

Date February 28, 2012

Item No. 4

File No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

ITEMS

Minutes - December 14, 2011

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SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO Draft MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

December 14, 2011 – 5:30 PM

Special Meeting

Members: Hope Johnson (Chair), Bruce Wolfe (Vice-Chair)
David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh,
Allyson Washburn, Jay Costa, Hanley Chan, Jackson West

1. **Call to Order, Roll Call and Agenda Changes.** (5:30 p.m. - 5:35 p.m.)

The meeting was called to order at 5:33 p.m. Vice-Chair Wolfe, and Members Snyder, Costa and Chan were noted absent. Member Costa was noted present at 5:37 p.m. Member Snyder was noted present at 5:50 p.m. Vice-Chair Wolfe was noted present at 6:54 p.m.

Member Cauthen motioned to excuse Member Chan. There was no second. Motion dies.

Chair Johnson moved Item 18 Supervisor of Records Report to the Task Force to the top of the agenda.

Public Comment: None.

2. **Approval of the Task Force's Annual Report to the Board of Supervisors.** (5:53 p.m. - 6:03 p.m.)

Chair Johnson said parts of the report have been rewritten and wanted to give the public more time to review it.

Member Knee, seconded by Member Washburn, motioned to continue the item to the January 3, 2012, meeting.

Public Comment: Tomas Picarello said the opinions of all Task Force members should be included in the report and that he was against continuing it. Ray Hartz, Director San Francisco Open Government, said continuing it would allow the Task Force to free up the backlog of complaints that could be heard in its place. Peter Warfield, Executive Director and co-founder of Library Users Association, said changes to the document need to be visible to allow the public to see what was recommended and suggested.

The motion carried by the following vote:

Ayes: 7 – Snyder, Knee, Cauthen, Manneh, Washburn, West, Johnson

Noes: 1 – Costa

Absent: 2 – Wolfe, Chan

3. **Approval of Minutes from the October 25, 2011 Regular Meeting.** (6:03 p.m. - 6:12 p.m.)

Member Knee, seconded by Member West, motioned to continue the item to the January 3, 2012, meeting.

Public Comment: Tomas Picarello said another complaint against the Clerk's Office should help solve the continuing issue of the Task Force's incomplete minutes.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, West, Johnson

Absent: 2 – Wolfe, Chan

4. **Approval of Minutes from the November 29, 2011 Regular Meeting.** (6:12 p.m. - 6:13 p.m.)

Member Knee, seconded by Member Washburn, motioned to continue the item to the January 3, 2012, meeting.

Public Comment: None.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, West, Johnson

Absent: 2 – Wolfe, Chan

5. **File No. 11008:** The Compliance and Amendments Committee has recommended to the Task Force that both parties in #11008 *William Clark v Arts Commission* recreate in print the missing part in an audio recording of an Arts Commission meeting and make it part of the official meeting minutes. (6:13 p.m. - 6:50 p.m.)

Complainant William Clark asked that Howard Lazar of the Arts Commission be found in willful failure and official misconduct for casting doubt on the authenticity of the audio recording. Julios Mantos of the Arts Commission said Mr. Lazar would recreate the missing dialogue and present it to the Street Artists Committee as the Compliance and Amendments Committee had ruled. The Task Force, he said, would be informed of the steps taken.

Chair Johnson, seconded by Member Costa, motioned to find Mr. Lazar in violation of Sections 67.14(c) for tampering with the audio recording, 67.16 for failure to include the missing dialogue in the minutes, and 67.21(e) for failure to send a knowledgeable representative. The Task Force instructs the Arts Commission to search for an electronic copy of the file to extract what both parties say is missing in the audio, and for the Arts

Commission to work with the Clarks to include the missing verbal exchange in the minutes.

Public Comment: Ray Hartz, Director San Francisco Open Government, said if the minutes were based on the recording the minutes would be incorrect and a violation would have occurred if the minutes had been approved. Tomas Picarello said the Task Force needs to consider the Compliance and Amendments Committee's recommendation as described in the agenda, and not rehear the complaint. Jack Song of the City Attorney's Office noted that the audio recording of one of the Task Force's meetings was also incomplete.

Chair Johnson, with Member Costa's support, withdraws motion based on Mr. Picarello's comment.

Public Comment: None.

