or discussed at the meeting to be held that day, attached hereto as EXHIBIT 77. The Commission never posted these on its website, in violation of this section.
- On Aug. 5, during the meeting of this committee and at the acting committee chair's request, we sent two pieces of correspondence regarding all items to be transacted or discussed at the 4:00 pm meeting of the *ad hoc* committee on the revision of *Bylaws*. The Commission never posted these on its website, in violation of this section.
- On Aug. 12, we sent correspondence regarding all items to be transacted or discussed at the committee meetings to be held that day. The Commission never posted these on its website, in violation of this section.
- The *ad hoc* committee for the revision of *Bylaws* was originally formed at the May 18, 2022, meeting of the Commission. (Although the action was null and void for a plethora of reasons, it stands until discharged or revised by the Commission or challenged by a member. See comments on Aug. 5 meeting under

- Item No. 3 for further discussion.) At this time, it was announced during debate that the purpose of the committee was to go over a copy of the *Bylaws* that the author of this report had marked up. This copy was not included in the agenda or otherwise posted on the Commission website in advance of the first meeting of the committee on Aug. 5, 2022, at 4:00 p.m., in violation of this section.
- At the regular meeting of the Implementation Committee on June 7, 2022, agenda attached hereto as EXHIBIT 40, during the discussion of Item No. 1.1, "Vote to adopt May 10, 2022 minutes [action item]," it was disclosed that staff had "distributed a template" regarding how the minutes should be written. This was required to be posted on the BHC website "to the extent possible," was not. Also, during Item No. 1.3, "Vote to appoint a Chair for the onetime bylaws non-public workgroup meeting – [action item]," it was disclosed that Commissioner Murawski, not then a member of the committee, had sent email for distribution to the members of this committee regarding this matter anticipated to be discussed by the committee under this item. This email, attached hereto as EXHIBIT 42, was neither posted on the Commission's website. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
 - At the July 20, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 72, they failed to post on the website correspondence I sent them regarding one of the items anticipated to be discussed at the meeting, namely the proposal to end the meetings regularly at 8:00 p.m., attached hereto as EXHIBIT 68. It was possible even for them to include this correspondence with the agenda document that was electronically posted, as I sent it to them the correspondence far enough in advance of the meeting that the agenda had not been posted yet.
 - At the Aug. 5, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached as EXHIBIT 78, Commissioner Stevens disclosed that she had created a markup copy of one of the annual reports. Commissioner Murawski objected that it should have been attached to the agenda. Commissioner Stevens stated that she did not want it to be made public. It should have been attached to the agenda or otherwise posted on the Commission website.
 - At the meeting of the *ad hoc* committee for the revision of *Bylaws* held on Aug. 5, 2022, at 4:00 p.m., it was revealed that a copy of the *Bylaws* that had been marked up by Commission counsel had been circulated among the members, but none was included in the agenda for the meeting or otherwise posted on the Commission website in advance of the meeting.
 - In advance of the meeting of the *ad hoc* committee on the revision of *Bylaws* to be held on Sept. 1 at 3:00 p.m., I sent correspondence to the clerk for distribution to the committee relevant to an item anticipated to be discussed at the meeting, and

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she did not post it on their website. I ask for a finding of willful noncompliance because I specifically asked for them to post this item citing this section, and they did not do so.

- On Sept. 1, at 5:20 p.m., well in advance of the posting of the notice for the meeting of the *ad hoc* committee on the revision of *B-laws* on Sept. 8, 2022, at 3:00 p.m., I sent the clerk an email for distribution to all of the members of the policy body, attached hereto as EXHIBIT 101, and she did not post it on the Commission website. I request a finding of willful noncompliance because I specifically requested compliance, citing this section in support, and the clerk refused to do so.
- On Sept. 11, 2022, at 4:34 and 4:41 pm, and on Sept. 22, 2022, and at 11:20 am on Sept. 23, 2022, I sent four emails to the *ad hoc* committee to revise the bylaws, attached hereto as EXHIBITS 102, 103, 104, and 105, to be sent to the members of the committee as explanatory correspondence relative to an item anticipated to be discussed at the next meeting of the committee. None of these emails were posted on the Commission's website, in violation of this section. I ask for a finding of willful noncompliance because I cited this section in each email and expressly asked for compliance in each email, and they complied in none of the cases.
- At the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, action was taken to approve the minutes for the Sept. 2, 2022, meeting of this committee. However, as the screen capture of the Commission website during this meeting showed, attached as EXHIBIT 112, no minutes for this meeting had been posted to the public, nor were any attached to the agenda.
- On Oct. 7, 2022, at 9:52 a.m., I sent email relevant to an item anticipated to be discussed at the next meeting of the Executive Committee, attached hereto as EXHIBIT 110, i.e., the proper creation of the *ad hoc* committee to revise the bylaws. In fact, the agenda for this meeting, attached hereto as EXHIBIT 111, showed item 2.4 as "The status of the BY Law [sic] Ad Hoc Committee, i.e [sic] should it continue? [action item]" This issue of whether the *ad hoc* committee should continue assumes that it had been properly created, which creation was the subject of my email. Consequently, the email was required to be posted on the Commission's website. It was not, in violation of this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.
- On Oct. 9 and 10, I sent email relevant to an item anticipated to be discussed at the next meeting of the Executive Committee, attached hereto as EXHIBITS 113 and 114, i.e., item No. 1.4, annual reports, on the agenda, attached hereto as EXHIBIT 111. This email was required to be posted on the Commission's website by this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.
- On Oct. 19 at 12:45 p.m., I sent email relevant to an item anticipated to be discussed at the meeting of the Commission that night at 6 p.m., attached hereto as EXHIBIT 115,

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agenda attached hereto as EXHIBIT 92, specifically Item No. 3.0 thereon. This email was required to be posted on the Commission's website by this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.

Item No. 7: "67.15(a) by failing to allow public comment for each item on the agenda."

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S.F. Admin. Code § 67.15(a) relevantly states as follows (sq. brackets added): *"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's [sic] subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. . . ." (Note, S.F. Admin. Code § 67.15(b) states as follows, in full: "Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon." This latter is an example of "Sunshine Ordinance underhang," as the analogous Brown Act requirement, Cal. Gov't Code § 54954.3(a), requires this opportunity regarding each item on the agenda of a special meeting, action items not distinguished.) (Note also, as an additional instance of "Sunshine Ordinance underhang," the analogous Brown Act requirement, cited above, requires that the opportunity occur "before or during the legislative body's consideration of the item" at regular meetings, and "before or during consideration of that item" at special meetings. We think this language should be read into the Sunshine Ordinance because it would be absurd to require an opportunity for the public to address the legislative body on an action item after the final vote had been taken on the item, or on a discussion item after the policy body had moved on to other matters. In support, we note that the exclusion for the Board of Supervisors further on in S.F. Admin. Code § 67.15(a) requires, as a condition, that the public be given an opportunity to address a committee of the Board of Supervisors "before or during the committee's consideration of the item," as well as other conditions not specified generally in id., such as "at a public meeting wherein all interested members of the public were allowed the opportunity to address the committee on the item . . ." Subd. (e) of id. requires that each policy body adopt a rule allowing each member of the public who wishes to address the policy body on an item be allowed to do so for up to three minutes at a regular or special meeting, so this language in (a) would appear to be redundant, and contributes to a reading in which "before or during the committee's consideration of the item" is impliedly redundant.)*

Failure of the Agenda to Provide for Opportunities for Members of the Public to Address the Commission Regarding Each Item on the Agenda

The law requires that the agenda provide that each item to be transacted or discussed, notice of which appears on the agenda, include an opportunity for members of the public to address the Commission on the particular item. Very often, agendas of meetings of the Commission or its committees fail to provide such opportunities.

- On Apr. 20, 2022, the agenda for this regular meeting of the BHC, attached hereto as EXHIBIT 4, BHC did not provide an opportunity for the public to address them on items 3.3, 3.4, and 3.5. It neither provided an opportunity for the public to address the Commission regarding the first four reports listed under Item No. 4.0. Item No. 3.1 actually consisted of two distinct items—the minutes of the February and March meetings—and the agenda provided no opportunity for the public to address the Commission before or during their consideration of the March minutes. I complained to them about the items under Item No. 3.0 in an email sent in advance of the meeting, attached hereto as EXHIBIT 3. According to the rules of order adopted by BHC, they should have ruled these items out of order when they came up, for violation of local and state procedural laws. RONR (12th ed.) 10:26(1). Instead, they “downgraded” Item No. 3.4 to a “discussion only” item without notice on the agenda (see Item No. 1, above) in order to evade criminal penalties for an imagined violation of the Brown Act. However, the law extends further than the criminal penalties under *Cal. Gov’t Code* § 54959. If criminal penalties were the sole measure of open meetings laws, then the Sunshine Ordinance would be a nullity except to the extent that it applied Brown Act requirements to policy bodies through *S.F. Admin. Code* § 67.5 (first sentence). The agenda is required to provide an opportunity for members of the public to address the Commission on “any item of interest to the public . . .” “Item” in *S.F. Admin. Code* § 67.15(a) means the same as “item to be transacted or discussed” in *id.* § 67.7(a) through the application of the interpretive canon *noscitur a sociis*. Therefore, “downgrading” this item to “discussion only” status, regardless of its illegality otherwise, does not absolve BHC in the least from the requirement that the agenda provide an opportunity for the public to participate in the discussion of each item to be transacted or discussed that is listed on the agenda. Because I had warned BHC about these violations apparent on the agenda, but too late for them to cure the violations, and BHC proceeded with the meeting, calling up Item No. 3.4 without ruling it out of order, a finding of willful violation of the Sunshine Ordinance is in order.
- The agenda for the regular meeting of the Site Visit Committee to be held on May 10, 2022, attached hereto as EXHIBIT 14, included no opportunities for the public to address the committee on Item Nos. 1.2 and 2.1 through 2.4. I sent email correspondence to the committee in advance of the meeting disclosing this failure and the items were called up without the chair ruling them out of order, we ask for a finding of willful noncompliance.
- The agenda for the regular meeting of the Implementation Committee to be held on May 10, 2022, attached hereto as EXHIBIT 15, included no opportunities for the public to address the committee on Item Nos. 2.2, 2.3, and 2.4.
- The agenda for the regular meeting of the Executive Committee to be held on May 10, 2022, attached hereto as EXHIBIT 16, included no opportunity for the public to address the Commission on Item No. 1.1. While the agenda appeared to provide an opportunity to comment on Item No. 1.0, it was worthless because, as discussed under Item No. 1 *supra*, the description did not even remotely represent what was actually discussed under

this item, and the opportunity was before the item. It is ambiguous whether there is an opportunity to comment on Item No. 1.2 because it is ambiguous whether this item is for discussion only, in which case an opportunity to address the committee after the item would be acceptable, or it is an action item, in which case the opportunity shown on the agenda would not be a real opportunity because the item had already been decided. I informed the committee of both of these defects via email in advance of the meeting, attached hereto as EXHIBIT 12, discussion occurred under both of these items, and they did not rule these items out of order. Consequently, we request a finding of willful noncompliance.

- The agenda for the regular meeting of the Commission to be held on May 18, 2022, the agenda for which is attached hereto as EXHIBIT 32, did not provide an opportunity for members of the public to address the Commission on Item Nos. 3.4, 5.1, nor 5.2 even after the consideration of the items. It also failed to provide any opportunities at all for the public to address the Commission regarding **“Implementation Committee, Chair Stephen Banuelos, JD [sic] / Discuss focus of the Implementation Committee”**, **“Site Visit Committee, Chair Vigil – / Report on Site Visit strategy to aggressively enroll commissioners in completing selected site evaluations; update on presentation by Tipping Point”**, and **“Strategic Planning Ad Hoc Committee, Commissioner Bohrer – / Update on progress of the current draft of the Strategic Plan – see attached below”**, all under **“ITEM 4.0 REPORT [sic] FROM THE COMMITTEES”**. This meeting adjourned before Item Nos. 5.1, 5.2, or any of the items under 4.0 were reached, so no violations occurred regarding these items. However, I warned the Commission about the lack of opportunity to comment on Item No. 3.4 via email in advance of the meeting, email attached hereto as EXHIBIT 29. They proceeded to call up and discuss the item anyway, and so we ask for a finding of willful noncompliance with respect to this item.
- The agenda for the regular meeting of the Site Visit Committee on June 7, 2022, attached hereto as EXHIBIT 39, did not provide an opportunity for members of the public to address the committee on the latter two of the three sets of minutes to be approved at that meeting. Item No. 1.2 is described on the agenda as **“Vote to adopt March 9, 2022, minutes, previously postponed from April 12, 2022 meeting; Vote to adopt April 12, 2022 minutes; Vote to adopt May 10, 2022 minutes [action item]”**. Only one period for the public to address the committee on all three of these items (each of which was voted on separately) appeared on the agenda. Effectively, the second two of the three items lacked an opportunity for the public to address the committee regarding them provided on the agenda. These items were “skipped,” and no discussion of them took place at this meeting, so no violations occurred. For compliance and monitoring purposes, however, it is instructive of what the committee believes to be acceptable practice. The agenda also provided no opportunities for the public to address the committee regarding Item Nos. 2.2 and 2.3. We complained about these items in an email to the committee in advance of the meeting, attached hereto as EXHIBIT 37. The committee ignored this warning and proceeded to discuss them anyway. We ask for a finding of willful noncompliance.

- The agenda for the regular meeting of the Implementation Committee to be held on June 7, 2022, attached hereto as EXHIBIT 40, did not provide an opportunity for members of the public to address the committee on Item Nos. 2.2 through 2.4. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the regular meeting of the Executive Committee on June 7, 2022, attached hereto as EXHIBIT 41, provided no opportunity for the public to address the committee on the second item directly under Item No. 1.0 **"ITEM 1.0 COMMISSIONER'S [sic] REPORTS"** "Discuss how to do the data notebook for 2022". I complained to the committee about this in an email sent before the meeting, attached hereto as EXHIBIT 37, and the committee ignored it. Consequently, we request a finding of willful violation. There was neither any such opportunity regarding Item No. 1.1, "Governor's Care Court Proposal: Discussion and possible action." Nor did the agenda provide an opportunity for the public to address the Executive Committee regarding the second sentence of Item No. 2.1, "Vote to approve unadopted minutes for May 10, 2022 Executive Committee meeting," which was actually a separate item.
- The agenda for the regular meeting of the BHC on June 15, 2022, attached hereto as EXHIBIT 43, did not provide an opportunity for the public to address them on the discussion topic listed immediately below Item 3.0. Although this was a presentation, which has not been regarded as an "item" by the SOTF in the past (presumably because it is neither to be transacted nor discussed), the representative of SFMHEF in item 3.1.a was a member of the Commission. Therefore, this too was a discussion without an opportunity for members of the public to participate. Nor did the agenda provide opportunities for the public to address the Commission regarding the first two committee reports under Item 4.0. Even if the two committee reports could be cognized as "a brief report on his or her activities", *Cal. Gov't Code* § 54954.2(a)(3), they are thereby "items" that would otherwise be subject to the requirement for notice under the Brown Act. The Sunshine Ordinance being *in pari materia* with the Brown Act, the word "item" means the same thing. The Sunshine Ordinance contains no analogous exemption from its notice requirement, and thus these reports are "items" with respect to which the agenda must provide opportunities for the public to address the Commission.
- The agenda of the regular meeting of the Site Visit Committee on July 12, 2022, attached hereto as EXHIBIT 61, contains numerous items without any opportunity for the public to address the committee regarding them. Item no. 1.2, "Vote to adopt rewritten May 10, 2022 minutes; vote to adopt June 7, 2022 minutes [action item]" was actually two items, called and voted on separately, and the agenda provided no opportunity for the public to address the committee regarding the second item. The agenda also provided no opportunity for the public to address the committee regarding Item Nos. 2.2 through 2.4. (This meeting proceeded without a quorum, so no actual violations occurred, but the

committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the regular meeting of the Implementation Committee on July 12, 2022, attached hereto as EXHIBIT 62, contains numerous items to be transacted or discussed for which no opportunity for members of the public to address the committee appears on the agenda. Item 1.1 has an opportunity for public address, but it actually contains two items which were in fact handled separately at the meeting. Consequently, only the first of them, "Vote to adopt rewritten May 10, 2022 minutes . . ." had an opportunity for the public to address the committee. This section requires that the agenda provide a period for the public to address the committee on each item. It did not provide an opportunity for the public to address the committee on "Vote to adopt the June 7, 2022 minutes [action item]." The agenda also shows one opportunity for members of the public to address the committee regarding Item 2.0, but Item 2.0 is really an heading under which item nos. 2.1 through 2.7 appear. All of them lack meaningful opportunities for public address, because they are labeled "for discussion and possible action" and the one period for public address is at the end.
- The agenda for the regular meeting of the Executive Committee on July 12, 2022, attached hereto as EXHIBIT 63, contains numerous items to be transacted or discussed for which the agenda provides no opportunity for members of the public to address the committee. The agenda shows one opportunity for the public to address the committee regarding Item 1.0, but Item 1.0 is really an heading under which seven different items appear. Two items appear in the paragraph immediately following the heading. "Discuss the need for the Behavioral Health Commission to be in on the decision-making process around the distribution of budget initiatives. . . ." is separate from "Discuss Commissioner Input on How to do the Data Notebook for 2022" and the law requires that the agenda provide an opportunity for the public to address the committee on each of them. But there is no such opportunity for either of them. The remaining five items are enumerated 1.1 through 1.5. As the agenda shows that the only opportunity for public comment is at the end, 1.1 through 1.4 lack opportunities for the public to address the committee. The agenda for this meeting neither offers the public an opportunity to comment on the adoption of the minutes for the June 7, 2022, meeting under Item 2.1, as there is but one opportunity for the public to comment on the separate approvals of this and the minutes for the May 10, 2022, meeting.
- The agenda for the regular meeting of the Commission on July 20, 2022, attached hereto as EXHIBIT 72, contains numerous items to be transacted or discussed for which the agenda provides no opportunity for members of the public to address the Commission. Specifically, there is an opportunity shown for the public to directly address the Commission on "**ITEM 4.0 REPORT [sic] FROM THE COMMITTEES,**" but this is really three different reports, and the one opportunity for the public to address the Commission only occurs "before or during" the last of them, i.e., "**Strategic Planning**

Ad Hoc Committee, Commissioner Bohrer.” The agenda provides *no opportunity* for the public to address the Commission on **“Implementation Committee, Chair Stephen Banaelos,”** nor **“Site Visit Committee, Chair Vigil.”**

- The agenda for the *ad hoc* committee to compose an annual report met on Sept. 9, 2022, the agenda for which is attached hereto as EXHIBIT 88. This agenda shows no opportunity for the public to address the committee on Item Nos. 3.1, the two items under 3.2, nor the first two of the three bullet items following Item No. 3.2. This meeting was attended by a majority of the committee.
- The agenda for the meeting of the Commission held on Sept. 21, 2022, attached hereto as EXHIBIT 89, provides not enough opportunities for the public to address the Commission on many items on the agenda. The agenda provided no opportunity for the public to address the Commission on Item No. 1.0, which was in fact not a subject-heading but was made into an item spontaneously by the chair at the meeting, as related under no. 1. above. There are five opportunities for six items, Item Nos. 3.0 through 3.5. One would think that, since 3.0 was a presentation and the agenda is not required to provide an opportunity to address the Commission about a presentation, that the remaining five opportunities for public address were for the remaining five items, especially given that these items were marked as “action items,” requiring the public to be able to comment on them before the items were called. However, one would have been wrong, as I was. At the first opportunity for the public to address the Commission, the chair announced that the period was for comment on Item No. 3.0. The next opportunity was for item no. 3.1, and so on. This worked out, because none of the items labeled “action items” were really action items (see item no. 1, above), and so it was acceptable to comment on them after the items. However, it did mean that Item No. 3.5 had no opportunity for the public to address the Commission regarding it, and none was in fact called during the meeting. I in fact had a comment for this specific item and had to give it under Item No. 4.0, after the three intervening committee reports had been given, combining it with my comment on them. Fortunately, my comments were short enough that this did not cause a problem. In addition to the lack of opportunity to comment on Item No. 3.5, there was also none to comment on the first two items in no. 4.0. There was, furthermore, no opportunity to comment on Item Nos. 5.1 and 5.2. This was not so bad at the meeting, however, because these were general headings, under which members were supposed to come up with specific material during the meeting, see no. 1, above, but none did.
- The agenda for the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, contains many items for which the agenda provides no opportunity for the public to address the committee regarding the items before or during the consideration of the item. The comment period following Item No. 2.0 appears to be with respect to Item No. 2.0. Therefore, Item No. 3.0 lacks an opportunity. Item Nos. 3.1 through 3.4 all lack any opportunity for the public to address the committee, and it is to be noted that Item No. 3.2 is actually four items, each of which

requires that an opportunity for the public to address the committee on the item appear on the agenda. Finally, I informed them of the requirement during the consideration of Item No. 3.2, and they went on to approve more of the items. Therefore, we ask for a finding of willful noncompliance.

- The agenda for the Sept. 30, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached as EXHIBIT 91, contains Item Nos. 1.1 and 3.2 through 3.5, none of which include an opportunity for the public to address the committee on or before the consideration of the items. (The period following 1.1 appears to be for Item No. 1.1.a, which is marked "action item.")
- The agenda for the Oct. 19, 2022, meeting of the Commission, attached hereto as EXHIBIT 92, fails to provide an opportunity for members of the public to directly address the Commission regarding Item Nos. 3.0, the first two of the multiple items under Item No. 4.0, and Item Nos. 5.1 and 5.2.

Failure of the Agenda to Provide an Opportunity for Members of the Public to Address the Commission Before or During the Consideration of the Item

As discussed at the beginning of this number, this section implicitly requires that the agenda show that the opportunity for the public to address the Commission occur "before or during the consideration of the item." Often, the agenda provides for the public to address the Commission in regard to an action item, but it does so after the item on the agenda. At the meeting, this means that the public is allowed to address the Commission on an item only after the item has been finally decided. This is pointless, as well as not meeting the requirements of the law. It nevertheless occurred on the following dates:

- The agenda for the regular meeting of the Commission to be held on May 18, 2022, the agenda for which is attached as EXHIBIT 32, does not provide an opportunity for members of the public to address the Commission regarding Item Nos. 3.1-3.3 and 3.5, which are each labeled as "[action item]" before or during the consideration of the item, because these are action items and the opportunities follow the items, i.e., after a vote has been taken on them. Item 3.0 is ambiguous as to whether action is to be taken on it or not ("for discussion and possible action"), but, if action is to be taken on it, then the agenda does not provide the opportunity before or during the item.
- The agenda for the regular meeting of the Implementation Committee to be held on May 10, 2022, attached hereto as EXHIBIT 15, contained opportunities for the public to address the committee on action items after action would have been taken on them. Specifically, Item Nos. 2.5 ("for discussion and possible action"), 3.1, and 4.1.
- On June 15, 2022, the BHC met regularly, the agenda for which meeting being attached hereto as EXHIBIT 43. As is often the case with BHC, it is unclear from the agenda as to which items each period for public comment applies. The first period for public address under Item 3.0 could be with respect to Item 3.0 b) or Item 3.1, as it appears between the two. It is unclear which. However, as the last period for public comment under Item 3.0

is not followed by anything else, a reasonable person would be led to believe that each period for public address was limited in its subject matter to the preceding item, even if they were aware of the requirements of the law. (9th Circuit precedent, *White v. City of Norwalk*, 900 F.2d 1421 (1990), clarifies that public address not on the topic for which the period was specified is a disruption of the meeting and not subject to Constitutional protection. Indeed, it seems that the public body has a Constitutional basis to disallow such comments, have such commenters removed from the room, and even to penalize them criminally.) Consequently, the agenda provides opportunities for the public to address the Commission on the items that precede the periods, but only *after* the items have been disposed, perhaps finally, which violates the law. The periods for public address on items 1.1 a), 3.1, 3.2, 3.3, 3.4, and 3.5 on the agenda all exhibit this quality. (At the meeting, in fact, the chair specified verbally that the first period was for 3.0 b), and took comment on the first set of minutes in item 3.1 after the item had been finally approved.) The SOTF should find willful noncompliance with this section with respect to item nos. 3.2 through 3.5 because I complained verbally during the opportunity for the public to address the Commission after Item 3.1 had been passed that it was completely pointless for me to address them regarding the matter at that point because it had already been finally determined, and that the law required the agenda to provide an opportunity for the public to address them "before or during" their consideration of the item. Yet, they continued through items 3.2 through 3.5 regardless of the inadequate notice on the agenda. They should have ruled these items out of order for noncompliance with state and local procedural law. Instead, they verbally asked for the public to address them before calling each of them.

- The agendas for the special meetings of the *ad hoc* committee recommend an annual report on Aug. 1 and 5, 2002, attached hereto as EXHIBITS 76 and 78, failed to include an opportunity for the public to address the committee before or during item nos. 3.0, 3.1, and 4.0, because these were action items, and the opportunity for the public to address the committee regarding these items does not occur until after the item. Items introduced under item no. 4.0 are action items because they are to be *Postponed Definitely* to the next meeting. This is a main motion under parliamentary law when moved without an opportunity to discuss the underlying item. RONR (12th ed.) 41:44-45.
- At the Aug. 5, 2022, special meeting of the *ad hoc* committee to formulate an annual report, held at 3:00 p.m., agenda attached hereto as EXHIBIT 78, the agenda provided no opportunity for the public to address the committee on the presentation that ended up taking nearly the entire meeting because the presentation itself was not on the agenda. There were no presentations of any kind listed anywhere on the agenda. As the presentation was by a member of the committee, it was necessarily a discussion, requiring an opportunity for the public to address the committee with respect to it. As the presentation/discussion itself was not on the agenda, the agenda neither provided an opportunity for the public to address the committee regarding the presentation/discussion.

- At the Sept. 9, 2022, meeting of the *ad hoc* committee on the formulation of an annual report, agenda attached hereto as EXHIBIT 88, the committee met and proceeded with a quorum of members, but a proposed action on the agenda included no opportunity for the public to address the committee before or during its consideration. Specifically, Item No. 3.0, "Vote on time and frequency of meetings [action item]" did not include an opportunity for the public to address the committee on it until after the vote. (At the meeting, this item was not actually proposed for action. It was degraded to a "discussion only" item without notice on the agenda (see above).
- On the agenda for the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, Item No. 3.0 says that it is an action item, but the opportunity for the public to comment on it comes after the vote on the item would have been taken.

Failure to Give Members of the Public an Opportunity to Speak, Despite a Required Opportunity Being Provided on the Agenda

Even when the agenda provides the required opportunity for members of the public to address the Commission on an item to be transacted or discussed, and it does so before or during the consideration of the item, there is in fact no opportunity, because the chair does not announce the opportunity or otherwise allow members of the public to speak.

- At the regular meeting of the Site Visit Committee on June 7, 2022, the agenda for which is attached hereto as EXHIBIT 39, the public comment listed on the agenda before Item 2.0, really 2.1, was not called. As a result, I had to comment on Item No. 2.1 after Item No. 2.4, three items later. This was not "before or during the consideration of the item!"
- At the regular meeting of the Implementation Committee on June 7, 2022, the agenda, attached hereto as EXHIBIT 40, provided an opportunity for members of the public to directly address the committee before Item No. 2.0, which was an heading, so it really appeared to be relevant to Item No. 2.1, but, in any event, the public was not in fact given this opportunity. The agenda also provided an opportunity for the public to address the committee on Item 2.5. However, ZOOM apparently ended the meeting and kicked all of the participants, public and Commissioner alike, out of the meeting before the opportunity was in fact given. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- At the regular meeting of the Executive Committee on June 7, 2022, the agenda for which is attached hereto as EXHIBIT 41, the public comment period listed prior to Item 2.1 was not called. The public comment period listed on the agenda between items 2.1 and 2.2 was not called, nor were the public comment periods before 2.4 and 2.5 called. Comment was called on 2.2 after the vote was taken on it.

- At the regular meeting of the Site Visit Committee on July 12, 2022, the agenda for which is attached as EXHIBIT 39, the public comment listed on the agenda for Item 1.1 was not called. The Chair instead called for public comment after the committee had voted on the AB 361 motion, at which point it would have been futile, because the proposal had been decided. Even then, they did not really call for it, because they closed it after one second. Public comment was not called at all before Item 1.4, even though this, too, was listed on the agenda. Although public comment was listed on the agenda after 2.4, the chair of this committee, also one of the Co-Chairs of the Commission, has a quirk for calling agenda items out of their listed order, and the committee or Commission lets him do it. He called the items in the order 2.1, 2.4, 2.2, 2.3, and then called for members of the public. So the opportunity to comment on 2.4 before or during its consideration was not called. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- At the meeting of the Executive Committee on July 12, 2022, the agenda for which is attached hereto as EXHIBIT 63, the Committee Chair said that that they were skipping public comment on Item No. 2.2 "in the interest of time" because it had been downgraded to a discussion item, again apparently adhering to the canard that, where no criminal penalties apply (because no action is taken), no violation of open meetings laws can occur. Public comment provided on the agenda was neither called for Item Nos. 2.4, 2.5, 2.6, nor 2.7, which were similarly "downgraded" to "discussion only" items during the meeting. Item nos. 2.1 and 2.3 were skipped entirely. Public comment was called after Item No. 2.8 "on all the action items." However, this can have only been public comment relevant to Item No. 2.8, because the public must have the opportunity to address the Commission "before or during consideration of the item." Public comment was not really called at all, because the committee chair moved on to the next item after waiting hardly one second to see if a member of the public wished to speak.
- At the meeting of the Commission on July 20, 2022, agenda attached hereto as EXHIBIT 72, although an opportunity for the public to address the Commission is shown regarding Item No. 3.5, this opportunity was not in fact given to the public at the meeting until after the vote on Item No. 3.5 had occurred. Although the agenda also showed an opportunity for the public to address the Commission regarding Item No. 3.6, in fact no such opportunity was afforded to the public at the meeting.
- At the Aug. 5, 2022, meeting of the *ad hoc* committee to formulate an annual report, held at 3:00 p.m., agenda attached hereto as EXHIBIT 78, the agenda provided an opportunity for the public to address the committee on Item no. 2 on the agenda, labeled "Co-Chairs will guide commissioners in work distribution regarding the 2021-2022 Annual Report." Public comment was listed at the end of this item, but it was never called. The public had no opportunity to address the committee during this entire meeting.

Very truly yours,

Committee Chair LaHood

October 10, 2022

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/s/

Wynship Hillier

INDEX OF EXHIBITS

- EXHIBIT 1 *Bylaws* prior to May 18, 2022 (subsequent to 5/18, *Bylaws* are as in EXHIBIT 29)
- EXHIBIT 2 Email dated Apr. 20, 2:00 pm, "Re: Proposed Bylaws"
- EXHIBIT 3 Email dated Apr. 20, 5:12 pm "Public comment on minutes (Item 3.2)"
- EXHIBIT 4 Agenda for Apr. 20 regular meeting of Commission
- EXHIBIT 5 Email dated May 6, 8:27 am "Minutes for Apr. 12 SV and Impl. Com. mtgs."
- EXHIBIT 6 Email dated May 6, 12:59 pm "Re: Minutes for Apr. 12 SV and Impl. Com. mtgs"
- EXHIBIT 7 Email dated May 6, 3:54 pm "Minutes of April 12, meeting of the Exec. Com."
- EXHIBIT 8 Email dated May 9, 1:18 pm "Voting on minutes is required, even if you were not present at the meeting"
- EXHIBIT 9 Email dated May 9, 1:27 pm "Defects in the notice for tomorrow's Site Visit Committee meeting"
- EXHIBIT 10 Email dated May 9, 1:42 pm "Criticism of the March 2022 minutes of the Site Visit Committee, to be approved tomorrow"
- EXHIBIT 11 Email dated May 9, 2:02 pm "Defects in the notice of tomorrow's Implementation Committee Meeting"
- EXHIBIT 12 Email dated May 9, 2:17 pm "Defects in the notice for tomorrow's meeting of the Executive Committee"
- EXHIBIT 13 Email dated May 9, 2:46 pm "follow-up on lack of posting for Impl. Com. meeting"
- EXHIBIT 14 Agenda for May 10 regular meeting of Site Visit Committee
- EXHIBIT 15 Agenda for May 10 regular meeting of Implementation Committee (misabeled as agenda for Apr. 12), downloaded May 7
- EXHIBIT 16 Agenda for May 10 regular meeting of Executive Committee, downloaded May 6
- EXHIBIT 17 Email dated May 10, 6:42 pm "voting"
- EXHIBIT 18 Email dated May 10, 6:58 pm "Costs of taking liberties with open meetings laws"
- EXHIBIT 19 Email dated May 11, 2:26 pm "Minutes for Apr. 20 BHC meeting"
- EXHIBIT 20 Email dated May 11, 2:41 pm "Comments on Feb. & Mar. minutes"
- EXHIBIT 21 Email dated May 12, 8:02 pm "proposed Bylaws amendment next week"
- EXHIBIT 22 Email dated May 12, 11:05 am "Re: Proposed Bylaws amendment next week"
- EXHIBIT 23 Email dated May 12, 8:46 pm "Re: STOP THE AUTHORITARIAN POWER-GRAB IN THE BYLAWS!"
- EXHIBIT 24 Email dated May 12, 8:56 pm "Re: Guidance on amendments to amendments of Bylaws, and the Health Commission"
- EXHIBIT 25 Email dated May 12, 9:00 pm "Unconstitutional Provision in proposed Bylaws"
- EXHIBIT 26 Email dated May 13, 7:00 am "further criticism of proposed Bylaws"
- EXHIBIT 27 Email dated May 15, 1:41 pm "Brown Act warning re: May 18 BHC meeting"
- EXHIBIT 28 Email dated May 15, 1:56 pm "Public comment on proposed minutes for Apr. 2022"
- EXHIBIT 29 Email dated May 16, 9:35 am "Proposed Bylaws (item 3.4 on 5/18 BHC agenda)"

- EXHIBIT 30 Email dated May 17, 2:56 pm "'recommended language' added by DCA Elizondo to proposed BHC Bylaws"
- EXHIBIT 31 Email dated May 17, 8:38 pm "Art. XIII of Proposed Bylaws"
- EXHIBIT 32 Agenda for May 18 regular meeting of the Commission
- EXHIBIT 33 Email dated May 18, 8:34 pm "Abstentions"
- EXHIBIT 34 Email dated May 19, 7:07 am "Re: voting"
- EXHIBIT 35 Email dated May 19, 6:12 pm "That was a dirty trick you pulled last night"
- EXHIBIT 36 Email dated May 31, 1:21 pm "Re: Executive Committee meeting"
- EXHIBIT 37 Email dated June 7, 12:53 pm "Brown Act warning re: committee meetings today"
- EXHIBIT 38 Email dated June 7, 2:25 pm "Re: Criticism of the March 2022 minutes of the Site Visit Committee, to be approved tomorrow"
- EXHIBIT 39 Agenda for June 7 regular meeting of Site Visit Committee
- EXHIBIT 40 Agenda for June 7 regular meeting of Implementation Committee
- EXHIBIT 41 Agenda for June 7 regular meeting of Executive Committee
- EXHIBIT 42 Email dated June 9, 5:38 pm "Re: Bylaws motion to move forward"
- EXHIBIT 43 Agenda for June 15 regular meeting of the Commission, showing June 7 date, downloaded June 16.
- EXHIBIT 44 Email dated June 13, 7:47 am "Wednesday Commission meeting Brown Act etc. warning"
- EXHIBIT 45 Agenda for June 15 regular meeting of Commission, showing filing at Government Information Center on June 13 at 2:07 p.m.
- EXHIBIT 46 Email dated June 15, 8:58 pm "Open Meeting Requirements in San Francisco"
- EXHIBIT 47 Email dated June 17, 6:08 pm "MHSA 'Public Hearing'"
- EXHIBIT 48 Email dated June 22, 3:26 pm "Voting"
- EXHIBIT 49 Email dated June 22, 4:54 pm "Chair's ability to hurry things along"
- EXHIBIT 50 Email dated June 22, 5:01 pm "On the minutes"
- EXHIBIT 51 Email dated June 22, 5:09 pm "Noticing Motions under Open Meetings Laws in San Francisco"
- EXHIBIT 52 Email dated June 22, 5:16 pm "Order of Business"
- EXHIBIT 53 Email dated June 27, 8:51 pm "Re: Chair's ability to hurry things along"
- EXHIBIT 54 Email dated June 30, 5:02 pm "The 'Reaching Out' motion or standing rule"
- EXHIBIT 55 Email dated July 1, 8:01 am "Re: The 'Reaching Out' motion or standing rule."
- EXHIBIT 56 Email dated July 2, 7:05 am "Conard House 'roundtable'"
- EXHIBIT 57 Email dated July 2, 3:04 pm "Re: Conard House 'roundtable'"
- EXHIBIT 58 Email dated July 8, 12:22 pm "Re: 30-Day Public Comment Period for MHSA FY 2022-2023 Annual Update DRAFT (6/17/22 - 7/20/22) -with Announcement Translations in Spanish, Chinese, Vietnamese, & Russian"
- EXHIBIT 59 Email dated July 8, 12:28 pm "Re: 30-Day Public Comment Period for MHSA FY 2022-2023 Annual Update DRAFT (6/17/22 - 7/20/22) -with Announcement Translations in Spanish, Chinese, Vietnamese, & Russian"

- EXHIBIT 60 Email dated July 12, 7:00 am "Brown Act Warning of Criminal Penalties, etc."
- EXHIBIT 61 Agenda for July 12 regular meeting of Site Visit Committee
- EXHIBIT 62 Agenda for July 12 regular meeting of Implementation Committee
- EXHIBIT 63 Agenda for July 12 regular meeting of Executive Committee
- EXHIBIT 64 Printout of Commission website showing July 17 dates for the above three meetings, downloaded July 11
- EXHIBIT 65 Email dated July 13, 10:23 am "Re: Voting"
- EXHIBIT 66 Email dated July 13, 10:56 am "Re: Order of Business"
- EXHIBIT 67 Email dated July 13, 12:03 pm "Re: Noticing Motions under Open Meetings Laws in San Francisco"
- EXHIBIT 68 Email dated July 13, 12:37 pm "Re: Chair's ability to hurry things along"
- EXHIBIT 69 Email dated July 16, 4:54 pm "Brown Act Warning"
- EXHIBIT 70 Email dated July 16, 5:49 pm "Re: Brown Act Warning"
- EXHIBIT 71 Excerpt from email dated July 20, 9:11 am "Re: Brown Act Warning"
- EXHIBIT 72 Agenda for July 20 meeting of the Commission
- EXHIBIT 73 Email dated July 20, 6:28 pm "You may not discuss ending time at this meeting"
- EXHIBIT 74 Email dated July 21, 8:03 am "Re: You may not discuss ending time at this meeting"
- EXHIBIT 75 Email dated July 21, 1:54 pm "Re: You may not discuss ending time at this meeting"
- EXHIBIT 76 Agenda for Aug. 1 meeting of *ad hoc* Annual Report Committee
- EXHIBIT 77 Email dated Aug. 1, 5:50 pm "Re: Meeting of Ad Hoc Annual Report Committee"
- EXHIBIT 78 Agenda for Aug. 5 regular meeting of the *ad hoc* Annual Report Committee
- EXHIBIT 79 Agenda for Aug. 5 regular meeting of the *ad hoc* Committee to Revise the *Bylaws*
- EXHIBIT 80 Email dated Aug. 5, 4:22 pm "GIS posting for meetings"
- EXHIBIT 81 Email dated Aug. 5, 4:32 pm "Web posting"
- EXHIBIT 82 Email dated Aug. 5, 5:42 pm "Training meeting"
- EXHIBIT 83 Email dated Aug. 12, 2:36 pm "Notice failures for today's meetings"
- EXHIBIT 84 Agenda for Aug. 12 regular meeting of the *ad hoc* Annual Report Committee
- EXHIBIT 85 Agenda for Aug. 12 regular meeting of the *ad hoc* Committee to Revise the *Bylaws*
- EXHIBIT 86 Email dated Aug. 15, 11:55 am "Re: Training meeting"
- EXHIBIT 87 Agenda for Aug. 26 regular meeting of annual report committee
- EXHIBIT 88 Agenda for Sept. 9 regular meeting of annual report committee
- EXHIBIT 89 Agenda for Sept. 21 regular meeting of the Commission
- EXHIBIT 90 Agenda for Sept. 23 regular meeting of annual report committee
- EXHIBIT 91 Agenda for Sept. 30 regular meeting of annual report committee
- EXHIBIT 92 Agenda for Oct. 19 regular meeting of the Commission
- EXHIBIT 93 Agenda for Sept. 29 regular meeting of bylaws committee
- EXHIBIT 94 Agenda for Sept. 8 regular meeting of bylaws committee

Committee Chair LaHood

October 10, 2022

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EXHIBIT 95 Capture of BHS website at appx. 4:30 p.m. on Sept. 6, 2022, showing no notice of 3:00 p.m. meeting on Sept. 8, 2022

EXHIBIT 96 Email notice of ZOOM "emergency meeting"

EXHIBIT 97 (not used)

EXHIBIT 98 Screen capture of BHC website at appx. 4:00 p.m. on Sept. 27

EXHIBIT 99 Agenda for Sept. 13, 2022, meeting of Executive Committee

EXHIBIT 100 Timestamped cover page of Sept. 29 meeting of bylaws committee

EXHIBIT 101 Email dated Sept. 1, at 5:20 p.m., to bylaws committee

EXHIBIT 102 Email dated Sept. 11, at 4:34 p.m., to bylaws committee

EXHIBIT 103 Email dated Sept. 11, at 4:41 p.m., to bylaws committee

EXHIBIT 104 Email dated Sept 22 to bylaws committee

EXHIBIT 105 Email dated Sept 23, at 11:20 a.m., to bylaws committee

EXHIBIT 106 Agenda for Sept. 22 meeting of bylaws committee

EXHIBIT 107 Email dated Sept. 22 to Commission

EXHIBIT 108 Email dated Oct. 1 to annual report committee

EXHIBIT 109 (not used)

EXHIBIT 110 Email dated Oct. 7, at 9:52 a.m., to Executive Committee

EXHIBIT 111 Agenda for Oct. 11 meeting of Executive Committee

EXHIBIT 112 Screen capture of BHC website on Sept. 23 during meeting of annual report committee at which minutes not on the site were approved.

