



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

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

May 2, 2012 – 4:00 PM

Regular Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	(Vacant)	Seat 8	Bruce Wolfe (Vice Chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson (Chair)
Seat 4	Suzanne Manneh	Seat 11	Jackson West
Seat 5	Allyson Washburn		
Seat 6	(Vacant)	Ex-officio	(Vacant)
Seat 7	Jay Costa	Ex-officio	(Vacant)

- Supervisor of Records Report - Presented by Paula Jesson, Deputy City Attorney. *(Discussion and Action) (attachment) (approximately 15 minutes)*
- Resolution to support SB1001 to protect California's political disclosure database, Cal-Access. *(Discussion and Action) (attachment) (approximately 15 minutes)*
- Resolution to support SB1003 to provide injunctive and declaratory relief on past actions by local agencies under the Ralph M. Brown Open Meetings Act. *(Discussion and Action) (attachment) (approximately 15 minutes)*
- Survey of Costs of Compliance with Sunshine Ordinance. *(Discussion and Action) (attachment) (approximately 15 minutes)*
- Motion to schedule a Special Meeting in July 2012, due to Regular Meeting convening on July 4, 2012, a holiday. *(Discussion and Action) (approximately 15 minutes)*
- File No. 11084:** Reconsideration of File No. 11084 Complaint filed by Library Users Association against the Arts Commission for not providing an audio recording of a meeting. *(approximately 15 minutes) (Discussion and Action)*
- File No. 11099:** Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly not providing requested information. *(approximately 30 minutes) (Discussion and Action)*

9. **File No. 12005:** Complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage.
- (a) Determination of jurisdiction on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. *(approximately 30 minutes) (Discussion and Action)*
10. **File No. 12011:** Complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records regarding the Montgomery - Alta Street Tree Project.
- (a) Determination of jurisdiction on complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records regarding the Montgomery - Alta Street Tree Project. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records regarding the Montgomery - Alta Street Tree Project. *(approximately 30 minutes) (Discussion and Action)*
11. **File No. 12012:** Complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records and delayed response.
- (a) Determination of jurisdiction on complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records and delayed response. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Lars Nyman against Frank Lee, Department of Public Works for allegedly not providing requested records and delayed response. *(approximately 30 minutes) (Discussion and Action)*
12. **File No. 12013:** Complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011.
- (a) Determination of jurisdiction on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the Street Artist Program for FY 2010-2011. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by William Clark against Howard Lazar, Arts Commission for allegedly not providing documents of expenses charged to the

Street Artist Program for FY 2010-2011. *(approximately 30 minutes) (Discussion and Action)*

13. **File No. 12014:** Complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget.
 - (a) Determination of jurisdiction on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by William Clark against Tom DeCaigny, Arts Commission for allegedly not providing an itemized list of expenditures for the Street Artist Program FY 2012-2013 budget. *(approximately 30 minutes) (Discussion and Action)*

14. **File No. 12015:** Complaint filed by William Clark against Ben Rosenfield, Controller, Controller's Office for allegedly not providing documents regarding the authorization of expenditures by the Street Artist Program.
 - (a) Determination of jurisdiction on complaint filed by William Clark against Ben Rosenfield, Controller, Controller's Office for allegedly not providing documents regarding the authorization of expenditures by the Street Artist Program. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by William Clark against Ben Rosenfield, Controller, Controller's Office for allegedly not providing documents regarding the authorization of expenditures by the Street Artist Program. *(approximately 30 minutes) (Discussion and Action)*

15. **File No. 12016:** Complaint filed by Michael Petrelis against Castro Community Benefit District for allegedly not providing proper public notice of the agenda and accurate minutes.
 - (a) Determination of jurisdiction on complaint filed by Michael Petrelis against Castro Community Benefit District for allegedly not providing proper public notice of the agenda and accurate minutes. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Michael Petrelis against Castro Community Benefit District for allegedly not providing proper public notice of the agenda and accurate minutes. *(approximately 30 minutes) (Discussion and Action)*

16. **Approval of Minutes from the April 4, 2012, Regular Meeting.** (Action) *(attachment)*
(approximately 10 minutes)
17. **Approval of Minutes from the October 25, 2011, Regular Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
18. **Approval of Minutes from the November 29, 2011, Special Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
19. **Approval of Minutes from the January 3, 2012, Special Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
20. **Approval of Minutes from the January 24, 2012, Special Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
21. **Approval of Minutes from the February 28, 2012, Regular Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
22. **Approval of Minutes from the March 7, 2012, Regular Meeting.** (Action)
(attachment) *(approximately 10 minutes)*
23. **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. (No Action) *Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
24. **Report: Compliance and Amendments meeting of March 20, 2012.** (Discussion and Action) *(approximately 5 minutes)*
25. **Administrator's Report.** (Discussion and Action)
(approximately 5 minutes)
26. **Announcements, Comments, Questions, and Future Agenda Items.** (No Action)
27. **ADJOURNMENT**

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as this document, please contact SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | | |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at

Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton b. Goodlett Place, Room 244, San Francisco, CA 94102; phone at (415) 554-7724; fax at (415) 554-7854; or by email at sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 37 of the San Francisco Administrative Code on the Internet , at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.

File No. _____

SOTF Item No. 2

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Supervisor of Records Report

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Paula Jesson
Deputy City Attorney

DATE: March 20, 2012

RE: Twelfth Annual Report of the Supervisor of Records
October 1, 2010 – September 30, 2011

The City Attorney's Office submits this report to the Sunshine Ordinance Task Force under Section 67.21(h) of the San Francisco Sunshine Ordinance (S.F. Admin. Code §67.21(h)). That section requires the Supervisor of Records to prepare a tally and report for the Sunshine Ordinance Task Force at least annually on each petition brought before the Supervisor of Records for access to records or information. Section 67.21(h) requires as follows:

The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

Reporting period: This report covers petitions brought before the Supervisor of Records between October 1, 2010 and September 30, 2011 (the "reporting period").

Court actions: No court decisions issued regarding determinations by the Supervisor of Records for the reporting period.

Orders issued: No order from the Supervisor of Records issued to any City department whose records were the subject of a petition.

DESCRIPTION OF PETITIONS AND THEIR DISPOSITION

The petitions and their disposition are set forth below. For the custodian of records, the report generally gives the name of the employee who responded to the request. An appendix with copies of the determinations is attached. In general, the appendix does not include denials based on the matter having become moot because the department provided the requested records. For more complex issues or where appropriate to provide context for the petition or the determination, the appendix may also contain additional communications regarding the petitions.

- 1. Petitioner: Peter Jamison
Department: District Attorney's Office
Records sought: Report by a legal consultant on D.N.A. evidence

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: March 20, 2012
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Custodian of
Records: Paul Henderson

Determination: Denied because moot – records provided

Peter Jamison asked the District Attorney's Office for a "review" or "report" by a D.N.A. consultant regarding the handling of D.N.A. evidence in a criminal case. Mr. Jamison said that the District Attorney's Office had informed him that it had no records responsive to his request, but that he believed, based on information provided by the consultant, that the District Attorney's Office had the document.

Staff from the District Attorney's Office informed us that Mr. Jamison had sent a more broadly worded request and, in response, the office had provided Mr. Jamison with an eight-page document consisting of several email messages. One of the messages contained comments by the consultant. In light of this more recent response, the Supervisor of Records found Mr. Jamison's petition moot and denied it on that ground.

Mr. Jamison then filed a second petition. He said that although the District Attorney's Office had provided a responsive document containing most of the information sought, it had not provided any cover letter, email address or other identification of the person to whom the consultant had sent the email message.

While we were reviewing this matter, the District Attorney's Office informed us that it would provide Mr. Jamison with the cover email showing the person to whom the consultant sent his email. We informed Mr. Jamison that the District Attorney's Office would provide the records that he sought. Accordingly, the petition had become moot.

2. Petitioner: Anonymous
Department: Recreation and Park Department
Records sought: Records of closed session of the Recreation and Park Commission
Custodian of
Records: Olive Gong
Determination: Denied – closed session properly called and conducted;
disclosure not required under Sections 67.8-1(a) or
67.12(b)(3) of the Sunshine Ordinance
Appendix: Pages 1-3

An anonymous petitioner asked the Recreation and Park Department for a copy of the recording of a closed session of a Recreation and Park Commission meeting. The Department declined to disclose the recording based on the attorney client privilege (California Government Code Section 6254(k) and California Evidence Code Section 954.). The petitioner filed a

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petition with the Supervisor of Records, alleging that the Department had improperly withheld the recording.

Background Information

The recording requested by the petitioner was from the Recreation and Park Commission meeting of October 7, 2010. We first describe the two agenda items relevant to the issues raised by petitioner, Agenda Items No. 9 and 10, and then the Commission's actions under each item.

Agenda Items 9 and 10

Agenda Item 9 was for a closed session to meet with legal counsel for "Anticipated Litigation (Discussion Item)/Number of potential cases: 1 (City and County of San Francisco as plaintiff.)"

Agenda Item 10 read as follows:

Discussion and possible action to approve a personal services contract with Verbij Windmill Design and Construction BV in the amount of \$206,406 [€153,188.58 Euros based on 9/27/10 exchange rate] for the renovation of the South Murphy Windmill Restoration Project. (ACTION ITEM)

Staff had prepared a staff report for Item 10. The staff report provided a detailed history of the work that the Verbij contract would cover. The summary of the staff report is as follows:

The City had entered into a contract with Bloemendal Construction Company ("Bloemendal") to restore the Murphy windmill. Bloemendal had an agreement with Verbij Windmill Design and Construction ("Verbij") to provide services as a sub-consultant. Bloemendal had completed part of the restoration work but thereafter informed the City that it could no longer continue with the project and subsequently filed for bankruptcy under Chapter 7. The City terminated the contract with Bloemendal. Thereafter, Verbij informed the City that Bloemendal had not paid it for work that it had done as a sub-consultant. Thus, the City had paid Bloemendal for certain of the services to be performed by Verbij, but Bloemendal apparently did not pass through all payments to Verbij, as Bloemendal's contract required. Verbij is located in the Netherlands and, unaware of its legal rights, did not file a stop notice or a claim against Bloemendal's payment bond, and the time to do so had expired.

Department staff recommended that the Commission approve the Verbij contract because Verbij had possession of parts needed to complete the restoration, had performed the necessary restoration work (the City already had possession of most of the restored pieces), and was willing and able to perform the remaining work and to deliver the parts still in its possession, but not before receiving payment for work that it had already done.

Commission actions on Agenda Items 9 and 10

Memorandum

TO: Honorable Members
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At the conclusion of the closed session held under Item 9, a deputy city attorney who had participated in the closed session opened the door to the hearing room to invite in members of the public. But no member of the public attended the rest of the meeting. Convening again in open session, the Commission voted not to disclose any part of the closed session.

The Secretary then called Item 10, approval of the Verbij contract. The Chair made the following comment: "... and is there anyone outside that wants to come back in and hear this wonderful decision?" The Commission, without further discussion of the item, approved it.

Petitioner's Arguments

The petitioner made the following arguments:

Argument No. 1. If the Commission held the closed session to consider litigation against Bloemendal, the Commission could not properly meet in closed session for this purpose. San Francisco Administrative Code Section 67.10 permits a closed session when discussion with legal counsel in open session about the anticipated litigation would likely and unavoidably prejudice the position of the City. The statute of limitations on filing a claim in the bankruptcy proceeding expired shortly after Bloemendal entered Chapter 7 bankruptcy without the City's filing a claim. No prejudice would arise from discussing the matter in open session.

Argument No. 2. Section 67.8-1(a) of the San Francisco Administrative Code ("Section 67.8-1(a)") requires disclosure. That Section provides that recordings of closed sessions held to discuss anticipated litigation with legal counsel "shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; [or] UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; [or] as soon as the controversy leading to anticipated litigation is settled or concluded." Because the statute of limitations on filing a claim in the bankruptcy proceeding has expired, Section 67.8-1(a) requires disclosure of the closed session recording.

Argument No. 3. If the Commission held the closed session to consider litigation against Verbij, approval of the Verbij contract (Item 10 on the agenda) constitutes removal of the underlying dispute with Verbij. Therefore, both Section 67.8-1(a) and San Francisco Administrative Code Section 67.12(b)(3) require disclosure of the closed session recording. The latter section provides that where disclosure of certain documents in a litigation matter that has been settled could adversely affect the City's interest in pending litigation involving a different party but the same facts, disclosure of the documents may be delayed until the pending litigation is settled or otherwise concluded.

Argument No. 4. The Commission improperly subsumed a complete discussion of approval of the Verbij contract in Item 10 within the closed-door session, and then failed to repeat any portion of the discussion upon return to open session. Disclosure of the recording of the closed session is necessary to correct this "serious omission."

Determination

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: March 20, 2012

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RE: Twelfth Annual Report of the Supervisor of Records
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In making his arguments, the petitioner had access to limited information. As permitted by State and local laws governing a closed session on anticipated litigation, the Commission agenda does not identify the nature of the litigation or the potential defendant. Anyone challenging the validity of the closed session must therefore, of necessity, make assumptions about the purpose of the closed session and the substance of the discussions that occurred.

The Supervisor of Records carefully reviewed the recording of the Commission's closed session in light of petitioner's arguments. She determined that the Commission lawfully called, and lawfully conducted, the closed session. She therefore rejected the four arguments raised by the petitioner.

Having done so, the Supervisor of Records found that she too faced a practical difficulty. To give an explanation of the reason for the determination would reveal the nature and substance of the closed session, a disclosure prohibited by the laws protecting its confidentiality. For a closed session on anticipated litigation, the laws protecting the information include those requiring attorneys to protect the confidences of their clients. (Evid. Code §950 *et seq.*; Bus. and Prof. Code §6068(e)(1); Rules of Professional Conduct, Rule 3-100.) Accordingly, the Supervisor of Records was constrained by these laws and required to respond in a conclusory manner, not addressing the specifics of petitioner's arguments or commenting on the accuracy of the assumptions behind them.

As noted above, the petitioner had argued that even if the closed session were lawfully called and conducted, Sections 67.8-1(a) and 67.12(b)(3) of the San Francisco Sunshine Ordinance require disclosure of the recording of the session. As noted, Section 67.8-1(a) requires disclosure of a recording of a closed session upon the earliest of the following: two years if no litigation is filed, expiration of the statute of limitations for the anticipated litigation if no litigation is filed, or as soon as the controversy leading to anticipated litigation is concluded or settled. Section 67.12(b)(3) provides that where disclosure of certain documents in a litigation matter that has been settled could adversely affect the City's interest in pending litigation involving a different party but the same facts, disclosure of the documents may be delayed until the pending litigation is settled or otherwise concluded.

The Supervisor of Records considered these provisions of the Sunshine Ordinance when reviewing the recording of the closed session. The Supervisor of Records determined that there remain causes of action that the City could bring against the potential defendant in this matter that are not time-barred. Therefore, Section 67.8-1(a) does not apply. The Supervisor of Records also determined that Section 67.12(b)(3) does not require disclosure.

3. Petitioner: Kimo Crossman
 Department: Office of the Assessor-Recorder
 Records sought: Records relating to reward program for information about underpayment of property taxes
 Custodian of Records: David Chai

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: March 20, 2012

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RE: Twelfth Annual Report of the Supervisor of Records
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Determination: Denied – response not overdue

City law authorizes the Assessor to recommend a reward for information leading to the detection of an underpayment of property taxes. (S.F. Admin. Code §10.177-2.) Mr. Crossman asked the Office of the Assessor-Recorder on January 19, 2011, for records relating to this program. On January 24, 2011, Mr. Crossman filed a petition to the Supervisor of Records stating that the Assessor had not responded. Based on a review of the history of communications forwarded by Mr. Crossman, the Supervisor of Records determined that the Assessor's response was not yet due. The Assessor had informed Mr. Crossman on January 28, 2011, that it was invoking an extension of time to respond and anticipated doing so by a date still in the future, February 14, 2011. When the Supervisor of Records pointed this out to Mr. Crossman, he acknowledged that the response was not overdue.

4. Petitioner: Rita O'Flynn
- Department: Contractor for Human Services Agency, Tenderloin Housing Clinic
- Records sought: Audited financial reports
- Custodian of Records: Pamela Tebo responded to separate request to the Human Services Agency for the same records
- Determination: Denied because moot – records provided

Ms. O'Flynn submitted a request to the Tenderloin Housing Clinic ("THC") for its audited financial reports for the fiscal year ending June 2010. The THC refused to provide the reports.

The THC has a contract with the Human Services Agency. The contract requires the THC to comply with Chapter 12L of the San Francisco Administrative Code. Chapter 12L requires nonprofit organizations to make available for public inspection certain financial information about the organization, including 'any financial audits . . . performed by or for the City . . . pursuant to a contract between the City and the nonprofit organization' (S.F. Admin. Code §12L.5(a).)

It is not clear whether the Supervisor of Records has jurisdiction to consider petitions alleging that a nonprofit contractor of the City subject to Chapter 12L of the San Francisco Administrative Code has improperly withheld a record under that Chapter. Chapter 12L includes procedures for dispute resolution. It authorizes a member of the public to submit a complaint to the City department that administers the contract and, after that complaint process is done, to seek an advisory opinion from the Sunshine Ordinance Task Force. The complainant may also ask that the Board of Supervisors review the City department's resolution of the complaint and make a determination that is nonbinding on the nonprofit. The Board of Supervisors adopted Chapter 12L in 1998, the year before the voters approved an amended version of the Sunshine Ordinance creating the function of the Supervisor of Records.

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

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The Supervisor of Records found it unnecessary to decide this jurisdictional issue under Chapter 12L and the Sunshine Ordinance. Ms. O'Flynn had also requested the THC reports from the Human Services Agency, which made the requested records available to her. Accordingly, the Supervisor of Records determined that the petition had become moot.

5. Petitioner: Patrick Tobin
 Department: San Francisco Police Department
 Records sought: "Like Work Like Pay" Cards
 Custodian of Records: Alice Villagomez
 Determination: Denied because moot – records provided

Patrick Tobin requested the following records from the Police Department:

Copies of all submitted "Like Work Like Pay" (hereafter LWLP) cards, front and back, submitted to your office for compensation by any and all members of the San Francisco Police Department since June 1, 2009.

The Police Department denied the request and Mr. Tobin filed a petition with the Supervisor of Records.

After reviewing the matter, the Supervisor of Records informed Mr. Tobin by e-mail that the records he had requested are public records. She also informed him that she had learned that Maureen Conefrey of the San Francisco Police Department had responded to his request for the records by sending him a spreadsheet of "Like Work Like Pay" information from June 1, 2009 to April 20, 2011 (a copy of which she attached to the e-mail message). The record that Ms. Conefrey provided had summarized the information contained on the cards, including the names of the individuals and the date and hours worked. The Supervisor of Records asked Mr. Tobin to confirm whether his being provided with this record satisfied his request.

Thereafter, the Supervisor of Records discussed the issue with Mr. Tobin by telephone. She informed Mr. Tobin that the "Like Work Like Pay" cards are kept in numerous separate facilities and in numerous separate files, rather than in a centralized location. Mr. Tobin informed the Supervisor of Records that the spreadsheet had partially satisfied his request and that he would send a newly focused and narrowed request. He sent a revised request for records, or a summary, listing the names and titles of officers whom the listed individuals on the Police Department's "Like Work Like Pay" spreadsheet were "working in the place of" on the dates indicated on the spreadsheet." The Supervisor of Records forwarded the revised request to the Police Department for a response. Mr. Tobin raised no further issue with the Supervisor of Records regarding the matter.

6. Petitioner: Rita O'Flynn

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: March 20, 2012
PAGE: 8
RE: Twelfth Annual Report of the Supervisor of Records
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Department: Mayor's Office of Housing
Records sought: Lead Hazard Program Records
Custodian of
Records: Eugene Flannery and Oliver Hack
Determination: Denied because moot – records provided

Rita O'Flynn asked the Mayor's Office of Housing ("MOH") for 15 properties, identified by address, in the MOH Lead Hazard Program. Not satisfied with MOH's response to the request, Ms. O'Flynn filed a petition with the Supervisor of Records.

Ms. O'Flynn provided the Supervisor of Records with e-mail messages reflecting a number of communications with Eugene Flannery over a period of about three weeks regarding her request. The e-mail show that Mr. Flannery and Ms. O'Flynn had discussed the manner and timing of MOH's production of the requested records. The e-mail also included complaints by Ms. O'Flynn of MOH not responding to a verbal request and, once the request was in writing, not responding to the written request. She also complained of MOH's not providing a definitive time frame for producing the records; exceeding permissible deadlines for responding to her request; asserting that the amount of requested records was voluminous; and refusing to provide verbal updates on the status of the request.

In the course of reviewing the issues with MOH, we learned from Oliver Hack of MOH that the department had made responsive records available to Ms. O'Flynn. We confirmed with Ms. O'Flynn that MOH had provided the records and that she did not need further assistance from the Supervisor of Records regarding the matter.

7. Petitioner: Rita O'Flynn
Department: Mayor's Office of Housing
Records sought: Deleted e-mails regarding Lead Hazard Program
Custodian of
Records: Oliver Hack
Determination: Denied because of the limited role of the Supervisor of Records

In March of 2008, Rita O'Flynn asked to review the file regarding MOH's lead abatement grant to fund lead-removal work on property owned by Ms. O'Flynn. Thereafter, she asked MOH to provide her a copy of the file. After MOH did so, Ms. O'Flynn concluded that the copy did not include e-mail communications from her previous review of the file, including e-mail of MOH employee Myrna Melgar. She then asked MOH for all e-mail messages regarding the lead abatement grant for her property. MOH informed Ms. O'Flynn that MOH had deleted the e-mails because they were more than two years old. MOH also informed her that the deletion was permitted under MOH's records retention policy.

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: March 20, 2012

PAGE: 9

RE: Twelfth Annual Report of the Supervisor of Records
October 1, 2010 – September 30, 2011

MOH thereafter requested that Department of Technology to restore Ms. Melgar's email messages. The Department of Technology did so and provided MOH with five CDs which contained Ms. Melgar's e-mail for several years (roughly, 2004 to 2009). MOH reviewed the CDs and found 26 pages of responsive records, which it provided to Ms. O'Flynn.

Ms. O'Flynn was concerned that MOH had either failed to provide all responsive records from the restored e-mail or had failed to request or obtain all relevant records from the Department of Technology. She filed a petition with the Supervisor of Records, asking for a review of those issues.

The Supervisor of Records denied Ms. O'Flynn's petition. The role of the Supervisor of Records is to determine whether a record that has been requested is public. This function is based on the assumption that a City department has located a record but is withholding it based on an exception set forth in the Sunshine Ordinance or other applicable law. The role of the Supervisor of Records is to determine whether the City department is lawfully relying on the claimed exception, not to rule on the adequacy of a department's search for records. For this reason, the Supervisor of Records does not address a complaint that a City department has not adequately searched for records in response to a public records request.

However, the practice of this office when it receives a petition raising this issue is to discuss it with the department. We therefore discussed Ms. O'Flynn's concerns with MOH's Chief Operating Officer, Oliver Hack, who searched the restored e-mails again for any of Ms. Melgar's e-mail. He found two additional messages that may not have been provided to Ms. O'Flynn earlier because they did not relate to her property and therefore may not have fallen within a category of records that were requested.

When the Supervisor of Records notified Ms. O'Flynn of the denial of her petition because of the limited role of the Supervisor of Records, described above, she also informed Ms. O'Flynn that, as a general rule, departments need not search their back-up electronic files in response to a public records request. See the City Attorney's *Good Government Guide*, p. 89: "Back-up tapes serve the limited purpose of providing a means of recovery in cases of disaster, departmental system failure, or unauthorized deletion. They are not available for departmental use except in these limited situations. Electronic records such as e-mails that an employee has properly deleted under the department's records retention and destruction policy but that remain on back-up tapes are analogous to paper records that the department has lawfully discarded but may be found in a City-owned dumpster. Neither the Public Records Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic."

8. Petitioner: Peter Jamison
- Department: District Attorney's Office and Police Department
- Records sought: Correspondence between employees of the Police Department and the District Attorney's Office
- Custodian of
- Records: Cristine Soto DeBerry and Maureen Conefrey
- Determination: Denied because of the limited role of the Supervisor of Records

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: March 20, 2012
PAGE: 10
RE: Twelfth Annual Report of the Supervisor of Records
October 1, 2010 – September 30, 2011

On June 2 and August 24, 2011, respectively, Peter Jamison submitted public records requests to the District Attorney's Office and to the Police Department for correspondence between Russ Giuntini, former chief attorney of the District Attorney's Office, and Jeff Godown and/or David Lazar of the San Francisco Police Department between March 1, 2010 and May 1, 2010. Both the District Attorney's Office and the Police Department informed Mr. Jamison that they had no responsive records.

Mr. Jamison filed a petition with the Supervisor of Records, stating that Rockne Harmon had informed him that Russ Giuntini sent an e-mail to both Jeff Godown and David Lazar on April 12, 2010, and that Mr. Harmon – who had a copy of the email – dictated its text to Mr. Jamison over the phone.

For the reasons discussed with respect to the previous petition, the role of the Supervisor of Records is to determine whether the City department is lawfully relying on the claimed exception, not to rule on the adequacy of a department's search for records. In light of this limited purpose, the Supervisor of Records denied Mr. Jamison's petition.

However, consistent with the practice of this office described above, we discussed Mr. Jamison's complaint with both the District Attorney's Office and the Police Department and received information from them that we passed on to the petitioner.

Katherine Miller of the District Attorney's Office provided the following information. As part of the office's standard practice when an employee leaves the office, the District Attorney's office manager sends a memo to human resources and technical staff. The memo provides notice of the employee's departure and directs, among other things, that staff remove the employee's City accounts for telephone, email and computer services. This procedure results in the removal of the employee's email account and the deletion of any email still remaining on the office's computer email system for that employee. These actions are normally taken within a week of the notification to human resources and technical staff. But because Mr. Giuntini had served as Chief Assistant District Attorney, the office temporarily delayed discontinuing his accounts to make sure that incoming calls and messages were reviewed and appropriately referred and that the office would continue to get legal subscriptions that had been sent to him. Because of this delay, the office still had access to Mr. Giuntini's email when Mr. Jamison made earlier requests in November and December of 2010 for certain of his email messages. The issues regarding Mr. Jamison's November/December requests were resolved by April 15, 2011 and the District Attorney's Office believed that this line of inquiry was resolved as it had provided the email documents that had been requested. As there was no further office need to preserve the account, in late April, using the procedure described above, the District Attorney's Office removed the various accounts for Mr. Giuntini, which included the deletion of his email messages. For this reason, the District Attorney's Office did not have email records responsive to Mr. Jamison's June 2, 2011 request.

The San Francisco Police Department informed us that it was reviewing its email records again in light of Mr. Jamison's petition. Captain Greg McEachern said that he would inform Mr. Jamison when the office had finished this further review and whether it had been able to locate any responsive records.

9. Petitioner: Che L. Hasim

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
DATE: March 20, 2012
PAGE: 11
RE: Twelfth Annual Report of the Supervisor of Records
October 1, 2010 – September 30, 2011

Department: San Francisco Municipal Transportation Agency
("SFMTA")
Records sought: Specifications for a recording system used in the taxi
industry
Custodian of
Records: Jarvis Murray
Determination: Moot – the Department provided the records

Che L. Hashim asked the SFMTA for records related to the approval of the Janus V2 recording system in the San Francisco taxicab industry. The SFMTA provided records in response to his request. Mr. Hashim then became aware of an SFMTA letter addressed to another person and he concluded from that letter that there were documents that were responsive to his request that the SFMTA had not provided to him. He then filed a petition to the Supervisor of Records. The Supervisor of Records discussed the matter with SFMTA staff, who reviewed their files and were able to locate several additional responsive records, which the Supervisor of Records sent to Mr. Hashim.

P.J.

APPENDIX

TO

TWELFTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS

OCTOBER 1, 2010 – SEPTEMBER 30, 2011

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

February 15, 2011

Anonymous Petitioner

[Redacted]

Re: Petition to Supervisor of Records - Recreation and Park Commission
Closed Session

Dear Anonymous Petitioner:

On December 17, 2010, the Supervisor of Records received your petition alleging that the Recreation and Park Department had improperly withheld the recording of a closed session of a Recreation and Park Commission meeting. The Department informed you that it was withholding the recording based on the attorney client privilege (California Government Code Section 6254(k) and California Evidence Code Section 954.)

Background Information

The agenda for the Recreation and Park Commission meeting of October 7, 2010 contained two items that are relevant to the disposition of your petition. The first was Item 9, a closed session to meet with legal counsel for "Anticipated Litigation (Discussion Item)/Number of potential cases: 1 (City and County of San Francisco as plaintiff.)" The second was Item 10 that the agenda described as:

Discussion and possible action to approve a personal services contract with Verbij Windmill Design and Construction BV in the amount of \$206,406 [€153,188.58 Euros based on 9/27/10 exchange rate] for the renovation of the South Murphy Windmill Restoration Project. (ACTION ITEM)

The staff report for Item 10 provided a detailed history of the work that the Verbij contract would cover. To summarize briefly, the City had entered into a contract with Bloemendal Construction Company ("Bloemendal") to restore the Murphy windmill. Bloemendal had an agreement with Verbij Windmill Design and Construction ("Verbij") to provide services as a sub-consultant. Bloemendal had completed part of the restoration work but thereafter informed the City that it could no longer continue with the project and subsequently filed for bankruptcy under Chapter 7. The City terminated the contract with Bloemendal. Thereafter, Verbij informed the City that Bloemendal had not paid it for work that it had done as a sub-consultant. Thus, the City had paid Bloemendal for certain of the services to be performed by Verbij, but Bloemendal apparently did not pass through all payments to Verbij, as Bloemendal's contract required. Verbij is located in the Netherlands and, unaware of its legal rights, did not file a stop notice or a claim against Bloemendal's payment bond, and the time to do so has expired.

Department staff recommended that the Commission approve the Verbij contract because Verbij has possession of parts needed to complete the restoration, has performed the necessary restoration work (the City already had possession of most of the restored pieces), and is willing and able to perform the remaining work and to deliver the parts still in its possession, but not before receiving payment for work it had done but not been paid for.

Letter to Anonymous Petitioner
[REDACTED]

Page 2
February 15, 2011

At the conclusion of the closed session, a deputy city attorney who had participated in it opened the door to the hearing room to invite in members of the public. But no member of the public had stayed for the rest of the meeting. Convening again in open session, the Commission voted not to disclose any part of the closed session.

The Secretary then called Item 10, approval of the Verbij contract. The Chair made the following comment: "... and is there anyone outside that wants to come back in and hear this wonderful decision?" The Commission, without further discussion of the item, approved it.

Issues to be Resolved

We summarize your arguments:

1. If the Commission held the closed session to consider litigation against Bloemendal, the Commission could not properly meet in closed session for this purpose. San Francisco Administrative Code Section 67.10 permits a closed session when discussion with legal counsel in open session about the anticipated litigation would likely and unavoidably prejudice the position of the City. The statute of limitations on filing a claim in the bankruptcy proceeding expired shortly after Bloemendal entered Chapter 7 bankruptcy without the City's filing a claim. No prejudice would arise from discussing the matter in open session.
2. Section 67.8-1(a) of the San Francisco Administrative Code ("Section 67.8-1(a)") requires disclosure. That Section provides that recordings of closed sessions held to discuss anticipated litigation with legal counsel "shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded." Because the statute of limitations on filing a claim in the bankruptcy proceeding has expired, Section 67.8-1(a) requires disclosure of the closed session recording.
3. If the Commission held the closed session to consider litigation against Verbij, approval of the Verbij contract (Item 10 on the agenda) constitutes removal of the underlying dispute with Verbij. Therefore, both Section 67.8-1(a) and San Francisco Administrative Code Section 67.12(b)(3) require disclosure of the closed session recording. The latter section provides that where disclosure of certain documents in a litigation matter that has been settled could adversely affect the City's interest in pending litigation involving a different party but the same facts, disclosure of the documents may be delayed until the pending litigation is settled or otherwise concluded.
4. The Commission improperly subsumed complete discussion of approval of the Verbij contract in Item 10 within the closed-door session, and then failed to repeat any portion of the discussion upon return to open session. Disclosure of the recording of the closed session is necessary to correct this "serious omission."

Determination

The Supervisor of Records has listened to the recording of the Recreation and Park Commission's October 7, 2010 closed session in light of the issues you raise.

In making these arguments, you necessarily do so with limited information. As permitted by State and local laws governing a closed session on anticipated litigation, the Commission agenda does not identify the nature of the litigation or the potential defendant. Therefore, you must of necessity make assumptions about the purpose of the closed session and the substance of the discussions that occurred.

Letter to Anonymous Petitioner
[REDACTED]Page 3
February 15, 2011

The Supervisor of Records has carefully reviewed the recording of the Commission's closed session and has determined that the Commission lawfully called, and lawfully conducted, the closed session. Therefore, we reject your arguments 1 and 4 as summarized above.

Having done so, the Supervisor of Records also faces a practical difficulty. To give an explanation of the reason for the determination would reveal the nature and substance of the closed session, a disclosure prohibited by the laws protecting its confidentiality. For a closed session on anticipated litigation, the laws protecting the information include those requiring attorneys to protect the confidences of their clients. (Evid. Code §950 *et seq.*; Bus. and Prof. Code §6068(e)(1); Rules of Professional Conduct, Rule 3-100.) Accordingly, we are constrained by these laws and required to make this response conclusory.¹ We cannot address the specifics of your arguments 1 and 4 as summarized above, or comment on the accuracy of the assumptions behind those arguments.

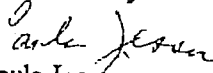
You also argue that even if the closed session were lawfully called and conducted, Sections 67.8-1(a) and 67.12(b)(3) of the San Francisco Sunshine Ordinance require disclosure of the recording of the session. As we have noted, Section 67.8-1(a) requires disclosure of a recording of a closed session upon the earliest of the following: two years if no litigation is filed, expiration of the statute of limitations for the anticipated litigation if no litigation is filed, or as soon as the controversy leading to anticipated litigation is concluded or settled. Section 67.12(b)(3) provides that where disclosure of certain documents in a litigation matter that has been settled could adversely affect the City's interest in pending litigation involving a different party but the same facts, disclosure of the documents may be delayed until the pending litigation is settled or otherwise concluded.

The Supervisor of Records has also considered these provisions of the Sunshine Ordinance when reviewing the recording of the closed session. The Supervisor of Records has determined that there remain causes of action that the City could bring against the potential defendant in this matter that are not time-barred. Therefore, Section 67.8-1(a) does not apply. The Supervisor of Records has also determined that Section 67.12(b)(3) does not require disclosure. Thus, we reject your arguments 2 and 3 as summarized above. But again, for the reasons stated above, we cannot address the specifics of those arguments or comment on the accuracy of the assumptions behind them.

Accordingly, the Supervisor of Records denies your petition.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Paula Jesson
Deputy City Attorney

¹ The San Francisco Charter and State law create attorney-client relationships between the City Attorney and City officials. Charter §6.102. Circumstances may arise where disclosure of information from a closed session held to confer with legal counsel may conflict with Charter and State law.

File No. _____

SOTF Item No. 3

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Resolution to Support SB1001

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

SB 1001 – YEE
LOBBYISTS: REGISTRATION FEES

EXISTING LAW

Existing provisions of the Political Reform Act of 1974 regulate the activities of lobbyists, lobbying firms, and lobbyist employers, as defined, in connection with attempts to influence legislative and administrative action by legislative and other state officials. The act requires that lobbying firms and lobbyist employers register with the Secretary of State, and authorizes the Secretary of State to charge each lobbying firm and lobbyist employer a fee of up to \$25 per year for each lobbyist required to be listed on its registration statement.

One of the uses for those funds is to finance the upkeep of the state's database that currently tracks campaign contributions and lobbying activity known as Cal-Access, which was recently shut down for well over a month as a result of a crash of the system due to outdated technology.

BILL SUMMARY

This bill would increase the maximum amount of this fee to \$50 per year per lobbyist with the goal of financing the maintenance of Cal-Access. The bill also would require the Fair Political Practices Commission to adjust this fee on December 1 of each even-numbered year to reflect any increase in the Consumer Price Index and to round the adjustment to the nearest \$5.

This bill would require committees required to file pursuant to 84101 to pay a \$50 per year fee as well. The lobbyist fees along with the committee fees will be collected in a new fund created by this bill, for the purposes of funding the online political disclosure database.

There are over 2,000 lobbyists (including placement agents) in California. With about 7,800 committees added into the equation, this legislation would result in more than \$440,000 per year in additional funds to operate the state's political database.

SUPPORT

Common Cause (sponsor)
California Newspaper Publishers Association
California Fair Political Practices Commission

Resolution in Support of SB 1001 (Yee) – Lobbyists: Registration Fees

Whereas, open government exists in many ways, one important yet little known is regarding political disclosure and the vast database that contains that information which is also available online, and

Whereas, existing provisions of the Political Reform Act of 1974 regulate the activities of lobbyists, lobbying firms, and lobbyist employers, as defined, in connection with attempts to influence legislative and administrative action by legislative and other state officials. The act requires that lobbying firms and lobbyist employers register with the Secretary of State, and authorizes the Secretary of State to charge each lobbying firm and lobbyist employer a fee of up to \$25 per year for each lobbyist required to be listed on its registration statement, and

Whereas, one of the uses for those funds is to finance the upkeep of the state's database that currently tracks campaign contributions and lobbying activity known as Cal-Access, which was recently shut down for well over a month as a result of a crash of the system due to outdated technology, and

Whereas, the current state's budget may not be able to continue support of the well built database an increase in the fee would help support it, therefore

Be it resolved, Sunshine Ordinance Task Force supports continued efforts to maintain the Cal-Access database with an increase in its annual fee.

File No. _____

SOTF Item No. 4

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

SB 1003 – YEE
BROWN ACT: DECLARATORY AND INJUNCTIVE RELIEF

PROBLEM

The language currently in the Brown Act does not provide injunctive and declaratory relief for past actions.

The California Court of Appeal for the Fifth District in *McKee et al v. Tulare County Board of Supervisors*, No. F061146 highlights a clear need for an amendment to the Brown Act.

In *McKee v. County of Tulare*, the Court ruled that there could be no injunctive and declaratory relief for a past violation because the board appeared to stop violating the law after the lawsuit was filed. This decision invites the petitioners to initiate a new lawsuit if the board returns to its bad behavior, thereby creating the potential for an endless loop of violation followed by corrective behavior.

EXISTING LAW

The Ralph M. Brown Act contained in government code sections 54950-54963 governs open meetings for local government bodies. Under the Brown Act, local governments are required to ensure the access of the public to meetings by posting advance notice in a public area as well as disclosing any action taken during meetings. Agendas must include descriptions of all items to be discussed. Action generally cannot be taken on items that are not on the agenda. Written notice must be provided upon request. Any action taken during meetings must be disclosed.

BILL SUMMARY

This bill adds language to the current Brown Act to codify injunctive and declaratory relief for past violations. This will ensure open government by local government agencies and conform to language within the Bagley-Keene Act addressing the same issue.

SB 1003 establishes a procedure for filing an action regarding a Brown Act violation. A letter must be submitted to the body alleged to have violated the act within one year of the alleged violation. The agency would then have 30 days in which they may respond to the allegation before any legal action is taken.

SUPPORT

AFSCME
California Newspaper Publishers Association
Californians Aware
California Teachers Association
First Amendment Coalition

OPPOSITION

Association of California School Administrators
Cathedral City
Community College League of California
City of Ventura
League of California Cities

Resolution in Support for SB 1003 (Yee) – Brown Act: Declaratory and Injunctive Relief

Whereas, the San Francisco Sunshine Ordinance holds its foundation in the Ralph M. Brown Open Meetings Act and the California Public Records Act, and

Whereas, unlike the Bagley-Keene Open Meetings Act which governs California state government there are few consequences for violating open government laws at the local level, and

Whereas, The language currently in the Brown Act does not provide injunctive and declaratory relief for past actions, and

Whereas, The California Court of Appeal for the Fifth District in McKee et al v. Tulare County Board of Supervisors, No. F061146 highlights a clear need for an amendment to the Brown Act, therefore

Be it resolved, San Francisco Sunshine Ordinance Task Force wholeheartedly supports SB 1003, and

Be it resolved, San Francisco Sunshine Ordinance Task Force appreciates the insight and foresight by Senator Leland Yee and his staff in recognizing the import to extend this provision to local agencies, and

Finally, be it resolved, passage of SB 1003 will help maintain the chain of transparency and open government in the state of California.

File No. _____

SOTF Item No. 5

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Survey of Costs of Compliance with City Sunshine Ordinance

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

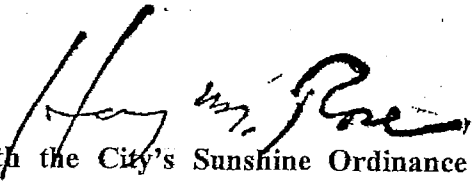
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The complete document is in the file.

**CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102
(415) 552-9292 FAX (415) 252-0461

LEGISLATIVE ANALYST REPORT

To: Supervisor Wiener
From: Budget and Legislative Analyst
Date: April 12, 2012
Re: Total Costs of Compliance with the City's Sunshine Ordinance (Project 110150.1)



SUMMARY OF REQUESTED ACTION

Pursuant to your request, the Budget and Legislative Analyst has calculated the costs to the City as a result of having to comply with the City's Sunshine Ordinance and reviewed Sunshine Ordinance Task Force activity as reported in their annual reports. The City's costs to comply with the City's Sunshine Ordinance have been broken down by department and include staff salary and benefits, overtime, and related costs. The costs are broken down by Sunshine Ordinance activities such as attending Sunshine Ordinance Task Force (SOTF) hearings, responding to public records requests and complying with public meeting requirements.

EXECUTIVE SUMMARY

- The City's Sunshine Ordinance, codified in Section 67.1 through 67.37 of the Administrative Code, incorporates and builds on two existing pieces of State law: 1) the Ralph M. Brown Act which establishes State public meeting access requirements; and 2) the California Public Records Act which establishes the public's right to receive documentary public information. The City's Sunshine Ordinance created the Sunshine Ordinance Task Force (SOTF), an oversight body charged with hearing complaints regarding any City departments' alleged lack of compliance with Sunshine Ordinance requirements, including incorporated State law requirements. The SOTF is comprised of eleven voting members appointed by the Board of Supervisors and two non-voting ex-officio members, one appointed by the Mayor and one appointed by the Clerk of the Board of Supervisors¹.
- In order to be in full compliance with the Sunshine Ordinance, City departments are required to use staff time and dedicate resources to (a) make public records available to the requesting parties and (b) address complaints made to the SOTF.
- In order to determine the total costs to the City of complying with the City's Sunshine Ordinance as well as providing an overview of the process and procedures related to the Sunshine Ordinance, the Budget and Legislative Analyst surveyed the 47 City departments that are subject to the City's Sunshine Ordinance to obtain each department's staff time and

¹ The two non-voting SOTF seats are currently vacant.

related costs incurred complying with the Sunshine Ordinance in Calendar Year 2011, with the understanding that these costs are frequently not individually tracked and would likely need to be estimated by the departments.