Member Washburn, seconded by Member Costa, motioned to continue the matter to the January 3, 2011, meeting.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, West, Johnson

Absent: 2 – Wolfe, Chan

6. **File No. 11071:** Determination of jurisdiction on complaint filed by Ray Hartz against Dennis Herrera of the City Attorney's Office for allegedly advising City Departments to violate the Sunshine Ordinance. (6:50 p.m. - 6:51 p.m.)

Member Washburn, seconded by Member Manneh, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

7. **File No. 11071:** Hearing on complaint filed by Ray Hartz against Dennis Herrera of the City Attorney's Office for allegedly advising City Departments to violate the Sunshine Ordinance. (6:52 p.m. - 8:14 p.m.)

Complainant Ray Hartz presented his claim. Jack Song of the City Attorney's Office provided the response.

Member Costa said he had two motions to offer.

Member Costa, seconded by Member Washburn, motioned to inform all City departments and agencies that the Task Force finds that under Section 67.15, a 150-word statement has to be in the minutes, and that acting on the City Attorney's advice that says the statements may be attached to the minutes violates the Sunshine Ordinance.

Public Comment: Tomas Picarello said he was against the motion because the Ordinance does not indicate what needs to be done if the City Attorney's Office disagrees with the Task Force's Order of Determination and that the issue should be brought to the attention of the Board of Supervisors. Peter Warfield, Executive Director and co-founder of Library Users Association, said the department or its representative has a purpose for denying access to public documents and the City Attorney's Office should not assist in the effort.

The motion carried by the following vote:

Ayes: 7 – Snyder, Cauthen, Manneh, Washburn, Costa, West, Johnson

Noes: 2 – Knee, Wolfe

Absent: 1 – Chan

Member Costa, seconded by Member Washburn, motioned to find the City Attorney's Office in violation of Section 67.21(i). for not protecting and securing the rights of the people of San Francisco to access public information and for acting as a legal counsel for a city employee or any person having custody of any public record for purposes of denying access to the public

Public Comment: Peter Warfield, Executive Director and co-founder of Library Users Association, said departments and employees can ignore the City Attorney's advice and that the 150-word statement is a verification of the speaker's thinking as opposed to what the department thinks the speaker said. Tomas Picarello said he opposes the motion and noted that kangaroo courts do not base their decisions on legal grounds but on their emotional reaction to the issues before them.

The motion carried by the following vote:

Ayes: 6 – Cauthen, Manneh, Washburn, Costa, Wolfe, West

Noes: 3 – Snyder, Knee, Johnson

Absent: 1 – Chan

8. **File No. 11084:** Determination of jurisdiction on complaint filed by Library Users Association against the Arts Commission for not providing an audio recording of a meeting. (8:22 p.m. - 8:30 p.m.)

Member Manneh, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

9. **File No. 11084:** Hearing on complaint filed by Library Users Association against the Arts Commission for not providing an audio recording of a meeting. (8:30 p.m. - 9:10 p.m.)

Complainant Peter Warfield, Executive Director and co-founder of Library Users Association, presented his claim. Ray Hartz, Director San Francisco Open Government, spoke in support of Mr. Warfield. Susan Pontious, Director of the Civic Art Collection and the Public Art Program, provided the response.

Vice Chair Wolfe, seconded by Member Knee, motioned to find the Arts Commission in violation of Section 67.14(c) for failing to record meetings of the Visual Arts Committee which is a policy body under Section 67.3(d)(4)(5), and to send a letter to the City Attorney's Office regarding the enforcement of Section 67.14(c).

Public Comment: None.

The motion carried by the following vote:

Ayes: 9 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, Wolfe, West,
Johnson

Absent: 1 – Chan

The matter is forwarded to the Education, Outreach and Training Committee.

10. **File No. 11085:** Determination of jurisdiction on complaint filed by Library Users Association against the Arts Commission for not providing the draft minutes of a meeting. (9:10 p.m. - 9:12 p.m.)

Member Knee, seconded by Member Washburn, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

11. **File No. 11085:** Hearing on complaint filed by Library Users Association against the Arts Commission for not providing the draft minutes of a meeting. (9:12 p.m. -9:38 p.m.)

Complainant Peter Warfield, Executive Director and co-founder of Library Users Association, presented his claim. Susan Pontious, Director of the Civic Art Collection and the Public Art Program, provided the response.

