

**SUNSHINE ORDINANCE
TASK FORCE**



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President David Chiu and Members
Board of Supervisors
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco CA 94102-4689

October 14, 2014

Re: Sunshine Ordinance Task Force 2012-2014 Annual Report

Dear President Chiu and Members,

The Sunshine Ordinance Task Force (Task Force) submits the attached Annual Report covering the period of May 2012 to April 2014 to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c). The report reflects the experience of the members who served on the Task Force during the time period covered.

The report summarizes the predominant matters managed by the Task Force during this period, first and foremost being the sheer volume of complaints submitted in what was essentially a condensed term; the Task Force was not able to meet for the first 4 months because of the lack of a member who is physically handicapped.

If you have any questions or concerns regarding this report please direct them to me or Task Force Administrator Victor Young at (415) 554-7724 or by email to soft@sfgov.org.

Best Regards,

A handwritten signature in blue ink that reads "Allyson M. Washburn".

Allyson Washburn
Chair

c: Sunshine Ordinance Task Force Members
Nicholas Colla, Deputy City Attorney
Angela Calvillo, Clerk of the Board
Mayor Edwin Lee
City Attorney Dennis Herrera
District Attorney George Gascón
Ethics Commission

**CITY AND COUNTY OF SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE
2012-2014 ANNUAL REPORT**

The San Francisco Sunshine Ordinance Task Force (Task Force) submits this annual report for the term of May 2012 to April 2014 to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c).

SUNSHINE ORDINANCE

San Francisco Administrative Code Chapter 67

The Sunshine Ordinance is San Francisco's open government law, enacted in 1993 by the Board of Supervisors and signed by former Mayor Frank Jordan. San Francisco voters amended and approved the current version of the Ordinance in November 1999 as Proposition G.

The Sunshine Ordinance is based on the California Public Records Act and the state open meetings law known as the Ralph M. Brown Act. It draws additional authority and potency from Article I, Section 3 of the California Constitution and is intended to ensure and broaden the public's access to local government guaranteed by state law. San Francisco voters enacted the law to assure that public officials conduct the people's business in full view of the public and that the people remain in control of their government.

SUNSHINE ORDINANCE TASK FORCE

The Task Force is established pursuant to Sunshine Ordinance section 67.30 to promote transparency and accountability in City government.

Members

The Task Force consists of 11 seats for voting members and two seats for non-voting members. Voting members from May 2012 to April 2014 were:

1. Chair Kitt Grant (5/22/12), Press or Electronic Media, *resigned 4/30/14
2. Vice Chair Louise Fischer (5/22/12), General Public
3. Richard Knee (holdover), Society of Professional Journalists, Local Journalist
4. Suzanne Manneh (holdover), New California Media, *resigned 4/3/13
5. Allyson Washburn (holdover), League of Women Voters
6. David Pilpel (6/6/12), Consumer Advocacy
7. David Sims (6/6/12), Consumer Advocacy
8. Todd David (6/4/12), General Public
9. Chris Hyland (5/24/12), General Public
10. Bruce Oka (11/7/12), General Public

The Board of Supervisors appoints voting members pursuant to requirements outlined in the Sunshine Ordinance. Voting members serve two-year terms without pay or expense reimbursement. There is no term limit for serving on the Task Force.

All Task Force members are required to have experience and/or demonstrated interest in the issues of citizen access and participation in local government. At all times the Task Force shall include at least one member who is a member of the public and is physically handicapped. Member Oka met that requirement when he was appointed in November 2012.

The two non-voting seats are designated for ex-officio members from the offices of the Mayor and the Clerk of the Board of Supervisors. Mayor Edwin Lee failed to designate a person to represent his office. Clerk of the Board Angela Calvillo attended two or three meetings in 2012, primarily to acclimate new Task Force members to their roles and address transitional issues.