EXHIBIT 113 Email dated Oct 9 to Executive Committee

EXHIBIT 114 Email dated Oct. 10 to Executive Committee

EXHIBIT 115 Email dated Oct. 19 to Commission

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Deleted: Agenda for Oct. 7 meeting of the annual report committee(not used)

Leger, Cheryl (BOS)

From: Wynship Hillier <wynship@hotmail.com>
Sent: Wednesday, February 15, 2023 4:52 PM
To: SOTF, (BOS)
Cc: Somera, Alisa (BOS); Leger, Cheryl (BOS); Calvillo, Angela (BOS); DPH-San Francisco Behavioral Health Commission; Simmons, Marlo (DPH); Pojman, Natalie (DPH); Varisto, Michaela (DPH); DPH Sunshine
Subject: Re: SOTF - Notice of Compliance and Amendments Committee Hearing, February 21, 2023 - 4:30 PM - Remote Meeting
Attachments: Feb. 21, 2023, Compliance and Monitoring hearing 2.docx; Resolution Text II.docx; EXHIBITS 142-145.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

(sent via bcc to members of the Compliance and Amendments Committee)

Attached are my documentary submissions for the hearing. I am sending Word files because the complaint is 100 pages and the navigation pane in Word is essential to using it. "Feb 21, 2023, Compliance and Monitoring Hearing 2" documents the Behavioral Health Commission's violations since the April 6, 2022, SOTF Order. This document is broken down by parts of the Apr. 6, 2022, SOTF order and modes of violation within each part. Go to the "View" tab, "Show/Navigation Pane" to see the outline-level view. Click on each section to go to the beginning of it. Also, as with past hearings, change tracking is used -- all new violations since the last hearing show as changes to the document so that they may be easily recognized. Use the "Review" tab, "Tracking/All Markup" to clearly see the changes. Violations are arranged in chronological order within each section, so go to the end of each section and look for new insertions to see whether there are any new violations in that section since the Dec. 27, 2022, hearing. Pages 9-10 provide an overview of activity since the Dec. 27, 2022, hearing.

The "Resolution Text II" file contains Word comments cross-referencing resolutions to the Apr. 6, 2022, SOTF order, asking for enforcement on all violations since the October hearing. We respectfully request that Compliance and Amendments put these resolutions on the agenda and move and dispose them at the meeting pursuant to the second sentence of *S.F. Admin. Code s. 67.7(a)*.

The file "EXHIBITS 142-145" contains the exhibits new to this hearing. To obtain pdf files for exhibits new to the August, October, or December 2022 hearings, send a request to me via email.

Very truly yours,
Wynship W. Hillier, M.S.
(415) 505-3856

From: SOTF, (BOS) <sotf@sfgov.org>
Sent: Thursday, February 9, 2023 1:45 PM
Cc: Somera, Alisa (BOS) <alisa.somera@sfgov.org>; Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>

Subject: SOTF - Notice of Compliance and Amendments Committee Hearing, February 21, 2023 - 4:30 PM - Remote Meeting

Good Afternoon:

Notice is hereby given that the Compliance and Amendments Committee of the Sunshine Ordinance Task Force (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. ***Please confirm your attendance for this hearing.***

Date: February 21, 2023

Location: Remote Meeting (Login Information to be provided shortly)

Time: 4:30 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.

File No. 22012: Complaint filed by Anonymous (SFT) against Director Grant Colfax and the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21, by failing to respond to a public records request in a timely and/or complete manner. *(On September 7, 2022, the SOTF moved to find that Greg Colfax and the Department of Public Health violated, Administrative Codes, Sunshine Ordinance, Sections 67.21(b) by failing to provide records in a complete manner and 67.26 for not keeping withholding to a minimum, and orders Director Grant Colfax and the Department of Public Health to continue to turn over requested records and forward to the Compliance and Amendments Committee for continued monitoring. On October 25, 2022, the Compliance and Amendments Committee moved to request the Respondent to submit a letter detailing their retention policy regarding MS Teams chats by November 8 2022.)*

File No. 23001 Complaint filed by Olga Tikhonova against the San Francisco Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

File No. 23002 Complaint filed by Stiliyan Bezhanski against Debra Lew and the Office of the Treasurer and Tax Collector for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.25, and California Government Code Section(s) 6253(c), by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

File No. 23007 Complaint filed by Pic Van Cleef against Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.5 for failing to adhere to the Brown Act and making meetings open and public and 67.6, for failing to clearly provide a time and place of a public meeting.

File No. 22092: Hearing to review the Behavioral Health Commission's compliance with the Sunshine Ordinance (Sections listed below) for meetings that occurred after April 13, 2021.

On December 27, 2022, the Compliance and Amendments Committee moved to continue the matter to the call of the chair and continue to monitor the Behavioral Health Commission for compliance with the Order of Determination specifically the Committee will be keeping a close eye on notice of meetings and in the event meetings are not noticed 72-hours in advance, how the Commission handles that and make sure that public comment is called every time it is required and that staff provide the Committee a description of their procedures and practices with regard to the Ordinance, which the Committee recommended that they use as the basis for


a public document describing their procedures and practices or be incorporated into their by-laws.

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, February 15, 2023.**

Victor Young on behalf of
Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

 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.*

Wynship W. Hillier, M.S.
3562 20th Street, Apartment 22
San Francisco, California 94110
(415) 505-3856
wynship@hotmail.com

February 15, 2022

Deleted: December 22

Lila LaHood, Chair
Compliance and Amendments Committee
Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 244
San Francisco, California 94102-4689

Sent via email to sotf@sfgov.org

Dear Committee Chair LaHood:

In response to your email of July 10, 2022, announcing an hearing before the Compliance and Amendments Committee ("CAC") of the Sunshine Ordinance Task Force ("SOTF") on Aug. 23, 2022, on the topic of the Behavioral Health Commission's ("BHC's") compliance with the Task Force's order of Apr. 6, 2022, I have compiled the following summary of violations thereof occurring since that date.

Summary of Recent SOTF Actions Regarding BHC

On Oct. 6, 2021, The SOTF ruled against the Behavioral Health Commission on file nos. 20100 and 20143, combined into 20100.

On Feb. 2, 2022, the SOTF reaffirmed its Oct. 6, 2021, decision in all respects.

On Apr. 6, 2022, the SOTF ruled against the Behavioral Health Commission on file nos. 21021, 21036, 21087, 21095, 21099, 21103, and 21118.

On Apr. 8, 2022, SOTF Administrator Cheryl Leger sent an email to me and the BHC with subject line "SOTF – Motion on Item 8, Consent Agenda; SOTF April 6, 2022" to the BHC (emph. in orig.):

Mr. Hillier and Mr. Grier: Below is the motion from Wednesday night's Sunshine Task Force hearing:

Member Hyland moved approve [sic] the consent agenda for file [sic] 21021, 21036, 21087, 21095, 21099, 21103, 21118 as presented for violations each noted and Order of Determination for each item, second, Vice-Chair Yankee.

Vice-Chair Yankee provided amendments to the motion.

Moved by Vice-Chair Yankee to include the motion from the March 8, 2022, Education, Outreach and Training Committee hearing and put it into the Order of Determination. The EOTC [sic] is ordered to provide a manual of their practices and procedures as listed above. [sic]

Moved by Chair Hyland, seconded by Member Yankee, to recommend that the SOTF, via Consent Agenda, find that the BHC and its Committees, at various meetings that occurred from period [sic] September 8, 2020, through April 13, 2021, violated one or more of the following Sunshine Ordinance Sections:

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The EOTC further requests that the SOTF refer the matter to the Compliance and Amendments Committee to review future agendas/meetings of the BHC, no earlier than the issue date of the Order of Determination, and not to extend beyond three months, regarding compliance with the Sunshine Ordinance Sections listed above or related violations.

The EOTC further requests that the BHC provide their manual or description of their procedures/practices implemented to address the violations listed above. In an effort to document compliances [sic] with posting requirements of the Sunshine Ordinance, the EOTC requests that the BHC maintain a log of when agendas and supporting documents are posted along with any other relevant data.

On Apr. 19, 2022, Ms. Leger sent a second email to me and the BHC, this time with "Subject" line "SOTF – April 6, 2022 Sunshine Task Force actions", as follows:

Mr. Hillier and Mr Grier: Per the Sunshine Task Force [sic], the actions from the April 6, 2022 Sunshine Task Force [sic] regarding the [sic] Item 8, the Consent Agenda hearing [sic] are below.

Action: Moved by Member Hyland, seconded by Vice Chair Yankee to approve the consent agenda for File Nos. 21021, 21036, 21087, 21095, 21099, 21103, 21118, as presented for violations each noted and that and that an Order of Determination is drafted for each item for the following violations against the Behavioral Health Commission for meetings that occurred for the period of September 8, 2020, through Apr. 13, 2021, for violations of one or more of the following Sunshine Ordinance Sections (with the Respondent plea of "No Contest"):

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The SOTF further requests that the matter is referred to the Compliance and Amendments Committee no earlier than the issue date of the Order of Determination. The SOTF further requests that the BHC provide their manual or description of their procedure/practices implemented to address the violations listed. In an effort to document compliance with posting requirements of the Sunshine Ordinance, the SOTF requests that the BHC maintain a log of when agendas and supporting documentation are posted along with any other relevant data.

The minutes for the meeting on Apr. 6, 2022, had additionally reported the following information:

The motion PASSED by the following vote:

Ayes: 7 – Hyland, Yankee, Wolfe, Padmanabhan, Schmidt, Stein,
Neighbors
Noes: 0 – None
Absent: 2 – Wong, LaHood

On July 6, 2022, I appeared before the SOTF at their regular meeting and requested that the referenced Order of Determination and another, regarding file no. 20100, issue, citing continuing desultory compliance and continuing violations by BHC. I was told at the meeting that the above emails were orders of determination, that staff was to have provided an email regarding file no. 20100, and that you were to schedule an hearing in CAC for monitoring and compliance.

On July 11, 2022, I received email from you, cc'd to the BHC and SOTF, relevantly stating the following (emph. in orig.):

Dear Mr. Hillier,

When the Sunshine Ordinance Task Force finds a violation and orders compliance, that **order of determination is effective immediately**. We expected that the Behavioral Health Commission would be taking steps to comply with our order right after it was issued in April.

I will ask Ms. Leger to **schedule a hearing on this matter for our next Compliance and Amendments Committee meeting in August**.

I would recommend that a representative from the **Behavioral Health Commission follow up with Ms. Leger and let her know what they have been doing to comply with our order of determination** in advance of that meeting.

Best regards,

Lila

At the time, the next meeting of the Compliance and Amendments Committee was scheduled for Aug. 23, 2022.

On July 15, 2022, Ms. Leger sent the following email to myself, the Behavioral Health Commission, and Mr. Grier, with the subject line, "SOTF – Matter No. 20100 per Mr. Hillier's request" (ellipses added):

Mr. Hillier, Behavioral Health Commission and Mr. Grier: Per Mr. Hillier's request, below is the October 6, 2021 Sunshine Task Force [sic] motion on matter 20100.

File No. 20100: Complaint filed by Wynship Hillier against the Behavioral Health Commission, formerly known as the Mental Health Board for allegedly violating, Section 67.7(a) failing to post the Agenda 72 hours in advance and failing to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(d) failure to take action on any item not on the Agenda [sic]; 67.7(g) failing to allow public comment; 67.9(a) failure to post relevant documents on the internet.

Chair Wolfe noted that both items 7 and 8 were heard by different Committees and suggested a motion to combine the items.

Both Petitioner and Respondent agreed to combining the two matters.

Action: Moved by Chair Wolfe, seconded by Member Hyland, to combine items 7 and 8, File Nos. 20100 and 20143, respectively. (File No. 20143 combined into 20100)

Public Comment:

.....

The motion PASSED by the following vote:

Ayes: 8 – Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Yankee

Absent: 1 – Wong

Member Wong was noted present at 6:06 PM.

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Action: Moved by Member Stein, seconded by Member Schmidt, to find that the Behavioral Health Commission Violated Administrative Code, Sunshine Ordinance, Section(s) 67.7(a) by failing to provide an adequate description of agenda items; 67.7(b) failing to post supporting documents on-line or make them available as soon as they are available [*sic*], 67.7(g) failing to include notices of rights under the Sunshine Ordinance on the agenda, and 67.9(a) failing to post supplementary documents for the meeting on the internet.

Public Comment:

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The motion PASSED by the following vote:

Ayes: 9 – Stein, Schmidt, Wolfe, Hyland, Padmanabhan, Lahood, Neighbors, Yankee, Wong

Noes: 0 – None

Action: Moved by Chair Wolfe, seconded by Vice-Chair Yankee, to continue the matter to the Call of the Chair to review the status of the Behavioral Health Commission as to whether it falls under the jurisdiction of the Ordinance under 67.3(d) and to further review how the holdover provisions apply.

Public Comment:

None

The motion PASSED by the following vote:

Ayes: 9 – Wolfe, Yankee, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Wong

Noes: 0 – None

Action: Moved by Vice-Chair Yankee, seconded by Chair Wolfe, to find that the Behavioral Health Commission violated Administrative Code (Sunshine Ordinance), Section(s) 67.7(a) by failing to post their agenda 72 hours in advance the meeting [sic].

Public Comment:

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....

The motion PASSED by the following vote:

Ayes: 8 – Yankee, Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Neighbors, Wong

Noes: 1 – Stein

The meeting was recessed from 8:27 to 8:37 PM.

File No. 20143: Complaint filed by Wynship Hillier against the Behavioral Health Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(a) by failing to post the Agenda 72 hours in advance of the meeting and failure to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(g) failing to allow public comment; 67.7(h) failing to include notices of rights under the Sunshine Ordinance on the agenda; 67.7(h) failing to include contact information and the Administrator’s name on the agenda; 67.9(a) failure to post relevant documents on the internet; 67.15(c) failing to allow public comment; and 67.21(b) failing to make files available to the public.

File No. 20143 combined into File No. 20100.

**BHC'S COMPLIANCE WITH THE SAN FRANCISCO SUNSHINE ORDINANCE
SINCE THE SOTF'S ORDER OF APR. 6, 2022, HAS BEEN POOR.**

BHC has shown improvement in only two of the seven areas in which SOTF found violations on Apr. 6, 2022. In one area, they have been including SOTF messages in all of their meeting notices, even in notices for meetings of committees new since the Apr. 6, 2022, order. In the one other area in which they showed improvement, their performance in the area had previously been so bad that, even with improvement, their compliance in this one area is still poor. We ask for findings of willful noncompliance in several areas because, not only did BHC have a ruling from the SOTF citing these very violations in front of them at the time that they were repeating them, but, in many instances (noted below), BHC proceeded with violations despite advance email warnings from me that the violations were apparent from the notice or the circumstances surrounding its posting and were either way incurable. Yet, they proceeded with the noticed meetings and actions anyway, knowing that they could not fail to commit violations of the law thereby. This is "willful noncompliance."

Since the hearing before this committee on Aug. 23, 2022, BHC has engaged in a number of evasive behaviors. They have noticed weekly meetings of two *ad hoc* committees extending over two months. These meetings have been poorly-noticed, many of them not meeting the 72-hour requirement, but we do not report them here because they were not *per se* violations, due to lack of quorum. Lack of quorum, nevertheless, rarely prevented these committees from proceeding with their meetings and conducting business in "discussion-only mode." The sizes and membership rosters of these committees also constantly changed, through actions by the co-chairs, made in the background, outside of the public view. Indeed, the Co-Chairs have become a committee unto themselves, requiring noticed meetings. The implementation of the new website occurred on Sept. 30. This has not resulted in any greater compliance. BHC has yet to post a single piece of explanatory correspondence, and the new website has made it harder for the public to find other documents relevant to meetings. To find the minutes of the Sept. meeting of the Commission to be approved at the Oct. meeting, which meetings are consistently labeled meetings of the "BHC Committee" on the new website, one must navigate up from the Oct. meeting, then down to past meetings, then (past a slough of meetings of *ad hoc* committees) down again to the Sept. meeting, where the minutes are labeled as minutes of the Executive Committee. None of this has been reported below. The Commission's standing committees, of which six meetings were noticed since the last meeting of this committee, none of the meetings occurred, except for one which was apparently held at a different meeting ZOOM than the one announced. Two were cancelled under strange circumstances. Three more failed to attract quora. All of them exhibited the same repetitive agendas we have reported previously, but we report none of them here because none of them were "meetings" under the Ordinance, except for the one held at a meeting ZOOM not available to the public, of which I was not informed until after the fact. Also during this period, one of the Co-Chairs (the other is a full-time graduate student at UC Berkeley, rents an apartment there, and has not been removed from the

Commission for violation of *S.F. Charter* § 4.101(b), requiring residency) announced a pronounced interest in “informal work groups” not subject to open meeting requirements, has spoken of the desire to move business from *ad hoc* committees into these work groups, and appears to have converted one of the *ad hoc* committees into such a work group by personal fiat, which he imagines to have allowed it to meet privately. At the meeting on Oct. 19, it was announced that separate “training sessions” with Commission counsel and the Deputy Director of Behavioral Health Services, both regarding conduct of meetings by the Commission, would be upcoming on uncertain dates. We also note for amendment purposes that the Commission has conducted a training session, under my advice, without notice to the public, and that they were only able to do so because the training was conducted remotely. I have since revised my guidance to them to make it clear that *all* meetings among a quorum of the Commission or any committee thereof, even if no discussions or actions are taken thereat, must be noticed to the public.

In preparation for the hearing on Dec. 27, 2022, I have removed references to special meetings, on the discovery that special meetings are treated very differently than regular meetings in the Sunshine Ordinance. All violations involving special meetings will be resubmitted as new complaints in order to obtain adjudications specific to the special meeting provisions of the Sunshine Ordinance, i.e., *S.F. Admin. Code* §§ 67.6(f) and 67.15(b). More specifically, we have deleted the “Serial Meetings,” “Meetings via Email,” “Failure to Notice Meetings as Meetings of the Correct Policy Body,” and “Failure to Issue Any Notice of a Meeting Inferred From Other Actions Taken” sections of Item No. 2 because these could only be conceived of as special meetings, and thus violations of § 67.6(f) rather than § 67.7(a).

In general, the Commission held approximately ¼ as many meetings between Oct. 25 and Dec. 27 as it did between Aug. 23 and Oct. 25, 2022. This was due to lack of meetings of standing committees during December, as well as almost zero meetings of *ad hoc* committees during the period. The fewer numbers of some kinds of violations during this period are mainly thus due to the far fewer numbers of meetings with respect to which violations could occur, as well as the lower stress on administrative personnel, and should not be attributed entirely to the new website.

For the period Dec. 27, 2022, through Feb. 15, 2023, five out of seven posted meetings failed to attract a quorum of members, and one of the remaining two only attracted a quorum for 25 minutes out of a 75-minute meeting. This artificially depressed the number of completed violations, which would otherwise have been far higher.

Other meetings had violations that were apparent from the agenda or the circumstances surrounding its posting that applied to the entire meeting. When this occurred, however, rather than call the meeting to order and rule all the items on the agenda out of order for reasons cited, committees of the Commission seemed to arrange for very few members to arrive, such that far less than a quorum was available, again allowing them to escape any admission of culpability by adjourning the meeting without going through the agenda, but ostensibly for lack of quorum rather than any violations of open meetings laws. However, at the Feb. 7 meeting of the

Implementation Committee, they believed they had a quorum and proceeded to hold the meeting despite the fact that I announced during almost every item that there was a "global" violation of the Sunshine Ordinance affecting the entire meeting, and there seemed to be no disagreement about the facts of the violation. (This violation was not included in the Apr. 6, 2022, SOTF order). (I myself was unaware at the time that there was no quorum and that open meetings laws did not apply to the meeting, which was not a "meeting" as defined by the Sunshine Ordinance.)

There were no failures to post notices of any meetings correctly since the previous hearing, even considering the attempted meetings that failed to attract quora. However, the abovementioned "global" violation should have prevented the Implementation Committee from proceeding with their agenda on Feb. 7 but did not, suggesting that, if a posting failure did occur at a future meeting, the Implementation Committee at least would not allow itself to be prevented from meeting thereby. Also, at the meeting of the Executive Committee on Feb. 7, it was announced (with notice on the agenda) that there would be a training session for all Commissioners, organized outside of the Commission. This meeting would be a "meeting" under S.F. Admin. Code § 67.3(b) subject to notice requirements if a quorum of the Commission or any committee attends.

The Commission continues to fail to unambiguously list an opportunity for the public to address the body on every item on every agenda, as detailed below. At a meeting of the Implementation Committee on Feb. 7, 2023, the chair failed to call for public comment on an item when public comment was listed unambiguously on the agenda. This was not reported below because there was not a quorum of the members of this committee present at this meeting. The Commission and its committees continue to refuse to reference correspondence in the possession of the clerk for distribution to the policy body in connection to any item on the agenda, if the correspondence was received from any member of the public, but none of these sorts of violations are reported for this period because all of the pieces of correspondence sent by the public relevant to specific agenda items submitted before the posting of the agenda for the meeting or soon afterward were relevant to items at attempted meetings that failed to attract quora. There were two instances of email sent by a Commissioner relevant to an item on the agenda of a meeting with quorum that was not referenced on the agenda, nor posted on the website, detailed below. The Commission and its committees continue to equivocate as to whether items will contain proposed actions or are for discussion only, with almost every item labeled "action item" but only some with proposed actions, and very few receiving motions during the meeting. The Commission and its committees continue to act as if they are free to decide whether to make a motion at the meeting, rather than in advance, upon the posting of the agenda.

In the remainder of this document, we break down the SOTF's Apr. 6, 2022, order into its component findings. Under each finding, in italicized type, we quote the black letter of the law for the relevant part of the code section cited, quote any other sections of law relevant to the finding, and discuss any issues of interpretation. Then, because each provision of each section may be violated in a number of different ways, we list each of those ways and discuss how the

Deleted: Committee Chair LaHood
December 22

referenced act or omission constitutes a violation of the referenced provision, as well as aggravating and mitigating factors, if any. Finally, we provide bullet points, one for each meeting in which the referenced act or omission occurred. Within each bullet point, we reference items on the agenda in which the referenced act or omission occurred and describe the act or omission.

OFFICIAL MISCONDUCT. *Official misconduct means 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, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any city law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.*

San Francisco Charter § 15.105(e). "Every willful omission to perform a duty enjoined by law upon any public officer . . . where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor." Cal. Gov't Code § 1222. "The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance [or] the Brown Act . . . shall be deemed official misconduct. . . ." S.F. Admin. Code § 67.34.

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The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

(1) The Word "willfully," when applied to the intent with which an action is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate the law, or to hurt another, or to acquire any advantage.

Cal. Pen. Code § 7(1). West's Annotated California Codes states that Cal. Gov't Code § 1222 had been codified as Cal. Police Code (the predecessor to the Cal. Penal Code) § 176 until 1945.

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Item No. 1: "67.7(a) by failing to provide an adequate description of the agenda items:"

S.F. Admin. Code § 67.7(a) states as follows, in relevant part (sq. brackets, ellipsis added): "[A] policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the [regular] meeting. Agendas shall specify for each item of business the proposed action or a statement that the item is for discussion only. . . ." (Note: S.F. Admin. Code § 67.7(b) states as follows, in pertinent part (ellipsis added): "A description is meaningful if it is sufficiently clear 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. . . .") (Note: Cal. Gov't Code § 54952.6, part of the Brown Act, in pari materia with the Sunshine Ordinance, states in full: "As used in this

chapter, 'action taken' means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.")

Failure to Include "a Meaningful Description"

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda for a regular meeting, that each item on the agenda include a "meaningful description" of the item to be transacted or discussed. The description must be detailed enough that a member of the public whose interests may be affected by the item would be able to tell from the description of it whether or not to attend the meeting. *Id.* § 67.7(b).

- The agenda for the May 10, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 15, contained a meaningless description. Item No. 2.4 was "Follow up on RFP: Dr. Kunins update on MHSF for 5/18/22. What about the RFP?" was insufficient to inform someone whose interests were affected of whether they should attend the meeting. During the discussion of this item, it was revealed that this item was actually about a proposal to have a member of BHC sit on an extant BHS panel to evaluate proposals by new programs seeking funding from BHS, and maybe visit their sites. This information should have appeared on the agenda. We complained about this in an email, attached hereto as EXHIBIT 11. They went ahead with the meeting anyway. We ask for a finding of willful noncompliance.
- The agenda for the May 10, 2022, regular meeting of the Executive Committee, attached hereto as EXHIBIT 16, did not contain any entry for two discussions listed on it. The item called was "ITEM 1.0 COMMISSIONER'S *[sic]* REPORTS [¶] Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives". It is ambiguous, what "in on" and "the distribution of budget initiatives" mean, but, in any event, it is clear that this item is the new place for the *Bylaws*-required reports of committees to the Executive Committee. (These used to have at least a marker on the agenda, as they do during the reporting period at the Commission level.) Nothing whatsoever to do with "the distribution of budget initiatives," whatever that was supposed to mean, was discussed here. Instead, a "report" of the Implementation Committee was given here. This was a seven-minute discussion between committee members and non-committee Commissioners on grievance processes at BHC sites and what to do about them. Furthermore, it was proposed to put this on the meeting of the Commission the following week, apparently as a discussion item, "just to get it heard by the administration." As mentioned elsewhere, it is ambiguous whether this item (at this meeting) was for discussion only or action was taken, because any member may put discussion items on the agenda for the Commission and no vote was taken. Either way, there was not even ambiguously any notice whatsoever on the agenda for this item, nor did the proposed action, which was to

recommend that the Commission discuss the item at its meeting the following week, appear on the agenda. Item 2.5 was dismissed by staff as “overkill” (apparently, they they are over-noticing in order to avoid violations) and skipped by the committee chair, but the description for this item, “MSA to be on June 15, 2022 agenda for presentation, vote if necessary [action item]” was an inadequate description because it did not state the topic of the presentation. I had complained via email about this item in advance of the meeting, attached hereto as EXHIBIT 12. While no violation occurred, for purposes of compliance and monitoring, the reason for skipping the item appears to have been other than the violation it would have entailed. Had the facts been otherwise, a violation may have occurred.

- The agenda for the regular meeting of the Commission held on May 18, 2022, attached hereto as EXHIBIT 32, contains no notice whatsoever of an item introduced immediately after roll call; Commissioners Wynn and Murawski, both newly added to the Commission, were asked to introduce themselves, and they did. It also contained no notice whatsoever of a motion to create an *ad hoc* committee to revise the *Bylaws*, which motion was introduced concurrently with the motion to approve the *Bylaws* under Item No. 3.4. Please make no mistake; this was not a secondary motion to *Commit or Refer* that would have temporarily disposed of the approval of the revised *Bylaws* and prevented final action on them by referring it to a committee; such a secondary motion to *Commit or Refer* would have required no notice on the agenda. This was a *main motion to Commit or Refer* the newly approved *Bylaws* to an *ad hoc* committee. Thus, it needed notice on the agenda. “Action taken” in *Cal. Gov’t Code* § 54952.6 includes *all main motions*, even secondary motions that are moved as main motions because they are moved when no other business is pending. *See*, RONR (12th ed.) 6:9 and 13:6 (incidental main motion to *Commit or Refer*) To reiterate, on this day, the Commission took action on a compound motion to: a) adopt revised *Bylaws* and b) form an *ad hoc* committee to revise them yet again. Only the motion to adopt the revised *Bylaws* was on the agenda; the committee to revise them still further was added because the motion to revise the *Bylaws* did not pass, the first time, and so they added it on (but staff announced the added motion at the beginning of the meeting during “agenda changed,” as if this had all been choreographed in advance, hmnmn.) This agenda also lacks a meaningful description of Item No. 3.3, “BHC to review, discuss, and vote on the motion put forth by Co-Chair Vigil –see pasted below [action item]” “Motion” is just about paradigmatic of an inadequate description. The direction to “see . . . below” was neither helpful because there were two motions pasted below that lacked reference on the agenda. We informed them of this defect via email in advance of the meeting, email attached hereto as EXHIBIT 27, and they proceeded to discuss it without ruling it out of order. Consequently, we request a finding of willful noncompliance.
- The agenda for the June 7, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 40, contains meaningless descriptions of items. Specifically, “1.3 Vote to appoint a Chair for the onetime bylaws non-public workgroup meeting – [action item]” This entry on the agenda would make no sense whatsoever to

someone of average intelligence and education who took the time to read the *Bylaws* and rules of the Commission. First of all, such a person would know that appointment of the members of an *ad hoc* committee (incl. designation of the committee chair) is never distinct from the creation of the committee. *Id.* 13:15 (“**Naming Members to a Special Committee.**” “When a motion to refer to a special committee had been adopted, no business except privileged matters can intervene until selection of the committee members is completed.”). Secondly, they would know that the designation of a committee chair is never distinct from the appointment of members to the committee except when the motion to refer specifies an appointing power other than the chair of the assembly. RONR (12th ed.) 13:18 (“**Designating the Committee Chairman.**” “If the chair appoints or nominates the committee, he has the duty to select its chairman . . . The chair should specifically mention as chairman the first committee member he names, but if he neglects to state this fact, the designation nevertheless is automatic . . .”). Even when the appointing power is other than the assembly chair and it fails to specify the committee chair, then is it the responsibility of the committee to elect its chair. *Id.* 13:18 (“If a chairman is not designated when the committee is appointed, the committee has the right to elect its own chairman. . .”). Thirdly, they would know that no referral to any committee of a motion to refer to an *ad hoc* had occurred, nor could any committee effectively recommend such a motion, since the Commission had defectively referred the matter of *Bylaws* revision to an *ad hoc* committee at its May 18, 2022, meeting. Thereby, it precluded other motions the topic except *Rescind or Amend Something Previously Adopted*, until a motion to *Discharge a Committee* had been passed. Finally, they would know that the *Bylaws*, Art. VIII, § 1, ¶ 4, requires that all *ad hoc* committees be created by the Co-Chair, with the approval of the Executive Committee. The Implementation Committee is not involved and cannot be involved. Whoever wrote this agenda item was deeply confused as to the difference between creating a committee and appointing its members, and the identity of appointing its members and appointing the committee chair. Discussion under this item disclosed that it had been placed on the agenda “by staff” (then both Grier and Gray). Staff are not members of the Implementation Committee. They are members of the public with respect to the Implementation Committee and have no right to place things on its agenda. The committee agenda is for committee members *only* to put items on, and the committee must protect itself from attempts by staff to abuse their responsibilities for posting committee agendas online and at the Government Information Center by usurping this privilege. Item No. 2.4, “**Follow up on RFP: Dr. Kunins update on MHSF for 5/18/22. What about the RFP?**” also violated this section of the Ordinance because it is unintelligible. In fact, nothing was discussed under this item at this meeting. It was a “cud-chewer,” thrown in for the committee equivalent of rumination, without any real purpose, in case something might come up, in order to violate the Ordinance if it did, and so no violation may be said to have actually occurred. (This meeting proceeded without a quorum, so no actual violations occurred at it, but the committee mistakenly thought it had quorum, and so, for compliance monitoring

purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, contains meaningless descriptions. The description of Item No. 1.0 was "Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives. . . ." Under this item, Commissioner Murawski, not a member of the committee, introduced the issue of practitioner/client ratios. This discussion was taken up by others, including the chair of the committee. A person whose interests would be affected by the item would not have known to attend the meeting from the notice on the agenda. Item No. 2.3 was a "complete consolidated resolution," referring to, actually, two resolutions, the larger one of which had previously been passed early this year. This was not a meaningful description because what was actually discussed under this item was a transmittal letter, not yet written, to send this resolution to the Board of Supervisors, to be drafted by the authors of the resolution. Furthermore, at the end of Item No. 2.5 but before 3.0 (no period for public comment is listed on the agenda between these two items), Commissioner Murawski, not a member of the Executive Committee, called upon a member of the public who "had his hand up for a long time" to speak. This member of the public asked two questions of the committee and made a statement, and received responses to each, one at a time. The questions were relevant to Item No. 2.2 on the agenda. The answers consisted of where SFMHEF had given presentations, how they had promoted them, and additional details about their promotional activities. All of the questions were answered by a member of the Executive Committee who was also a member of SFMHEF. Staff (Grier), who was also Executive Director of SFMHEF at the time, added to the last response. Other members of the public were not given an opportunity to speak. Neither the description for Item No. 2.5, "MHSA to be on June 15, 2022 agenda for presentation, vote if necessary [action item]" nor that for Item No. 3.0, "New BHC Business," was adequate for this exchange. Finally, during Item No. 3.0 "New BHC Business", a member of the Commission but not of the Executive Committee spoke about the activities of her nonprofit regarding COVID-19 testing. Another non-member of the Executive Committee Commissioner asked her a question, and she answered it. The notice on the agenda was not sufficient to notify someone whose interests would be affected of whether they should attend the meeting. Finally, after final public comment (in which I mentioned this committee's responsibility for granting excusals), it was alleged that the meeting was adjourned without a declaration to this effect by the chair, and then excusal for Commissioner Klain was discussed between several Commissioners. (Klain was not a member of this committee, but the Commission has delegated the granting of excusals from meetings of the Commission to this committee through its *Bylaws*, Art. III, § 14.) The chair sadly said that he had not even seen her letter requesting excusal, while staff continued to bellow at every meeting that she was excused, from then to the time of the submission of this report. This did not have any notice on the agenda.