Member Knee, seconded by Member Costa, motioned to find the Arts Commission in violation of Sections 67.16 for not releasing the draft minutes, 67.21(a) & (b) for failure to provide requested records, 67.26 for not keeping withholding to a minimum, and 67.27 for not justifying the withholding.

Public Comment: Ray Hartz, Director San Francisco Open Government, said he recently attended an Arts Commission meeting and noticed that the participants violated several sections of the Sunshine Ordinance.

The motion carried by the following vote:

Ayes: 9 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, Wolfe, West,
Johnson

Absent: 1 – Chan

The matter is forwarded to the Education, Outreach and Training Committee.

12. **File No. 11082:** Determination of jurisdiction on complaint filed by Anonymous against Caroline Celaya of the San Francisco Municipal Transportation Agency for allegedly not responding in a timely manner to a public records request. (9:38 p.m. - 9:39 p.m.)

Member Knee, seconded by Vice Chair Wolfe, motioned to continue the item to the January 3, 2012, meeting.

Public Comment: None.

The motion passed without objection.

13. **File No. 11082:** Hearing on complaint filed by Anonymous against Caroline Celaya of the San Francisco Municipal Transportation Agency for allegedly not responding in a timely manner to a public records request. (9:38 p.m. - 9:39 p.m.)

Continued to January 3, 2012, meeting.

14. **File No. 11034:** Continued hearing on complaint filed by Frank McDowell against the San Francisco Municipal Transportation Agency for allegedly not providing documents associated with a drive cam. (9:39 p.m. - 9:43 p.m.)

The Complainant was not present. No one in the audience presented facts and evidence on behalf of the Complainant. An SFMTA representative was present.

Member Snyder, seconded by Member Manneh, motioned to dismiss the matter.

The motion carried by the following vote:

Ayes: 9 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, Wolfe, West,
Johnson

Absent: 1 – Chan

15. **File No. 11083:** Determination of jurisdiction on complaint filed by Ray Hartz against the Public Library for allegedly violating Ordinance Sections 67.21(c), (d) and (e). (9:44 p.m. - 9:44 p.m.)

Member Knee, seconded by Member Manneh, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

16. **File No. 11083:** Hearing on complaint filed by Ray Hartz against the Public Library for allegedly violating Ordinance Sections 67.21(c), (d) and (e). (9:44 p.m. - 10:57 p.m.)

Ray Hartz, Director San Francisco Open Government, presented his claim. Sue Blackman of the Public Library provided the response.

Vice Chair Wolfe, seconded by Member Knee, motioned to find City Librarian Luis Herrera in violation of Sections 67.21 (b) & (c) for failure to provide requested records and 67.26 for not keeping withholding to a minimum.

Public Comment: Peter Warfield, Executive Director and co-founder of Library Users Association, said Ms. Blackman's title as Custodian of Records prevents the public from talking to employees who really know the issue at hand; in this case, the chief financial officer who would know in detail the financial relationship between the Library and the Friends of the Library.

The motion carried by the following vote:

Ayes: 7 – Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Noes: 2 – Snyder, Cauthen

Absent: 1 – Chan

The matter is referred to the Compliance and Amendments Committee.

17. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction but not on today's agenda. (10:58 p.m. - 10:59 p.m.)

Peter Warfield, Executive Director and co-founder of Library Users Association, thanked the Task Force and said he appreciates what it does for the public whose only intention is to get some information. Ray Hartz, Director San Francisco Open Government, also thanked the Task Force for what it does. He also said the Ethics Commission's response to his complaint on the 150-worrd statement was proof that it did not want public input in their minutes.

18. **Supervisor of Records Report to the Task Force.** (5:35 p.m. - 5:53 p.m.)

Deputy City Attorney Paula Jesson presented the report on the petitions made by citizens during October 1, 2009, and September 30, 2010.

Chair Johnson, seconded by Member Cauthen, motioned to accept the report.

Public Comment: Ray Hartz, Director San Francisco Open Government, said the City Attorney's Office always denies access to records by claiming attorney-client privilege. Peter Warfield, Executive Director and co-founder of Library Users Association, said the report needs to show the time it takes for the City Attorney's Office to respond to a request. Tomas Picarello said he cannot give meaningful public comment because he did not have access to the document.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Cauthen, Manneh, Washburn, Costa, West, Johnson

Absent: 2 – Wolfe, Chan

19. **ADJOURNMENT** (11:00 p.m.)