- The Budget and Legislative Analyst received completed survey responses from 40 out of the 47 departments surveyed, a response rate of 85.1 percent. The surveyed departments that responded are identified in Attachment 3 of this report.
- The City's total net cost as a result of complying with the Sunshine Ordinance in Calendar Year 2011 was estimated by the Budget and Legislative Analyst to be \$4,274,320, which includes costs related to existing State law as well as costs incurred due to the City's Sunshine Ordinance. These amounts cover all reported City department costs of (a) responding to 5,833 formal requests for records, (b) providing information less formally to the public, (c) preparing for and attending Sunshine Ordinance Task Force hearings when complaints are filed against City departments, (d) attending enforcement hearings before the Ethics Commission and (e) meeting all public meeting requirements.
- As shown in Table 1 below, the Budget and Legislative Analyst notes that an estimated \$3,276,645, or 76.7 percent of the \$4,274,320 in total costs identified in this report to comply with the City's Sunshine Ordinance, related to (a) providing access to public meetings and (b) providing City documents to the public pursuant to the Sunshine Ordinance, would continue to exist under current State law even if the City did not have the Sunshine Ordinance.
- After accounting for existing State legislation with which City departments are obligated to comply, regardless of the City's own Sunshine Ordinance requirements, the Budget and Legislative Analyst has estimated the total Calendar Year 2011 net cost to the City to comply with just the City's Sunshine Ordinance as \$997,676, shown in Table 1 below.
- As shown in Table 1 below, the largest category of total net City costs, an estimated \$2,077,880 of the \$4,274,320 in total net City costs for Calendar Year 2011, were incurred responding to public records requests activities.
- Of the estimated \$997,676 in costs incurred in Calendar Year 2011 that were unique to the City's Sunshine Ordinance, the largest category of costs, \$354,905, or 35.6 percent of the \$997,676 in total estimated costs unique to the City, was for Sunshine Ordinance Task Force hearings, enforcement and related tasks. These costs included Sunshine Ordinance Task Force support costs for services provided by the City Attorney and the Clerk of the Board's office and City department staff time expended at hearings. These hearings included complaint and post-decision Sunshine Ordinance Task Force hearings and Ethics Commission hearings on Sunshine Ordinance Task Force decisions.
- The Budget and Legislative Analyst's review of the Sunshine Ordinance Task Force's 2010 and 2011 annual report statistics and discussions with City staff disclosed that multiple hearings and continuances per complaint are common occurrences at Sunshine Ordinance Task Force hearings due to complainants not appearing and/or the Task Force not having a quorum. Of the 78 cases closed in Calendar Year 2011 by the SOTF, each case was heard an

average of 1.9 times by the full Task Force and each case was heard an average of 2.6 times, including hearings at the full Task Force and SOTF committees. Since these hearings often require the presence of City department staff and support services from the City Attorney's Office and the Clerk of the Board of Supervisors Office, additional costs are incurred when there are multiple hearings on a case.

- The 10 City departments that reported the largest costs attributable to the City's Sunshine Ordinance in Calendar Year 2011 are presented in Table 2 below. As can be seen, the Municipal Transportation Agency incurred the highest costs of all departments (\$859,810), followed by the Office of Emergency Management (\$226,994) the Planning Department (\$212,336) and Elections Department (\$151,170).

Table 1: Total Net Estimated Calendar Year 2011 City Costs due to the Sunshine Ordinance

Activity	Total Costs Due to City & State Legislation	Costs Due to State Legislation	Costs Unique to Sunshine Ordinance²
Noticing Requirements	\$275,324	\$275,324	\$0
Purchasing, Maintaining, or Operating Audio and/or Video Recording Equipment For Public Meetings	323,408	\$0	323,408
Costs of Maintaining and Updating Sunshine Ordinance Information on Department Websites	79,093	\$79,093	0
Other costs associated with complying with Sunshine Ordinance public meeting access requirements	73,160	\$73,160	0
Subtotal: Public Meetings Activities	750,985	427,577	323,408
Responding to Formal Sunshine Ordinance Requests For Information	1,400,627	\$1,260,564	140,063
Providing Sunshine-Ordinance Related Information, Separate From Responding to Formal Public Information Requests	649,759	\$649,759	0
Maintaining Index of Records Website	1,184	\$0	1,184
Copying Fees for Providing Public Records Not Recouped	18,351	\$18,351	0
Providing Information to the City Administrator for the Index of Records	7,959	\$0	7,959
Subtotal: Public Records Request Activities	2,077,880	1,928,674	149,206
Clerk of the Board's Support of the SOTF	110,288	\$0	110,288
Department Staff Preparation/Attending Hearings on Complaints Filed with the Sunshine Ordinance Task Force	85,290	\$0	85,290
Department Staff Attendance: Post-Decision Sunshine Ordinance Task Force Enforcement/Compliance Matters	43,354	\$0	43,354
City Attorney Costs Related to Supporting SOTF	100,233	\$0	100,233
Post-Decision Sunshine Ordinance Task Force Enforcement and Compliance Matters	43,354	\$0	43,354
Ethics Commission Costs - Post-Decision Actions	15,740	\$0	15,740
Subtotal: SOTF Hearings, Enforcement and Related Tasks	354,905	0	354,905
Preparing for Sunshine Ordinance-Related Legal Actions	1,752	\$1,752	0
Other Costs of Sunshine Ordinance Compliance	145,230	\$116,184	29,046
City Attorney Costs of Supporting Departments in Sunshine Ordinance-related issues	917,357	\$825,621	91,736
City Attorney Costs for Acting as Supervisor of Records	51,949	\$0	51,949
Subtotal: Miscellaneous Costs	1,116,288	943,557	172,731
TOTAL COSTS	\$4,300,058	\$3,299,809	\$1,000,250
COPYING REVENUES RECEIVED BY DEPTS.	25,738	23,164	2,574
TOTAL NET COSTS (rounded)	\$4,274,320	\$3,276,645	\$997,676

² The Budget and Legislative Analyst assumes that 10% of public records requests and 20% of "Other Costs" were unique to the Sunshine Ordinance in 2011.

Table 2:
10 Departments that Reported the Largest Sunshine Ordinance Compliance Costs
in Survey Responses
Calendar Year 2011

Department	Total Estimated Cost
MTA	\$859,810
Emergency Management	226,994
Planning	212,336
Elections	151,170
Public Utilities Commission	143,956
Public Health	134,354
Ethics Commission	131,818
City Attorney	125,827
Controller	124,065
Public Works	107,451
Total	\$2,217,781

Source: Budget and Legislative Analyst Survey of City Departments

SUNSHINE ORDINANCE OVERVIEW AND SURVEY

The Sunshine Ordinance is contained within Section 67.1 through 67.37 of the Administrative Code. The stated purpose of the Sunshine Ordinance is to protect the right of San Francisco residents to know what their government and those acting on behalf of their government are doing. The Sunshine Ordinance incorporates and builds on two existing State laws, the Ralph M. Brown Act which establishes State public meeting access requirements, and the California Public Records Act which establishes the public's right to receive documentary public information.

The SOTF is comprised of eleven voting members appointed by the Board of Supervisors and two non-voting ex-officio members, appointed by the Mayor and the Clerk of the Board of Supervisors. Each appointed member has a term of two years, unless removed earlier by the Board of Supervisors. According to the SOTF bylaws, members of the SOTF serve without compensation and there is no term limit for serving on the SOTF. As with all City appointive boards, commissions and other units of government, all SOTF hearings, which are held monthly, must have a majority of members (six members) of the SOTF present to constitute a quorum. As of April 2011, when the Sunshine Ordinance Task Force amended its bylaws, approval of substantive and procedural matters requires an affirmative vote of a

majority of the members present rather than the majority of all members as is required of City boards and commissions or other units of government³. If a quorum of the Task Force is not present, no official action may be taken, except roll call and adjournment.

The Sunshine Ordinance created an oversight body called the Sunshine Ordinance Task Force (SOTF), the purpose of which is to advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement the ordinance. Specific SOTF activities delineated in the Sunshine Ordinance include:

1. Establishing appropriate goals for implementation of the Sunshine Ordinance;
2. Proposing amendments to the Sunshine Ordinance;
3. Reporting annually to the Board of Supervisors on any practical or policy problems encountered in the administration of the Sunshine Ordinance;
4. Receiving and reviewing the annual report of the City's Supervisor of Records (City Attorney);
5. Making referrals to a municipal office with enforcement power under the Sunshine Ordinance, California Public Records Act or Brown Act, whenever it concludes that any person has violated any provisions of the Sunshine Ordinance or the State Acts; and,
6. Issuing public reports from time to time evaluating compliance with the Sunshine Ordinance and related State laws by the City, or any department, office or official thereof.

While the Sunshine Ordinance does not specify how referrals are to be made to a municipal office with enforcement power (#5 above), the Sunshine Ordinance Task Force has developed complaint procedures, detailed below, that allow for members of the public to file complaints with the Task Force which then holds hearings to make determinations on whether or not a Sunshine Ordinance violation has occurred.

In Calendar Year 2011, the SOTF held 10 regular hearings and 9 special hearings⁴. An average of 24.5 agenda items and an average of 15.2 complaints were calendared per hearing.⁵ In Calendar Year 2011, the SOTF received 98 new and individual complaints from 40 complainants, or an average of 2.5 complaints per complainant. Of these 98 complaints, 78 were disposed of by the SOTF. These 78 closed cases were heard by the full SOTF or its committees over a total of 201 hearings, or 2.6 hearings each on average. They were heard by the full SOTF over a total of 150 hearings, on an average of 1.9 hearings each. Table 3 presents the average number of hearings per complaint. The number of hearings per complaint ranged from one to eight, with the majority of complaints having two or three hearings each. See Attachment 1 for details on SOTF hearings.

³ Charter Section 4.104(b) requires affirmative votes by a majority of members of appointive boards, commissions or other units of government for approval of any matter.

⁴ Special hearings are hearings by the SOTF which were not one of the regularly scheduled monthly hearings.

⁵ Hearing information is based on the SOTF's website:

<http://www.sfbos.org/meeting.aspx?page=5233&subpage=2011>

**Table 3: Average Number of Hearings per Sunshine Ordinance Complaint
Calendar Year 2011**

	SOTF Only	SOTF and its Committees
Number Closed Complaints	78	78
Total # Hearings for Closed Complaints	150	201
Average Number Hearings/Complaint	1.9	2.6

Source: Closed complaints reported in the SOTF 2011 Annual Report

In order to comply with the Sunshine Ordinance, it is part of the regular duties of City departments to use staff time and dedicate resources to deliver public records and, on occasion, address complaints filed with the Sunshine Ordinance Task Force. To the extent that hearings at the SOTF or its committees are continued, additional department staff time and costs are incurred.

Charged with the task of determining the total costs to the City of complying with the Sunshine Ordinance and giving an overview of the process related to the Sunshine Ordinance, the Budget and Legislative Analyst surveyed all City departments asking that their costs of compliance with the Sunshine Ordinance for Calendar Year 2011 be submitted, with the understanding that these costs are frequently not individually tracked and would likely need to be estimated. (See Attachment 2 for sample survey)

The Budget and Legislative Analyst also recognizes that provisions of the two State ordinances, the Ralph M. Brown Act and the California Public Records Act, are contained within the Sunshine Ordinance and govern the manner and content of the dissemination of most public information. However, the Budget and Legislative Analyst determined that it was not possible to parse out all of the costs directly attributed to the Sunshine Ordinance versus the two State ordinances contained within it, which exist in their own right, given the nature of records departments typically keep on these matters. Therefore, some portion of the cost of providing access to public meetings as well as providing public documents that are directly attributed to the Sunshine Ordinance in this report would continue to exist under current State law if the Sunshine Ordinance were not in place. In addition, it is likely that without the SOTF, some portion of complaints would be directed to other public bodies, such as the courts, which would in turn incur costs.

Finally, the Budget and Legislative Analyst acknowledges that self-reporting of costs which are typically not tracked in detail on a rolling basis has the possibility of resulting in either inflated or deflated costs based on the nature of the estimating process. Therefore, the Budget and Legislative Analyst cautions that the estimates contained within this report should be considered in light of the process in which they were derived. In addition, seven departments did not return completed surveys and therefore those departments' costs are not accounted for in the final estimates included in this report. All department costs and staff hours reported by survey respondents have been reviewed by the Budget and Legislative Analyst and returned

to departments for clarification in cases when the reported amounts did not seem reasonable or were well above or below responses from other departments.

The Budget and Legislative Analyst received completed surveys from 40 out of 47 departments. Details on total costs attributable to the Sunshine Ordinance, by department, are presented as Attachment 3 to this report.

Based on the survey results and identification of some additional costs by the Budget and Legislative Analyst, the City incurred an estimated \$4,274,320 in Calendar Year 2011 complying with the Sunshine Ordinance. Of that amount, the Budget and Legislative Analyst estimates that \$3,276,645 would have been incurred anyway complying with State legislation if the Sunshine Ordinance were not in place in San Francisco and that \$997,675 of the total estimated costs were unique to the Sunshine Ordinance. Details on these costs, by function are presented in the following sections. Details on costs reported by individual City department are presented in Attachment 3.

PUBLIC ACCESS TO POLICY BODY MEETINGS AND PASSIVE MEETINGS BODIES

The Sunshine Ordinance contains specific requirements in regard to public meetings. These requirements are different for policy bodies and passive meeting bodies. The Administrative Code defines a policy body as (a) the Board of Supervisors, (b) any other board or commission authorized by the Charter, (c) any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors or by a policy body, and (d) any standing committee of a policy body, any advisory board, commission, committee or council created by a federal, State, or local grant whose members are appointed by City officials, employees, or agents⁶. A passive meeting body is defined in the Administrative Code as (a) an advisory committee created by a member of a policy body, the Mayor or a Department head, (b) any group whose purpose is to advise the Mayor or any Department head on fiscal, economic, or policy issues, (c) social, recreational or ceremonial occasions sponsored by or for a policy body to which a majority of the body has been invited, (d) a group of employees of the City and County of San Francisco who are developing, modifying, or creating City policies or procedures related to public health, safety, welfare, or homeless services⁷.

The Sunshine Ordinance requires policy body meetings to be open and public, as originally required by the Ralph M. Brown Act⁸. Section 67.6 of the Administrative Code requires that each policy body, except for advisory bodies, must establish by resolution or motion the time and place for holding regular meetings. Policy bodies must post an agenda in an area freely accessible to the public as well as on the internet specifying the time and place of the meeting and containing meaningful descriptions of each item of business of the next meeting at least 72 hours before that meeting. Members of the public must be granted the opportunity to provide testimony concerning any item which is being discussed at the policy body meeting.

⁶ Administrative Code Section 67.3

⁷ Administrative Code Section 67.3

⁸ Government Code Section 54950

In addition, the clerk or secretary of each board and commission must record the minutes for each regular and special meeting, which must be available for inspection and copying upon request no later than 10 days after the meeting. The Administrative Code requires that every policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio and video recording equipment, unless the equipment is not available for technical or other reasons⁹. Any audio or video recording will be considered a public record subject to the California Public Records Act provisions¹⁰ and shall not be erased or destroyed. These recordings must be made available within seventy two hours of the date of the meeting or hearing on the City's website and remain available for at least two years after that date. Any special meetings of a policy body must be accompanied by a written notice at least 72 hours before the meeting, delivered by mail or personally to each member of the policy body and to the local media who have requested such notices.

The Administrative Code provides that all individuals must have access to all gatherings of passive meeting bodies¹¹. Meetings of irregular passive bodies must be preceded by a notice delivered personally, by email, mail, or facsimile at least 72 hours before the time of such meetings to each person who has requested such a notice. If a passive body decides to conduct regular meetings, no notice is required. However, similar to the policy bodies, an agenda must be posted in an area freely accessible to the public as well as on the internet specifying the time and place of the meeting and containing meaningful descriptions of each item of business of the next meeting at least 72 hours before that meeting. Gatherings subject to this requirement include advisory committees or other multimember bodies created in writing, by initiative, or which were formed or exist to serve as a non-governmental advisor to a member of a policy body. Closed sessions of such passive meeting bodies may be held under specific circumstances. However, the Administrative Code specifies that all closed sessions of any policy body covered by the Sunshine Ordinance must be audio or video recorded in their entirety and those recordings must be retained for ten years, or permanently when feasible¹².

As shown in Table 4 below, the 40 departments that responded to the survey report that they incurred costs due to public meeting requirements totaling \$750,985. The Budget and Legislative Analyst notes that these costs, other than the \$323,408 cost of purchasing, maintaining, or operating audio and/or video recording equipment for public meetings, would be incurred if the Sunshine Ordinance were not in place due to the compliance obligations under the Ralph M. Brown Act.

⁹ Administrative Code Section 67.14

¹⁰ Government Code Section 54950

¹¹ Administrative Code Section 67.4

¹² Administrative Code Section 67.8

**Table 4: Summary of Survey Results of Costs of Public Meetings
 Calendar Year 2011**

Sunshine Ordinance Requirement	Annual Cost	Estimated Cost Unique to Sunshine Ordinance
Noticing Requirements	\$275,324	\$0
Purchasing, Maintaining, or Operating Audio and/or Video Recording Equipment For Public Meetings	323,408 ¹³	323,408
Costs of Maintaining and Updating Sunshine Ordinance Information on Department Websites	79,093	0
Other Costs	73,160	0
Total	\$750,985	\$323,408

ACCESS TO PUBLIC RECORDS

Public information is defined in the Sunshine Ordinance as the content of public records as defined by the California Public Records Act¹⁴. According to the California Public Records Act, a public record includes any writing containing information related to the conduct of public business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics¹⁵. The Administrative Code requires that any public record be available for inspection and a single copy provided to any individual upon payment of a reasonable copying charge, not to exceed ten cents per page¹⁶.

The intent of the Sunshine Ordinance is to keep the withholding of records to a minimum¹⁷. No records may be withheld from disclosure in their entirety unless all information contained in the records are expressly exempt by the California Public Records Act or some other statute. Withholding on this basis by a City department must be justified in writing. However, the Sunshine Ordinance¹⁸ requires disclosure of the following type of records which are not subject to disclosure requirements under the California Public Records Act:

- **Drafts and memoranda** (disclosure of draft versions of agreements in the process of being negotiated can be delayed until 10 days prior to the presentation of the agreement for approval by a policy body and disclosure of final draft agreements where the City is offering to provide facilities or services in direct competition with other public or private entities not required by law to make their competing proposals public may be delayed until the draft agreement is presented for approval).

¹³ In their completed survey, the Board of Appeals did not include \$45,000 which the department pays the Department of Technology for its services in broadcasting public meetings in this category but instead included it as "Other Costs". Given the purpose of the cost, this \$45,000 was moved to the "Purchasing, Maintaining, or Operating Audio and/or Video Recording for Public Meetings estimate of costs.

¹⁴ Administrative Code Section 67.20

¹⁵ Government Code Section 6252

¹⁶ Administrative Code Section 67.21

¹⁷ Administrative Code Section 67.26

¹⁸ Administrative Code Section 67.24

- Specific types of **records pertaining to litigation** (pre-litigation claims against the City, any record not attorney/client privileged at the time received/created, and any advice, analysis, opinion or other communication concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or the Sunshine Ordinance).
- Certain **personnel information** (job pool characteristics and employment and education histories of all successful job applicants, salary information and benefits for every employee, curriculum vitae of any employee, job descriptions for every employment classification, and any memorandum of understanding between the City or department and a recognized employee organization, but always excluding personal contact information, social security number, age and marital status for individual employees).
- Certain **law enforcement information** (names of juvenile witnesses, personal or private information, identity of a confidential source, secret investigative techniques/procedures, information that would endanger law enforcement personnel or the successful completion of an investigation may be excluded if public interest in nondisclosure outweighs the public interest in disclosure).
- **Contracts, bids, proposals, and other records of communications between departments and persons/firms seeking contracts** (Director of Public Health may withhold proposed and final rates of payments for managed health care contracts, in which the City either pays for health care services or receives compensation for providing health care services, if public disclosure would adversely affect the ability to engage in effective negotiations for managed health care contracts if the rates of payment are under three years old).
- **Budgets and Other Financial Information** (no exceptions).

The Administrative Code requires that City departments designate a staff member and an alternate to serve as custodian of public records for the department, responsible for providing information, including oral information, to the public about the department's operations, plans, policies, and positions¹⁹. No City employee is required to respond to a public inquiry on these topics if it takes more than fifteen minutes to provide oral information responsive to the inquiry.

The Custodian must comply with requests for public records within ten days following receipt of that request. The request may be delivered to the office of the custodian orally, in writing by fax, mail, or email. The custodian must justify withholding any record by demonstrating in writing within ten days following receipt of a request that the requested record is exempt under the Sunshine Ordinance.

¹⁹ Administrative Code Section 67.21

The custodian must also assist a member of the public in identifying the existence, form, and nature of any record or information maintained by, available to, or in the custody of that custodian, whether those records are exempt from disclosure. Within seven days following receipt of such a request, the custodian must provide a statement in writing regarding the existence, quantity, form, and nature of records relating to a particular subject or questions with enough specificity to identify records in order for a member of the public to make a request of that document.

The 40 departments that responded to the survey report receiving an estimated 5,833 formal requests for Sunshine Ordinance information in 2011, in which the request was received in writing and directly invoked the Sunshine Ordinance. As shown in Table 5 below, approximately 20,679 hours of City Department staff time were spent responding to formal public record requests at a total estimated cost to the City of \$1,400,627. The Budget and Legislative Analyst notes that most of these costs could continue to be incurred even if the Sunshine Ordinance were not in place due to local government disclosure obligations under the California Public Records Act. The Budget and Legislative Analyst assumes that ten percent of these costs, or \$140,063, is unique to the Sunshine Ordinance since, as discussed above, the Sunshine Ordinance contains some additional disclosures above and beyond those required by the California Public Records Act. However, responding to public records requests, including the disclosure obligations specified under the California Public Records Act, are also included within the Sunshine Ordinance and therefore have been included in the City's estimated costs below.

Table 5: City Department Estimated Costs of Responding to Formal Sunshine Ordinance Public Records Requests, Calendar Year 2011

Total Work Hours	Total Cost	Estimated Cost Unique to Sunshine Ordinance
20,679	\$1,400,627	\$140,063

As shown in Table 6 below, 13,607 estimated hours of City Department staff time were spent providing Sunshine Ordinance-related information separate from formal public information requests at a total estimated cost to the City of \$649,759. These requests include all informal requests for information about public records available, the records request process and other oral requests that do not directly invoke the Sunshine Ordinance. The Budget and Legislative Analyst notes that these costs would also continue to be incurred even if the Sunshine Ordinance were not in place due to local government disclosure obligations under the California Public Records Act. However, like the costs associated with responding to formal requests, responding to public records requests, including the disclosure obligations specified under the California Public Records Act, are also included within the Sunshine Ordinance and therefore have been included in the City's estimated costs below.

Table 6: City Department Estimated Costs of Providing Sunshine Ordinance-Related Information Separate from Formal Sunshine Ordinance Public Record Requests, Calendar Year 2011

Total Work Hours	Total Cost	Estimated Cost Unique to Sunshine Ordinance
13,607	\$649,759	\$0

CITY COPYING FEE REVENUES FOR RECORDS PROVIDED PURSUANT TO THE SUNSHINE ORDINANCE

The Administrative Code allows City departments to charge fees for documents routinely produced, such as meeting agendas, not to exceed one cent per page, plus postage costs²⁰. For documents assembled and copied at the order of a requestor, a fee not to exceed 10 cents per page may be charged, plus postage costs. Copies of video-recorded meetings can be provided at a cost of \$10 or less per meeting. According to the results of our survey, City departments estimated that they received \$25,738 in copying fee revenues in Calendar Year 2011 and incurred \$18,351 in copying fees that were not recouped.^{21,22}

CITY COSTS OF PROVIDING INFORMATION TO THE CITY ADMINISTRATOR FOR THE INDEX OF RECORDS

According to the Administrative Code, the City is required to prepare a public records index identifying various types of information and documents maintained by City departments' boards, commissions and elected officers²³. The City Administrator is responsible for the preparation of this Index of Records. The Index is to clearly and meaningfully describe individual types of records that are prepared and maintained by each department, agency, commission, or public official of the City and be kept up to date in respect to the types of records maintained by these entities and should be sufficient to aid the public in making a request or inquiry. The index does not include copies of actual documents that are available. The Department of Technology advises that department staff spends approximately 15-20 hours annually to maintain the website. Those \$1,184 to \$1,578 in costs are reportedly integrated into the annual subscription all departments pay for general Information

²⁰ Administrative Code Section 67.28

²¹ The Department of Public Health reported \$15,000.02 in copying fees not recouped. However, the Department noted that, when responding to this survey question it included staff time and other costs which may have already been included in other questions within the survey. Therefore, the \$15,000 was removed in order to avoid possible double-counting of costs.

²² The Department of Emergency Management reported \$34,721 in copying fees that were not recouped. However, the Department noted that when responding to this survey question, it included staff time in their estimate. Given that this question was meant to capture copying fees only and that the staff time estimated was not included in the survey question related to informal requests for information, the staff time estimate was moved to that survey question and removed from the question regarding copying fees.

²³ Administrative Code Section 67.29

Technology (IT) services. To be conservative, the Budget and Legislative Analyst used the lower cost in the estimated range, or \$1,184 for this cost, all of which is assumed to be unique to the Sunshine Ordinance.

According to the results of our survey, City departments estimated that they spent a total of \$7,959 providing information to the City Administrator for the Index of Records.

SUNSHINE ORDINANCE-RELATED COMPLAINTS TO THE SUNSHINE ORDINANCE TASK FORCE PRIOR TO FILING A COMPLAINT

The Administrative Code includes provisions that allow members of the public additional recourse, as promulgated by the Sunshine Ordinance Task Forces in its Complaint Procedures, if a request for a public record and/or is not granted or public meeting requirements are not followed. If a request for access to public records is not granted and/or public meetings requirements are not adhered to, the SOTF's Public Complaint Procedure states that the Sunshine Ordinance Task Force Administrator²⁴ must discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request. If the member of the public continues to be denied access to the desired record or the public meeting requirement is not met, the SOTF Administrator must advise the member of the public of his/her right to file a petition with the City Attorney's Office and to pursue the SOTF complaint process and send the complainant a packet of information to inform the complaint process. As shown in Table 7 below, a total of \$110,288 was spent by the Clerk of the Board's Office in Calendar Year 2011 supporting the SOTF. The Budget and Legislative Analyst assumes that all of these costs are unique to the Sunshine Ordinance.

Table 7: Summary of Clerk of the Board Costs Incurred Supporting the Sunshine Ordinance Task Force: Calendar Year 2011

	Cost	Estimated Cost Unique to Sunshine Ordinance
Salaries	\$77,121	\$77,121
Fringe	\$31,794	\$31,794
Miscellaneous Expenses	\$337	\$337
Materials and Supplies	\$532	\$532
Services of Other Departments	\$504	\$504
Total	\$110,288	\$110,288

²⁴ The Administrator is a City employee of the Board of Supervisors' Clerk's Office who is tasked with supporting the SOTF.

SUNSHINE ORDINANCE TASK FORCE COMPLAINT PROCESS

If the member of the public decides to pursue the complaint process, a letter or complaint form may be submitted to the SOTF. The responding City department will be sent written notice of the complaint along with a request to respond to the charges in the complaint within five business days. A Deputy City Attorney who advises the City departments may assist the department, board or commission or public official (known as the respondent) in preparing a response to the complaint.

Jurisdiction of the SOTF over a given matter must be determined as soon as possible but never later than 45 days from when a written complaint is received. The Deputy City Attorney assigned to advise the SOTF, is to provide a written opinion to the SOTF on its jurisdiction on the matter and detail the focus of the issues for the SOTF. The SOTF's complaint process calls for complaints to be heard before the SOTF's Complaint Committee in order to determine SOTF jurisdiction over the matter and to focus information requests. However, this process is not currently followed due to the current backlog of cases; complaints are now sent directly to the full SOTF, without this prior review by the committee. Jurisdiction is currently determined at the same hearing that the complaint is first heard before the SOTF. However, the SOTF plans to return to the original complaint process as soon as possible.²⁵ Once jurisdiction has been determined, the complainant may waive the 45-day rule if they choose or request a special hearing within the 45-day period.

Continuances are granted if a request for a continuance is submitted at least three business days in advance of the scheduled hearing. Respondents' agreement is not required for a continuance to be granted. If a request for continuance is submitted less than three business days in advance or more than one request for a continuance is made, the request may be granted by a majority vote of the SOTF members present (not the full SOTF).

Continuances are also granted to departments if submitted at least three business days in advance of the scheduled hearing if the complainant agrees. If the complainant is not in agreement, the request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuances may be granted by a majority vote of the SOTF members present.

Continuances on individual complaints are frequently made on the day the hearing is meant to be heard, according to City staff, due to complainants not attending the scheduled hearing. If this happens repeatedly, the same complaint can be continued at several SOTF hearings due to a lack of attendance by the complainant. In such situations, City department staff may appear and wait for the complaint to be heard, only to find that the matter is continued. Complaints can also be continued due to the SOTF lacking a quorum and therefore being unable to issue a decision (known as an Order of Determination) on the matter.

²⁵ The Clerk's Office provided this information on current deviations from the SOTF's complaint procedure.

After all testimony is heard by the SOTF, it will vote on an Order of Determination or other directives stating whether the disputed record is public and must be provided and/or whether open meeting laws were obeyed. The complainant and respondent will be notified of the SOTF's Order of Determination in writing. (See Attachment 4 for a Detailed Flowchart of the Complaint Process)

The City departments who responded to the survey reported that they attended a total number of 130 SOTF hearings in Calendar Year 2011. As shown in Table 8 below, the City spent an estimated 1,197 hours preparing for and/or attending hearings concerning complaints filed with the SOTF prior to a decision being rendered. The total estimated cost to the City associated with that time is \$85,290. The Budget and Legislative Analyst assumes that all of these costs are unique to the Sunshine Ordinance.

Table 8: City Department Costs of Preparing For and/or Attending Hearings Concerning Complaints Filed with the Sunshine Ordinance Task Force Calendar Year 2011

Total Work Hours	Total Cost	Estimated Cost Unique to Sunshine Ordinance
1,197	\$85,290	\$85,290

The City Attorney's Office estimates that it incurs \$100,233 in annual costs supporting the SOTF. In addition, the City Attorney's Office estimates that \$917,357 worth of staff time was spent supporting all City departments on Sunshine Ordinance-related matters²⁶.

POST-DECISION SUNSHINE ORDINANCE TASK FORCE ENFORCEMENT AND COMPLIANCE MATTERS

According to the SOTF's Public Complaint Procedure, once an Order of Determination has been sent, a request for reconsideration may be made only if new information exists which was not available at the time of the hearing. The party requesting consideration is to provide proof of that new information when petitioning for reconsideration. If the request is granted, a new hearing on the complaint will be scheduled for the next SOTF meeting.

If a request for reconsideration is not requested or granted and the record is found to be public, the record is to be provided to the complainant within five days of the Order of Determination. The matter is also referred to a SOTF committee for follow-up, either, the Compliance & Amendments Committee (CAC) and/or any committee recommended by the Chair.

²⁶ In order to avoid double-counting and account for all City Attorney costs, any City Attorney time estimated by departments other than the City Attorney in their survey was removed.

If the respondent continues to fail to comply with the Order of Determination, the SOTF may choose to notify the District Attorney, the Attorney General, the Board of Supervisors, or the Ethics Commission, who may take additional measures to ensure compliance with the Sunshine Ordinance. In 2011, 63 cases were forwarded to one of these bodies. SOTF records show that the Ethics Commission is the primary avenue by which complaints are addressed after the SOTF issues its Order of Determination and respondents continue to fail to comply. The Ethics Commission reports receiving eight violation referrals from the SOTF in Calendar Year 2011.

The Ethics Commission estimated its costs of hearing Sunshine Ordinance-related complaints in 2011 between \$15,740 and \$22,460. To be conservative, the Budget and Legislative Analyst has assumed that the lower amount represents the total costs for the Ethics Commission for handling violations referrals in 2011, as shown in Table 9. The Budget and Legislative Analyst assumes that all of these costs are unique to the Sunshine Ordinance.

Table 9: Ethics Commission Estimated Costs Associated with Handling Violation Referrals Concerning Sunshine Ordinance Complaints in Calendar Year 2011

Activity	Cost	Estimated Cost Unique to Sunshine Ordinance
Cost of Handling 8 Cases	\$13,440	\$13,440
Copies	\$200	\$200
Portion of Lexis Subscription	\$2,100	\$2,100
Total	\$15,740	\$15,740

Source: Ethics Commission

City departments that responded to the survey report attending and preparing for 42 post-decision hearings. As shown in Table 10 below, the costs for City Department participation in post-decision Sunshine Ordinance Task Force enforcement and compliance matters, including preparing for and attending post-decision hearings before the SOTF, any of its subcommittees, or the Ethics Commission is \$43,354. The Budget and Legislative Analyst assumes that all of these costs are unique to the Sunshine Ordinance.

Table 10: City Department Costs of Post-Decision Sunshine Ordinance Task Force Enforcement and Compliance Matters Calendar Year 2011

Total Work Hours	Total Cost	Estimated Cost Unique to Sunshine Ordinance
515	\$43,354	\$43,354

If the matter continues to not be settled in a manner which is satisfactory to the complainant, the complainant may choose to pursue further action through litigation outside of the Sunshine Ordinance process.

City departments reported a total of eight legal actions in 2011 related to Sunshine Ordinance matters. As shown in Table 11 below, City departments preparing for Sunshine Ordinance-related legal actions, including responding to writs, results in \$1,752 costs to the City. The Budget and Legislative Analyst assumes that these costs would be incurred even if the Sunshine Ordinance were not in place.

**Table 11: Costs of City Department Preparation for Sunshine Ordinance-Related Legal Actions, Including Responding to Writs
 Calendar Year 2011**

Total Work Hours	Total Cost	Estimated Cost Unique to Sunshine Ordinance
27	\$1,752	\$0

OTHER COSTS DETAILED BY DEPARTMENTS IN SURVEY

City departments were also asked to provide estimates of “any other costs” they believe they incurred due to the Sunshine Ordinance which were not specifically requested in the survey. Table 12 below details those costs.²⁷ The Budget and Legislative Analyst assumes that twenty percent of these costs are unique to the Sunshine Ordinance.

Table 12: Other Costs Incurred by City departments for Compliance with the Sunshine Ordinance, Calendar Year 2011

Activity	Cost	Estimated Cost Unique to Sunshine Ordinance
Committee staffing	\$515	\$103
Police time	1,375	275
Interpreters	340	68
Vendor Costs	143,000	28,600
Total Costs	\$145,230	\$29,046

In addition to the above detailed “other costs” reported in the survey, the City Attorney’s Office reports that a total of \$51,949 was spent in relation to the City Attorney’s role as Supervisor of Records, a role delegated to the Office pursuant to the Administrative Code. This entire cost is assumed to be unique to the Sunshine Ordinance.

²⁷ MTA reported that \$547,000 in Overhead is directly attributable to the Sunshine Ordinance. The Budget and Legislative Analyst concluded that it was not appropriate to include those costs because the MTA’s overhead is not directly related to the City’s Sunshine Ordinance and therefore those costs should not be attributed to the Sunshine Ordinance.

**SUMMARY OF COMMENTS PROVIDED BY CITY DEPARTMENTS ABOUT
COMPLIANCE WITH THE SUNSHINE ORDINANCE**

City departments were also asked to provide any general comments they wished to at the close of the survey. Many departments reported that complying with the Sunshine Ordinance and addressing complaints directed to the SOTF was extremely time-consuming for Department staff. Other Departments noted that additional funding is recommended to account for the time spent complying with Sunshine Ordinance requests. Other comments submitted noted that the complaint process is inefficient for both complainants and staff.

Attachment 1: Summary of Complaints Completed in Calendar Year 2011

Complaint Number	Complaint Committee	Task Force	Compliance and Amendments	Education, Outreach and Training Committee	Status
10034	3			3	Concluded
10036	1	2		2	Ethics Commission
10040		4			Concluded
10042	4				Concluded
10050		4		1	Concluded
10052	1	1	1		Concluded
10053		2			Tabled
10056	2				Concluded
10057	3				Withdrawn
10059		5	2		Board of Supervisors & Ethics Commission
10061	1	1			No Violation
10063		4	1		Ethics Commission
10064	2				Concluded
10065	1	1			Concluded
10067	1	1		1	Concluded
10068		2			Withdrawn
10069		2	1		Ethics Commission
10071	1	1			Tabled
10072		1			Concluded
10074		2	1		Ethics Commission
10075		1			Tabled
11001		2		1	Ethics Commission
11002		1		1	Tabled
11003	1	2			Concluded
11006		1			Ethics Commission, Attorney General, District Attorney, Board of Supervisors
11007		1			Ethics Commission
11010	1	1		1	Concluded
11011	1	1		1	Concluded
11012	1	1		1	Concluded
11013	1	1	1		District Attorney, Ethics Commission
11014	1	1	2		Concluded
11015		2	2		Concluded
11016		2	2		Ethics Commission
11017		2		1	Concluded
11018		2			Concluded

Complaint Number	Complaint Committee	Task Force	Compliance and Amendments	Education, Outreach and Training Committee	Status
11019		1			Withdrawn
11020		2			Concluded
11021		5	1	1	Concluded
11022		2			Concluded
11023		2	1		Mayor, Board of Supervisors, DA, BOS
11025		2			Tabled
11026		2			Concluded
11028		2			Board of Supervisors
11029		1			Tabled
11030		1	2		Board of Supervisors
11031		2			Concluded
11032		2			Concluded
11033		1			Board of Supervisors
11034	1	6		1	Dismissed
11035	1	2			Concluded
11036		1			Concluded
11037		1			Ethics Commission
11042	1	3	2		Ethics Commission
11043		3	1		Concluded
11044		1			Withdrawn
11045		2			Ethics Commission
11046		4		2	Concluded
11047		3		2	Concluded
11048		3			District Attorney, Ethics Commission
11049		3	1		Ethics Commission
11052		1			Withdrawn
11053		1			Withdrawn
11054		2	1		District Attorney, Ethics Commission
11055		1			Concluded
11057		1			Withdrawn
11060		2			Dismissed
11063		3			No action
11066		3			Withdrawn
11067		3			Withdrawn
11070		2			Closed
11072		2			Closed

Complaint Number	Complaint Committee	Task Force	Compliance and Amendments	Education, Outreach and Training Committee	Status
11074		2			Closed
11075		6			Withdrawn
11078		4			No action
11082		5			Withdrawn
11086		1			Withdrawn
Total	29	150	22	19	
Average Per Case		1.95			

**City and County of San Francisco
Survey of Costs of Compliance with City Sunshine Ordinance**

The Budget and Legislative Analyst's Office has been requested by the Board of Supervisors to collect and tabulate all City departments' costs of complying with the Sunshine Ordinance (Administrative Code Chapter 67). Please respond to the survey below regarding your department's specific costs related to its compliance with the Sunshine Ordinance and return to Marisa Rimland Flower of the Budget and Legislative Analyst's Office (marisa.rimland.flower@sfgov.org) by February 3, 2012.

We appreciate your cooperation on this matter. If you have any questions regarding this survey, please contact Ms. Flower at (415) 553-4635 or marisa.rimland.flower@sfgov.org.

1. Please provide the name of person completing survey.

2. Please provide the name and classification of your department's Custodian of Records required by Administrative Code Section 67.22 of the Sunshine Ordinance.

3. For each of the following Sunshine Ordinance-required tasks, please report the number of occurrences in calendar year 2011:

Number of responses to formal requests for Sunshine Ordinance information	Number of hearings your department had to prepare for and/or attend concerning complaints filed with the Sunshine Ordinance Task Force (SOTF), including all initial and continued hearings on the same requests	Number of post-decision SOTF enforcement and compliance hearings for which your department had to prepare and attend, including the full SOTF, any of its subcommittees or Ethics Commission meetings	Number of legal actions against your department for which you had to prepare or respond to complaints, writs, etc.

4. For each of the following Sunshine Ordinance-related tasks, please report 1) the classification that conducted the task, 2) the actual or estimated number of work hours performed by each classification in calendar year 2011 on each task, and 3) if any of the hours were compensated as overtime at time and a half. A number of classifications which commonly respond to Sunshine Ordinance requests and complaints are already presented but please add others for each task if appropriate.

Attachment 2

a) Providing Sunshine Ordinance-related information to the public, separate from responding to formal public information requests (required by 67.21):

Classification (click on box for drop-down menu choices)	Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

b) Responding to formal Sunshine Ordinance requests for information (including time conferring with City Attorney's Office concerning requests):

Classification (click on box for drop-down menu choices)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

Attachment 2

c) Preparing for and/or attending hearings concerning complaints filed with SOTF (including all initial and continued hearings on the same complaints) prior to a decision being rendered:

Classification (click on box for drop-down menu choices)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

d) Post-decision SOTF enforcement and compliance matters (including preparing for and attending post-decision hearings before SOTF, any of its subcommittees, or the Ethics Commission):

Classification (click on box for drop-down menu choices)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

e) Preparing for Sunshine Ordinance-related legal actions, including responding to writs:

Classification (click on box for drop-down menu choices)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

5. Based on calendar year 2011, please identify your department's costs for the following (estimates can be made if actual costs were not tracked):

a) What were your department's annual costs in calendar year 2011, if any, for maintaining and updating Sunshine Ordinance information on your website?

b) What were your department's annual costs in calendar year 2011, if any, for providing information to the City Administrator for the Index of Records?

c) What were your annual total copying fee revenues in calendar year 2011 for records provided to the public pursuant to the Sunshine Ordinance?

d) What amount of your department's annual copying fees for providing records to the public pursuant to the Sunshine Ordinance were not recouped in calendar year 2011 from fees?

Attachment 2

4. What costs, if any, were incurred by your department in calendar year 2011 for complying with public meeting access requirements of the Sunshine Ordinance, including:
- a. Noticing requirements for your policy body (Charter board or commission, advisory boards, committee, etc.)
 - b. Purchasing, maintaining or operating audio and/or video recording equipment for public meetings for your department's policy body board or commission
 - c. Other costs
5. Please detail any other costs incurred by the department for compliance with the ordinance in calendar year 2011.

Detail Costs:

6. Provide any other comments about compliance with the Sunshine Ordinance here:

Comments:

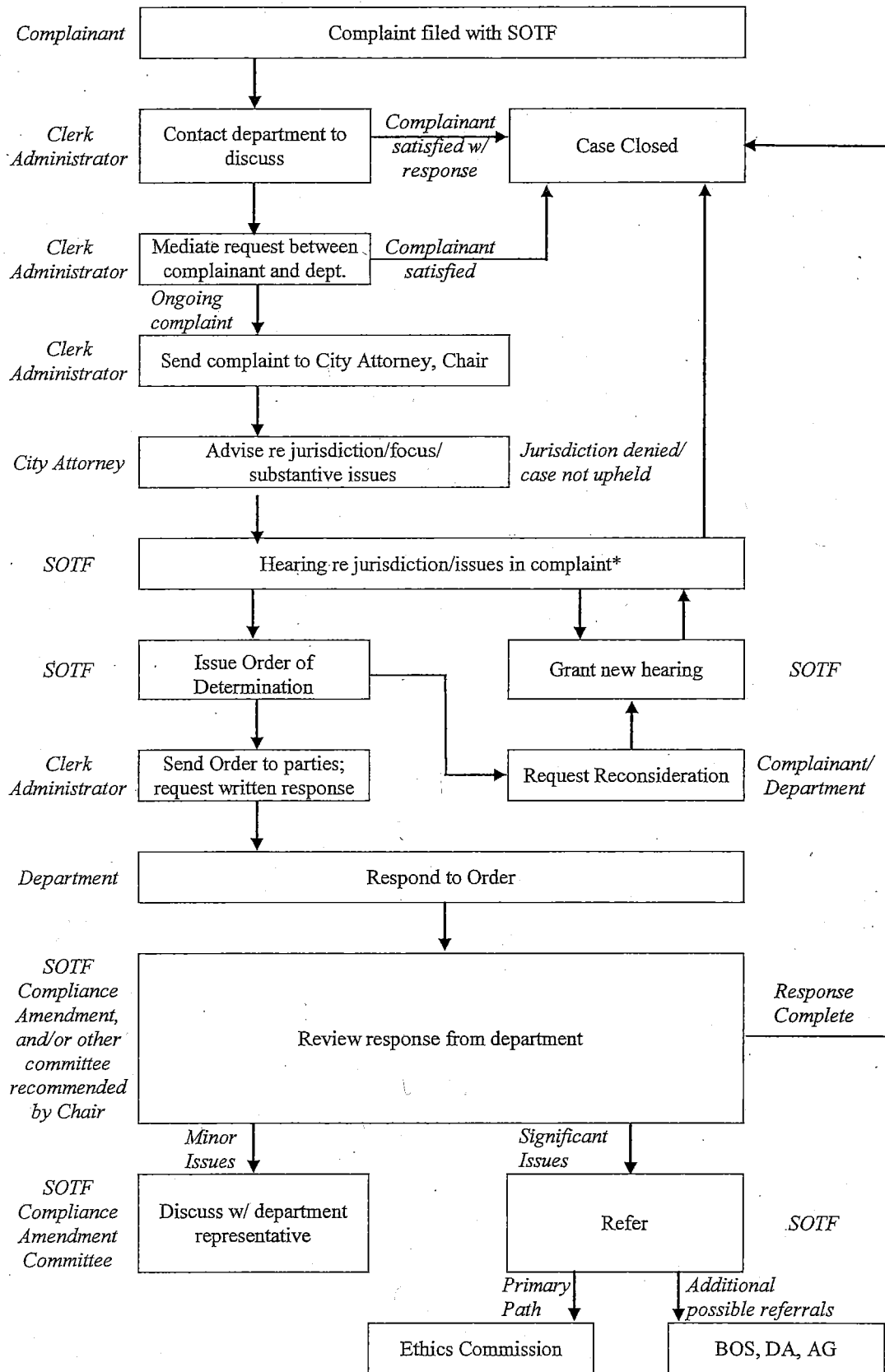
Thank you for your cooperation in filling out the above survey. Please send the completed version to Marisa Rimland Flower at marisa.rimland.flower@sfgov.org |

Attachment 3: Sunshine Ordinance Survey Results By City Department

Department	Total Estimated Cost
Administrative Services	\$4,868
Adult Probation	1,697
Airport	98
Arts Commission	77,586
Asian Art Museum	2,029
Assessor-Recorder	871
Board of Appeals	49,697
Building Inspection	52,430
Children and Families Commission	709
Children Youth & Families	507
City Attorney	125,827
Civil Service	48,746
Controller	124,065
District Attorney	20,052
Economic & Workforce Development	16,475
Elections	151,170
Emergency Management	226,994
Environment	83,470
Ethics Commission	131,818
Fire	69,430
Health Service System	0
Human Resources	30,928
Human Rights Commission	2,740
Human Services Agency	27,082
Mayor	48,600
MTA	859,810
Planning	212,336
Police Department	45,428
Port	86,947
Public Health	134,354
Public Library	34,006
Public Utilities Commission	143,956
Public Works	107,451
Recreation & Park	96,227
Rent Board	5,949
Retirement System	12,365
Sheriff	6,785

Department	Total Estimated Cost
Status of Women	543
Technology	82,880
War Memorial	2,120
Total Estimated Costs Per Department	\$3,129, 046¹

¹ The \$3,129,046 summarized here are the results from the Budget and Legislative Analyst's survey and do not contain other estimated costs and offsetting copying fee revenue included in the total cost of compliance with the Sunshine Ordinance, which is estimated to equal \$4,274,320.