- The agenda for the June 15, 2022, regular meeting of the Commission, attached hereto as EXHIBIT 43, suffers from a special problem. Item No. 3.0(a) under “**ITEM 3.0 ACTION ITEMS,**” is listed as “Presentation by the San Francisco Mental Health Education Funds (SFMHEF)” No further detail is given. Normally, this would be sufficient. The notice and public address requirements apply only to “items to be transacted or discussed,” and a presentation is neither of these. However, SFMHEF has a special relationship with the Commission. From the previous century until 2020, SFMHEF provided staff to the Commission. A recent ordinance severed this link, moving the staff responsibility to DPH/BHS effective only this year. However, SFMHEF still has other ties to the Commission. Previously, a certain number of SFMHEF board members were required to be Commissioners. As far as I know, this is still the case. In any event, several members of the Commission are also currently on the SFMHEF board, and one is a former member of the SFMHEF board. Furthermore, the presenter on behalf of SFMHEF was also a member of the Commission at the time of the meeting. Consequently, question-and-answer was an exchange between Commissioners, and, also for other reasons, this really was a discussion item, requiring better notice of the topic. Discussion ranged far beyond the specific activities of SFMHEF and reached the activities of the Commission. Another Commissioner than the presenter, which Commissioner was also on the board of SFMHEF, frequently answered questions by Commissioners to the presenter. Commissioner Bohrer, formerly on the SFMHEF board, announced as “question” for the “presenter” that the Commission currently lacks representation by the Asian community. As “a brief announcement” by a Commissioner, exempt from the notice requirement of the Brown Act through *Cal. Gov’t Code § 54954.2(a)(3)* but no analogous exemption from the Sunshine Ordinance applying, *see, S.F. Admin. Code § 67.7(d)*, this announcement, which was followed by a response by a Commissioner who was also a member of SFMHEF, required its own notice on the agenda, and violated the Ordinance. In response to a question from a member of the public to the “presenter,” the member of the public was partly directed to Commission staff (Gray) for an answer, and partly answered directly. The referral to Gray was no longer appropriate, as Gray was new as of March and never employed by SFMHEF. However, if it had been appropriate, it would have fallen under one of the exemptions from the notice requirement under *S.F. Admin. Code § 67.7(d)*. The direct address to the member of the public was legal to the extent that the Commissioner/SFMHEF member was speaking on behalf of SFMHEF, but not legal to the extent that they were speaking on behalf of the Commission. Normally, the requirement that remarks by the public be relevant to the item being discussed makes any sort of response by the policy body to a public comment appropriate, because it is just more discussion of an item already adequately noticed. As just mentioned, this item was not adequately noticed for discussion, and so the Commission’s responses to the commentator violated the notice requirement to the extent that the exemptions of *S.F. Admin. Code § 67.7(d)* did not cover them. Things got still more complicated after that, as Commissioner Murawski, not on the board of SFMHEF, questioned SFMHEF about a flyer apparently distributed by

SFMHEF that allegedly listed the Commission on it. Reference was made to a “contract” and an “order,” apparently regulating the relationship between the two organizations. Even the meeting chair was confused by this and asked that it be brought up as an item at a future meeting. At any event, it concerned BHC enough to be more than a “question” to the “presenter,” and the chair did not move fast enough to prevent a response from Commissioner Jackson-Lane, also on the SFMHEF board, and further dialogue by Murawski. There was not adequate notice on the agenda for this, and a violation occurred.

- The agenda for the July 12, 2022, regular meeting of the Site Visit Committee, attached hereto as EXHIBIT 61, contains meaningless descriptions. Specifically, Item No. 1.4 says as follows, “Strategic planning around Conard Housing [*sic*] and mental health complaints [**action items**]”. “Strategic planning” is meaningless administrative doublespeak. What was actually discussed under this item was a Site Visit to Conard House (the second in three years), and the agenda should have stated this (as well as the actions proposed to be taken, whatever they were (none were in fact taken or even moved at the meeting)). Nothing was mentioned about “mental health complaints” other than that Conard House had pulled out of giving a presentation at this meeting because of them, but the presentation too was on the agenda (Item 1.3)! (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the July 12, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 62, contains meaningless descriptions of items. Specifically, Item No. 1.2, “Review progress of the onetime bylaws non-public workgroup meeting,” is not a meaningful description, as evidenced by the fact that even the chair of the committee present at the meeting did not know what it was. It appears to refer to a single meeting, but then it purports to “review the progress” of this meeting, as if the meeting were ongoing, during the meeting of the Implementation Committee! Also, the fact that the meeting is characterized as “non-public” is cause for concern. A minority of the members of a policy body are allowed to meet privately and discuss matters within the subject-matter jurisdiction of the policy body. However, such meetings can have no official recognition by the parent body (nor any of its “official” committees), or else it becomes a committee of the parent body, regardless of the use of words such as “non-public workgroup” to describe it. As a committee, it is then subject to open meeting requirements, and a majority of its members may not meet outside of a meeting noticed to the public. It cannot report to the parent body. Only a member thereof can introduce its results as a motion and speech in debate. Furthermore, no instruction had been given to this committee to report to the Implementation Committee, nor had it done so of its own accord. In order for a description to be “meaningful”, it must make some kind of sense with respect to the rules of order of the Commission and its *Bylaws* and other rules. Finally, even as a committee, this “non-public workgroup” had not been created according to *Bylaws*, which led to confusion among the members of

the Implementation Committee as to what this item was supposed to be about. The confusion of a member of the public could only have been greater. Item No. 2.4, "Establish Ad Hoc Committee for the Annual Report" also fails to make sense in terms of the rules of the Commission. Specifically, its *Bylaws*, Art. VIII, § 1, ¶ 4, requires that *ad hoc* committees be created "by the Chair or Co-Chairs, with concurrence of the Executive Committee . . ." The Implementation Committee has no part in it, nor can they have any part in it, and a member of the public familiar with the *Bylaws* would be utterly confused by this item. Anyone familiar with the rules of order of the Commission would be additionally confused by it, because it does not include specifics as to the size and method of appointment of the members of the committee, nor its membership directly, nor any special instructions, such as the schedule for regular meetings, required to be established by the Commission under *Cal. Gov't Code* § 54954(a). RONR (12th ed.) 13:8 describes these as "necessary details for the motion". (Without them it is impossible to determine quorum.) A member of the public might want to attend on the basis of who was named to be on this committee, or who was to make the appointments thereto, and this shades into "the proposed action", addressed below. Finally, Item No. 2.5, "**Follow up on RFP:** Co-Chairs will discuss with Dr. Kunins on how commissioners can participate in the RFP process," is ambiguous. It would appear that Dr. Kunins would be present for a discussion with the Co-Chairs that would occur at the meeting. Actually, what was meant was an announcement that the Co-Chairs would be having a private discussion with Dr. Kunins "offline" as part of their liaison responsibilities, *see, Cal. Welf. & Inst. Code* § 5604.5(d) ("The local mental health board shall develop bylaws to be approved by the governing body which shall do all of the following: [¶¶] (d) Establish that the chairperson of the mental health board be in consultation with the local mental health director."), about how the Commission could be involved with RFP's, and thus learn about and be involved with new programs "on the ground floor," as had been announced at previous meetings. But even this was not in fact the subject of the report or announcement that actually occurred under this item. When this item came up, it was announced or reported that there was a specific RFP "for the tenderloin," and that, somehow (it was not clear), BHC involvement with this RFP would get it "a new Commissioner." This information, and not what appeared there, was required to be included under Item No. 2.5.

- At the July 12, 2022, meeting of the Executive Committee, agenda attached as EXHIBIT 63, members thereof brazenly added discussion items to the agenda. During item no. 1.2, members of the committee proposed a new agenda item 1.6, which was a 10-minute discussion regarding an anticipated special meeting for training, and a new item no. 1.7, which was a 15-minute discussion regarding annual reports. Both discussions were in fact held later during the meeting. The Executive Committee does not seem to understand that nothing within the subject-matter jurisdiction of the Executive Committee may be discussed at a meeting among a quorum of its members without notice on the agenda. For discussion-only items, there are no exceptions. Under the Commission's new *Bylaws*, attached hereto as EXHIBIT 29, § 2, ¶ 1.b, as well as the old, annual reports

are within the express subject-matter jurisdiction of the Executive Committee. Neither the special meeting, nor the training proposed thereat, were within the subject-matter jurisdiction of the Executive Committee, but it is certainly within the subject-matter jurisdiction of the Commission, liberally construed. As discussed under Item No. 2, below, this supposed meeting of the Executive Committee was really a meeting of the Commission because a quorum of the Commission was in attendance, etc. The description of the first part of item no. 2.3 is so vague that it does not meet the standard of a meaningful description. "Vote to have Conard House placed on the July 20, 2022, full Commission agenda. . . ." It cannot be a presentation, because the same item proposes that Conard House give a presentation at the September meeting of the Commission (really, this is two items). It can neither be the question of whether Conard House should present in September, because any Commissioner could put that on the agenda. All the public is told is that the (first part of the) item has something to do with Conard House and the July 20 meeting. "Placed" is vague and hides the substance of the action. What action was to be placed on the agenda for the July 20 meeting? This would not be sufficient to inform someone whose interests may be affected of whether they should attend the meeting.

- At the July 20, 2022, meeting of the Commission, the agenda for which is attached hereto as EXHIBIT 71, Co-Chair Banuelos, who was not the chair for this particular meeting, added an item during "Agenda Changes" to the agenda. In fact, staff (Grier) said that the item would be called up later on, as if they had this authority. In fact, they could not pass the necessary finding that the item was unknown to the Commission at the time of the posting of the agenda, required by *Cal. Gov't Code* § 54954.2(b)(2), because they had discussed it in committees the previous week. In fact, the reason why it was not on the agenda was that I had anticipated that it would be on the agenda and had sent the Commission correspondence about the item well in advance of the posting of the agenda, and insisted that the agenda include a reference to this correspondence, per local law. See Item No. 3, *infra*. The same thing had happened last year, as well: I sent correspondence in advance of the posting of the agenda, demanding reference to the correspondence in the agenda; the item was omitted from the agenda altogether; at the meeting, the item was illegally added back in. As a matter of fact, the item was never called, but only after much argument by the Co-Chair, who thought that, since they would only be discussing the matter, and not taking action, that it would not violate the law. No actual violation occurred, but, for compliance and monitoring purposes, Co-Chair Banuelos was in ignorance of the law, and tried rather hard to violate it. He even said, "but you let me do it at the Executive Committee!" (see previous bullet point.)
- At the *ad hoc* committee on the creation of an annual report held on Aug. 26, 2022, agenda attached hereto as EXHIBIT 87, during Item No. 2, "The Co-Chairs will guide commissioners in work distribution regarding the 2021-2022 Annual Report," the discussion strayed into current activities that would be covered in the 2022-2023 annual report, such as site visits that were currently wrapping up or in progress, and asking a Commissioner who was present to give a presentation at the next meeting at a specific

“open ended” item on the agenda. This was a meeting of an *ad hoc* committee, but the Commission had, at its July meeting, proposed compound assignments to two *ad hoc* committees, including this one. Furthermore, the agenda for this meeting included topics that were not assigned to this committee, even as compound items. Normally, it would not be a violation to discuss matters outside the jurisdiction of an *ad hoc* committee, because, with respect to those matters, it would be a discussion among less than a quorum of members of the parent body, of matters within the subject matter jurisdiction of the parent body. However, even taking these odd agenda items as an expansion or compounding of the *ad hoc* matter assigned to this committee, is it a violation of the law to discuss matter that is on the agenda, but under another item? The strict letter of the law would say no; the law only requires that each item to be transacted or discussed appear (somewhere) on the agenda. A liberal construction, on the other hand, would dictate that the discussion be corralled within the corresponding items, called in the sequence in which they appear (with the exception of parliamentary motions such as secondary motions to *Postpone Definitely* or *Lay on the Table* to move items forward on the agenda or to the next meeting, or *Suspend the Rules* to hear a future item immediately). The off-topic discussion here was relevant to these other items on the agenda. This off-topic discussion began appx. 30 minutes into the meeting and continued until adjournment at 4:10, although it briefly returned to the subject of annual reports in general, without reference to a specific period. This was a complete violation because, although the meeting began with just two members of this five-member committee, a third member turned up in the audio at 3:45 p.m. and said that she had been listening for some time before then.

- The *ad hoc* committee to compose an annual report met on Sept. 9, 2022, agenda attached hereto as EXHIBIT 88, did not include a meaningful descriptions of the first two of the three items listed as bullet points following Item No. 3.2. “Site Visit Report” and “Liza’s Resolution” do not contain enough detail for someone whose interests may be affected by the item to know whether to attend the meeting.
- At the Sept. 21, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 89, an off-topic discussion occurred under Item No. 1.0, which appeared to be only an heading, i.e., “Chair’s Report,” but was turned into an item by the chair, who gave a nearly-ten-minute talk about the recent training session by CALBHBC in which Brown Act compliance was discussed, which training was on the agenda for the meeting, but much farther down, at no. 3.5, where it was in fact discussed a second time, but with different material, i.e., only future meeting dates were discussed under 3.5. At least this first discussion included interaction with another member of the Commission. This first item should have been labeled with the material that was in fact discussed here, i.e., regarding compliance with the 72-hour notice requirement and whether *ad hoc* committees are covered by open meetings laws in San Francisco, which were the subjects of the training and of this discussion noticed unhelpfully as “Chair’s Report.”
- At the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, the agenda contains a number of different items.

During Item No. 2.0, which was noticed as the 2021-2022 annual report, discussion repeatedly took very lengthy detours into current issues and practices of the Commission, with no effort by the committee chair to rein them in. These had no notice on the agenda for this item, nor adequate notice elsewhere on the agenda. It was even admitted at the end of the meeting when these items were called that all of the items on the agenda except Nos. 1.1.a., 3.0, and 3.2 had in fact been discussed during Item No. 2.0.

- At the Sept. 30, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 91, Item No. 2.0 includes a rather lengthy description: "Annual Report Committee Co-Chair will guide commissioners in work distribution regarding the 2021-2022 Annual Report. This includes a review and update to Commission activities (site visits, resolutions, presentations, and/or individuals and/or organizations who should receive a tribute). Review draft portions of the report (e.g. site visits and resolution, list of commissioners and staff, and the outline for the chair's welcome letter [*sic*], to make necessary revisions." During this period, Commissioner Murawski, member of the committee, gave a report, to which staff made further contributions and committee chair Stevens and member Banuelos joined in, over a period of several minutes, on a site visit completed earlier the same week as the meeting, of Citywide Case Management, and issues regarding Grier's participation in the visit. The report listed on the agenda was for FY 2022, which ended on June 30, 2022. There was no way that it could encompass this visit, which took place on Sept. 28, during FY 2022-2023, though the visit had been discussed during FY 2022 as a prospect. A person whose interests would be affected by the item would not know to attend the meeting from this notice. This item mentioned nothing about Citywide Case Management nor this specific visit to it. Also, repeatedly, during Item No. 2.0, the discussion on what the 2021-2022 report should say were priorities for 2022-2023 veered off into what the priorities for 2022-2023 *should be*, always at the instigation of member Murawski, and there was no notice of this on the agenda for the meeting. Staff also made "a brief announcement" regarding a recent change to the Brown Act, during Item No. 2.0. This announcement is not exempt from the Sunshine Ordinance's notice requirements and should have appeared on the agenda.
- At the Oct. 19, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 92, at the end of the presentation of the BHS Director, Dr. Kunins, Item No. 2.0, the description of which is "boilerplate," copied mindlessly from one month's agenda to the next, Commissioner Murawski did more than ask questions of the presenter for clarification, make referrals to staff for factual information, or request staff to report back on any matter. Murawski made reports of her own activities that led into questions to the presenter that were requests for information beyond what the presenter had presented, rather than for clarification of what had been presented. She also made a request for a future presentation and told the presenter what she should have presented in place of what she had presented. Treating Dr. Kunins's presentation as testimony by a member of the public on matters within the subject-matter jurisdiction of the Commission but not on that day's agenda (Kunins is not a member of the BHC), these statements and requests did not

fit any of the exemptions from the notice requirement in *S.F. Admin. Code* § 67.7(d). Treating the presentation instead as a discussion item, the description contained insufficient detail for someone whose interests may be affected by the item to know whether to attend the meeting, and, if it had been sufficiently specific, Murawski's comments would have gone beyond it. The agenda for the meeting of the Implementation Committee on Nov. 8, 2022, attached hereto as EXHIBIT 131, does not show a discussion of the data notebook, which had nothing to do with the preceding or succeeding items on the agenda when it was discussed at the meeting. Staff and Commissioners discussed this item for seven minutes between Item Nos. 2.2 and 2.3. A person whose interests would be affected by the item would not know to attend the meeting from the agenda.

- The agenda for the meeting of the Commission on Dec. 17, 2022 ("annual retreat"), attached hereto as EXHIBIT 140, contained an un-meaningful description of a discussion-only item. Item No. 4.3, "Discussion around the funding of mental health and substance use programs and services in both private and public sectors of Mental Health Services" did not contain enough detail for someone whose interests were affected by the item to know whether to attend the meeting. This subject spans the entire funding aspect of the Commission's expansive subject-matter jurisdiction, everything from MediCal, patient payments, private insurance, and performance contracts with the state to city funding through Prop C and elsewhere for every kind of mental health or substance abuse service available in the City and County, all in five minutes! Even the chair asked during the meeting what this agenda item was really about! This would have been appropriate for a discussion of behavioral health as a financial system, i.e., a systemic overview. This is not at all what the item was, and the notice on the agenda was unhelpful to the point of misleading and deceptive. At the beginning of the discussion, Commissioner Murawski, who put this item on the agenda, said it was *actually* about "treatment on demand," the closure of the linkage center, and a brochure of ten sites. During the discussion, she also said it was about "wellness hubs" and the failure of Mental Health SF and people selling vouchers. Treatment on demand and people selling vouchers, if not also the closure of the linkage center, had to do with the failure of Mental Health SF. *Someone whose interests were affected by these items would not have known to attend the meeting from this description on the agenda.* The failure of Mental Health SF, treatment on demand, the "wellness hubs," and the brochure of ten sites would have made an adequate and far more specific item on the agenda, which would have told not only the public, but also the Commissioners themselves what to expect during the discussion, in order that they could participate meaningfully. There is some doubt as to whether this was a regular meeting. See the discussion under the last section of the last item in this complaint.

• At the Jan. 10, 2023, meeting of the Executive Committee, agenda attached hereto as EXHIBIT 143, a topic was discussed while the meeting had quorum but without adequate notice on the agenda. Item No. 2.3 on the agenda read "Discussion on the PHACS Program with possible decision (action item)." This was not enough detail for someone whose interests would be affected by the item to know whether to attend the meeting because PHACS was not spelled

out, nor better identified, on the agenda. A member said that they would agendize it for a meeting of another committee with a better description on the agenda. However, this did not dispose of the item, which was simply dropped. When a violation occurs, it *must* be ruled out of order by the chair or by vote of the Committee through a motion to *Appeal* the chair's ruling. Only then is the violation officially recognized as such. We ask for a finding of willful noncompliance because we warned them of this violation during public comment, the chair did not rule the item out of order, and no one raised a point of order regarding this item (despite agreement that no one beside the member who put it on the agenda knew what PHACS stood for).

Deleted: ¶

Use of "Boilerplate" Infinitely-Repeatable Agenda Items

The temptation to create an agenda by first copying all of the items from the previous agenda must be irresistible. However, it has to stop. Not only does it lead to desultory meetings that proceed by way of the chair calling out discussion topics that are the same from one meeting to the next ("Any discussion on Topic A this month? No? How about topic B? Topic C?"), but the anticipation of doing so leads committee and Commission chairs to formulate agenda topics in a bland and general way. The practice is insidiously self-perpetuating, because then members refrain from submitting their specific discussion-only items to the secretary or chair, in anticipation that the agenda will include everything from the previous month, and they will be able to cram it under one of the general topics previously announced. Finally, it contributes to a whimsical air in discussion material, an attitude of, "Well, it is questionable whether this is on topic. I wouldn't want to submit this as an item for the written agenda, but since I can just spontaneously blurt it out during General Topic C without going on paper, I'll wait until that comes up at the meeting and see how I feel about it then!" The results are agenda items that inform no one of whether anything will be discussed that affects their interests, because their interests are *specific* and the agenda topics are *general*.

This problem has actually gotten worse during the reporting period, rather than better. Once any item or topic of discussion is conceived, it appears on every agenda of two committees, as well as the Commission, for ongoing "updates." I.e., the conversation continues forever, and in triplicate. Even if no one has anything meaningful to report about a topic, the topic stays on the agenda forever, as if the Commission were a therapy group and the point were to air everyone's ongoing feelings about a subject. This is as bad as no notice of an item, because the public is required to attend every meeting of a body and each of two of its committees because a vaguely-worded and perpetually-included item might, at any given meeting, have material under it, which might include something in which they have an interest. In this sense, it is worse than no notice at all.

Some of these topics are so broad that they were not even inspired by a specific topic in the beginning. Rather, they have been engineered to exploit perceived gaps in open meetings laws to nearly the maximum possible extent. All of these perceived gaps are, however, illusory. Item 5.1 on all Commission agendas during the reporting period, "Suggestions of people, programs, or both that Commissioners believe should be acknowledged or highlighted by BHC" is intended to

exploit the exemption from the notice requirement of the Sunshine Ordinance for “purely commendatory” actions, but the Commission always neglects the requirement that these items must still pass a complicated supermajority vote as to whether the Commission learned of them after the agenda had been posted, *S.F. Admin. Code* § 67.7(e)(2)(B), to say nothing of the Brown Act requirement for a finding of urgency, *Cal. Gov’t Code* § 54954.2(b)(2), presumably because these conditions typically do not obtain, and these items would need no notice at all if they did. Violation is also avoided by Commissioners simply not voting on these items. If a Commissioner names a program during 5.1, staff issues a commendation on behalf of the Commission, as if the Commission itself had spoken. (Site Visits are handled the same way—if a Commissioner names one, correspondence goes to the site stating that “the Commission” has chosen their site for a visit, when no vote was taken, even at the committee level!) Item 5.2 on these agendas, “Report by members of the Commission on their activities on behalf of the Behavioral Health Commission as authorized” is nonsense—authorization has never once been given!—and is intended to exploit the exemption from notice requirement of the Brown Act for “a brief report on his or her own activities . . .” *Cal. Gov’t Code* § 54954.2(a)(3), which would also require no notice at all on the agenda. However, there is no analogous exemption from the Sunshine Ordinance for such reports, *see, S.F. Admin. Code* § 67.7(d), and so each report must have specific notice on the agenda. Item 6.0, “Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners” is intended to exploit the exemption from the notice requirement of the Brown Act for “take action to direct staff to place a matter of business on a future agenda,” *id.*, only it is unsuccessful even at this because a) BHC has adopted no special rule of order allowing for automatic referrals, b) the exemption is obviously for *postponing* matters to future meetings of the same body, not *referring* them to other bodies, and c) again, even if the exemption applied, there is no analogous exemption from the Sunshine Ordinance. BHC has continued their inclusion of these items on agendas going back to 2006, despite our complaining about it in file no. 20100 regarding their meeting on July 15, 2020, now over two years ago. BHC’s continued inclusion of these items on their agendas is an open invitation to their membership to violate the Sunshine Ordinance by spontaneously giving brief reports, making automatic referrals, or making “purely commendatory” requests under them. Certain committee agendas carry similar “boilerplate” items.

The problem is exacerbated still further by the fact that discussion items outnumber *true* action items by an order of magnitude at Commission and committee meetings, and discussion items are inherently more ambiguous as to the relevancy of any discussion to the item. When an action item is before a policy body, relevance of discussion is generally not a problem, because each speech must be for or against the proposed action. Discussion items are another story, and their equivalency in *S.F. Admin. Code* § 67.7(a) is deceptive. RONR (12th ed.) 4:8n6 (“It was found in the House of Lords of England that, when there was no definite motion pending, it was not possible to tell whether debate was germane . . .”). Although *S.F. Admin. Code* § 67.7(a) pretends to restrict discussion to a specified topic, the distinction between relevance and irrelevance is much less clear than with respect to a concrete proposal, and the agenda requirement only half-solves the problem. We favor a strict interpretation, as discussion-only

items are supposed to be *disfavored* by policy bodies. RONR (12th ed.) 4:7 (“Under parliamentary procedure, strictly speaking, discussion of any subject is permitted only with reference to a pending motion. . . .”) and 4:8 (“For a member to begin to discuss a matter while no question is pending . . . implies an unusual circumstance and requires permission of the assembly . . . in addition to obtaining the floor. . . .”). While this rule is relaxed in meetings of fewer than 13 people (the Commission had at most 12 during the reporting period), “[t]he general rule against discussion without a motion is one of parliamentary procedure’s powerful tools for keeping business ‘on track,’ and *an observance of its spirit* can be an important factor in making *even a very small meeting* rapidly moving and interesting.” *Id.* (emph. added). Otherwise, the Commission stands to be renamed “The San Francisco Taxpayer-Supported Behavioral Health Chit-Chat Society,” because this is substantially all it does.

For all that, we stop short of eliminating all repetitious items. If a Commissioner wishes to discuss the same issue month after month, and they are at least willing to obtain the floor and give more or less the same address each month, they must be allowed to do so, and a repeated agenda item would be in order. After all, an action item might be postponed from one meeting to the next unchanged, and debate under it might be range widely. The touchstone is always whether someone whose interests would be affected would know whether to attend the meeting. We note regarding this standard that there is no question of whether someone’s interests would be affected by the item. It is, for instance, impossible to imagine that anyone’s interests would be affected by the go-live date for the Commission’s new website changing from July to September. However, the language of the law states the standard as, *assuming that* someone’s interests *were* affected, the notice must be sufficient. And so the notice must summarize the specific content of the address, i.e., “The go-live date for the Commission’s new website has changed from end of July to end of September,” or “the Commission’s new website will allow staff to post material directly, without an intermediary,” not “Commission websites, old and new.” If the meeting is made superfluous by the agenda in some respects and members of the public forego attendance therefor, nothing is lost. It is not the purpose of the agenda to incite curiosity or draw spectators! Furthermore, many items contain a level of subject specificity that should be included on the agenda but was not. For example, “progress on RFP’s” versus a specific RFP; a member of the public might not be interested in RFP’s in general but might very well be interested in an RFP specific to their neighborhood, and so the detail is required to be included.

For this reason, BHC practices need to change. BHC needs to start each agenda with a blank sheet of paper, not the agenda for the previous month’s meeting. If staff wants to put an item on the agenda, they must find a member of the body who is willing to sponsor the item by asking the chair or secretary for its inclusion on the agenda on behalf of staff, and make the announcement themselves, on behalf of staff. Anything not so sponsored should be ruled out of order when it comes up. If it is not known that there is a *Commissioner or committee member who themselves wants to speak on an item* at that particular meeting, an agenda item must not be listed for it, and if there is new material, the item must be specific to the new material. Demands for “ongoing discussions” must therefore be suppressed; a new request must be made every

month. Members must not be asked to discuss matters on which none of them have anything they want to say. Members will have to get into the habit of, if they find out about or think of something during the month that they would like to discuss at a meeting, asking the chair or secretary to commit their specific matter or issue to the written agenda, rather than waiting during a meeting for a call-out on a general topic that will hopefully be on the agenda and maybe speaking at that time, maybe not. They must also get into the habit of, if they want to speak with the voice of the Commission or the committee, whether it is for a commendation or a site visit, putting their matter on the agenda in the form of a resolution, substantially in final form. If it is out of order for any reason, such as a doubt about its relevancy to the powers and duties of the Commission, then it should go on the agenda and be ruled out of order when it comes up, so that Commissioners or committee members will have the opportunity to challenge the ruling of the chair at that time.

The Commission's underlying rules of order allow any member of a policy body to get on the agenda for any regular meeting thereof.

[A] notice [of a motion] can . . . be sent to every member with the call of the meeting at which the matter is to come up for action, in cases where there is a duty . . . of issuing such a call. In such cases, the member desiring to give the notice writes to the secretary alone, requesting that the notice be sent with the call of the next meeting, and the secretary then does this at the expense of the society.

RONR (12th ed.) 10:51 (sq. brackets added). In the context of open meetings laws, which prohibit anything from being transacted *or discussed* without written notice on the agenda, this rule embodies a fundamental principle of parliamentary law, that “[e]ach individual or subgroup has the right to make the maximum effort to have his, her, or its position declared the will of the assembly to the extent that can be tolerated in the interests of the entire body.” *Id.* p. xlix. Thus, this rule cannot be suspended, even by a unanimous vote of the assembly. *Id.* 25:9 (“Rules which embody *fundamental principles of parliamentary law* . . . cannot be suspended, even by a unanimous vote. . . .” *emph. in orig.*). Members should get used to exercising it. (Nevertheless, the Commission has not only suspended this rule, but, in a frenzy of authoritarian feeling, has adopted a contrary rule that violates this fundamental principle. *Bylaws* Art. VIII, § 2, ¶ 1.a. (allowing ExCom to approve agendas for regular meetings of the Commission). This provision also violates another fundamental parliamentary principle that “a deliberative body is a free agent—free to do what it wants to do with the greatest measure of protection to itself and of consideration for the rights of its members,” RONR (12th ed.) p. 1, because it allows the Executive Committee, a minority of the Commission, to bind the larger remainder of the membership to sit through presentations that the Executive Committee alone may choose.) This may lead to drastically shorter agendas, which would not be saying much.

The words of the first sentence of *Cal. Gov't Code* § 54953.7 support the conclusion that actual application of Brown Act requirements to items to which it would apply is mandatory and not optional. “[G]reater access to their meetings than prescribed by the minimal standards set forth in this chapter. . . .” entails that “minimal standards set forth in this chapter” *are prescribed* for

the case in question. It does not say, “[G]reater access to their meetings than *may be* prescribed by the minimal standards . . .” It says, “than prescribed . . .” If there will not be any relevant proceedings subject to Brown Act requirements, then this entire sentence is without effect. If it were otherwise, this sentence would allow legislative bodies, through the “[n]otwithstanding any other provision of law” clause, to suspend the notice requirement of the Sunshine Ordinance by making less stringent special rules. For this reason, any special rules less stringent than legal requirements must be backed up by certainty of application of the Brown Act to the item at some later point.

The Commission's Practice of Inviting Reports on Commissioners' Own Activities is Unlawful Notwithstanding Cal. Gov't Code § 54953.7.

The Behavioral Health Commission's many practices in violation of the notice requirement of the Sunshine Ordinance are distinguishable from otherwise-similar practices of the Sunshine Ordinance Task Force and the Board of Supervisors. The above argument shows that there is a piper to be paid in the first sentence of § 54953.7. The Task Force and Board of Supervisors are paying them, but the Behavioral Health Commission is not.

Item No. 5.1 on agendas of all meetings of the Commission is a general heading under which Commissioners may give “a brief report on his or her own activities . . .” exempted from the requirement of a brief, general description on the agenda and public comment by § 54954.2(a)(3). Because of this exemption, including an heading for it on the agenda is “greater access . . . than prescribed by . . .” the Brown Act. “Notwithstanding any other provision of law,” then, would seem to suspend the local requirement of a proposed action or a statement that the item is for discussion only and a meaningful description and an opportunity for public address regarding it appearing on the agenda, which local requirement omits this exemption and would prohibit these reports without these provisions. This suspension would occur on the basis of insertion of a general heading, a mere sop thrown in the general direction of openness. But these reports do not have any component that would be subject to the Brown Act. There is no “access . . . prescribed by . . . this chapter. . . .” requisite for their exemption from the notice requirement of the Sunshine Ordinance. The reports are given, and these are the ends of each of the matters. Therefore, any reports given under this heading, without more, at meetings of the Commission violate the Sunshine Ordinance.

The Commission's Handling of New Business is Unlawful Notwithstanding Cal. Gov't Code § 54953.7.

Does the Behavioral Health Commission's practice for handling items of new business, more similar to those of the Task Force and Board of Supervisors, fare any better? The Commission's practice of putting a general heading on their agenda for verbal announcements of new business at the meeting (always Item No. 6 on agendas of meeting of the Commission) is distinguishable from the Task Force's and the Board of Supervisors' because the Commission has established no rule that these items be subject to automatic postponement or referral to one committee or another as claimed on their agenda or otherwise, and no such informal custom exists, either.

Consequently, an analysis of items of business proposed by Commissioners under this general heading over a two-year period dated appx. June 30, 2021, showed that 7 out of every 8 of such items were never reported back from, nor even discussed within, the committees to which they were ostensibly referred, and things have not relevantly changed since then. The chair of whatever committee apparently decides which very few items of new business are worthy of hearing and throws the remaining vast majority into the recycling bin. Under these circumstances, the public is afforded neither notice nor any opportunity to be heard on any of the lost items, which notice and opportunity might have made the difference as to them being lost. For the vast majority of these items, there is no applicability of the Brown Act upon which basis the suspension of local law through the first sentence of § 54953.7 would apply to the verbal notices at meetings of the Commission.

Under local law, then, the lost items would have required due notice on the agenda, and the public allowed to address the Commission on each. The difference between Commission practice and the Task Force's and the Board of Supervisors' rules is that that the latter two are rules which are faithfully followed. Both require the introduction of *all* new business to come up at some place where the Brown Act would then apply. The machinations behind the scenes are ministerial, rather than discretionary, with respect to openness (the only discretion being, in the case of the Board of Supervisors, whether the new business goes to committee or to the calendar for adoption without committee reference, and, if to committee, to which committee). Without these special rules specific to the legislative body, the new business would have been introduced directly in the committee or at the subsequent meeting, at both of which the Brown Act would then apply. The verbal announcements beforehand, without full public participation, are thus in addition to Brown Act requirements applicable to later meetings, congruent with the language of the first sentence of § 54953.7. Therefore, the verbal announcements in advance do not require more than a general heading on the agenda, notwithstanding the contrary provisions of the Sunshine Ordinance. Because Commission practice affords no Brown Act process with respect to the lost items, the Sunshine Ordinance requires that each item of new business at meetings of the Commission have a meaningful description, a statement that the item is for discussion only, and an opportunity for public address on the agenda for the meeting.

The Commission's Handling of Commendations is Unlawful Notwithstanding Cal. Gov't Code § 54953.7.

The Behavioral Health Commission's heading for commendations (always Item No. 5.2 on Commission agendas) is neither exempt from the Sunshine Ordinance through the first sentence of § 54953.7. The Commission's treatment of these items has historically been slightly inconsistent. To my recollection, once or twice in four years, the Commission has voted on them later, but only once or twice. The rest and vast majority of the time, staff hands out commendations like candy at the request of any individual Commissioner at a meeting and without any notice to or input from the public. The situation is roughly analogous to the nearly all items of new business that become "lost." In both cases, these items are never seen again, but instead of a discretionary process occurring without any public input separating some items for

full public treatment out from the vast majority, a ministerial process occurs in secret. Unlike the ministerial process that occurs at the Task Force or the Board of Supervisors, this one at the Commission does not subject every one of these items to Brown Act requirements later on. To the contrary, the Commission's process consigns every one of them to oblivion. Again, unlike the Task Force's and Board of Supervisors' verbal notices, the spontaneous introductions under this item are not additional to Brown Act requirements later to be fulfilled. They are, rather, instances of avoidance of any public process other than the announcement itself, which is deficient under local law. Even ignoring the fact that the Commission is here reduced to a rubber stamp in the hands of individual Commissioners, these items are "brief announcements," each prohibited by local law without either a proposed action or a statement that the item is for discussion only and a meaningful description, and an opportunity for members of the public to address the Commission, on the agenda. *S.F. Admin. Code* §§ 67.7(a) and 67.15(a).