Responsibilities

The Task Force protects the public interest in open government and performs the duties outlined in the Sunshine Ordinance. It monitors the effectiveness of the Ordinance and recommends ways to improve it. The goal is to maximize public access to City records, information, and meetings and help public officials, employees, and entities find effective, efficient, and practical ways to meet open government requirements.

The Task Force is responsible for determining whether a record or information, or any part of that record or information, is public and must be disclosed; for determining whether meetings of policy, advisory, and passive meeting bodies should be open to the public; and for hearing public complaints alleging violations of the Sunshine Ordinance, California Public Records Act, Ralph M. Brown Act, and the Nonprofit Public Access Ordinance.

Meetings

Regular Task Force meetings are currently held on the first Wednesday of each month at 4:00 p.m. When the transition of new members occurred the Task Force met on June 6 and July 11, 2012, but determined that the Task Force could not meet again until at least one member of the Task Force who is a member of the public and is physically handicapped was appointed. Meetings resumed in November 2012, after Member Oka was appointed.

Standing Committees of the Task Force

During this period the Compliance and Amendments Committee (CAC) and the Education, Outreach, and Training Committee (EOTC) were active. Reports from those two committees are included below.

Although the Task Force By-Laws establish a Complaint Committee and a Rules Committee neither were active during this period. Members were appointed to the Rules Committee, but there was a decision to prioritize the backlog of cases that had accrued and it did not meet.

Task Force Administrator

The Task Force is assisted by a full time Administrator from the office of the Clerk of the Board of Supervisors pursuant to Sunshine Ordinance, Section 67.31. During this period the role of Administrator was initially filled by Andrea Ausberry, followed by Victor Young, who currently serves in that role.

The Administrator receives complaints related to the Sunshine Ordinance and assists the public in resolving open government issues. The number of complaints received by the Administrator is substantially higher than the number of complaints actually heard by the Task Force, primarily because the Administrator is sometimes able to resolve conflicts between parties.

Deputy City Attorney

The City Attorney assigns a Deputy City Attorney to serve as legal advisor to the Task Force. Jerry Threet, Celia Lee, and currently, Nicholas Colla, served in that capacity during this period.

Complaints

During this period there were a total of 190 complaints heard with 62 complaints still pending.

2012: 59 heard, 9 pending

2013: 91 heard, 23 pending

2014: 40 heard, 30 pending

As a result of the Task Force's inability to meet for several months in 2012 there was a backlog of complaints to be heard once meetings resumed.

Referrals

During this period the Task Force referred 32 complaints to Task Force committees, the Board of Supervisors, or the Ethics Commission for enforcement.

2012: 8 CAC, 6 EOTC, 1 Board of Supervisors, 3 Ethics Commission

2013: 5 CAC, 6 EOTC, 1 Board of Supervisors, 2 Ethics Commission

2014: 6 CAC, 1 EOTC, 0 Board of Supervisors, 0 Ethics Commission

In choosing where to refer complaints after being heard on the merits the Task Force took into account whether there was an intent to deny the public documents to which they were entitled. The Task Force found that in many City departments there was no clear process in place for complying with the Sunshine Ordinance and referred those cases to the EOTC. Complaints that involved a violation by a City department or representative were referred to the CAC. Blatant disregard of Sunshine requirements and subsequent non-compliance with Orders of Determination were referred to the Board of Supervisors or the Ethics Commission.

Highlights of Cases Resulting in Orders of Determination and Referrals

The cases discussed below represent some of the cases that were important in providing greater transparency in the day-to-day business of City departments. As stated in previous annual reports, the Task Force is seeking a stronger partnership and accountability by municipal offices with enforcement power through timely action to see these cases through to their important and just conclusions.