* The SOTF complaint procedure calls for jurisdiction to be considered first at a complaint committee hearing. At present, the full SOTF is considering jurisdiction, generally at the same time as it hears to substantive issues in the complaint.

Please email this completed form to: Fred.Brousseau@sfgov.org and
Gabriela.Loeza@sfgov.org

**REQUEST BY A MEMBER OF THE
BOARD OF SUPERVISORS
TO THE BUDGET AND LEGISLATIVE ANALYST**

Supervisor: Scott Wiener

Contact Person (if other than the
Supervisor): _____

Contact Person's Email: scott.wiener@sfgov.org

Contact Person's Telephone No.: 554-6968

Date of Request: December 13, 2011

Nature of Request (Please describe the specific nature of the request.)

The Sunshine Ordinance is one of the most important pieces of legislation in San Francisco. It helps ensure open government and provides citizens with access to information about their government. The Sunshine Ordinance's implementation, effectiveness, and efficiency are critical aspects of San Francisco government. Moreover, the Sunshine Ordinance Task Force, as the entity that implements and oversees the ordinance, plays a key role and must operate effectively. In order to evaluate the effectiveness and efficiency of our implementation of the Ordinance, I request that the Budget and Legislative Analyst calculate the cost to the City, broken down by Department, of complying with the Ordinance. For example, I would like to know how much each Department spends to comply with the Ordinance on an annual basis, including hard costs, staff costs, overtime costs, and so forth. I would also like to know how much each Department spends in attending hearings by the Sunshine Ordinance Task Force, including hard costs, staff costs, overtime costs, and so forth. There may be other costs of compliance beyond these examples. Once we know how much the City spends to comply with the Ordinance, we can work to ensure that we are getting the best value for our investment.

We will follow up within 48 hours to discuss the scope of work, identify specific concerns and estimate the number of initial anticipated hours.

City and County of San Francisco
Survey of Costs of Compliance with City Sunshine Ordinance

The Budget and Legislative Analyst's Office has been requested by the Board of Supervisors to collect and tabulate all City departments' costs of complying with the Sunshine Ordinance (Administrative Code Chapter 67). Please respond to the survey below regarding your department's specific costs related to its compliance with the Sunshine Ordinance and return to Marisa Rimland Flower of the Budget and Legislative Analyst's Office (marisa.rimland.flower@sfgov.org) by February 3, 2012.

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1. Please provide the name of person completing survey.

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3. For each of the following Sunshine Ordinance-required tasks, please report the number of occurrences in calendar year 2011:

Number of responses to formal requests for Sunshine Ordinance information.	Number of hearings your department had to prepare for and/or attend concerning complaints filed with the Sunshine Ordinance Task Force (SOTF), including all initial and continued hearings on the same requests.	Number of post-decision SOTF, ombudsman and compliance hearings for which your department had to prepare and attend, including the full SOTF, any of its subcommittees or Ethics Commissions meetings.	Number of legal actions against your department for which you had to prepare or respond to complaints, writs, etc.

4. For each of the following Sunshine Ordinance-related tasks, please report 1) the classification that conducted the task, 2) the actual or estimated number of work hours performed by each classification in calendar year 2011 on each task, and 3) if any of the hours were compensated as overtime at time and a half. A number of classifications which commonly respond to Sunshine Ordinance requests and complaints are already presented but please add others for each task if appropriate.

Budget and Legislative Analyst

- a) Providing Sunshine Ordinance-related information to the public, separate from responding to formal public information requests (required by 67.21):

Classification (check one box in non-governmental jobs)	Work Hours	Actual or Estimated	Number of Hours of Any Compensation or Variable
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

- b) Responding to formal Sunshine Ordinance requests for information (including time conferring with City Attorney's Office concerning requests):

Classification (check one box in non-governmental jobs)	Estimated Work Hours	Actual or Estimated	Number of Hours of Any Compensation or Variable
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

- c) Preparing for and/or attending hearings concerning complaints filed with SOTF (including all initial and continued hearings on the same complaints) prior to a decision being rendered:

Classification (or category of assignment) (circle)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

- d) Post-decision SOTF enforcement and compliance matters (including preparing for and attending post-decision hearings before SOTF, any of its subcommittees, or the Ethics Commission):

Classification (or category of assignment) (circle)	Estimated Work Hours	Actual or Estimated	Number of Hours (If Any) Compensated as Overtime
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

e) Preparing for Sunshine Ordinance-related legal actions, including responding to writs:

Classification Code, Indicator, and Departmental Unit	Estimated Work Hours	Allocation Estimated	Number of Hours (If Any) Compensated as OVERTIME
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
Choose a Classification		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	
		Choose A or E	

5. Based on calendar year 2011, please identify your department's costs for the following (estimates can be made if actual costs were not tracked):

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d) What amount of your department's annual copying fees for providing records to the public pursuant to the Sunshine Ordinance were not recouped in calendar year 2011 from fees?

4. What costs, if any, were incurred by your department in calendar year 2011 for complying with public meeting access requirements of the Sunshine Ordinance, including:

a. Noticing requirements for your policy body (Charter board or commission, advisory boards, committee, etc.)

b. Purchasing, maintaining or operating audio and/or video recording equipment for public meetings for your department's policy body board or commission

c. Other costs

5. Please detail any other costs incurred by the department for compliance with the ordinance in calendar year 2011.

Detail Costs:

6. Provide any other comments about compliance with the Sunshine Ordinance here:

Comments:

Thank you for your cooperation in filling out the above survey. Please send the completed version to Marisa Rimland Flower at marisa.rimland.flower@sfgov.org!

Budget and Legislative Analyst

File No. 11084

SOTF Item No. 7
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

- | | | |
|--------------------------|-------------------------------------|-----------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memo |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Response |
| <input type="checkbox"/> | <input type="checkbox"/> | |
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OTHER

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| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



Request for Reconsideration of Complaint 11084

SOTF to: libraryusers2004, Pontious, Susan

Sent by: Andrea Ausberry

Cc: Hope Johnson, Jerry Threet

03/16/2012 03:21 PM

NOTICE TO ALL PARTIES in Complaint No. 11084, Library Users Association v. Arts Commission:

Please be advised the Task Force learned new information in this matter, and I am requesting reconsideration of the decision on the complaint based on Section E of the Sunshine Ordinance Task Force's complaint procedures.

Based on the information provided to the Task Force at the hearing held on December 14, 2011, the Task Force found the Visual Arts Committee in violation of 67.14(c) for failure to record meetings. However, Section 67.14(c) applies only when meetings are held at City Hall. The Task Force has since learned that the Visual Arts Committee does not hold its meetings at City Hall. At the time of the hearing, the Task Force was not provided with this information and therefore did not take up discussion of other possibly applicable sections of the ordinance.

The Task Force will consider at its next scheduled meeting whether or not to hold a new hearing on this matter. Pursuant to Section E of the complaint procedures, if the Task Force grants the reconsideration, a new hearing will be held at the next following scheduled Task Force meeting.

Thank you for your cooperation and patience in this matter. Please contact the SOTF Administrator with any questions or concerns.

Hope Johnson, SOTF Chair

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: December 13, 2011
RE: Complaint No. 11084: Library Users Association v. S. F. Arts Commission

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Library Users Association ("LUA") alleges that the San Francisco Arts Commission (the "Commission") violated section 67.14(b) of the Ordinance by failing to provide LUA an opportunity to review an audio recording of the meeting of the Visual Arts Committee ("VAC") meeting held on August 17, 2011.

COMPLAINANT FILES COMPLAINT:

On October 11, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.14(b).

JURISDICTION

The Commission is both a department and a Charter commission. Therefore, in general, the Task Force has jurisdiction to hear public meeting and records complaints against the Arts Commission. However, the Commission contests jurisdiction on the basis that the VAC is an advisory body under the Ordinance and therefore not subject to the provisions of section 67.14(b). Whatever the merits of that argument, it does not appear to be one that goes to the jurisdiction of the Task Force to hear this matter, but rather speaks to whether there was a violation by the Commission.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.14(b) governs the requirement that boards and commissions enumerated in the Charter audio record their special and regular meetings.

APPLICABLE CASE LAW:

None.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 2
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to audio record the August 17, 2011 meeting of the VAC and subsequently failing to provide LUA with an opportunity to review such an audio recording of that meeting.

The Commission does not dispute the above facts, but admits that it did not and does not cause the VAC meetings to be audio recorded. Rather, the Commission argues that section 67.14(b) does not require audio recordings of the VAC. The Commission argues that the VAC is an "advisory committee" under the Ordinance and therefore is not subject to the requirements of section 67.14(b).

Complainant responds that this response is a "dangerous argument that would allow circumvention of the clear language [] of Sunshine by [] placing the work of a Charter body into one or more subcommittees. Then, the parent body, rubberstamping the work of the it(s) committee(s), could evade all the requirements applying to a charter board/commission under Sunshine, and the public would have no minutes or tape recordings of meetings at which the real work is done." Complainant further alleges that the "actual work" of the Commission is done by the VAC in the subject area under its purview. Complainant further alleges that the VAC has been in existence for decades, and argues from this allegation that the VAC is a "standing committee of a legislative body" under section 54952(b) of the Brown Act and thus also is defined as a legislative body by that statute.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- How was the VAC created and when? Was it created by formal action of the Commission? By the initiative of a member of a policy body, the Mayor, or a department head?
- What is the composition of the membership of the VAC? Is it composed solely of members of the Commission, or does it also contain members who are not Commission members?
- What is the subject matter considered at VAC meetings? Does it consist solely of matters referred to it for consideration by the Commission?
- What happens to matters once they are considered by the VAC? Are all such matters referred to the Commission for further consideration and action on recommendations by the VAC?
- What is the meeting schedule of the VAC and how is that schedule determined?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements of the Ordinance and the Public Records Act?
- Can the VAC legally be considered the same as the Commission under section 67.14(b)?
- Is the VAC a "passive meeting body" or a "policy body", under the Ordinance?
- Assuming the VAC is an "passive meeting body", do the requirements of section 67.14(b) apply to its meetings?
- Assuming the VAC is a "policy body", do the requirements of section 67.14(b) apply to its meetings?

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 3
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 4
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

CHAPTER 67, S F ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

SEC. 67.3. DEFINITIONS.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
 - (1) A congregation of a majority of the members of a policy body at the same time and place;
 - (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 - (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
 - (4) "Meeting" shall not include any of the following:
 - (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
 - (C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.
 - (C-1)* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.
 - (D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 5
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

(c) "**Passive meeting body**" shall mean:

- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.
- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;
- (5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "**Policy Body**" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the Charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

SEC. 67.14. VIDEO & AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 6
RE: *Complaint No. 11084: Library Users Association v. S. F. Arts Commission*

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

**CALIFORNIA GOV'T CODE §§ 54950 ET SEQ. (BROWN ACT)
§ 54952. LEGISLATIVE BODY, DEFINITION**

As used in this chapter, "legislative body" means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.



Sunshine Complaint
complaints

to:

sotf

10/14/2011 10:12 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:Staff person

PUBLIC RECORDS VIOLATION:Yes

PUBLIC MEETING VIOLATION:No

MEETING_DATE:August 17, 2011

SECTIONS VIOLATED:Section 67.14 (b)

DESCRIPTION:Art Commission Did Not Provide Audio Recording of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association.

HEARING:Yes

PRE-HEARING:No

DATE:

NAME:Peter Warfield

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

Tuesday, October 11, 2011

Honorable Members
Sunshine Ordinance Task Force
City Hall
San Francisco
By email: sotf@sfgov.org

Subject: Complaint #1: Art Commission Did Not Provide Audio Recording of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association

Ladies and Gentlemen:

The Art Commission did not provide Library Users Association an opportunity to listen to a recording of its Visual Arts Committee (VAC) meeting of August 17, 2011. A staff member told us that only the meetings of the full Art Commission are recorded -- not committee meetings.

This violates Library Users Association's rights, and the public's, under Sunshine Ordinance Section 67.14 (b), which requires all charter commissions to audio record their meetings, to retain the recordings, and to make the recordings available for inspection. The section reads as follows:

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Background: This meeting included a presentation, plus discussion and approval, of San Francisco Public Library's imminent plan to completely destroy the existing Bernal Heights Branch Library mural, painted by noted San Francisco muralist Arch Williams, as well as Carlos Alcaya. The mural was designed and painted in a participatory community process over a two-year period, 1980-1982. It includes on the front of the library words by Holly Near, and the famed Chilean Victor Jara in Spanish and English, plus images of Victor Jara and others, which will not be carried over into the planned mural. The new design lacks any words and was called by someone close to the original design sanitized and gentrified.

Library Users Association requests a prompt hearing on this complaint, and thanks you for your time and effort on this matter.

Sincerely yours,

Peter Warfield
Executive Director, Library Users Association

Page 1 of 2

415/753-2180

Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

April 26, 2012

Honorable Members
Sunshine Ordinance Task Force
City Hall
San Francisco
By email: sotf@sfgov.org

Subject: Re-hearing of Complaint # 11084, Art Commission Did Not Provide Audio Recording of Its Visual Arts Committee (VAC) Meeting to Library Users Association

Ladies and Gentlemen:

We would like to note that this matter has not changed with regard to facts or history since you last heard this in December, 2011 – but your own actions subsequent to the complaint filing are relevant:

A. Why this is being re-heard.

We would like it understood, as it has not always been from the SOTF agendas, that this matter is being re-heard through no fault of Library Users Association. The Task Force at the hearing of December 14, 2011, found a section of the law that it later discovered did not, in fact, apply to this case. The absence of the SOTF's attorney's opinion when this came up may have contributed to this mistake, but there was no issue of arguments being made or facts presented / not presented by our side of the case. We argued the case entirely without any reliance on the section that the SOTF incorrectly applied, 67.14(c).

B. SOTF Actions.

On the same day of this hearing, the SOTF heard Library Users Association Complaint #11085, concerning failure of the Visual Arts Committee (VAC), a subcommittee of the Arts Commission, to provide draft meeting minutes promptly. In a 9-0 decision in our favor, SOTF found that the VAC IS SUBJECT to the minutes requirements and is not exempt because it is not specifically mentioned in the charter, although its 'parent' body is. Your reasoning was essentially the same as the arguments we had presented.

The SOTF Order of Determination regarding Complaint # 11085, dated April 9, 2012, reads as follows (excerpt is all of first two paragraphs of "Findings of Fact and Conclusions of Law":

The Task Force concluded that the minutes requirements of Sunshine Ordinance Section 67.16 apply to the VAC. As a standing committee, the VAC is a part of the SFAC, a commission enumerated in the Charter. [Emphasis added.] The Task Force interprets the phrase "each board and commission

enumerated in the Charter" in Section 67.16 to be inclusive of all parts of those boards and commissions, including all standing committees. The Task Force concluded that standing committees, including the VAC, are not intended to stand alone as entities separated from the parent commission. Standing committees are established to make work decisions for the parent commission; they consist of voting members of the parent commission; and they have continuing subject matter jurisdiction pertinent to the parent commission's work. The Task Force concluded an interpretation that excludes standing committees from state and local public records and public meetings laws is inconsistent with the findings and purpose of the Sunshine Ordinance.

The Task Force further concluded that the VAC is a legislative body as defined by Section 54952(b) of the Brown Act and, therefore, a local agency subject to the requirements of the California Public Records Act.

We believe that the same reasoning leads to the same conclusion regarding the requirement that meetings be recorded. Sunshine 67.14 (b) says:

"Each board and commission enumerated in the charter shall audio record each regular and special meeting"

C. Request for Explicit and Clear Finding Regarding Multiple, Ongoing Violations.

Please Note: We would appreciate your making explicit that the Visual Arts Committee failed to record any of its meetings for multiple years, including all of their meetings at which they discussed and acted upon the planned removal and replacement of the historic community-created Victor Jara Bernal Heights Branch Library Mural . We specifically requested recordings for multiple dates in Fall, 2009 and Fall, 2011 and received nothing – because, we were told, those meetings were never recorded.

The impact of this failure was to make it extraordinarily difficult for us, and anyone else, to understand what had been discussed at those meetings. Library Users Association has expressed concern that no specifics of mural contents were discussed, but anyone attempting to check the source was unable to, and would have to rely as we did, on minutes only.

Thank you for your attention to this.

Peter Warfield
Executive Director
Library Users Association
415/7 5 3 – 2 1 8 0

P.S. Attached below is our November 17 response to Art Commission's argument on this.

Library Users Association

P.O. Box 170544, San Francisco, CA 94117-0544

Tel./Fax (415) 753-2180

November 17, 2011

Honorable Members
Sunshine Ordinance Task Force
City Hall
San Francisco
By email: sotf@sfgov.org

Subject: *Our Response to Art Commission's Reply to Our Complaint #1-- (Art Commission Did Not Provide Audio Recording of Its Visual Arts Committee (VAC) Meeting to Library Users Association)*

Ladies and Gentlemen:

Library Users Association earlier this week (11/14/11) received from the SOTF Administrator the Art Commission's reply to our complaint of October 11, 2001, and reply with this letter.

We note their reply is dated October 19, and it did not reach Library Users Association until nearly a month later, on the evening of November 14, 2011.

The Commission letter argues that the Visual Arts Committee (VAC) is an "advisory committee of the SFAC [Arts Commission]." As such, the argument continues, the VAC "is not a 'board or commission listed in the charter' and thus is not required to audio record its meetings."

We consider this to be a dangerous argument that would allow circumvention of the clear language and spirit of Sunshine by the simple stratagem of placing the work of a Charter body into one or more subcommittees. Then the parent body, rubber stamping the work of its committee(s), could evade all the requirements applying to a charter board/commission under Sunshine, and the public would have no minutes or tape recordings of meetings at which the real work was done.

In fact, at the Arts Commission, the real work IS done by the Visual Arts Committee (VAC) for the topic area it covers. At the August 17, 2011 meeting of the VAC, for example, the group was attended by the **Commission President**, P.J. Johnston; the administrative head of the department, **Interim Director** J.D. Beltran; and many staff members. In addition, discussion of the Bernal Heights Branch Library mural 100% demolition and replacement project included participation by the **City Librarian**, and **artists for the new murals**. A multi-paragraph description of the proceedings was in the VAC Minutes of the meeting.

At the full Arts Commission meeting of September 12, 2011, the Bernal Heights Branch Library mural destruction and replacement project was on the agenda -- as a **CONSENT ITEM** -- and could have passed, together with another group of projects without a single word of discussion. The Commission President "pulled" the item so that it could be discussed -- *but announced that no one from the Library and none of the artists were present to make presentations or answer questions*. Public comment was allowed, but it was not followed by substantive discussion by the Commissioners.

Finally, we note that the Brown Act defines "legislative bodies to which the law applies. Section 54952 (b) it says that "legislative body" means:

"(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter."

We note that the Visual Arts Committee has been in existence for decades, performing similar work of the Arts Commission over time.

We ask you to reject the argument of the Arts Commission's letter, and determine that the VAC, and any other subcommittee of the Arts Commission, must follow the requirements of the Sunshine Ordinance with respect to boards and commissions named in the charter.

Library Users Association requests a prompt hearing on this complaint, and thanks you for your time and effort on this matter.

Sincerely yours,

Peter Warfield
Executive Director, Library Users Association
415/7 5 3 - 2 1 8 0



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

JO BELTRAN
INTERIM DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

October 19, 2011

Honorable Members
Sunshine Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #11084 and complaint #11085 submitted on October 11, 2011 by Mr. Peter Warfield, executive director, Library Users Association.

The San Francisco Arts Commission (SFAC) is in compliance with the Sunshine Ordinance and Mr. Warfield's complaints are both outside the jurisdiction of the Sunshine Task Force and without merit because the Sunshine Ordinance does not require the Visual Arts Committee (VAC) which is an advisory committee of the SFAC, to audio record VAC meetings or to keep minutes of VAC meetings.

1. The Sunshine Ordinance does not require audio recordings of advisory committee meetings.

In complaint # 11084, Mr. Warfield states that the SFAC did not provide his organization with an audio recording of the August 17, 2011 VAC meeting, even though the SFAC does not currently record VAC meetings. According to the 2010-2011 Good Government Guide, Part Three, p.133, Section G.1., the VAC, as an advisory subcommittee of the of the full Arts Commission, is not a "board or commission listed in the charter" and thus is not required to audio record its meetings:

G. Records of meetings

1. Audio recordings

"Each board or commission listed in the Charter must audio record regular and special meetings. Admin. Code § 67.14(b). Other policy bodies are not required to audio record their meetings, except for closed session portions of meetings. Admin. Code § 67.8-1(a)." (Emphasis added)

2. The Sunshine Ordinance does not require advisory bodies or committees of parent bodies to keep minutes of their meetings.

In complaint # 11085, Mr. Warfield also states that the SFAC did not provide draft minutes of the August 17, 2011 VAC meeting until more than 10 days after the



CITY AND COUNTY OF
SAN FRANCISCO

meeting. According to the 2010 -2011 Good Government Guide, Part Three, p.135, Section G.2. (c), the SFAC is not required to keep minutes for meetings of the VAC because the VAC is purely an advisory body of the parent body known as the Arts Commission:

G. Records of meetings

2. Minutes

c. Other policy bodies

"Policy bodies that do not fit into one of the above two categories, such as purely advisory bodies and committees of parent bodies, are not required to keep meeting minutes or maintain a record of meetings."

Although not required, the SFAC does keep minutes of all VAC meetings which are available to the public on the sfgov.org website and by request. Minutes for the August 17, 2011 VAC meeting were provided to Mr. Warfield within two days of his request. Those minutes are enclosed for your review.

In short, and for the reasons stated above, the SFAC is in compliance with the Sunshine Ordinance.

Thank you for your attention to this matter.

Sincerely,



Susan Pontious
Public Art Program Director
San Francisco Arts Commission
25 Van Ness, Suite 345
San Francisco, CA 94102
(415) 252- 2587

File No. 11099

SOTF Item No. 8

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Response
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OTHER

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 29, 2012
RE: *Complaint No. 11099 – Garza v. Department of Public Health*

BACKGROUND

Jason Garza ("Complainant") alleges that the Department of Public Health ("DPH") violated public records laws by failing to adequately respond to his requests for public documents.

COMPLAINT

On December 21, 2011, Complainant filed this complaint against DPH, without specifying which specific provision(s) of the public meetings and public records laws were violated.

JURISDICTION

DPH is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the DPH.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.20 governs the definition of a public record.
- Section 67.21 governs the process for gaining access to public records.
- Section 67.22 governs the release of oral public information.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs written justifications for withholding of records

California Public Records Act (Gov't Code § 6250 et seq.)

- Section 6252 governs the definition of a public record.

BACKGROUND

Complainant sent an email to DPH on December 9, 2011, with subject line "Immediate Disclosure Request," which relevant requests are quoted here:

I would like to request a copy of the following:

All documents, emails, correspondence, logs, notes of conversation, notes of phone calls regarding:

(1) Please send me the CORRECT information as previously requested through Faye DeGuzman (Barbara's Garcia – Director of Public Health's Secretary) who sent me the wrong information (and subsequently not followed up on repeated requests for CORRECT INFORMATION) concerning who the CORRECT AGENCY who regulates/certifies/accredits the

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: March 29, 2012
 PAGE: 2
 RE: Complaint No. 11099 – Garza v. Department of Public Health

San Francisco Department of Public Health in regard to providing Medical Services to patients in order to file a complaint and have DPH unaccredited and de-certified. In the last INCORRECT information received by Ms. De Guzman the specific agency that she sent me to (Public Health Accreditation Board) who wrote back and told me that she (Ms. De Guzman) was INCORRECT as to what I was seeking specifically stating in an email from Kay Bender, PhD, RN, FAAN, President and CEO Public Health Accreditation Board 1600 Duke Street, Suite 440 Alexandria, VA 22314 phone 703-778-4544 fax 703-778-4556; President and CEO of Public Health Accreditation Board: "Thank you for contacting the Public Health Accreditation Board regarding your complaint of the City and County of San Francisco Department of Public Health. Public health department accreditation under the Public Health Accreditation Board does not include health services since accreditation of health services is handled by other entities. Therefore, your concerns are outside the scope of authority of the Public Health Accreditation Board."

(2) Please send me the CORRECT information as to the CORRECT state and federal agencies to file and ADA PROGRAMMATIC ACCESS complaints with. Please realize that as the requester I am notifying you that if you DO NOT understand what I am requesting to contact me IMMEDIATELY for written/documented clarification. Please realize that you MUST work with the requester to get him what is clearly required and if you DO NOT understand what is clearly required... do NOT hesitate to contact the requester.

(3) Please also send me ALL enforcement agencies (city, state, and federal) where the PROGRAMMATIC ACCESS complaint can be filed and investigated. In other words WHERE do I CORRECTLY go to ... the San Francisco Police Department and file and ADA complaint with them for denial of access and accommodation and have the perps arrested?

This request includes all paperwork sent, received, emailed or any other form of transmittal to all involved. This request includes all paperwork sent, received, emailed or any other form of transmittal from all involved. This request also includes all internal documentation generated by this sunshine request matter also. (From inception to present date) ... for example any documentation, notes, logs, tapes, emails, etc from any individual to any other individual regarding any matter concerning this matter, its handling, deposition, etc.

On December 12, 2011, DPH responded to Complainant's IDR by email. DPH understood and summarized Complainant's request #1 to be for "the names of the agencies that regulate and accredit the health care that DPH delivers at our hospitals and clinics." In response, DPH provided the names and contact information for the federal-level Centers for Medicare and Medicaid Services, Division of Survey and Certifications, as well as for the state-level California Department of Public Health Licensing and Certification Program.

DPH understood and summarized Complainant's request #2 to be for "what state and federal agencies can you complain to regarding ADA compliance." In response, DPH directed Complainant to the Mayor's Office on Disability, as well as to the federal ADA website.

DPH understood and summarized Complainant's request #3 to be "you are asking for the same information as item 2 but also are including City and County of San Francisco and any other agencies in addition to the state and federal agencies." In response, DPH directed Complainant to the City Department's ADA coordinator website.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 29, 2012
PAGE: 3
RE: Complaint No. 11099 – Garza v. Department of Public Health

On December 12, 2011, Complainant responded to DPH by email. In this December 12, 2011 email, Complainant informed DPH that the state agency (California Department of Public Health Licensing and Certification Program) instructed Complainant that they do not take complaints against "Departments of public health only clinics." Complainant further claimed that DPH's response to request #2 was inadequate, and requests specific contact names, telephone numbers, and email addresses. Complainant further claimed that DPH's response to request #3 was similarly inadequate, and requests DPH to provide the name of the specific "enforcement agencies" who could "have the perps arrested."

DPH made no additional response, and on December 21, 2011, Complainant brought his complaint to the Task Force.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Is Complainant's requests for the names, telephone numbers, or contact persons at various local, state, and federal agencies a public records request?
- Has Complainant made any request for public information that is held or controlled by DPH in documentary form? If so, what documents have been requested?
- Does DPH have any documents (that is, documentary records) responsive to Complainant's public records/information requests? If so, have those documents been provided to Complainant?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Are the names of various local, state, or federal agencies a "public record" within the meaning of the Brown Act or the Ordinance?
- Does the Ordinance require an agency (i.e. DPH) to provide answers to general questions, even if there is no actual documentary record being requested?
- Did DPH's responses to Complainant's email inquiries comply with the requirements of Ordinance with regard to providing public records?
- Did DPH's responses to Complainant's email inquiries comply with legal requirements regarding providing public information in a non-documentary form?
- Has DPH complied with the requirements of the Ordinance, the PRA and the Brown Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



Fw: 12/12/2011 - Response - Still not what was REQUESTED. - Fw: 12/9/2011 - IMMEDIATE DISCLOSURE REQUEST

Jason Grant Garza

to:

sotf@sfgov.org, sotf@brucewolfe.net, hopeannette@earthlink.net, Eileen.Shields@sfdph.org, Barbara.Gracia@sfdph.gov, Joseph.Pace@sfdph.gov, Publicrecords.dph@sfgov.org, jasongrantgarza@yahoo.com
12/21/2011 10:09 PM

Cc:

"Donald.White@oig.hhs.gov", "kathleen.Sebelius@hhs.gov", "Kathleen.Billingsley@cdph.ca.gov", "DDooley@chhs.ca.gov", "opi.net.post@ssa.gov"

Hide Details

From: Jason Grant Garza <jasongrantgarza@yahoo.com> Sort List...

To: "sotf@sfgov.org" <sotf@sfgov.org>, "sotf@brucewolfe.net" <sotf@brucewolfe.net>, "hopeannette@earthlink.net" <hopeannette@earthlink.net>, "Eileen.Shields@sfdph.org" <Eileen.Shields@sfdph.org>, "Barbara.Gracia@sfdph.gov" <Barbara.Gracia@sfdph.gov>, "Joseph.Pace@sfdph.gov" <Joseph.Pace@sfdph.gov>, "Publicrecords.dph@sfgov.org" <Publicrecords.dph@sfgov.org>, "jasongrantgarza@yahoo.com" <jasongrantgarza@yahoo.com>

Cc: "Donald.White@oig.hhs.gov" <Donald.White@oig.hhs.gov>, "kathleen.Sebelius@hhs.gov" <kathleen.Sebelius@hhs.gov>, "Kathleen.Billingsley@cdph.ca.gov" <Kathleen.Billingsley@cdph.ca.gov>, "DDooley@chhs.ca.gov" <DDooley@chhs.ca.gov>, "opi.net.post@ssa.gov" <opi.net.post@ssa.gov>

Please respond to Jason Grant Garza <jasongrantgarza@yahoo.com>

1 Attachment



pic16700.jpg

12/21/2011 10 pm PST Wednesday

To the Sunshine Task Force and Whom It May Concern:

Please process my this as a sunshine complaint for NOT complying with my IMMEDIATE DISCLOSURE REQUEST. Send me IMMEDIATELY the date of the hearing (SUNSHINE TASK FORCE) that this will be scheduled for. Also IMMEDIATELY let me know if there are any more "HOOPS" that I must jump through in order to have this process move forward ASAP.

Please know that this documentation serves as notice for the requested hearing having meet the requirements of notification as denoted in the ordinance. Therefore there should NOT be any delay in scheduling and if there is please notify me ASAP.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza
jasongrantgarza@yahoo.com

P.S. In addition to below which DENOTES the WRONG/INCORRECT (UN-FORFILLED IDR) information requested on a state level there is NOW a letter from CMS (federal level) regarding investigation/certification and ADA issues, etc stating:

"It has come to the attention of the Western Division of Survey and Certification that, in response to your letter to the U.S. Department of Health and Human Services communicating your concerns about being denied medical care at the San Francisco Department of Public Health's Tom Waddell Clinic, CMS sent a response letter to you dated September 27, 2011. You then sent an email message on September 29, 2011 requesting further follow-up on this matter. Please be advised that there is nothing further that CMS can do to address your situation. Therefore, CMS considers this inquiry closed."

Signed Steven Chickering.

So apparently the I received INCORRECT INFORMATION from SOMEONE !!! Or maybe LIKE Alice in Wonderland fell down the wrong hole ... YOU KNOW "THE DEAD END LEAD" hole. (I say this for if you look at my file an MOD's failure and the lack of ADA (Madeline) help ... you will begin to see a pattern ... PLEASE NOTE I AM INSERTING THIS FOR "REASONABLE" MEN)

Please note THAT AS OF TODAY ... I STILL HAVE NOT BEEN SENT # 3 ...the ENFORCEMENT AGENCIES TO ARREST THE PERPS.

P.P.S Please respond ASAP and HAVE a NICE DAY and GOD BLESS.

----- Forwarded Message -----

From: Jason Grant Garza <jasongrantgarza@yahoo.com>

To: "Barbara.Garcia@sfdph.org" <Barbara.Garcia@sfdph.org>; "Eillen.Shields@sfdph.org"

<Eileen.Shields@sfdph.org>; "jasongrantgarza@yahoo.com" <jasongrantgarza@yahoo.com>
Sent: Monday, December 12, 2011 4:27 PM
Subject: Fw: 12/12/2011 - Response - Still not what was REQUESTED. - Fw: 12/9/2011 - IMMEDIATE DISCLOSURE REQUEST

----- Forwarded Message -----

From: Jason Grant Garza <jasongrantgarza@yahoo.com>
To: "publicrecords.dph@sfgov.org" <publicrecords.dph@sfgov.org>; "Eileen.Shields@sfdph.gov" <Eileen.Shields@sfdph.gov>; "Barabara.Garcia@sfdph.gov" <Barabara.Garcia@sfdph.gov>; "Joseph.Pace@sfdph.org" <Joseph.Pace@sfdph.org>; "jasongrantgarza@yahoo.com" <jasongrantgarza@yahoo.com>; "soft@sfgov.org" <soft@sfgov.org>; "soft@brucewolfe.net" <soft@brucewolfe.net>; "hopeannette@earthlink.net" <hopeannette@earthlink.net>
Cc: "Doanld.White@oig.hhs.gov" <Doanld.White@oig.hhs.gov>; "Kathleen.Sebelius@hhs.gov" <Kathleen.Sebelius@hhs.gov>; "Kathleen.Billingsley@cdph.ca.gov" <Kathleen.Billingsley@cdph.ca.gov>; "DDooley@chhs.ca.gov" <DDooley@chhs.ca.gov>; "opi.net.post@ssa.gov" <opi.net.post@ssa.gov>
Sent: Monday, December 12, 2011 4:22 PM
Subject: 12/12/2011 - Response - Still not what was REQUESTED. - Fw: 12/9/2011 - IMMEDIATE DISCLOSURE REQUEST

12/12/2011

To Whom It may Concern (Since there is no signature as to whom SPECIFICALLY this came from) and ALL Others:

First thank you for your response and the name of Kelly Valente to followup with at the CMS. I will contact and let you know if you "STEERED" me in the right direction.

On the matter of the STATE AGENCY ... you are INCORRECT for when I contacted this agency ... they SPECIFICALLY told me they do NOT take complaint against DEPARTMENTS of PUBLIC HEALTH only clinics. I can provide you with the paperwork. If you are sure ... please provide me with an name and interface at L/C to proceed with the comliants. Would that be DIANA MARANA or maybe Kathleen Billingsley ... remeber I have my files and if you'll notice ... Ms. Billingsley has been cc'd in the emails to date.

On the matter of the number two (2) ... You are not providing WHAT is requested but rather trying to LEAD me DOWN a DEAD PATH (MOD) as the file will demonstate. Please send me the name, interface and phone numbers for the divisions you claim. Please send me the STATE information, Federal and CITY ... name and phone numbers.

On the matter of number three (3) ... you have NOT sent me the NAME of the ENFORCEMENT AGENCIES as to where and who I go to to have the PERPS arrested? This includes city, state and federal. Number two is who and where to file complaints ... number three deals wth arresting agencies.

Please realize that I do NOT consider this IDR filled since as my email states above ... I have NOT gotten the information requested SPECIFICALLY where to go and HAVE the PERPS arrested.

Please respond ASAP.

Jason Grant Garza
jasongrantgarza@yahoo.com

P.S. Who sent this ??? Please let me know ASAP as it has no signature.
P.P.S. Have a NICE DAY and GOD BLESS.

— Forwarded Message —

From: PublicRecords DPH <PublicRecords.DPH@sfdph.org>
To: Jason Grant Garza <jasongrantgarza@yahoo.com>
Cc: SOTF <sotf@sfgov.org>
Sent: Monday, December 12, 2011 1:03 PM
Subject: Re: 12/9/2011 - IMMEDIATE DISCLOSURE REQUEST

Dear Mr. Garza:

We have received your IDR e-mail of 12/9/11 and for purposes of responding, have re-stated your requests as I understand them.

Regarding item 1. You are asking for the names of the agencies that regulate and accredit the health care that DPH delivers at our hospitals and clinics.

Here are the state and federal agencies that regulate and accredit health centers and hospitals:

Federal resource:

Centers for Medicare and Medicaid Services
Division of Survey and Certifications
Kelly Valente (415)744-3709

State Resource:

California Department of Public Health
Licensing and Certification Program
(916)440-7360

or email:

CDPH.internetadmin@CDPH.ca.gov

Regarding item 2. You want to know what state and federal agencies you can complain to regarding ADA compliance.

The Mayor's Office on Disability is the local source of expertise on this topic and you may wish to consult with them on this matter.

The California State agency website access is at

<http://www.disabilityaccessinfo.ca.gov/lawsregs.htm%0A>

The federal ADA website is available at <http://www.ada.gov/>.

Regarding item 3. You are asking for the same information as item 2 but

also are including the City and County of San Francisco and any other agencies in addition to the state and federal agencies.

The link to the City Department's ADA coordinators is:

<http://www.sfgov2.org/index.aspx?page=429>

Please clarify or re-state your request if I have misinterpreted any portion of it.

(Embedded image moved to file: pic16700.jpg)

Jason Grant Garza
<jasongrantgarza@
yahoo.com>

To

"Barbara.Garcia@sfdph.org"
12/09/2011 10:45 AM <Barbara.Garcia@sfdph.org>,
"Joseph.Pace@sfdph.org"

<Joseph.Pace@sfdph.org>,
"PublicRecords.dph@sfgov.org"
Please respond to <PublicRecords.dph@sfgov.org>,
Jason Grant Garza "Eileen.Shield@sfdph.org"
<jasongrantgarza@ <Eileen.Shield@sfdph.org>,
yahoo.com> "hopeannette@earthlink.net"

<hopeannette@earthlink.net>,
"sotf@brucewolfe.net"
<sotf@brucewolfe.net>,
"sotf@sfgov.org" <sotf@sfgov.org>,
"jasongrantgarza@yahoo.com"
<jasongrantgarza@yahoo.com>

cc

"Donald.White@oig.hhs.gov"
<Donald.White@oig.hhs.gov>,
"Kathleen.Sebelius@hhs.gov"
<Kathleen.Sebelius@hhs.gov>,
"Kathleen.Billingsley@cdph.ca.gov"
<Kathleen.Billingsley@cdph.ca.gov>,
"DDooley@chhs.ca.gov"
<DDooley@chhs.ca.gov>,
"opi.net.post@ssa.gov"
<opi.net.post@ssa.gov>

Subject

12/9/2011 - IMMEDIATE DISCLOSURE
REQUEST

12/9/2011 10:45 am PST Friday

Attn: Barbara Garcia, Joseph Pace, Eileen Shields
Re: IMMEDIATE DISCLOSURE REQUEST

IMMEDIATE DISCLOSURE REQUEST

To Barbara Garcia, Joseph Pace, Public Records Request Office, and Eileen Shields and Whom It May Concern:

Please be sure to forward this to the Custodian of Records, department head or who ever is in charge for compliance per the regulations for correct process.

As previous written requests indicate, THEREFORE:

Pursuant to all relevant provisions of the California Government Codes (Ralph M. Brown Act et al.) and the San Francisco Sunshine Ordinance, California Records Act, and the Federal FOIA Act - I would like to request a copy of the following:

All documents, emails, correspondence, logs, notes of conversation, notes of phone calls regarding:

(1) Please send me the CORRECT information as previously requested through Faye DeGuzman (Barbara's Garcia - Director of Public Health's Secretary) who sent me the wrong information (and subsequently not followed up on repeated requests for CORRECT INFORMATION) concerning who the CORRECT AGENCY who regulates/certifies/accredits the San Francisco Department of Public Health in regard to providing Medical Services to patients in order to file a complaint and have DPH unaccredited and de-certified. In the last INCORRECT information received by Ms. De Guzman the specific agency that she sent me to (Public Health Accreditation Board) who wrote back and told me that she (Ms De Guzman) was INCORRECT as to what I was seeking specifically stating in an email from Kay Bender, PhD, RN, FAAN, President and CEO Public Health Accreditation Board 1600 Duke Street, Suite 440 Alexandria, VA 22314 phone 703-778-4554 fax 703-778-4556 , President and CEO of Public Health Accreditation Board

“ Thank you for contacting the Public Health Accreditation Board regarding

your complaint of the City and County of San Francisco Department of Public Health. Public health department accreditation under the Public Health Accreditation Board does not include health services since accreditation of health services is handled by other entities. Therefore, your concerns are outside the scope of authority of the Public Health Accreditation Board.”

; (2) Please send me the CORRECT information as to the CORRECT state and federal agencies to file an ADA PROGRAMMATIC ACCESS complaints with. Please realize that as the requester I am notifying you that if you DO NOT understand what I am requesting to contact me IMMEDIATELY for written/documented clarification. Please realize that you MUST work with the requester to get him what is clearly required and if you DO NOT understand what is clearly required ... do NOT hesitate to contact the requester.

; (3) Please also send me ALL enforcement agencies (city, state and federal) where the PROGRAMMATIC ACCESS complaint can be filed and investigated. In other words WHERE do I CORRECTLY go to ... the San Francisco Police Department and file an ADA complaint with them for denial of access and accommodation and have the perps arrested?

This request includes all paperwork sent, received, emailed or any other form of transmittal to all involved. This request includes all paperwork sent, received, emailed or any other form of transmittal from all involved. This request also includes all internal documentation generated by this sunshine request matter also. (From inception to present date) ... for example any documentation, notes, logs, tapes, emails, etc from any individual to any other individual regarding any matter concerning this matter, its handling, deposition, etc.

Please realize that per the sunshine regulations ... you must be helpful in resolving and getting me what I specifically request. You MUST work with the requester to clearly provide what is required.

Sincerely,

Jason Grant Garza
1369 B. Hayes Street
San Francisco, CA 94117
jasongrantgarza@yahoo.com

email cc:

Kathleen Sebelius - Secretary of Health & Human Services
Donald White - Office of Inspector General

P.S. Is NOT a similar as the DNA CRIME LAB RE-ACCREDITATION SCANDAL (see current newspaper articles ... faulty processes, missing information, etc?)

P.P.S. Have a NICE DAY and GOD BLESS.