Furthermore, the Commission's process is only ministerial because a discretion that ought to be exercised in public is not exercised at all. Truly, this is a case of the public losing "control over the instruments they have created." § 54950. *See, also, S.F. Admin. Code* § 67.1(f) ("control over the government they have created."). On the other hand, if the Commission decides to grow up and take responsibility for its public name and expense as a body, they will also need to begin voting on commendations. This appears to be assumed by *S.F. Admin. Code* § 67.7(e)(2)(A), which exempts "purely commendatory" items from notice requirements without them meeting the standard of "threaten serious injury to the public interest if action were deferred to a subsequent regular or special meeting . . ." Such commendations-without-notice must still meet the requirements of a special finding of "a need to take immediate action," § 54954.2(b)(2) (emph. added), and another special finding that "the need for action came to the attention of the local agency subsequent to the agenda being posted . . ." *id.* and *S.F. Admin. Code* § 67.7(e)(2)(B) (emph. added). One imagines that the vast majority of commendations not meeting this standard for exemption from notice requirements would nevertheless still require a vote. "Action taken," in the above, means a collective decision, a promise to make a yes or no decision, or a vote. § 54952.6 (applies to the Sunshine Ordinance because the Ordinance is *in pari materia* with the Brown Act). Only the certainty of such a vote would justify suspension of the notice requirements of the Sunshine Ordinance through the first sentence of § 54953.7.

The Commission's Handling of Committee Reports is Unlawful Notwithstanding Cal. Gov't Code § 54953.7.

The Behavioral Health Commission's non-meaningful headings for their several committee reports, always grouped together unnumbered under Item No. 4.0 on agendas for Commission meetings and copied mindlessly from one agenda to the next in perpetuity, are also not permitted by this rule. They are, at best, "brief announcements" prohibited by local law without statements that each is for discussion only, meaningful descriptions, and opportunities for public address on the agenda. Again, they are subjected to no Brown Act requirements at any other time that might allow for suspension of the Sunshine Ordinance notice requirements under the first sentence of § 54953.7. (Unlike most deliberative bodies, committees of the Commission are subject to

mandatory reporting at each meeting of the Executive Committee and the Commission. Therefore, no vote to report normally occurs at the committee level. If a vote to report does occur, it may be and commonly is ignored by the reporting member, who merely *ad libs* about what happened at the meeting, if any, under this heading. If a resolution reported from a committee comes before the Commission at all, it is introduced under a different heading, and a second is sought, just as if the resolution were only the proposal of an individual Commissioner.)

These Items Together Take up a Substantial Portion of the Meetings of the Commission.

The Behavioral Health Commission is exploiting the suspension of local law provided by the first sentence of § 54953.7 entirely beyond its true extent, and this is having a substantial impact on public participation in its meetings. At the most recent meeting of the Commission on Nov. 16, the above items took 28 minutes, in total. During this time, Commissioners discussed nine or ten different subjects. Members of the public were given the opportunity to directly address the Commission but twice regarding them, with the benefit of notice of any of these subjects appearing on the agenda not even once, when there will very likely be no further proceedings subject to the Brown Act on any of them. The public is thus effectively prevented from participation in a substantial portion of Commission meetings in violation of local law.

This characteristic type of violation of the meaningful description requirement occurred on the following dates, in the following ways:

- The agenda for the regular meeting of the Commission held on Apr. 20, 2022, attached hereto as EXHIBIT 4, contained three “boilerplate” items that actually had nothing under them or the Co-Chair allowed no parliamentary procedure on these so-called “[**action items**]”. The first item under Item No. 3.2, “Approve the minutes of the Behavioral Health Commission meeting of February 16, 2022 . . .” and 3.3, “BHC to review, discuss and vote on the motion put forth by Co-Chair Vigil – **see posted below [action item]**” were carryovers from previous agendas. Both items in total were skipped by the Co-Chair, after I had orally commented on the minutes in addition to my written comments on them. They were otherwise not even discussed and should have been left off the agenda entirely. The Commission lacked the necessary supermajority to pass Item No. 3.5 at this meeting. However, it was neither postponed with a motion and vote nor downgraded to “for discussion only” status. It, too, was simply not called up, and no Commissioner objected.
- The agenda for the regular meeting of the Site Visit Committee held on May 10, 2022, attached hereto as EXHIBIT 14, contained “boilerplate” items, specifically Item No. 2.1, “Opening comments by the Chair, Bahlam Javier Vigil.” This agenda item contained substantially no useful information, and should have been dropped from the agenda. Possibly because I sent email complaining of this fact in advance of the meeting, attached hereto as EXHIBIT 9, this item was not called up.
- The agenda for the regular meeting of the Implementation Committee held on May 10, 2022, attached hereto as EXHIBIT 15, contained “boilerplate” items. Specifically, Item Nos. 3.1, “Members report on their research and actions” and 4.1 “Discussion developing

follow-up research, presenters to the committee and action item [*sic*]. These are analogous to Item Nos. 5.2 and 6.0 on agendas for the Commission (discussed above). We warned the committee in writing in advance of the meeting that these items were inadequate. EXHIBIT 11. Nothing was brought up under these items at the meeting, and so no violations occurred (but they remain on the agenda as an open invitation to violations, despite my repeated admonishments over email and “in person”, including at this meeting, during “FINAL PUBLIC COMMENT”).

- The agenda for the regular meeting of the Executive Committee held on May 10, 2022, attached hereto as EXHIBIT 16, contained several “boilerplate” items. Specifically, Item Nos. 1.2, “BHS/BHC Websites, Old & New: Discussion and possible action”, 2.2, “Vote to approve unadopted minutes from March 9, 2022 Executive Committee meeting [action item],” and 2.4, “Vote to move the newly revised By Laws [*sic*] on to the full BHC for review and potential adoption [action item]” had all been copied from the agenda for the Apr. 12 meeting of this committee, at which Items 2.2 and 2.4 had been approved. At this particular meeting, under Item No. 1.2, it was related that the website included the ability to post “live” media streams, and also would allow staff to post agendas directly (thus to correct errors in the posting of documents, such as had occurred in the posting of the Implementation Committee meeting earlier that day), and was scheduled to go live in June. This is what needed to appear in the description for this item. We informed them of this defect via email in advance of the meeting, attached hereto as EXHIBIT 12, and we ask for a finding of willful noncompliance. As for the other items, Item 2.2 was quickly discussed and 2.4 skipped. Both should have been left off of the agenda entirely.
- The agenda for the Commission’s regular meeting on May 18, 2022, attached hereto as EXHIBIT 32, included meaningful descriptions of neither Item Nos. 5.1, 5.2, nor 6.0 (described *supra*). BHC adjourned the meeting before reaching these items, and so no violation occurred.
- The agenda for the regular meeting of the Site Visit Committee on June 7, 2022, attached hereto as EXHIBIT 39, included a “boilerplate” description for item no. 2.1, “**ITEM 2.0 Chair’s Report / Discussion:** Report on site visits and strategy / **2.1** Opening comments by Chair, Bahlam Javier Vigil” The report included (in addition to an item present elsewhere on the agenda) the proposed addition of Commissioner Murawski to the committee, and this should have appeared on the agenda (though Edgewood was listed with one other site under item 2.4). We complained of this in an email sent to the committee prior to the meeting, and our complaint was ignored. We ask for a finding of willful violation. Item No. 2.2, “Implementation of the strategy of every commissioner participating in site visits among the 140 agencies, that the Department of Public Health and Behavioral Health Services manage,” contained no information; it was skipped, and should have been dropped from the agenda. Item No. 2.3, “Discuss the importance of the Behavioral Health Commission legislative mandate: Review and evaluate the City and County’s mental health needs, services, facilities, and special problems” contained only an announcement by staff of the importance of contacting staff when planning a site visit. This had nothing to do with *the importance of BHC’s legislative mandate*, and should

have had specific notice on the agenda, except that staff are not members of the committee and have no right to get on the agenda with their own items. It should have been dropped from the agenda.

- The agenda for the regular meeting of the Implementation Committee on June 7, 2022, attached hereto as EXHIBIT 40, included several “boilerplate” items. Item No. 1.2, “BHS/BHC Websites, Old & New: Discussion and possible action” is repeated from one agenda to the next, even across meetings on the same day. At this particular meeting was to be given a demonstration of the new website. However, this was unsuccessful. Nevertheless, it should have been on the agenda. Item No. 2.3 “**2.3 Review the 2022 Data Notebook:** Discussion on BHC participation on How to do the Data Notebook for 2022” was one. Commissioner Murawski, not even a member of the committee and who should thus have been prevented from speaking until public comment, *id.* 50:27, characterizing her address as “on all the items under 2.0,” returned to the topic of grievance procedures, Item No. 2.1 on the day’s agenda, which had already been closed. The committee chair did not even discourage this. To the contrary, he and another member of the Commission nonmember of the committee joined in the discussion! Anyone interested only in Item No. 2.1 would have hung up after it had been closed the first time, and would not have been notified by the agenda of this significant additional discussion, actually longer than the one that had been correctly noticed, under a different item. Item No. 3.1 “**3.0 COMMITTEE MEMBERS [sic] REPORTS [¶¶] 3.1 Members report on their research and actions**” essentially mirrors Item No. 5.2 on agendas for Commission meetings (see above). Item No. 4.1, “**4.0 NEXT ACTION ITEMS FOR COMMITTEE MEMBERS [¶¶] 4.1 Discussion developing follow up research, presenters to the committee, and action item [sic]**” mirrors Item No. 6.0 on agendas for Commission meetings (see above). Because the computer automatically ended this meeting at 5:00 p.m., these items were not reached at this meeting, and so no material was introduced under them and no violations occurred, but they appear on every agenda of this committee. (This meeting also proceeded without a quorum, so no violations could have occurred if the meeting had reached these items, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the regular meeting of the Executive Committee on June 7, 2022, agenda attached hereto as EXHIBIT 41, included several “boilerplate” items. “**ITEM 3.0 New BHC Business**” was intended to exploit the exemption from the notice requirement of the Brown Act for directing staff to place an item of business on a future agenda. *Cal. Gov’t Code* § 54954.2(a)(3). However, there is no analogous exemption from the Sunshine Ordinance, *see, S.F. Admin. Code* § 67.7(d), and so items of new business must be submitted in advance and included on the agenda individually (with periods for the public to address the committee). They had planned to discuss the data notebook during this item because they apparently forgot that they had already agendized it under Item No. 1.0 (second sentence). During this item, Commissioner Wynn advertised her

nonprofit's involvement in COVID testing in her neighborhood. We ask for a finding of willful noncompliance because we had told them during public comment on Item No. 2.2 because they had been talking about using Item No. 3.0 as a dumping ground for motions that were not on the agenda (such as recommendation to the Executive Committee from the Implementation Committee in "assembly-line" fashion), and they did not rule Commissioner Wynn's "motion" out of order. Item No. 1.2 on this agenda also lacked a meaningful description.). During Item No. 1.2, "BHS/BHC Websites, Old & New: Discussion and possible action," Staff (Grier) announced that the new BHC website would be "very basic," but would allow the Commission to implement "things such as grievances." This is what should have appeared on the agenda, because the description that did appear is copied from one agenda to the next without thinking, while the actual content changes. The public should be able to tell which meeting to attend based on the content specific to that meeting. Item No. 2.3, "Vote to move complete consolidated resolution, authored by Co-Chair Vigil and Commissioner Murawski previously viewed and voted on. A carry over from the April 20, 2022 meeting [action item]" is not a meaningful description because there were three motions attached to the agenda, and only two items on the agenda referring to them. We complained to the committee about this in advance of the meeting, EXHIBIT 37. However, they ignored our email, and so we ask for a finding of willful violation.

- The agenda for the Commission's regular meeting on June 15, 2022, attached hereto as EXHIBIT 43, included meaningful descriptions of neither Item Nos. 5.1, 5.2, 6.0, nor any of the items under "**ITEM 4.0 REPORT FROM THE COMMITTEES** [sic]." The items under 4.0 are copied from one agenda to the next and are insufficient to alert someone whose interests may be affected by the item, no matter what is actually transacted or discussed under them. "**Implementation Committee, Chair Stephen Banuelos / Discuss focus of Implementation Committee**" is a placeholder for discussing whatever was brought up at that committee that month which specific content needs to appear on the agenda. Same for "**Site Visit Committee, Chair Vigil / Report on Site Visit Strategy in completing selected site evaluations,**" and for "**Strategic Planning Ad Hoc Committee, Commissioner Bohrer – / Update on the progress of the current draft of the strategic plan – See attached below**" (Note: The "Strategic Planning Ad Hoc Committee has not met since Oct. 7, 2020!) Item Nos. 5.1, 5.2, and 6.0 were as described in the header for this section. The chair unilaterally adjourned the meeting before reaching these items at this meeting, and so nothing was discussed or transacted under them. Consequently, no violations occurred due to these items.
- The agenda for the regular meeting of the Site Visit Committee on July 12, 2022, attached hereto as EXHIBIT 61, included the following "boilerplate", recyclable item descriptions: Item 2.1, "Opening Comments by Chair," 2.2, "Implementation of the strategy of every commissioner participating in site visits among the 140 agencies, that the Department of Public Health and Behavioral Health Services manage," and 2.3, "Discuss the importance of the Behavioral Health Commission legislative mandate: Review and evaluate the City and County's mental health needs, services, facilities, and

special problems.” These are the same items that have appeared on every agenda since this committee was formed in Oct. 2020. These descriptions did not adequately describe the matters discussed under them. Item 2.1 was a vapid and contentless description. What was actually announced under it were site visits to Citywide and Edgewood, which at least had notice elsewhere on the agenda, under Item 2.4. Under Item No. 2.2, they actually discussed sending out emails asking for Commissioners to pick three sites to visit, but then settled on the idea of, instead, announcing the request at the meeting the following week and sending out an email in advance of the meeting (both of which any Commissioner has the power to do, the former with notice on the agenda). No votes were taken. Although these fit under the general rubric described on the agenda, the agenda should have described the specific proposals being “discussed” and an order to staff is an action item. RONR (12th ed.) 10:24 (“**Orders (Instructions to Employees)**” “In organizations with employees, the assembly or the board can give instructions to an employee in the form of an *order*, which is written just as a resolution except that the word ‘*Ordered*’ is used in place of the word ‘*Resolved*.’ . . .” *emph’s in orig.*). Under Item No. 2.3, what was actually discussed was one of the Co-Chairs’ (not even on the Committee) proposals to “piggyback” BHC site visits on BHS site visits, a proposal which has been discussed on and off since 2021. The agenda should have contained this specific information, which was not, in fact, anything whatsoever to do with *the importance of BHC’s* very broad legislative mandate. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the meeting of the Implementation Committee on July 12, 2022, attached hereto as EXHIBIT 62, included meaningful descriptions of neither Item Nos. 1.2, “Review progress of the onetime bylaws non-public workgroup meeting,” 2.1, “**Follow up on Grievance Procedures.** Update on BHC strategy to improve Grievance Procedures,” 2.2, “**Strategic Plan Status.** This is an ongoing item on the Implementation Committee agenda and will allow the committee/BHC to have an ongoing sense of our progress on meeting goals (updates if any),” 2.3, “**Review the 2022 Data Notebook:** Discussion on BHC participation in How to do the Data Notebook for 2022,” 2.7, “**MHSA Presentation to BHC:** discuss questions about the MHSA draft.” 3.1, “Members report on their research and actions,” nor 4.1, “Discussion developing follow-up research, presenters to the committee and action item [*sic*]”. These are “cud-chewing” items. It is now known whether there is anything to discuss under any of them, but there once was, at least, and this is enough for the committee to endlessly regurgitate and “chew the cud” regarding them, then swallow, repeat. It also makes the committee look terribly busy to endlessly cycle through them, which is the ultimate objective to be achieved. Where there is something new, it does not appear on the agenda. Regarding item 1.2, also discussed in the previous section, “reviewing progress” of anything is hardly specific enough for an agenda item. The specific progress to be reviewed must appear on the agenda. When this item was called, it was revealed that the committee in

question had never even met. Item 2.1 is noticed using the words “follow up” and “update”. These are words used by the Commission when it doesn’t have anything to say and is putting something on the agenda for the sake of reserving a space in time during which something specific, not included in the agenda, might be discussed, if any. Under this item, Commissioner Bohrer announced that she was on a committee on homeless shelters, that they had recognized that something needed to be done about the discharge process, and had asked BHS Director Dr. Kunins to do something about it, were waiting to hear back, and suggested that the Commission ask Kunins to report on it at the Commission meeting the following week (which should have required a motion). It is questionable what or whether this had anything to do with “the grievance process,” as advertised, it should have been its own item, and should have been introduced at the Commission level. Also under this item, Co-Chair Banelos announced the results of his conference with Kunins on the item and that she was aware that there was no BHS Ombudsman currently. Banelos announced an idea to get peer-to-peer services involved in “maneuvering” complaints that he planned to bring up with Kunins, as well as asking for reinstatement of an Ombudsman position. Certainly, the advisements to Kunins should have been an action item on its own and introduced at a meeting of the Commission. Otherwise, Co-Chair Banelos is using his position to bring his own personal peevishness and ideas before the BHS Director. None of this was on the agenda, but all of it clearly would make a difference as to whether a member of the public would attend the meeting. Item 2.2 actually announces that it is a “boilerplate” agenda item. The strategic plan covers everything that the Commission does. Consequently, “updates” to the strategic plan is simply too vague to be of any use to a member of the public trying to decide whether to attend the meeting. Moreover, anything under this item is likely to be redundant to other activity at a meeting. At the very least, an effort needs to be made on someone’s part to find out in advance of the meeting whether anything will be introduced under this item, and, if so, the specifics of whatever new material needs to be placed on the agenda. In fact, under this item, it was announced that information was needed for the plan about the next item on the agenda! Item 2.3 was this item. What was actually discussed hurriedly under this item was that the data notebook was the responsibility of staff, and that Commissioner Bohrer would be the “go to” person for this item (and she would go to staff). This should have been on the agenda. Item 2.7 was in fact an “empty” item; nothing was announced or discussed under it. It should have been left off of the agenda. Item 3.1 is analogous to Item 5.2 on agendas for Commission meetings (see above). Item 4.1 is analogous to Item 6.0 on agendas for Commission meetings (see above). No one volunteered announcements or reports under items 3.1 or 4.1 at this meeting, so it cannot be said that material was introduced under these items without adequate notice. On the other hand, these items are fairly meaningless and would not have been adequate for anything announced or reported under them. They clutter up the agenda, and over-noticing of this sort can serve to obscure agenda items that are actually meaningful, as well as give the appearance of business when the committee is actually doing very little, which is, I suspect, their true purpose.

- The agenda for the meeting of the Executive Committee on July 12, 2022, attached hereto as EXHIBIT 63, included meaningful descriptions of item nos. 1.0, "Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives. Discuss commissioner input on how to do the Data Notebook for 2022," 1.1, "Governor's Care Court Proposal update," 1.3, "Discuss progress of BHC complaint process," 1.4, "Covid testing being discontinued," and 3.0, "New BHC Business," i.e., many of the very same items also considered by the Implementation Committee during the previous hour, making the committee process into a pointless subterfuge. Under Item No. 1.0, specific proposals for intervening in the budget process were discussed, i.e., that staff attend Board of Supervisors meetings. This was not "discussion of the need," but a proposal to meet that need and an order to staff. It should have been an action item. RONR (12th ed.) 10:24 (*supra*). They also discussed the MHSa hearing they were required to hold the following week as a way to meet this need. It was these that should have been put on the agenda. The Data Notebook was not in fact discussed, and should have been left off the agenda. Under item 1.1, the update that was given was strictly on state action regarding the bill. The agenda was not specific enough, as it implied that the Commission, as opposed to the State Legislature, may be taking some action regarding the care court proposal. This committee had previously discussed taking action under the same agenda item at earlier meetings. Under item 1.3, it was only announced that the director of BHS had been made aware that the position of Ombudsman for complaints was unfilled, and the agenda should have contained this. Under Item 1.4, Discontinued funding for testing specifically for the African-American community in Bayview/Hunter's Point was discussed, and this should have appeared on the agenda. Under Item No. 3.0, "New BHC Business," the committee chair stated that all such business should be sent via email in advance of the meeting for specific inclusion on the agenda, but this committee chair is currently prevented by law from continuing to serve on the Commission, and it remains to be seen whether this practice will continue. This was the first time such an announcement had been made.
- The agenda for the July 20, 2022, meeting of the Commission, attached hereto as EXHIBIT 72, includes a number of "boilerplate" agenda items. Specifically, all of the items under "ITEM 4.0 REPORT [*sic*] FROM THE COMMITTEES" are carried over from one meeting to the next, and say absolutely nothing about what will be discussed at this particular meeting. The first of them, "**Implementation Committee, Chair Stephen Banuelos** / Discuss focus of the Implementation Committee," says nothing except the name of the committee and the name of the reporting member. In fact, no report was even given under this heading, and so it should have been left off of the agenda. The second report, "**Site Visit Committee, Chair Vigil** / Report on Site Visit strategy in completing selected site evaluations," also says nothing except the names of the committee and its reporting member. The report under this heading was a regurgitation of what had been discussed at the meeting of this committee the previous week, i.e., how hard it is to set these up, the efforts that staff were making, and the provisional assignments to site visit teams. The assignments were creations of committees and

therefore action items. If they were premature because staff had not been successful in actually contacting the sites, then this item should have been dropped from the agenda. Unfortunately, the Commission's *Bylaws*, attached hereto as EXHIBIT 29, require that each committee report at every meeting of the Commission and its Executive Committee, Art. VIII, § 1, ¶ 3.f, so desultory reports are required. The agenda should have specified the actual contents of the report, i.e., what the provisional teams and sites selected were. (The sites selected should also have been an action item, since no instruction was ever given to this committee to select sites on behalf of the Commission, and this should have occurred before staff attempted first contact. Staff actually sends out correspondence beginning with a statement that the Commission has selected them for a site visit as the first contact.) The third report, "**Strategic Planning Ad Hoc Committee, Commissioner Bohrer** – / Update on progress of the current draft of the Strategic Plan – **see attached,**" is similarly uninformative and repeated from one agenda to the next. Again, no report was actually given under this heading, and the item should have been dropped. As usual, this agenda included the reports discussed at the beginning of this section, under the usual Item Nos. 5.1, 5.2, and 6.0, all of which are repeated from one agenda to the next without alteration. Under Item 5.1, Co-Chair Banuelos attempted to bring his unagendized discussion topic on ending the meeting regularly at 8:00 p.m. (really an action item, since it requires a vote) and was shut down by staff and another Commissioner. As noted in the previous section, notice needed to appear on the agenda. Under this item, Commissioner Bohrer "highlighted" Lieutenant Mario Molina of the Crisis Intervention Team of the SFPD. This needed to be on the agenda. Even if it was "purely commendatory" action (there was no vote), it would still need findings of urgency and that no one on the Commission learned of it until after the agenda had been posted, adopted by specific supermajorities. *Cal. Gov't Code* § 54954.2(b)(2). Under Item No. 5.2, nothing was proposed and the item should have been dropped from the agenda. Under Item No. 6.0, Co-Chair Banuelos reported that Dr. Kunins had reported no ideas on how to get the Board of Supervisors to appoint a Sitting Supervisor to the Commission. This was "a brief report on his or her own activities," exempt from the notice requirement of the Brown Act, but not that of the Sunshine Ordinance, and it should have had notice on the agenda and an opportunity for the public to address the Commission. Also under this item was a discussion between Commissioner Parks and the others regarding her proposed attendance at MHSF Working Group meetings. This could have been formalized as a motion to commit to Commissioner Parks, or else it was a discussion. Either way, it needed notice on the agenda. Public comment was called at this point, but in fact Commissioners were not through with the item. Commissioner Murawski asked to put a presentation on the agenda for the following meeting. This should have been on the agenda for a vote and an opportunity for the public to speak. Murawski then proposed to have the Controller present to the Commission regarding patient/staff ratios. This too should have been on the agenda for an opportunity for the public to speak and a vote. Finally, Murawski proposed a "roundtable" with the Office of Police Accountability, which also should have been agendized with an opportunity for

public input and a vote. We complained to the Commission via email sent in advance of the meeting of these violations apparent from the agenda, email attached as EXHIBITS 66 and 67, and the chair failed to rule them out of order at the meeting. Consequently, we ask for a finding of willful noncompliance.

- The agenda for the *ad hoc* committee to propose an annual report, in their agendas for Aug. 1 and 5, 2022, attached hereto as EXHIBITS 76 and 78, contained a “boilerplate” “ITEM NO. 4.0 NEW BUSINESS [Discussion only]” This item further specified, “Suggestions for further agenda items to be referred to the Executive Committee and for future trainings and orientations of future Commissioners.” This was not adequate to inform someone whose interests would be affected by the item of whether they should attend the meeting, and thus violated *S.F. Admin. Code § 67.7(a)*. This item was not called at the meeting on Aug. 1.
- The agenda for the Sept. 21, 2022, meeting of the Commission, attached hereto as EXHIBIT 89, included the usual “boilerplate” item nos. 5.1, 5.2, and 6.0, described at the beginning of this section, as well as “boilerplate” committee reports under Item No. 4.0, mindlessly copied from one agenda to the next, despite my announcing the SOTF’s decision in my favor regarding these at multiple committee meetings in August and September, as well as at this meeting. Nothing was transacted or discussed under these items at this meeting, except that chair Banuelos made a referral to the Executive Committee of a motion to approve an *ad hoc* committee to compose an agenda for the annual retreat in December. Notice of this should have appeared on the agenda. Because the Commission has ignored so many of my verbal warnings, we ask for a finding of willful noncompliance. These items continue to be mindlessly copied from one agenda to the next, an open invitation to violate the Sunshine Ordinance, to begin again just as soon as I stop monitoring compliance.
- Item No. 3.3 on the agenda, attached hereto as EXHIBIT 91, for the Sept. 30, 2022, meeting of the *ad hoc* committee to compose the annual report, explicitly stated, “Site Visit Report – update,” where the chair introduced the site visit conducted earlier the same week and covered earlier in the meeting under Item No. 2.0. Member Murawski, who is now also chair of the Site Visit Committee, then gave a preview of meetings in two weeks, at which sites would be selected to visit, Commissioners assigned to them, etc. Member Banuelos then asked whether he had a conflict of interest in visiting a site with which Murawski claimed she had a conflict of interest because she previously lived there or at another property under the control of the same organization, and Banuelos had previously worked on their contract with BHS. This agenda item, mindlessly copied from one agenda to the next, did not include these requisite specifics, and what appeared was insufficient to alert someone whose interests would be affected of whether they should attend the meeting. I ask for a finding of willful noncompliance because I told them that this item and others under Item No. 2.0 lacked the requisite detail, citing this section and describing its requirements, and they went ahead and gave the report under this inadequate description anyway. The report or discussion was not timed exactly but appeared to have lasted over five minutes.

- At the meeting of the Commission on Oct. 19, 2022, agenda attached hereto as EXHIBIT 92, During Item No. 1.1, which was labeled only "**Report from the Commission Co-Chair and the Executive Committee,**" Co-Chair Banuelos discussed three standing orders and special rules of order which he was apparently making unilaterally, without a vote from the Commission: 1) That public comment would be limited to two minutes and would be called at the middle of the item, with a second public comment before the vote on actions to be taken (in conflict with *S.F. Admin. Code* § 67.15(c), requiring that the Commission adopt a special rule of order allowing each member of the public up to three minutes to address the Commission); 2) That there would be informal work-groups as well as *ad hoc* committees, which work groups would be advisory only and would report to the Commission; and 3) Public commenters on presentations would not be allowed to ask questions of the presenter. He said that meetings would be more like the meetings of the Health Commission with these changes. These announcements took appx. three minutes, but did not fit any of the exemptions from the notice requirement listed under *S.F. Admin. Code* § 67.7(d). However, this violation was incomplete because a quorum was not present for this portion of the meeting. We list it here for guidance purposes. The agenda for this meeting continued to include the usual "boilerplate" agenda items 4.0, 5.1, 5.2, and 6.0, the latter three of which are discussed above, at the beginning of this section. During Item No. 4.0, the report of the Site Visit Committee, labeled only "**ITEM 4.0 REPORT FROM THE COMMITTEES / Site Visit Committee, Chair Vigil / Report on Site Visit strategy in completing selected program reviews,**" the results of a recent Site Visit to Conard House was reported without notice on the agenda. Also during this item, an account was given of a presentation by Citywide Case Management to this committee during the meeting this week, at which one member of the Commission, who was ex officio member of the committee, attended. Also under this item was "**Implementation Committee, Chair Stephen Banuelos / Discuss focus of implementation Committee.**" During this report, a discussion was held as to whether the agenda for the December retreat should be taken up by this committee, and also an announcement that the 2021-2022 had listed a number of issues as ongoing issues to be taken up by this committee moving forward. Also under this item was "**Strategic Planning Ad Hoc Committee, Commissioner Bohrer / Update of progress of the current draft of the Strategic Plan – see attached below.**" Under this report, Commissioner Bohrer stated that her committee hadn't met, that she had no members, and a discussion was held regarding its tasks and relationship to the Implementation Committee, and whether the informal work group planning the retreat (the strategic plan is usually a topic at the retreat) could do its work. During Item No. 6.0, labeled only "**ITEM 6.0 NEW BUSINESS (Discussion only) / Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners,**" Co-Chair Vigil announced that a persistent problem he had noticed during site visits was the shortage of staff, high level of burnout, and low pay among both contractors and BHS. Also during this item, volunteers were solicited for an informal work group to advise the chair on an agenda for the December retreat.

- At the meeting of the Implementation Committee on Nov. 8, 2022, the agenda for which is attached as EXHIBIT 131, Item 2.2, "**Strategic Plan Status:** This is an ongoing item on the Implementation Committee agenda and will allow the committee/BHC to have an ongoing sense of our progress on meeting goals (updates will take place at the retreat, if any)" was again a "cud-chewer", with nothing to be discussed under it, and should have been left off of the agenda (this was the first time that this committee had met with quorum since July). Item No. 3.1 "Members report on their research and actions" was not a meaningful description, and under it, Commissioner Murawski (not a member of the Committee but allowed to speak without an opportunity offered to other members of the public) discussed a recent CALBHB/C training she attended and the new legal requirement for a veteran-associated Commissioner discussed at the training, and Jackson-Lane discussed that she and Commissioner Stevens were on a panel at a conference on the state of black mental health, representing San Francisco Mental Health Education Funds, Inc. These discussions (which involved other committee members) together took eight minutes. This item did not contain enough detail for someone whose interests were affected by the item to know to attend the meeting. Then, Item No. 4.1, "developing follow-up research, presenters to the committee, and action items," was called. Banuelos proposed a presentation by Behavioral Health Services on Child, Youth, and Family and Transitional Age Youth issues. At this point also, Committee Member Parks raised a point of inquiry about a totally unrelated issue: the planning of the annual retreat. This item neither contained enough detail to inform someone whose interests would be affected by the item to know whether to attend the meeting, and took up at least three minutes. I addressed the committee on both Item Nos. 3.1 and 4.1 that the descriptions of the items were inadequate to notice any kind of discussion whatsoever under this section. My comments were not allowed until the end of the item, but the 3.1 comment came right before 4.1, to which it was equally relevant. We ask for a finding of willful noncompliance on both items 3.1 and 4.1 because I have been yelling at them and filing formal complaints about these items for literally years. Even for 3.1, they well knew, and their actions were a deliberate provocation.
- The agenda for the meeting of the Behavioral Health Commission on Nov. 16, attached hereto as EXHIBIT 138, showed the usual generic items copied from one agenda to the next: The committee report items, plus the usual Item Nos. 5.1, 5.2, and 6.0, described in the introduction to this section. Before these items, however, it was discovered that a quorum had been lost somewhere around 8 p.m., and the Commission continued to meet for some 45 minutes and discuss a plethora of different issues without notice under these items. We include this item for advisory purposes, exemplary of what the Commission probably would have done if it had had a quorum.
- On the agenda for the Feb. 7 meeting of the Executive Committee, attached hereto as EXHIBIT 145, item No. 1.0, "BUSINESS—Discuss the importance of the Behavioral Health Commission being included in the budget approval process" is copied over from one agenda to the next without any thought as to the specific material to be discussed at the particular meeting. As a result, the public has no idea whether or not to attend the

meeting ascertainable from the agenda. At this particular meeting, this item was the occasion for a ten- to fifteen-minute discussion regarding material only distantly related to the budget approval process. Specifically, for several minutes, the chair and a member talked about the new mobile SCRT teams and whether the Commission could perform a site visit on them. Then, the member talked about a PHACS program that she had been unable to research through DPH Sunshine. The issue with both programs seemed to be the contract with the City, which linked them to the budget process, because they must have contracts in order to get paid. While this connection with the agenda item was tenuous at best, the agenda item should have contained specific notice of the SCRT teams and PHACS so that the public could have made an informed decision of whether to attend the meeting on the basis of the agenda.

Failure to Include "the Proposed Action"

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda, that items on which action is proposed to be taken by the policy body include the proposed action. BHC and its committees violated this requirement on the following dates, in the following ways:

- At the regular meeting of the Implementation Committee held on May 10, 2022, the agenda for which is attached hereto as EXHIBIT 15, action probably was taken on Item No. 2.3, "**Review of the Care Court Proposal:** Discussion on State Care Court Proposal; what shall BHC do?" but no action was listed on the agenda. A decision may have been made to "take" the issue to the Executive Committee for presentation to the Commission (however, the item was already on the agenda for this meeting). No vote was taken, but the definition of "action taken" in *Cal. Gov't Code* § 54952.6 encompasses informal agreements. Action may similarly have been taken on Item No. 2.4, "**Follow up on RFP:** Dr. Kunins update on MHSF for 5/18/22. What about the RFP?" During this item, Co-Chair Banuelos agreed to "bring it up at exec" (as a non-agendized item during the meeting immediately following – but this did not in fact occur, perhaps due to my objections during public comment) for presentation to the full commission. (It should be noted that the committee also would have been reticent to take action at this meeting in order to avoid criminal penalties from violation of the Brown Act, *Cal. Gov't Code* § 54959 (action knowingly taken in violation of the Brown Act incurs misdemeanor guilt), but they consider this to mean only a formal vote. See, Item No. 2, under which the failure to post the agenda physically is described, and also EXHIBIT 11, warning them of this fact.) Whether decisions were made is not clear, because any member of the ExCom, which included the chair of this committee, may place items on the ExCom agenda, and this agenda is posted in advance of the meeting of the Implementation Committee anyway. Furthermore, regular reports of the Implementation Committee to the ExCom are mandatory under both old and new *Bylaws*, regardless of whether the Implementation Committee authorizes them or not. (This is a very questionable practice. It turns committee reports into spontaneous observations of the committee on the part of the reporting member. The reporting member is thus put in

the position of a scientific observer of the committee, which is reduced to an object, instead of the reporting member being its faithful servant. It destroys the distinction between taking action and not taking action at the committee level, since the committee is advisory and the report may be the same whether action is taken on any item or not, nor whether the action is yes or no. All that matters is what the committee chair *qua* reporting member thinks. By destroying the distinction, and taking reporting—the only function of an advisory committee—out of the control of the committee, it deprives advisory committees of taking action. Consequently, an advisory committee at the Commission is just a group of people that is forced to meet regularly and yak on pre-assigned topics, to spit up and reveal what they know, like slaves or laboratory specimens with no power of self-determination. Even the power to put business on the agenda of the committee meeting becomes only the power to speak, perhaps in vain, and hope for favor from the committee chair (also a Co-Chair) like medieval courtiers. If the all-powerful Co-Chair does not look favorably upon one's speech at the committee and report it to the Commission, then one speaks into a void, action taken or no, action yes or action no. Even if the committee chair does report it, committee reports are second-to-last on agendas of Commission meetings. One can get on the agenda by oneself (hopefully) and earlier on the agenda than the reports anyway. Furthermore, because the committee reports are only the reports of individuals, not authorized by their committees, they mean no more than other items submitted by individuals. The reason for having committees is thus destroyed, beyond better informing the Co-Chairs (who are also the committee chairs). They are effectively Co-Chair enslavements. Consequently, the experience of them is degrading. It contributes to similar feelings at the Commission level, and possibly explains the ready acceptance and even enthusiastic adoption of other authoritarian practices at the Commission. I would not want to serve on a BHC committee for this reason, and other members of the public may be similarly disgusted.) Enforcing the distinction between proposed-action vs. discussion-only items highlights the nonsensical and authoritarian nature of how committees are organized at the Commission, which in turn explains the Commission's poor observance of the distinction. If the items complained-of here were not action to advise the parent body (or some other body), then they were for discussion only, and should have included the required statements to this effect (see following section). In addition, the proposed action on Item No. 1.1 was not included on the agenda. Although these were minutes, and there was a posting on the website of minutes for the meeting of this committee on "April 10" (the April meeting was on Apr. 12), the file actually contained the minutes for the March meeting of the committee, which had already been approved at the April meeting, the minutes for which were needed. We gave advance written notice of the inadequacy of Item Nos. 2.3 and 2.4, attached as EXHIBIT 11 and the committee ignored our warnings and discussed or acted upon these items regardless. Therefore, we ask for a finding of willful noncompliance.

- At the regular meeting of the Executive Committee on May 10, 2022, the agenda of which is attached hereto as EXHIBIT 16, Item No. 1.1, "Governor's Care Court

Proposal: Discussion and possible action” was taken up. This discussion was clearly in regard to whether this item should be included on the agenda for the meeting of the Commission during the following week. No vote was taken, and there was even disagreement among members of the committee as to whether it should be included in the agenda for the meeting of the Commission, but, because any member may place an item on the agenda for a meeting of the Commission, there must have been a sense of futility about the decision. A decision was made *by staff* to put it on the agenda for the meeting of the Commission the following week, apparently because at least one member wanted it. This member, also a Co-Chair, wanted it on the agenda “even if we ignore it, *to throw out some comment* before it becomes a dead issue in Sac.” As questionable as this motive was with respect to the perceived methods of the Commission, it needed to be on the agenda that this was a *proposed action to put this item on the agenda for the next meeting of the Commission* for discussion only, i.e., as reported by the Executive Committee. A vote should have been taken. The individual proponent could have put it on just the same if they lost the vote, but the noncommittal “Discussion and possible action” is unlawful and should not have been used.