1) Allen Grossman (Complainant) v. John St. Croix, Executive Director, Ethics Commission (Respondent), for failure to provide public records subject to disclosure. (File No. 12056)

The Task Force heard the complaint on June 5, 2013. The Complainant alleged that the Respondent violated public records laws by not fully responding to his October 3, 2012 public records request. The Complainant appeared before the Task Force and presented his claim. The Respondent presented the Ethics Commission's defense. The issue in this case was whether the Respondent violated Sunshine Ordinance sections 67.21, 67.24, and 67.27 and / or California Public Records Act sections 6253 and 6254.

The Task Force found the testimony of the Complainant persuasive and that Sunshine Ordinance sections 67.21 (b) and 67.24 (b) (1) were applicable in this case. The Task Force found that the records requested from the Ethics Commission were public records subject to disclosure and that the Respondent had violated Sunshine Ordinance section 67.21 (b) by failing to provide the records within ten days following receipt of a request and section 67.24 (b) (1) by withholding records subject to disclosure. An Order of Determination was issued on June 24, 2013 asking the Respondent to release the requested records within 5 business days and appear before the CAC on August 20, 2013.

After an unsuccessful referral to the CAC, the Task Force found the Respondent in violation of Sunshine Ordinance sections 67.21 (b), 67.24 (b) (1) (i) and (iii), and 67.27 (a) and (b) on September 4, 2013 and referred the matter to the Board of Supervisors and the Ethics Commission for enforcement.

The matter has since been heard in San Francisco Superior Court and the Court of Appeal.

2) Dominic Maionchi (Complainant) v. Phil Ginsburg, General Manager, Recreation and Park Department (Respondent), for failure to provide unredacted copies of records pertaining to waiting lists for slips in the Marina Yacht Harbor. (File No. 12058)

The Task Force heard the complaint on May 1, 2013. The Complainant alleged that the Recreation and Park Department (Department) violated public records laws by failing to timely respond to his November 22, 2012 public records request and failing to provide unredacted copies of the requested records pertaining to waiting lists for slips in the Marina Yacht Harbor. The Complainant appeared before the Task Force and presented his claim. Olive Gong, Custodian of Records for the Department, presented the Department's defense. The issue in this case was whether the Department violated Sunshine Ordinance sections 67.21 and 67.24 and / or California Public Records Act section 6253.

The Task Force found the testimony of the Complainant persuasive and that Sunshine Ordinance section 67.26 was applicable in this case. The Task Force did not find the testimony of the Department persuasive regarding the alleged violation of Sunshine Ordinance section 67.26. An Order of Determination was issued on June 12, 2013.

The Complainant provided an update at the July 16, 2013 CAC meeting. The Complainant stated that the Department had provided the same documents as had been provided in response to the original records request, which does not comply with the Order of Determination. Olive Gong of the Department stated that the California Government Code supports the Department's decision to redact documents provided to the Complainant and not disclose others.

The Task Force found the Department in violation of Sunshine Ordinance sections 67.21 (e), 67.24 (g), and 67.34 on November 6, 2013 and referred the matter to the Ethics Commission for enforcement, specifically naming Phil Ginsburg, General Manager, Recreation and Park Department, responsible.

The Ethics Commission referred the matter back to the Task Force on May 2, 2014, and requested additional information.

3) Ray Hartz (Complainant) v. Luis Herrera, City Librarian, Public Library (Respondent), for failure to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings. (File No. 13013)

The Task Force heard the complaint on July 9, 2013. The Complainant alleged that the Respondent violated the public meeting requirements of the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech. The Complainant appeared before the Task Force and presented his claim. Sue Blackman, Commission Secretary, Public Library, presented the Library's defense. The issue in this case was whether the Library violated Sunshine Ordinance section 67.15.

The Task Force found the testimony of the Complainant persuasive and that Sunshine Ordinance sections 67.15 (a) and (d) were applicable in this case. The Task Force did not find the testimony of the Library persuasive. An Order of Determination was issued on August 19, 2013.

The Complainant provided an update at the October 2, 2013 Task Force meeting. Sue Blackman of the Library provided an overview of the Library's position. The Task Force found the Respondent in violation of the Sunshine Ordinance as determined in the Order of Determination and referred the matter to the Board of Supervisors and the Ethics Commission for enforcement.

