

ETHICS SAN MATEO

DEDICATED TO TRUTH, TRANSPARENCY AND ETHICAL CONDUCT IN CITY GOVERNMENT

December 29, 2022

Statement of Position

Regarding Continued Allegations of Unethical and/or Unlawful Appointment Influence

As stated in the Statement of Position (SOP) issued on December 12, 2022, Ethics San Mateo would be, and has been, closely following events related to the allegations made by (then) Council Member Amourence Lee of unethical and/or unlawful acts made to influence the appointment to replace Council Member Diane Papan.

We acknowledge the very public disagreement between Council Members Lee, Loraine, Newsom, and Nash regarding the appointment of a mayor and the selection of an applicant to fill the vacant fifth council seat. As our Code and Conduct requires, along with our operational philosophy, Ethics San Mateo is issue-agnostic. We limit our comments and SOPs to the question of “Were ethical standards violated?”. We have no verifiable information that leads us to take a position on the questions of which council duty should be performed first, naming a mayor, or appointing someone to fill a vacant seat. Ethics San Mateo does, however, believe there were significant breaches of minimum ethical standards during the impassioned and lengthy dispute held during the public council sessions as well as in media of several types reporting on the session. Of highest concern is:

- Rather than immediately reporting the incidents which (then) Council Member Lee described at the December 7th City Council meeting as a “backdoor” deal constituting a potential violation of the Brown Act and California Penal Code Section 85 (Bribery of Legislative Officers, a felony), she chose to publicly announce it during the meeting. Her statements at the time did not include any details, and when asked if she had reported the incidents her statement was, “I am now.”

We strongly believe that Lee should have contacted the City Attorney immediately when the incident(s) occurred. That she decided to use a public forum, a City Council meeting, to reveal the information is more than a questionable act; it calls into question the motives behind the delay of reporting the incidents and of making the accusations public during a contentious meeting of the City Council.

- We further believe that it was incumbent on the City Attorney, City Manager and/or San Mateo Police Chief, all present at the meeting, to have provided immediate and strong

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guidance to Ms. Lee to cease discussing the potentially unlawful and unethical offers and ask her to cooperate in investigating the allegations by meeting with the City Attorney, City Manager and Chief of Police as soon as possible after the conclusion of the meeting. As a potential Penal Code felony crime as well as a Brown Act violation was being asserted, good governance should have dictated discretion in what was publicly discussed. Certainly Ms. Lee has been briefed on the requirements of the Brown Act and Anti-Bribery statutes as part of the educational programs all city council members are mandated to participate in.

We can only conclude that, considering the report by the City Attorney that Ms. Lee did not contact him, nor is there any report that she contacted the Chief of Police or City Manager, between December 7th and December 12th, in regards to these incidents, there were other motivations controlling her actions. We believe those motivations came to light in the December 12th City Council Special meeting.

- Ethics San Mateo's membership observed an intense media campaign by Ms. Lee and those who supported her stance that she should have been appointed mayor on December 5th. We support the right to free speech and the resulting use of media to make statements regarding any issues, contentious or not. We do, however, question the tactic of using inflammatory rhetoric, misleading information, verbal, and written attacks on people who are in opposition to their positions with accusations of racism, sexism, antisemitism, and other illegal conduct without factual basis. We believe these accusations, without a shred of proof offered, border on defamation of character, slander or libel, go to the core of the kind of unethical conduct we adamantly condemn.
- In numerous social media posts, and reports and interviews in radio, print and television media, Ms. Lee and her vocal supporters appeared to be on a campaign to spread false and misleading information. Verifiable research into some of the statements clearly shows some of their talking points to be false.
 1. The City of San Mateo was founded in 1894. There was no official "Mayor" noted in any San Mateo historical archive prior to 1928. The first mayor of the City of San Mateo was F. E. Beer, in 1928. For more than 30 years San Mateo had no mayor.
 2. There was no official process or procedure to select a mayor until 1970.
 3. There have been previous departures from a rotational selection of the mayor.
 4. As the City Attorney clearly stated numerous times during the City Council meetings, the City Charter allows for a departure from the rotational mayoral

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selection process if the City Council votes to do so. He was clear that it was not illegal to do so.