- At its regular meeting on May 18, 2022, the Commission took action on an item not on the agenda for the meeting, attached hereto as EXHIBIT 32. After the Commission took a final vote on its proposed revised *Bylaws*, which vote they failed to pass, a member spontaneously made a motion to pass the *Bylaws* as before, but combined this with another motion to create an *ad hoc* committee to further revise them. This motion eventually passed. No notice of this second motion appeared on the agenda, and the action violated *S.F. Admin. Code* § 67.7(a), in just the way that the SOTF had previously noted.
- On June 7, 2022, at the regular meeting of the Implementation Committee, the agenda for which is attached hereto as EXHIBIT 40, Item No. 1.1, “Vote to adopt May 10, 2022 minutes [action item]” was not the action which was not only proposed but approved at the meeting. The action that was both proposed and approved was an order to staff to rewrite the minutes and resubmit them for passage at the next meeting. RONR (12th ed.) 10:24 (*supra*). Again, the committee had plenty of time to review the minutes and put this motion on the agenda in advance of the meeting, because *S.F. Admin. Code* § 8.16 required that staff post draft minutes of a meeting within 10 days of the meeting to which they pertained. Item No. 2.3, “**Review the 2022 Data Notebook:** Discussion on BHC participation on How to do the Data Notebook for 2002” also violated this section. It began with an order to staff to print out and distribute relevant pages from *surveymonkey.com*, which should have been an action item, RONR (12th ed.) 10:24 (*infra*). (This meeting also proceeded without a quorum, so no violations could have occurred if the meeting had reached these items, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- Item 2.3 on the agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, made reference to “complete consolidated

resolution, authored by Co-Chair Vigil and Commissioner Murawski, previously viewed and voted on. A carry-over from the April 20, 2022 meeting, [sic]" However, there were three resolutions attached to the agenda, and none of them identified themselves by their co-authors, nor made mention of the April 20, 2022, meeting. Only one of the resolutions could be attributed to one of the other agenda items, and, in fact, only the larger of the two remaining resolutions was intended by this agenda item. Item 1.1 on the same agenda, "Governor's Care Court Proposal: Discussion and possible action," was also insufficiently descriptive because it didn't include the proposed action, which was to recommend that the Executive Committee approve creation an *ad hoc* committee to address this issue. In fact, we complained about this item in advance of the meeting, correspondence attached hereto as EXHIBIT 37. The chair should have ruled it out of order. We ask for a finding of willful violation therefore.

- On June 15, 2022, the Commission took action on an item without the proposed action being on the agenda. Under Item No. 3.5, "**Review Complaint from BHS client – commissioners to review letter submitted by Mary Savannah and determine how BHC can support the grievance – see attached [possible action item],**" it was moved to invite Conard House to give a presentation at the July meeting of the Commission. The motion had a dispositive vote, which is "action taken" as defined in *Cal. Gov't Code* § 54952.6, even though the vote was to reject the proposed presentation. The motion did not appear on the agenda.
- On July 12, 2022, the Implementation Committee, agenda attached hereto as EXHIBIT 62, violated this rule in two ways: Item No. 1.1 specified that minutes were up for approval. This was not the action taken. Instead, the Chair complained that the minutes were not in the correct form, and wanted staff to compose a new document. Instead of voting the minutes down, as they should, they ordered staff to redo them, and characterized this still further wrongly as a postponement to the next meeting, which would have been in order under the notice on the agenda (but would not have been adequate for their needs, as it would have resulted only in the very same draft minutes being proposed for adoption at the next meeting). An order to staff to redraft the minutes, on the other hand, is a distinct motion which needed to be on the agenda. RONR (12th ed.) 10:24 (*supra*). They had time to review the minutes and get such a motion on the agenda because staff are responsible for publishing proposed minutes for a meeting within ten days after it occurs, *S.F. Admin. Code* § 8.16, and this meeting, at which they were to be approved, was a month later. They also failed to include the proposed action by not including the necessary details of the motion to "Establish Ad Hoc Committee for the Annual Report," Item no. 2.4 on the agenda (we also complained of this two sections back). Specifically, either the number of members and the method of their appointment or the names of the initial members are required to be included. RONR (12th ed.) 13:8(d). (The reference does not say it, but, without this information, whether a quorum was present at a meeting of this committee cannot be determined.) Because we are entitled to a presumption that the Implementation Committee would follow its binding rules, *Cal. Evid. Code* § 664, the proposed action does not appear on the agenda. Only a truncated

version of it does. (In fact, no action was taken on this item at this meeting because the Implementation Committee has nothing to do with the creation of committees, nor did they “push it forward” to Exec., because no vote was taken, nor was any motion made, etc. Any such “pushing forward” would have been dilatory anyway because the ExCom met immediately after this committee was to adjourn and was required to post its agenda in advance of the meeting of the Implementation Committee. It had the right to put this motion on its agenda itself because it is required by the *Bylaws* to approve the creation of *ad hoc* committees and was required to do so in order to determine it.)

- On July 12, 2022, the Executive Committee of the Commission violated this rule by failing to specify an proposed action for items that clearly proposed action. Specifically, item nos. 2.3 through 2.8 on the agenda for the meeting, attached hereto as EXHIBIT 63, did not include the proposed action. Item 2.3 does not even meet the standard for a reasonable description (see above). Item 2.4 says only, “Discuss commissioner input on How to do the Data Notebook for 2022- [sic] [action item]” (first square brackets added). It is obvious that this item fails to state the proposed action. Item 2.5 says, “Discuss questions for MHSA presentation, vote if necessary [action item]” This item makes implicit reference (for those who know) to *Cal. Welf. & Inst. Code* § 5848(b), which requires as follows:

The mental health board shall review the adopted [Mental Health Services Act or MHSA] plan or update and make recommendations to the local mental health agency or local behavioral health agency, as applicable, for revisions. The local . . . behavioral health agency . . . shall provide an annual report of written explanations to the local governing body and the State Department of Health Care Services for any substantive recommendations by the local mental health board that are not included in the annual plan or update.

Subd. (f) states as follows, “For purposes of this section, ‘substantive recommendations made by the local mental health board’ means any recommendation that is brought before the board and approved by a majority vote of the membership present at a public hearing of the local mental health board that has established its quorum.” This item reveals that, in fact, at the time of posting, the Commission had *no proposals* for recommendations to Behavioral Health Services regarding the proposed MHSA update. Consequently, the item should have been dropped from the agenda, because any proposal introduced at the meeting would have been a substantive amendment. (In any event, like many BHC committee actions, this one was dilatory, as any member could put a motion to make a recommendation to BHS regarding the MHSA plan on the agenda for the meeting of the Commission, such recommendations are not even within the subject-matter jurisdiction of the Executive Committee, and the Commission would have to vote on any recommendation anyway.) Items 2.6 and 2.7 proposed the creation of *ad hoc* committees. However, the specifications of these committees include little more than a name for one and the tasks which the other was to perform (n.b., *ad hoc* committees are

not to be given names, they are simply referred to by their tasks). A minimally viable specification for a committee must include either the names of the members of which it shall consist (including its chair) or the number of members and the method by which they are to be determined. RONR (12th ed.) 13:8(c) (“**Necessary Details of the Motion**”). To add these at the meeting would be a substantive amendment to the motion, not allowable under this section. Item 2.8 made reference to a motion attached to the agenda. However, there were not one but two motions that were not attributable to other items on the agenda. They differed substantially, and this section is to be interpreted liberally in favor of public disclosure. The public has a right to a reference to a specific motion, not an hodgepodge of motions through which to sort and guess at. It would be bad enough that members of the public would have to match all of the motions attached to the agenda to their respective agenda items. In fact, it is worse, because the agenda item references a “BHOC” motion, but that acronym appears nowhere in either of the *two* motions attached to the agenda that are not attributable to any other agenda item.

- At the July 20, 2022, meeting of the Commission, agenda attached as EXHIBIT 72, Item Nos. 3.2 through 3.6 did not include “the proposed action.” We complain in the next section that Item Nos. 3.2, 3.4, and 3.6 were “downgraded” to “discussion only” status at the meeting because no vote was taken on them. The remaining Item Nos. 3.3 and 3.5 were approved on July 20, 2022. However, the measures approved substantially did not appear on the agenda. Item No. 3.3 appeared on the agenda as “**Establish Ad Hoc Committee for the Annual Report: The BHC Annual Reports are due for 2021-2022 in September [action item]**” The motion passed at the meeting was never stated by the chair, but appears to have been to form an *ad hoc* committee to propose an Annual Report for 2021-2022, identify 3-4 potential resolutions and have them ready to share at the July 2022 Commission meeting, and identify 4-5 programs that the Commissioners want to review and prepare to share, consisting of four people named in the motion (as stated by Banuelos): Vigil (committee chair), Bohrer, Stevens, and Banuelos. The two “identify” clauses were modified from Item No. 3.5 by Word document on-screen by staff at the meeting without anyone even moving for an amendment. This is what needed to be on the agenda for Item No. 3.3 and was not. Item no 3.5 appeared on the agenda as “**The creation of the Oversight Ad-Hoc Committee: to establish an Ad Hoc committee to review BHC mandates which include the Annual Report, specifically to (1.) Identify 3-4 potential resolutions and have them ready to share at the July 2022 Commission meeting [sic].** These resolutions would include key issues the Commissioners want to send to the Board of Supervisors, Health Commission, and Mayor’s Office [sic], (2.) **Identify 4-5 programs that the Commissioners want to review and prepare to share them at the July 2022 Commission meeting [sic].** The Commissioners can conduct virtual site reviews or use the BHC COVID Survey form.” What was passed was never stated by the chair, but appears to have been: create an ad hoc committee to review grievances, complaints, and BHC mandates, which include the Annual Report, consisting of Vigil (Chair), Wynn, and Murawski. This is, of course, what needed to be on the agenda, and was not. We complained about items 3.3 and 3.5 via email, attached hereto

as EXHIBITS 66 and 67, in advance of the meeting and our complaints were ignored. Therefore, we ask for a finding of willful noncompliance on these items.

- The agenda for the meeting of the *ad hoc* committee to revise the *Bylaws*, held at 4:00 p.m. on Aug. 5, 2022, agenda attached hereto as EXHIBIT 79, failed to contain the proposed actions. Item No. 2.0 was labeled, “**REVIEW RECENTLY PASSED BY-LAWS**” “The chair will guide Commissioners in reviewing the by-laws for changes, amendments and potential adoptions.” One might conclude that this was the motion to recommend revised *Bylaws* to the parent body. However, what, then, would item 3.2 be? “**ITEM 3.0 ACTION ITEMS**” “**3.2 Review attached By-Laws and sample markups:** discussion and possible action item on shared items [action item].” Shared items? Potential adoptions? Sounds like an orphanage! One of these items, and only one, should have been a motion to recommend revised *Bylaws* to the parent body. At the meeting, 2.0 was treated as the motion to recommend, and *seriatim* consideration proceeded under it. Item 3.2 was not reached.
- The agenda for the meeting of the *ad hoc* committee to revise the *Bylaws*, held at 4:00 p.m. on Aug. 12, 2022, agenda attached hereto as EXHIBIT 85, failed to contain the proposed actions. Item No. 2.0 was labeled, “**REVIEW RECENTLY PASSED BY-LAWS**” “The chair will guide Commissioners in reviewing the by-laws for changes, amendments and potential adoptions.” One might conclude that this was the motion to recommend revised *Bylaws* to the parent body. However, what, then, would item 3.2 be? “**ITEM 3.0 ACTION ITEMS**” “**3.2 Review attached By-Laws and sample markups:** discussion and possible action item on shared items [action item].” This actually threw me for quite a loop. I had prepared a lengthy public comment for the *Bylaws* revision item, and I thought it would be 3.2. Consequently, I neglected to comment on Item No. 2.0 at all. This ended up being the item under which they proceeded *seriatim* through their recently-adopted *Bylaws*. They spent an hour on Item No. 2.0. I didn’t get to deliver my prepared comment until near the end of the meeting, at which point I proceeded to tell them that they were breaking state law in three different ways, local law in two different ways, and were violating a special rule of order in the very *Bylaws* they were setting about to revise, by proceeding at all. The value of my comment was significantly degraded by the confusion and resultant delay in delivering it. Although the same activity occurred at the meeting of this same body on the previous week, the previous meeting was chaired by a different and less experienced member.
- At the Sept. 9, 2022, meeting of the *ad hoc* committee on the composition of an annual report, agenda attached hereto as EXHIBIT 88, a couple of action items did not include proposed actions. Specifically, item no. 3.0, “Vote on time and frequency of meetings [action item]” does not include any proposal for what the meeting times and frequency should be, which was what was required. Also, the third bullet point under Item No. 3.2, “Draft 2020-2021 Annual Report with List of BHC Commissioners and Staff [see attached draft],” does not contain a verb. Was the committee going to discuss it, recommend that the Executive Committee pass it, send it to the Board of Supervisors, make it into a paper airplane, what? A quorum of this committee was present at the

meeting. At the Oct. 19, 2022, meeting of the Commission, attached hereto as EXHIBIT 92, action was taken on an item without notice on the agenda. During Item No. 6.0, labeled only "ITEM 6.0 NEW BUSINESS (Discussion only) / Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners," the matter of discharging the *ad hoc* committee to revise the bylaws was referred to the Executive Committee.

- At the Nov. 8 meeting of the Site Visit Committee, agenda attached hereto as EXHIBIT 130, Item No. 1.2 states that there were "no October 11, 2022, minutes to adopt due to lack of quorum." However, there actually were minutes to adopt sent to members of the public, and they were in fact adopted at the meeting by a vote, without notice on the agenda. During the opportunity for the public to comment, I mentioned that the item on the agenda did not contain a proposed action, and that it would be a violation of this subdivision to take action to approve them, and that I would ask for a finding of willful noncompliance in the instant proceeding if they proceeded to vote on the item. They went ahead and did so anyway, heedless of the consequences. We ask for a finding of willful noncompliance, because we warned them and cited this subdivision, and they approved the minutes anyway. Members present at the meeting were Banuelos (ex officio), Mason, Murawski, Parks (3 out of 5). At the Nov. 8 meeting of the Executive Committee, agenda attached hereto as EXHIBIT 133, Item No. 1.3 states as follows, "Review of the recently edited BHC By Laws [*sic*] (see attached)." What was actually moved and approved under this item was a motion "to put the bylaws on the agenda for the commission [meeting] next week." This is what was required to appear on the agenda as the "proposed action" for this item. *S.F. Admin. Code* § 67.7(a). On the same agenda, Item No. 1.4 states as follows, "Review 2021-2022 Annual Report (see attached)." What was actually moved under this item was a motion "to adopt the FY 2021-2022 Annual Report." Again, this is what was required to appear on the agenda for this item as the "proposed action" under *S.F. Admin. Code* § 67.7(a). "To adopt" means to make a document into the words of the Commission. "To review" only means to read or re-read it. "To adopt" this annual report appeared under item no. 2.2 on the agenda, and the chair said that they were "combining" the two during the meeting, but there was no motion and vote taken to *Suspend the Rules* and hear this item immediately. A member of the public would have been misled to think that the vote would not be taken until no. 2.2, which was never called up in its order. We ask for a finding of willful noncompliance on both counts because we informed the committee of both of these violations during the opportunity for the public to address them on these items, and they did nothing. While public comment was not taken until the end of each of these items, we also made complaints about the violation of this clause of this subdivision during item nos. 1.1 and 1.2, so they were well enough on notice that these items were inadequately noticed, and they were informed during the AB 361 motion of what to do about it. Present during these items were: Banuelos, Vasconez, Jackson-Lane, and Murawski (4 of 6).

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Failure to Label Discussion-Only Items With a Statement That They Are For Discussion Only

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda, that that discussion items (for which no action is proposed to be taken) be labeled with a statement that the item is for discussion only. This is a rule for the violation of which BHC implicitly takes solace in the fact that items on agendas of the Sunshine Ordinance Task Force have included the ambiguous statement “for discussion and possible action” which the Commission often copies onto its own agendas. It is important to appreciate that “for discussion and possible action” is ambiguous, defeats the purpose of the rule, and is in fact unnecessary. *It is always possible to determine in advance of the meeting whether or not action is proposed to be taken on each item on the agenda.* It not that no prediction can be made as to whether action will *in fact* be taken, as “action taken” is defined in Cal. Gov’t Code § 54952.6, *in pari materia* with the Sunshine Ordinance, that gives rise to the perceived need to violate this section with ambiguous labels. A *proposed* action may fail to be taken for any number of reasons, such as the action being out of order, a temporary disposition of the proposal occurring before action is taken, such as laying the item on the table, postponing it to the next meeting, or referring it to a committee, staff, or counsel, or the item being subject to a successful motion to avoid its determination, such as a motion to *Postpone Indefinitely* or *Object to the Consideration of the Item*. For all this, it is no less an item for which action was proposed to be taken. Proposing an item for action sets into motion the parliamentary machinery that finally or temporarily determines every proposal for action one way or another. By contrast, a discussion-only item has no determination.

“Discussion” merely occurs, continues until it peters out, and is without consequence. It fills up time. This notation tells the public whether the parliamentary machinery will be used on a concrete proposal (which must itself appear on the agenda), or whether they can instead expect a desultory exchange of views on a topic. For better or for worse, the local requirement that items be segregated into action items and discussion-only items prevent meetings from being used as “brainstorming sessions” at which a brilliant idea may be hatched and acted upon at the same meeting. At best, a discussion at one meeting may lead to a proposal for action later being placed on the agenda for the following meeting, and the effort to cheat this process through ambiguously labeling items as “for discussion and possible action” defeats the purpose of the rule. This requirement protects the public from surprises resulting from specific action being taken on an item that would normally be a boring and inconsequential discussion, so that the public may focus their scarce time and attention on items that count, at the cost of less room for spontaneity at meetings on the part of the local agency. To this end, it works in tandem with the rule that proposed action appear itself on the agenda. Each item must be either one or the other.

In some cases, BHC “downgrades” items labeled on the agenda with the proposed action to “discussion only” status at a meeting. They do this for a single very inauspicious reason: If no action is taken on an item, it cannot be the basis for a criminal violation of the Brown Act under § 54959. Often such a violation is thought to extend to an entire meeting. “Downgrading” then allows *all* of the action items to be addressed in serial discussions. Often, this has the same result as actually deciding the items. The discussion is pronounced to have veered in a particular direction, for or against, and the members get by without having to disclose their real positions

by a vote. Nor do they need to suffer the pressure of a final determination. Action is presumed to have been taken without the legal consequences thereof. The alternative to “downgrading” in the face of legal violations would be to rule the items out of order for specific violations of the Brown Act and not address them at the meeting. This has the significant disadvantages of admitting that the violation in fact occurred and providing for significantly less hot-air-blowing to prop up the egos of the participants, who are already insecure about whether they are accomplishing anything at all at these meetings. By contrast, “Downgrading” to “discussion-only mode” makes it appear that the body is continuing to do significant work while neither admitting to faults nor failing to hedge against violations that are only vaguely suggested. It allows uncertainty about applicable law to thrive, prevail, and even be wielded as a cudgel. (There is in fact no rule of order adopted by the BHC for “downgrading” items to “discussion only” status once they are proposed for action, nor would the Sunshine Ordinance generally allow such a rule.) BHC and its committees violated this requirement on the following dates, in the following ways:

- On Apr. 20, 2022, at the BHC regular meeting, Item No. 3.4 on the agenda for this meeting, attached hereto as EXHIBIT 4, was not labeled with a statement that it was for discussion only, as the law requires. This item was not introduced by the chair as a “proposed action,” despite the moniker to this effect appearing on the agenda. It was introduced as an item for discussion only, upon which the chair would allow BHC to take no action. Staff said that a supermajority was necessary to pass the item. However, rather than moving and voting to postpone it to the next meeting, the item was “stepped down” to a “discussion-only” item. A member of the public whose interests would be affected by the item might have been enticed to attend the meeting by the promise of action being proposed (which adds considerable pressure to debate), only to be disappointed. In this case, had the item been labeled correctly, such a member of the public would have known that they could safely forego attendance at the meeting.
- The agenda for the regular meeting of the Implementation Committee on May 10, 2022, attached hereto as EXHIBIT 15, showed Items Nos. 1.2 and 2.1 through 2.5 as “for discussion and possible action[s], and 3.1 and 4.1 as “for discussion and action.” None of them included a proposed action, and no action was taken under any of them except maybe 2.3 and 2.4, described in the previous section. When Item No. 1.3 was called, committee chair Banuelos asked staff what it was about (apparently, it had been placed there by staff). Grier said it was a duplicate and to “move on,” but it did not duplicate anything on the agenda. Banuelos moved on to the next item. If this was “discussion,” then this item needed a statement that it was for discussion only. Instead, it was labeled as an “[action item]”. Item 2.2 was a “cud-chewer” item placed on the agenda for ongoing regurgitation, chewing, and re-swallowing. No action was taken on it. During the item, staff (Gray) asked if this was the approval of minutes from March 9 (Item. No. 2.2 on the agenda of the meeting of the Executive committee immediately following, but also the minutes mistakenly placed in the file mislabeled as the minutes for the “April 10” meeting of this committee (the previous meeting was on Apr. 12)). Staff (Grier) answered “not there yet” and the committee chair called the next item. This item needed

a statement that it was for discussion only. Item 2.5 contained only a discussion by staff about the new website's promised capabilities, i.e., possible inclusion of "live links," and a possible go-live in June. It was for discussion only and needed a statement to this effect. We warned the committee of the inadequacy of the description of Item No. 2.2 in writing, attached as EXHIBIT 11.

- The agenda for the regular meeting of the Executive Committee on May 10, 2022, attached hereto as EXHIBIT 16, marked Item Nos. 1.1 and 1.2 with "Discussion and possible action," and 2.1, 2.2, 2.3, and 2.5 as "[action item]", under the heading "**ITEM 2.0 ACTION ITEMS – Discussion on action items,**" but no action was taken on any of these items at the meeting. Consequently, each of them should have included a statement that the item was for discussion only. (If action really was planned to be taken on each of these items, then they needed to be labeled with the proposed action, and each of them should have had either a final vote or another (voted) disposition at the meeting.) As mentioned under the previous section and the Implementation Committee meeting for this date, this distinction is causing problems for the Commission, and for a very good reason, but this committee differs to some extent. At this point in time, this committee had no power to put *Orders of the Day*, including, mainly, lengthy presentations, on the agenda for the Commission, but this did not stop it from usurping such power anyway, and it formally gained this power later in the month. For this reason, the mentioned comments regarding the Implementation Committee require some modification – the Executive Committee has the power to force the Commission to sit through long presentations. This makes its actions not gratuitous, but only in this one area.
- The agenda for the regular meeting of the Site Visit Committee on June 7, 2022, attached hereto as EXHIBIT 39, Items 2.1 through 2.4 are all substantially the same as on the July 12, 2022, agenda, with the subtraction of "Conard House" from Item No. 2.4, and the same comments apply thereto (*see, infra*).
- On the agenda for the regular meeting of the Implementation Committee held on June 7, 2022, attached hereto as EXHIBIT 40, use of the illegal and noncommittal "for discussion and possible action" label was extensively made, and no actions were taken on the items. This label appeared on Item Nos. 1.0, 1.2, 2.0, 3.0, and 4.0. Item Nos. 1.2, 1.3, 2.1-2.5, 3.1, and 4.1 all should have included statements that they were for discussion only, because no actions were proposed to be taken under any of them (3.1 and 4.1 were not reached). Item No. 2.3, which said that it was a "discussion", is inadequate. It must say discussion only, as discussion may, should, and usually does occur with proposed action. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- On the agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, Item Nos. 2.3, 2.4, and 2.5 were all "downgraded" to discussion-only items at the meeting, and no votes were taken on them. This was for various reasons: Item No. 2.3 had already been passed earlier in the year; Item No. 2.4

was simply not put up for a vote; Item No. 2.5 was realized to have been put on the agenda by mistake – the MHSA hearing was not ready to present, and would not be ready until July. “1.1 Governor’s Care Court Proposal: Discussion and possible action” also lacked a statement that this item was for discussion only. Although an action was proposed to create an *ad hoc* committee (which did not appear on the agenda), I suppose to recommend to the Executive Committee, it wasn’t *really* proposed. It was only discussed. Consequently, the item should have been so labeled. “1.2 BHS/BHC websites, Old & New: Discussion and possible action,” also lacked a proposal for action (which also did not appear on the agenda). On June 15, 2022, the Commission met, agenda attached as EXHIBIT 43. At this meeting, they failed to take action on Item Nos. 3.2, 3.3, and 3.4 on the agenda, which should therefore have been labeled with a statement that they were for discussion only. All of these items were under the heading for Item 3.0 on the agenda, “**ITEM 3.0 ACTION ITEMS.**” The first of them was Item No. 3.2, “**Data Notebook 2022 – Discussion on input from the BHC [action item]**” Although this description contains the word “Discussion,” it also contains indicia that action was proposed to be taken. It is ambiguous. Furthermore, discussion is normally included in action items. It is called “debate.” This is why that law requires “a statement that the item is for discussion only.” The word only is missing and cannot be inferred. No vote was taken on this item, and, even if a vote had been taken on it, the proposed action was not on the agenda, as the law requires. Item 3.3 on the agenda, “**Resolution for BHOCC – BHC to review, discuss, and vote on the BHOCC motion put forth by Co-Chair Vigil – see attached below [action item],**” did not get a dispositive vote. A post-vote discussion revealed that Commissioners were unsure of what they were voting on because of lax parliamentary practices by the chair, but my notes show clearly that a secondary motion to postpone to the next meeting had been made. It was not stated by the chair, but nothing is ever stated by the chair. It was neither seconded, but a second is not necessary in a meeting of this size. The motion to postpone failed. Debate should have returned to the main motion. However, after the post-vote discussion on why some Commissioners had voted “no” or (illegally) “abstain,” the item was not pursued further; no dispositive vote was taken. Therefore, it was effectively “downgraded” to an item for discussion only, the vote to postpone notwithstanding, and should have been labeled as such on the agenda. Item 3.4, “**Appoint Chair to the Ad Hoc Bylaw Committee – establish the bylaw oversight ad hoc committee [action item],**” was called, and comments from Commissioners and the public were called, but no Commissioners had any comments, and it was passed over without a vote. It was for discussion only, and should have been labeled so on the agenda.

- With respect to the agenda for the regular meeting of the Site Visit Committee on July 12, 2022, notice of which is attached hereto as EXHIBIT 39, Item Nos. 2.1 through 2.4 all appear under the heading, “**Discussion: Report on site visits and strategy**” It is not clear what “reporting” on “strategy” would entail. In any event, Item No. 2.2, “Implementation of the strategy . . .” seems to go beyond mere “reporting,” and so it is unclear what significance the heading has at all. Although Item No. 2.3 directs to

“Discuss the Importance . . .” and the remaining items have lesser statements, none state explicitly that they are for discussion *only*, which is what was required. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- With respect to the agenda of the regular meeting of the Implementation Committee on July 12, 2022, notice of which is attached hereto as EXHIBIT 62, Item No. 1.2 appears under the heading “**1.0 BUSINESS** – Discussion and possible action out of the topics discussed.” Item Nos. 2.1 through 2.7 all appear under the blanket label, “**2.0 ITEMS FOR DISCUSSION AND POSSIBLE ACTIONS**”. Of these, only item 2.4 even includes a defective action of some kind. Presumably, the rest are “for discussion only.” None of them contains a statement to this effect, though item no. 2.3 does say that it is a “discussion.” The law requires more.
- With respect to the regular meeting of their Executive Committee on July 12, 2022, the notice of which is attached hereto as EXHIBIT 63, BHC again “downgraded” Item Nos. 2.2, 2.4, 2.5, 2.6, 2.7, and 2.8, advertised on the agenda as “action items,” to “discussion-only items” during the meeting, again in order to avoid criminal penalties from violation of the Brown Act, though not the ones I had alleged in my warning to them of the various violations of open meetings laws apparent from the agenda. Other items on the agenda for this meeting were not “downgraded” from “action item” status, but were not labeled with “for discussion only” either, as the law requires. Specifically, all seven of the items appearing under the heading “Item 1.0 Commissioner’s *[sic]* Reports” contained neither the proposed action nor a message that the items were for discussion only. Some of them were ambiguously labeled by “Discussion and possible action.” As related above, this defeats the purpose of the law. Action was in fact taken on none of these items, possibly due to the circumstances of the meeting involving imagined violations of the Brown Act.
- At the regular meeting of the Commission on July 20, 2022, the agenda attached hereto as EXHIBIT 72, a number of items on the agenda were “downgraded” from proposed actions to items “for discussion only” at the meeting. Item No. 3.2, “**Data Notebook 2022** – Discussion on input from the BHC [action item]” neither lists the proposed action nor a statement that the item is for discussion only. The word “discussion” without more is not enough, because action items commonly also include debate, which may also be termed discussion. From the label “[action item],” and the placement of this item under “**ITEM 3.0 ACTION ITEMS**,” I suppose that action was contemplated. None, however, occurred at the meeting, and this item should have contained a statement that it was for discussion only. Item No. 3.4, “**Appoint Chair to the Ad-Hoc *[sic]* ByLaw *[sic]* Committee**: establish the bylaw ad hoc committee [action item]” appears to be an action item. However, this item had no disposition. It was not postponed, laid on the table, committed, nor finally disposed. Therefore, it was, in fact, a discussion-only item. It was required to have been labeled on the agenda as such. Item No. 3.6, “**BHC Commissioner Training**: notify the commissioners of the scheduled commissioner

virtual training on August 17, 2022 from 5 – 7 pm [action item]” is similarly ambiguous. Nevertheless, no action was taken on this item at the meeting. It should have included a statement that it was for discussion only. We complained to the Commission via email sent in advance of the meeting, attached hereto as EXHIBITS 66 and 67, about these violations and the chair did not rule them out of order. Therefore, we ask for a finding of willful noncompliance.

- At the Sept. 9, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 88, the committee met with quorum, but several items appear on the agenda, including Item Nos. 3.0, 3.1, the two items under 3.2, and the three bullet-points under Item No. 3.2, none of which were subject to temporary or permanent disposition by the committee, nor a ruling by the committee chair, but neither did any of them include a statement that the item was for discussion only, as was required by law.
- At the meeting of the Commission on Sept. 21, 2022, attached hereto as EXHIBIT 89, Item Nos. 3.1 through 3.5 were labeled as “action items”, but in fact no action was proposed to be taken at the meeting on any of them. This was not due to a decision not to take action at this meeting, but was apparently due to mislabeling of these items on the agenda. All of them should have been labeled “for discussion only.”
- At the meeting of the *ad hoc* committee to compose an annual report on Sept. 23, 2022, agenda attached hereto as EXHIBIT 90, Item Nos. 2.0, 3.0, 3.1, 3.3, 3.4, and 3.5 included neither a proposed action nor a statement that the item was for discussion only. In fact, no motion was made, nor any called up, during Item No. 2.0, and so it should have been labeled “for discussion only.”
- The agenda for the Sept. 29, 2022, meeting of the *ad hoc* committee on the revision of bylaws, attached hereto as EXHIBIT 93, shows Item 1.1.a. as being an action item. However, no vote was called on this item. An announcement regarding it was made by staff, and the chair neither ruled it out of order, nor did the committee dispose of it in any way. Therefore, it was an item for discussion only, and it was required to include a statement to this effect.
- The agenda for the Sept. 30, 2022, meeting of the *ad hoc* committee to compose an annual report, attached hereto as EXHIBIT 91, shows Item Nos. 3.1 through 3.5. The chair did not rule any of these out of order, and no motions were made nor disposed under these items. Therefore, they were for discussion only, and lacked the required statement on the agenda to this effect.
- The agenda for the Oct. 19, 2022, meeting of the Commission, attached hereto as EXHIBIT 92, contains a number of items which were in fact for discussion only, but were not labeled as such on the agenda. Specifically, item nos. 2.0, 3.0, 3.2 through 3.5, 4.0 were all for discussion only. No motions were made under any of these items. Far less did the chair rule them out of order, nor were they disposed through a vote. For all this, none of them included the required statement that they were for discussion only.
- The agenda for the Nov. 8, 2022, meeting of the Site Visit Committee, attached hereto as EXHIBIT 130, contained a couple of items which were reached with a quorum in

attendance, but upon which no action was taken at the meeting. Both items lacked a statement to this effect. Namely, item nos. 1.3 and 2.0 were both for discussion only. No motions were made under either of these items. I informed them at the meeting that item no. 1.3 at least failed to meet the notice requirement, citing this subdivision, because it contained neither a proposed action nor the required statement, and told them that the chair should rule it out of order therefor. I even advised them that, if the chair did not rule item no. 1.3 out of order, that any member of the Committee could raise a *Point of Order* against the continued consideration of the item. They all ignored this warning, and went ahead with the consideration of the item. Consequently, we ask for a finding of willful noncompliance. In attendance at the meeting were Banuelos, Mason, Murawski, Parks. (Banuelos ex officio, 3 of 5 members present).

- The agenda for the Nov. 8, 2022, meeting of the Implementation Committee, attached hereto as EXHIBIT 130, contained a number of items that neither included a proposed action nor a statement that the item was for discussion only. Specifically, no action was taken on item nos. 1.2, 2.1, 2.2, 2.3, 3.1, 4.0, and 4.1, yet none of them contained a statement that they were for discussion only, either. Items 2.1, 2.2, and 2.3 contained the ambiguous label, “**ITEMS FOR DISCUSSION AND POSSIBLE ACTIONS**”. Item No. 3.1 was labeled with “For discussion and action.” Item No. 4.0 and 4.1, “**NEXT ACTION ITEMS FOR COMMITTEE MEMBERS – For discussion and action.**” This was not adequate, and suggested that the items were proposed actions. However, the descriptions of the items neither were nor contained proposed actions, and in fact no motions were made under any of these items at the meeting. During each of item nos. 1.2, 3.1, and 4.1, and at least once during 2.1, 2.2, and 2.3, I said that the description on the agenda included neither a proposed action nor a message that the item was for discussion only, and cited this section. During these items, I said that the chair should rule the item out of order therefor. We ask for a finding of willful noncompliance because the committee went right on discussing through all of these items, regardless of my warnings. Present at the meeting were Banuelos, Jackson-Lane, Mason, Parks (4 of 5).
- At the Nov. 8 meeting of the Executive Committee, agenda attached hereto as EXHIBIT 133, no motions were made during or relevant to Item Nos. 1.1, 1.2, 1.5, and 1.6, but these items included no statements to the effect that they were for discussion *only*. While the words “Discuss” and “Discussion” occurred in the descriptions, this was not sufficient, because discussion may also occur during a proposed action. I mentioned this in the public comment on these items, but public comment was not called until the end of each item, and so there was nothing left for the chair to rule out of order. However, those present could readily enough infer from the comment on 1.1 that the same condition held for 1.2, etc. I mentioned during the AB 361 item at the beginning of the meeting that the chair should have ruled it out of order, and, if he did not, any member present could raise a *Point or Order* against the further consideration of the Item. The Committee was well enough on notice, then (except Vasconez, who was absent for the AB 361 vote) that these items violated the law and that each of them could do something about it. Consequently,

we ask for a finding of willful noncompliance against the members of the committee present for these items. These were: Banuelos, Vasconez, Jackson-Lane, and Murawski (4 of 6).

- At the Nov. 16, 2022, meeting of the Commission, the agenda for which is attached hereto as EXHIBIT 138, several items had no motions made under them, but the agenda included no statements to the effect that they were for discussion only. Item Nos. 3.0, 3.2, 3.3, 3.4, 3.5, all of the unnumbered items under 4.0, and 5.1 and 5.2 all lacked both motions made under them and this statement. Although Nos. 5.1 and 5.2 appeared together under an heading that said "(Discussion only)," the law required that each of the two items under it include the statement. I pointed out to them during public comment on at least Item Nos. 3.2, 4.0, and 5.0 that this was the case (on the others, it seemed like they were action items from the agenda, and so I did not have public comments prepared to point out their deficiency). During 5.0, I said that the chair should rule the item out of order, and, during both 3.2 and 5.0, I said that any member could raise a *Point of Order* against the consideration of the item. Consequently, we ask for a finding of official misconduct. Present at the meeting were: Banuelos, Bohrer, Jackson-Lane, Mason, Murawski, Parks, Stevens, Vasconez, Williams, and Wynn (10 of 17).
- At the Dec. 17, 2022, meeting of the Commission, the agenda for which is attached hereto as EXHIBIT 140, no motions were made under several items, but the agenda included no statements to the effect that they were for discussion only. Motions were made under none of Item Nos. 1.0, 1.1, 2.0 a, 3.0, 4.1, 4.2, 4.3, 5.0 b, and 6.0, but none of these items included this statement on the agenda. I pointed out to them during public comment on Item Nos. 3.0 and 4.3 and was summarily ignored both times. Consequently, we ask for a finding of willful noncompliance for all of them. Banuelos, Bohrer, Mason, Murawski, Parks, Stevens, Vasconez, Williams, and Wynn were present for all of these items (9 of 17) and Vigil was present for all but 1.0.
- At the Jan. 10, 2023, meeting of the Executive Committee, agenda attached hereto as EXHIBIT 142, Item No. 2.1 had adoption of two sets of minutes under the item. Neither was moved at the meeting, and so both of them were for discussion only. Item No. 2.3 on the agenda read "Discussion on the PHACS Program with possible decision action item." No action was proposed under this item. Therefore, it was for discussion only, but contained no label to this effect. We ask for a finding of willful noncompliance because we warned them of this violation during public comment, the chair did not rule the item out of order, nor did the Committee so rule through a motion to Appeal a ruling by the chair, and no one raised a point of order regarding this item.
- At the Feb. 7, 2023, meeting of the Executive Committee, agenda attached hereto as EXHIBIT 143, no action was proposed for Item Nos. 1.0, 1.1, 1.2, the first item under Item No. 2.1, Item Nos. 2.2, 2.3, nor 3.1, but none of them contained a message that the item was for discussion only, in violation of this section. We ask for a finding of willful noncompliance because we warned the Committee of this violation on Item Nos. 1.1 and 2.1 and the chair did not rule them out of order, nor did any member raise a *Point of Order* against the discussions of these items.