The Ethics Commission heard the matter on March 24, 2014, and found Luis Herrera, City Librarian, did not violate the Sunshine Ordinance.

4) Mica Ringel (Complainant) v. John Rahaim, Director, Planning Department, for failure to permit public records to be inspected and copied without unreasonable delay. (File No. 13024)

The Task Force heard the complaint on October 2, 2013. The Complainant alleged that the Planning Department (Department), via staff members Ben Fu, Don Lewis, and Lulu Hwang, violated the public records requirements of the Sunshine Ordinance by failing to provide access to various requested public records without unreasonable delay. The Complainant appeared before the Task Force and presented his claim. Lulu Hwang, Operations and IS Administrator for the Department, presented the Department's defense and provided a copy of the complete case file on a compact disk for the Complainant. The issue in this case was whether the Department violated Sunshine Ordinance sections 67.21, 67.24, 67.25, 67.26, and 67.27.

The Task Force found the testimony of the Complainant persuasive and that Sunshine Ordinance sections 67.21 (a) and 67.29-7 were applicable in this case. The Task Force did not find the testimony of Lulu Hwang of the Department persuasive. An Order of Determination was issued on October 23, 2013 ordering the Department to release the requested records and appear before the CAC on November 19, 2013.

The matter was heard at the CAC, referred back to the Task Force, referred to the EOTC, and referred back again to the Task Force. The Task Force found John Rahaim, Director, Planning Department, in violation of the Sunshine Ordinance for willful failure to comply with the Task Force's Order of Determination and referred the matter to the Ethics Commission and the Board of Supervisors for enforcement.

The Ethics Commission held a public hearing on the matter on July 28, 2014 and found John Rahaim, Director, Planning Department, in violation of Sunshine Ordinance section 67.21 (a). The Ethics Commission also found that there was not enough evidence to sustain a willful violation of Sunshine Ordinance section 67.29-7. The Ethics Commission instructed Director John Rahaim and Planning Department staff to cease and desist from failing to permit public records to be inspected and examined without unreasonable delay.

Enforcement of the Sunshine Ordinance

Sunshine Ordinance, Section 67.30 (c) provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

Municipal offices with enforcement power under the Sunshine Ordinance are the District Attorney and the Ethics Commission. The District Attorney's office has failed to respond to any referral for enforcement from the Task Force, including a failure to provide any explanation to the Task Force or the underlying complainant. Enforcement of the Ordinance is essential to protecting the public's right to open government. The Ordinance is not merely local law; it also encompasses open government rights guaranteed by state law. The Task Force recommends that the Board of Supervisors take meaningful steps to improve enforcement of the Ordinance.

Short-Term Issues

The biggest issue is handling the sheer volume of complaints filed with the Task Force. Even though many complaints are resolved with mediation, there is still a backlog of complaints due to a party's unwillingness to mediate or when mediation is not successful. This backlog is the biggest issue before the Task Force. An additional monthly meeting has been temporarily added to tackle this issue; however, most Task Force members have full-time jobs and, as a result, this increases the burden on them. Currently, the expectation that pending complaints will be heard in a timely manner is difficult to attain. The Task Force has discussed making changes to its by-laws and the Administrator has developed a list of suggested amendments that has not yet been discussed by the Task Force. Discussions are also underway to implement creative and effective ways to reduce the backlog and comply with the 45-day rule to hear complaints.

If municipal offices with enforcement power actually did so, the Task Force believes that in itself would decrease the number of complaints, as it would send a strong message to City departments that they must comply with Sunshine requirements. Unfortunately, the lack of enforcement is tantamount to giving them a "(city) hall pass" to ignore and undermine our Sunshine law.

