

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

September 2, 2008

DATE THE DECISION ISSUED

August 26, 2008

KIN TSO v. ANIMAL WELFARE COMMISSION (08038)

FACTS OF THE CASE

On June 12, 2008, Complainant Kin Tso attended the Animal Control and Welfare Commission ("Commission"). At this hearing approximately 20 members of an animal rights group named Fix San Francisco attended the meeting with intentions to speak during the public comment section of the agenda about the San Francisco Society for the Prevention of Cruelty to Animals (SPCA). Complainant Tso is a member of Fix San Francisco. At the public comment section of the meeting, Commission Chairperson Sally Stephens stated that the Commission does not have jurisdiction over private organization in San Francisco. Therefore, discussion of private organizations is not under the purview of the Commission to discuss and of which the Board of Supervisors has no control. Chairperson Stephens stated that the Commission is an advisory body to the Board of Supervisors. Following these statements, the public was discouraged from speaking at the public comment section about the SPCA over the objections and protests from members of the public.

COMPLAINT FILED

On July 28, 2008, Kin Tso filed a complaint against the Commission alleging that Chairperson Stephens prohibited public comment on the topic of the SPCA even though San Francisco Health Code, Article I, Section 41.2 states that the Commission may study and recommend requirements for the maintenance of animals in, public, private, and commercial care.

HEARING ON THE COMPLAINT

On August 26, 2008, Complainant Kin Tso appeared before the Task Force and presented his case. Respondent Agency was represented by Animal Welfare Commission Chairperson Sally Stephens.

The issue in the case is whether the Commission violated:

1. Section(s) California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.

3. Section 67.15 of the Sunshine Ordinance addresses public comment at meetings.
4. Article I, Section 41.2 of the Health Code addresses the powers and duties of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds that the testimony of Kin Tso to be persuasive and finds that sections 67.21 (i) & 6253.9 (a) & (b) to be applicable in this case. The Task Force does not find that testimony provided by the Commission persuasive to this case. Chairperson Stephens did acknowledge that due to her misunderstanding as to the subject matter that the public wanted to speak on, she did restrict testimony on the SPCA and tried to rectify the mistake by allowing public comment at the end of the meeting and at a later meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission violated Section(s) 67.15 of the Sunshine Ordinance. The Commission shall report as to what training it has received when it appears before the Compliance and Amendments Committee on September 10, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 26, 2008, by the following vote: (Pilpel / Cauthen)

Ayes: Knee, Cauthen, Gokhale, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman

Excused: Craven, Williams



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kin Tso
Sally Stephens