Deleted: Committee Chair LaHood
December 22

Item No. 2: "67.7(a) by failing to post their Agenda 72 hours in advance of the meeting:"

S.F. Admin. Code § 67.7(a) states, in relevant part (ellipsis, square brackets added): "At least 72 hours before a regular meeting, a policy body shall post an agenda . . . In addition, a policy body shall post a current agenda on its Internet [sic] site at least 72 hours before a regular meeting." S.F. Admin. Code § 67.3(b)(2) states that "A 'meeting' shall mean any of the following: [¶] (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or [¶] (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

Failure to Post on the Commission Website at Least 72 Hours in Advance of the Meeting

This section requires that notices of meetings of the Commission and its committees be posted on the Commission website 72 hours in advance of the meeting. The Commission and/or its committees violated this requirement on the following dates:

- With respect to their June 15, 2022, regular meeting, BHC originally posted their notice with a date of June 7, 2022. See EXHIBIT 43, attached. Only after I complained via email the following Monday, June 13, attached as EXHIBIT 44, did they then revise their notice to state the correct date. The public had no notice whatsoever of the correct date of the meeting until BHC revised their notice, less than 52 hours before the meeting. EXHIBIT 45.
- With respect to the regular meetings of their Site Visit Committee, Implementation Committee, and Executive Committee on July 12, 2022, BHC formulated the notices with the correct date on them, but each was posted on the BHC website under a link labeled prominently "July 17, 2022". See EXHIBIT 64, attached hereto. BHC contends that IT staff not under its control formulates the link, but this is no excuse. No matter who was at fault, the meetings were not properly noticed. A member of the public checking the website would think that BHC had scheduled a weekend meeting and may have forgone downloading it until later, or ignored the date on the notice. The notice requirement must be interpreted liberally. *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.*, 69 Cal. App. 4th 287, *204 (1999) (Presiding Justice Klein), citing *San Diego Union v. City Council of City of San Diego*, 146 Cal. App. 3d 947, 955 (1983) (Associate Justice Work). In the current context, this means that *all* meeting dates related to the notice must be correct. Again, I warned BHC of the problem via email eight hours in advance of the meeting, advising them that all agenda items would be out of order therefor. Two hours later (to my chagrin, since this reflected BHC's will to hold the meetings in violation of the law), I saw that the dates had been repaired. All three meetings were held on schedule, with no items being ruled out of order, when all of them in fact were out of order. We ask for a

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finding of willful noncompliance because BHC was informed of the violations, which were incurable, and they proceeded to hold the meetings regardless. (The meeting of the Site Visit Committee proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- On Aug. 1, 2022, the Commission's *ad hoc* committee to propose annual reports met without a notice stating the time and place of the meeting. The meeting ZOOM on the notice that was posted, attached hereto as EXHIBIT 76, was unusable, and no meeting occurred there. As shown by the email chain attached as EXHIBIT 77, an alternative location had to be set for the meeting. The same email chain shows that I warned them not to hold this meeting. Even if the purpose of the meeting at the new location had been limited to setting a date for a future meeting, as advertised, it was nevertheless a meeting under the Sunshine Ordinance, if not also the Brown Act, liberally construed, and was held without notice to the public. (It was not in fact so limited in subject matter.) We ask for a finding of willful noncompliance because we warned them not to hold the meeting.
- On August 5, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose an annual report met, but the notice had not been posted on the Commission website 72 hours in advance of the meeting. Specifically, the website did not show posting of the notice of this meeting on the evening of Tuesday, August 2, 2022, printout attached as EXHIBIT 81. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law.
- On August 5, 2022, at 4:00 p.m., the Commission's *ad hoc* committee to propose revised *Bylaws* met, but notice of the meeting, attached hereto as EXHIBIT 79, had not been posted on the Commission's website 72 hours in advance of the meeting. Specifically, the website did not show posting of the notice for this meeting at 5:00 p.m. on Tuesday, August 2, 2022, printout attached to EXHIBIT 81. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law. Furthermore, I spoke during the first opportunity for the public to address the committee, which came early during the meeting, and informed them of the fact. Staff countered that they had sent the item on July 30, but that posting had failed due to matters beyond their control. I mentioned that it would have been impossible for them to have sent the notice on July 30, because the acting committee chair had announced at a meeting of another committee on Aug. 1, 2022, that the meeting for this committee would be held on Aug. 4, 2022, at 4:00 p.m., i.e., the previous day. At the request of the committee chair, I sent evidence of the late posting on the Commission's website to staff, attached hereto as EXHIBIT 81 and staff claimed to display some evidence of their having sent their request to IT staff within the required time. The acting committee chair said that the committee could not be held responsible for failures arising beyond the Commission's own staff, and ruled that the meeting should continue. We ask for a finding of willful violation because the meeting proceeded despite my informing them through verbal address and through evidence submitted via email at their request during the meeting, while they stated that "a

matter of hours” (even 20 of them!) made no difference and that their work was too important to delay on account of failures beyond their control, and the SOTF had ruled against them on this very issue last year. I told them that it was the position of the SOTF that they should not hold the meeting under the circumstances, and they proceeded to hold it. I did not say at the meeting that the Commission had committed the same error at least on July 15, 2020, again claiming that they had timely asked IT staff to post, but IT staff did not timely execute, and that we complained in file no. 20100 of the fact, the Commission promised that it would not happen again, and the SOTF ruled in our favor on the issue, as disclosed in Ms. Leger’s email of July 15, 2020, above. Staff contended at the end of the meeting that, because no action had been taken at the meeting, no violation had occurred, again confusing the Brown Act requirement for criminal penalties with civil violation. A mitigating factor is that the acting chair was serving without notice, she was appointed to the Commission this May, and it was possibly her first time chairing a meeting of any kind, certainly first time chairing a meeting of the Commission, including any committee thereof.

- The *ad hoc* committee to propose an annual report apparently met at 3:00 p.m. on Sept. 2, 2022, minutes showing a quorum in attendance attached hereto as EXHIBIT 116. However, No notice appeared on the Commission’s website until *after* the meeting. This is shown by screen captures taken on Aug. 31 and even Sept. 6, 2022, the latter four days *after* the meeting, attached hereto as EXHIBITS 117 and 118! Consequently, I was unable to attend.
- The *Ad Hoc* Committee to propose revised *Bylaws* posted a notice of a meeting at 3:00 p.m. on Sept. 8, 2022, attached hereto as EXHIBIT 94. This meeting notice was not posted on the Commission website until after 4:30 p.m. on Sept. 6, 2022, no more than 46 hours before the meeting, as shown by the website capture attached hereto as EXHIBIT 95. Furthermore, when the meeting time arrived, at least part of San Francisco was subject to a blackout, presumably due to high temperatures. No meeting was held at the ZOOM link on the meeting agenda. However, at appx 3:45 p.m., after the power had come back on where I was located, I received email of a ZOOM “emergency meeting” of the *Ad Hoc* committee to revise the *Bylaws*, attached hereto as EXHIBIT 96. The word “emergency” was apparently intended to invoke the provisions of *Cal. Gov’t Code* § 54956.5(b)(1), which applies to “the case of an emergency situation involving matters upon which prompt action is necessary due to disruption or threatened disruption of public facilities . . .” exempting a legislative body from the requirement for posting notices of *special* meetings. Even if this requirement had been fulfilled (which it certainly was not!), this was not a special meeting in the sense that the date and time for it had been the same on the previous two weeks. Only the place had been changed to a ZOOM location not available to the public. The meeting began with only two members of the four-person committee present at appx. 3:45 p.m. and proceeded to informally discuss a matter on the agenda. Unusually for committees of the Behavioral Health Commission, there were no staff present, nor nonmembers of the committee who were members of the Commission, nor members of the public other than myself. At appx.

4:18 p.m., a third member of the committee arrived at the meeting, creating a quorum. I then asked a self-selected one of the members to please hang up or log out, because there was no public notice of the meeting ZOOM, nor was there any notice of this ZOOM attached to the meeting ZOOM that was noticed to the public on the website, and this was now a “meeting” subject to open meetings laws because a quorum was present and they were discussing matters within the subject-matter jurisdiction of the *ad hoc* committee, namely the subject-matter that had been referred to them. A member complained that the meeting had begun without quorum and that there had been agreement at that time to proceed in “discussion only mode,” and that discussing matters within the subject-matter jurisdiction was acceptable among a quorum of the body without notice to the public if no votes were taken. I tried to correct her, to no avail. I then said that I would be placing myself on “mute” because I chose not to involve myself in their violation of the Sunshine Ordinance, nor the Brown Act, that I would be reporting the incident to the Sunshine Ordinance Task Force, and that I expected that the SOTF would support me because the Brown Act prohibits discussion as well as voting among a quorum of a legislative body, and the Sunshine Ordinance prohibits exchanges of views among the same, outside of a meeting noticed to the public. There followed a short discussion, during which the committee chair said that she did not care what the SOTF would say about it, and they chose to continue. The meeting continued until 5:03 p.m. and was recorded. I request a finding of willful noncompliance because I explained the law to them and how they were in violation and they chose to continue to hold the meeting.

- The *ad hoc* committee to compose an annual report posted a notice to meet on Sept. 9, 2022, at 3:00 pm, attached hereto as EXHIBIT 88. A screen capture of the website at appx. 4:30 pm on Sept. 6, less than 72 hours before the meeting, attached hereto as EXHIBIT 95, showed that the notice had not been posted. I informed the committee that the meeting did not meet the notice requirements during the first opportunity to address them at the meeting, Item 1.1.a. They proceeded to hold the meeting and discussed matters within their subject-matter jurisdiction until 4:30 pm. They were a five-member committee, of which four of the members were present. We ask for a finding of willful noncompliance because they continued to hold the meeting after I warned them about the violation and told them that it affected every item on the agenda.
- The Executive Committee scheduled a regular meeting on Sept. 13, 2022, agenda attached hereto as EXHIBIT 99. However, no meeting occurred at the meeting ZOOM on the agenda. Staff announced to one of the chairs of the committees that met earlier that day to say that all meetings that day had been cancelled, and just to be sure I called ZOOM and tried to access the meeting at 5:41pm, when the meeting was scheduled to begin at 5:00 and was told that the meeting had not started. On Oct. 11, during the informal discussion that occurred—the regular meeting had been scheduled for that date, but failed to attract a quorum—it was disclosed that vice-chair Vasconez had in fact held a meeting of this committee at an undisclosed meeting ZOOM on that date. It is uncertain who attended, or whether the meeting attracted a quorum, but, if it did, a

violation occurred because there was no notice of the meeting ZOOM available to the public.

- The *ad hoc* committee to revise the bylaws posted a notice to meet on Sept. 29, 2022, at 3:00 pm, attached hereto as EXHIBIT 93. A screen capture of the website at appx. 4:00 pm on Sept. 27, 2022, 47 hours before the meeting, attached hereto as EXHIBIT 98, shows that the notice had not been posted. I announced this during an unagendized public comment taken at the start of the meeting. There was not a quorum at this time, but the chair was present and quorum was obtained shortly afterwards. I announced that the meeting would be illegal once that member was added, while they were in the process of logging in. They continued with the meeting anyway, simply omitting to vote on one amendment in order to avoid criminal penalties under *Cal. Gov't Code* § 54959. Commissioners present were Bohrer, Wynn, and Murawski. I asks for a finding of willful noncompliance because they continued with their meeting after I told them about the violation of the notice requirement, and they even acknowledged that this violation had occurred.
- The *ad hoc* committee to compose an annual report posted a notice to meet on Sept. 30, 2022, at 3:00 pm, attached hereto as EXHIBIT 91. A screen capture of the website at appx. 4:01 pm on Sept. 27, 2022, 70 hours before the meeting, attached hereto as EXHIBIT 98, shows that the notice had not been posted. I nounced this during an unagendized period for public comment taken at the start of the meeting, and that every item on the agenda would violate this section of the Sunshine Ordinance, that the chair should rule the next item—approval of the AB 361 motion—out of order as well as the other items on the agenda. There was a quorum at the meeting at this time. The chair went through the agenda without ruling anything out of order and the meeting lasted for over two hours. I ask for a finding of willful noncompliance because the committee continued with their meeting after I warned them that they were violating this section and they ignored me and continued to hold the meeting.
- The *ad hoc* committee to compose an annual report seems to have met on Oct. 7 without notice on the website. At their previous meeting on Sept. 30, they did not approve the final report and more changes remained to be made, nor was there a motion to rise, and when a member complained about this, another member said that they should just “meet as a work group” and not hold a noticed meeting, as if they were not required to do so by law. Apparently, this actually occurred, because a final report was on the agenda for approval at the Oct. 11 meeting of the Executive Committee, required by bylaws to give their final approval on the item.

Failure to Post Physically at the Government Information Center at Least 72 Hours in Advance of the Meeting

This section requires physical posting of the agenda and notice of meeting in a place accessible to the public with 72 hours advance notice of the meeting. BHC violated this requirement on the following dates, in the following ways:

- With respect to the regular meeting of their Implementation Committee on May 10, 2022, agenda attached hereto as EXHIBIT 15, the Commission failed to post notice at the Government Information Center 72 hours before the meeting. Specifically, the notice that they sent had the date "April 12, 2022" as the date of the meeting, as shown in the exhibit. The Government Information Center does not post notices of meetings that occurred in the past, and so this meeting was not noticed physically. I warned the members of the committee in advance of the meeting by email of the lack of physical posting, the email attached hereto as EXHIBIT 11. They proceeded to hold the meeting anyway, and did not rule each item on the agenda out of order. We ask for a finding of willful noncompliance.
- With respect to their June 15, 2022, regular meeting, BHC originally posted their notice with a date of June 7, 2022. See EXHIBIT 43, attached. Only after I complained via email the following Monday, June 13, attached as EXHIBIT 44, did they then revise their notice to state the correct date. As may be seen from EXHIBIT 45, the notice was not received by the Government Information Center until less than 52 hours before the meeting. The printout shows that the notice was received at 2:07 pm on June 13. Staff had in fact timely sent Library staff the notice for this meeting, but, because the notice advertised a date that had already passed, Library staff did not post it, nor could they have known where to post it, as notices are posted in order by the date and time of the meeting. Despite my email warning sent to all BHC members, attached as EXHIBIT 44, BHC proceeded to revise their notice inside the 72 hour window to include the correct date, and to actually hold the meeting in violation of the law. We ask for a finding of willful noncompliance for this violation because we warned BHC of the violation in advance of the meeting, making clear that the violation could not be cured, and they proceeded to hold their meeting regardless of our warning.
- On Aug. 1, 2022, the Commission's *ad hoc* committee to propose annual reports met with neither 72 hours' notice, nor a notice stating the time and place of the meeting. As shown by the email chain in EXHIBIT 77, the meeting ZOOM on the notice, attached hereto as EXHIBIT 76, was unusable, and no meeting occurred there. As shown by the email chain, an alternative location had to be set for the meeting. An earlier email in the chain shows that I warned them not to hold this meeting. That they met at a new location, regardless of my advice. Even if the purpose of the meeting at the new location had been limited to setting a date for a future meeting, as advertised, it was nevertheless a meeting under the Sunshine Ordinance, if not also the Brown Act, liberally construed. (It was not in fact so limited.) Since they met after our warning, we ask for a finding of willful noncompliance.
- On August 5, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose an annual report met, but the notice had not been posted on the Commission website 72 hours in advance of the meeting. Specifically, the posting at the Government Information Center did not show posting of the notice of this meeting on the evening of Tuesday, August 2, 2022, printout attached as EXHIBIT 80. Posting occurred sometime in the afternoon of August 3, 2022, well within the 72-hour window and in violation of the law.

However, because they did not allow the public to address them at any time during the meeting, I was not able to inform them of this fact.

- On August 5, 2022, at 4:00 p.m., the Commission's *ad hoc* committee to propose a revision of its *Bylaws* met, but the notice had not been posted at the Government Information Center 72 hours in advance of the meeting. Specifically, the Government Information Center's document had a stamp indicating that it has been received at 2:00 p.m. on Aug. 3, 2022, printout attached as EXHIBIT 80. This was well within the 72-hour window and in violation of the law. I informed them of this fact at the first opportunity for the public to address the committee, at which point the staff claimed that they had sent timely notice to the public library. The committee chair asked for evidence from both sides, and I sent the printout attached as EXHIBIT 80 via email also attached, directing them to the second page of the file. This was allegedly displayed at the meeting, at which point the acting committee chair took issue with the crossed-out date, which showed the date that staff claimed that they had sent the document. However, as discussed above, staff could not have noticed the public library on July 30 as claimed, because the acting committee chair had, at a meeting of another committee on Aug. 1, 2022, announced that the *Bylaws* committee was to meet on Thurs., Aug. 4, 2022, at 4:00 p.m. So, if notice had been given on July 30, it had been for the Aug. 4, 2022, meeting date, and not the current date.
- On Aug. 26, 2022, at 3:00 p.m., the Commission's *ad hoc* committee to propose several annual reports met, but the notice of the meeting had not been posted at the Government Information Center 72 hours in advance of the meeting. I visited the Government Information Center and checked their binder on the night of August 24. There were no agendas for either this meeting or the meeting of the *ad hoc* committee on proposed *Bylaws* held the previous day. (I am not listing the meeting of the *ad hoc* committee on proposed *Bylaws* under this item, because they did not have a quorum – only one member attended.) Present at this meeting, after a delay for one of the members, were: Stevens, Mason, Murawski. It was disclosed during the meeting that Bohrer had been removed from the membership and Mason and Murawski added (*see infra*, regarding this action taken out of the public eye). Therefore, the membership was, at this time: Vigil (chair), Stevens, Banuelos, Mason, Murawski (5 members, with a quorum of three). Consequently, a meeting occurred within the definition in the Act and the Ordinance.
- The *Ad Hoc* Committee to propose revised *Bylaws* posted a notice of a meeting on Sept. 8, 2022, the cover page of which is attached hereto as EXHIBIT 94. As may be seen from the timestamp thereon, this meeting notice was not posted at the Government Information Center until Sept. 6, 2022, only two days before the meeting. Furthermore, when the meeting time arrived, at least part of San Francisco was subject to a blackout, presumably due to high temperatures. No meeting was held at the ZOOM link printed on the meeting agenda. However, at appx 3:45 p.m., after the power had come back on where I was located, I received email of a ZOOM "emergency meeting" of the *Ad Hoc* committee to revise the *Bylaws*, attached hereto as EXHIBIT 96. What transpired at that meeting is described in substantial detail in the previous section, to which the reader is

now referred. We again ask for a finding of willful noncompliance because the participants proceeded with the meeting despite my warnings that to do so would violate the Sunshine Ordinance, notwithstanding their lack of quorum when the meeting started, and notwithstanding their "decision" to proceed without taking any votes.

- The *ad hoc* committee to compose the annual report posted a notice of a meeting on Sept. 9, 2022, the cover page of which is attached hereto as EXHIBIT 88. As may be seen from the timestamp, the Government Information Center did not post the agenda until the morning of Sept. 7, two days before the meeting. The Government Information Center told me on a previous occasion that they do not post items received after 4:30 p.m. on weekdays, and do not post items at all on weekends (and holidays). Sept. 5 was Labor Day. As mentioned in the previous item, I informed the committee of this problem at the meeting, simply telling them that the 72 hour requirement had not been met, without breaking it down into website and physical components, and they proceeded to hold the meeting anyway, with four of their five members, and continued to meet until 4:30 pm, discussing matters within the subject-matter jurisdiction of the committee. We ask for a finding of willful noncompliance because we warned them about the violation and told them that it affected every item on the agenda and they proceeded to hold the meeting against our admonition.
- The Executive Committee scheduled a regular meeting on Sept. 13, 2022, agenda attached hereto as EXHIBIT 99. However, no meeting occurred at the meeting ZOOM on the agenda. Staff announced to one of the chairs of the committees that met earlier that day to say that all meetings that day had been cancelled, and just to be sure I called ZOOM and tried to access the meeting at 5:41pm, when the meeting was scheduled to begin at 5:00 and was told that the meeting had not started. On Oct. 11, during the informal discussion that occurred—the regular meeting had been scheduled for that date, but failed to attract a quorum—it was disclosed that vice-chair Vasconez had in fact held a meeting of this committee at an undisclosed meeting ZOOM on that date. It is uncertain who attended, or whether the meeting attracted a quorum, but, if it did, a violation occurred because there was no notice of the changed meeting ZOOM available to the public.
- The *ad hoc* committee to revise the bylaws posted a notice to meet on Sept. 29, 2022, at 3:00 pm, a cover page of the agenda for which is attached hereto as EXHIBIT 100. As shown by the timestamp on the cover page of the agenda, this notice was not posted at least 72 hours before the meeting. It was posted 51 hours before the meeting. I announced this during an unagendized public comment taken at the start of the meeting. There was not a quorum at this time, but the chair was present and quorum was obtained shortly afterwards. I announced that the meeting would be illegal once that member was added, while they were in the process of logging in. They continued with the meeting anyway, simply omitting to vote on one amendment in order to avoid criminal penalties under *Cal. Gov't Code* § 54959. Commissioners present were Bohrer, Wynn, and Murawski. I asks for a finding of willful noncompliance because they continued with

their meeting after I told them about the violation of the notice requirement, and they even acknowledged that this violation had occurred.

- The *ad hoc* committee to compose an annual report seems to have met on Oct. 7 without notice on the website. At their previous meeting on Sept. 30, they did not approve the final report and more changes remained to be made, nor was there a motion to rise, and when a member complained about this, another member said that they should just “meet as a work group” and not hold a noticed meeting, as if they were not required to do so by law. Apparently, this actually occurred, because a final report was up for approval at the Oct. 11 meeting of the Executive Committee, required by bylaws to give their final approval on the item.

Item No. 3: “67.7(b) by failing to provide a clear description of the matters:”

S.F. Admin. Code § 67.7(b) provides as follows, in relevant part (ellipses added): “The description . . . 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 . . .”

Failure to Reference Correspondence or Reports Distributed to a Majority of the Members of the Policy Body on the Agenda for the Meeting at Which They Are to Be Discussed or Acted Upon

I commonly send email correspondence to the Commission in advance of the notice for the meeting. When I do so, I usually request that they reference the correspondence in the meaningful description of the item in the notice for the meeting. As of yet, after years of this practice, they continue to refuse to do so, giving no explanation for their refusal. Even material provided by other people is not so referenced.

- At the regular meetings of the Site Visit and Implementation Committees on May 10, 2022, agendas attached hereto as EXHIBITS 14 and 15, it was anticipated that the minutes for the Apr. 12 meetings of these committees would be discussed. Consequently, I sent correspondence to the Commission regarding these items, attached hereto as EXHIBITS 5 and 6, in advance of their posting of the agendas for these meetings. The Commission subsequently posted the agendas for these meetings, attached hereto as EXHIBIT 40 and 41 without referencing this correspondence. Item No. 1.2 on the Site Visit Committee agenda. Item No. 1.1 on the Implementation Committee agenda. It is to be remarked that, though a file labeled “April 12, 2022 – Site Visit Committee Meeting” appeared on the website under “2022 Minutes,” when I downloaded this file on May 6, 2022, it contained minutes for the March 9 meeting of this committee. Consequently, approval of these minutes had to be delayed until the June meeting, upon the agenda for which, attached hereto as EXHIBIT 39, it also appears as Item No. 1.2.
- At the regular meetings of the Executive Committee on May 10, 2022, agenda attached hereto as EXHIBIT 16, it was anticipated that the minutes for the Apr. 12 meetings of this committee would be discussed. Consequently, I sent

correspondence to the Commission regarding this item, attached hereto as EXHIBIT 7, in advance of their posting of the agenda for this meeting. As a result, the Commission left an item for approval of the minutes of the Apr. 12 meeting of this committee of their May 10 agenda, attached hereto as EXHIBIT 16. We note that failing to post a draft agenda violates *S.F. Admin. Code* § 8.16, which is outside of the SOTF's jurisdiction, but failing to reference correspondence related to it on an agenda for an upcoming meeting is not. Action to cover up evidence of an illegality is admissible as evidence that the illegality occurred. The agenda for the June 7 meeting of this committee, attached hereto as EXHIBIT 42 includes an item, Item No. 2.1, for approval of these minutes without referencing this attachment, in violation of this section. This is "temporization," i.e., the delaying of commitment of a violation in the hope that the delay will prevent notice of thereof.

- At the regular meeting of the Executive Committee on May 10, 2022, the agenda for which attached hereto as EXHIBIT 16, a motion was passed during Item No. 2.3, "Vote to move complete consolidated resolution, authored by Co-Chair Vigil and Liza Murawski (a member of the public) previously viewed and voted on. A carry over from the April 20, 2022 meeting [action item]" This item made no reference to a document that was included with the agenda, containing the text of the motion. Moreover, there were three other such documents appended to the agenda, only two of which were traceable to other items thereon. The text of this item was not sufficient to identify to which of the remaining two resolutions it related. Furthermore, the inclusion of the word "consolidated" suggested that both such items were intended. In fact, only the second one was. We ask for a finding of willful noncompliance, because I informed them of this problem via email in advance of the meeting, attached hereto as EXHIBIT 12, and they proceeded to act on it anyway. Consequently, those on the committee knew what was happening, but the public did not. They could have handled the situation by amending the "compound" resolution by deleting the first part.
- In the agenda for the regular meeting of the Commission on May 18, 2022, attached hereto as EXHIBIT 32, under Item 3.1, the Commission failed to reference correspondence I had sent to them for distribution to all Commissioners in reference to this item, attached hereto as EXHIBITS 19 and 20. They also failed to reference correspondence I had submitted in reference to Item No. 3.4, attached hereto as EXHIBITS 21, 22, 23, 24, 25, and 26. In EXHIBITS 23, 24, 25, and 26, I asked expressly for such reference, citing this section in support. Consequently, we request a finding of willful noncompliance. The Commission also failed to reference correspondence I had submitted into both of the above items, Item Nos. 3.3, 5.1, 5.2, and 6.0, as well as all of the items on the agenda, attached hereto as EXHIBIT 27.
- The agenda for the regular meeting of the Implementation Committee held on June 7, 2022, attached hereto as EXHIBIT 15, makes mention of approval of the minutes of the previous meeting under item no. 1.1. During the discussion of this item, it was disclosed

that staff (Grier) had "distributed a template" of how the minutes should be written. This item was required to reference the template in the agenda. (This meeting proceeded without a quorum, so no actual violation occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The regular meeting of the Commission to be held on June 15, agenda attached hereto as EXHIBIT 43, contains no reference to our correspondence attached hereto as EXHIBIT 50, which was relevant to Item No. 3.1, approval of minutes, despite our requesting the reference and citing this section in the first paragraph. We therefore request a finding of willful noncompliance.
- The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 41, Item No. 2.3, contains no reference to our correspondence of July 2, attached hereto as EXHIBIT 56, nor our postscript sent the same date, attached hereto as EXHIBIT 57, despite our request for such a reference in the first paragraph of the letter, and our citation of this section. Consequently, we request a finding of willful noncompliance. The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 63, Item No. 2.5, contains no reference to our correspondence of June 17, attached hereto as EXHIBIT 47, nor our correspondence and postscript of July 8, attached hereto as EXHIBITS 59 and 60, in violation of this section.
- The regular meeting of the Executive Committee to be held on July 12, agenda attached hereto as EXHIBIT 63, Item No. 2.8, contains a reference to neither our correspondence of June 30, attached hereto as EXHIBIT 54, nor our postscript of July 1, attached hereto as EXHIBIT 55, despite our request for such a reference in the first paragraph of the letter, citing this section. We therefore request a finding of willful noncompliance.
- Well in advance of the posting of the agenda for the regular meeting of the Commission on July 20, 2022, attached hereto as EXHIBIT 72, I sent the Commission correspondence relevant to one of the items anticipated to be transacted at the meeting, i.e. a motion to end meetings of the Commission at 8:00 p.m., attached hereto as EXHIBITS 66-68. The issue of time-limiting the meetings of the Commission had been discussed at the meeting of the Executive Committee the previous week as Item No. 1.5. No formal motion had been made to put it on the Commission agenda, but this was true of everything on the ExCom agenda (all action items were "downgraded" to "for discussion only" in order to escape criminal Brown Act violations, see Item No. 1, *supra*), many of which ended up on the agenda for the Commission meeting. E.g., Item No. 2.6 on the ExCom agenda became Item No. 3.5 on the Commission agenda; Item No. 2.7 on the ExCom agenda, also Item No. 2.4 on the Impl. Com. agenda, became Item No. 3.3 on the Commission agenda; Item No. 2.4 on the ExCom agenda, also Item No. 2.3 on the Impl. Com. agenda, became Item No. 3.2 on the Commission agenda; Item No. 1.2 on the Impl. Com. agenda became Item No. 3.4 on the Commission agenda. The discussion had been favorable and I expected to see it on the Commission agenda. The item was dropped from the agenda because of the need to reference my correspondence, as evidenced by the Co-Chair Banuelos's attempt to add it back in during "agenda changes." See Item No. 1, *supra*.

No actual violation occurred, but, for compliance and monitoring purposes, it shows law-avoiding activity involving an attempt to discuss a matter without notice on the agenda, which matter did not meet any of the exemptions therefrom.

- At the Aug. 5, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached as EXHIBIT 78, Commissioner Stevens disclosed she had created a markup copy of one of the annual reports. Commissioner Murawski objected that it should have been attached to the agenda. Commissioner Stevens stated that she did not want it to be made public. It should have been referenced on the agenda.
- At the meeting of the *ad hoc* committee to revise the *Bylaws* held on Aug. 5, 2022, it was announced that a copy of the *Bylaws* marked up by counsel had been distributed among the members. The *ad hoc* committee for the revision of *Bylaws* was originally formed at the May 2022 meeting of the Commission. (This action was null and void, but so are absolutely all of the acts of the Commission, many times over, due to the Commission's very lax compliance with open meetings requirements, other governing laws, rules of order, and even their own *Bylaws*, of which only the very few violations addressed by the SOTF are described here. This particular action was also defective because it failed to name the initial members of the committee, nor state its size and how the members would be appointed, such that it would be impossible to determine a quorum or whether the committee had even met! The rules of order state that no other action can take place until these details are filled in, RONR (12th ed.) 13:11, but Commissioners heartily scoff at these, to say nothing of all other laws, and hardly feel that it is worth their time to even glance at them. The status of this committee, and whether it even needs to be discharged, is very much in doubt.) At this time, it was announced that the purpose of the committee was to go over a copy of the *Bylaws* that the author of this report had marked up. Agenda item 3.2, "**Review attached By-Laws [sic] and sample markups: . . .**" did not make reference to either of these documents in distinction to the other one. The public needs to know that there are multiple documents, if there are, and how many, and what each document is, so that they can know that they have copies of all of them, one way or another. The situation is exacerbated by the inclusion of unmarked bylaws with the agenda for the meeting, and a lot of other extraneous material, such as the objectives of the Commission, the strategic plan, and a draft meeting schedule for the Commission and its standing committees.
- Prior to the posting of the agenda for the Sept. 1, 2022, meeting of the *ad hoc* committee for the reformulation of *Bylaws*, attached hereto as EXHIBIT 94, I sent the clerk an email for distribution to the committee, relevant to an item anticipated to be transacted or discussed at its next meeting, citing this section and asking that it be referenced on the agenda. As is apparent from the exhibit, it was not. I request a finding of willful noncompliance because I cited the section and specifically asked for compliance, and was refused.
- On Sept. 1, 2022, at 5:20 p.m., well in advance of the posting of the agenda for the meeting on Sept. 8, 2022, of the *ad hoc* committee on the revision of *Bylaws*, attached hereto as EXHIBIT 94, I sent the clerk an email for distribution to the committee,

Deleted: _____

relevant to the item which had been referred to the committee, attached hereto as EXHIBIT 101, citing this section and requesting that the relevant item on the agenda be annotated to make reference to this item. I request a finding of willful noncompliance because I cited this section and asked for specific compliance, and was refused.

- On Sept. 11, 2022, at 4:34 and 4:41 pm, and on Sept. 22, 2022, and at 11:20 am on Sept. 23, 2022, well in advance of the deadline for posting the notice for the Sept. 29, 2022, meeting of the *ad hoc* committee to revise the bylaws, I sent four emails to the committee, attached hereto as EXHIBITS 102, 103, 104, and 105, relevant to an item anticipated to be discussed at the following meeting, namely, the proposed bylaws. No reference to any of these pieces of correspondence appeared on the agenda for the Sept. 29 meeting, in violation of this section, as apparent from the agenda attached as EXHIBIT 93, nor on those of any of the intervening meetings of the committee. (There was a meeting noticed for Sept. 22, agenda attached as EXHIBIT 106, but only one person showed up, not even the chair, and the meeting was adjourned immediately.) I ask for a finding of willful noncompliance because I cited this section in each email and expressly asked for compliance in each email, and they complied in none of the cases.
- On Sept. 22, 2022, well in advance of the deadline for posting the notice for the Oct. 19, 2022, meeting of the Commission, I sent an email to the Commission, attached hereto as EXHIBIT 107, relevant to an item anticipated to be discussed at the Oct. 19 meeting, namely, the minutes for the June meeting of the Commission, which had never been approved, and the approval of which had been postponed from the July meeting but not even agendized, far less approved, at the September meeting. The item for approval of the June minutes on the agenda for the Oct. 19, meeting, attached hereto as EXHIBIT 92, made no reference to this email correspondence, in violation of this section. We request a finding of willful noncompliance, because the email cited this section and specifically described and requested this compliance.
- On Oct. 7, 2022, at 9:52 a.m., well in advance of the posting deadline for the Oct. 11 meeting of the Executive Committee at 4:30 p.m., I sent email relevant to an item anticipated to be discussed at the next meeting of this committee, attached hereto as EXHIBIT 110, i.e., the proper creation of the *ad hoc* committee to revise the bylaws. In fact, the agenda for this meeting, attached hereto as EXHIBIT 111, showed Item 2.4 as "The status of the BY Law [*sic*] Ad Hoc Committee, i.e [*sic*] should it continue? [action item]" This issue of whether the *ad hoc* committee should continue assumes that it had been properly created, which creation was the subject of my email. Consequently, this item on the agenda was required to reference the email, which did not occur, in violation of this section.
- On Oct. 6 at 5:50 and 6:16 p.m., I sent email to the *ad hoc* committee on bylaws as explanatory correspondence relevant to a matter anticipated to be discussed at the next meeting thereof, attached hereto as EXHIBITS 119 and 120. Subsequent to the transmission of these emails, the *ad hoc* committee posted an agenda for a meeting on Nov. 3, 2022, attached hereto as EXHIBIT 129. As may be seen from this agenda, no reference to these emails was made in the bylaws item on the agenda for the meeting.

Deleted: On Oct. 1, 2022, well in advance of the deadline for posting the agenda for the Oct. 7, 2022, meeting of the *ad hoc* committee to compose an annual report, I sent email relevant to an item anticipated to be discussed at the next meeting of the committee, attached hereto as EXHIBIT 108, i.e., the approval of the minutes of the Sept. 23, 2022, meeting of the committee, which had been discussed at the Sept. 30, 2022, meeting of the committee but no action had been proposed to be taken, because of a question of whether it was necessary to report the votes of each member of the committee present for the approval of other minutes at the Sept. 23, 2022, meeting. I only sent the email to staff and to the chair of the committee. I did not send it, or ask it to be sent, to the entire committee. Nevertheless, it was, in some sense, "provided to the policy body in connection with an agenda item . . ." and reference to it should have appeared on the agenda for the next meeting of the committee on Oct. 7, attached hereto as EXHIBIT __. No such reference appeared, in violation of this section. On Oct. 7, 2022, at 9:52 a.m., well in advance of the

Consequently, the *ad hoc* committee violated this provision. We request a finding of willful noncompliance, because we specifically asked for them to reference the emails in this item on the agenda, and cited this section. Present at this meeting were Murawski, Bohrer, and Wynn (3 of 4).