Long-Term Issues

The Task Force has been in existence for 20 years with mixed results. Although transparency in City government is crucial to fostering a working relationship with the public, many sections of the Sunshine Ordinance itself are outdated and require amendment in order to be both current and effective for both the public and City officials.

There needs to be a better way for the Administrator to manage the process and streamline complaints so that by the time they are heard by the Task Force they have been fully vetted and every mediation opportunity has been exhausted.

The volume of cases is so high that other pertinent Task Force issues, including updating the by-laws, complying with new laws related to technology and digital data storage, working with other City agencies on enforcement, increasing education of City departments, and conducting outreach to the public have fallen to the wayside and have not been adequately addressed.

During this period the Task Force's priority has been managing complaints and hearing them in as timely a manner as possible.

Another major issue that continues to be a problem is the lack of a full Task Force membership. Members of the Board of Supervisors were asked repeatedly for assistance in filling the two Task Force seats that were empty for most of this period. Moving forward, it is important that all positions on the Task Force are filled in order to illustrate the level of seriousness to which the Board of Supervisors considers the responsibilities of the Task Force. It is hoped that this situation will be corrected in the upcoming term. The Board of Supervisors Rules Committee is thus strongly urged to fill any vacant seats on the Task Force within one or two months.

Until there are meaningful changes to the process, the Task Force will continue to struggle to be effective and taken seriously by other City departments and agencies. Members of the public have the right to appear before the Task Force and receive due process; however, both the public and City departments need to recognize the limitations of the Task Force and respect the decisions that are ultimately rendered. Otherwise the Task Force has limited effectiveness and respect, which is totally out of alignment with the purpose and spirit of the Sunshine Ordinance.

Conclusion

In conclusion, the Task Force urges the Board of Supervisors and the Mayor to take a hard look at the Task Force, its purpose in promoting open government, and give it the tools necessary to make it a viable decision-making body that serves the public interest and creates an environment where City officials and agencies can work with the public in a respectful and efficient manner.

**Sunshine Ordinance Task Force
Compliance and Amendments Committee
2012-2014 Annual Report**

The Compliance and Amendments Committee (CAC) takes the lead in monitoring effectiveness of the Sunshine Ordinance and proposing revisions thereto. The CAC also follows up on Orders of Determination that the Task Force issues when finding violations of the Ordinance, investigates whether the Orders have been met, and recommends when necessary that the Task Force refer cases of willful failure to comply with the Orders to offices with enforcement power.

The CAC has been comprised of three members for the past several years, most recently, Allyson Washburn, who has served as chair, Richard Knee, and Kitt Grant.

The CAC normally meets on the third Tuesday of each month at 4 p.m.

Hearings on Orders of Determination

From May 2012 to April 2014 the CAC followed up on 19 Orders of Determination that the Task Force issued after finding violations of the Sunshine Ordinance.

May 2012

Ray Hartz v. Luis Herrera, City Librarian, Public Library (File No. 11098)

Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission

Library Users Association v. Arts Commission (File No. 12001)

Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission

November 2012

William Clark v. Arts Commission (File No. 11008)

Due to lack of a motion the committee had no further recommendation.

Anonymous v. Planning Department (File No. 11068)

Complainant did not appear; matter was continued to the call of the chair.

Ray Hartz v. Ethics Commission (File No. 11088)

Due to lack of a motion the committee had no further recommendation.

Library Users Association v. David Campos, Supervisor, Board of Supervisors (File No. 12007)

Matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission and the EOTC to develop procedures regarding fulfilling public records requests.

Allen Grossman v. Marisa Moret, Managing Attorney, City Attorney's Office (File No. 12009)

Finding of willful failure to meet request and noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission.

Allen Grossman v. Susana Martinez, Chief Fin. Officer, City Attorney's Office (File No. 12010)
Finding of willful failure to meet request and noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission.

January 2013

Anonymous v. Planning Department (File No. 11068)
Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission.