Subject 3/11 - Still awaiting response from MINISTRY and CHAIR - Fw: 3/5/2012 - Partial Response A (#2 and incorrect rescheduling of DPH's IDR) - Fw: Hearing Notice re Complaint 11099, Garza v. DPH
From: Jason Grant Garza
To: "sotf@sfgov.org", "sotf@brucewolfe.net", "jasongrantgarza@yahoo.com", "hopeannette@earthlink.net", "Adam.Taylor@sfgov.org", "Scott.Wiener@sfgov.org", "ggiubbini@sftc.org", "Donald.White@oig.hhs.gov", "Kathleen.Sebelius@hhs.gov", "Kathleen.Bilingsley@cdph.ca.gov", "DDooley@chhs.ca.gov", "opi.net.post@ssa.gov", "Marilyn.Tavener@cms.hhs.gov"
Date: 03/11/2012 09:15 AM

3/11/2012 SUNDAY (Note prior email sent in MONDAY 3/5)
To Whom It May Concern: Administrator, Chair and Vice Chair:

Please note that I STILL AWAIT response. Also please realize that I am currently working on the other items of concern # 1 and # 3 of CHAIR Johnson's email since I have responded to # 2 and await an answer. In order for process to correctly work ... answers MUST be forthcoming and two-way (this is NOT the case at the MINISTRY of SUNSHINE) as this example will demonstrate. Shall we see how much longer on the MIS-SCHEDULING, how much longer before PROPER and CORRECT RESPONSE, or even the ADMISSION of FAILED POLICY (45 days) and that the FAILED POLICY had been previously forewarned and NOT acted upon NOR accounted for. (See documentation sent into the MINISTRY (Knee) DOCUMENTING this.)

Please realize that as I state I am working on items # 1 and # 3 however I am DOCUMENTING (for "REASONABLE men) awaiting ANSWER, RESPONSE or any form of HUMANITY from the MINISTRY. Please note that the DOCUMENTATION continues to exhibit the FARCE and FAILURE of the MINISTRY who SITS in JUDGMENT while NOT CORRECTLY PERFORMING per its OWN POLICY as denoted in this set of IDRS and naturally the 11010-11012 IDRS that I wrote Knee over. Please realize that I will continue to bring up these "TRUTHS" at the MINISTRY of SUNSHINE (as I did at the Mar 7th hearing) and will continue to SHOW MY SHAME and HORROR at the MINISTRY by continuing to tell the "TRUTH" and SUNSHINEING not just this FACT but others such as the false claim of ADA help that I and the CHAIR still have to present to the PUBLIC (remember the July 2011 hearing) unless that "TRUTH" is to be buried by the MINISTRY such as the NON-RESPONSE to the 45 day repeated failures.

Please note that I STILL DEMAND CORRECT ORDER on the SCHEDULING of my

IDRS and naturally a response from the chair regarding the Sept 2011 IDR for the Haight Ashbury that I sent to her personal address that she apparently got confused with regarding the scheduling by trying to tie my request to an old IDRS (11010-11012.) Please note that I am constantly put on NOTICE that I must comply with paperwork requests and responses HOWEVER as the record indicates the SAME DIGNITY, HUMANITY and DECENCY is not recipitated. Thank YOU for allowing me the OPPORTUNITY to DOCUMENT for "REASONABLE men."

How much LONGER on RESPONSE or will the tactic be as always NO RESPONSE just BAD INCORRECT PROCEDURE while demanding/requesting that I follow your wishes ... NOT very PROFESSIONAL at all.

Please respond ASAP.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza
jasongrantgarza@yahoo.com

----- Forwarded Message -----

From: Jason Grant Garza <jasongrantgarza@yahoo.com>

To: "sof@sfgov.org" <sof@sfgov.org>; "sof@brucewolfe.net" <sof@brucewolfe.net>; "hopeannette@earthlink.net" <hopeannette@earthlink.net>; "jasongrantgarza@yahoo.com" <jasongrantgarza@yahoo.com>; "Adam.Taylor@sfgov.org" <Adam.Taylor@sfgov.org>; "Scott.Wiener@sfgov.org" <Scott.Wiener@sfgov.org>; "ggiubbini@sftc.org" <ggiubbini@sftc.org>

Cc: "Donald.White@oig.hhs.gov" <Donald.White@oig.hhs.gov>; "Kathleen.Sebelius@hhs.gov" <Kathleen.Sebelius@hhs.gov>; "Kathleen.Billingsley@cdph.ca.gov" <Kathleen.Billingsley@cdph.ca.gov>; "DDooley@chhs.ca.gov" <DDooley@chhs.ca.gov>; "opi.net.post@ssa.gov" <opi.net.post@ssa.gov>; "Marilyn.Tavener@cms.hhs.gov" <Marilyn.Tavener@cms.hhs.gov>

Sent: Monday, March 5, 2012 10:13 AM

Subject: 3/5/2012 - Partial Response A (#2 and incorrect rescheduling of DPH's IDR) -Fw: Hearing Notice re Complaint 11099, Garza v. DPH

3/5/2012 Monday 10:15 am PST

To Whom It May Concern: Administrator, Chair and Vice Chair:

Please note that below is an email that I received from the Chair regarding

case # 11099 and other matters. (see below).

I will be breaking down this email into sections and respond to each section in separate emails for a clearer DOCUMENTATION.

This email will deal with the case # 11099 that again has been scheduled OUT OF ORDER. and YOUR # 2 (below - Haight Ashbury IDR scheduling - Details on your IDR complaint against Haight Ashbury Clinic allegedly filed September 2011.) PLEASE realize my confusion as this note from the chair was apparently addressed March 1st and if you (MINISTRY of SUNSHINE) look ... I forwarded the information in an email dated 2/25/2012 (subject line: Response to Chair's INCORRECT HAIGHT ASHBURY IDR Request - Fw: 9/28/2011 - Please schedule an IDR Hearing ASAP and other matters (HAFCI and ADA, etc.) Please note that this email (2/25) has the IDR from September 2011. NOTE: The interesting part is that this precise email was sent to the CHAIRS address, the MINISTRY'S address and the VICE CHAIRS address. What is of even more interest is the NON-PERFORMANCE, the QUALITY of SAID RESPONSE (by chair - see below regarding the framing of the MINISTRY'S INCOMPETENCE, and the WONDERFUL FACT of the IDR over 45 days.) Please look in your records for an email to prior CHAIR KNEE (subject line: 6/16/2011 - Mr. Knee - Bingo regarding IMPROPER Response: Fw: 2/16 IMMEDIATE Disclosure Request # 4 - scheduling of this matter with SOTF) - when a similar (past 45 days) FAILURE OCCURRED before under the RUSTOM, with my questioning and warning and yet NO FIX and the MINISTRY is doing it again and STATING BACKLOG ... what a FARCE. Please look at your files for my email dated 2/25/2012 as stated above in response to your question # 2 below. PLEASE BE SURE TO NOTICE THE RECURRING PATTERN OF IMPROPER IDR SCHEDULING, NO RESPONSE, NO FIX AND NO HUMANITY. Shall we speak to what happened in my prior HAIGHT ASHBURY CASES ... I can send in prior DOCUMENTATION informing MINISTRY of INCORRECT ORDER of DETERMINATION (@11010-11012) as stated to Costa at that HEARING for my HAIGHT ASHBURY cases that were consolidated against my wishes, due process and NATURALLY FAILURE at the MINISTRY?

Please explain the LACK of PROPER response from prior chair (KNEE) and the INCOMPETENT Mr. Rustom (over PRIOR HAIGHT ASHBURY IDR scheduling, why NO FIX to FAILING PROCESS at MINISTRY, what consequence for FAILURE) At that time after explanation ... the CURRENT CHAIR can again explain the FAILURE of IMPROPER SCHEDULING, LACK of ADA HELP, LACK of ADVOCACY, etc as EXHIBITED

by this CONTINUING FARCE in this CURRENT Haight Ashbury IDR scheduling FAILURE. Do I expect an ANSWER ... just thought I'd ask the question for REASONABLE men.

Please respond ASAP if you need anymore information as to the FAILURES at the MINISTRY of SUNSHINE, any more direction to previously sent emails questioning your failed procedures and NO DUE PROCESS, or any more paperwork of IMPROPER RESPONSE, NO RESPONSE, etc from the prior CHAIR and how this fate is different ??? from what I have gotten from the CURRENT CHAIR. Please be aware that I have much much much much more ... note this small list - such as case # 10038, the INCORRECT and RIGGED processes, the FAILURE of SUNSHINE such as the prior HAIGHT ASHBURY denial of services and medical care (case# 11010-11012 and non-correction of that INCORRECT Order of Determination) the STILL AS OF YET - medical records IDR from Tom Waddell, the FAILURE of RUSTOM, KNEE and MINISTRY of SUNSHINE for PROPE Rand CORRECT PROCESS, etc.

Now what happens when I prove this ... do I go on being DEAD RIGHT and LEFT for DEAD as has been the case? Another question for the file and REASONABLE men.

So please let me know if you need anymore information ... please confirm receipt of this email and notification that again the DPH's IDR is mis-scheduled since it is OUT OF ORDER. since my HAIGHT ASHBURY IDR was sent in before and NATURALLY the MINISTRY's failure is NOT my PROBLEM. Also note that THERE is ALSO missing PROPER SCHEDULING for my IDR that was sent to the SUNSHINE TASK FORCE in December 2011 (don't want this small fact to also get lost in false process) Please note that I will be working on responding to the other items in your email as time allows. I believe that is # 1 and # 3 below. I will work on sending you notification of prior emails that speak to these issues for DOCUMENTATION's sake.

Thou I walk thru the VALLEY of SHADOWS.

Jason Grant Garza
jasongrantgarza@yahoo.com

P.S. How much LONGER on my IDR medical records to DPH (Tom Waddell) or do

I have to re-IDR them ... let me KNOW IMMEDIATELY.

Please note for DOCUMENTATION sake ... I will be re-forwarding the emails (spoken above in my response) in case you can not find in your files ... please also acknowledge receipt of them.

P.P.S. Have a NICE DAY and GOD BLESS.

----- Forwarded Message -----

From: Hope Johnson <hopeannette@earthlink.net>
To: jasongrantgarza@yahoo.com
Cc: SOTF <soif@sfgov.org>
Sent: Saturday, March 3, 2012 11:26 AM
Subject: Fw: Hearing Notice re Complaint 11099, Garza v. DPH

Mr. Garza:

Following is the notice I requested be sent to you on Thursday, March 1.

Hope Johnson

----- Forwarded Message -----

>From: Hope Johnson <hopeannette@earthlink.net>
>Sent: Mar 1, 2012 11:58 AM
>To: SOTF <soif@sfgov.org>
>Cc: Jerry Threet <jerry.threet@sfgov.org>
>Subject: Hearing Notice re Complaint 11099, Garza v. DPH

>Hi Andrea:

>Please send notice to the parties in Complaint No. 11099 that the hearing is being rescheduled for April 4, 2012.

>Please also send the message below to Mr. Garza regarding the allegations in his multiple emails. I am requesting he provide the SOTF with specific information or we will not be further responding to these requests. I am not familiar with practices of the Clerk's office for handling these types of matters so please check with Rick Caldeira on his preferred approach for you to respond to Mr. Garza should Mr. Garza refuse to provide information for us to assess his allegations and requests.

>Going forward, I will only be responding to either specific details of his allegations or newly filed Sunshine complaints starting with Complaint No. 11099.

>Thank you for your assistance.

>
>Hope Johnson

>

>

>

>Dear Mr. Garza:

>In an effort to provide adequate time to address and resolve the allegations you submitted to the Sunshine Ordinance Task Force, the hearing on your Complaint No. 11099 against DPH is being rescheduled for April 4, 2012 at 4:00pm in Room 408 of City Hall.

>Please provide specific details to the SOTF Administrator on your following allegations.

>(1) Errors in the Order of Determination for Complaint No. 11081.

>Please state with specificity the errors in this Order so that we can follow up on your allegations. If you are unable or unwilling to state the errors, we will not be able to address your allegation. Merely stating there is an error does not provide sufficient information for review of the Order. If the error you allege is related to the HIPAA release form, your allegation is unfounded. DPH admitted at the November 29, 2011 hearing that it is in possession of one signed form from 2006 only, and that is reflected in the Order of Determination.

>(2) Details on your IDR complaint against Haight Ashbury Clinic allegedly filed in September 2011.

>Please provide details of this IDR complaint you state was filed with the Sunshine Ordinance Task Force. We are unable to find specific details for this complaint. Please resubmit the details so that the new SOTF Administrator can process your complaint.

>(3) ADA accommodations.

>Please provide with specificity the accommodations you are requesting. Several people have attempted multiple times to discuss your needs with you but you have refused to state the ADA accommodations you require. If you are unwilling or unable to state with specificity the accommodations you are seeking, we cannot assess your request.

>Thank you for your attention to these matters. Please be advised that this is my final attempt at learning the specifics of your allegations. If you are unable or unwilling to provide details of your allegations, neither I nor the SOTF Administrator will be further responding to you on these specific matters.

>Hope Johnson, SOTF Chair

Subject: 3/5/2012 - Partial Response A (#2 and incorrect rescheduling of DPH's IDR) - Fw: Hearing Notice re Complaint 11099, Garza v. DPH
From: Jason Grant Garza
To: "sotf@sfgov.org", "sotf@brucewolfe.net", "hopeannette@earthlink.net", "jasongrantgarza@yahoo.com", "Adam.Taylor@sfgov.org", "Scott.Wiener@sfgov.org", "ggiubbini@sftc.org", "Donald.White@oig.hhs.gov", "Kathleen.Sebelius@hhs.gov", "Kathleen.Billingsley@cdph.ca.gov", "DDooley@chhs.ca.gov", "opi.net.post@ssa.gov", "Marilyn.Tavener@cms.hhs.gov"
Date: 03/05/2012 10:12 AM

3/5/2012 Monday 10:15 am PST

To Whom It May Concern: Administrator, Chair and Vice Chair:

Please note that below is an email that I received from the Chair regarding case # 11099 and other matters. (see below)

I will be breaking down this email into sections and respond to each section in separate emails for a clearer DOCUMENTATION.

This email will deal with the case # 11099 that again has been scheduled OUT OF ORDER. and YOUR # 2 (below - Haight Ashbury IDR scheduling - Details on your IDR complaint against Haight Ashbury Clinic allegedly files September 2011.) PLEASE realize my confusion as this note from the chair was apparently addressed March 1st and if you (MINISTRY of SUNSHINE) look ... I forwarded the information in an email dated 2/25/2012 (subject line: Response to Chair's INCORRECT HAIGHT ASHBURY IDR Request - Fw: 9/28/2011 - Please schedule an IDR Hearing ASAP and other matters (HAFCI and ADA, etc.) Please note that this email (2/25) has the IDR from September 2011. !!! NOTE: The interesting part is that this precise email was sent to the CHAIRS address, the MINISTRY'S address and the VICE CHAIRS address. What is of even more interest is the NON-PERFORMANCE, the QUALITY of SAID RESPONSE (by chair - see below regarding the framing, of the MINISTRY'S INCOMPETENCE, and the WONDERFUL FACT of the IDR over 45 days.) Please look in your records: for an email to prior CHAIR KNEE (subject line: 6/16/2011 - Mr. Knee - Bingo regarding IMPROPER Response: Fw: 2/16 IMMEDIATE Disclosure Request # 4 - scheduling of this matter with SOTF) - when a similar (past 45 days) FAILURE OCCURRED before under the RUSTOM, with my questioning and warning

and yet NO FIX and the MINISTRY is doing it again and STATING BACKLOG what a FARCE. Please look at your files for my email dated 2/25/2012 as stated above in response to your question # 2 below. PLEASE BE SURE TO NOTICE THE RECURRING PATTERN OF IMPROPER IDR SCHEDULING; NO RESPONSE, NO FIX AND NO HUMANITY. Shall we speak to what happened in my prior HAIGHT ASHBURY CASES ... I can send in prior DOCUMENTATION informing MINISTRY of INCORRECT ORDER of DETERMINATION (@11010-11012) as stated to Costa at that HEARING for my HAIGHT ASHBURY cases that were consolidated against my wishes, due process and NATURALLY FAILURE at the MINISTRY?

Please explain the LACK of PROPER response from prior chair (KNEE) and the INCOMPETENT Mr. Rustom (over PRIOR HAIGHT ASHBURY IDR scheduling, why NO FIX to FAILING PROCESS at MINISTRY, what consequence for FAILURE.) At that time after explanation ... the CURRENT CHAIR can again explain the FAILURE of IMPROPER SCHEDULING, LACK of ADA HELP, LACK of ADVOCACY, etc as EXHIBITED by this CONTINUING FARCE in this CURRENT Haight Ashbury IDR scheduling FAILURE. Do I expect an ANSWER ... just thought I'd ask the question for REASONABLE men.

Please respond ASAP if you need anymore information as to the FAILURES at the MINISTRY of SUNSHINE, any more direction to previously sent emails questioning your failed procedures and NO DUE PROCESS, or any more paperwork of IMPROPER RESPONSE, NO RESPONSE, etc from the prior CHAIR and how this fate is different ??? from what I have gotten from the CURRENT CHAIR. Please be aware that I have much much much much much more note this small list - such as case # 10038, the INCORRECT and RIGGED processes, the FAILURE of SUNSHINE such as the prior HAIGHT ASHBURY denial of services and medical care (case# 11010-11012 and non-correction of that INCORRECT Order of Determination) the STILL AS OF YET - medical records IDR from Tom Waddell, the FAILURE of RUSTOM, KNEE and MINISTRY of SUNSHINE for PROPE Rand CORRECT PROCESS, etc.

Now what happens when I prove this ... do I go on being DEAD RIGHT and LEFT for DEAD as has been the case? Another question for the file and REASONABLE men.

So please let me know if you need anymore information ... please confirm receipt of this email and notification that again the DPH's IDR is

mis-scheduled since it is .OUT OF ORDER. since my HAIGHT ASHBURY IDR was sent in before and NATURALLY the MINISTRY's failure is NOT my PROBLEM. Also note that THERE is ALSO missing PROPER SCHEDULING for my IDR that was sent to the SUNSHINE TASK FORCE in December 2011 (don't want this small fact to also get lost in false process) Please note that I will be working on responding to the other items in your email as time allows. I believe that is # 1 and # 3 below. I will work on sending you notification of prior emails that speak to these issues for DOCUMENTATION's sake.

Thou I walk thru the VALLEY of SHADOWS,

Jason Grant Garza
jasongrantgarza@yahoo.com

P.S. How much LONGER on my IDR medical records to DPH (Tom Waddell) or do I have to re-IDR them ... let me KNOW IMMEDIATELY.

Please note for DOCUMENTATION sake ... I will be re-forwarding the emails (spoken above in my response) in case you can not find in your files ... please also acknowledge receipt of them.

P.P.S. Have a NICE DAY and GOD BLESS.

----- Forwarded Message -----

From: Hope Johnson <hopeannette@earthlink.net>
To: jasongrantgarza@yahoo.com
Cc: SOTF <sotf@sfgov.org>
Sent: Saturday, March 3, 2012 11:26 AM
Subject: Fw: Hearing Notice re Complaint 11099, Garza v. DPH

Mr. Garza:

Following is the notice I requested be sent to you on Thursday, March 1.

Hope Johnson

----- Forwarded Message -----

>From: Hope Johnson <hopeannette@earthlink.net>
>Sent: Mar 1, 2012 11:58 AM
>To: SOTF <sotf@sfgov.org>
>Cc: Jerry Threet <jerry.threet@sfgov.org>

>Subject: Hearing Notice re Complaint 11099, Garza v. DPH

>Hi Andrea:

>Please send notice to the parties in Complaint No. 11099 that the hearing is being rescheduled for April 4, 2012.

>Please also send the message below to Mr. Garza regarding the allegations in his multiple emails. I am requesting he provide the SOTF with specific information or we will not be further responding to these requests. I am not familiar with practices of the Clerk's office for handling these types of matters so please check with Rick Caldeira on his preferred approach for you to respond to Mr. Garza should Mr. Garza refuse to provide information for us to assess his allegations and requests.

>Going forward, I will only be responding to either specific details of his allegations or newly filed Sunshine complaints starting with Complaint No. 11099.

>Thank you for your assistance.

>Hope Johnson

>Dear Mr. Garza:

>In an effort to provide adequate time to address and resolve the allegations you submitted to the Sunshine Ordinance Task Force, the hearing on your Complaint No. 11099 against DPH is being rescheduled for April 4, 2012 at 4:00pm in Room 408 of City Hall.

>Please provide specific details to the SOTF Administrator on your following allegations.

>(1) Errors in the Order of Determination for Complaint No. 11081.

>Please state with specificity the errors in this Order so that we can follow up on your allegations. If you are unable or unwilling to state the errors, we will not be able to address your allegation. Merely stating there is an error does not provide sufficient information for review of the Order. If the error you allege is related to the HIPAA release form, your allegation is unfounded. DPH admitted at the November 29, 2011 hearing that it is in possession of one signed form from 2006 only, and that is reflected in the Order of Determination.

>(2) Details on your IDR complaint against Haight Ashbury Clinic allegedly filed in September 2011.

>Please provide details of this IDR complaint you state was filed with the Sunshine Ordinance Task Force. We are unable to find specific details for this complaint. Please

resubmit the details so that the new SOTF Administrator can process your complaint.

(3) ADA accommodations.

>Please provide with specificity the accommodations you are requesting. Several people have attempted multiple times to discuss your needs with you but you have refused to state the ADA accommodations you require. If you are unwilling or unable to state with specificity the accommodations you are seeking, we cannot assess your request.

>
>Thank you for your attention to these matters. Please be advised that this is my final attempt at learning the specifics of your allegations. If you are unable or unwilling to provide details of your allegations, neither I nor the SOTF Administrator will be further responding to you on these specific matters.

Hope Johnson, SOTF Chair



Fw: 11099, Garza v. Department of Public Health

SOTF to:

04/02/2012 04:24 PM

Sent by: **Andrea Ausberry**

Bcc: dsnyder, rak0408, scau1321, smanneh, amwashburn,
jay.costa09, sotf, han467, hopeannette, jacksonwest

The following is the Respondents response regarding the above referenced complaint.

Best,

Andrea S. Ausberry

Administrator

Sunshine Ordinance Task Force

Office 415-554-7724 | Fax 415-554-5163

sotf@sfgov.org | www.sfbos.org

City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 244

San Francisco, CA 94102

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Complete a Board of Supervisors Customer Service Satisfaction form by clicking :

— Forwarded by Andrea Ausberry/BOS/SFGOV on 04/02/2012 04:23 PM —

Re: Hearing Rescheduled April 4th - 11099, Garza v. Department of Public Health

Eileen Shields to: SOTF

04/02/2012 02:19 PM

Cc: Alice A Gleghorn, Andrea Ausberry

From: Eileen Shields/DPH/SFGOV

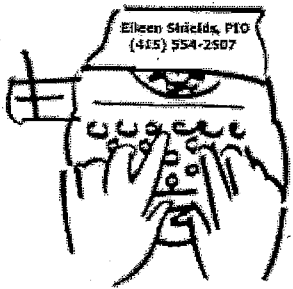
To: SOTF/SOTF/SFGOV@SFGOV

Cc: Alice A Gleghorn/DPH/SFGOV@SFGOV, Andrea Ausberry/BOS/SFGOV@SFGOV

The content of these e-mails have been responded to on numerous occasions by this Department and the matters have since been heard before the SOTF--also on several overlapping hearings. At this time, the Department of Public Health has no further information to provide Mr. Garza, nor do we see any additional specific requests for new information that has not already been provided to him. The nature of his complaint appears to be one of further appeal, rather than seeking new documents.

We do not intend to send a representative or appear at this hearing.

If the SOTF determines that Mr. Garza is asking for any new information that has not already been heard or responded to, we would be happy to provide him with the public documents he is requesting.



File No. 12005

SOTF Item No. 9

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint
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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: March 22, 2012
RE: Complaint No. 12005, Anonymous v. Municipal Transportation Agency ("MTA")

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

The anonymous complainant ("Anonymous ") alleges that the Municipal Transportation Agency ("MTA") violated public records laws by failing to adequately respond to their October 26, 2011 Immediate Disclosure Request ("IDR") for Muni camera footage pertaining to the intersection of 3d Street and Oakdale Avenue from July 16, 2011.

COMPLAINANT FILES COMPLAINT:

On January 9, 2012, Anonymous filed this complaint against MTA, alleging that Caroline Celaya of MTA failed to respond to the IDR within 24 hours and that MTA never produced the requested records.

JURISDICTION

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254(f) governs exemption from disclosure for law enforcement investigative files and related records.

APPLICABLE CASE LAW:

See cases cited in discussion, below

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 2
RE: *Complaint No. 12005, Anonymous v. MTA*

ISSUES TO BE DETERMINED

Uncontested Facts: Anonymous alleges that on October 25, 2011, they personally delivered to Caroline Celaya, MTA, and IDR requesting Muni camera footage pertaining to the intersection of 3^d Street and Oakdale Avenue on July 16, 2011. Anonymous further alleges that, as of January 9, 2012, MTA still had not communicated with them or released the records requested by the IDR.

Ms. Celaya responds that MTA did respond the day after the IDR was received, on October 26, 2011. MTA's response further alleges that the specific records requested were: 1) "camera footage from the T-Light Rail MUNI train that was present at 3rd Street and Oakdale Avenue between 4:20 p.m. and 4:55 p.m. on July 16, 2011" and 2) "surveillance camera footage from the three municipal cameras at the intersection of 3rd Street and Oakdale Avenue on the date July 16, 2011 for the time interval of 4:30 pm to 5:00 pm."

MTA states that it responded by letter on October 26, 2011 asserting an exemption to disclosure for the camera footage under Government Code section 6254(f) and Ordinance section 67.24(d). It further states that the letter was returned on November 7, 2011 with an insufficient address sticker, at which time MTA sought an email address from the complainant by calling the telephone number provided and then sent the letter to that email address.

MTA asserts that because the camera footage requested by the IDR was provided to a law enforcement agency for the purposes of an ongoing criminal investigation, MTA is not required to disclose that footage in response to the IDR. MTA further asserts that it need only provide the requested footage once the District Attorney or a court determines that a prosecution will not be sought of once the statute of limitations for filing charges has expired.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the purpose for which the cameras on the T-Light rail train were installed?
- What was the purpose for which the three municipal cameras located at 3rd Street and Oakdale Avenue were installed?
- Does MTA ordinarily maintain the cameras on the T-Light rail train and maintain custody of the footage recorded by that camera?
- Does MTA ordinarily maintain the three municipal cameras located at 3rd Street and Oakdale Avenue and maintain custody of the footage recorded by that camera?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the MTA violate the public records laws by failing to disclose the footage requested by the IDR from these cameras?

DISCUSSION

This discussion addresses the argument by MTA that it may withhold the camera recordings requested by Anonymous on the grounds that they have been provided to a law enforcement agency to assist in their criminal investigation. MTA makes this claim under Government Code section 6254 (f) and S.F. Administrative Code section 67.24(d). Section

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 3
RE: *Complaint No. 12005, Anonymous v. MTA*

6254(f) of the Government Code makes certain records related to law enforcement investigations exempt from disclosure, even though they may otherwise qualify as public records. Section 67.24(d) governs disclosure of records related to law enforcement investigations once an investigation is closed.

Section 6254 (f) exempts from disclosure two categories of records: 1) "records of . . . investigations conducted by . . . [a] local police agency" and 2) "investigatory . . . files compiled by any . . . local agency for correctional, law enforcement, or licensing purposes." See *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068. The first category, records of an investigation conducted by law enforcement, are exempt without regard for whether the prospect of enforcement proceedings are definite. *Haynie, supra*, 26 Cal.4th at 1069. The second category, investigatory files compiled by a local agency for law enforcement purposes, is exempt from disclosure only if the "prospect of enforcement proceedings [by the local agency that compiled the records] is concrete and definite." *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212. If the primary purpose of compiling the records is not law enforcement and they were not being used for those purposes at the time of the request, then they are not exempt from disclosure. *Id.*; see also *Register Division of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 904 [holding sheriff's investigation report on throat slashing of prisoner in county jail not exempt from disclosure under section 6254 (f) because it was conducted primarily to determine the validity of a tort claim against the county.]

Based on the allegations of the parties, it appears that the records requested do not fall under the first category of records exempted by section 6254 (f), as they do not appear to be records of an investigation conducted by SFPD. Therefore, the question is whether the camera footage requested by the IDR constitutes investigatory files compiled by a local agency for law enforcement purposes, and thus falls under the second category of records exempted by section 6254 (f). It is unclear from the facts whether the records would qualify under the second category. This determination would depend in large part on the primary purpose for which the camera footage requested was recorded. Assuming that the footage in question is maintained and held in custody by MTA, for purposes related to the efficient operation of transit services, then it is questionable whether the exemption would apply. Assuming instead, however, that the footage is recorded for the purpose of investigating crimes that may occur on or around MTA vehicles, then it may qualify for the exemption if at the time of recording there was a "concrete and definite" prospect of enforcement proceedings related to events recorded in the footage.

Section 67.24(d) applies to govern disclosure where records pertain to investigations, arrests and other law enforcement activity, generally the same category as those subject to Section 6254 (f). Section 67.24(d) does not appear to create any exemptions to disclosure, but only to govern the circumstance under which records that are subject to the exemption of Section 6254(f) must eventually be disclosed.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 4
RE: *Complaint No. 12005, Anonymous v. MTA*

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, *the following policies shall govern* specific types of documents and information and shall provide enhanced rights of public access to information and records:

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any *investigation, arrest or other law enforcement activity* shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

SEC. 67.25. IMMEDIACY OF RESPONSE.

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 5
RE: *Complaint No. 12005, Anonymous v. MTA*

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 6
RE: *Complaint No. 12005, Anonymous v. MTA*

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere; which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) **Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.** The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

(f) *Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by*

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
PAGE: 7
RE: *Complaint No. 12005, Anonymous v. MTA*

any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

- (1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
- (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.
- (3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a

MEMORANDUM

TO: Sunshine Task Force
DATE: March 22, 2012
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RE: *Complaint No. 12005, Anonymous v. MTA*

scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2012 JAN -9 PM 1:51

Complaint against which Department or Commission SFMTA

Name of individual contacted at Department or Commission Caroline Celaya

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.25(a)
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

On October 26, 2011 after multiple attempts I was able to serve (in person) Ms. Celaya with an immediate disclosure request for MUNI camera footage pertaining to the intersection of 3rd St + Oakdale Ave. on July 16th of 2011. continued ->

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
 Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹ Name [Redacted] Address [Redacted] 16th St. Suite # [Redacted] (94103)


Telephone No. 415-[Redacted] E-Mail Address [Redacted]@gmail.com

Date 01/09/2012 [Redacted]

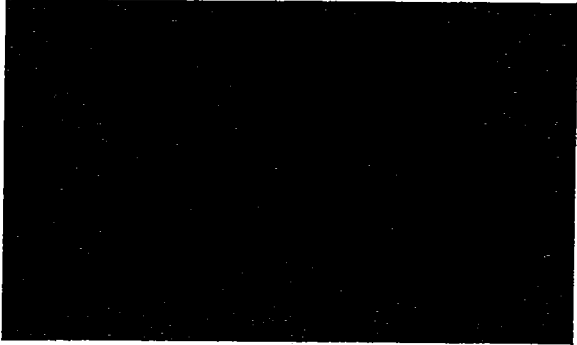
I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

No response was rendered from Ms. Celaya as of a week later. The ~~star~~ ordinance requires a 24-hour response, or a legal justification for delay. I attempted to follow up multiple times by telephone and with in-person visits to the SFMTA office. As of the date of this complaint (01/09/2012) in contravention of San Francisco law, Ms. Celaya has not communicated with me nor released the requested records. I seek immediate resolution of this matter by the appropriate organs of government.



Idriss Stelley Foundation
2940 16th St. Suite # 209
San Francisco, CA 94103



Celaya, Caroline

From: Celaya, Caroline
Sent: Thursday, November 10, 2011 4:40 PM
To: [REDACTED]@gmail.com
Subject: [REDACTED], [REDACTED] 10.26.11.pdf
Attachments: [REDACTED], [REDACTED] 10.26.11.pdf

Per your request.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

October 26, 2011

██████████
Co-Director

Education Not Incarceration/Idriss Stelley Foundation
1940 – 16th Street, Suite #209
San Francisco, CA 94103

RE: Immediate Disclosure Request dated October 25, 2011

Dear Mr. Miller:

On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated October 25, 2011.

Records Requested

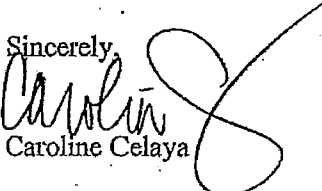
You have requested the surveillance camera footage from the T-Light Rail MUNI train that was present at 3rd St. + Oakdale Ave. between 4:20pm and 4:55pm on July 16, 2011. You have also requested the surveillance camera footage from the three municipal cameras at the intersection of 3rd st. and Oakdale Ave. on the date of July 16, 2011 for the time interval of 4:30pm to 5:00pm.

Exemptions and Privileges

The video you have requested have been provided to a law enforcement agency for the purposes of an investigation. The SFMTA is not required to disclose videos submitted to law enforcement agencies in connection with ongoing criminal investigations. (California Government Code section 6254(f)). The Sunshine Ordinance recognizes the need to keep records related to pending investigations confidential. San Francisco Administrative Code Section 67.24(d) provides that disclosure of "records pertaining to any investigation, arrest, or other law enforcement activity" is only required once the District Attorney or court determines that a prosecution will not be sought or once the statute of limitations for filing charges has expired. As a result, we are unable to provide you with the videos you seek at this time.

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfntasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Joél Ramos | Director

Edward D. Reiskin | Director of Transportation

Edwin M. Lee | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Oka | Director
Joél Ramos | Director
Edward D. Reiskin | Director of Transportation

February 3, 2012

Hope Johnson
Chair, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint against the Municipal Transportation Agency
Complaint No. 12005

Dear Ms. Johnson:

I am writing in response to complaint #12005 filed by Anonymous. Anonymous complains that the San Francisco Municipal Transportation Agency ("SFMTA") failed to respond to his October 25, 2011, request for public records.

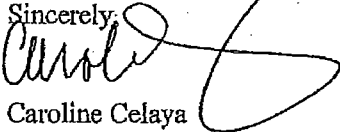
As explained below, the SFMTA did complete a response to this request within the time frame required by the Sunshine Ordinance.

On Tuesday, October 25, 2011, the SFMTA received an immediate disclosure request and sent a response on Wednesday, October 26, 2011. The request sought surveillance camera footage from the T-Light Rail MUNI train that was present at 3rd St. + Oakdale Ave. between 4:20pm and 4:55pm, and the surveillance camera footage from the three municipal cameras at the intersection of 3rd St. and Oakdale Ave. between 4:30pm to 5:00pm for July 16, 2011.

The SFMTA's October 26, 2011, response letter (copy attached) explained that the video requested had been provided to a law enforcement agency for the purposes of an investigation. The SFMTA is not required to disclose videos submitted to law enforcement agencies in connection with ongoing criminal investigations. (California Government Code section 6254(f)). The Sunshine Ordinance recognizes the need to keep records related to pending law enforcement investigations confidential. San Francisco Administrative Code Section 67.24(d) provides that disclosure of "records pertaining to any investigation, arrest, or other law enforcement activity" is only required once the District Attorney or court determines that a prosecution will not be sought or once the statute of limitations for filing charges has expired. As a result, we are unable to provide the requestor with the videos he sought at that time.

On November 7, 2011, the SFMTA's letter was returned with an insufficient address sticker and a call was placed to the requestor seeking an email address to send the letter. An email address was provided and the letter was sent via email on November 10, 2011 (copy attached).

Sincerely,

A handwritten signature in cursive script, appearing to read 'Caroline', written over a large, stylized flourish that extends to the right.

Caroline Celaya
Manager, Public Records Requests

File No. 12011

SOTF Item No. 10

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Response
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
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OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
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<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

April 24, 2012:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (12011)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his January 7, 2012 public records request for all public records related to the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On February 16, 2012, Complainant filed this complaint against Frank Lee and DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: On 01/07/2012, Complainant filed a request for public records from the Department of Public Works by email to Frank Lee for records in connection with the Montgomery/Alta Street tree project. As of February 16, 2012, he had not received any records in response to his request.

On 01/07/2012, Complainant sent an email to the Department of Public Works and Frank Lee requesting "...any and all public records... in connection with or with respect to... the Montgomery/Alta Street tree project". On 01/09/2012, Frank Lee acknowledged the request and stated that he would contact Complainant "as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012". He further stated that "...the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure" and

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 2
RE: Complaint 12011: Nyman v. DPW

"[t]here is no requirement that a department or officer construct a document to meet the specifications of the request."

On 01/09/2012, Complainant re-stated his request by email to Frank Lee to include ANY and ALL records and not narrow the scope of the request. He also stated that it was his "understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt", and that it was his "understanding that if you have electronic information in different places you do have a requirement of compiling it".

On 01/27/2012, having not heard from Department of Public Works or Frank Lee, Complainant emailed Frank Lee and asked if they were intending to provide him with the requested records. He received no immediate response from Department of Public Works or Frank Lee. On 02/03/2012, Complainant again emailed Frank Lee and asked if they were intending to provide him with the records I requested.

On 02/03/2012, Frank Lee replied to Complainant by email, stating "Yes, we intend to respond." However, as of the date of the complaint, they had not responded.

On March 5, 2012, DPW gave its first substantive response through Frank Lee to the Sunshine complaint, copying both the Complainant and the Task Force. In that email, which had a pdf file of documents attached to it, DPW stated:

We have every intention to respond to Mr. Nyman's request. Unfortunately, the request for "all documents" requires a huge amount of time to research, including knowing where to look for responsive documents, and requires us to inspect a voluminous amount of documents to extract the ones that fit Mr. Nyman's request.

Attached is the first set of responsive documents that we are making available to Mr. Nyman today. They are the emails to and from DPW employee Edmund Lee. The file consists of 1026 pages.

There followed a series of email from Frank Lee to Complainant, each of which contained a separate batch of responsive documents:

- Edmund Lee's emails (75 pages) – 3/5/12;
- drawing associated with the Montgomery-Alta construction (1 page) – 3/5/12;
- DPW employee Ramon Kong e emails (468 pages) – 3/8/12;
- attachments to DPW employee Ramon Kong's emails (52 pages) – 3/8/12;
- emails with attachments to and from DPW Director Ed Reiskin (648 pages) – 3/19/12;
- emails to and from DPW employee Carla Short & documents from Urban Forestry (62 pages) – 3/19/12;
- emails to and from DPW employee Patrick Rivera (396 pages) – 3/20/12.

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 3
RE: Complaint 12011: Nyman v. DPW

On March 19, 2012, Complainant responded to this email production of responsive documents from DPW by email to Frank Lee and the Task Force. In that email, he stated:

I see there are a lot of redactions in your pdf files.

Why do you do these redactions?

Are these redactions justified, authorized and allowed under the Sunshine Ordinance Act of San Francisco and the California Public Records Act?

Also, it is unfortunate that you are not honoring my request to provide the electronic records in their original format. This is what I requested: "If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address."

Is there a reason why you do not provide the records in their original format?

On March 20, 2012, Complainant again responded to this email production of responsive documents from DPW by email to Frank Lee and the Task Force. In that email, he stated:

It seems like you have provided NO records after April 2011. For some reason, there are no records, no documents, no emails in your submissions dated after April 2011. However, such records do exist and such records were and are included in my request.

Can you please provide ALL records, not only those prior to mid-April 2011, but ALL records per my request

DPW has not further responded to the Complaint, nor has it provided any additional information to the Task Force to explain its actions in responding to this request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does DPW have further responsive records that it has not provided?
- What evidence does Complainant have that DPW may have such records?
- Did DPW redact records provided to Complainant?
- What is the basis for the redactions, if any?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did DPW timely respond to the request?
- Has DPW justified any withholding of records or information in accordance with the requirements of the Ordinance?
- Are DPW's justifications for any withholding within the exemptions allowed by the Ordinance and the PRA?

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 4
RE: Complaint 12011: Nyman v. DPW

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 5
RE: Complaint 12011: Nyman v. DPW

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 6
RE: Complaint 12011: Nyman v. DPW

otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 7
RE: Complaint 12011: Nyman v. DPW

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



Sunshine Complaint
complaints

to:
sof

02/16/2012 04:47 PM

Show Details

To:sof@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Department of Public Works

CONTACTED:Frank Lee

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:[Since this online Complaint Form does not allow for submission of additional documents, I have emailed sof@sfgov.org with 6 additional documents I would like to be considered part of this complaint.] On 01/07/2012, I filed a request for public records from the Department of Public Works by email to Frank Lee for records in connection with the Montgomery/Alta Street tree project. As of this date, I have not received any records in response to my request. The Department of Public Works is violating the San Francisco Sunshine Ordinance by not providing the request records and by not providing the records in a timely manner. Please, see the 6 additional documents submitted separately to sof@sfgov.org. Below follows a summary of the email exchange. On 01/07/2012, I filed my request with the Department of Public Works and Frank Lee requesting "...any and all public records... in connection with or with respect to... the Montgomery/Alta Street tree project". I explicitly and clearly expressed that I requested ANY and ALL records and included a list of records that should be included. On 01/09/2012, Frank Lee acknowledged the request and stated that he would contact me "as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012". He further stated that "...the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure" and "There is no requirement that a department or officer construct a document to meet the specifications of the request." On 01/09/2012, I re-stated my request to ensure that Frank Lee would indeed include ANY and ALL records and not narrow the scope of the request. I also stated that it was "my understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt", and that it was "my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010")". On 01/27/2012, having not heard from Department of Public Works or Frank Lee, I emailed Frank Lee and asked if they were intending to provide me with the records I requested. I received no response from Department of Public Works or Frank Lee. On 02/03/2012, I again emailed Frank Lee and asked if they were intending to provide me with the records I requested. On 02/03/2012, Frank Lee replied stating "Yes, we intend to respond." However, as of this date, they have not responded. Lars Nyman

HEARING:Yes

PRE-HEARING:No

DATE:02/16/2012

NAME:Lars Nyman

ADDRESS:

CITY:

ZIP:

PHONE:

CONTACT_EMAIL:upwardfacingdog@hotmail.com;

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No



Re: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works
Up Dog
to:
Lee, Frank W, SOTF
03/19/2012 07:19 PM
Cc:
"Threet, Jerry", "Hope Johnson"
Show Details

Mr. Lee,

I see there are a lot of redactions in your pdf files.

Why do you do these redactions?

Are these redactions justified, authorized and allowed under the Sunshine Ordinance Act of San Francisco and the California Public Records Act?

Also, it is unfortunate that you are not honoring my request to provide the electronic records in their original format. This is what I requested: "If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address."

Is there a reason why you do not provide the records in their original format?

Sincerely,
Lars Nyman

From: Lee, Frank W
Sent: Monday, March 19, 2012 4:46 PM
To: SOTF ; Up Dog
Cc: Threet, Jerry ; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Today, we are making emails with attachments to and from DPW Director Ed Reiskin available to you. Attached is that file. It consists of 648 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Thursday, March 08, 2012 1:58 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is a file containing the attachments to DPW employee Ramon Kong's emails. This file consists of 52 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Thursday, March 08, 2012 1:57 PM
To: SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Today, we are making emails to and from DPW employee Ramon Kong available to you. Attached are the emails. It consists of 468 pages.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W
Sent: Monday, March 05, 2012 6:13 PM
To: Lee, Frank W; SOTF; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is the construction drawing associated with the Montgomery-Alta construction. Please see attached.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W

Sent: Monday, March 05, 2012 6:12 PM

To: SOTF; Up Dog

Cc: Threet, Jerry; Hope Johnson

Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

Attached is a file containing the attachments to DPW employee Edmund Lee's emails. This file consists of 75 pages.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Lee, Frank W

Sent: Monday, March 05, 2012 6:09 PM

To: SOTF; Up Dog

Cc: Threet, Jerry; Hope Johnson

Subject: RE: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Dear SOTF and Mr. Nyman:

We have every intention to respond to Mr. Nyman's request. Unfortunately, the request for "all documents" requires a huge amount of time to research, including knowing where to look for responsive documents, and requires us to inspect a voluminous amount of documents to extract the ones that fit Mr. Nyman's request.

