

To: The Los Angeles City Ethics Commission

From: Mike

Re: A potential *ex parte* communications disclosure policy for Ethics Commissioners

Date: October 22, 2017

Honorable Commissioners,

The City of Los Angeles has struggled over the last decade to develop a City-wide policy regarding disclosure of *ex parte* communications for its Boards and Commissions. This process began¹ with a pair of Council motions from 2007 and 2009 introduced by Councilmember Wendy Gruel.² One result of these motions, which ultimately expired in committee without action being taken,³ was a comprehensive 2010 memorandum from your Executive Director, Heather Holt, who was at that time Director of Policy. The memo recommended that the Ethics Commission submit to Council a recommendation that Commissioners disclose all *ex parte* communications, which they ultimately did do. Holt's memo eloquently states the reasons why disclosure is desirable:

Ex parte communications are, essentially, off-the-record interactions with decision makers that occur without the knowledge, consent, or participation of all involved parties. An ex parte communication leads to an information imbalance; opposing parties and other decision makers may not be privy to the data or perspectives obtained through the communication and may not be aware that the communication occurred.

I think the desirability of a policy requiring, at a minimum, Commissioners to disclose *ex parte* communications, is self-evident. Disclosure is an easy, efficient, and painless way to address this "information imbalance." Furthermore, the harm done by *ex parte* communications is significant. As Heather Holt put the matter in that same 2010 memorandum:⁴

Two of the [Governmental Ethics Ordinance's] stated purposes are to ensure that "individuals and interest groups in our society have a fair and equal opportunity to participate in the governmental process" and to ensure that "the governmental process itself promotes fairness and equity for all residents" Another purpose of the GEO is to "help restore public trust in governmental and electoral institutions." When ex parte communications occur, the public's confidence in the equity of City decisions can be threatened. Communications that occur outside a formal, public process can lead to the perception that City decisions are biased because of a particular person's special access or influence, rather than objectively based on facts, law, and good public policy.

¹ In the current iteration, anyway.

² The relevant Council files are [07-3294](#) and [07-3294-S1](#).

³ Thus presently there is no City-wide disclosure requirement.

⁴ Citations omitted.

The political likelihood of a City-wide policy being developed and implemented at this time seems slim. Indeed, modified versions of Gruel's motions were revived in 2016 by Councilmembers David Ryu and José Huizar⁵ and seem poised to meet the same fate as their predecessors, i.e. a quiet death by expiration.

However, it turns out that a City-wide policy is not required for individual Commissions to take action. For instance, the Board of Harbor Commissioners famously has its own disclosure policy, which requires each Commissioner to orally disclose *ex parte* communications at the beginning of each meeting. The opportunity exists, therefore, for the Ethics Commission to set an example for the rest of City government by unilaterally adopting a policy on *ex parte* communications which includes, at a minimum, a public disclosure requirement.

I am writing, therefore, to request that, for the reasons given above, the Ethics Commission initiate a process whereby such a CEC-specific policy might be developed, discussed, and ultimately adopted. In particular, I hope you will consider putting an item on the agenda for December 19, 2017 directing staff to develop a proposal for a policy regulating *ex parte* communications to Ethics Commissioners and that this policy, at a minimum, should include a requirement that such communications be publicly disclosed. Given that much of the work on such a policy has already been completed by staff in response to Wendy Gruel's motions, I think it's not unreasonable to ask that such a proposal be completed in time for consideration at the Commission's February 2018 meeting.

Thank you for your time and consideration,

Mike

⁵ The relevant Council file is [07-3294-S2](#).