February 2013

William Clark v. Howard Lazar, Street Artist Program Dir., Arts Commission (File No. 12013)
Matter was referred back to the Task Force without recommendation.

March 2013

Lars Nyman v. Frank Lee, Executive Assistant, Department of Public Works (File No. 12011)
Complainant did not appear; matter was continued to the call of the chair.

Lars Nyman v. Frank Lee, Executive Assistant, Department of Public Works (File No. 12012)
Complainant did not appear; matter was continued to the call of the chair.

William Clark v. Ben Rosenfield, Controller, Office of the Controller (File No. 12038)
Due to lack of a motion the matter was concluded.

April 2013

Lars Nyman v. Frank Lee, Executive Assistant, Department of Public Works (File No. 12011)
Complainant did not appear; matter was concluded.

Lars Nyman v. Frank Lee, Executive Assistant, Department of Public Works (File No. 12012)
Complainant did not appear; matter was concluded.

June 2013

Ray Hartz v. John St. Croix, Executive Director, Ethics Commission (File No. 12049)
The matter was concluded.

July 2013

Dominic Maionchi v. Recreation and Park Department (File No. 12058)

Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission for enforcement for violating Sunshine Ordinance sections 67.21 (i), 67.26, and 67.34; Chair to draft a letter to the City Attorney stating that the Recreation and Park Department's attorney is in violation of Sunshine Ordinance section 67.21 (i).

August 2013

Allen Grossman v. John St. Croix, Executive Director, Ethics Commission (File No. 12056)

Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Board of Supervisors and the Ethics Commission for failure to comply with the Order of Determination.

September 2013

Ray Hartz v. Luis Herrera, City Librarian, Public Library (File No. 13013)

Matter was referred back to the Task Force, with notice to be sent requiring the City Librarian to attend the Task Force's next hearing on the matter, and with recommendation to refer it to the Ethics Commission.

November 2013

Mica Ringel v. Planning Department (File No. 13024)

Finding of noncompliance with the Order of Determination; matter was referred back to the Task Force with recommendation to refer it to the Ethics Commission.

December 2013

Patrick Monette-Shaw and Maria Rivero v. Health Commission (File No. 13021)

Due to lack of a motion the matter was concluded.

April 2014

Ray Hartz v. Paula Jesson, Deputy City Attorney, City Attorney's Office (File No. 13027)

Matter was continued to the May meeting with request that the City Attorney order the Public Library to furnish all remaining requested records to the Complainant by a date certain.

To summarize, the CAC found non-compliance with 11 of the 19 Orders of Determination, 10 of which were referred back to the Task Force with recommendations for further action.

The CAC would be aided immeasurably by the presence of a Deputy City Attorney at CAC meetings. Economy moves within the City Attorney's office have eliminated the CAC's ability to have a legal voice for assistance during meetings.

**Sunshine Ordinance Task Force
Education, Outreach, and Training Committee
2012-2014 Annual Report**

The Education, Outreach, and Training Committee (EOTC) makes recommendations to the Task Force regarding outreach and publicity to the media and the general public about the Sunshine Ordinance and the Task Force. The EOTC also assists City departments to develop procedures to comply with the Ordinance.

The EOTC has been comprised of four or five members for the past several years, most recently, David Pilpel, who has served as chair, Todd David, Chris Hyland, Louise Fischer, and Bruce Oka.

The EOTC normally meets the second Monday of each month at 3 p.m.

Hearings and Areas of Discussion

Placement of 150-word summaries from members of the public in meeting minutes.

Public access to records and meetings of nonprofit organizations. (Admin. Code Chapter 12L)

Review of the Task Force website.

Review of the use of City Attorney advice as a defense for not complying with the Sunshine Ordinance.

Review of the Planning Department's public records policies and procedures.

Review of the Arts Commission's public records policies and procedures.

Public comment process used by the Board of Supervisors Budget and Finance Committee during deliberations on the annual budget.

Review of time limit rules for public comment.