- On Oct. 20, 2022, I sent email to the Executive Committee regarding the discharge of the bylaws ad hoc committee as explanatory correspondence relevant to a matter anticipated to be discussed at the next meeting thereof, attached hereto as EXHIBIT 127. Subsequent to the transmission of these emails, the Executive Committee committee posted an agenda for a meeting on Nov. 8, 2022, attached hereto as EXHIBIT 133. As may be seen from this agenda, no reference to these emails was made in item No. 2.4 on the agenda for the meeting. Consequently, the Executive Committee violated this provision. We request a finding of willful noncompliance, because we specifically asked for them to reference the emails in this item on the agenda, and cited this section. Present at this meeting were: Banelos, Vasconez, Jackson-Lane, and Murawski (4 of 6).
- At the Jan. 10, 2023, meeting of the Executive Committee, agenda attached hereto as EXHIBIT 142, a document was mentioned during the discussion of an item on the agenda, but the document was not referenced in the item on the agenda and I had to request it individually from DPH Sunshine. It was relevant to item No. 2.4, "Vote to accept Judith Klain's resignation [action item]", namely, Former Commissioner Klain's letter of resignation, attached hereto as EXHIBIT 143. As this was received in advance of the posting of the agenda, it should have been referenced thereon pursuant to S.F. Admin. Code § 67.7(b).

Item No. 4: "67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available:"

In relevant part, S.F. Admin. Code § 67.7(b) states as follows (sq. brackets added):
"[Explanatory] 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."

The provision of this section requiring posting of documents deals only with documents of one page in length. These are to be posted "adjacent to" the agenda. The language strongly suggests that these documents are to be posted physically next to the agenda on a bulletin board. Here in San Francisco, with over 150 local government boards and commissions, we have too many local bodies to post their notices of meetings on a bulletin board. They are instead kept in a binder at the Government Information Center of the Public Library. By contrast, posting on the Commission's web page is addressed by section 67.9(a).

Failure to Attach Document to the Minutes When Only One Page in Length.

Deleted: Committee Chair LaHood
December 22

It is rare that I have correspondence for distribution to the Commission and/or its committees that is of less than one page in length, in which case it is to be "posted adjacent to the agenda," but it happened on the following occasions:

- On Sept. 22, 2022, well in advance of the deadline for posting the notice for the Sept. 22, 2022, meeting of the Commission, I sent an email to the Commission, attached hereto as EXHIBIT 107, relevant to an item anticipated to be discussed at the Oct. 19 meeting, namely, the minutes for the June meeting of the Commission, which had never been approved, and the approval of which had been postponed from the July meeting but not even agendized, far less approved, at the September meeting. The agenda for the Oct. 19, meeting, attached hereto as EXHIBIT 92, did not include this email correspondence, which was one page in length, in violation of this section. We request a finding of willful noncompliance, because the email cited this section and specifically described and requested this compliance.
- On Oct. 6 at 5:50 and 6:16 p.m., 2022, I sent email to the *ad hoc* committee on bylaws as explanatory correspondence relevant to a matter anticipated to be discussed at the next meeting thereof, attached hereto as EXHIBITS 119 and 120. Subsequent to the transmission of these emails, the *ad hoc* committee posted an agenda for a meeting on Nov. 3, 2022, attached hereto as EXHIBIT 129. As may be seen from the agenda, none of the attached emails were included. Consequently, the *ad hoc* committee violated this section. We request a finding of willful noncompliance because we specifically asked them to post these emails on their website, citing this section.

Deleted: <#>Prior to the posting of the agenda for the Aug. 1, 2022, meeting of the *ad hoc* committee for the revision of *Bylaws*, attached hereto as EXHIBIT __, I sent correspondence that was less than one page in length, and it was not posted adjacent to the agenda for the meeting.¶
On Oct. 1, 2022, well in advance of the deadline for posting the agenda for the Oct. 7, 2022, meeting of the *ad hoc* committee to compose an annual report, I sent email relevant to an item anticipated to be discussed at the next meeting of the committee, attached hereto as EXHIBIT 108, i.e., the approval of the minutes of the Sept. 23, 2022, meeting of the committee, which had been discussed at the Sept. 30, 2022, meeting of the committee but no action had been proposed to be taken, because of a question of whether it was necessary to report the votes of each member of the committee present for the approval of other minutes at the Sept. 23, 2022, meeting. I only sent the email to staff and to the chair of the committee. I did not send it, or ask it to be sent, to the entire committee. Nevertheless, it was, in some sense, "provided to the policy body in connection with an agenda item" and it should have been "posted adjacent to" the agenda for the next meeting of the committee on Oct. 6, attached hereto as EXHIBIT __. It was not, in violation of this section.¶

Item No. 5: "67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda:"

BHC has complied with this provision.

Item No. 6: "67.9(a) by failing to post supplementary documents for the meeting on the internet:"

S.F. Admin. Code § 67.9(a) states as follows, in full (sq. brackets added): "Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall be made available through the policy body's Internet site [sic]. However, this disclosure need not include any material exempt from public disclosure under this ordinance."

We frequently send email correspondence to BHC regarding items anticipated to be discussed or actually appearing on a published agenda before a meeting, and they have never once posted any of it on their website, whether with their meeting notices (when timely received) or otherwise.

- On Apr. 16 and 20, 2022, we sent correspondence relevant to Item Nos. 3.5 and 4.0, anticipated to be discussed the Apr. 20, 2022, regular meeting of the Commission, both attached hereto as EXHIBIT 3, and they were never posted on the Commission's website.
- On Apr. 20, we sent correspondence relevant to both of the items shown under Item No. 3.2 on the agenda for the Apr. 20, 2022, meeting of the Commission, attached hereto as EXHIBIT 4, and these were never posted on the Commission's website.
- On May 6, we sent correspondence relevant to items anticipated to be discussed on the agendas of the Site Visit and Implementation Committees on May 12, 2022, attached hereto as EXHIBITS 5 and 6, and the Commission never posted them on their website.
- Also on May 6, we sent correspondence related to an item anticipated to be discussed at the May 12 meeting of the Executive Committee, attached hereto as EXHIBIT 7, and the Commission never posted it on their website.
- On May 9, we sent correspondence relevant to items anticipated to be discussed at the Executive Committee on May 10, 2022, attached hereto as EXHIBIT 8, and the Commission never posted it on their website.
- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Site Visit Committee on May 10, 2022, attached hereto as EXHIBIT 9, and the Commission never posted it on their website.
- Also on May 9, we sent correspondence relevant to an item anticipated to be discussed at the same meeting as the last item, attached hereto as EXHIBIT 10, and the Commission never posted it on their website.
- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Implementation Committee on May 10, 2022, attached hereto as EXHIBIT 11, and the Commission never posted it on their website. In the second sentence of this email, we referenced this section and informed them of the requirement that they post it on their website "to the extent possible." Consequently, we ask for a finding of willful noncompliance.
- Also on May 9, we sent correspondence relevant to items anticipated to be discussed at the meeting of the Executive Committee on May 10, attached hereto as EXHIBIT 12, and the Commission never posted it on their website. In the first sentence of this email, we referenced this section and informed them of the requirement that they post it on their website. They subsequently failed to do so, and they did not rule the items we had referenced out of order, and so we ask for a finding of willful noncompliance.

- Also on May 9, we sent correspondence relevant to all items anticipated to be discussed at the meeting of the Implementation Committt on May 10, attached hereto as EXHIBIT 13, and the Commission never posted it on their website.
- After the committee meetings on May 10, we sent-out correspondence relevant to all action items at future meetings, attached hereto as EXHIBIT 17, and the Commission never posted it on their website.
- Also on May 10, we sent out correspondence relevant to the all action items at future meetings, attached hereto as EXHIBIT 18, and the Commission never posted it on their website.
- On May 11, we sent out correspondence relevant to the minutes anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBIT 19, and the Commission never posted it on their website, despite our request that they do so.
- Also on May 11, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBITS 20 and 21, and the Commission never posted them on their website, in violation of this section.
- On May 12, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBITS 23, 24, and 25, and the Commission never posted it on their website, in violation of this section. All three pieces cited this section and requested posting in the first paragraph, and we request a finding of willful violation.
- On May 13, we sent out correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission, attached hereto as EXHIBIT 26, and the Commission never posted it on their website, in violation of this section. This correspondence cited this section and requested posting in the first paragraph, and we request a finding of willful violation.
- On May 15, we sent two pieces of correspondence relevant to various items and the proposed April minutes anticipated to be discussed under Item No. 3.1 at the May 18 meeting of the Commission, attached hereto as EXHIBITS 27 and 28, and the Commission never posted it on their website, in violation of this section. The latter correspondence cited this section and requested posting in the first paragraph, and we request a finding of willful violation.
- On May 16, we sent correspondence relevant to the proposed *Bylaws* anticipated to be discussed at the May 18 meeting of the Commission under Item No. 3.4, attached hereto as EXHIBIT 29, and the Commission never posted it on their website, in violation of this section.
- On May 17, we sent correspondence relevant to the proposed *Bylaws* anticipated to be discussed under Item No. 3.4 at the May 18 meeting of the Commission, attached hereto as EXHIBITS 30 and 31, and the Commission never posted them on their website, in violation of this section. In the first paragraph of the first of

these correspondences, we requested such posting, citing this section, and request a finding of willful violation.

- On May 18, we sent correspondence relevant to all action items at all meetings, attached hereto as EXHIBIT 33, and the Commission never posted it on their website, in violation of this section.
- On May 19, we sent two pieces of correspondence, both relevant to all action items at all meetings, attached hereto as EXHIBITS 34 and 35, and the Commission never posted them on their website, in violation of this section.
- On May 31, we sent correspondence relevant to the formation of an *ad hoc* committee to revise *Bylaws*, anticipated to be discussed at the subsequent meeting of the Executive Committee, attached hereto as EXHIBIT 36, and the Commission never posted it on their website, in violation of this section.
- On June 7, we sent correspondence regarding various matters anticipated to be discussed at all three of the committee meetings scheduled for this day, attached hereto as EXHIBIT 37, and the committee never posted it to the Commission website, in violation of this section.
- Also on June 7, we sent correspondence regarding the minutes, Item No. 1.2 on the agenda for the Site Visit Committee to be approved that day, attached hereto as EXHIBIT 38, and the committee never posted it to the Commission website, in violation of this section.
- On June 9, we received fulfillment of a public records request by the Commission regarding an email from Commissioner Murawski that was relevant to an item distributed to the members of the Commission and anticipated to be discussed at the June 7 meeting of the Implementation Committee, Item No. 1.3, attached hereto, with my reply, as EXHIBIT 42, and the committee never posted it to the Commission website, in violation of this section.
- On June 15, we sent correspondence to the Commission regarding all action items anticipated to be discussed by any body, as well as adjournments, attached hereto as EXHIBIT 46, and the Commission never posted it on their website, in violation of this section.
- On June 17, we sent correspondence to the Commission regarding the MHSA public hearing anticipated to be discussed at the July 12 meeting of the Executive Committee and the July 20 meeting of the Commission, attached hereto as EXHIBIT 47, and the Commission never posted it on their website, in violation of this section.
- On June 22, we sent correspondence to the Commission regarding all anticipated action items of any body, a copy of which is attached hereto as EXHIBITS 46 and 47, and the Commission never posted them on their website, in violation of this section.
- On the same day, we sent correspondence to the Commission regarding the minutes to be passed by the Commission at its July meeting, a copy of which is attached hereto as EXHIBIT 50, and the Commission never posted it on their

website, in violation of this section. We asked for it to be posted and cited this section in the first paragraph, and so we request a finding of willful violation.

- On the same day, we sent correspondence to the Commission regarding all items at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 51. The Commission never posted it to their website, despite our request that they do in the first paragraph, and in violation of the law.
- On the same day, we sent correspondence to the Commission regarding all items of business at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 52. The Commission never posted it to their website, despite our request that they do in the first paragraph, and in violation of the law.
- On June 27, we sent correspondence to the Commission regarding all items of business at all meetings of any policy body of the Commission, including itself, a copy of which is attached hereto as EXHIBIT 53. The Commission never posted it to their website, in violation of the law.
- On June 30, we sent correspondence to the Commission regarding a motion anticipated to be discussed by the Executive Committee and the Commission, attached hereto as EXHIBIT 54. The Commission never posted it to their website, despite our request that they do so and our citation of this section in the first paragraph, in violation of the law. We request a finding of willful noncompliance, therefor.
- On July 1, we sent a postscript to the previous letter, attached hereto as EXHIBIT 55. The Commission never posted it to their website, in violation of the law.
- On July 2, we sent correspondence and a postscript to the Commission regarding a matter anticipated to be discussed by the Executive Committee, attached hereto as EXHIBITS 54 and 55. The Commission never posted them on their website, despite our request that they do so and our citation of the law in the first paragraph of the letter. We request a finding of willful noncompliance therefor.
- On July 8, we sent correspondence and a postscript to the Commission regarding a matter anticipated to be discussed by the Executive Committee, attached hereto as EXHIBITS 59 and 60. The Commission never posted them on their website, in violation of this section.
- On July 12, we sent correspondence to the Commission regarding all matters anticipated to be discussed at the three committee meetings that day, attached hereto as EXHIBIT 60. The Commission never posted it on its website, in violation of this section.
- On July 13, we sent correspondence to the Commission, one item regarding all matters anticipated to be discussed at any meeting of any body of the Commission and three others regarding a specific matter anticipated to be discussed at the July 20 regular meeting of the Commission, attached hereto as EXHIBITS 66, 67, 68

- and 69, resp. The Commission never posted these on its website, in violation of this section.
- On July 16, we sent correspondence and a postscript to the Commission regarding various matters anticipated to be discussed at the regular meeting of the Commission at the regular meeting on July 20, attached hereto as EXHIBITS 70 and 71. The Commission never posted these on its website, in violation of this section.
 - On July 20, we sent another postscript to the messages described in the previous paragraph and a message regarding a matter anticipated to be discussed at all meetings of the Commission and its committees, attached hereto as EXHIBITS 72 and 74. The Commission never posted these on its website, in violation of this section.
 - On July 21, we sent two additional postscripts to the second of the two messages described in the previous paragraph, attached hereto as EXHIBITS 75 and 76. The Commission never posted these on its website, in violation of this section.
 - On Aug. 1, we sent correspondence regarding everything anticipated to be transacted or discussed at the meeting to be held that day, attached hereto as EXHIBIT 77. The Commission never posted these on its website, in violation of this section.
 - On Aug. 5, during the meeting of this committee and at the acting committee chair's request, we sent two pieces of correspondence regarding all items to be transacted or discussed at the 4:00 pm meeting of the *ad hoc* committee on the revision of *Bylaws*. The Commission never posted these on its website, in violation of this section.
 - On Aug. 12, we sent correspondence regarding all items to be transacted or discussed at the committee meetings to be held that day. The Commission never posted these on its website, in violation of this section.
 - The *ad hoc* committee for the revision of *Bylaws* was originally formed at the May 18, 2022, meeting of the Commission. (Although the action was null and void for a plethora of reasons, it stands until discharged or revised by the Commission or challenged by a member. See comments on Aug. 5 meeting under Item No. 3 for further discussion.) At this time, it was announced during debate that the purpose of the committee was to go over a copy of the *Bylaws* that the author of this report had marked up. This copy was not included in the agenda or otherwise posted on the Commission website in advance of the first meeting of the committee on Aug. 5, 2022, at 4:00 p.m., in violation of this section.
 - At the regular meeting of the Implementation Committee on June 7, 2022, agenda attached hereto as EXHIBIT 40, during the discussion of Item No. 1.1, "Vote to adopt May 10, 2022 minutes [action item]," it was disclosed that staff had "distributed a template" regarding how the minutes should be written. This was required to be posted on the BHC website "to the extent possible," was not. Also, during Item No. 1.3, "Vote to appoint a Chair for the onetime bylaws non-public

workgroup meeting – [action item],” it was disclosed that Commissioner Murawski, not then a member of the committee, had sent email for distribution to the members of this committee regarding this matter anticipated to be discussed by the committee under this item. This email, attached hereto as EXHIBIT 42, was neither posted on the Commission’s website. (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- At the July 20, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 72, they failed to post on the website correspondence I sent them regarding one of the items anticipated to be discussed at the meeting, namely the proposal to end the meetings regularly at 8:00 p.m., attached hereto as EXHIBIT 68. It was possible even for them to include this correspondence with the agenda document that was electronically posted, as I sent it to them the correspondence far enough in advance of the meeting that the agenda had not been posted yet.
- At the Aug. 5, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached as EXHIBIT 78, Commissioner Stevens disclosed that she had created a markup copy of one of the annual reports. Commissioner Murawski objected that it should have been attached to the agenda. Commissioner Stevens stated that she did not want it to be made public. It should have been attached to the agenda of otherwise posted on the Commission website.
- At the meeting of the *ad hoc* committee for the revision of *Bylaws* held on Aug. 5, 2022, at 4:00 p.m., it was revealed that a copy of the *Bylaws* that had been marked up by Commission counsel had been circulated among the members, but none was included in the agenda for the meeting or otherwise posted on the Commission website in advance of the meeting.
- In advance of the meeting of the *ad hoc* committee on the revision of *Bylaws* to be held on Sept. 1 at 3:00 p.m., I sent correspondence to the clerk for distribution to the committee relevant to an item anticipated to be discussed at the meeting, and she did not post it on their website. I ask for a finding of willful noncompliance because I specifically asked for them to post this item citing this section, and they did not do so.
- On Sept. 1, at 5:20 p.m., well in advance of the posting of the notice for the meeting of the *ad hoc* committee on the revision of *Bylaws* on Sept. 8, 2022, at 3:00 p.m., I sent the clerk an email for distribution to all of the members of the policy body, attached hereto as EXHIBIT 101, and she did not post it on the Commission website. I request a finding of willful noncompliance because I specifically requested compliance, citing this section in support, and the clerk refused to do so.
- On Sept. 11, 2022, at 4:34 and 4:41 pm, and on Sept. 22, 2022, and at 11:20 am on Sept. 23, 2022, I sent four emails to the *ad hoc* committee to revise the bylaws, attached hereto

as EXHIBITS 102, 103, 104, and 105, to be sent to the members of the committee as explanatory correspondence relative to an item anticipated to be discussed at the next meeting of the committee. None of these emails were posted on the Commission's website, in violation of this section. I ask for a finding of willful noncompliance because I cited this section in each email and expressly asked for compliance in each email, and they complied in none of the cases.

- At the Sept. 23, 2022, meeting of the *ad hoc* committee to compose an annual report, agenda attached hereto as EXHIBIT 90, action was taken to approve the minutes for the Sept. 2, 2022, meeting of this committee. However, as the screen capture of the Commission website during this meeting showed, attached as EXHIBIT 112, no minutes for this meeting had been posted to the public, nor were any attached to the agenda.
- On Oct. 7, 2022, at 9:52 a.m., I sent email relevant to an item anticipated to be discussed at the next meeting of the Executive Committee, attached hereto as EXHIBIT 110, i.e., the proper creation of the *ad hoc* committee to revise the bylaws. In fact, the agenda for this meeting, attached hereto as EXHIBIT 111, showed Item 2.4 as "The status of the BY Law [*sic*] Ad Hoc Committee, i.e [*sic*] should it continue? [action item]" This issue of whether the *ad hoc* committee should continue assumes that it had been properly created, which creation was the subject of my email. Consequently, the email was required to be posted on the Commission's website. It was not, in violation of this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.
- On Oct. 9 and 10, I sent email relevant to an item anticipated to be discussed at the next meeting of the Executive Committee, attached hereto as EXHIBITS 113 and 114, i.e., Item No. 1.4, annual reports, on the agenda, attached hereto as EXHIBIT 111. This email was required to be posted on the Commission's website by this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.
- On Oct. 19 at 12:45 p.m., I sent email relevant to an item anticipated to be discussed at the meeting of the Commission that night at 6 p.m., attached hereto as EXHIBIT 115, agenda attached hereto as EXHIBIT 92, specifically Item No. 3.0 thereon. This email was required to be posted on the Commission's website by this section. We ask for a finding of willful noncompliance because we specifically requested compliance, citing this section.
- On Oct. 7 at 9:52 a.m., and Oct. 9 at 12:05 p.m., I sent email to the Executive Committee, attached hereto as EXHIBITS 121 and 124, regarding the discharge of the *ad hoc* bylaws committee and the approval of the 2021-2022 Annual Report, matters anticipated to be discussed at the next meeting of the Executive Committee. The Executive Committee posted an agenda for a meeting on Oct. 11, 2022, attached hereto as EXHIBIT 126. As may be seen from a web page capture for this meeting attached hereto as EXHIBIT 125, none of the attached emails were posted on the web page for the meeting. Consequently, the Executive Committee violated this section. We request a finding of willful noncompliance because we specifically asked them to post these emails on their website,

citing this section. The meeting did not occur, and the matters appeared on the agenda for the Nov. 8 meeting. A screen-capture of the web page for this meeting, attached hereto as EXHIBIT 132, similarly shows no emails attached, yet they went ahead and discussed these matters as if nothing were wrong. Present at this meeting were: Banuelos, Vasconez, Jackson-Lane, and Murawski (4 of 6).

- On Oct. 7 at 1:29 p.m., and 1:37 p.m., I sent email to the ad hoc committee to revise bylaws, attached hereto as EXHIBIT 122 and 123 regarding a matter anticipated to be discussed at the next meeting of the ad hoc committee on Nov. 3, 2022, namely the proposed revision of the bylaws. As may be seen from a web page capture for this meeting attached hereto as EXHIBIT 128, none of the attached emails were posted on the web page for the meeting. Consequently, the ad hoc committee violated this section. We request a finding of willful noncompliance because we specifically asked them to post these emails on their website, citing this section. Present at this meeting were: Murawski, Bohrer, and Wynn (3 of 4).
- On Oct. 20, 2022, I sent email to the Executive Committee, attached hereto as EXHIBIT 127, regarding a matter anticipated to be discussed at the next meeting of the Executive Committee, namely the discharge of the ad hoc bylaws committee. Subsequent to the transmission of this email, the Executive Committee posted an agenda for a meeting on Nov. 8, 2022, attached hereto as EXHIBIT 133. As may be seen from a web page capture for this meeting attached hereto as EXHIBIT 132, the attached email was not posted on the web page. Consequently, the Executive Committee violated this section. We request a finding of willful noncompliance because we specifically asked them to post this email on their website, citing this section. Present at this meeting were: Banuelos, Vasconez, Jackson-Lane, and Murawski (4 of 6).
- On Nov. 10, at 2:52 p.m. and 2:56 p.m. I sent email to the Commission, attached hereto as EXHIBITS 134 and 135, regarding a matter anticipated to be discussed at the meeting on Nov. 16, 2022, namely the approval of proposed revised bylaws and approval of minutes, resp. Subsequent to the transmission of these emails, the Commission posted an agenda for a meeting on Nov. 16, 2022, attached hereto as EXHIBIT 138. As may be seen from a web page capture for this meeting attached hereto as EXHIBIT 137, none of the attached emails were posted on the web page for the meeting. Consequently, the Commission violated this section. We request a finding of willful noncompliance because we specifically asked them to post these emails on their website, citing this section. Present at this meeting were: Banuelos, Bohrer, Jackson-Lane, Mason, Murawski, Parks, Stevens, Vasconez, Williams, Wynn.(10 of 17).
- At 7:50 p.m. on Nov. 16, 2022, at the meeting of the Commission, the agenda for which is attached as EXHIBIT 138, Commissioner Murawski disclosed that she had sent email out to all Commissioners regarding Item No. 3.5 and received no response. (This was not the draft letter that appeared on the agenda for approval under this item.) This email, a copy of which is attached as EXHIBIT 136, should have been posted on the Commission website. A screen capture of the page for this meeting, attached hereto as EXHIBIT 137, shows that it was not. Consequently, the Commission violated this section.

- On Dec. 16, 2022, at 12:29 and 12:58 pm, I sent email to the Commission, both attached hereto as EXHIBIT 139, intended for distribution to the Commission in connection with a matter anticipated to be transacted or discussed at the meeting to be held the following day, specifically, Item No. 1.1, "Best Practices Manual," on the agenda for the meeting, attached hereto as EXHIBIT 145. Pursuant to this section, the Commission should have published the email on its website. It refused to do so, in violation of this section, as can be seen from a screen capture of the website dated Dec. 19, 2022, attached hereto as EXHIBIT 141. We ask for a finding of willful noncompliance, as we specifically requested that they post the 12:29 email, to which the 12:58 email was a postscript, and cited this section. Present at this meeting were: Banuelos, Bohrer, Mason, Murawski, Parks, Stevens, Vasconez, Vigil, Williams, Wynn (10 of 17).
- At the Jan. 10, 2023, meeting of the Executive Committee, agenda attached hereto as EXHIBIT 142, a document was mentioned in connection to an item on the agenda which was intended for distribution to all of the members of the Executive Committee, but the document was not posted on the Commission's website and I had to request it from DPH Sunshine. It was relevant to Item No. 2.4, "Vote to accept Judith Klain's resignation [action item]", namely, Former Commissioner Klain's letter of resignation, attached hereto as EXHIBIT 143, to the extent that it was made available to me through DPH Sunshine. As this was over one page in length, and not subject to posting adjacent to the agenda under the third sentence of § 57.7(b), it should have been posted on the website. As shown by a screen capture taken the following day and included as EXHIBIT 144, it was not.

Item No. 7: "67.15(a) by failing to allow public comment for each item on the agenda."

S.F. Admin. Code § 67.15(a) relevantly states as follows (sq. brackets added): "Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's [sic] subject matter jurisdiction, provided that no action shall be taken of any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. . . ." (Note also, as an instance of "Sunshine Ordinance underhang," the analogous Brown Act requirement, cited above, requires that the opportunity occur "before or during the legislative body's consideration of the item" at regular meetings, and "before or during consideration of that item" at special meetings. We think this language should be read into the Sunshine Ordinance because it would be absurd to require an opportunity for the public to address the legislative body on an action item after the final vote had been taken on the item, or on a discussion item after the policy body had moved on to other matters. In support, we note that the exclusion for the Board of Supervisors further on in S.F. Admin. Code § 67.15(a) requires, as a condition, that the public be given an opportunity to address a committee of the Board of Supervisors "before or during the committee's consideration of the item," as well as other conditions not specified generally in id., such as "at a public meeting wherein all interested members of the public were allowed the opportunity to address the committee on the item . . ." Subd. (e) of id. requires that each policy body adopt a rule allowing each member of the public who wishes to address the policy body on

Leger, Cheryl (BOS)

From: Wynship Hillier <wynship@hotmail.com>
Sent: Thursday, October 20, 2022 7:39 PM
To: SOTF, (BOS)
Cc: DPH-San Francisco Behavioral Health Commission; Grier, Geoffrey (DPH - Contractor); Gray, Amber (DPH); Young, Victor (BOS); Somera, Alisa (BOS)
Subject: Re: SOTF - Notice of Appearance - Compliance and Amendments Committee; October 25, 2022 4:30 p.m.
Attachments: Oct. 25, 2022, Compliance and Monitoring hearing.pdf; exhibits(0).pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Attached, our submissions. Per Victor Young's email earlier today, our deadline was extended to 8:00 pm. - WH

From: SOTF, (BOS) <sotf@sfgov.org>
Sent: Friday, October 14, 2022 3:09 PM
To: Marc Norton <nortonsf@protonmail.com>; Tran, Sophie (DPH) <sophie.tran@sfdph.org>; Pojman, Natalie (DPH) <natalie.pojman@sfdph.org>; Reilly, Lynn (POL) <Lynn.Reilly@sfgov.org>; Sergei Severinov <serolga@yahoo.com>; sf.texts.research@pm.me <sf.texts.research@pm.me>; Colfax, Grant (DPH) <grant.colfax@sfdph.org>; Anonymous <arecordsrequestor@protonmail.com>; Feitelberg, Brittany (PUC) <BFeitelberg@sflower.org>; Ruski Augusto Sa, Mayara (PUC) <MRuskiAugustoSa@sflower.org>; Grier, Geoffrey (DPH - Contractor) <geoffrey.grier@sfdph.org>; Wynship Hillier <wynship@hotmail.com>; Gray, Amber (DPH) <amber.gray@sfdph.org>
Cc: Young, Victor (BOS) <victor.young@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>
Subject: SOTF - Notice of Appearance - Compliance and Amendments Committee; October 25, 2022 4:30 p.m.

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 Compliance and Amendments Committee to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee. ***To all parties, please confirm your attendance for this hearing.***

Date: **October 25, 2022**

Location: Remote meeting; participant information to be included on the Agenda cover page.

Time: 4:30 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:

File No. 21124: Complaint filed by Marc Norton against the Department of Public Health (DPH) for violating Administrative Code (Sunshine Ordinance), Section(s) 67.21 by failing to provide guidance on locating records; 67.25 by failing to respond to an Immediate Disclosure Request in a timely manner; 67.26 by failing to keep withholding to a minimum and 67.27 by failing to provide justification for withholding.

File No. 22014: Complaint filed by Sergei Severinov against Lt. Lynn Reilly and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21(b), by failing to respond to a public records request in a timely and/or complete manner.

File No. 22012: Complaint filed by Anonymous (SFT) against Director Greg Colfax and the Department of Public Health for allegedly violating Administrator Code (Sunshine Ordinance), Section(s) 67.21, by failing to respond to a public records request in a timely and/or complete manner.

File No. 21153: Complaint filed by Anonymous (ARE) against Dennis Herrera for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.29-5(a), by failing to keep or cause to be kept a calendar with certain minimum information about his business meeting, and to disclose them as public records and willful failure to discharge any duties imposed by the Sunshine Ordinance, Brown Act or the Public Records Act and 67.34 willful violation constituting official misconduct.

File No. 22092: Hearing to review the Behavioral Health Commission's compliance with the sunshine Ordinance (Sections listed below) for meetings that occurred after April 13, 2021.

On April 6, 2022, the SOTF referred the matter to the Compliance and Amendments Committee to monitor future Behavioral Health Commission's meetings for compliance with the following sections of the sunshine Ordinance:

- 67.7(a) providing an adequate description of the agenda items;
- 67.7(a) posting Agenda 72 hours in advance of the meeting;
- 67.7(b) providing a clear description of the agenda matters;
- 67.7(b) posting supporting documents on-line or making them available as soon as they are available;
- 67.7(g) including notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) posting supplementary documents for the meeting on the internet;
- 67.15(a) allowing public comment for each item on the agenda.

In addition, the SOTF requests that the Behavioral Health Commission provide their manual or description of their procedure/practices implemented to address the code sections listed. In an effort to document compliances with posting requirements of the Sunshine Ordinance, the SOTF requests that the Behavioral Health Commission maintain a log of when agendas and supporting documents are posted along with any other relevant data.

File No. 22120: The members of the Compliance and Amendments Committee are inviting members of the public who wish to propose amendments to the Sunshine Ordinance to present their proposals at this meeting. Each person who makes a presentation will be given equal speaking time of five minutes. We will take public comment once all of the presentations are complete. Each person who makes a presentation will be given an equal amount of speaking time. Each presenter will have at least five minutes to speak. *(Discussion and No Action)*

For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, October 20, 2022.

Cheryl Leger
Assistant Clerk, Board of Supervisors
Tel: 415-554-7724

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

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Wynship W. Hillier, M.S.
3562 20th Street, Apartment 22
San Francisco, California 94110
(415) 505-3856
wynship@hotmail.com

October 10, 2022

Lila LaHood, Chair
Compliance and Amendments Committee
Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 244
San Francisco, California 94102-4689

Sent via email to sotf@sfgov.org

Dear Committee Chair LaHood:

In response to your email of July 10, 2022, announcing an hearing before the Compliance and Amendments Committee (“CAC”) of the Sunshine Ordinance Task Force (“SOTF”) on Aug. 23, 2022, on the topic of the Behavioral Health Commission’s (“BHC’s”) compliance with the Task Force’s order of Apr. 6, 2022, I have compiled the following summary of violations thereof occurring since that date.

Summary of Recent SOTF Actions Regarding BHC

On Oct. 6, 2021, The SOTF ruled against the Behavioral Health Commission on file nos. 20100 and 20143, combined into 20100.

On Feb. 2, 2022, the SOTF reaffirmed its Oct. 6, 2021, decision in all respects.

On Apr. 6, 2022, the SOTF ruled against the Behavioral Health Commission on file nos. 21021, 21036, 21087, 21095, 21099, 21103, and 21118.

On Apr. 8, 2022, SOTF Administrator Cheryl Leger sent an email to me and the BHC with subject line “SOTF – Motion on Item 8, Consent Agenda; SOTF April 6, 2022” to the BHC (emph. in orig.):

Mr. Hillier and Mr. Grier: Below is the motion from Wednesday night’s Sunshine Task Force hearing:

Member Hyland moved approve [*sic*] the consent agenda for file [*sic*] 21021, 21036, 21087, 21095, 21099, 21103, 21118 as presented for violations each noted and Order of Determination for each item, second, Vice-Chair Yankee.

Vice-Chair Yankee provided amendments to the motion.

Moved by Vice-Chair Yankee to include the motion from the March 8, 2022, Education, Outreach and Training Committee hearing and put it into the Order of Determination. The EOTC [*sic*] is ordered to provide a manual of their practices and procedures as listed above. [*sic*]

Moved by Chair Hyland, seconded by Member Yankee, to recommend that the SOTF, via Consent Agenda, find that the BHC and its Committees, at various meetings that occurred from period [*sic*] September 8, 2020, through April 13, 2021, violated one or more of the following Sunshine Ordinance Sections:

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The EOTC further requests that the SOTF refer the matter to the Compliance and Amendments Committee to review future agendas/meetings of the BHC, no earlier than the issue date of the Order of Determination, and not to extend beyond three months, regarding compliance with the Sunshine Ordinance Sections listed above or related violations.

The EOTC further requests that the BHC provide their manual or description of their procedures/practices implemented to address the violations listed above. In an effort to document compliances [*sic*] with posting requirements of the Sunshine Ordinance, the EOTC requests that

the BHC maintain a log of when agendas and supporting documents are posted along with any other relevant data.

On Apr. 19, 2022, Ms. Leger sent a second email to me and the BHC, this time with "Subject" line "SOTF – April 6, 2022 Sunshine Task Force actions", as follows:

Mr. Hillier and Mr Grier: Per the Sunshine Task Force [*sic*], the actions from the April 6, 2022 Sunshine Task Force [*sic*] regarding the [*sic*] Item 8, the Consent Agenda hearing [*sic*] are below.

Action: Moved by Member Hyland, seconded by Vice Chair Yankee to approve the consent agenda for File Nos. 21021, 21036, 21087, 21095, 21099, 21103, 21118, as presented for violations each noted and that and that an Order of Determination is drafted for each item for the following violations against the Behavioral Health Commission for meetings that occurred for the period of September 8, 2020, through Apr. 13, 2021, for violations of one or more of the following Sunshine Ordinance Sections (with the Respondent plea of "No Contest"):

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

The SOTF further requests that the matter is referred to the Compliance and Amendments Committee no earlier than the issue date of the Order of Determination. The SOTF further requests that the BHC provide their manual or description of their procedure/practices implemented to address the violations listed. In an effort to document compliance with posting requirements of the Sunshine Ordinance, the SOTF requests that the BHC maintain a log of when agendas and supporting documentation are posted along with any other relevant data.

The minutes for the meeting on Apr. 6, 2022, had additionally reported the following information:

The motion PASSED by the following vote:

Ayes: 7 – Hyland, Yankee, Wolfe, Padmanabhan, Schmidt, Stein,
Neighbors

Noes: 0 – None

Absent: 2 – Wong, LaHood

On July 6, 2022, I appeared before the SOTF at their regular meeting and requested that the referenced Order of Determination and another, regarding file no. 20100, issue, citing continuing desultory compliance and continuing violations by BHC. I was told at the meeting that the above emails were orders of determination, that staff was to have provided an email regarding file no. 20100, and that you were to schedule an hearing in CAC for monitoring and compliance.

On July 11, 2022, I received email from you, cc'd to the BHC and SOTF, relevantly stating the following (emph. in orig.):

Dear Mr. Hillier,

When the Sunshine Ordinance Task Force finds a violation and orders compliance, that **order of determination is effective immediately**. We expected that the Behavioral Health Commission would be taking steps to comply with our order right after it was issued in April.

I will ask Ms. Leger to **schedule a hearing on this matter for our next Compliance and Amendments Committee meeting in August**.

I would recommend that a representative from the **Behavioral Health Commission follow up with Ms. Leger and let her know what they have been doing to comply with our order of determination** in advance of that meeting.

Best regards,

Lila

At the time, the next meeting of the Compliance and Amendments Committee was scheduled for Aug. 23, 2022.

On July 15, 2022, Ms. Leger sent the following email to myself, the Behavioral Health Commission, and Mr. Grier, with the subject line, "SOTF – Matter No. 20100 per Mr. Hillier's request" (ellipses added):

Mr. Hillier, Behavioral Health Commission and Mr. Grier: Per Mr. Hillier's request, below is the October 6, 2021 Sunshine Task Force [*sic*] motion on matter 20100.

File No. 20100: Complaint filed by Wynship Hillier against the Behavioral Health Commission, formerly known as the Mental Health

Board for allegedly violating, Section 67.7(a) failing to post the Agenda 72 hours in advance and failing to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(d) failure to take action on any item not on the Agenda [sic]; 67.7(g) failing to allow public comment; 67.9(a) failure to post relevant documents on the internet.

Chair Wolfe noted that both items 7 and 8 were heard by different Committees and suggested a motion to combine the items.