Attached is the first set of responsive documents that we are making available to Mr. Nyman today. They are the emails to and from DPW employee Edmund Lee. The file consists of 1026 pages.

Sincerely,

Frank W. Lee

*Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org*

From: Andrea Ausberry [mailto:Andrea.Ausberry@sfgov.org] **On Behalf Of** SOTF
Sent: Wednesday, February 29, 2012 5:00 PM
To: Lee, Frank W; Up Dog
Cc: Threet, Jerry; Hope Johnson
Subject: REVISED : Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

Good Afternoon,

Please delete prior email if received...

Mr. Nyman has filed two complaints with the Department of Public works. The documents attached are the correct corresponding documents submitted by the Complainant, when the complaint was filed.

Sincerely,

Andrea S. Ausberry
Administrator

Sunshine Ordinance Task Force
Office 415-554-7724 | Fax 415-554-5163
sotf@sfgov.org | www.sfbos.org

City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 244
San Francisco, CA 94102
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Sunshine Complaint Received: 12011_Lars Nyman vs Department of Public Works

SOTF to: Up Dog, Frank.W.Lee

02/24/2012 05:25 PM

Sent
by: Andrea Ausberry

Cc: Jerry Threet

This e-mail is to confirm that the attached complaint has been received. The Department is required to submit a response to the charges to the Task Force within five business days of receipt of this notice. Please refer to complaint number #12011 when submitting any new information and/or supporting documents pertaining to this complaint.

Both parties will be contacted once a hearing date is determined.

Complainants: Your attendance is required at this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.

Thank you,

Andrea S. Ausberry
Administrator

Sunshine Ordinance Task Force

Office 415.554.7724 | Fax 415.554.5163

sotf@sfgov.org | www.sfbos.org

City Hall, 1 Dr. Carlton B. Goodlett Place, Rm. 244

San Francisco, CA 94102

Follow Us! | [Twitter](#)

Complete a Board of Supervisors Customer Service Satisfaction form by clicking [HERE](#)

Up Dog

From: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Date: Friday, February 03, 2012 6:30 PM
To: "Up Dog" <upwardfacingdog@hotmail.com>
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project
Mr. Nyman:

Yes, we intend to respond.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

-----Original Message-----

From: Up Dog [<mailto:upwardfacingdog@hotmail.com>]
Sent: Friday, February 03, 2012 7:41 AM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

On January 7, 2012, I issued a public records request for "ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project".

I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are violating the Sunshine Ordinance of San Francisco by not responding to my request. Are you intending to respond with the records I requested?

Sincerely,
Lars Nyman

-----Original Message-----

From: Up Dog
Sent: Friday, January 27, 2012 12:51 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

On January 7, 2012, I issued a public records request for "ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project". On January 9, 2012, you stated "I will contact you as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).".

You did not contact me before Thursday, January 19, 2012 as you stated you would.

I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are now in violation of the Sunshine Ordinance of San Francisco.

Are you intending to provide me with the records I requested or not?

Sincerely,
Lars Nyman

-----Original Message-----

From: Up Dog

Sent: Monday, January 09, 2012 5:21 PM

To: Lee, Frank W

Cc: upwardfacingdog@hotmail.com

Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

>If I misunderstood your request, please let me know immediately.

As stated in my email, my request is for:

"any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:
- the Montgomery/Alta Street tree project".

That is the request.

I am requesting any and all public records as they are defined under the law, California Public Records Act and the San Francisco Sunshine Ordinance. As you know, the definition of a public record is very broad and inclusive and so is my request - ALL public records in connection with or with respect to the Montgomery/Alta Street project. The list I specified was an example of records that should be included, but NOT limited to such records - I am requesting ALL records.

You stated: "Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure."

I am not sure what the difference between an "identifiable record" and a "record" is. It is my understanding that the San Francisco Sunshine Ordinance Act is more liberal (than the California Public Records Act) requiring you to produce records that the Public Records Act may not require you to produce. It is my understanding that you need produce any public record. It is also my understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt.

You stated: "There is no requirement that a department or officer construct a document to meet the specifications of the request."

It is my understanding that you have no obligation to create a document. However, it is my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010").

Sincerely,
Lars Nyman

-----Original Message-----

From: Lee, Frank W
Sent: Monday, January 09, 2012 4:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Dear Mr. Nyman:

I am confirming that we received your Public Records Request, which we assigned as #RR009, today for the following:

* Any and all records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project. This includes, but is not limited to: (1) communication between Department Of Public Works and other City departments, agencies, boards, etc.; (2) communication between Department Of Public Works and public utilities; (3) communication between Department Of Public Works and private businesses, corporations and citizens; (4) communication from and to any and all current and former employees of Department Of Public Works, incl. the current and former Director of Department Of Public Works; (5) meeting minutes, budgets, estimates; (6) records related to, or in connection with, the Montgomery/Alta Street project.

If I misunderstood your request, please let me know immediately.

Our department will identify and compile the requested information. The Sunshine Ordinance requires departments to respond as soon as possible or within ten calendar days from receipt of any records requests. Therefore, I will contact you as soon as the responsive documents are ready for you to view and will do so on or before Thursday, January 19, 2012, as permitted by San Francisco Administrative Code § 67.21(b) and California Government Code § 6253(c).

Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) The City's obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in its custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that a department or officer construct a document to meet the specifications of the request.

I will attempt to email responsive documents to you, if you provided an email address. Hard copies of any 8.5x11 documents that are made available to you will cost \$0.10 per copy, as allowed by the San Francisco Administrative Code § 67.28(c). This section states "a fee not to exceed 10 cents per page may be charged." Postage would be extra. Checks should be made out to "The Department of Public Works."

Our office is located at:

City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Public Records Requests to the Department of Public Works could be sent directly to me via email at Frank.W.Lee@sfdpw.org or via Fax at (415) 522-7727. My direct telephone number is (415) 554-6993.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

-----Original Message-----

From: Up Dog [<mailto:upwardfacingdog@hotmail.com>]
Sent: Saturday, January 07, 2012 12:33 PM

To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

--- BACKGROUND ---

Over the last 8 months, I have requested information and public records from the Department Of Public Works about the Montgomery/Alta Street project that involved cutting down or saving a tree and to repair the street.

I have requested public records about:

- the approval or authorization of the project but have been told no such records exist.
- the approval or authorization of the initial budget for the project but have been told no such records exist.
- the approval or authorization of spending public funds beyond the initial budget but have been told no such records exist.

Because of the lack of important, critical and key records produced, I am therefore now forced to issue a "blanket" request of ALL records related to this project.

--- SUNSHINE ORDINANCE REQUEST ---

This is a public records request pursuant to the provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:

- the Montgomery/Alta Street tree project

Note, I am requesting ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project.

This includes, but is not limited to:

- communication between Department Of Public Works and other City departments, agencies, boards, etc.
- communication between Department Of Public Works and public utilities
- communication between Department Of Public Works and private businesses, corporations and citizens
- communication from and to any and all current and former employees of Department Of Public Works, incl. the current and former Director of Department Of Public Works
- meeting minutes, budgets, estimates
- records related to, or in connection with, the Montgomery/Alta Street project

Again, I am requesting ANY and ALL records in connection with or with respect to the Montgomery/Alta Street tree project - the above list is only an example of records that are being requested. I know the project started in 2010, extended into 2011 and that there exist records from 2012, however I do not know the date of genesis of this project.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address. If the volume of requested records precludes delivery by email, please let me know of other delivery options, e.g. CD, DVD or ftp.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Friday, February 03, 2012 7:41 AM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project
Mr. Lee,

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I have not received ANY records from you in response to my January 7 request.

You and the Department of Public Works are violating the Sunshine Ordinance of San Francisco by not responding to my request. Are you intending to respond with the records I requested?

Sincerely,
Lars Nyman

-----Original Message-----

From: Up Dog
Sent: Friday, January 27, 2012 12:51 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

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Sincerely,
Lars Nyman

-----Original Message-----

From: Up Dog
Sent: Monday, January 09, 2012 5:21 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

>If I misunderstood your request, please let me know immediately.

As stated in my email, my request is for:

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However, it is my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010").

Sincerely,
Lars Nyman

-----Original Message-----

From: Lee, Frank W
Sent: Monday, January 09, 2012 4:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Dear Mr. Nyman:

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Sincerely,

Frank W. Lee
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Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Friday, January 27, 2012 12:51 PM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project
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-----Original Message-----

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To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

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Our office is located at:

City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA. 94102

Public Records Requests to the Department of Public Works could be sent directly to me via email at Frank.W.Lee@sfdpw.org or via Fax at (415) 522-7727. My direct telephone number is (415) 554-6993.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

-----Original Message-----

From: Up Dog [<mailto:upwardfacingdog@hotmail.com>]

Sent: Saturday, January 07, 2012 12:33 PM

To: Lee, Frank W

Cc: upwardfacingdog@hotmail.com

Subject: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Mr. Lee,

--- BACKGROUND ---

Over the last 8 months, I have requested information and public records from the Department Of Public Works about the Montgomery/Alta Street project that involved cutting down or saving a tree and to repair the street.

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- the approval or authorization of the project but have been told no such records exist.
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- the Montgomery/Alta Street tree project

Note, I am requesting ANY and ALL records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project.

This includes, but is not limited to:

- communication between Department Of Public Works and other City departments, agencies, boards, etc.
- communication between Department Of Public Works and public utilities

- communication between Department Of Public Works and private businesses, corporations and citizens
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If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address. If the volume of requested records precludes delivery by email, please let me know of other delivery options, e.g. CD, DVD or ftp.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Monday, January 09, 2012 5:21 PM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project
Mr. Lee,

>If I misunderstood your request, please let me know immediately.

As stated in my email, my request is for:

"any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:
- the Montgomery/Alta Street tree project".

That is the request.

I am requesting any and all public records as they are defined under the law, California Public Records Act and the San Francisco Sunshine Ordinance. As you know, the definition of a public record is very broad and inclusive and so is my request - ALL public records in connection with or with respect to the Montgomery/Alta Street project. The list I specified was an example of records that should be included, but NOT limited to such records - I am requesting ALL records.

You stated: "Please note that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure."

I am not sure what the difference between an "identifiable record" and a "record" is. It is my understanding that the San Francisco Sunshine Ordinance Act is more liberal (than the California Public Records Act) requiring you to produce records that the Public Records Act may not require you to produce. It is my understanding that you need produce any public record. It is also my understanding that if you withhold any public record by claiming it is exempt then you need to let me know that you are doing so and what the reason is for you claiming the record is exempt.

You stated: "There is no requirement that a department or officer construct a document to meet the specifications of the request."

It is my understanding that you have no obligation to create a document. However, it is my understanding that if you have electronic information in different places you do have a requirement of compiling it (per City Attorney's Office Sunshine training, "Rules of Conduct For Public Officials, 2010").

Sincerely,
Lars Nyman

-----Original Message-----

From: Lee, Frank W
Sent: Monday, January 09, 2012 4:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance Request - all records related to Montgomery/Alta Street tree project

Dear Mr. Nyman:

I am confirming that we received your Public Records Request, which we assigned as #RR009, today for the following:

* Any and all records, regardless of source, in connection with or with respect to the Montgomery/Alta Street tree project. This includes, but is not limited to: (1) communication between Department Of Public Works and other City departments, agencies, boards, etc.; (2) communication between Department Of Public Works and public utilities; (3) communication between Department Of Public Works and private businesses, corporations and citizens; (4) communication from and to any and all current and former employees of Department Of Public Works, incl. the current and former Director of Department Of Public Works; (5) meeting minutes, budgets, estimates; (6) records related to, or in connection with, the Montgomery/Alta Street project.

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Cc: <upwardfacingdog@hotmail.com>
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Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

From: Rivera, Patrick
Sent: Thursday, June 10, 2010 5:15 PM
To: Reiskin, Ed
Cc: Sweiss, Fuad
Subject: Re: Montgomery St. median tree

Ok, I'll let you know who can meet with you and Carla.

Patrick

On Jun 10, 2010, at 3:15 PM, "Reiskin, Ed" <Ed.Reiskin@sfdpw.org> wrote:

> Hi Patrick:

>
> I'd like to have the appropriate engineers (Reza, Stephan?) meet me
> and Carla Short some time soon on site to review this issue. At nor
> thbound Montgomery at Alta, there's a tree leaning over the street,
> which is believed to be causing damage to the street and to private
> property across the street. Some neighbors think there may be some
> larger dynamic (hillside slippage/movement). I'd like an engineerin g
> perspective on what's happening, and also an evaluation of the ret
> aining wall.

> Please let me know who best to include so I can schedule.

> Thanks.

> Ed

>
> _____
> From: Short, Carla
> Sent: Thursday, June 10, 2010 3:00 PM
> To: Reiskin, Ed
> Subject: FW: Montgomery St. median tree

>
>
>
>
> *****
> Carla Short
> Urban Forester
> Department of Public Works
> Bureau of Urban Forestry
> 415.641.2674

> _____
> From: Short, Carla
> Sent: Thursday, June 10, 2010 10:39 AM
> To: Falvey, Christine
> Subject: RE: Montgomery St. median tree

* To view full document
Request file # 12011

Construction Project Update

SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS



UPDATE: Montgomery/Alta Project

Montgomery Street Improvements Completion

Thank you for your support and patience as the Department of Public Works (DPW) underwent and completed the repair and restoration of the roadway along Montgomery Street. The project resulted in the installation of new American with Disabilities curbside ramps, the construction of a chicane/bulb-out around the Italian Stone Pine Tree, new landscaping in the form of a mini community garden, and new street repavement; thereby calming down vehicular traffic for the safety of pedestrians in addition to rehabilitating the street.

The Department of Parking and Traffic has affixed reflectors and applied reflective paint to improve night visibility of the chicane/bulb-out.

Street Parking Impacts and Emergency Access

DPW and the San Francisco Municipal Transportation Agency (SFMTA) have worked together to maintain safe access and preserve as much parking as possible; while promoting safety and protecting the tree.

During our post construction walk-thru, we have found it necessary to include additional red "no-parking" zone at the northeast corner of Montgomery and Alta Street in order to maintain a safe path of travel for emergency vehicles. This change will reduce curb space by 21 ft. (approx. 2.5 parking spaces). We apologize for any inconvenience this might create. If you have questions or concerns, please contact the department.

Add twitter and facebook logos here

CONTACT INFORMATION

DPW PUBLIC AFFAIRS

Ms. Dadisi Najib

415-437-7018

dadisi.najib@sfdpw.org

Visit us at: www.sfdpw.org

Call with questions Thank you for your support of this project.

* To view full document
Request file # 12011

EE
E. Lee emails Attachments

Lee, Edmund

From: Chan, Gloria
Sent: Thursday, April 07, 2011 6:15 PM
To: Lee, Edmund
Subject: RE: Montgomery
Attachments: image001.jpg; image002.jpg

Thanks Edmund for reviewing. I expect another hit piece on this project ☺

From: Lee, Edmund
Sent: Thursday, April 07, 2011 2:28 PM
To: Chan, Gloria
Cc: Najib, Dadisi; Kong, Ramon; Folks, Tom
Subject: RE: Montgomery

Gloria,

Other than the comments Tom suggested, I do not have any additional comments.

Edmund Lee
DPW-BOE
Streets and Highways
554-8258

From: Folks, Tom [mailto:Tom.Folks@sfmta.com]
Sent: Thursday, April 07, 2011 2:20 PM
To: Chan, Gloria; Lee, Edmund
Cc: Najib, Dadisi; Kong, Ramon
Subject: FW: Montgomery
Importance: High

Hi Gloria,
I made a few suggested edits that you'll see in the attachment. (FYI—we've stopped using the DPT name and go by SFMTA now.)
Tom

From: Chan, Gloria [mailto:Gloria.Chan@sfdpw.org]
Sent: Thursday, April 07, 2011 2:08 PM
To: Folks, Tom; Lee, Edmund
Cc: Najib, Dadisi; Velasco, Manito; Kong, Ramon
Subject: RE: Montgomery
Importance: High

Thanks Dadisi for putting this together.

Ed/Tom...Please review flyer that will go out to residents to ensure language is okay and accurate. Dadisi will be going door to door and we will be mailing these out to residents today.

From: Folks, Tom [mailto:Tom.Folks@sfmta.com]
Sent: Thursday, April 07, 2011 1:57 PM

* To view full document
Request file # _____

Kong, Ramon

From: DeVinny, James
Sent: Tuesday, April 12, 2011 2:42 PM
To: Chan, Gloria; Najib, Dadisi
Cc: Kong, Ramon; Lee, Edmund; McDaniels, Chris
Subject: RE: Planting Bed, Montgomery Street ,San Francisco

I'm jumping into the middle of this, but I believe it's been Urban Forestry's (Carla's) understanding that the chicane planting would be installed and maintained by the neighbors, subject to DPW review and approval. The vegetation shouldn't encroach into the street and safety and visibility would dictate a height limit of around 3', since the chicane is in a high-volume foot-traffic area and adjacent to an intersection, which has already been pinched by the chicane itself. I think the size and depth of the chicane allows plenty of options, considering the many constraints.

When Carla returns, I'll follow up regarding whether her intention was to create an official maintenance agreement with the Telegraph Hill Dwellers.



James DeVinny
ISA Certified Arborist
Urban Forestry Inspector
City & County of San Francisco
Department of Public Works
Urban Forestry Permits and Policy
2323 Cesar Chavez St
San Francisco, CA 94124

(415) 641-2675 p
(415) 695-2147 f
james.devinny@sfdpw.org

SF Department of Public Works: Greening

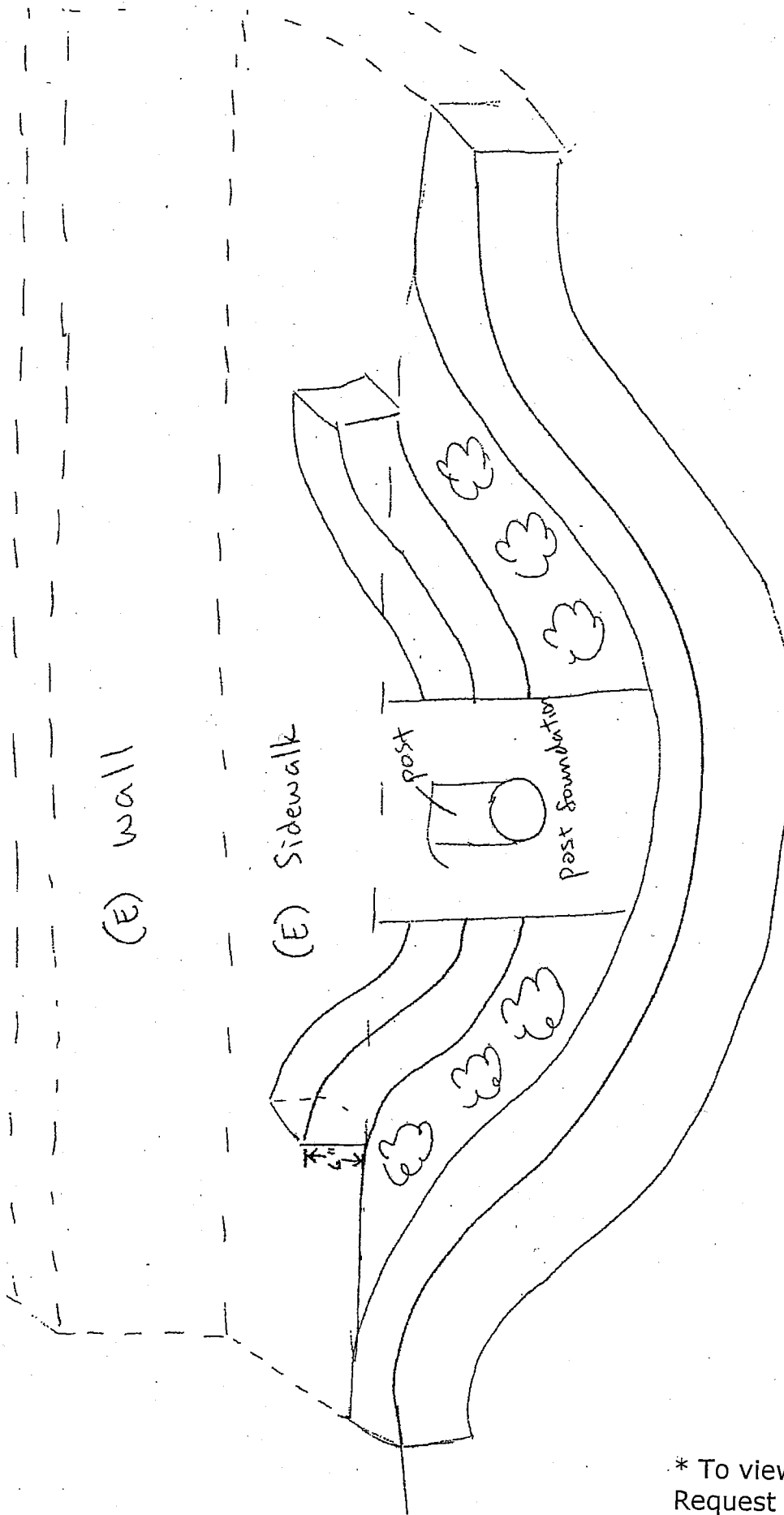
Please consider the environment before printing this e-mail.

From: Lee, Edmund
Sent: Tuesday, April 12, 2011 2:05 PM
To: Chan, Gloria; McDaniels, Chris; Najib, Dadisi
Cc: DeVinny, James; Kong, Ramon
Subject: RE: Planting Bed, Montgomery Street ,San Francisco

Gloria,

The chicane was designed per SFMTA approval. SFMTA had a traffic safety concern with the curb height of the chicane being too high, residents had a concern with the chicane being too shallow. In addition, a curb height too high would require reinforcement as well as a footing. This is essentially a retaining wall design, which would be more costly in both design and construction phases. All concerns considered, the current design was the end result. Regarding the planter areas, it is my understanding that the residents would work with Carla to determine what could be planted in the planters.

* To view full document
Request file # 12011



(E) wall

(E) Sidewalk

post

post foundation

Rivera, Patrick

From: Falvey, Christine
Sent: Tuesday, September 07, 2010 3:52 PM
To: Rivera, Patrick
Cc: Nuru, Mohammed; Short, Carla; Lee, Edmund; Kong, Ramon; Velasco, Manito
Subject: chronicle request for information
Attachments: RE: Montgomery and Alta Cost Estimate; FW: Montgomery and Alta Cost Estimate; Montgomery and Alta Cost Estimate

Importance: High

Hi Patrick, I am double checking the costs I am providing to chronicle.

The attached emails state:

Paving and Curb Ramp Work = \$98,000
Chicane = \$3,000 construction cost (\$900 design cost)
Tree Support = \$4,200 construction cost (\$1,400 design cost).

(Josef verbally gave me the design costs)

This is a total of \$107,500, however, I only gave the Chronicle the cost of the chicane and the tree support. (\$9,500), since the roadway repair and curb ramps are not associated with protecting the tree.

Are my assumptions accurate and costs accurate?

From: Haase, Mike
Sent: Friday, May 21, 2010 7:47 AM
To: Short, Carla
Subject: Fw: 2 Leaning Pine Trees & Buckled Street at Montgomery/Alta

Michael D. Haase
Office of the City Attorney
Assistant Chief of Claims & Investigations
875 Stevenson Street, Suite 440
San Francisco, CA 94103

PHONE: 415-554-5845
FAX: 415-554-7890

CONFIDENTIALITY NOTE

This contains information from the City Attorney's Office which is confidential and privileged. This information is intended to be for use of the individual or entity named above. If you are not the intended recipient, be aware, that any disclosure, copying, distribution or use of the contents of this information is prohibited.

-----Forwarded by Mike Haase/CTYATT on 05/20/2010 02:36PM -----

Delivery Failure Report

Your document: 2 Leaning Pine Trees & Buckled Street at Montgomery/Alta
was not delivered to: Carla.Short@sfdpw.org
because: Error transferring to 10.1.3.216; SMTP Protocol Returned a Permanent Error 554 Relay rejected for policy reasons.

What should you do?

- You can resend the undeliverable document to the recipients listed above by choosing the Resend button.
- Once you have resent the document you may delete this Delivery Failure Report.
- If resending the document is not successful you will receive a new failure report
- Unless you receive other Delivery Failure Reports, the document was successfully delivered to all other recipients.

Routing Path:

Ing01b01/SFGOV, Ing01b01/SFGOV, Ing01b01/SFGOV; Inh01a01/SFGOV, Inm06a01/CTYATT

Mike Haase
<Mike.Haase@sfgov.org>

To: Carla.Short@sfdpw.org

cc:

02:20 PM MST Today

Subject: 2 Leaning Pine Trees & Buckled Street at
Montgomery/Alta

File No. 12012

SOTF Item No. 11
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

- | | | |
|--------------------------|-------------------------------------|-----------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Memo |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Response |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |
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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

April 24, 2012:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (12012)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his January 4, 2012 Immediate Disclosure Request ("IDR") for "any and all public records... with respect to... any mentioning of [his] 4/12/2011 request for answers."

COMPLAINANT FILES COMPLAINT:

On February 16, 2012, Complainant filed this complaint against Frank Lee and DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: On 01/04/2012, Complainant filed an IDR with the DPW and Frank Lee requesting "copies of any and all public records... with respect to... any mentioning of [his] 4/12/2011 request for answers."

On 01/05/2012, Frank Lee acknowledged the request via email and stated:

I am going to skip the formal language that I send to acknowledge receipt; however, I am informing you that your request is number RR005 and that I am responding to your Immediate Disclosure Request within the time period specified in the San Francisco Sunshine Ordinance. (I am

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 2
RE: Complaint 12012: Nyman v. DPW

instituting a numbering system for all public records requests received for 2012.)

Since I was not part of the project team, I do not know whom Dadisi may have asked for help with your 4/12/11 request. Therefore, I asked her again. And, instead of just documents showing her asking for advice on how to handle your request, I am asking her to include any documents that showed her asking for and receiving answers to your questions. (You already have the documents that showed her seeking my, Gloria Chan, and James Devinny's advice and our responses to her.)

Today, Dadisi informed me that there are no other responsive documents to your request. (See attached.) Therefore, I have asked her for the reason why there are no documents, but I have not received her response yet.

However, I do know that in Dadisi's 6/14/11 reply to you, she mentioned Chris Buck, Edmund Lee, and Ramon Kong. Therefore, I will ask these three individuals to see if they have responsive documents to your request. But, I suspect that these three individuals will need some time to research and respond. (Technically, I am invoking an extension of up to 14 additional days to respond.)

Other than what I have done and will do, I do not know of any other method to find the documents that you want. Therefore, if you know of any individual that would or could possess such documents, please let me know and I will inquire with that person.

Regarding my response to you on 6/27/11, I also included a sentence that says "If I misinterpreted your request, please let me know immediately after the sentence where I listed what we thought you were requesting. My records show that I did not receive any response or correction from you. To avoid any further misinterpretations, I strongly suggest that you accept our invitation to meet and discuss."

On 01/05/2012, Complainant responded stating that he was exercising his rights under the Sunshine Ordinance and would not trade those rights for a meeting. Complainant also requested that DPW produce the responsive records on an incremental or rolling basis.

On 01/06/2012, Frank Lee stated via email "We are not suggesting that you trade your rights for a meeting. We are simply offering to meet and discuss your concerns."

On 01/07/2012, Complainant responded via email that his concerns would be addressed by producing the records requested and a meeting would not help produce such records, and further suggested that email communication should be sufficient for clarification if Mr. Lee did not understand the request.

On 01/27/2012, having not heard from DPW or Frank Lee, Complainant emailed Mr. Lee and asked if DPW was intending to provide him with the requested records. Complainant received no response. On 02/03/2012, Complainant again emailed Mr. Lee and asked if they were intending to provide the requested records. On 02/03/2012, Mr. Lee replied via email, stating "Yes, we intend to respond." However, as of 02/10/2012, DPW had not responded.

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 3
RE: Complaint 12012: Nyman v. DPW

Complainant argues that DPW does not have proper mechanisms and procedures in place for maintenance and retrieval of public records. In support of this, Complainant states that, in his 01/05/2012, Frank Lee states that he has asked certain individuals in the department if they know of or have any documents. Complainant argues that using such a document retrieval method, it would be easy to "miss" documents that should be included. Complainant argues that a department should have better mechanisms and procedures in place to do a proper record search than to simply "ask some individuals" if they have or know of any documents.

DPW has not further responded to the Complaint, nor has it provided any additional information to the Task Force to explain its actions in responding to this request.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does DPW have further responsive records that it has not provided?
- What evidence does Complainant have that DPW may have such records?
- Did DPW redact records provided to Complainant?
- What is the basis for the redactions, if any?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did DPW timely respond to the request?
- Has DPW justified any withholding of records or information in accordance with the requirements of the Ordinance?
- Are DPW's justifications for any withholding within the exemptions allowed by the Ordinance and the PRA?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 4
RE: Complaint 12012: Nyman v. DPW

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
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RE: Complaint 12012: Nyman v. DPW

otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

MEMORANDUM

TO: Sunshine Task Force
DATE: April 24, 2012
PAGE: 6
RE: Complaint 12012: Nyman v. DPW

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



Sunshine Complaint
complaints

to:

sotf

02/16/2012 04:55 PM

Show Details

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Department of Public Works

CONTACTED:Frank Lee

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:[Since this online Complaint Form does not allow for submission of additional documents, I have emailed sotf@sfgov.org with 7 additional documents I would like to be considered part of this complaint.] On 01/04/2012, I filed "IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request" by email with Frank Lee and the Department of Public Works for public records. As of this date, I have not received any records in response to my request. Department of Public Works is violating the San Francisco Sunshine Ordinance by not providing the request records and by not providing the records in a timely manner. Please, see the 7 additional documents-submitted separately to sotf@sfgov.org. Below follows a summary of the email exchange. On 01/04/2012, I filed my request with the Department of Public Works and Frank Lee requesting "copies of any and all public records... with respect to... any mentioning of my 4/12/2011 request for answers." On 01/05/2012, Frank Lee acknowledged the request and "Technically, I am invoking an extension of up to 14 additional days to respond." Frank Lee suggested "to meet and discuss". On 01/05/2012, I responded stating that I was exercising my rights under the San Francisco Sunshine Ordinance and would not trade those rights for a meeting. I also requested that he/DPW would produce the records to me on an incremental or rolling basis. On 01/06/2012, Frank Lee stated that a meeting would be to "discuss your concerns". On 01/07/2012, I responded stating my concerns will be addressed by producing the records requested and, that I don't think a meeting will help produce such records, and suggested email communication should be sufficient for clarification if Frank Lee did not understand my request. On 01/27/2012, having not heard from DPW or Frank Lee, I emailed Frank Lee and asked if they were intending to provide me with the records I requested. I received no response. On 02/03/2012, I again emailed Frank Lee and asked if they were intending to provide me with the records I requested. On 02/03/2012, Frank Lee replied stating "Yes, we intend to respond." However, as of 02/10/2012, they have not responded. I am also concerned that the Department of Public Works does not have proper mechanisms and procedures in place for maintenance and retrieval of public records. In his 01/05/2012, Frank Lee states that he has asked certain individuals in the department if they know of or have any documents. Using such a document retrieval method, it seems like it would be easy to "miss" documents that should be included. What if Frank Lee doesn't ask a staff member that has documents - then those documents would not be included. Was the director asked? Was the former director asked? He writes: "Other than what I have done and will do, I do not know of any other method to find the documents that you want. Therefore, if you know of any individual that would or could possess such documents, please let me know and I will inquire with that person. And, if you know of a better method for our research, please share it with me." This is alarming and it seems a department should have better mechanisms and procedures in place to do a proper record search than to simply "ask some individuals" if they have or know of any documents. How can one otherwise trust that the department is not withholding records, accidentally or deliberately.

Lars Nyman

HEARING:Yes

PRE-HEARING:No
DATE:02/10/2012
NAME:Lars Nyman
ADDRESS:
CITY:
ZIP:
PHONE:
CONTACT_EMAIL:upwardfacingdog@hotmail.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Wednesday, January 04, 2012 4:02 PM
To: <frank.w.lee@sfdpw.org>
Cc: "Up Dog" <upwardfacingdog@hotmail.com>
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request
Mr. Lee,

--- Background

On June 9, 2011, I made a request for documents from Department of Public Works under the Sunshine Ordinance of San Francisco. You responded with some documents on June 27, 2011 and some additional documents on July 6, 2011.

However, it was brought to my attention that in your response you had "redefined" my request for documents and narrowed the scope of the documents I requested.

My request stated:

"I am hereby requesting the following documents from you and the Department of Public Works:

- any email communication, documents and/or letters discussing handling of my 4/12/2011 request for answers"

Your response stated:

"Therefore, let me also restate what I think that you are requesting today. I believe that you are asking for

- Any emails, documents, or letters to and from Ms. Najib that shows her seeking or receiving advice on how to handle your April 12, 2011 email, consisting of a list of 17 questions."

Note, my request was for ANY documents/records discussing handling of my 4/12/2011 request for answers. ANY documents. In your response you had narrowed that to documents to and from Ms. Najib. However I asked for ANY documents, regardless of author, sender, receiver etc.

Since you had erroneously changed my request and narrowed the scope of my request, I am therefore now forced to re-issue my request for documents to ensure I will get access to ANY and ALL such documents as originally requested.

--- IMMEDIATE DISCLOSURE REQUEST

This is a public records request pursuant to the provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:

- any mentioning of my 4/12/2011 request for answers

Please note, under California Public Records Act and the San Francisco Sunshine Ordinance

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address.

Sincerely,

Lars Nyman

upwardfacingdog@hotmail.com

Up Dog

From: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Date: Thursday, January 05, 2012 7:01 PM
To: "Up Dog" <upwardfacingdog@hotmail.com>
Cc: "Najib, Dadisi" <Dadisi.Najib@sfdpw.org>
Attach: 1-5-12 email from Dadisi Najib.pdf
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?
Mr. Nyman:

I am going to skip the formal language that I send to acknowledge receipt; however, I am informing you that your request is number RR005 and that I am responding to your Immediate Disclosure Request within the time period specified in the San Francisco Sunshine Ordinance. (I am instituting a numbering system for all public records requests received for 2012.)

Since I was not part of the project team, I do not know whom Dadisi may have asked for help with your 4/12/11 request. Therefore, I asked her again. And, instead of just documents showing her asking for advice on how to handle your request, I am asking her to include any documents that showed her asking for and receiving answers to your questions. (You already have the documents that showed her seeking my, Gloria Chan, and James Devinny's advice and our responses to her.)

Today, Dadisi informed me that there are no other responsive documents to your request. (See attached.) Therefore, I have asked her for the reason why there are no documents, but I have not received her response yet.

However, I do know that in Dadisi's 6/14/11 reply to you, she mentioned Chris Buck, Edmund Lee, and Ramon Kong. Therefore, I will ask these three individuals to see if they have responsive documents to your request. But, I suspect that these three individuals will need some time to research and respond. (Technically, I am invoking an extension of up to 14 additional days to respond.)

Other than what I have done and will do, I do not know of any other method to find the documents that you want. Therefore, if you know of any individual that would or could possess such documents, please let me know and I will inquire with that person.

And, if you know of a better method for our research, please share it with me.

Regarding my response to you on 6/27/11, I also included a sentence that says "If I misinterpreted your request, please let me know immediately" after the sentence where I listed what we thought you were requesting. My records show that I did not receive any response or correction from you. To avoid any further misinterpretations, I strongly suggest that you accept our invitation to meet and discuss.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, January 04, 2012 4:03 PM
To: Lee, Frank W
Cc: Up Dog
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Lee,

--- Background

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However, it was brought to my attention that in your response you had "redefined" my request for documents and narrowed the scope of the documents I requested.

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Note, my request was for ANY documents/records discussing handling of my 4/12/2011 request for answers. ANY documents. In your response you had narrowed that to documents to and from Ms. Najib. However I asked for ANY documents, regardless of author, sender, receiver etc.

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- any mentioning of my 4/12/2011 request for answers

Please note, under California Public Records Act and the San Francisco Sunshine Ordinance

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Thursday, January 05, 2012 8:21 PM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <Dadisi.Najib@sfdpw.org>; <upwardfacingdog@hotmail.com>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request
Mr. Lee,

It seems like you are suggesting that the Department Of Public Works does not have a system to maintain public records and your comments are alarming.

As was abundantly clear from my request, I am requesting "...copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member..." Not just from or by the "project team", from or to or by ANY ONE, including the Director of the Department Of Public Works.

I understand that you are invoking an extension to fulfill the request. I hereby request that per San Francisco Sunshine Ordinance sec. 67.25 you produce the discovered record as soon as reasonably possible on an incremental or "rolling" basis.

I will exercise my full rights under the San Francisco Sunshine Ordinance and will not trade those rights for a meeting.

Sincerely,
Lars Nyman

PS: Note, I have edited and removed the trailing question mark in the subject line of this email, since my email to you had the subject "IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request" without a trailing question mark.

From: Lee, Frank W
Sent: Thursday, January 05, 2012 7:01 PM
To: 'Up Dog'
Cc: Najib, Dadisi
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Nyman:

I am going to skip the formal language that I send to acknowledge receipt; however, I am informing you that your request is number RR005 and that I am responding to your Immediate Disclosure Request within the time period specified in the San Francisco Sunshine Ordinance. (I am instituting a numbering system for all public records requests received for 2012.)

Since I was not part of the project team, I do not know whom Dadisi may have asked for help with your 4/12/11 request. Therefore, I asked her again. And, instead of just documents showing her asking for advice on how to handle your request, I am asking her to include any documents that showed her asking for and receiving answers to your questions. (You already have the documents that showed her seeking my, Gloria Chan, and James Devanny's advice and our responses to her.)

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And, if you know of a better method for our research, please share it with me.

Regarding my response to you on 6/27/11, I also included a sentence that says "If I misinterpreted your request, please let me know immediately" after the sentence where I listed what we thought you were requesting. My records show that I did not receive any response or correction from you. To avoid any further misinterpretations, I strongly suggest that you accept our invitation to meet and discuss.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, January 04, 2012 4:03 PM
To: Lee, Frank W
Cc: Up Dog
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

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Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Saturday, January 07, 2012 10:29 AM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: "Najib, Dadisi" <Dadisi.Najib@sfdpw.org>; <upwardfacingdog@hotmail.com>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request
Mr. Lee,

My concerns will be addressed by producing the records I have requested – I don't see how a meeting will help you produce such records.

You have suggested a meeting several times. The same reasoning applies in those instances – my concerns will be, or would have been, addressed by producing the requested records and I don't see how a meeting would help you, or would have helped you, produce such records. If you do not understand my request or what records I am requesting, I suggest that you ask me to clarify and email correspondence seems to be both sufficient and efficient manner for that.

Lars Nyman

From: Lee, Frank W
Sent: Friday, January 06, 2012 5:57 PM
To: 'Up Dog'
Cc: Najib, Dadisi
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request

Mr. Nyman:

We are not suggesting that you "trade your rights" for a meeting. We are simply offering to meet and discuss your concerns.

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, January 05, 2012 8:22 PM
To: Lee, Frank W
Cc: Najib, Dadisi; upwardfacingdog@hotmail.com
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request

Mr. Lee,

It seems like you are suggesting that the Department Of Public Works does not have a system to

maintain public records and your comments are alarming.

As was abundantly clear from my request, I am requesting "...copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member..." Not just from or by the "project team", from or to or by ANY ONE, including the Director of the Department Of Public Works.

I understand that you are invoking an extension to fulfill the request. I hereby request that per San Francisco Sunshine Ordinance sec. 67.25 you produce the discovered record as soon as reasonably possible on an incremental or "rolling" basis.

I will exercise my full rights under the San Francisco Sunshine Ordinance and will not trade those rights for a meeting.

Sincerely,
Lars Nyman

PS: Note, I have edited and removed the trailing question mark in the subject line of this email, since my email to you had the subject "IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request" without a trailing question mark.

From: Lee, Frank W
Sent: Thursday, January 05, 2012 7:01 PM
To: 'Up Dog'
Cc: Najib, Dadisi
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Nyman:

I am going to skip the formal language that I send to acknowledge receipt; however, I am informing you that your request is number RR005 and that I am responding to your Immediate Disclosure Request within the time period specified in the San Francisco Sunshine Ordinance. (I am instituting a numbering system for all public records requests received for 2012.)

Since I was not part of the project team, I do not know whom Dadisi may have asked for help with your 4/12/11 request. Therefore, I asked her again. And, instead of just documents showing her asking for advice on how to handle your request, I am asking her to include any documents that showed her asking for and receiving answers to your questions. (You already have the documents that showed her seeking my, Gloria Chan, and James Devinny's advice and our responses to her.)

Today, Dadisi informed me that there are no other responsive documents to your request. (See attached.) Therefore, I have asked her for the reason why there are no documents, but I have not received her response yet.

However, I do know that in Dadisi's 6/14/11 reply to you, she mentioned Chris Buck, Edmund Lee, and Ramon Kong. Therefore, I will ask these three individuals to see if they have responsive documents to your request. But, I suspect that these three individuals will need some time to research and respond. (Technically, I am invoking an extension of up to 14 additional days to respond.)

Other than what I have done and will do, I do not know of any other method to find the documents that you want. Therefore, if you know of any individual that would or could possess such documents, please let me know and I will inquire with that person.

And, if you know of a better method for our research, please share it with me.

Regarding my response to you on 6/27/11, I also included a sentence that says "If I misinterpreted your request, please let me know immediately" after the sentence where I listed what we thought you were requesting. My records show that I did not receive any response or correction from you. To avoid any further misinterpretations, I strongly suggest that you accept our invitation to meet and discuss.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, January 04, 2012 4:03 PM
To: Lee, Frank W
Cc: Up Dog
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Lee,

--- Background

On June 9, 2011, I made a request for documents from Department of Public Works under the Sunshine Ordinance of San Francisco. You responded with some documents on June 27, 2011 and some additional documents on July 6, 2011.

However, it was brought to my attention that in your response you had "redefined" my request for documents and narrowed the scope of the documents I requested.

My request stated:

"I am hereby requesting the following documents from you and the Department of Public Works:

- any email communication, documents and/or letters discussing handling of my 4/12/2011 request for answers"

Your response stated:

"Therefore, let me also restate what I think that you are requesting today. I believe that you are asking for

- Any emails, documents, or letters to and from Ms. Najib that shows her seeking or receiving advice on how to handle your April 12, 2011 email, consisting of a list of 17 questions."

Note, my request was for ANY documents/records discussing handling of my 4/12/2011 request for answers. ANY documents. In your response you had narrowed that to documents to and from Ms. Najib. However I asked for ANY documents, regardless of author, sender, receiver etc.

Since you had erroneously changed my request and narrowed the scope of my request, I am therefore now

forced to re-issue my request for documents to ensure I will get access to ANY and ALL such documents as originally requested.

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- any mentioning of my 4/12/2011 request for answers

Please note, under California Public Records Act and the San Francisco Sunshine Ordinance

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Friday, January 27, 2012 12:51 PM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?
Mr. Lee,

On January 4, 2012, I issued a public records request for "any mentioning of my 4/12/2011 request for answers". On January 5, 2012, you invoked "an extension of up to 14 additional days to respond".

I have not received ANY records from you in response to my January 4 request.
I have not received ANY response from you since January 5 from you with regards to my January 4 request.

I believe you and the Department of Public Works are now in violation of the Sunshine Ordinance of San Francisco.

Are you intending to provide me with the records I requested or not?

Sincerely,
Lars Nyman

From: Lee, Frank W
Sent: Thursday, January 05, 2012 7:01 PM
To: 'Up Dog'
Cc: Najib, Dadisi
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Nyman:

I am going to skip the formal language that I send to acknowledge receipt; however, I am informing you that your request is number RR005 and that I am responding to your Immediate Disclosure Request within the time period specified in the San Francisco Sunshine Ordinance. (I am instituting a numbering system for all public records requests received for 2012.)