5. The City Attorney also stated that although the sequence of selecting a fifth council member before selecting the mayor may not be preferred in some interpretations of the City Charter, nothing forbids it.
6. Ms. Lee would not be (and is not) the first person of Asian descent, the first person identifying as a woman, or the first person of the Jewish religion to become Mayor of San Mateo.

During the Special Meeting of the City Council on December 12th, with the sole agenda item of selecting the fifth City Council member, (then) Council Member Lee furthered her yet-to-be investigated accusations regarding the “backdoor” offers she first reported on December 7th. Lee produced an envelope which she stated contained the name of the applicant who she was being enticed to vote for to fill the vacant seat on the City Council.

When a vote to select an applicant to fill the vacant seat was held, Ms. Lee refused to vote, stating she was abstaining because the process had been tainted by the incidents she described. Council Member Loraine joined her in abstaining. Both then continued to advocate the delay of selecting a fifth council member until after the appointment of a mayor.

- When Ms. Lee finally opened the envelope and read the name on an enclosed piece of paper, which was one of the current candidates, she refused to state who had made the purported offer. She stated that she would only reveal the information if ordered to do so by a court. Under questioning by other council members, the City Attorney stated that Ms. Lee had not contacted him regarding the incidents. The only information he received from Ms. Lee were her statements at the December 7th meeting.

Eventually a vote was taken, as encouraged by the City Attorney, and what appeared to be a compromise applicant was selected, sworn in, and seated.

Ethics San Mateo believes that the true motivation behind the attempt to delay the selection of the fifth council member was to further Council Member Lee and Lorraine’s continuing insistence that a mayor be appointed before filling the seat. Again, Ethics San Mateo is not entering any opinion regarding that specific issue. The deployment of the tactics used are, however, of great concern.

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We are concerned that the following actions and activities by (now) Mayor Lee are contrary to even the minimal ethical standards we expect our city officials to adhere to:

1. Making public accusations of illegal conduct by one or more individuals, without offering details or providing verifiable evidence of the actions and not reporting the incidents to the proper authorities.
 2. Publicly naming an individual with allegations of connection with illegal conduct without offering proof.
 3. Using unsupported accusations as an excuse to delay council duties.
 4. Refusal to provide information, which was certainly known by Ms. Lee, in response to questions by members of the council.
 5. The continuing use of inflammatory rhetoric by Ms. Lee as well as by other officials of our city government, acting as individuals and sometimes under pseudonyms.
- Immediately following the Special Meeting of the City Council on December 12th, the Regular Meeting of the City Council that began on December 5th was reopened. Council Member Lee was appointed Mayor by unanimous vote, and Council Member Nash was selected as Deputy Mayor.

We wish to recognize the Council for the conciliatory statements made after the selection of Mayor, backed by their votes for Deputy Mayor, in an effort to begin rebuilding trust and confidence in our city government.

However, we have observed the continuing use of the same inflammatory rhetoric, false accusations, social media postings and interviews in main stream media to further the same claims as before selection of the fifth council member and mayor. It begs the question: What is the purpose of this continuation? It certainly cannot be to promote harmony and good governance.

We assert that the most egregious breach of ethical standards, one potentially exposing the city to litigation, is the allegation of the “backdoor” offer. Ms. Lee, when removing the contents of the envelope she produced, named a very highly respected and civically active resident as the applicant to vote for in the alleged bribery scheme. Ms. Lee’s statements, unless supported by factual information, could become the basis for civil actions.

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If the allegation is found by competent authority not to have any factual basis, we call on Mayor Lee and the City Attorney to issue a formal and public retraction and apology and to take appropriate action according to the law. If it is found that there was, in fact, a breach of ethical conduct or a violation of law, we expect the matter be pursued with vigor.

Ethics San Mateo, based on the above factual information and observations as stated, find that Mayor Amourence Lee, a number of current city officials who have been highly vocal in similar rhetoric as Mayor Lee, and many of her other supporters have engaged in conduct, and continue to do so, that is of more than questionable ethics and leads us to question if the governance of the city is being compromised due to a lack of ethical oversight and enforceable controls.

The past few weeks of conflict and lack of ethical behavior simply reinforces our goal to see the San Mateo City Council establish an independent Ethics Commission. Clearly defined rules regulating the behavior of our city officials are needed. Ordinances requiring lobbyists to register and identify themselves are essential. These are required to ensure the residents of San Mateo are well-served by a city government that is not unduly, unethically, or illegally influenced by parties from within or outside San Mateo.