Both Petitioner and Respondent agreed to combining the two matters.

Action: Moved by Chair Wolfe, seconded by Member Hyland, to combine items 7 and 8, File Nos. 20100 and 20143, respectively. (File No. 20143 combined into 20100)

Public Comment:

....

The motion PASSED by the following vote:

Ayes: 8 – Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Yankee

Absent: 1 – Wong

Member Wong was noted present at 6:06 PM.

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Action: Moved by Member Stein, seconded by Member Schmidt, to find that the Behavioral Health Commission Violated Administrative Code, Sunshine Ordinance, Section(s) 67.7(a) by failing to provide an adequate description of agenda items; 67.7(b) failing to post supporting documents on-line or make them available as soon as they are available [sic], 67.7(g) failing to include notices of rights under the Sunshine Ordinance on the agenda, and 67.9(a) failing to post supplementary documents for the meeting on the internet.

Public Comment:

.....

The motion PASSED by the following vote:

Ayes: 9 – Stein, Schmidt, Wolfe, Hyland, Padmanabhan, Lahood, Neighbors, Yankee, Wong

Noes: 0 – None

Action: Moved by Chair Wolfe, seconded by Vice-Chair Yankee, to continue the matter to the Call of the Chair to review the status of the Behavioral Health Commission as to whether it falls under the jurisdiction of the Ordinance under 67.3(d) and to further review how the holdover provisions apply.

Public Comment:

None

The motion PASSED by the following vote:

Ayes: 9 – Wolfe, Yankee, Hyland, Padmanabhan, Schmidt, LaHood, Stein, Neighbors, Wong

Noes: 0 – None

Action: Moved by Vice-Chair Yankee, seconded by Chair Wolfe, to find that the Behavioral Health Commission violated Administrative Code (Sunshine Ordinance), Section(s) 67.7(a) by failing to post their agenda 72 hours in advance the meeting [*sic*].

Public Comment:

.....

.....

The motion PASSED by the following vote:

Ayes: 8 – Yankee, Wolfe, Hyland, Padmanabhan, Schmidt, LaHood, Neighbors, Wong

Noes: 1 – Stein

The meeting was recessed from 8:27 to 8:37 PM.

File No. 20143: Complaint filed by Wynship Hillier against the Behavioral Health Commission for allegedly violating Administrative Code (Sunshine Ordinance),

Sections 67.7(a) by failing to post the Agenda 72 hours in advance of the meeting and failure to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(g) failing to allow public comment; 67.7(h) failing to include notices of rights under the Sunshine Ordinance on the agenda; 67.9(a) failure to post relevant documents on the internet; 67.15(c) failing to allow public comment; and 67.21(b) failing to make files available to the public.

File No. 20143 combined into File No. 20100.

BHC'S COMPLIANCE WITH THE SAN FRANCISCO SUNSHINE ORDINANCE SINCE THE SOTF'S ORDER OF APR. 6, 2022, HAS BEEN POOR.

BHC has shown improvement in only two of the seven areas in which SOTF found violations on Apr. 6, 2022. In one area, they have been including SOTF messages in all of their meeting notices, even in notices for meetings of committees new since the Apr. 6, 2022, order. In the one other area in which they showed improvement, their performance in the area had previously been so bad that, even with improvement, their compliance in this one area is still poor. We ask for findings of willful noncompliance in several areas because, not only did BHC have a ruling from the SOTF citing these very violations in front of them at the time that they were repeating them, but, in many instances (noted below), BHC proceeded with violations despite advance email warnings from me that the violations were apparent from the notice or the circumstances surrounding its posting and were either way incurable. Yet, they proceeded with the noticed meetings and actions anyway, knowing that they could not fail to commit violations of the law thereby. This is "willful noncompliance."

Committee. None of this has been reported to you. The Commission is aware of all of which six meetings were noticed since the last meeting of this committee, none of the meetings occurred, except for one which was apparently held at a different meeting ZOOM than the one announced. Two were cancelled under strange circumstances. Three more failed to attract quorum. All of them exhibited the same repetitive agendas we have reported previously, but we report none of them here because none of them were "meetings" under the Ordinance, except for the one held at a meeting ZOOM not available to the public, of which I was first informed only after the fact. Also during this period, one of the Co-Chairs (the other is a full-time graduate student at U.C. Berkeley, rents an apartment there, and has not been removed from the Commission for violation of S.F. Charter § 4.104(b), requiring residents, community group members, and others in an "informal work group" not subject to open meeting requirements, may speak at the desire to move business from *ad hoc* committees into these work groups, and appears to have converted one of the *ad hoc* committees into such a work group by personal fiat, which he imagines to have allowed it to meet privately. At the meeting on Oct. 19, it was announced that separate "training sessions" with Commission counsel and the Deputy Director of Behavioral Health Services, both regarding conduct of meetings by the Commission, would be appearing on uncertain dates. We also note for amendment purposes that the Commission has conducted a training session, under my advice, without notice to the public, and that they were only able to do so because the training was conducted remotely. In other words, the CMAID-19-260 exposures, through a possible procedure without notice that would have previously occurred without event, because the provisions in the San Francisco Ordinance for remote meetings are broader than those for in-person meetings, compare S.F. Ordinance 30.301.002.010, but could be corrected under the Ordinance, and § 4.104.002.010, but not required all meetings to be held in person. All violations in S.F. Charter § 4.104(b).

In the remainder of this document, we break down the SOTF's Apr. 6, 2022, order into its component findings. Under each finding, in italicized type, we quote the black letter of the law for the relevant part of the code section cited, quote any other sections of law relevant to the finding, and discuss any issues of interpretation. (We assume that the SOTF did not mean to limit its orders to regular meetings, even if the specific code sections they cited only applied to regular meetings. In these circumstances, we cite or quote the code section responsible for analogous special meeting requirement. We also assume that the SOTF orders were intended to cover all BHC committees, including ones created after the order.) Then, because each provision of each section may be violated in a number of different ways, we list each of those ways and discuss how the referenced act or omission constitutes a violation of the referenced provision, as well as aggravating and mitigating factors, if any. Finally, we provide bullet points, one for each meeting in which the referenced act or omission occurred. Within each bullet point, we reference items on the agenda in which the referenced act or omission occurred and describe the act or omission.

Item No. 1: "67.7(a) by failing to provide an adequate description of the agenda items;"

S.F. Admin. Code § 67.7(a) states as follows, in relevant part (sq. brackets, ellipsis added): “[A] policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the [regular] meeting. Agendas shall specify for each item of business the proposed action or a statement that the item is for discussion only. . . .” (Note: S.F. Admin. Code § 67.7(b) states as follows, in pertinent part (ellipsis added): “A description is meaningful if it is sufficiently clear 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. . . .”) (Note: Cal. Gov’t Code § 54952.6, part of the Brown Act, in pari materia with the Sunshine Ordinance, states in full: “As used in this chapter, ‘action taken’ means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”) (Note: S.F. Admin. Code § 67.6(f) specifies that (sq. brackets, ellipses added), “[t]he notice [of a special meeting] shall specify . . . the business to be transacted. No other business shall be considered at such meetings. . . .”)

Failure to Include “a Meaningful Description”

S.F. Admin. Code § 67.7(a) requires, as part of the descriptions of items on the agenda for a regular meeting, that each item on the agenda include a “meaningful description” of the item to be transacted or discussed. The description must be detailed enough that a member of the public whose interests may be affected by the item would be able to tell from the description of it whether or not to attend the meeting. *Id.* § 67.7(b).

- The agenda for the May 10, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 15, contained a meaningless description. Item No. 2.4 was “**Follow up on RFP:** Dr. Kunins update on MHSF for 5/18/22. What about the RFP?” was insufficient to inform someone whose interests were affected of whether they should attend the meeting. During the discussion of this item, it was revealed that this item was actually about a proposal to have a member of BHC sit on an extant BHS panel to evaluate proposals by new programs seeking funding from BHS, and maybe visit their sites. This information should have appeared on the agenda. We complained about this in an email, attached hereto as EXHIBIT 11. They went ahead with the meeting anyway. We ask for a finding of willful noncompliance.
- The agenda for the May 10, 2022, regular meeting of the Executive Committee, attached hereto as EXHIBIT 16, did not contain any entry for two discussions listed on it. The item called was “**ITEM 1.0 COMMISSIONER’S [sic] REPORTS [¶]** Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives”. It is ambiguous, what “in on” and “the distribution of budget initiatives” mean, but, in any event, it is clear that this item is the new place for the *Bylaws*-required reports of committees to the Executive Committee.

(These used to have at least a marker on the agenda, as they do during the reporting period at the Commission level.) Nothing whatsoever to do with “the distribution of budget initiatives,” whatever that was supposed to mean, was discussed here. Instead, a “report” of the Implementation Committee was given here. This was a seven-minute discussion between committee members and non-committee Commissioners on grievance processes at BHC sites and what to do about them. Furthermore, it was proposed to put this on the meeting of the Commission the following week, apparently as a discussion item, “just to get it heard by the administration.” As mentioned elsewhere, it is ambiguous whether this item (at this meeting) was for discussion only or action was taken, because any member may put discussion items on the agenda for the Commission and no vote was taken. Either way, there was not even ambiguously any notice whatsoever on the agenda for this item, nor did the proposed action, which was to *recommend that the Commission discuss the item at its meeting the following week*, appear on the agenda. Item 2.5 was dismissed by staff as “overkill” (apparently, they are over-noticing in order to avoid violations) and skipped by the committee chair, but the description for this item, “MSA to be on June 15, 2022 agenda for presentation, vote if necessary [action item]” was an inadequate description because it did not state the topic of the presentation. I had complained via email about this item in advance of the meeting, attached hereto as EXHIBIT 12. While no violation occurred, for purposes of compliance and monitoring, the reason for skipping the item appears to have been other than the violation it would have entailed. Had the facts been otherwise, a violation may have occurred.

- The agenda for the regular meeting of the Commission held on May 18, 2022, attached hereto as EXHIBIT 32, contains no notice whatsoever of an item introduced immediately after roll call; Commissioners Wynn and Murawski, both newly added to the Commission, were asked to introduce themselves, and they did. It also contained no notice whatsoever of a motion to create an *ad hoc* committee to revise the *Bylaws*, which motion was introduced concurrently with the motion to approve the *Bylaws* under Item No. 3.4. Please make no mistake; this was not a secondary motion to *Commit or Refer* that would have temporarily disposed of the approval of the revised *Bylaws* and prevented final action on them by referring it to a committee; such a secondary motion to *Commit or Refer* would have required no notice on the agenda. This was a *main motion* to *Commit or Refer* the newly approved *Bylaws* to an *ad hoc* committee. Thus, it needed notice on the agenda. “Action taken” in *Cal. Gov’t Code* § 54952.6 includes *all main motions*, even secondary motions that are moved as main motions because they are moved when no other business is pending. See, RONR (12th ed.) 6:9 and 13:6 (incidental main motion to *Commit or Refer*) To reiterate, on this day, the Commission took action on a compound motion to: a) adopt revised *Bylaws* and b) form an *ad hoc* committee to revise them yet again. Only the motion to adopt the revised *Bylaws* was on the agenda; the committee to revise them still further was added because the motion to revise the *Bylaws* did not pass, the first time, and so they added it on (but staff announced the added

motion at the beginning of the meeting during “agenda changed,” as if this had all been choreographed in advance, hmmm.) This agenda also lacks a meaningful description of Item No. 3.3, “BHC to review, discuss, and vote on the motion put forth by Co-Chair Vigil – see **pasted below [action item]**” “Motion” is just about paradigmatic of an inadequate description. The direction to “see . . . below” was neither helpful because there were two motions pasted below that lacked reference on the agenda. We informed them of this defect via email in advance of the meeting, email attached hereto as EXHIBIT 27, and they proceeded to discuss it without ruling it out of order. Consequently, we request a finding of willful noncompliance.

- The agenda for the June 7, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 40, contains meaningless descriptions of items. Specifically, “**1.3 Vote to appoint a Chair for the onetime bylaws non-public workgroup meeting – [action item]**” This entry on the agenda would make no sense whatsoever to someone of average intelligence and education who took the time to read the *Bylaws* and rules of the Commission. First of all, such a person would know that appointment of the members of an *ad hoc* committee (incl. designation of the committee chair) is never distinct from the creation of the committee. *Id.* 13:15 (“**Naming Members to a Special Committee.**” “When a motion to refer to a special committee had been adopted, no business except privileged matters can intervene until selection of the committee members is completed.”). Secondly, they would know that the designation of a committee chair is never distinct from the appointment of members to the committee except when the motion to refer specifies an appointing power other than the chair of the assembly. RONR (12th ed.) 13:18 (“**Designating the Committee Chairman.**” “If the chair appoints or nominates the committee, he has the duty to select its chairman . . . The chair should specifically mention as chairman the first committee member he names, but if he neglects to state this fact, the designation nevertheless is automatic . . .”). Even when the appointing power is other than the assembly chair and it fails to specify the committee chair, then is it the responsibility of the committee to elect its chair. *Id.* 13:18 (“If a chairman is not designated when the committee is appointed, the committee has the right to elect its own chairman. . . .”). Thirdly, they would know that no referral to any committee of a motion to refer to an *ad hoc* had occurred, nor could any committee effectively recommend such a motion, since the Commission had defectively referred the matter of *Bylaws* revision to an *ad hoc* committee at its May 18, 2022, meeting. Thereby, it precluded other motions the topic except *Rescind or Amend Something Previously Adopted*, until a motion to *Discharge a Committee* had been passed. Finally, they would know that the *Bylaws*, Art. VIII, § 1, ¶ 4, requires that all *ad hoc* committees be created by the Co-Chair, with the approval of the Executive Committee. The Implementation Committee is not involved and cannot be involved. Whoever wrote this agenda item was deeply confused as to the difference between creating a committee and appointing its members, and the identity of appointing its members and appointing the committee chair. Discussion under this item disclosed that it had been placed on the agenda “by staff”

(then both Grier and Gray). Staff are not members of the Implementation Committee. They are members of the public with respect to the Implementation Committee and have no right to place things on its agenda. The committee agenda is for committee members *only* to put items on, and the committee must protect itself from attempts by staff to abuse their responsibilities for posting committee agendas online and at the Government Information Center by usurping this privilege. Item No. 2.4, "**Follow up on RFP: Dr. Kunins update on MHSF for 5/18/22. What about the RFP?**" also violated this section of the Ordinance because it is unintelligible. In fact, nothing was discussed under this item at this meeting. It was a "cud-chewer," thrown in for the committee equivalent of rumination, without any real purpose, in case something might come up, in order to violate the Ordinance if it did, and so no violation may be said to have actually occurred. (This meeting proceeded without a quorum, so no actual violations occurred at it, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)

- The agenda for the regular meeting of the Executive Committee held on June 7, 2022, attached hereto as EXHIBIT 41, contains meaningless descriptions. The description of Item No. 1.0 was "Discuss the need for the Behavioral Health Commission (BHC) to be in on the decision-making process around the distribution of budget initiatives. . . ." Under this item, Commissioner Murawski, not a member of the committee, introduced the issue of practitioner/client ratios. This discussion was taken up by others, including the chair of the committee. A person whose interests would be affected by the item would not have known to attend the meeting from the notice on the agenda. Item No. 2.3 was a "complete consolidated resolution," referring to, actually, two resolutions, the larger one of which had previously been passed early this year. This was not a meaningful description because what was actually discussed under this item was a transmittal letter, not yet written, to send this resolution to the Board of Supervisors, to be drafted by the authors of the resolution. Furthermore, at the end of Item No. 2.5 but before 3.0 (no period for public comment is listed on the agenda between these two items), Commissioner Murawski, not a member of the Executive Committee, called upon a member of the public who "had his hand up for a long time" to speak. This member of the public asked two questions of the committee and made a statement, and received responses to each, one at a time. The questions were relevant to Item No. 2.2 on the agenda. The answers consisted of where SFMHEF had given presentations, how they had promoted them, and additional details about their promotional activities. All of the questions were answered by a member of the Executive Committee who was also a member of SFMHEF. Staff (Grier), who was also Executive Director of SFMHEF at the time, added to the last response. Other members of the public were not given an opportunity to speak. Neither the description for Item No. 2.5, "MHSA to be on June 15, 2022 agenda for presentation, vote if necessary [**action item**]" nor that for Item No. 3.0, "**New BHC Business,**" was adequate for this exchange. Finally, during Item No. 3.0

“**New BHC Business**”, a member of the Commission but not of the Executive Committee spoke about the activities of her nonprofit regarding COVID-19 testing. Another non-member of the Executive Committee Commissioner asked her a question, and she answered it. The notice on the agenda was not sufficient to notify someone whose interests would be affected of whether they should attend the meeting. Finally, after final public comment (in which I mentioned this committee’s responsibility for granting excusals), it was alleged that the meeting was adjourned without a declaration to this effect by the chair, and then excusal for Commissioner Klain was discussed between several Commissioners. (Klain was not a member of this committee, but the Commission has delegated the granting of excusals from meetings of the Commission to this committee through its *Bylaws*, Art. III, § 14.) The chair sadly said that he had not even seen her letter requesting excusal, while staff continued to bellow at every meeting that she was excused, from then to the time of the submission of this report. This did not have any notice on the agenda.

- The agenda for the June 15, 2022, regular meeting of the Commission, attached hereto as EXHIBIT 43, suffers from a special problem. Item No. 3.0(a) under “**ITEM 3.0 ACTION ITEMS**,” is listed as “Presentation by the San Francisco Mental Health Education Funds (SFMHEF)” No further detail is given. Normally, this would be sufficient. The notice and public address requirements apply only to “items to be transacted or discussed,” and a presentation is neither of these. However, SFMHEF has a special relationship with the Commission. From the previous century until 2020, SFMHEF provided staff to the Commission. A recent ordinance severed this link, moving the staff responsibility to DPH/BHS effective only this year. However, SFMHEF still has other ties to the Commission. Previously, a certain number of SFMHEF board members were required to be Commissioners. As far as I know, this is still the case. In any event, several members of the Commission are also currently on the SFMHEF board, and one is a former member of the SFMHEF board. Furthermore, the presenter on behalf of SFMHEF was also a member of the Commission at the time of the meeting. Consequently, question-and-answer was an exchange between Commissioners, and, also for other reasons, this really *was* a discussion item, requiring better notice of the topic. Discussion ranged far beyond the specific activities of SFMHEF and reached the activities of the Commission. Another Commissioner than the presenter, which Commissioner was also on the board of SFMHEF, frequently answered questions by Commissioners to the presenter. Commissioner Bohrer, formerly on the SFMHEF board, announced as “question” for the “presenter” that the Commission currently lacks representation by the Asian community. As “a brief announcement” by a Commissioner, exempt from the notice requirement of the Brown Act through *Cal. Gov’t Code* § 54954.2(a)(3) but no analogous exemption from the Sunshine Ordinance applying, *see, S.F. Admin. Code* § 67.7(d), this announcement, which was followed by a response by a Commissioner who was also a member of SFMHEF, required its own notice on the agenda, and violated the Ordinance. In response to a question from a member of the

public to the “presenter,” the member of the public was partly directed to Commission staff (Gray) for an answer, and partly answered directly. The referral to Gray was no longer appropriate, as Gray was new as of March and never employed by SFMHEF. However, if it had been appropriate, it would have fallen under one of the exemptions from the notice requirement under *S.F. Admin. Code* § 67.7(d). The direct address to the member of the public was legal to the extent that the Commissioner/SFMHEF member was speaking on behalf of SFMHEF, but not legal to the extent that they were speaking on behalf of the Commission. Normally, the requirement that remarks by the public be relevant to the item being discussed makes any sort of response by the policy body to a public comment appropriate, because it is just more discussion of an item already adequately noticed. As just mentioned, this item was not adequately noticed for discussion, and so the Commission’s responses to the commentator violated the notice requirement to the extent that the exemptions of *S.F. Admin. Code* § 67.7(d) did not cover them. Things got still more complicated after that, as Commissioner Murawski, not on the board of SFMHEF, questioned SFMHEF about a flyer apparently distributed by SFMHEF that allegedly listed the Commission on it. Reference was made to a “contract” and an “order,” apparently regulating the relationship between the two organizations. Even the meeting chair was confused by this and asked that it be brought up as an item at a future meeting. At any event, it concerned BHC enough to be more than a “question” to the “presenter,” and the chair did not move fast enough to prevent a response from Commissioner Jackson-Lane, also on the SFMHEF board, and further dialogue by Murawski. There was not adequate notice on the agenda for this, and a violation occurred.

- The agenda for the July 12, 2022, regular meeting of the Site Visit Committee, attached hereto as EXHIBIT 61, contains meaningless descriptions. Specifically, Item No. 1.4 says as follows, “Strategic planning around Conard Housing [*sic*] and mental health complaints [**action items**]”. “Strategic planning” is meaningless administrative doublespeak. What was actually discussed under this item was a Site Visit to Conard House (the second in three years), and the agenda should have stated this (as well as the actions proposed to be taken, whatever they were (none were in fact taken or even moved at the meeting)). Nothing was mentioned about “mental health complaints” other than that Conard House had pulled out of giving a presentation at this meeting because of them, but the presentation too was on the agenda (Item 1.3)! (This meeting proceeded without a quorum, so no actual violations occurred, but the committee mistakenly thought it had quorum, and so, for compliance monitoring purposes, the proceedings are an example of what the committee thought it could legally do if it had quorum.)
- The agenda for the July 12, 2022, regular meeting of the Implementation Committee, attached hereto as EXHIBIT 62, contains meaningless descriptions of items. Specifically, Item No. 1.2, “Review progress of the onetime bylaws non-public workgroup meeting,” is not a meaningful description, as evidenced by the fact that even the chair of the committee present at the meeting did not know what it was. It appears to

refer to a single meeting, but then it purports to “review the progress” of this meeting, as if the meeting were ongoing, during the meeting of the Implementation Committee! Also, the fact that the meeting is characterized as “non-public” is cause for concern. A minority of the members of a policy body are allowed to meet privately and discuss matters within the subject-matter jurisdiction of the policy body. However, such meetings can have no official recognition by the parent body (nor any of its “official” committees), or else it becomes a committee of the parent body, regardless of the use of words such as “non-public workgroup” to describe it. As a committee, it is then subject to open meeting requirements, and a majority of its members may not meet outside of a meeting noticed to the public. It cannot report to the parent body. Only a member thereof can introduce its results as a motion and speech in debate. Furthermore, no instruction had been given to this committee to report to the Implementation Committee, nor had it done so of its own accord. In order for a description to be “meaningful”, it must make some kind of sense with respect to the rules of order of the Commission and its *Bylaws* and other rules. Finally, even as a committee, this “non-public workgroup” had not been created according to *Bylaws*, which led to confusion among the members of the Implementation Committee as to what this item was supposed to be about. The confusion of a member of the public could only have been greater. Item No. 2.4, “Establish Ad Hoc Committee for the Annual Report” also fails to make sense in terms of the rules of the Commission. Specifically, its *Bylaws*, Art. VIII, § 1, ¶ 4, requires that *ad hoc* committees be created “by the Chair or Co-Chairs, with concurrence of the Executive Committee . . .” The Implementation Committee has no part in it, nor can they have any part in it, and a member of the public familiar with the *Bylaws* would be utterly confused by this item. Anyone familiar with the rules of order of the Commission would be additionally confused by it, because it does not include specifics as to the size and method of appointment of the members of the committee, nor its membership directly, nor any special instructions, such as the schedule for regular meetings, required to be established by the Commission under *Cal. Gov’t Code* § 54954(a). RONR (12th ed.) 13:8 describes these as “necessary details for the motion”. (Without them it is impossible to determine quorum.) A member of the public might want to attend on the basis of who was named to be on this committee, or who was to make the appointments thereto, and this shades into “the proposed action”, addressed below. Finally, Item No. 2.5, “**Follow up on RFP:** Co-Chairs will discuss with Dr. Kunins on how commissioners can participate in the RFP process,” is ambiguous. It would appear that Dr. Kunins would be present for a discussion with the Co-Chairs that would occur at the meeting. Actually, what was meant was an announcement that the Co-Chairs would be having a private discussion with Dr. Kunins “offline” as part of their liaison responsibilities, *see, Cal. Welf. & Inst. Code* § 5604.5(d) (“The local mental health board shall develop bylaws to be approved by the governing body which shall do all of the following: [¶¶] (d) Establish that the chairperson of the mental health board be in consultation with the local mental health director.”), about how the Commission could be involved with RFP’s, and thus

learn about and be involved with new programs “on the ground floor,” as had been announced at previous meetings. But even this was not in fact the subject of the report or announcement that actually occurred under this item. When this item came up, it was announced or reported that there was a specific RFP “for the tenderloin,” and that, somehow (it was not clear), BHC involvement with this RFP would get it “a new Commissioner.” This information, and not what appeared there, was required to be included under Item No. 2.5.

- At the July 12, 2022, meeting of the Executive Committee, agenda attached as EXHIBIT 63, members thereof brazenly added discussion items to the agenda. During item no. 1.2, members of the committee proposed a new agenda item 1.6, which was a 10-minute discussion regarding an anticipated special meeting for training, and a new item no. 1.7, which was a 15-minute discussion regarding annual reports. Both discussions were in fact held later during the meeting. The Executive Committee does not seem to understand that nothing within the subject-matter jurisdiction of the Executive Committee may be discussed at a meeting among a quorum of its members without notice on the agenda. For discussion-only items, there are no exceptions. Under the Commission’s new *Bylaws*, attached hereto as EXHIBIT 29, § 2, ¶ 1.b, as well as the old, annual reports are within the express subject-matter jurisdiction of the Executive Committee. Neither the special meeting, nor the training proposed thereat, were within the subject-matter jurisdiction of the Executive Committee, but it is certainly within the subject-matter jurisdiction of the Commission, liberally construed. As discussed under Item No. 2, below, this supposed meeting of the Executive Committee was really a meeting of the Commission because a quorum of the Commission was in attendance, etc. The description of the first part of item no. 2.3 is so vague that it does not meet the standard of a meaningful description. “Vote to have Conard House placed on the July 20, 2022, full Commission agenda. . . .” It cannot be a presentation, because the same item proposes that Conard House give a presentation at the September meeting of the Commission (really, this is two items). It can neither be the question of whether Conard House should present in September, because any Commissioner could put that on the agenda. All the public is told is that the (first part of the) item has something to do with Conard House and the July 20 meeting. “Placed” is vague and hides the substance of the action. What action was to be placed on the agenda for the July 20 meeting? This would not be sufficient to inform someone whose interests may be affected of whether they should attend the meeting.
- At the July 20, 2022, meeting of the Commission, the agenda for which is attached hereto as EXHIBIT 71, Co-Chair Banuelos, who was not the chair for this particular meeting, added an item during “Agenda Changes” to the agenda. In fact, staff (Grier) said that the item would be called up later on, as if they had this authority. In fact, they could not pass the necessary finding that the item was unknown to the Commission at the time of the posting of the agenda, required by *Cal. Gov’t Code* § 54954.2(b)(2), because they had discussed it in committees the previous week. In fact, the reason why it was not on the

such as secondary motions to Postpone Definitely or to move items forward on the agenda or to the next meeting, or Suspend the Rules to hear a future item immediately). The off-topic discussion here was relevant to those other items on the agenda. This off-topic discussion began approx. 30 minutes into the meeting and continued until approx. 1:00 p.m. although it briefly returned to the subject of financial reports in general, without reference to a specific period. This was a complete violation because, although the meeting began with just two members of this five-member committee, a third member turned up in the audio at 3:45 p.m. and said that she had been listening for some time before then.

- The ad hoc committee to compose an annual report met on Sept. 9, 2022, agenda attached hereto as EXHIBIT 88, did not include a meaningful description of the first two of the three items listed as bullet points following Item No. 2, "Site Visit Report" and "Ezra's Resolution" do not contain enough detail for someone whose interests may be affected by the item to know whether to attend the meeting.
- At the Sept. 21, 2022, meeting of the Commission, agenda attached hereto as EXHIBIT 89, an off-topic discussion occurred under Item No. 1.0, which appeared to be only an heading, i.e., "Chair's Report," but was turned into an item by the chair, who gave a nearly 15-minute talk about the recent training session by C. A. Blinn in which Bryan Act compliance was discussed, which training was on the agenda for the meeting, but much further down at no. 3.2, where it was in fact discussed a second time, but with different material, i.e., and future meeting dates were discussed under 3.5. At least one board member made it clear at a subsequent meeting of the Commission that this item should have been linked with the material that was in fact discussed hereafter regarding compliance, training, and future meeting and when a compliance committee is established, it should also include laws in San Francisco, which were the subject of the training, and should discuss a medical infidelity by a Chair's Report.
- At the Sept. 23, 2022, meeting of the ad hoc committee to compose an annual report, agenda attached hereto as EXHIBIT 90, the agenda contains a number of different items, but the agenda is not clear about the details of the 2021-2022 annual report discussion because it does not clearly state the details of the report items and does not clearly state the details of the 2021-2022 annual report discussion. The agenda lists the items to be discussed but does not clearly state the details of the 2021-2022 annual report discussion. The agenda lists the items to be discussed but does not clearly state the details of the 2021-2022 annual report discussion.
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in a bland and general way. The practice is insidiously self-perpetuating, because then members refrain from submitting their specific discussion-only items to the secretary or chair, in anticipation that the agenda will include everything from the previous month, and they will be able to cram it under one of the general topics previously announced. Finally, it contributes to a whimsical air in discussion material, an attitude of, “Well, it is questionable whether this is on topic. I wouldn’t want to submit this as an item for the written agenda, but since I can just spontaneously blurt it out during General Topic C without going on paper, I’ll wait until that comes up at the meeting and see how I feel about it then!” The results are agenda items that inform no one of whether anything will be discussed that affects their interests, because their interests are *specific* and the agenda topics are *general*.

This problem has actually gotten worse during the reporting period, rather than better. Once any item or topic of discussion is conceived, it appears on every agenda of two committees, as well as the Commission, for ongoing “updates.” I.e., the conversation continues forever, and in triplicate. Even if no one has anything meaningful to report about a topic, the topic stays on the agenda forever, as if the Commission were a therapy group and the point were to air everyone’s ongoing feelings about a subject. This is as bad as no notice of an item, because the public is required to attend every meeting of a body and each of two of its committees because a vaguely-worded and perpetually-included item might, at any given meeting, have material under it, which might include something in which they have an interest. In this sense, it is worse than no notice at all.

Some of these topics are so broad that they were not even inspired by a specific topic in the beginning. Rather, they have been engineered to exploit perceived gaps in open meetings laws to nearly the maximum possible extent. All of these perceived gaps are, however, illusory. Item 5.1 on all Commission agendas during the reporting period, “Suggestions of people, programs, or both that Commissioners believe should be acknowledged or highlighted by BHC” is intended to exploit the exemption from the notice requirement of the Sunshine Ordinance for “purely commendatory” actions, but the Commission always neglects the requirement that these items must still pass a complicated supermajority vote as to whether the Commission learned of them after the agenda had been posted, *S.F. Admin. Code* § 67.7(e)(2)(B), to say nothing of the Brown Act requirement for a finding of urgency, *Cal. Gov’t Code* § 54954.2(b)(2), presumably because these conditions typically do not obtain, and these items would need no notice at all if they did. Violation is also avoided by Commissioners simply not voting on these items. If a Commissioner names a program during 5.1, staff issues a commendation on behalf of the Commission, as if the Commission itself had spoken. (Site Visits are handled the same way—if a Commissioner names one, correspondence goes to the site stating that “the Commission” has chosen their site for a visit, when no vote was taken, even at the committee level!) Item 5.2 on these agendas, “Report by members of the Commission on their activities on behalf of the Behavioral Health Commission as authorized” is nonsense—authorization has never once been given!—and is intended to exploit the exemption from notice requirement of the Brown Act for “a brief report on his or her own activities . . .” *Cal. Gov’t Code* § 54954.2(a)(3), which would

also require no notice at all on the agenda. However, there is no analogous exemption from the Sunshine Ordinance for such reports, *see*, *S.F. Admin. Code* § 67.7(d), and so each report must have specific notice on the agenda. Item 6.0, “Suggestions for future agenda items to be referred to the Executive Committee and for future trainings and orientation of future Commissioners” is intended to exploit the exemption from the notice requirement of the Brown Act for “take action to direct staff to place a matter of business on a future agenda,” *id.*, only it is unsuccessful even at this because a) BHC has adopted no special rule of order allowing for automatic referrals, b) the exemption is obviously for *postponing* matters to future meetings of the same body, not *referring* them to other bodies, and c) again, even if the exemption applied, there is no analogous exemption from the Sunshine Ordinance. BHC has continued their inclusion of these items on agendas going back to 2006, despite our complaining about it in file no. 20100 regarding their meeting on July 15, 2020, now over two years ago. ____ BHC’s continued inclusion of these items on their agendas is an open invitation to their membership to violate the Sunshine Ordinance by spontaneously giving brief reports, making automatic referrals, or making “purely commendatory” requests under them. Certain committee agendas carry similar “boilerplate” items.

The problem is exacerbated still further by the fact that discussion items outnumber *true* action items by an order of magnitude at Commission and committee meetings, and discussion items are inherently more ambiguous as to the relevancy of any discussion to the item. When an action item is before a policy body, relevance of discussion is generally not a problem, because each speech must be for or against the proposed action. Discussion items are another story, and their equivalency in *S.F. Admin. Code* § 67.7(a) is deceptive. RONR (12th ed.) 4:8n6 (“It was found in the House of Lords of England that, when there was no definite motion pending, it was not possible to tell whether debate was germane . . .”). Although *S.F. Admin. Code* § 67.7(a) pretends to restrict discussion to a specified topic, the distinction between relevance and irrelevance is much less clear than with respect to a concrete proposal, and the agenda requirement only half-solves the problem. We favor a strict interpretation, as discussion-only items are supposed to be *disfavored* by policy bodies. RONR (12th ed.) 4:7 (“Under parliamentary procedure, strictly speaking, discussion of any subject is permitted only with reference to a pending motion. . . .”) and 4:8 (“For a member to begin to discuss a matter while no question is pending . . . implies an unusual circumstance and requires permission of the assembly . . . in addition to obtaining the floor. . . .”). While this rule is relaxed in meetings of fewer than 13 people (the Commission had at most 12 during the reporting period), “[t]he general rule against discussion without a motion is one of parliamentary procedure’s powerful tools for keeping business ‘on track,’ and *an observance of its spirit* can be an important factor in making *even a very small meeting* rapidly moving and interesting.” *Id.* (emph. added). Otherwise, the Commission stands to be renamed “The San Francisco Taxpayer-Supported Behavioral Health Chit-Chat Society,” because this is substantially all it does.

For all that, we stop short of eliminating all repetitious items. If a Commissioner wishes to discuss the same issue month after month, and they are at least willing to obtain the floor and

give more or less the same address each month, they must be allowed to do so, and a repeated agenda item would be in order. After all, an action item might be postponed from one meeting to the next unchanged, and debate under it might be range widely. The touchstone is always whether someone whose interests would be affected would know whether to attend the meeting. We note regarding this standard that there is no question of whether someone's interests would be affected by the item. It is, for instance, impossible to imagine that anyone's interests would be affected by the go-live date for the Commission's new website changing from July to September. However, the language of the law states the standard as, *assuming that someone's interests were affected*, the notice must be sufficient. And so the notice must summarize the specific content of the address, i.e., "The go-live date for the Commission's new website has changed from end of July to end of September," or "the Commission's new website will allow staff to post material directly, without an intermediary," not "Commission websites, old and new." If the meeting is made superfluous by the agenda in some respects and members of the public forego attendance therefor, nothing is lost. It is not the purpose of the agenda to incite curiosity or draw spectators! Furthermore, many items contain a level of subject specificity that should be included on the agenda but was not. For example, "progress on RFP's" versus a specific RFP; a member of the public might not be interested in RFP's in general but might very well be interested in an RFP specific to their neighborhood, and so the detail is required to be included.

For this reason, BHC practices need to change. BHC needs to start each agenda with a blank sheet of paper, not the agenda for the previous month's meeting. If staff wants to put an item on the agenda, they must find a member of the body who is willing to sponsor the item by asking the chair or secretary for its inclusion on the agenda on behalf of staff, and make the announcement themselves, on behalf of staff. Anything not so sponsored should be ruled out of order when it comes up. If it is not known that there is *a Commissioner or committee member who themselves wants to speak on an item* at that particular meeting, an agenda item must not be listed for it, and if there is new material, the item must be specific to the new material. Demands for "ongoing discussions" must therefore be suppressed; a new request must be made every month. Members must not be asked to discuss matters on which none of them have anything they want to say. Members will have to get into the habit of, if they find out about or think of something during the month that they would like to discuss at a meeting, asking the chair or secretary to commit their specific matter or issue to the written agenda, rather than waiting during a meeting for a call-out on a general topic that will hopefully be on the agenda and maybe speaking at that time, maybe not. They must also get into the habit of, if they want to speak with the voice of the Commission or the committee, whether it is for a commendation or a site visit, putting their matter on the agenda in the form of a resolution, substantially in final form. If it is out of order for any reason, such as a doubt about its relevancy to the powers and duties of the Commission, then it should go on the agenda and be ruled out of order when it comes up, so that Commissioners or committee members will have the opportunity to challenge the ruling of the chair at that time.