Since I was not part of the project team, I do not know whom Dadisi may have asked for help with your 4/12/11 request. Therefore, I asked her again. And, instead of just documents showing her asking for advice on how to handle your request, I am asking her to include any documents that showed her asking for and receiving answers to your questions. (You already have the documents that showed her seeking my, Gloria Chan, and James Devinnny's advice and our responses to her.)

Today, Dadisi informed me that there are no other responsive documents to your request. (See attached.) Therefore, I have asked her for the reason why there are no documents, but I have not received her response yet.

However, I do know that in Dadisi's 6/14/11 reply to you, she mentioned Chris Buck, Edmund Lee, and Ramon Kong. Therefore, I will ask these three individuals to see if they have responsive documents to your request. But, I suspect that these three individuals will need some time to research and respond. (Technically, I am

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Other than what I have done and will do, I do not know of any other method to find the documents that you want. Therefore, if you know of any individual that would or could possess such documents, please let me know and I will inquire with that person.

And, if you know of a better method for our research, please share it with me.

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Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, January 04, 2012 4:03 PM
To: Lee, Frank W
Cc: Up Dog
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Lee,

-- Background

On June 9, 2011, I made a request for documents from Department of Public Works under the Sunshine Ordinance of San Francisco. You responded with some documents on June 27, 2011 and some additional documents on July 6, 2011.

However, it was brought to my attention that in your response you had "redefined" my request for documents and narrowed the scope of the documents I requested.

My request stated:

"I am hereby requesting the following documents from you and the Department of Public Works:
- any email communication, documents and/or letters discussing handling of my 4/12/2011 request for answers"

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Note, my request was for ANY documents/records discussing handling of my 4/12/2011 request for answers. ANY documents. In your response you had narrowed that to documents to and from Ms. Najib. However I asked for ANY documents, regardless of author, sender, receiver etc.

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- any mentioning of my 4/12/2011 request for answers

Please note, under California Public Records Act and the San Francisco Sunshine Ordinance

If the requested records are kept electronically or in PDF format, please send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address.

Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

Up Dog

From: "Up Dog" <upwardfacingdog@hotmail.com>
Date: Friday, February 03, 2012 7:40 AM
To: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Cc: <upwardfacingdog@hotmail.com>
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?
Mr. Lee,

On January 4, 2012, I issued a public records request for "any mentioning of my 4/12/2011 request for answers". On January 5, 2012, you invoked "an extension of up to 14 additional days to respond".

I have not received ANY records from you in response to my January 4 request.
I have not received ANY response from you since January 5 from you with regards to my January 4 request.

You and the Department of Public Works are violating the Sunshine Ordinance of San Francisco by not responding to my request. Are you intending to respond with the records I requested?

Sincerely,
Lars Nyman

From: Up Dog
Sent: Friday, January 27, 2012 12:51 PM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Lee,

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Sincerely,
Lars Nyman

From: Lee, Frank W
Sent: Thursday, January 05, 2012 7:01 PM
To: 'Up Dog'
Cc: Najib, Dadisi

Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Nyman:

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Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]

Sent: Wednesday, January 04, 2012 4:03 PM

To: Lee, Frank W

Cc: Up Dog

Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

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Sincerely,

Lars Nyman

upwardfacingdog@hotmail.com

Up Dog

From: "Lee, Frank W" <Frank.W.Lee@sfdpw.org>
Date: Friday, February 03, 2012 6:30 PM
To: "Up Dog" <upwardfacingdog@hotmail.com>
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?
Mr. Nyman:

Yes, we intend to respond.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Friday, February 03, 2012 7:40 AM
To: Lee, Frank W
Cc: upwardfacingdog@hotmail.com
Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

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Cc: Najib, Dadisi
Subject: RE: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Nyman:

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Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, January 04, 2012 4:03 PM
To: Lee, Frank W
Cc: Up Dog
Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request?

Mr. Lee,

--- Background

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Sincerely,
Lars Nyman
upwardfacingdog@hotmail.com

File No. 12013

SOTF Item No. 12

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memo
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint
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OTHER

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<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

April 24, 2012:

WILLIAM & ROBERT CLARK VS. ARTS COMMISSION (12013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark alleges that the Arts Commission and Howard Lazar ("Commission") violated section 67.21(b) and 67.26 of the Ordinance by failing to properly respond to his request for documentation of the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounting to \$20,396, including a breakdown in the following manner: subject matter of each time you asked the City Attorney for advice date of each time you asked the City Attorney for advice; amount of time associated with each time you asked the City Attorney for advice; name of the attorney you talked to each time you asked the City Attorney for advise?

COMPLAINANT FILES COMPLAINT:

On February 29, 2012, Complainants filed a complaint with the Task Force alleging a violation of sections 67.21(b) and 67.26.

JURISDICTION

The Commission is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the Commission. The Commission has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.
- Section 6254(k) governs exemptions from disclosure of certain records
- Section 6276.04 governs exemptions from disclosure of records that constitute attorney client privileged communications or attorney work product

DATE: April 24, 2012
PAGE: 2
RE: Clark vs. Arts Commission (12013)

APPLICABLE CASE LAW:

See citations in analysis below.

ISSUES TO BE DETERMINED**Uncontested/Contested Facts:**

On February 1, 2012 Complainant sent Howard Lazar the following email:

Mr. Lazar, I noticed that the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounted to \$20,396. I would like a breakdown of that expense in the following manner: What was the subject matter of each time you asked the City Attorney for advice? What was the date of each time you asked the City Attorney for advice? What was the amount of time associated with each time you asked the City Attorney for advice? What was the name of the attorney you talked to each time you asked the City Attorney for advice [sic]? I am requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance.

On February 10, 2012 Mr. Lazar responded to Complainant with the following email:

I am writing in response to your February 1, 2012 request for records. In your request, you asked for a breakdown of "the legal service expense charged to the Street Artists Program for the 2010-11 fiscal year," including the "date," "subject matter," and "amount" of each time [Howard Lazar] asked the City Attorney for advice as well as the "attorney name." In response to your request, we are providing the City Attorney billing records for the Street Artists Program for FY 2010-11, including the attorney, billing number, and general category of services. These records include billing for matters that relate to the Public Records Act and the Sunshine Ordinance ("Sunshine-related"), as well as for matters that are not Sunshine-related.

For records that are not Sunshine-related, we have redacted any parts that contain confidential attorney-client communications or attorney work product. The San Francisco Sunshine Ordinance provides that "[r]elease of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act in particulars not addressed by [the Sunshine Ordinance]" S.F. Admin. Code §67.21(k). The Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but limited to, provisions of the Evidence Code relating to privilege." Gov't Code §6254(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. Similarly, the California Code of Civil Procedure §2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories . . ." (See, also, Cal. Gov't Code Sec. 6276.04.)

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Please be aware that the City has in the past withheld time billing records that are not Sunshine-related based on the privileges just discussed. In this case, we find withholding unnecessary because we are able to separate and redact the protected information.

Complainant further alleges that the responsive public records included with Mr. Lazar's email did not contain all of the requested information, so on February 10, 2012 he sent Mr. Lazar another email stating:

Although you provided me with some of the information I requested, you didn't provide me with the most pertinent information which I requested. The pertinent information I requested which you did not provide me was the specific subject matter which required the Street Artist Program's staff to contact the City Attorney Office for its advice and counsel. All you sent me was a general description of the subject matter being discussed such as "Public Requests/Brown Act", "Phone Call", "Review", "Memo", "Other", "Conference (Client/Opp. Council/Staff)", "Sunshine Act Requests" and "Research". I am requesting the specific subject matter that required the need for the Street Artist Program to seek the advice and council of the City Attorney in each of the instances listed in the City Attorney billing record you provided me.

For instance, where it was listed as "Public Requests/Brown Act" then if that request is the result of a Sunshine Ordinance complaint provide me with the complaint number. If that request was not the result of a Sunshine Ordinance complaint then provide me with a list of the specific information and/or record(s) that was (were) requested. If it was listed as "Phone Call" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney over the phone. If it was listed as "Review" then provide me with the specific subject matter which required the City Attorney to review. If it was listed as "Memo" then provide me with the specific subject matter of the memo. If it was listed as "Other" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney. If it was listed as "Conference (Client/Opp. Council/Staff)" then provide me with the specific subject matter that required the need for the conference. If it was listed as "Sunshine Act Requests" then provide me with the specific subject matter of the request that was made and any related Sunshine Ordinance complaint number. If it was listed as "Research" then provide me with the specific subject matter that required research. I am making this request for public information pursuant to the provisions of the Sunshine Ordinance.

On February 16, 2012 Mr. Lazar responded via email, stating:

In response to your request for "the specific subject matter which required the Street Artist Program staff to contact the City Attorney Office for its advice and counsel," we have attached a pdf. Document of charts I kept entitled "2010-11 SAP STAFF HOURS SPENT ON SUNSHINE

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REQUESTS" which include details on dates of conference with the City Attorney's office, the subjects of such conferences, and the amounts of time spent by Street Artists Program staff on subjects relative to Sunshine Ordinance matters.

For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated in our e-mail response to you on February 10th, the Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). California Evidence Code Sec. 954 protects from disclosure communications between attorneys and their clients. Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04.

Complainant further alleges that the public records Mr. Lazar included in that email still didn't provide him with all the requested information so he sent Mr. Lazar the following email:

You are well aware of the fact that I am not asking for "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories." or any other communication, advice or information discussed between the Street Artist Program Staff and the City Attorney. I have only asked you to provide me with an explanation of what the specific subject matter was for each time the Street Artist Program staff consulted with the City Attorney on any matters related to the Street Artist Program during the 2010-11 fiscal year regardless of whether or not the were Sunshine Ordinance related.

I am reminding you the Sunshine Ordinance Task Force issued an Order of Determination in my complaint #11001 against the City Attorney in which the task force found that the City Attorney violated the Sunshine Ordinance for not providing me with a description of the subject matter for each and every time the Street Artist Program staff consulted with the City Attorney during a previous fiscal year. I am including an attachment with this email of the Sunshine Ordinance Task Force's Order of Determination for complaint #11001.

As of February 29, 2012 Complainant not received the additional information requested from Mr. Lazar.

On March 7, 2012, Mr. Lazar responded to the Sunshine Complaint by letter. That letter essentially repeated the same rationales from the above emails explaining why the Commission would not provide the additional information requested by Complainant.

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QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Has the Commission redacted information from the billing records requested by Complainant/?
- Have the records sought by complainant previously been disclosed by the Arts Commission to someone outside of an attorney client relationship? If so, to whom were they disclosed and under what circumstances?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Commission timely respond to the request?
- If documents sought by the request were withheld by the Commission, did the Commission justify the withholding in writing as required by the Ordinance?
- Does the Commission's justification, if any, for withholding any responsive documents comply with the requirements of the Ordinance and the PRA?
- Do any records withheld by the Commission from disclosure constitute privileged information exempt from disclosure under the PRA and the Ordinance?
- If so, has the confidentiality of the privileged documents been partially or entirely waived under these circumstances?

SUGGESTED ANALYSIS

To the extent details of attorney billing records reveal communications between the City Attorney's Office and the client department, or the thought processes of the Deputy City Attorney Office in providing legal services to a client department, those details may be confidential under either the attorney client privilege or the attorney work product doctrine, and therefore exempt from disclosure. The legal issues involved in such a determination are discussed below.

Attorney-Client Privilege

To the extent that details of client billing records would reveal confidential communications between an attorney and her client, they are protected by the attorney-client privilege.

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority."

Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov't. Code § 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to [] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov't. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: "Attorney-client confidential communication;

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Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code."

It is clear from these provisions that attorney-client privileged information is protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4th at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. "[T]he privilege seeks to insure the 'right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]'"

...
A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel []. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

City of Palmdale, supra, 5 Cal.4th at 380-381.

The attorney client privilege protects communication from an attorney to her City client. (Evid. C. § 954.) This is true even where the communication may not be written and oral statements but other means of communication. *Mitchell v. Sup. Ct (Shell Oil Co.)* (1984) 37 Cal.3d 591, 599-600. Thus, details of billing records are encompassed by the privilege.

Section 67.21(i) of the Ordinance provides that communications with the City Attorney's Office with regard to the Ordinance are public record subject to disclosure. While this may open to disclosure attorney client communications that otherwise would be protected by privilege, it extends only to communications with regard to the Ordinance, and not to other attorney client communications between the City Attorney and its client departments.

Attorney Work Product Doctrine

To the extent that details of client billing records would reveal the thought processes of an attorney in providing legal advice to her client, they are protected by the attorney work product doctrine.

Section 67.27 of the Sunshine Ordinance allows for "withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive

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exemption is not forbidden to be asserted by this ordinance, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [] *pursuant to* [] *state law, including, but not limited to*, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

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ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

[. . .]

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing

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concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. *All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.*

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

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CAL. GOV'T CODE §§ 6250 et seq. (Public Records Act)

§ 6254. EXEMPTION OF PARTICULAR RECORDS

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

ARTICLE 2. OTHER EXEMPTIONS FROM DISCLOSURE

III. § 6275. LEGISLATIVE INTENT; EFFECT OF LISTING IN ARTICLE

It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

JJJ. § 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

§ 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"

...

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

...

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.



Sunshine Complaint
complaints

to:

sotf

02/29/2012 07:15 PM

Show Details

Follow Up:
Urgent Priority.

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:San Francisco Arts Commission

CONTACTED:Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.21(b) and Section 67.26

DESCRIPTION:On February 1, 2012 I sent Howard Lazar the following email: Mr. Lazar, I noticed that the legal service expense charged to the Street Artist Program for the 2010-11 fiscal year amounted to \$20,396. I would like a breakdown of that expense in the following manner: What was the subject matter of each time you asked the City Attorney for advice? What was the date of each time you asked the City Attorney for advice? What was the amount of time associated with each time you asked the City Attorney for advice? What was the name of the attorney you talked to each time you asked the City Attorney for advice? I am requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance. William J. Clark On February 10, 2012 Mr. Lazar sent me the following email: Dear Mr. Clark, I am writing in response to your February 1, 2012 request for records. In your request, you asked for a breakdown of "the legal service expense charged to the Street Artists Program for the 2010-11 fiscal year," including the "date," "subject matter," and "amount" of each time [Howard Lazar] asked the City Attorney for advice as well as the "attorney name." In response to your request, we are providing the City Attorney billing records for the Street Artists Program for FY 2010-11, including the attorney, billing number, and general category of services. These records include billing for matters that relate to the Public Records Act and the Sunshine Ordinance ("Sunshine-related"), as well as for matters that are not Sunshine-related. For records that are not Sunshine-related, we have redacted any parts that contain confidential attorney-client communications or attorney work product. The San Francisco Sunshine Ordinance provides that "[r]elease of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act in particulars not addressed by [the Sunshine Ordinance]" S.F. Admin. Code §67.21(k). The Public Records Act allows an agency to decline to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but limited to, provisions of the Evidence Code relating to privilege." Gov't Code §6254(k). California Evidence Code §954 protects from disclosure communications between attorneys and their clients. Similarly, the California Code of Civil Procedure §2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories . . ." (See, also, Cal. Gov't Code Sec. 6276.04.) Please be aware that the City has in the past withheld time billing records that are not Sunshine-related based on the privileges just discussed. In this case, we find withholding unnecessary because we are able to separate and redact the protected information. Sincerely, Howard Lazar, Street Artists Program Director The public records included in Mr. Lazar's

email did not contain all of the information I requested so on February 10, 2012 I sent Mr. Lazar the following email: Mr. Lazar, Although you provided me with some of the information I requested, you didn't provide me with the most pertinent information which I requested. The pertinent information I requested which you did not provide me was the specific subject matter which required the Street Artist Program's staff to contact the City Attorney Office for its advice and counsel. All you sent me was a general description of the subject matter being discussed such as "Public Requests/Brown Act", "Phone Call", "Review", "Memo", "Other", "Conference (Client/Opp. Council/Staff)", "Sunshine Act Requests" and "Research". I am requesting the specific subject matter that required the need for the Street Artist Program to seek the advice and council of the City Attorney in each of the instances listed in the City Attorney billing record you provided me. For instance, where it was listed as "Public Requests/Brown Act" then if that request is the result of a Sunshine Ordinance complaint provide me with the complaint number. If that request was not the result of a Sunshine Ordinance complaint then provide me with a list of the specific information and/or record(s) that was(were) requested. If it was listed as "Phone Call" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney over the phone. If it was listed as "Review" then provide me with the specific subject matter which required the City Attorney to review. If it was listed as "Memo" then provide me with the specific subject matter of the memo. If it was listed as "Other" then provide me with the specific subject matter that required the Street Artist Program to seek the advice and council of the City Attorney. 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Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ." Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04. Sincerely, Howard Lazar Street Artists Program Director Arts Commission The public records Mr. Lazar included in that email still didn't provide me with all the information I requested so I sent Mr. Lazar the following email: Mr Lazar, You are well aware of the fact that I am not asking for "writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ." or any other communication, advice or information discussed between the Street Artist Program Staff and the City Attorney. 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previous fiscal year. I am including an attachment with this email of the Sunshine Ordinance Task Force's Order of Determination for complaint #11001. William J. Clark As of today, February 29, 2012 I have not received the information I requested from Mr. Lazar. Therefore, I am filing this complaint against Mr. Lazar for violating Section 67.21(b) and Section 67.26 of the San Francisco Sunshine Ordinance.

HEARING:Yes

PRE-HEARING:No

DATE:2/29/12

NAME:William J. Clark

ADDRESS:P.O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

2010-11

SAP STAFF
HOURS SPENT ON SUNSHINE REQUESTS

REQUESTOR	HOURS SPENT (RESEARCH/DRAFT REPLY/COPYING/SUNSHINE TASKFORCE HRNG)	
WM + ROBT. CLARK	1.5	7/2; 7/9/10
PAULA DATESH	2.0	7/27/10 (REVIEW SOTF HRNG)
PBT LLOYD	5, 3, 3	7/27 TAPES DUPLICATING 8/3, 8/11, 8/15
WM + ROBT CLARK	1.2	HW EMAIL LETTER TO CITY ATTY RE: SOTF CLARK VS MC AMBER ET AL RE: DISCLOSURE OF INFO
MARK MELANCON/AMANDA NORDQUIST	3.0	9/13/10 TRANSFER OF 4/8 SAME AUDIO TAPE TO SOTF FILE + CD
INSPECTION OF FILES BY MELANCON/NORDQUIST	1.0	9/14/10
MELANCON/NORDQUIST	3.5	9/15/10 RE TRANSFER OF 4/8 SAME AUDIO TAPE TO 2 DIGITAL FILES AND 3 MORE BACKED TO 4 CDs / CD-R LETTERS
SOTF (CLARKS V. A/C ET AL) COMPLAINT COMMITTEE	3.0	9/14/10 2 hrs prep / 1 hr attend hearing
SOTF (" " ")	1.0	9/16 - email letter to busk/fidry/1/3 on outline of SOTF
SOTF (" " ")	4.0	9/17 - 1 hr prep for hearing, 3 hrs @ hearing
SOTF (" " ")	2.0	10/4 - email report to busk on SOTF hearing + busk correspondence with HL
CLARKS	0.5	10/8 - 1/2 day - day written letter to City for review
"	0.5	10/13 - Conference with City Atty and hearing of 14-day letter
ANDRARIO	CP223	10/14 - 1/2 day preparation letter written + sent

Name	Hours	Date	Remarks
ADDARIO	4.0	10/25/10	RESEARCH; LETTER; PHONOLOGY
CLARKS	4.0	11/20 - 21	MYSSA VICOURIS DID THE PHONOLOGY; LETT
SOTF/CLARK V.A/c)	5.0	10/26/10	Prep. of spec. for SOTF 10/26/10
SOTF/CLARK V.A/c)	2.0	10/26/10	SOTF Hearing
CLARK	5.0	11/2/10	RESEARCH for 11/10 request
"	1.0	11/5/10	DELIVERY hand copy + e-mail
CLARK	1.00	11/9/10	14-day ext. response on 11/8 request
CLARK	2.00	11/10/10	14-day ext. response on 11/9 request
CLARK	3.00 2.00	11/15/10	- response letter + determination 11/8 + 11/9 reports
CLARK	8	11/15/10	- Temp employee scheduling hourly with opinion reported by Clark
CLARK	1.5	11/7/10	- Clark 11/8 + 11/9 reports
CLARK	0.5	11/22/10	- Mailing of documents
CLARK	0.5	11/23/10	- Mailing of documents
CLARK	3.0	1/3/11	Draft of letter for City Atty review: #10069 SOTF
CLARK	0.5	1/4/11	Final letter #10069 drafted/mailed to SOTF
CLARK	1.0	1/6/11	response letter to 1/5/11 request
CLARK	1.00	1/10/11	Research How Has for 1/5/11 request
CLARK	1.00	1/11/11	Research 1/11/11 report; question to City Atty
CLARK	5.00	1/13/11	Research for (1/5/11 request)
CLARK	5.00	1/14/11	Draft of letter to City Atty + copy of documents (1/5/11 request)

CLARK	3.5	1/19/11	Conference w/City Atty; final draft + mailing of letter; copying of all documents
CLARK	2.0	1/25/11	(1/5/11 request) Attending 1/25 SOTF hearing
CLARK	<u>4.0</u>	2/3/11	← Copying + redaction of confidential details confer w/City Atty; draft of letter
CLARK	2.0	2/4/11	Letter/conf. w/City Atty
CLARK	2.0	2/8/11	prep + SOTF hearing on #10069
CLARK	+ <u>4.0</u> hrs	(for temp personnel prep + attend hearing)	
CLARK	3.0	2/9/11	Conf w/City Atty on redaction of documents (#10069)
CLARK	<u>2.0</u>	2/10/11	Redaction of documents; draft letter (#10069)
CLARK	2.0	2/11/11	further redaction; final draft of letter; conf w/City Atty (#10069)
CLARK	2.5	3/1/11	2/3 request for docs; confer w/City Atty
CLARK	2.5	3/2/11	2/3 request; write + send letter + materials (copy to file).
CLARK	2.0	3/2/11	Clarke response to 2/3 request + 2/21 request; confer w/City Atty on 2/21
CLARK	3.0 + 1.0	3/3/11	Research re: 2/21 request; draft letter
CLARK	2.0	3/4/11	2/21 request research; draft response for 3/8 SOTF

CLARK	0.5	3/7/11	2/24 request; confer w/ City Atty
CLARK	2.5	3/8/11	2/4 request: make audiotapes of 1/12/11 SAFC mtg
CLARK	2.0	3/9/11	2/4 request: make CDs + prep for meeting
X CLARK	4.0	3/8/11	SOTF #10074: Brief ^{re delinquent} re: 10/30/10, Complaint #4 for 4 hrs (min) for rep.
CLARK	2.5	3/9/11	Draft letters for SOTF #11007 + #1108
CLARK	3.5	3/10/11	Draft letters #11007 + #11008; confer w/ City Atty; confer w/ City Atty on 2/3 request
CLARK	7.0	3/14/11	Confer w/ City Atty / final draft of letter to Clark re: 2/24 request; copying documents / prep for meeting ; reply to 3/9 request + documents; letter to SOTF re: Complaint #10007
CLARK	1.0; 1.0; 1.0	3/18/11	3/17 request for personnel info: Alyssa Howard; 1/2 day ext letter + research; 3/18 request for personnel info: Howard Lazar; conf w/ City Atty; 1/2 day ext. letter research
CLARK	5.5	3/21/11	Prepare/draft response to SOTF #11008; review 1/12/11 SAFC audiotapes
CLARK	3.0	3/22/11	Prepare response to SOTF #10074, #11007, #11008 #11008 for 3/22 SOTF hearings; brief Julie Mathos (temp personnel)
	+ 8		temp personnel briefing + attending 3/22 SOTF hearings (3); temp personnel report to the

CLARK	7.0	3/24/11	Reccards docs + draft letters for 3/7 + 3/18 requests (for City Atty review).
CLARK	2.0	3/25/11	Re-Draft letter/prepare docs for 3/18 request; scanning of documents for City Atty review
CLARK	0.25	3/29/11	Order w/ City Atty on 3/17 request
CLARK	2.0; 3.0	3/30/11	Redaction of document re 3/18 + 3/17 requests. final drafts of letter; photocopying all; further cont. w/ City Atty
CLARK	2.0	4/6/11	Research & respond to 3/23 request
CLARK	2.5 2.5	4/7/11	Cont/ City Atty: #11019 + #11023 + #11008 Letter to SOTF: #11019 #11023

186 hours spent (since 7/1/10) as of 4/7/11 on SOTF/public records matters

CLARK	.5	4/14/11	e-mail + attachment re: 4/12/11 City Atty clarification
MELANCON	1	4/15/11	Letter (14 days est.) response + e-mail to Melancon re: 4/13 request
NORDQVIST	.5	4/22/11	Letter response (14 day est.) forwarded to Nordquist
MELANCON	3.0	4/22/11	Printed scanning + emailing docs to City Atty re: 4/13 request
MELANCON	3, 2	4/26/11	Letter response to 4/13 request; review of docs w/ City Atty; redactions; photocopying

CLARK 8 4/26/11 (sup^{8 hrs} by temp personnel) SOTF hearings on # 11069 - # 11008

MELANCON 2.0 4/27/11 → Final letter + copying of docs in 4/13 request; email letter

WARDQUIST 1.5, 1 5/4/11 re 4/21/11 request; scanning & transmitting documents to Ct. letter; drafting letter-response; order w/Ct. filing; final letter & doc

206.5 hrs spent thus far since July 07 and reported at 5/11/11 SAPC

CLARK 1.0 5/25/11 e-mail response to 5/3/11 emailed guidance "Further public's Freedom Request"

CLARK 1.0 6/6/11 Research on Request of 5/25, 5/27, 5/28, 5/31, and 6/05/11

CLARK 1.0 6/7/11 Making available of 2/4/9 SAPC tape & e-mailing it to Clark (5/25 request)

CLARK 1.0 7/8/11 Making available of 9/9/05 SAPC tape as per 5/25 request

CLARK 1.5 7/9/11 Making available of 11/12/05 (Tape 1) as per 5/25 request

CLARK 1.5 7/10/11 Making available of 11/2/05 (Tape 2) as per 5/25 request

CLARK	2.5	6/13/11	Making audiotapes of 4/13/10 SATC (Tape 1 & 2) as per 5/31 request
C. LLOYD	3.0	6/15/11	Making audio files of 8/16/10 ABCOM criteria mtg, as per 6/14 request
CLARK	3.5	6/20/11	Draft memos ^{letters} to SOTF #11037 and #11040; Confer w/City Atty
CLARK	1.0 .05	6/21/11	Confer w/City Atty on #11037 & #11040 letter draft; finalize draft & send to SOTF
CLARK	2.0	6/28/11	Preparation for #11037 #11040 for 6/28 hrs

END FY 2010-11



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

TOM DECAIGNE
DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS INITIATIVE

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.354.6000

WWW.SFARTSCOMMISSION.ORG

ARTS.COMMISSION@SFGOV.ORG

March 7, 2012

Honorable Members, Sunshine Ordinance Task Force
Office of the Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

RE: Sunshine Ordinance Task Force - #12013 William v. Arts
Commission

Dear Committee Members:

The San Francisco Arts Commission (the "Commission") is submitting this response to Complaint #12013, William and Robert Clark v. Arts Commission, which your office forwarded to the Commission on March 2, 2012, at 3:21 p.m.

We note that in the complaint Mr. Clark states that he wrote to Street Artists Program Director Howard Lazar that, while he was "not asking for 'writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories' or any other communication, advice or information discussed between[n] the Street Artist Program Staff and the City Attorney," he was asking for "an explanation of what the specific subject matter was for each time the Street Artist Program staff consulted with the City Attorney on any matters related to the Street Artist Program during the 2010-11 fiscal year regardless of whether or not the[y] were Sunshine Ordinance related."

In his complaint, Mr. Clark then states that "the Sunshine Ordinance Task Force issued an order of Determination in my complaint #11001 against the City Attorney in which the task force found that the City Attorney violated the Sunshine Ordinance for not providing me with a description of the subject matter for each and every time the Street Artist Program staff consulted with the City Attorney during a previous fiscal year" and that "As of today, February 29, 2012 I have not received the information requested from Mr. Lazar."



CITY AND COUNTY OF
SAN FRANCISCO

This is to inform you that on February 16, 2012 the Arts Commission sent Mr. Clark a Pdf document of charts kept by Program Director Lazar entitled "2010-11 SAP STAFF HOURS SPENT ON

SUNSHINE REQUESTS" (please see attached) which included details on dates of conference with the City Attorney's office, the subjects of such conferences, and the amounts of time spent by Street Artists Program staff on subjects relative to Sunshine Ordinance matters.

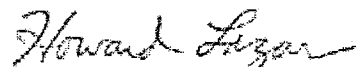
For matters that were not Sunshine Ordinance-related, we supplied Mr. Clark with the following written explanation: *"For matters that are not Sunshine Ordinance-related, we are not required to disclose documents relating to City Attorney counsel requested and received by the Arts Commission. As we stated in our e-mail response to you on February 10th, the Public Records Act allows an agency to decline to disclose [r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). California Evidence Code Sec. 954 protects from disclosure communications between attorneys and their clients. Similarly, California Code of Civil Procedure Sec. 2018.030 protects from disclosure the work product of an attorney. The work product privilege protects any 'writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories ...' Cal. Code Civ. Proc. Sec. 2018.030; see also Cal. Gov't Code Sec. 6276.04."*

It is our understanding that the protection from disclosure of "communications between attorneys and their clients" would also include protection from the disclosure of the nature of topic or subject matter of such communications. For this reason, we declined to furnish such information to Mr. Clark.

In summary, the Arts Commission responded to Mr. Clark with documents to the fullest extent of the law.

We respectfully request that you please take this into consideration as you assess this matter.

Sincerely,



Howard Lazar

Street Artists Program Director

Attachment

Cc: The Honorable JD Beltran, President, Arts Commission
The Honorable Sherene Melania, Vice-President, Arts Commission
The Honorable Greg Chew, Chairman, and Commissioners John
Calloway, Amy Chuang, and Jessica Silverman - Street Artists
Committee
Mr. Tom DeCaigny, Director of Cultural Affairs
Ms. Rebekah Krell, Deputy Director
Ms. Alyssa Licouris, Street Artists Program Assistant

File No. 12014

SOTF Item No. 13

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Complaint
Response

OTHER

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



To:
Cc:
Bcc:
Subject: Fw: My complaint

My complaint

Bill and Bob Clark to: soft

03/07/2012 04:57 PM

Please respond to Bill and Bob Clark

Complaint Form

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102
Tel. (415) 554-7724;
Fax (415) 554-7854
<http://sfgov.org/sunshine>

(* Required field)

Complaint against which Department or Commission * SF Arts Commission

Name of individual contacted at Department or Commission

Alleged Violation: Tom DeCaigny

Public Records: * Yes

Public Meeting: * No

Date of meeting:

Sunshine Ordinance Section:

(If known, please cite specific provision being violated) Section 67.25(a)

Please describe alleged violation: *On March 1, 2011 I sent Mr. DeCaigny the following email:

From: Bill and Bob Clark [Add to Address Book]
To: tom.decaigny@sfgov.org
Cc: howard.lazar@sfgov.org
Subject: IMMEDIATE DISCLOSURE REQUEST FOR INFORMATION
Date: Mar 1, 2012 5:32 PM
IMMEDIATE DISCLOSURE REQUEST

Mr. DeCaigny,

At the January 30, 2012 Executive Committee meeting the Committee approved a proposed FY 2012-13 Street Artist Program budget amounting to \$262,313. At the meeting the public was not provided with an itemized list of expenditures for that proposed budget. Since the proposed Street Artist Program budget for FY 2012-13 is going to be voted on at the March 5, 2012 Arts Commission meeting which is only 5 days from now, I am making an Immediate Disclosure Request for an Itemized list of the expenditures in the proposed Street Artist Program budget for FY 2012-13 which amounts to \$262,313.

I am making this Immediate Disclosure Request pursuant to the provisions of the San Francisco

Sunshine Ordinance.

I checked my emails at 5 PM the following day and I had not received a response from Mr. DeCaigny. I checked my emails the following night at 7:30 PM and noticed that I had an email from Mr. DeCaigny that was sent to me at 7:31 PM on March 2, 2011.

The email read as follows:

From: "DeCaigny, Tom" [Edit Address Book]
To: Bill and Bob Clark
Cc: "Lazar, Howard" , "Krell, Rebekah"
Subject: Re: IMMEDIATE DISCLOSURE REQUEST FOR INFORMATION
Date: Mar 2, 2012 7:31 PM
Dear Mr. Clark:

Thank you for your inquiry. The itemized list of expenditures for the proposed FY 2012-13 & 2013-14 Street Artists Program Budgets was posted earlier today. You can find the document here:
<http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>.

Sincerely,
Tom DeCaigny

Tom DeCaigny
Director of Cultural Affairs
San Francisco Arts Commission
25 Van Ness, Suite 345
San Francisco, CA 94102

phone: (415) 252-2591
fax: (415) 252-2595

The attachments in his email provided me with only some of the information I requested.

Therefore, I am filing this complaint.

William J. Clark

Do you wish a public hearing before the Sunshine Ordinance Task Force? * Yes

Do you also want a pre-hearing conference conference before the Complaint Committee? No

(Optional)
Date: March 7, 2012
Name: William J. Clark
Address: P.O. Box 882252
City: SF
Zip: 94188
Telephone: 415-822-5465
Email: billandbbclark@access4less.net

If anonymous, please let us know how to contact you. Thank you.
I request confidentiality of my personal information. No

Notice: Personal Information that you provide is subject to disclosure under the California Public Records Act and the Sunshine Ordinance, except when confidentiality is specifically requested. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone Number, Fax Number, or Email address).

Last updated: 9/1/2009 10:40:32 AM



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

TOM DECAIGNY
DIRECTOR OF
CULTURAL AFFAIRS

March 20, 2012

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Pl., Room 244
San Francisco, CA 94102

Re: Complaint 12014
William J. Clark v. Arts Commission

PROGRAMS

- CIVIC ART COLLECTION
- CIVIC DESIGN REVIEW
- COMMUNITY ARTS & EDUCATION
- CULTURAL EQUITY GRANTS
- PUBLIC ART
- STREET ARTISTS' LICENSES
- ARTS COMMISSION GALLERY
- 401 VAN NESS AVENUE
- 415.354.6080

Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to complaint #12014, submitted on March 7, 2012 by William J. Clark, and received by our office on March 14, 2012.

In his complaint, Mr. Clark says that he requested "an Itemized list of the expenditures in the proposed Street Artist Program budget for FY 2012-13 which amounts to \$262,313."

Mr. Clark's complaint acknowledges receipt of my response, which states, in part: "The itemized list of expenditures for the proposed FY 2012-13 & 2013-14 Street Artists Program Budgets was posted earlier today. You can find the document here: <http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>."

Mr. Clark's complaint then says: "The attachments in his email provided me with only some of the information I requested."

In response to the complaint, please be advised that the document posted online with the agenda for the March 5, 2012 meeting of the full Arts Commission, entitled "Budgeted Revenues, Expenditures by Program," includes on page 2 an itemized list of both revenue and expenditures for the proposed Street Artists Program budget for FY 2012-13 and FY 2013-14, and is responsive to Mr. Clark's request. The document is still posted here: <http://www.sfgov3.org/modules/showdocument.aspx?documentid=1656>

For the convenience of the Task Force, we are attaching a copy of the document for your review.

Very truly yours,

Tom DeCaigny
Director of Cultural Affairs



CITY AND COUNTY OF
SAN FRANCISCO

TD/spr
Encl

Arts Commission - March 2, 2012
Budgeted Revenues Expenditures by Program

Program	Description	Title	FY11-12 Approved Budget	FY12-13 Proposed Budget	FY13-14 Proposed Budget
Administration					
	Revenue:				
		General Fund	713,136	460,673	431,106
		POP Concerts	772,606	450,817	440,365
		Overhead Recovery		401,076	495,112
	Revenue Total:		1,485,742	1,312,566	1,366,583
	Expense:				
		Salaries	747,294	719,701	722,470
		Mandatory Fringe Benefits	372,307	353,209	388,761
		Other Expenses	129,391	16,680	16,680
		City Department Work Orders	236,750	220,976	236,672
	Expense Total:		1,485,742	1,312,566	1,366,583
Community Arts & Education					
	Revenue:				
		Cultural Centers			
		Hotel Tax	1,516,000	1,516,000	1,516,000
		General Fund	582,602	776,195	792,266
		Grants for the Arts	441,229	441,229	441,229
		Capital Maintenance*	595,000	20,000	20,000
	Revenue Subtotal:		3,134,831	2,753,424	2,769,495
		WritersCorps			
		Library Work Order	170,000	180,000	180,000
		DCYF Work Order	100,000	100,000	100,000
		Grants	107,600	107,600	107,600
	Revenue Subtotal:		377,600	387,600	387,600
		Arts Education			
		Transit Advertising	133,017	133,017	133,017
		Street Smarts, Where Art Lives			
		DPW Work Order	150,000	150,000	150,000
	Revenue Subtotal:		283,017	283,017	283,017
	Revenue Total:		3,795,448	3,424,041	3,440,112
	Expense:				
		Cultural Centers			
		Salaries	144,092	284,461	285,555
		Mandatory Fringe Benefits	62,759	114,976	128,947
		Grants	2,124,238	2,124,238	2,124,238
		Overhead	106,659	107,666	108,672
		Other Expenses	102,083	102,083	102,083
		Capital Maintenance*	595,000	20,000	20,000
	Expense Subtotal:		3,134,831	2,753,424	2,769,495
		WritersCorps			
		Salaries	134,735	141,672	142,217
		Benefits	59,856	63,193	70,526
		Program Expenses	183,009	182,735	174,857
	Expense Subtotal:		377,600	387,600	387,600
		Arts Education			
		Salaries	62,972	108,458	108,876
		Street Smarts, Where Art Lives			
		Benefits	22,040	47,991	53,577
		Program Expenses	198,005	126,568	120,564
	Expenses Subtotal:		283,017	283,017	283,017
	Expense Total:		3,795,448	3,424,041	3,440,112
Cultural Equity Grants					
	Revenue:				
		Hotel Tax	1,716,000	1,716,000	1,716,000
		General Fund	668,787	598,476	614,517
		Grants for the Arts	30,000	30,000	30,000
	Revenue Total:		2,414,787	2,344,476	2,360,517
	Expense:				
		Salaries	206,396	265,492	286,591
		Mandatory Fringe Benefits	91,179	120,826	135,143
		Temporary Staff	175,362	-	-
		Grants	1,823,527	1,823,527	1,823,527
		Overhead	101,077	97,385	98,010
		Other Expenses	17,246	17,246	17,246
	Expense Total:		2,414,787	2,344,476	2,360,517
Gallery					
	Revenue:				
		POP Concerts	20,000	341,789	352,241
		General Fund	10,000	10,000	10,000
		Grants for the Arts	25,000	25,000	25,000
	Revenue Total:		55,000	376,789	387,241
	Expense:				
		Salaries	-	181,571	182,270
		Mandatory Fringe Benefits	-	81,705	91,152
		Program expenses	55,000	55,000	55,000
		Overhead	-	58,513	58,819
	Expense Total:		55,000	376,789	387,241

Arts Commission - March 2, 2012
Budgeted Revenues Expenditures by Program

Program	Description	Title	FY11-12	FY12-13	FY13-14
			Approved Budget	Proposed Budget	Proposed Budget
Public Art					
	Revenue:				
		2% Art Enrichment Fund	1,817,553	1,437,660	1,054,444
		Transit Advertising	109,586	109,586	109,586
		JC DeCaux	4,000	4,000	4,000
	Revenue Total:		1,931,139	1,551,246	1,168,030
	Expense:				
		Salaries	500,098	593,757	593,757
		Mandatory Fringe Benefits	175,034	237,503	237,503
		Overhead	114,714	116,622	118,529
		Other Expenses	113,586	113,586	113,586
		Artist Services	914,121	489,778	104,655
		Special Projects	113,586	113,586	113,586
	Expense Total:		1,931,139	1,664,832	1,281,616
		Total Project Cost			
Civic Collection					
	Revenue:				
		General Fund	-	255,500	265,118
		2% Art Enrichment Fund	49,491	36,256	36,256
		Airport Work Order	31,025	31,025	31,025
		Capital Maintenance*	75,000		
	Revenue Total:		155,516	322,781	332,399
	Expense:				
		Salaries	9,222	178,521	179,208
		Mandatory Fringe Benefits	3,680	77,229	86,225
		Overhead	49,491	49,877	50,264
		Other Expenses	18,123	17,154	16,702
		Capital Maintenance*	75,000		
	Expense Total:		155,516	322,781	332,399
Street Artists					
	Revenue:				
		License Fees	262,313	262,313	262,313
		Interest Earned	-	568	568
		Fund Balance	-	31,821	1,331
	Revenue Total:		262,313	294,702	264,212
	Expense:				
		Salaries	123,372	125,000	126,300
		Mandatory Fringe Benefits	55,448	63,568	70,811
		Overhead	29,675	33,684	34,063
		Management Supervision	18,085	18,307	18,757
		Legal Services	20,396	20,396	20,396
		Other Expenses	30,842	32,416	29,516
	Expense Total:		277,818	293,371	299,843
Civic Design					
	Revenue:				
		Fee for Service	155,459	150,000	150,000
	Revenue Total:		155,459	150,000	150,000
	Expense:				
		Salaries	63,357	75,295	75,585
		Mandatory Fringe Benefits	29,429	32,789	36,632
		Overhead	-	16,585	16,700
		Other Expenses	62,673	25,331	21,083
	Expense Total:		155,459	150,000	150,000
Municipal Symphony Concerts					
(Charter Mandated Set Aside)					
	Revenue:				
		General Fund	1,985,087	1,985,087	1,985,087
	Revenue Total:		1,985,087	1,985,087	1,985,087
	Expense:				
		Contract (SF Symphony)	1,985,087	1,985,087	1,985,087
	Expense Total:		1,985,087	1,985,087	1,985,087

*The Capital Planning Committee will determine the Art Commission's capitol fund allocation in May.

File No. 12015

SOTF Item No. 14

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

April 25, 2012:

WILLIAM & ROBERT CLARK VS. CONTROLLER (12015) **COMPLAINT**

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark alleges that the Controller, Ben Rosenfield ("Controller"), violated section 67.21(b) of the Ordinance by failing to properly respond to his request for information pursuant to provisions of the San Francisco Sunshine Ordinance.

COMPLAINANT FILES COMPLAINT:

On March 7, 2012, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b).

JURISDICTION

The Controller is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the Controller. The Controller has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request, and the format of requests and of responsive documents.
- Section 67.22 governs the release of oral public information.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

DATE: April 25, 2012
PAGE: 2
RE: Clark vs. Controller (12015)

ISSUES TO BE DETERMINED**Uncontested/Contested Facts:**

On February 18, 2012, Complainant sent Ben Rosenfield the following email:

At the Arts Commission Executive Committee meeting on January 30, 2012 the proposed Street Artist Program budget for FY 2012-13 was discussed. I received a copy of the proposed budget for FY 2012-13 on January 27, 2012.

On the spreadsheet of the proposed budget for FY 2012-13 the figures for the Street Artist Program budget for FY 2010-11 were included. In those figures were the estimated expenses which were approved by the Board of Supervisors for the FY 2010-11 budget and the actual expenses incurred by the Street Artist Program for FY 2010-11. I am including an attachment of that spreadsheet with this email.

I noticed that under the actual expenses for FY 2010-11 was a management and supervision charge of \$19,953. However, that management and supervision charge was not included and approved by the Board of Supervisors in the annual appropriation ordinance.

I also noticed that an actual expense of \$1,317 for security/ police at meetings was charged the Street Artist Program for FY 2010-11 which was not included in the Street Artist Program Budget approved by the Board of Supervisors.

In the SF Charter Article III Section 3.105(i) states that "i) All disbursements of funds in the custody of the Treasurer must be authorized by the Controller. No officer or employee shall bind the City and County to expend money unless there is a written contract or other instrument and unless the Controller shall certify that sufficient unencumbered balances are available in the proper fund to meet the payments under such contract or other obligation as these become due, or that he or she expects sufficient unencumbered balances to be available in the proper fund during the course of the budgetary cycle to meet the payments as they become due."

Also SF Administrative Code Section 10.06 ENCUMBRANCES states that "No obligation involving the expenditure of money shall be incurred or authorized by any officer, employee, board or Commission of the City and County unless the Controller first certifies that there is a valid appropriation from which the expenditure may be made, and that sufficient unencumbered funds are available in the treasury to the credit of such appropriation to pay the amount of such expenditure when it becomes due and payable."

Did you authorize the payment of that \$19,953 management and supervision charge for FY 2010-11?

DATE: April 25, 2012
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RE: Clark vs. Controller (12015)

If your answer is yes then on what date did you authorize that management and supervision charge?

Did you authorize the payment of \$1,317 for security/ police at meetings for FY 2010-11?

If the answer is yes then on what date did you authorize that security/ police at meetings charge?

I also noticed that the Street Artist Program was only budgeted \$13,910 for City Attorney legal services for FY 2010-11 but the program actually spent \$20,396 for City Attorney legal services.

According to SF Administrative Code Section 10.05 ALLOTMENTS "The Controller in issuing warrants or checks or in certifying contracts or purchase orders or other encumbrances, pursuant to Section 10.06 of this Code, shall consider only the allotted portions of appropriation items to be available for encumbrance or expenditure and shall not approve the incurring of liability under any allotment in excess of the amount of such allotment.

After the allotment schedule has been established or fixed, as heretofore provided, it shall be unlawful for any department or officer to expend or cause to be expended a sum greater than the amount set forth for the particular activity in the said allotment schedule so established unless an additional allotment is made, as herein provided."

Did you authorize the Street Artist Program to spend \$6,486 more for City Attorney legal services than the \$13,910 approved by the Board of Supervisors?

If the answer is yes then on what date did you make that authorization?

I'm making this request for information pursuant to the provisions of the San Francisco Sunshine Ordinance.

Mr. Rosenfield responded on February 22, 2011 with the following email:

This email responds to your Information Request below. The Controller's Office is invoking the extension of time provided by the Sunshine Ordinance, Administrative Code Section 67.25(b). As permitted by Section 67.25(b), this Office will respond to your request within 10 business days of its receipt.

The Controller's Office is invoking the extension because your request is a "more extensive or demanding request" and is not a "simple routine or other readily answerable request" as described in Section 67.25(a). Some of the information you requested involves the need to consult with other departments, a reason for an extension under Section 67.25(b). We expect to respond to you within the 10 business day deadline and we will produce the information on a rolling basis as it is ready.

Complainant further alleges that, as of March 7, 2012, he had not received any further response from Mr. Rosenfield. The Controller has provided no response to this Complaint.

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LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the Controller timely respond to the request?
- Did the Controller fully respond to the request?
- Is the Controller legally required to provide information in response to interrogatories, such as those included in Complainant's email request?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

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RE: Clark vs. Controller (12015)

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) *A custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) *A custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

[...]

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing

DATE: April 25, 2012
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concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

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No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.



To:
Cc:
Bcc:
Subject: Fw: 2nd complaint

Complaint Form

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102
Tel. (415) 554-7724;
Fax (415) 554-7854
<http://sfgov.org/sunshine>

(* Required field)

Complaint against which Department or Commission * SF Controller
Name of individual contacted at Department or Commission Ben Rosenfield
Alleged Violation:
Public Records: * Yes
Public Meeting: * No
Date of meeting:
Sunshine Ordinance Section:
(If known, please cite specific provision being violated) Section 67.21(b)

Please describe alleged violation:

On February 18, 2012 I sent the Controller Mr. Rosenfield the following email:

Bill and Bob
Clark

access4less.net> Controller@sfgov.org
cc
02/18/2012 03:03 Debbie.Toy@sfgov.org,
PM Leo.Levenson@sfgov.org,
Mayoredwinlee@sfgov.org,
Rebekah.krell@sfgov.org,
Please respond to tom.decaigny@sfgov.org
Bill and Bob Subject
Clark Public information request

access4less.net>

Mr. Rosenfield,

At the Arts Commission Executive Committee meeting on January 30, 2012 the proposed Street Artist Program budget for FY 2012-13 was discussed. I received a copy of the proposed budget for FY 2012-13 on January 27, 2012.

On the spreadsheet of the proposed budget for FY 2012-13 the figures for the Street Artist Program budget for FY 2010-11 were included. In those figures were the estimated expenses which were approved by the Board of

Supervisors for the FY 2010-11 budget and the actual expenses incurred by the Street Artist Program for FY 2010-11. I am including an attachment of that spreadsheet with this email.

I noticed that under the actual expenses for FY 2010-11 was a management and supervision charge of \$19,953. However, that management and supervision charge was not included and approved by the Board of Supervisors in the annual appropriation ordinance.

I also noticed that an actual expense of \$1,317 for security/ police at meetings was charged the Street Artist Program for FY 2010-11 which was not included in the Street Artist Program Budget approved by the Board of Supervisors.

In the SF Charter Article III Section 3.105(i) states that "i) All disbursements of funds in the custody of the Treasurer must be authorized by the Controller. No officer or employee shall bind the City and County to expend money unless there is a written contract or other instrument and unless the Controller shall certify that sufficient unencumbered balances are available in the proper fund to meet the payments under such contract or other obligation as these become due, or that he or she expects sufficient unencumbered balances to be available in the proper fund during the course of the budgetary cycle to meet the payments as they become due."

Also SF Administrative Code Section 10.06 ENCUMBRANCES states that

"No obligation involving the expenditure of money shall be incurred or authorized by any officer, employee, board or Commission of the City and County unless the Controller first certifies that there is a valid appropriation from which the expenditure may be made, and that sufficient unencumbered funds are available in the treasury to the credit of such appropriation to pay the amount of such expenditure when it becomes due and payable."

Did you authorize the payment of that \$19,953 management and supervision charge for FY 2010-11?

If your answer is yes then on what date did you authorize that management and supervision charge?

Did you authorize the payment of \$1,317 for security/ police at meetings for FY 2010-11?

If the answer is yes then on what date did you authorize that security/ police at meetings charge?

I also noticed that the Street Artist Program was only budgeted \$13,910 for City Attorney legal services for FY 2010-11 but the program actually spent \$20,396 for City Attorney legal services.

According to SF Administrative Code Section 10.05 ALLOTMENTS

"The Controller in issuing warrants or checks or in certifying contracts or purchase orders or other encumbrances, pursuant to Section 10.06 of this

Code, shall consider only the allotted portions of appropriation items to be available for encumbrance or expenditure and shall not approve the incurring of liability under any allotment in excess of the amount of such allotment.

After the allotment schedule has been established or fixed, as heretofore provided, it shall be unlawful for any department or officer to expend or cause to be expended a sum greater than the amount set forth for the particular activity in the said allotment schedule so established unless an additional allotment is made, as herein provided."

Did you authorize the Street Artist Program to spend \$6,486 more for City Attorney legal services than the \$13,910 approved by the Board of Supervisors?

If the answer is yes then on what date did you make that authorization?

I'm making this request for information pursuant to the provisions of the San Francisco Sunshine Ordinance.

William J. Clark

Mr. Rosenfield responded on February 22, 2011 with the following email:

From: Controller.CON@sfgov.org [Edit Address Book]
To: Bill and Bob Clark
Cc: Controller@sfgov.org, Monique.Zmuda@sfgov.org
Subject: Public Information Request, Bill & Bob Clark, #2012-0006
Date: Feb 22, 2012 2:27 PM
Attachments: Copy of Street Artist Budget FY12-13 FY13-14.jpg

Gentlemen:

This email responds to your Information Request below. The Controller's Office is invoking the extension of time provided by the Sunshine Ordinance, Administrative Code Section 67.25(b). As permitted by Section 67.25(b)(a), this Office will respond to your request within 10 business days of its receipt.

The Controller's Office is invoking the extension because your request is a "more extensive or demanding request" and is not a "simple routine or other readily answerable request" as described in Section 67.25(a). Some of the information you requested involves the need to consult with other departments, a reason for an extension under Section 67.25(b). We expect to respond to you within the 10 business day deadline and we will produce the information on a rolling basis as it is ready.

Thank you.

As of today, March 7, 2012, I have not received any further response from Mr. Rosenfield.

Therefore, I am filing this complaint.

Do you wish a public hearing before the Sunshine Ordinance Task Force? * Yes

Do you also want a pre-hearing conference conference before the Complaint Committee? No

(Optional)

Date: March 7, 2012

Name: William J. Clark

Address: P.O. Box 882252

City: SF

Zip: 94188

Telephone: 415-822-5465

Email: billandbbclark@access4less.net

If anonymous, please let us know how to contact you. Thank you.
I request confidentiality of my personal information. No

Notice: Personal Information that you provide is subject to disclosure under the California Public Records Act and the Sunshine Ordinance, except when confidentiality is specifically requested. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone Number, Fax Number, or Email address).

Last updated: 9/1/2009 10:40:32 AM

File No. 12016

SOTF Item No. 15

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Complaint
Response

OTHER

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<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



Complaint against the Castro Benefit District

mpetrelis

to:

sotf

02/28/2012 02:08 PM

Cc:

pmonette-shaw, rak0408, kimo

Show Details

1 Attachment



CBD June 2011 agenda.pdf

Sunshine Ordinance Task Force
City Hall
San Francisco, CA

Dear SOTF Members,

I wish to file a complaint against the Castro Benefit District for what I believe are several violations of Sunshine statutes.

First, the June 2011 agenda for the CBD's board of directors meeting (see attached document), doesn't list an item solely about the history of the rainbow flag at Harvey Milk Plaza. However, the minutes for the meeting show that an individual by the name of Patrick Batt, who is not a member of the CBD board, made a full ten-minute presentation regarding the troubled history of the public flag at Milk Plaza. This presentation was separate from the agenda item related to sending a letter to the Department of Public Works.

Source:

http://castrocbd.org/content/images/stories/monthly_minutes_2011/CastroCBDMinutesBoard_06-09-11_Final.pdf . See page 4.

In short, without proper public notification, the CBD significantly altered the agenda, in my view.

Second, those minutes do not accurately reflect what the unnamed members of the public had to say and indeed, strong opposition to the Patrick Batt presentation was omitted by the CBD's person taking notes. Further, the CBD note-taker assertively pushes every member of the public to sign-in on an attendance record, giving one's name, address, email, etc., but members of the public always have their names omitted from the minutes and we would like our comments and names included and to be accurate.

My third issue pertains to the lack of minutes on the CBD's site for its committee meetings. The CBD says:

"Here you will find our monthly minutes, reports from committees and vendors, newsletters and meeting agendas as they become available."

Source: <http://castrocbd.org/content/reports-a-publications>

However, there are no reports from the committees and no information is provided about how to obtain the public records off-line or perhaps elsewhere on the CBD site.

Therefore, I request that the SOTF consider hearing my complaint before the proper committee of the body.

Sincerely,
Michael Petrelis
PH: 415-621-6267



06-03-11P05:22 RQVD

**Castro/Upper Market Community Benefit District
AGENDA**

June 9, 2011 6:00 p.m.

Location: Castro Community Room 501 Castro St. (above the Bank of America)

- I. Introductions
 - a. Brown Act

- II. May Minutes

- III. President's Report

- IV. Treasurer's Report
 - a. Review Financial Situation
 - b. Review of Financial Statements
 - c. Finance Committee Report

- V. Committee Reports and New Business
 - a. Executive Committee Report
New Business: Motion: To ratify the Executive Committee's decision to support the addition of a metered parking space on the west side of Noe Street in front of the community garden in the space where there is currently a curb cut and free/open unmetered parking.
- Vote
Motion: To ratify the Executive Committee's decision to send to Supervisor Weiner a letter in support of the Chevron Gas Station's claim regarding cracked sidewalks at 17th and Market. - Vote

 - b. Finance Committee Report
 - i. FY 2011-12 Budget
New Business: Motion: to approve the FY 2011-2012 budget as presented by the Finance Committee. - Vote

 - b. Streetscape Committee Report

GOVERNMENT
DOCUMENTS DEPT

JUN 08 2011

SAN FRANCISCO
PUBLIC LIBRARY

New Business: Motion: To approve the recommendation from the Joint Streetscape/Services Committee meeting on Harvey Milk Plaza redesign to encourage a safe and comfortable environment for pedestrians. – Vote

c. Services Committee Report

d. Other New Business

- i. Motion: To encourage DPW to convene a meeting with all interested parties to discuss the decision-making process concerning the flag/flagpole at Harvey Milk Plaza. – Vote
- ii. Motion: To support policies/practices which encourage responsible drinking on Pink Saturday to ensure the event is a positive community event. – Vote
- iii. Motion: To support the WIN Center. – Vote (J.D. Petras to briefly present an overview of the WIN Center.)

VI. Executive Director's Report

VII. Public Comment

VIII. Adjourn

Members of the public will be permitted to comment based on a first come, first served basis. Public Comment is limited to 2 minutes per person per item, and 6 minutes total per item, which may result in only a limited number of members of the public being able to comment on each agenda item. Public comment will be taken after board/committee member discussion of item and before board/committee vote on an item. Members of the public must follow these time limits when making their comments and will be asked to stop their comments once they have reached their allotted time.

Pursuant to Section 54957.9 of the Brown Act, the Board shall exclude or remove all persons who willfully cause a disruption of a meeting so that the meeting cannot be conducted in an orderly manner.

If, due to a disability, you require accommodations to attend this meeting, please contact Andrea Aiello – (415) 500-1181.



CASTRO/UPPER MARKET COMMUNITY BENEFIT DISTRICT

584 Castro Street #336; San Francisco CA 94114

www.CastroCBD.org 650/355-1294

Minutes of the Regular Monthly Board of Directors Meeting on June 9, 2011 Castro Community Room, 501 Castro Street, Second Floor, San Francisco, California

The meeting was called to order at 6:05pm by Vice President Tim Patriarca chairing for President Dominic Campodonico who could not attend.

A quorum was present and was maintained throughout the meeting.

Directors Present: Joel Bubeck, Treasurer Herb Cohn, Jim Laufenberg, Vice President Tim Patriarca, Pat Sahagun, Secretary Pauline Scholten, Blake Smith, Ken Wingard;

Directors Absent: Excused absences: President Dominic Campodonico, Gustavo Serina, Richard Sollitto;
Unexcused absences: none

Staff, Guests: Seven (7) members of the public and the media; Executive Director Andrea Aiello; Richard Magary (taking Minutes).

An agenda was distributed to Board members and guests.

Introductions

The Board members publicly introduced themselves and guests were invited (but not required) to introduce themselves.

Brown Act Notice

Tim summarized California's Brown Act, as its rules apply to the CBD's Board meetings. They include provisions that meetings are publicly noticed in advance and are open to the public; for public comment on each agenda item, and before any vote is taken; and for general Public Comment, scheduled as Item VIII on the Agenda for this meeting, to be called in order but no later than 7:25pm. Guests who interrupt or are otherwise disruptive of the Meeting will be given a verbal warning. If a second interruption or disruption by the individual(s) occurs at the meeting, they will be asked to leave.

Minutes from May 12, 2011

After corrections were noted, those Minutes were adopted by general consent.

President's Report

No President's report was made, since Dominic was absent.

Andrea asked Board Members if they wanted to hold the regularly-scheduled July meeting on July 14. In the past two years, the July meeting was not held. After discussion, it was agreed to schedule the July meeting as usual, and to consider then whether to hold an August meeting.

Committee Reports

Executive Committee

Tim gave the Executive Committee Report.

- A Motion was made by the Executive Committee (no second required) to ratify the Executive Committee's decision to support the addition of a metered parking space on the west side of Noe Street

in front of the Community Garden in the space where there is currently a curb cut and free/open unmetered parking. After Board discussion and a call for public comment on the Motion (there was none), the Motion passed *unanimously*.

- A Motion was made by the Executive Committee (no second required) to ratify the Executive Committee's decision to send to Supervisor Wiener a letter in support of the Chevron Gas Station's claim regarding cracked sidewalks at 17th and Market Streets. Director Pat Sahagun recused himself and left the room during discussion of and voting on this Motion. After Board discussion and a call for public comment on the Motion (there was none), the Motion passed *unanimously*.

Public Comment was invited on the Executive Committee report. There was none.

Board Development Committee

Andrea reported on behalf of the Committee that Director Richard Sollitto submitted his resignation due to extended personal obligations outside of San Francisco.

- A Motion was made (M-JL, 2nd-BS) to accept the resignation with regret and thanks for his past service and to instruct the Executive Director to send a letter to that effect to Richard. After Board discussion and a call for public comment on the Motion (there was none), the Motion passed *unanimously*.

Streetscape Committee

Ken presented the Streetscape Committee report.

- A Motion was made (M-KW, 2nd-JL) from the Streetscape Committee to approve the recommendation from the Joint Streetscape/Services Committee meeting on Harvey Milk Plaza redesign to encourage a safe and comfortable environment for pedestrians.

As a related development, Ken said that Supervisor Wiener is developing legislation to clarify operating hours, permitted activity, etc. in Jane Warner Plaza, since (as a City "Pavement to Parks" project) it does not fall under all existing, appropriate City regulations. Ken also explained that, in a joint meeting, the Streetscape and Services Committees discussed a 30 day pilot program to hire private security guard firm to monitor activity in the two Plazas for six hours per day at varying times of day, seven days a week, starting as soon as possible. There was also discussion at this Joint Committee meeting to somehow close off the benches during late evening hours and early morning, and have the hours that the seating is open posted. The cost for the pilot would not exceed \$6,000. Budgeted funds are available for the project.

- During discussion of the Motion, an Amendment was made (M-KW, 2nd-BS) to spend up to \$6,000 from the existing Security Services budget for the 30 day security guard pilot program described above; that the Services Committee would interview and select a contractor; to issue media information to emphasize the CBD's concerns and efforts to improve quality of life issues in the two Plazas; to assure that guards working on the project are given training, orientation, and a purpose-appropriate job description; and that the pilot be monitored and evaluated after 30 days.

Ken explained that this Motion and Amendment were intended to show the CBD's understanding of and desire to respond to concerns expressed by neighbors and merchants. If judged successful and/or as modified from experience during the pilot period, the program could be extended. During the pilot, CBD Committees also should continue to consider other options for the Plazas. The options include removing, modifying or replacing the Harvey Milk Plaza benches, somehow closing them off during certain times and creating hours during the day that the seating would be open. Hours and duties of the security guards under the pilot program should be coordinated with existing S.F. Patrol Special Police assignments in the area

After extended Board discussion, there was a call for Public Comment. One speaker suggested that the use of a non-profit security service contractor be considered. The suggestion will be considered by the Services Committee when interviewing and selecting a contractor. Then, the Amendment was voted upon; it was *approved* with one dissenting vote. Then, the Motion as amended was approved *unanimously*.

Committee Reports were suspended at this point to hear the:

Treasurer's Report

Herb presented the Treasurer's Report for March 2011:

March beginning of month cash balances were \$340,255.58

During the month of March 2011, the CBD earned interest earned of \$103.25 and received flower basket donations of \$9.10.

Expenses for March were \$31,950.44 for our maintenance contract, administration costs, and ongoing programs.

March end of the month cash balances were \$308,417.49

He also distributed to Board Members the Balance Sheet as of March 31, 2011 and the Profit & Loss statement for July 2010 – March 2011. He also will send the March 2011 Profit & Loss Statement by email to Board Members. At next month's meeting, he will present Treasurer's information for both April and May.

Public Comment was invited on the Treasurer's Report. There was none.

Committee Reports continued at this point in the meeting.

Finance Committee Report

Herb presented the Finance Committee report, with the proposed budget for July 1, 2011 – June 30, 2012, which he explained, and the Board discussed. Herb noted that projections for next year also include \$378,188 in carryover and reserves, which include the mandated final six months of operating costs at the end of the CBD's current ten year life. The proposed budget meets all expense percentages mandated by the CBD's Management Plan. During discussion the allocations between Economic Development and Streetscape budget lines were discussed.

- A Motion was made by the Finance Committee (no second required) to approve the 2011-2012 budget as presented. After further Board discussion and a call for public comment on the Motion (there was none), the Motion passed *unanimously*.

After the vote, it was noted that the 2011-2012 Budget included a recommended increase in Assessments of 1.5% or \$6,030, as permitted by the Management Plan and calculated according to a CPI index as required. Concern was expressed by some Board members that future budgets and recommended assessment increases should be presented and voted upon clearly and separately.

- A Motion was made (M-BS, 2nd-HC) to rescind the above approval of the 2011-2012 budget, to allow for additional discussion. After Board discussion and a call for public comment on the Motion (there was none), the Motion passed *unanimously*.

There then was further discussion of the recommended Assessment increase, the history of past increases (and years in which there had been none), the base amount and CPI formula used to calculate the increase, and related issues.

During this discussion, Ken served for several minutes as temporary chair in Tim's absence.

- A new Motion was made by the Finance Committee (no second required) to approve the 2011-2012 Budget as presented, including the proposed 1.5% Assessment increase. After further Board discussion and a call for public comment on the Motion (there was none), the Motion was *approved* with two dissenting votes.

Services Committee Report

Joel presented the Services Committee report.

He reported on the continuing issue of alleged damage to the building facade at 1857 Market Street by MJM workers removing graffiti. Total cost was \$5,676. Negotiations with MJM have led to a proposed settlement under which MJM would pay one-half (\$2,838) and the CBD would pay one-half (\$2,838), based on the fact that MJM's workers did the alleged damage and that the CBD does not have graffiti removal damage waivers from property owners, as is the policy with several other CBDs in the City.

Castro/Upper Market CBD Minutes June 2011

There could not be a vote on the matter at this meeting, since the item was not publicly noticed in advance as required by the Brown Act. It was the sense of the Board discussion on the matter that six of eight attending Board members favored the proposed resolution with MJM, to take as a "lesson learned" and to resolve the issue. Andrea further reported that graffiti damage waivers based on those used by other CBDs are being prepared and will be mailed to all property owners in the CBD during June. Although no vote was to be taken on the matter tonight, Public Comment was invited on the issue. There was none.

The matter was referred to the Executive Committee for further action and a report back to the full Board at the next meeting.

Other New Business

Rainbow Flag

Patrick Batt was invited to speak on the issue of the Rainbow Flag which currently is maintained under the stewardship of MUMC (Merchants of Upper Market & Castro) at Harvey Milk Plaza. Patrick is a longtime local businessperson and MUMC Member. He was MUMC's president when the agreement between MUMC and the City concerning the Rainbow Flag and flagpole at Harvey Milk Plaza was made and remains involved in MUMC's Flag stewardship. He noted that MUMC became involved after the Rainbow Flag, with no entity really in charge to take care of it, subsequently suffered from neglect and was in disrepair. No City department or other local group was willing to take responsibility for on-going maintenance, other necessary funding and support. MUMC agreed to assume responsibility for maintenance, flag replacements (typically about 4 times per year), insurance and other items. Patrick added that MUMC had a letter between DPW and MUMC, authorizing this agreement. He said he had the letter at home, but didn't think of bringing it with him. Patrick noted that the Castro St. Fair contributes \$4,000 annually for the flag replacement and MUMC pays for the insurance. MUMC also coordinates the general maintenance of the flag through volunteers. MUMC soon began receiving an increasing number of requests to temporarily replace and/or lower the flag on behalf of and in honor of various individuals, organizations, etc. The MUMC Board considered these requests and found the volume and variety of them, as well as practical operating and safety issues involving flying the flag at half-staff to be a lot for a volunteer organization to handle. As the task of making judgments became increasingly difficult, a policy evolved that the flag would be maintained at full-staff at all times, except in extremely rare and unique situations to be considered by the MUMC Board.

At this point in the meeting it was 7:25pm and discussion of the Rainbow Flag was suspended for public comment.

General Public Comment

Tim called for general Public Comment on CBD-related issues not listed on tonight's Agenda. There was none.

Rainbow Flag, continued

- A Motion was made (M-PS, 2nd-JB) to encourage the S.F. Department of Public Works to convene a meeting with all interested parties to discuss the decision-making process concerning the flag/flagpole at Harvey Milk Plaza.
- During discussion of the Motion, an Amendment was proposed to add a request that Supervisor Scott Wiener be asked to follow up on the proposed request for a DPW meeting. The Motion for Amendment failed for lack of a second, and discussion continued on the primary Motion. Members of the public attending were invited to participate in the ensuing discussion. It was noted that MUMC's significant contributions regarding the Flag are appreciated, but that MUMC may not have communicated as effectively as it could have in the past, regarding its role, policies and procedures, etc. regarding the Flag. Why the issue has become an issue for CBD discussion also was questioned. Several Board members expressed the feeling that the issue should be discussed between community and neighborhood representatives and appropriate officials at City Hall, including our Supervisor, not by the CBD. Following further discussion, and Public Comment having been heard as part of the discussion, the Motion *failed* with one yes vote and 7 no votes.

- A Motion was made (M-BS, 2nd-JB) to support policies/practices which encourage responsible drinking on Pink Saturday (June 25) to ensure that the event is a positive community event. During discussion, it was noted that alcohol drinking's negative effect on major events such as Pink Saturday is a growing problem. The purpose of this Motion is to show the CBD's support for SFPD Mission Station's Castro Liaison Sgt. Chuck Limbert's call for responsible alcohol serving and selling practices by licensed premises during Pink Saturday and similar events. It was noted that Jane Warner Plaza will be closed to the public during Pink Saturday, and that SFPD's local command post will be located there. All persons entering the gated event will be screened for metal objects and no alcohol containers will be allowed through the gates. Licensed premises are being reminded by SFPD and the State Alcoholic Beverage Commission of the strict off-sale rules for various license types. After Board discussion and a call for Public Comment (there was none), the Motion passed *unanimously*.
- A Motion was made (M-HC, 2nd-BS) to support the WIN Center, a proposed pharmacy and Medical Cannabis Dispensary (MCD) at 260 Noe Street. JD Petras, Edward Huser and attorney Douglas Evans representing the WIN Center were invited to make a brief presentation. The operation will be 90% holistic, organic medicine and about 10% MCD with no smoking or other consumption allowed on premises or in the area. It will be non-profit, operating in partnership with other groups such as IEP, LYRIC, etc. Most surplus funds will benefit organizations and causes in The Castro. The project is seeking MCD approval, and a "spot zoning" exemption from Planning Code provisions, since it will be less than the required 1,000 feet from some local schools. It will be between 850 and 920 feet from McKinley and Harvey Milk schools. State MCD regulations permit MCDs to operate as close as 600 feet from schools, but San Francisco has a 1,000 foot rule. During the Board discussion that followed, Ken served for several minutes as temporary chair in Tim's absence. Board discussion noted that there already are at least four permitted MCDs in the area, plus others in surrounding neighborhoods. The need for vibrant local businesses of all types, the benefits provided by medical cannabis products, the presence at nearby restaurants of families with young children, whether this is an appropriate topic for CBD consideration (vs. neighborhood groups such as DTNA in this case), also were points noted by Board members. After a call for Public Comment on the item (there was none) the Motion *passed* with two no votes and one abstention. Andrea was instructed to write a letter regarding the CBD's support.

Executive Directors Report

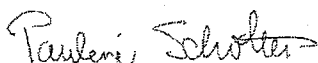
Andrea reported that the Ambassadors training will be held on Saturday June 11. She showed the materials bags that Ambassadors will carry/wear. She thanked Blake, Pauline and Joel for their help interviewing Ambassadors and the coordinator.

Adjournment

The meeting was adjourned at 8:05 pm.

Minutes taken and prepared by Richard Magary

Approved July 14, 2011



Pauline Scholten, Secretary



March 27, 2012

VIA E-MAIL ONLY

Sunshine Ordinance Task Force
c/o Andrea S. Ausberry, Administrator
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Rm. 244
San Francisco, CA 94102

RE: Castro/Upper Market Community Benefit District (Complaint No. 12016)

Dear Ms. Ausberry:

We are writing on behalf of our client, the Castro/Upper Market Community Benefit District (the "Castro CBD"), in response to complaint number 12016, filed with the Sunshine Ordinance Task Force (the "Task Force") by Mr. Michael Petrelis on March 20, 2012. As described in more detail below, the complaint should be dismissed both because the Castro CBD is not subject to the jurisdiction of the Task Force, and because the Castro CBD did not violate the Brown Act.

Background

The Castro CBD is a nonprofit corporation that has contracted with the City to manage a community benefit district of the same name in the Castro/Upper Market area of the City, which was created by resolution of the Board of Supervisors in 2005 pursuant to state law. More specifically, the Castro CBD is an "owners' association" under California Streets & Highways Code section 36614.5, which provides:

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act

(Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the district. [Emphasis added.]

This statutory language is specifically incorporated into the Castro CBD's contract with the City, which was entered into by the parties on February 27, 2006. (Copy attached.) Section 12.2 of that contract indicates that the contract is also subject to Section 67.24(e)¹ of the Sunshine Ordinance; however, the contract otherwise does not make the CBD subject to the Sunshine Ordinance.

The Task Force Has No Jurisdiction To Consider This Matter

The Castro CBD readily admits that it is subject to the requirements of the state Public Records Act ("PRA") and the Brown Act per its contract with the City. However, it is not subject to the Sunshine Ordinance (other than Section 67.24(e)), and consequently the Task Force simply does not have jurisdiction to hear the complaint filed in this matter.

State law, which takes precedence over any conflicting City law, clearly provides that the Castro CBD "is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose." Thus, state law prohibits the Task Force from considering the Castro CBD and its staff, officers and directors to be "policy bodies," "passive meeting bodies," or "departments" subject to the Sunshine Ordinance. (See S.F. Admin. Code sections 67.3 & 67.20.) Because the Castro CBD is not subject to the Sunshine Ordinance (other than Section 67.24(e)), it is not subject to the jurisdiction of the Task Force.

The City Attorney's Office made a substantially similar argument to the Task Force in 2010 with respect to a complaint against the North of Market/Tenderloin CBD. (See attached City Attorney Memorandum dated 11/5/10, Task Force Complaint 10052.) The Task Force nevertheless determined that it does have jurisdiction to consider purported CBD

¹ Section 67.24(e) provides for the disclosure of certain contracts, bids, and responses to RFP's by a person or firm seeking to contract with the City, as related communications between the City and that person or firm.

violations of the PRA/Brown Act pursuant to Section 67.30(c), which states 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 provision of this ordinance or the Acts."

We strongly urge the Task Force to reconsider this conclusion, which we believe is based on an overly broad reading of Section 67.30(c). State law does not contemplate that any local entity (other than the District Attorney's office) should enforce violations of the PRA or the Brown Act. Neither does the Sunshine Ordinance, which incorporates by reference the provisions of the PRA and the Brown Act simply to establish, without the need for redundant statutory language, minimum public access requirements upon which the Sunshine Ordinance expands with respect to City agencies. (See also Cal. Govt. Code section 6253(e) [local agency may adopt requirements for "faster, more efficient, or greater" access to public records].)

The flaw in the Task Force's prior reading of Section 67.30(c) is illustrated by taking it to its logical conclusion. Under that reading, the Task Force would have jurisdiction over any PRA/Brown Act complaints against a state or regional agency located in (or perhaps outside of) San Francisco. For example, this reading would presumably allow the Task Force to exercise jurisdiction over a PRA complaint against the California Public Utilities Commission. However, such an outcome is clearly in conflict with state law. For this reason and the reasons pointed out above, the Task Force's jurisdiction is limited only to City agencies (i.e., policy bodies, passive meeting bodies, and City departments), and it does not have jurisdiction over the Castro CBD.

In sum, the Task Force should dismiss Mr. Petrelis's complaint because it lacks the jurisdiction to consider any alleged violations of the PRA or the Brown Act by the Castro CBD.

Mr. Petrelis's Brown Act Claims Are Baseless

Even if it had jurisdiction over Mr. Petrelis's allegations, the Task Force should nevertheless dismiss his complaint because it fails to assert any cognizable violation of the Brown Act.

The first alleged violation involves the purported failure of the Castro CBD's agenda for its June 2011 Board meeting to reflect that a particular individual would speak on the topic of the flag at Harvey Milk Plaza. This claim is entirely spurious. The agenda

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for that meeting clearly notices a discussion and decision concerning the flag (see item V(d)(i)), and the Castro CBD was not under any obligation to specify in further detail who would speak to the issue.

Indeed, the Brown Act only requires that agendas contain “a brief general description of each item to be discussed or transacted at the meeting” so as to “inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.” (Cal. Govt. Code section 54954.2(a); California Attorney General’s Office, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003), p. 16 [Emphasis added].) The Castro CBD clearly fulfilled this requirement by indicating that the meeting would include a motion “[t]o encourage DPW to convene a meeting with all interested parties to discuss the decision-making process concerning the flag/flagpole at Harvey Milk Plaza.”

The second and third alleged violations involve purported deficiencies with respect to the drafting and posting of Castro CBD Board meeting minutes. However, these allegations plainly cannot constitute Brown Act violations because “the Brown Act imposes no requirements . . . regarding minutes of meetings.” (City Attorney of San Francisco, *Good Government Guide* (2010-2011), p. 133.)

In sum, Mr. Petrelis has failed to allege any violations of the Brown Act, so even assuming for the sake of argument that the Task Force had jurisdiction, it should still dismiss the complaint.

Conclusion

The Castro CBD understands the importance of its obligations under the PRA and the Brown Act, and works hard to comply with those obligations. However, Mr. Petrelis’s complaint is based on a faulty understanding of both the Brown Act as well as the Task Force’s jurisdiction. Consequently, the Task Force should dismiss Mr. Petrelis’s complaint.

We understand that the Complaint Committee will decide the jurisdictional issue at a public hearing. Please be sure to forward all meeting information to our attention in

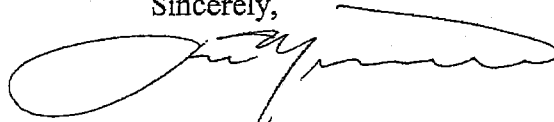
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advance of the hearing. Please also feel free to contact us with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Mainardi', written over a horizontal line.

Jesse Mainardi

Enclosures

JAM/lc

#1535.01

**AGREEMENT FOR THE ADMINISTRATION OF THE
"CASTRO/UPPER MARKET COMMUNITY BENEFIT DISTRICT"**

This Agreement ("Agreement") is entered into this February 27 2006 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), by and through the Mayor's Office of Economic and Workforce Development ("MOEWD") and subject to approval of the Board of Supervisors for the City and County of San Francisco (the "Board of Supervisors" or "Board") by resolution, and, CASTRO/UPPER MARKET COMMUNITY BENEFIT DISTRICT, a California nonprofit corporation ("Corporation"), acting as the "Owners' Association" pursuant to Sections 36614.5 and 36651 of the California Streets and Highways Code, to implement, administer and provide the property-related services, improvements and activities to be funded by special assessments the City has levied on Identified Parcels of real property included within the property-based business improvement district known as the *Castro/Upper Market Community Benefit District* ("District"), with reference to the following:

RECITALS

WHEREAS, pursuant to Article XIIIID of the California Constitution ("Article XIIIID"), adopted by the California voters in November 1996 as Proposition 218, California Government Code Section 53753 ("Section 53753"), and other legal authorities, revenues from assessments on real property may only be used for the capital costs of public improvements, maintenance and operation expenses of public improvements, and costs of property-related services, that confer "special benefits" (as defined in Article XIIIID, Section 2(i)) upon the assessed parcels. The assessment on each assessed parcel may not exceed the proportional reasonable cost of the special benefits conferred on the parcel in relation to the total cost of the special benefits conferred on all parcels within a defined geographic area subject to assessment.

WHEREAS, on June 7, 2005, acting pursuant to the Property and Business Improvement District Law of 1994, Part 7 of Division 18 of the California Streets and Highways Code (commencing with Section 36600), as augmented by Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), Article XIIIID and Section 53753, the Board of Supervisors adopted Resolution No. 421-05 ("Resolution of Intention") declaring the Board's intention to form a property-based business improvement district and to levy assessments on parcels to be included within the district, setting the public hearing, initiating mail ballot majority protest proceedings, approving the Castro/Upper Market Community Benefit District Management District Plan (the "Management District Plan" or "Plan"), making various findings and taking other legislative actions required to form the proposed district and levy the proposed assessments (Board File No. 050924).

WHEREAS, on August 2, 2005, the Board of Supervisors, acting pursuant to the Property and Business Improvement District Law of 1994, as augmented by Article 15, adopted Resolution No. 582-05 ("Resolution of Formation"), establishing the property-based business improvement district designated as the "*Castro/Upper Market Community Benefit District*" and levying multi-year special assessments on Identified Parcels (as defined herein) included within the District ("Assessments") (Board File No. 051187)(Controller's Special Assessment No. 64).

WHEREAS, the District is not a governmental, corporate or separate legal entity, but is a geographic area containing all of the Identified Parcels subject to the Assessments the Board of Supervisors has levied for purposes authorized by the Property and Business Improvement District Law of 1994, Article 15, Resolution of Formation, Management District Plan and Annual Reports.

WHEREAS, pursuant to the Article XIID, Section 53753, the Property and Business Improvement District Law of 1994, Article 15 and the Resolution of Formation, the Assessments may only be used to fund property-related services, "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and "Activities" (as defined in Section 36613 of the Streets and Highways Code) within the District in accordance with the Management District Plan (collectively, "District Programs"). The Board of Supervisors may amend the Plan from time to time in accordance with the Property and Business Improvement District Law of 1994.

WHEREAS, Corporation shall hold in trust all funds it receives from the City that are derived from the City's levy and collection of the Assessments exclusively for the purposes of implementing the Management District Plan, and administering, managing and providing District Programs, directly by Corporation's personnel or by third party providers contracting with Corporation, as set forth in the Management District Plan, Resolution of Formation, and annual budgets set forth in the Plan for the first Fiscal Year of operations and, in subsequent Fiscal Years, set forth in the Annual Reports approved by the Board of Supervisors and Corporation's board of directors pursuant to Streets and Highways Code Section 36650, subject to the terms, conditions and restrictions set forth in this Agreement.

WHEREAS, the District Programs are supplemental to the municipal services the City currently provides within the boundaries of the District. Were it not for the City's establishment of the District, the supplemental property-related services, Improvements and Activities to be funded by the Assessments could not or would not be performed by the City or by City employees. The interests of the City, the owners of Identified Parcels and businesses and other tenants occupying the Identified Parcels are better served by an agreement pursuant to Streets and Highways Code Section 36651 between the City and an Owners' Association to implement the Management District Plan and administer, manage and provide the District Programs, than by the performance of such tasks by the City. In addition:

A. The City currently intends that the level of municipal services presently being provided by the City within the District ("baseline service level") will not be affected by the City's establishment of the District or the collection and expenditure of the Assessments for the District Programs.

B. The Board of Supervisors, by adopting a resolution approving this Agreement, authorizes MOEWD, as the City agency responsible under the Resolution of Formation for coordination between the City and the Owners' Association of the District to execute and administer this Agreement with Corporation.

C. Prior to the execution of this Agreement, Corporation has commenced tasks associated with this Agreement, including but not limited to: (i) forming the Corporation, (ii) obtaining approval of the officers and board of directors for the Corporation to enter into this Agreement and authorizing the execution hereof by the individual or individuals executing this Agreement on behalf of the Corporation, (iii) appointing an agent for service of process upon the Corporation, whose business address shall be in San Francisco and who shall accept service of process in San Francisco on behalf of the Corporation, (iv) establishing an account or accounts at a federally insured bank, a savings and loan, a credit union or other financial corporation acceptable to the City for the safekeeping of Assessments Funds the City disburses to or on behalf of the Corporation under this Agreement, and which Corporation shall authorize to disclose directly to the City all statements, records, and other information for all such accounts upon written request of the MOEWD, Controller, City Attorney, Ethics Commission or Grand Jury, (v) submitting to City the Articles of Incorporation and Bylaws of the Corporation acceptable to the City, (vi) submitting to City copies of the Corporation's application for non-profit status under Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended; (vii) obtaining a business registration certificate from the Tax Collector pursuant to Article 12 of the San Francisco Business and Tax Regulations Code, (viii) submitting to City a certificate of good standing, and (ix) submitting to the City additional records and information as may have been requested by the Clerk of the Board of Supervisors, MOEWD, Controller or City Attorney.

D. Prior to the commencement of District Programs, Corporation shall obtain insurance acceptable to the City's Risk Manager naming the City and related Indemnified Parties (as defined herein) as additional insured(s) or loss payee(s) as required in Article 10 of this Agreement, and provide copies of all documents, certificates and other records as may be required by City under this Agreement or applicable law prior to commencement of operations.

NOW, THEREFORE, City and Corporation, in consideration of the recitals, mutual promises, covenants, agreements, representations set forth below, and other valuable consideration the receipt of which is hereby acknowledged, hereby promise, covenant, agree and represent as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Specific Terms. Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

- (a) "**Activities**" shall, consistent with the definition set forth in Section 36613 of the Streets and Highways Code, mean, but is not limited to, all of the following:
 - (i) Promotion of public events which benefit businesses or real property in the District.
 - (ii) Furnishing of music in any public place within the District.
 - (iii) Promotion of tourism within the District.
 - (iv) Marketing and economic development, including retail retention and recruitment.
 - (v) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the City.
 - (vi) Other activities which specially benefit businesses and real property located in the District.

- (b) "**ADA**" means the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

- (c) "**Annual Report**" means the annual report required under Section 36650 of the Streets and Highways Code (including all information required to be contained in such report and all other substantive and procedural requirements set forth in the Property and Business Improvement District Law of 1994 and other laws therein referenced), for each Fiscal Year, as such report may be amended, modified or supplemented by the Board of Supervisors pursuant to Sections 36650, 36635 and 36636. All references in this Agreement to budgets, District Programs, authorizations, descriptions, specifications or other matters set forth in the "Annual Report" for any given Fiscal Year means the Annual Report as finally approved by the Board of Supervisors pursuant to Section 36650.

- (d) "**Assessments**" mean the special assessments levied by the Board of Supervisors on Identified Parcels of real property included within the District pursuant to the Resolution of Formation.

- (e) "**Assessment Funds**" and "**Assessment Revenues**" mean any and all money collected by the City from the levy of the Assessments, including all amounts collected as penalties and interest for delinquent payment of Assessments, and including all interest, dividends, income and other increases or accumulations from the deposit or investment thereof by or on behalf of the City or Corporation.

- (f) "**Charter**" means the Charter of the City and County of San Francisco.

- (g) "**City Attorney**" means the City Attorney of the City and County of San Francisco.

(h) "**Controller**" means the Controller of City and County of San Francisco.

(i) "**Disbursement & Depository Certification**" means a writing bearing the original signatures of authorized officers of the Corporation requesting that the Controller disburse Assessment Funds to Corporation by direct deposit, electronic transfer, delivery of a negotiable instrument or other means acceptable to Controller, for deposit into an account or accounts held in the name of the Corporation at a bank, savings and loan, credit union or other financial institution or firm acceptable to the Controller, and containing all of the following: (i) the name, address and telephone number of the San Francisco branch of such bank, savings and loan, credit union or other financial institution or firm, (ii) the specific account or accounts to which such funds are to be deposited for safekeeping, (iii) the name and contact information of the branch manager or other senior management employee at the branch to whom the City should direct communications regarding disbursements of Assessment Funds, and to whom or from whom instructions may be made and received regarding electronic transfers or other means of transferring Assessment Funds from the City treasury for deposit into Corporation's account(s), and (iv) such other information as may be required by the Controller or by the bank, savings and loan, credit union or other financial institution. The Disbursement & Depository Certification shall not be valid unless a certified copy of the resolution of Corporation's board of directors authorizing execution and delivery of such certification to the Controller, and containing all of the same information as must be specified in the certification, is affixed thereto and received by the Controller. The Controller may supplement, modify or waive any or all of the requirements for the Disbursement & Depository Certification set forth in this subsection (i) and Section 4.1 of this Agreement, in writing delivered to Corporation and the branch manager or other senior management employee specified in the certification. If no valid certification has been delivered to Controller, or such certification is no longer valid for any reason, the Controller's written supplement, modification or waiver may be delivered to the branch manager of the bank, savings and loan, credit union or other financial institution or firm at which Corporation maintains the account or accounts into which the Assessment Funds shall be deposited for safekeeping.

(j) "**Eligible Expenditures**" means expenditures of Assessments Funds for property-related services, Improvements and Activities included in the annual budget for the Fiscal Year in which the expenditure is made, as authorized by the Property and Business Improvement District Law of 1994 (as augmented by Article 15), Management District Plan, Resolution of Formation and Annual Reports for the relevant Fiscal Year.

(k) "**Event of Default**" shall have the meaning set forth in Section 11.1 of this Agreement.

(l) "**Fiscal Quarter**" means each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.

(m) "**Fiscal Year**" means each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.

(n) "**HRC**" means the San Francisco Human Rights Commission.

(o) "**Improvement**" shall, consistent with the definition set forth in Section 36610 of the Streets and Highways Code, mean the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (i) Parking facilities.
- (ii) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (iii) Trash receptacles and public restrooms.
- (iv) Lighting and heating facilities.
- (v) Decorations.

- (vi) Parks.
- (vii) Fountains.
- (viii) Planting areas.
- (ix) Closing, opening, widening, or narrowing of existing streets.
- (x) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (xi) Ramps, sidewalks, plazas, and pedestrian malls.
- (xii) Rehabilitation or removal of existing structures.

(p) "**Indemnified Parties**" means: (i) the City, including the Board of Supervisors, MOEWD, Controller, City Attorney and all other commissions, departments, agencies and other subdivisions of the City; (ii) elected officials, directors, officers, employees, agents, successors and assigns of the City; and (iii) all persons or entities acting on behalf of any of the foregoing.

(q) "**Identified Parcel**" shall, consistent with the definition in Government Code Section 53750(g), mean a parcel of real property included within the District, identified in the Management District Plan as having a special benefit or benefits conferred upon it, and upon which the Board of Supervisors has levied multi-year special assessments pursuant to Streets and Highways Code Sections 36625 and 36628.5, Article 15 and Resolution No. 582-05.

(r) "**Losses**" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(s) "**Management District Plan**" and "**Plan**" mean the proposal submitted to the Board of Supervisors pursuant to Section 36622 of the Streets and Highways Code, designated as the "Castro/Upper Market Community Benefit District Management District Plan" and approved by the Board of Supervisors by adoption on June 7, 2005 of Resolution No. 421-05, as the Plan may be amended, modified, corrected, supplemented or superceded by the Board of Supervisors from time to time pursuant to the Property and Business Improvement District Law of 1994, and including any attachments and exhibits thereto.

(t) "**Owners' Association**" shall, consistent with Section 36614.5 of the Streets and Highways Code, mean a private nonprofit entity that is under contract with the City to administer or implement activities (as defined in Section 36613 of the Streets and Highways Code) and improvements (as defined in Section 36610 of the Streets and Highways Code) that are specified in the Management District Plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding the previous sentence, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters concerning the District (including this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the District and the subject matter of this Agreement) are heard, discussed, or deliberated by Corporation's board of directors or any committee thereof, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the subject matter of this Agreement.

(u) "**Publication**" shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to the District, all or any portion of the Management District Plan or is paid for in whole or in part using Assessments Funds.

Section 1.2 Additional Terms. The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of the MOEWD, Board of Supervisors, Mayor, Controller, City Attorney, Risk Manager or other commission, department, agency, subdivision, elected official, director, officer, employee or agent of the City responsible for such direction, requirement, or permission, the case may be. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of the department, person or body described in the preceding sentence authorized to exercise such judgment on behalf of the City. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to such department, person or body authorized to grant such approval, acceptance or determination of satisfaction on behalf of the City, as the case may be. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation". The use of the term "subcontractor," "successor" or "assign" herein refers only to a subcontractor, successor or assign expressly permitted by the City in writing.

Section 1.3 References to this Agreement. References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with this Agreement and applicable law. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," herein or "hereto" refer to this Agreement as a whole.

Section 1.4 Other References. References in this Agreement to the Management District Plan, Annual Reports, budgets, resolutions, statutes, ordinances, regulations, agreements and other documents or materials include: (a) any and all appendices, exhibits, schedules, attachments thereto; (b) any and all statutes, ordinances, regulations, resolutions or other documents expressly incorporated by reference therein; and (c) any and all amendments, modifications or supplements thereto.

ARTICLE II

TERM OF AGREEMENT

Section 2.1 Period of Performance. Unless modified by mutual agreement of the parties through a written amendment to this Agreement, the period of performance under this Agreement shall be from the effective date the Board of Supervisors resolution approving this Agreement to and including December 31, 2021; provided, that if the District is disestablished pursuant to the Property and Business Improvement District Law of 1994 or Article 15, expires prior to December 31, 2021 for any reason, the City exercises its right to terminate this Agreement as provided herein, or this Agreement is terminated for any other reason, the period of performance shall end on the date the last of the following events occurs: (i) the Controller accepts in writing the Corporation's final accounting of all Assessment Funds disbursed by the City, (ii) the Corporation submits written confirmation acceptable to the Controller that there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the District, and (iii) any and all claims against the Corporation and the City arising out of this Agreement or the Corporation's administration, management and provision of the District Programs has been settled or finally adjudicated and all obligations relating thereto have been fully satisfied; provided, further, that certain obligations of Corporation with respect to the preservation of records, City's access to books and records, audits, insurance and indemnification of City and Indemnified Parties arising from Corporation's performance of this Agreement, implementation of the Management District Plan and receipt of Assessment Funds, shall, as specified in this Agreement and applicable law, survive the period of performance set forth in this section.

ARTICLE III
CORPORATION RESPONSIBILITIES

Section 3.1 District Programs; Implementation of Plan; Nonprofit Status of Corporation. Corporation shall, in good faith and with diligence, develop, implement, direct, manage, administer, operate and ensure the timely provision of all property-related services, Improvements and Activities as described in the Management District Plan, attached hereto as Appendix A and incorporated herein by reference. Corporation acknowledges and expressly agrees that, for the duration of this Agreement, it will: (i) comply with all applicable federal, state and local laws and regulations, (ii) continuously maintain its corporate status active and in good standing, (iii) continuously maintain nonprofit status under Section 501(c)_____ of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended. Corporation's failure to obtain approval from the Internal Revenue Service of Corporation's application for such non-profit status and all other approvals from any governmental agency as may be necessary to obtain such nonprofit status obtain within one (1) year of the effective date of the Board of Supervisors resolution approving this Agreement, or denial for any reason of Corporation's application for nonprofit status or request for other approvals as may be necessary therefor, if any, shall automatically terminate this Agreement. Corporation's abandonment of the application for nonprofit status or failure to promptly respond to requests for information or documents necessary to process the application shall constitute a material breach of this Agreement for which the City may exercise any of its remedies under this Agreement, including terminating this Agreement and entering into a contract with a different nonprofit entity to act as the Owners' Association for the District.

Section 3.2 Corporation's Personnel; Administration of Contracts with Third Parties; Accountability. The Management District Plan shall be implemented only by competent personnel under the direction and supervision of Corporation. Corporation shall be responsible for the oversight, administration and enforcement of any and all contracts with third parties to provide any property-related service, Improvement or Activity paid or to be paid with Assessment Funds. The use of Assessment Funds for purposes other than Eligible Expenditures by any third party under contract with Corporation shall be attributable to Corporation and shall be deemed a material breach of this Agreement for which the City may exercise any of its remedies under this Agreement or applicable law, including terminating this Agreement and entering into a contract with a different nonprofit entity to act as the Owners' Association for the District.

Section 3.3 Corporation's Board of Directors. Corporation shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Corporation's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Corporation's bylaws shall provide that, at all times this Agreement is in effect, not less than 20% of the voting members of its board of directors shall be individuals who (i) own or have an ownership interest in a businesses located in the District, and (ii) do not own or have an ownership interest in an Identified Parcel. Corporation's board of directors shall exercise such oversight responsibility as is necessary to ensure full and prompt performance by Corporation of its obligations under this Agreement and compliance with federal, state and local laws.

Section 3.4 Annual Reports. Corporation shall prepare and submit an Annual Report to the Clerk of the Board of Supervisors and the MOEWD for each Fiscal Year for which the City collects and disburses the Assessments. Corporation also shall prepare an Annual Report for any Fiscal Year in which it expends Assessment Funds carried over from the prior Fiscal Year even if no additional Assessment Funds are to be collected and disbursed to Corporation during the Fiscal Year covered by the report. The Corporation shall prepare all Annual Reports in accordance with Section 36650 of the Streets and Highways Code, and shall include in such reports, at a minimum, the proposed annual budget for the upcoming Fiscal Year and all items of information required by Section 36650. Corporation shall include in the Annual Reports such additional information and/or supporting

documentation as City may require. Not less than five percent (5%) of the revenues identified in the annual budgets for District Programs set forth in the Annual Reports shall be derived from sources other than the Assessments to cover the proportional share of the costs of general benefits conferred by the District Programs. The first Annual Report shall be submitted by July 31, 2006 and subsequent Annual Reports shall be submitted by July 31st of each subsequent Fiscal Year for the duration of this Agreement.

Section 3.5 Mid-Year Reports. In addition to the Annual Reports, Corporation shall submit mid-year reports to MOEWD on Corporation's operations for the first and second Fiscal Quarters of the then-current Fiscal Year for the duration of this Agreement. The first mid-year report shall be submitted by January 31, 2007, and subsequent mid-year reports shall be submitted by January 31 of each year thereafter. The mid-year reports shall describe the status and progress of the various District Programs as described and referenced in the Management District Plan and the Annual Reports for the first and second Fiscal Quarters. The mid-year reports shall be written in narrative summary form, and include summary statistical and financial data, a description of the status of each contract Corporation has with third parties to provide or perform any of the District Programs, actual versus budgeted expenditures corresponding to each line item in the corresponding annual budget set forth in the Annual Report, the amount of Corporation's revenues derived from sources other than the Assessments during the first and second Fiscal Quarters and a description of how the Corporation will make up for any shortfall thereof, any deviations from the annual budget or additional proposed expenditures for which approval by the Board of Supervisors and/or amendment of the Management District Plan is required under this Agreement or applicable law, changes within the District during the first and second Fiscal Quarters that will require correction or modification of the Plan or assessment database, any proposed amendments or modifications to the Annual Report or Plan, and such other information as MOEWD may require.

Section 3.6 Coordination. Corporation shall render all services and perform all work in accordance with the Management District Plan and the terms of this Agreement, and shall cooperate with the City in the implementation of the Management District Plan and the performance of this Agreement. Corporation shall coordinate with the MOEWD for the implementation of the Plan. Unless otherwise stated in the Agreement or required by the Charter, ordinance or other applicable law, MOEWD shall be the agency of the City responsible for administration of this Agreement and for any acceptance, approval, permission or determination of the City required or permitted under this Agreement, all of which shall be in writing and delivered to Corporation by mail or personal delivery. Unless otherwise agreed to by the parties in a written amendment to this Agreement, electronic mail may not be used to communicate any acceptance, approval, permission or determination by the City.

Section 3.7 Support Services; Eligible Expenditures. Corporation assumes responsibility for contracting for support services as required, and paying for all such direct and indirect expenses as may be necessary or convenient for the timely completion of work. Any obligations or expenditures for items not budgeted in the Annual Report may not be paid through Assessments collected by the City for the District Programs. In administering contracts with third party providers as necessary for providing the property-related services, Improvements and Activities within the District, Corporation shall comply with all applicable federal, state and City laws and regulations.

Section 3.8 Community/Public Access. To foster effective working relationships and effectuate the goals of the District as set forth in the Management District Plan, Corporation's responsibilities under this Agreement shall include the following:

(a) **Annual Outreach/Informational Meetings.** Corporation shall organize and conduct, at a minimum, one annual informational meeting to be noticed in writing by Corporation to the owners of Identified Parcels and businesses (including nonprofit and community-based organizations) located in the District. Such notice shall be in addition to the requirements of the Ralph M. Brown Act and additional open meeting requirements of this Section. Such meetings must be conducted at a location within the District in order to allow the property owners, business owners and members of the public to

familiarize themselves with the Corporation, its functions and its officers and directors. At these meetings property owners, businesses and members of the public shall have the opportunity to express to Corporation their views relating to the District. Such meetings may, but are not required to be, consolidated with a regular meeting of the Corporation's board of directors for the transaction of Corporation's business.

(b) **Open Meetings; Compliance with Ralph M. Brown Act.** Actions of the Corporation shall be taken openly and deliberations shall be conducted openly in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), made applicable to Corporation pursuant to Section 36614.5 of the Streets and Highways Code and this Agreement. In addition to Corporation's obligation to comply with the Ralph M. Brown Act, all notices and agendas for regular and special meetings of Corporation's board of directors and its committees shall be sent to the Government Information Center at the main branch of the San Francisco Public Library for posting. If Corporation establishes an internet website for the District, meeting notices and agendas shall be posted on Corporation's website no later than the time such notices and agendas must be posted under the Ralph M. Brown Act.

(c) **Public Access to District Related Records; Compliance with the California Public Records Act.** Corporation shall comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement

(d) **Newsletters.** Corporation may prepare a District newsletter for distribution to the owners of Identified Parcels and businesses and community-based organizations operating from Identified Parcels. Every issue of any newsletter shall be submitted in duplicate to the MOEWD for reference.

(e) **Other Events.** Corporation may organize at its discretion other events and programs that involve the owners of Identified Parcels, businesses and community-based organizations operating from Identified Parcels and the public that further the goals and objectives described in the Management District Plan; provided, that Assessment Funds may only be used for such events and programs if included in the annual budget set forth in the Management District Plan or Annual Report.

Section 3.9 Budget. Each property-related service, Improvement and Activity specified in the Management District Plan, and included in the budget therein during the first Fiscal Year of operations and in the corresponding Annual Report for subsequent Fiscal Years, shall be implemented by Corporation. Corporation and City agree that amounts shown in the Management District Plan or the Annual Reports were (or will be) the best estimates of the cost of those property-related services, Improvements and Activities at the time the estimates were (or will be) made. The parties anticipate that deviations from those estimates may occur and that some property-related services, Improvements and Activities may not be completed within the particular year budgeted, given normal delays that can be expected with these types of programs and changing circumstances. Corporation will use its best efforts to implement and complete all District Programs specified in the Management District Plan and Annual Reports; however, it is possible that Corporation may not expend the precise amount budgeted for any particular line item in Corporation's annual budget. A ten percent (10%) deviation in a budget line item set forth in the budget for the first year of operation in the Management District Plan or in the Annual Reports for subsequent years will not be considered significant so as to constitute a material breach of this Agreement. If deviation in a budget line item exceeds 10%, or if Corporation desires to make budget allocation changes that exceed 10% of the total budget for all District Programs for a given Fiscal Year, and such changes would, in the opinion of the MOEWD, adversely impact the special benefits conferred on the Identified Parcels, Corporation will request that the Board of Supervisors to modify the Management District Plan pursuant to Section 36636 of the Streets and Highways Code. In no event may Corporation expend from Assessments Funds more than the total amount budgeted in the

Management District Plan for the first year of operation, or in the Annual Report for subsequent years (including delinquent payments, interest income, and rollover funds) as finally approved by the Board of Supervisors.

Section 3.10 Assessment Records. Corporation shall maintain a complete database, in a format requested by the Controller and current to the most recent property tax year available, containing the following information: the Assessor Parcel Number and site address of all Identified Parcels; the name and address of the legal owner of each Identified Parcel; the amount of Assessments levied upon each Identified Parcel; the proportionate financial obligation of the Assessments levied upon each Identified Parcel in relation to the entire amount of the Assessments levied upon all Identified Parcels; and the Assessment calculation for each Identified Parcel, including all variables used for such calculation for each Identified Parcel. The database shall be updated at least once each year to reflect changed conditions such as merger of parcels, subdivision of parcels (including condominium conversions), lot line adjustments, changed property usage, new construction, and to accurately reflect the status of the Identified Parcels and correct errors, if any, in the database for the Assessments. The MOEWD may, at the MOEWD's discretion, provide assistance in compiling or correcting data or information relative to the Assessments on Identified Parcels; however, the MOEWD shall not be obligated to prepare, produce or correct such data or information. Corporation agrees to make such data available at the Corporation's office for public inspection during Corporation's normal business hours.

Section 3.11 Preparation Annual Assessment Database; Beginning July 31, 2006, and by July 31 of each subsequent year, Corporation shall provide the Controller and MOEWD with Assessment data for placement on the tax roll for the subsequent tax year, in a format to be prescribed by the Controller. The Assessment database shall include the following: Assessor Parcel Numbers of all Identified Parcels; the amount of Assessments upon each parcel; exemption documentation acceptable to the City, the Assessments calculations for each Identified Parcel, including all variables used in the calculation of the Assessments, and such other information as the Controller or MOEWD may require. Any corrections or adjustments to the annual Assessment database, as well as the accuracy of any such corrections or adjustments, shall be the responsibility of Corporation. Upon request of the City, Corporation shall promptly complete a written request for an investigation of discrepancies and make all reasonable efforts to obtain additional documentation related to the Assessments upon any or all of the Identified Parcels for which a correction or adjustment is requested. Corporation shall provide the Annual Assessment Database to MOEWD and the Controller on CD-ROM or other electronic medium as requested.

Section 3.12 Prohibited Contracts with City Officers and Employees. Corporation may not employ or subcontract with any person where such employment or subcontract would constitute a violation of California Government Code Sections 1090 et seq.

Section 3.13 City Access to Records; Copies. All designs, plans, reports, files, invoices, investigations, materials, documents and other records that are prepared, acquired, owned, maintained or under the control or possession by Corporation, its agents or representatives, or other person under contract with Corporation, pursuant to this Agreement (including any duplicate copies), shall be made fully available to City by Corporation. Corporation agrees to exercise reasonable and due diligence in providing for the secure storage of all such materials and, upon request, to provide copies for City's use for any purpose.

Section 3.14 Digital Photographs of Streetscape Conditions. Within 30 days of execution of this Agreement, Corporation shall provide to City digital photographs of the conditions of streets, sidewalks and other streetscape, acceptable to MOEWD, prior to the commencement of services to be funded by the "Public Rights Of Way And Sidewalk Operations" and "District Identity and Streetscape Improvement" portions of the budget for the 2005-2006 Fiscal Year as set forth in the Management District Plan.

ARTICLE IV
CITY RESPONSIBILITIES

Section 4.1 Collection and Disbursement of Assessments. Based upon the annual Assessments levied by the Resolution of Formation, as listed in the Management District Plan and, after the first Fiscal Year, the Annual Reports, and with the exception of recoverable City costs for supplemental City service fees, loans or advances, City shall include the Assessments on the property tax bills mailed to the owners of Identified Parcels. The City shall directly bill annual Assessments on Identified Parcels owned by entities exempt from property taxation. The City shall disburse to Corporation the actual revenues received from the Assessments, subject to the terms and conditions of this Agreement. The City shall be under no obligation to make any disbursement of Assessment Funds without a Disbursement & Depository Certification executed by Corporation containing the information described in Section 1.1(j) of this Agreement. The City shall disburse Assessment Funds during each Fiscal Year for the duration of this Agreement according to the following schedule:

(a) **Disbursement of First Installment.** For Assessments the City receives with the first installment of secured property taxes which, if not paid on or before December 10th, are delinquent, the City shall disburse all Assessment Funds available for immediate disbursement on or before January 10th of the following calendar year.

(b) **Disbursement of Second Installment.** For Assessments the City receives with the second installment of secured property taxes which, if not paid on or before April 10th, are delinquent, the City shall disburse all Assessment Funds available for immediate disbursement on or before May 10th of the same calendar year.

(c) **Reconciliation; Delinquent Assessments and Other Special Disbursements.** In addition to the disbursements for the first and second installments described above, and subject to the terms and conditions of this Agreement, the City shall make at least one disbursement of Assessment Funds to Corporation during the last Fiscal Quarter of each Fiscal Year, and may make additional disbursement from time to time as determined by the Controller. Each disbursement of Assessment Funds shall include:

(1) Assessments paid and/or processed by the Office of the Treasurer/Tax Collector and posted to the special assessment account within the City's Treasury for the District (Controller's Special Assessment No. 64) after disbursement of the second installment;

(2) Assessments collected but not previously disbursed pending: (i) reconciliation of the City's books and records; (ii) resolution of disputes resulting in withholdings from or suspension of disbursements under Section 4.4; or (iii) cure of an Event of Default resulting in withholding of Assessment Funds under Section 11.2; and,

(3) Assessment Funds, including delinquent Assessments from prior Fiscal Years, not previously disbursed for any other reason that are available for disbursement.

(d) Disbursements made pursuant to subsection (c) shall be made as such intervals and under such conditions or assurances of Corporation's future compliance with this Agreement as the Controller deems appropriate. Assessment Funds not disbursed during the Fiscal Year in which received shall be carried over to the next Fiscal Year and disbursed with the first installment disbursement, unless disbursement would violate this Agreement or applicable law.

(e) City shall not be responsible for delays in disbursements to Corporation due to delays in transmittals of funds or payment delays by property owners, including other public entities, organizations or agencies, or delays caused by the resolution of disputes which, in the discretion of the Controller, warrant suspension of disbursements as set forth in this Article.

Section 4.2 Assistance. The City may assist with the resolution of any discrepancies in individual Assessments amounts, calculations or benefits. The City may:

- (a) Make reasonable efforts to effect the timely collection of the annual Assessments, including City Assessments and direct billed Assessments, if any;
- (b) Make reasonable efforts to pursue delinquent Assessments and remit such Assessments to Corporation, including interest and penalties subject to City's right to recover costs for pursuing such Assessments;
- (c) Maintain a continual liaison with Corporation, including assisting with the coordination of services from various other City departments, bureaus, and agencies;
- (d) Conduct reviews of existing primary data; verify Assessment data as compiled by any consultant or subcontractor hired by Corporation; perform field or site inspections to verify the accuracy of existing or secondary data, or to substantiate a claim made by a property owner subject to Assessments in the District, with the cooperation of Corporation; maintain confidentiality of certain City records as City deems appropriate;
- (e) Direct the Corporation to recalculate the amount of the Assessments due and request the Controller to respond appropriately, or make such other arrangements with Corporation and the property owner to resolve an incorrect Assessment;
- (f) Recalculate the amount of the Assessments due, or make such other arrangements with Corporation and the property owner to resolve the incorrect Assessments;
- (g) Require a written request from Corporation to conduct an investigation or provide additional related documentation, such as a written request from the affected property owner. The City's costs associated with supplemental investigations may be recovered from the Assessments collected, subject to existing or future City policies and procedures regarding recoverable costs and expenses.

Section 4.3 Delinquent Assessments. The amount of delinquent Assessments, if any, and interest and penalties thereon, if any, that have been collected by City that are available for disbursement to Corporation for District Programs shall be disbursed in accordance with the disbursement schedule in Section 4.1. The City shall be under no obligation to make a special disbursements of delinquent Assessments except as provided in Section 4.1.

Section 4.4 Withholding; Suspension of Disbursements. The City may withhold either all or some portion of the actual revenues received from Assessments if, in the judgment of the Controller: (i) Corporation is not properly administering the budget in accordance with the Management District Plan, Annual Report, and this Agreement, (ii) Corporation has failed to maintain proper records or follow generally accepted accounting principals, (iii) Corporation has failed to diligently implement audit recommendations regarding the safekeeping or use of Assessment Funds, (iv) based on advice from the City Attorney, Corporation is in violation of this Agreement or the Property and Business Improvement District Law of 1994, Article 15 or other applicable law. The City will notify Corporation and set forth the specific problems and issues the Controller determines warrant suspension of disbursements. The City and Corporation will immediately attempt to cure the problems if, at the City's discretion, a cure is appropriate. Assessments Funds will be released upon the implementation of an acceptable cure, subject to the approval of the Controller and possible modification of the disbursement

schedule. This does not alter or diminish in any way City's right to proceed in a manner consistent with California Streets and Highways Code, Section 36670, Article 15 or other applicable law, or to invoke other appropriate remedies, including termination of this Agreement.

Section 4.5 Notification of Changed Status. If the Corporation is dissolved, dissolves itself, no longer has non-profit status, or has its corporate powers suspended by the Secretary of State or otherwise fails to maintain in good standing its authority to conduct business or operate in the City or the State of California, prior to or upon the expiration of this Agreement, Corporation shall immediately transmit to City all unexpended Assessment Funds for distribution to the owners of Identified Parcels, less amounts City, in its sole discretion, may pay or agree to pay to Corporation's unpaid creditors for Eligible Expenses, unless Corporation makes arrangements for payment of creditors and return of excess Assessment Funds acceptable to City. Corporation will immediately notify the MOEWD and Controller in writing of any such change in the status of the Corporation described in this Section or which constitutes a breach of this Agreement.

ARTICLE V

APPROPRIATION AND CERTIFICATION OF ASSESSMENTS FUNDS; LIMITATIONS ON CITY'S OBLIGATIONS

Section 5.1 Risk of Non-Appropriation of Assessments Funds. This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements for administration of the District by Corporation or by a different nonprofit entity acting as the Owners' Association for the District. Corporation assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. Any Assessment Funds collected by the City that are not appropriated for implementation of the Management District Plan by an Owners' Association shall be refunded, on a proportional basis, to the owners of Identified Parcels who paid the Assessments, or on whose behalf the Assessments were paid..

Section 5.2 Certification of Controller; Guaranteed Maximum Costs. No Assessment Funds shall be available under this Agreement without prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code, and as required by other applicable law:

(a) City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by City ordinances governing emergency conditions, City and its employees, officers agents and representatives may not request Corporation to perform services or to provide materials, equipment and supplies that would result in Corporation performing services or providing materials, equipment and supplies that are beyond the scope of this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City may not disburse Assessment Funds to Corporation for purposes beyond the scope of the Management District Plan, Annual Report for the relevant Fiscal Year, or this Agreement, unless an amendment to the Plan, such Annual Report and/or this Agreement, as appropriate, has been made in accordance with applicable law, or that is beyond the scope of Activities and Improvements authorized by the Property and Business Improvement District Law of 1994, as augmented by Article 15.

(c) City and its employees and officers are not authorized to offer or promise to Corporation additional funding for this Agreement which would exceed the maximum amount of Assessment Funds provided for herein. Additional funding from any City funds for District Programs in excess of Assessment Funds actually collected under this Agreement shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum amount of Assessment Funds provided in this when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make disbursements on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

Section 5.3 Automatic Termination for Nonappropriation of Funds. This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if Assessment Funds are not appropriated for the next succeeding Fiscal Year. If Assessment Funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year. All undisbursed Assessments Funds in the possession of the City or its agents upon termination of this agreement shall be refunded to the owners of Identified Parcels, in proportion to the amounts paid, as set forth in Section 11.4.

Section 5.4 SUPERSEURE OF CONFLICTING PROVISIONS. IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 5 AND ANY OTHER PROVISION OF THIS AGREEMENT, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 5 SHALL GOVERN.

ARTICLE 6

ADDITIONAL REPORTING AND ORGANIZATIONAL REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

Section 6.1 Additional Reports. In addition to the Annual Reports and Mid-Year Reports described in Article 3 of this Agreement, Corporation shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the City, in form and substance satisfactory to the City. All reports required under this Agreement, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

Section 6.2 Organizational Documents. On or before the effective date of this Agreement, Corporation shall provide to City the names of its officers and directors and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of the valid nonprofit status described in Section 8.1. Notwithstanding the previous sentence, Corporation may submit satisfactory evidence that it has applied for and is diligently pursuing nonprofit status in conformity with applicable laws. Failure to provide proof of such valid nonprofit status satisfactory to City within one year of adoption of a resolution by the Board of Supervisors approving this Agreement shall constitute a material breach of this Agreement.

Section 6.3 Notification of Defaults or Changes in Circumstances. Corporation shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

Section 6.4 Financial Statements. Within thirty (30) days following the end of each Fiscal Year, Corporation shall deliver to City an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Corporation as accurately presenting the financial position of Corporation. Corporation shall also deliver to City, no later than one hundred twenty (120) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a Certified Public Accountant or reputable accounting firm, acceptable to City, as accurately presenting the financial position of Corporation, including the receipt and all expenditures and other uses of Assessment Funds, and of all other funds from sources other than the Assessments.

Section 6.5 Books and Records. Corporation shall establish and maintain accurate files and records of all aspects of the Management District Plan and the matters funded in whole or in part with Assessment Funds during the term of this Agreement, and shall follow generally accepted accounting principals. Without limiting the scope of the foregoing, Corporation shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Assessment Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Assessment Funds. Corporation shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final disbursement under this Agreement or until any final audit has been fully completed to the satisfaction of the Controller, whichever is later.

Section 6.6 Inspection and Audit. Corporation shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls, tax returns and statements and other data required to be established and maintained by Corporation under this Agreement and applicable law. Corporation shall permit City, its employees and authorized representatives to inspect, audit, examine, make and retain duplicate copies, and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Corporation has the obligation to maintain such files, records, books, invoices, documents, payrolls, tax returns and statements and other data under this Article 6.

Section 6.7 Submitting False Claims; Monetary Penalties. Corporation acknowledges and agrees that it is a "Corporation" under and is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any Corporation, subcontractor or consultant who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A Corporation, subcontractor or consultant who submits a false claim shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A Corporation, subcontractor or consultant will be deemed to have submitted a false claim to City if the Corporation, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (ii) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (iii) conspires to defraud City by getting a false claim allowed or paid by City; (iv) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (v) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

**ARTICLE 7
TAXES**

Section 7.1 Corporation to Pay All Taxes. Corporation shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Management District Plan, the Assessment Funds or any of the activities contemplated by this Agreement.

Section 7.2 Use of City Real Property. If at any time this Agreement entitles Corporation to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

(a) Corporation, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Corporation, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

(b) Corporation, on behalf of itself and any subcontractors, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Corporation shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

(c) Corporation shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

Section 7.3 Earned Income Credit (EIC) Forms. Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Corporation shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Corporation has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Corporation; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Corporation of the terms of this Agreement. If, within thirty (30) days after Corporation receives written notice of such a breach, Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Corporation fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by Corporation shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

ARTICLE 8
REPRESENTATIONS AND WARRANTIES

Corporation represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

Section 8.1 Organization; Authorization. Corporation is a nonprofit corporation, duly organized and validly existing and in good standing under the laws of the State of California. Corporation has applied for and shall diligently pursue, and once established, shall maintain valid nonprofit status under Section 501(c)_____ [INSERT # FOR TYPE OF NONPROFIT STATUS APPLIED FOR] of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. Corporation has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Corporation has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Corporation, enforceable against Corporation in accordance with the terms hereof.

Section 8.2 Location. Corporation's operations, offices and headquarters are located at the address for notices set forth in Section 15. All aspects of the Management District Plan will be implemented within the geographic boundaries of the District specified in the Management District Plan.

Section 8.3 No Misstatements. No document furnished or to be furnished by Corporation to City in connection with the this Agreement, Annual Report, any Disbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

Section 8.4 Conflict of Interest. Through its execution of this Agreement, Corporation acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

Section 8.5 No Other Agreements with City. Except as expressly itemized in an attachment to this Agreement, neither Corporation nor any of Corporation's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof.

Section 8.6 Subcontracts. Corporation has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Management District Plan, except as expressly itemized in an attachment to this Agreement, which attachment shall include true and correct copies of all contracts with such person or entity. By executing this Agreement, Corporation certifies that it has not and shall not enter into any subcontract unless the subcontracting party agrees in writing to the terms and conditions set forth in this Agreement applicable to Corporation

Section 8.7 Eligibility to Receive Government Funds. By executing this Agreement, Corporation certifies that Corporation is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Corporation further certifies that it is not suspended, debarred or otherwise excluded from being awarded contracts from the State of California or the City, or from participation in assistance programs funded by the State of California. Corporation acknowledges that this certification of eligibility to receive federal, state and local funds is a material term of the Agreement.

ARTICLE 9

INDEMNIFICATION AND GENERAL LIABILITY

Section 9.1 Indemnification. Corporation shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Corporation; (b) a material breach of any representation or warranty of Corporation contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Corporation or its employees, subcontractors or agents; (d) any property damage caused, directly or indirectly by any act or omission of Corporation or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment or facility used by Corporation, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Corporation by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Corporation is responsible under Article 7; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Corporation's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

Section 9.2 Duty to Defend; Notice of Loss. Corporation acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Corporation by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Corporation prompt notice of any Loss under Section 9.1 and Corporation shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Corporation if representation of such Indemnified Party by the counsel retained by Corporation would be inappropriate due to conflicts of interest between such Indemnified Party and Corporation. An Indemnified Party's failure to notify Corporation promptly of any Loss shall not relieve Corporation of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Corporation's ability to defend such Loss. Corporation shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Corporation contends that such Indemnified Party shares in liability with respect thereto.

Section 9.3 Incidental and Consequential Damages. Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Corporation's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

Section 9.4 LIMITATION ON LIABILITY OF CITY. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ASSESSMENT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE ASSESSMENT FUNDS, THE MANAGEMENT DISTRICT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 10
INSURANCE

Section 10.1 Types and Amounts of Coverage. Without limiting Corporation's liability pursuant to Article 9, Corporation shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident.
- (b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

Section 10.2 Additional Requirements for General and Automobile Coverage. Commercial General Liability and Commercial Automobile Liability insurance policies shall:

- (a) Name as additional insured City and its officers, agents and employees.
- (b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

Section 10.3 Additional Requirements for All Policies. All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or reduction in coverage mailed to City's address for notices pursuant to Article 15.

Section 10.4 Required Post-Expiration Coverage. Should any of the insurance required hereunder be provided under a claims-made form, Corporation shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

Section 10.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

Section 10.6 Evidence of Insurance. Before commencing any operations under this Agreement, Corporation shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, Corporation shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII

or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

Section 10.7 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of Corporation hereunder.

Section 10.8 Adjustments to Types and Amounts of Coverage. The City may require Corporation to provide types of insurance coverage different than as set forth in this Article 10, and insurance coverage in amounts higher than as set forth in this Article 10, as may be required by the City's Risk Manager. City shall provide written notice of such changes in types and amounts of coverage not less than ninety (90) days before Corporation's obligation to obtain and thereafter maintain such additional type(s) of coverage, or coverage in amounts higher than as set forth herein, becomes effective.

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

- (a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Disbursement Request or in any other document submitted to City under this Agreement is found by City to be false or misleading.
- (b) **Failure to Provide Insurance.** Corporation fails to provide or maintain in effect any policy of insurance required in Article 10.
- (c) **Failure to Comply with Applicable Laws.** Corporation fails to perform or breaches any of the terms or provisions of Article 16.
- (d) **Failure to Perform Other Covenants.** Corporation fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Corporation as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.
- (e) **Cross Default.** Corporation defaults under any other agreement between Corporation and City (after expiration of any grace period expressly stated in such agreement).
- (f) **Voluntary Insolvency.** Corporation (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Corporation or of any substantial part of Corporation's property or (v) takes action for the purpose of any of the foregoing.
- (g) **Involuntary Insolvency.** Without consent by Corporation, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Corporation or with respect to any substantial part of Corporation's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Corporation.

Section 11.2 Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to Corporation and, on the date specified in such notice, this Agreement shall terminate and all rights of Corporation hereunder shall be extinguished. In the event of such termination, Corporation shall not be entitled to receive any further disbursement of Assessment Funds.

(b) **Withholding of Assessment Funds.** City may withhold all or any portion of Assessment Funds not yet disbursed hereunder, regardless of whether the Controller previously approved the disbursement of the Assessment Funds. Any Assessment Funds withheld pursuant to this Section and subsequently disbursed to Corporation after cure of applicable Events of Default may be disbursed without interest.

(c) **Offset.** City may offset against all or any portion of undisbursed Assessment Funds hereunder or against any payments due to Corporation under any other agreement between Corporation and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) **Return of Assessment Funds.** City may demand the immediate return of any previously disbursed Assessment Funds that have been claimed or expended by Corporation in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

Section 11.3 Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

Section 11.4 Use of Assessments and Refunds Upon Disestablishment of District or Termination of Agreement.

(a) Upon the disestablishment of the District, any remaining revenues, after all outstanding debts are paid, derived from the levy of the Assessments, or derived from the sale of assets acquired with Assessment Funds, shall be refunded to the owners of the Identified Parcels who paid the Assessment, or on whose behalf the Assessment was paid, applying the same method and basis that was used to calculate the Assessments in the fiscal year in which the District is disestablished. All outstanding Assessment Funds collected after disestablishment shall be spent on Improvements and Activities specified in the Management District Plan in accordance with Section 36671 of the Streets and Highways Code.

(b) If the disestablishment occurs before the Assessments are included on the property tax bills or billed directly, sent to the owners of Identified Parcels for the Fiscal Year in which the District is disestablished, the method and basis that was used to calculate the Assessments in the immediate prior Fiscal Year shall be used to calculate the amount of any refund to the owners of the Identified Parcels who paid the Assessment, or on whose behalf the Assessment was paid.

(c) The City shall refund and dispose of Assessment Funds as set forth in subsections (a) and (b) of this Section if this Agreement is terminated for any reason and either of the following occurs: (i) the Board of Supervisors determines, in its sole discretion, not to enter into an agreement with a different nonprofit entity as the Owners' Association for purposes of implementing the Management District Plan, or (ii) the Board of Supervisors initiates disestablishment proceedings under Section 36670

(a) **Limitations.** In no event may Corporation subcontract or delegate for the implementation of the whole of the Management District Plan. Corporation may subcontract with any person or entity acceptable to the City; provided, however, that Corporation shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Corporation, Corporation shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Corporation. Corporation shall ensure that its subcontractors comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management District Plan. All references herein to duties and obligations of Corporation shall be deemed to pertain also to all subcontractors to the extent applicable. A default by any subcontractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and City.

(b) **Terms of Subcontract.** Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subcontractor. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management District Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subcontractor, the audit and inspection rights set forth in Article 6. Upon the request of City, Corporation shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

Section 13.4 Corporation Retains Responsibility. Corporation shall in all events remain liable for the performance by any assignee or subcontractor of all of the covenants, terms and conditions contained in this Agreement.

ARTICLE 14

INDEPENDENT CORPORATION STATUS

Section 14.1 Nature of Agreement. Corporation shall be deemed at all times to be an independent Corporation and is solely responsible for the manner in which Corporation implements the Management District Plan and uses the Assessment Funds. Corporation shall at all times remain solely liable for the acts and omissions of Corporation, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and Corporation.

Section 14.2 Direction. Any terms in this Agreement referring to direction or instruction from the City or any Indemnified Party shall be construed as providing for direction as to policy and the result of Corporation's work only, and not as to the means by which such a result is obtained.

Section 14.3 Consequences of Recharacterization.

(a) Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Corporation is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Corporation which can be applied against this liability). City shall subsequently forward such amounts to the relevant taxing authority.

(b) Should a relevant taxing authority determine a liability for past services performed by Corporation for City, upon notification of such fact by City, Corporation shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Corporation under this Agreement (again, offsetting any amounts already paid by Corporation which can be applied as a credit against such liability).

(c) A determination of employment status pursuant to either subsection (a) or (b) of this Section 14.3 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Corporation shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator, or administrative authority determine that Corporation is an employee for any other purpose, Corporation agrees to a reduction in City's financial obligation hereunder such that the aggregate amount of Assessment Funds under this Agreement does not exceed what would have been the amount of such Assessment Funds had the court, arbitrator, or administrative authority had not determined that Corporation was an employee.

ARTICLE 15 NOTICES AND OTHER COMMUNICATIONS

Section 15.1 Requirements. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, or (b) hand delivered.

If to the City:

Mayor's Office of Economic and Workforce Development
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place,
San Francisco, CA_94102
Attn: Director

If to Corporation:

Castro/Upper Market Community Benefit District
C/O Merchants of Upper Market and Castro (MUMC)
584 Castro Street #333
SF CA 94114
Attn: Herb Cohn, Richard Magary, Gustavo Serina, Paul Moffit & Ken Stram
Facsimile No. (415) 674-7719

Section 15.2 Effective Date. All communications sent in accordance with Section 15.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

Section 15.3 Change of Address. From time to time any party hereto may designate a new address for purposes of this Article by notice to the other party.

ARTICLE 16
COMPLIANCE

Section 16.1 Disadvantaged Business Enterprise Utilization; Liquidated Damages. If Corporation enters into an agreement for construction or construction-related services with any person ("Contractor") that would be subject to the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code, Corporation shall include in its agreement with such Contractor provisions requiring Contractor to comply with such ordinance, substantially as follows:

(a) The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) Compliance and Enforcement

1. Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

2. Subcontracting Goals If Contractor Will Use Subcontractors

The DBE subcontracting participation goal for this contract shall be established by HRC. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in HRC Form 7 and Form 9. Failure to provide HRC Form 7 and Form 9 with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until HRC Form 7 and Form 9 is provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the DBE Ordinance, for any purpose inconsistent with the provisions of the DBE Ordinance, its implementing rules and regulations, or this Section.

3. Subcontract Language Requirements

Contractor shall incorporate the DBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with DBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any DBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the DBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and Purchasing to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

4. Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file an affidavit (HRC Form 9) with the Controller, under penalty of perjury, that the

Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14A.13.

Section 16.2 Nondiscrimination; Penalties.

(a) **Corporation Shall Not Discriminate.** In the performance of this Agreement, Corporation agrees not to discriminate against any employee, City and County employee working with such Corporation or subcontractor, applicant for employment with such Corporation or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Corporation shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions, if, depending on the subject matter and terms and conditions of such subcontract, such provisions would be apply to Corporation if the subcontract was a contract to which the City was a party. Corporation's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Non-Discrimination in Benefits.** Corporation does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Contract.** As a condition to this Agreement, Corporation shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Corporation shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Corporation understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Corporation and/or deducted from any payments due Corporation.

Section 16.3 MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the

MacBride Principles. By signing below, the person executing this agreement on behalf of Corporation acknowledges and agrees that he or she has read and understood this section

Section 16.4 Tropical Hardwood and Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all Corporations not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 16.5 Drug-Free Workplace Policy. Corporation acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Corporation and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

Section 16.6 Resource Conservation; Liquidated Damages. Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Corporation to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Corporation fails to comply in good faith with any of the provisions of Chapter 5, Corporation shall be liable for liquidated damages in an amount equal to Corporation's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Corporation acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Corporation from any contract with City.

Section 16.7 Compliance with ADA. Corporation acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a Corporation or Corporation, must be accessible to the disabled public. Corporation shall not discriminate against any person protected under the ADA in connection with all or any portion of the Management District Plan and shall comply at all times with the provisions of the ADA.

Section 16.8 Requiring Minimum Compensation for Employees. Corporation agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/oca/lwih.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Corporation agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Corporation shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Corporation shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that if Corporation is a Nonprofit Corporation or a public entity, it shall be required to pay a minimum of \$9 an hour for the term of this Agreement.

(b) Corporation shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Corporation's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Corporation understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Corporation of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Corporation fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

The right to charge Corporation an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Corporation under this Agreement;

The right to terminate this Agreement in whole or in part;

In the event of a breach by Corporation of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

The right to bar Corporation from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Corporation represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Corporation shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Corporation from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Corporation shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO.

(h) The Corporation shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

(i) The City may conduct random audits of Corporation. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Corporation every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Corporation shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Corporation and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Corporation shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Corporation's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Corporation.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Corporation of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Corporation understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Corporation of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Corporation arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Corporation also understands that the MCO provides that if Corporation prevails in any such action, Corporation may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Corporation is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Corporation later enters into an agreement or agreements that cause Corporation to exceed that amount in a fiscal year, Corporation shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Corporation and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

Section 16.9 Limitations on Contributions. Through execution of this Agreement, Corporation acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations of the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

Section 16.10 First Source Hiring Program.

(a) Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Corporation

shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) First Source Hiring Agreement.

(1) Corporation will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

(2) Corporation will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;

(3) Corporation agrees to use good faith efforts to comply with the First Source hiring requirements. A Corporation may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Corporation's employment records.

(c) Hiring Decisions.

Corporation shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) Subcontracts

Any subcontract entered into by Corporation shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

Section 16.11 Prohibition on Political Activity with City Funds. In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively,

"Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Corporation, or any staff member in association with Corporation, engages in any Political Activity, then (i) Corporation shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Corporation shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Corporation agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Corporation violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Corporation and City, (ii) prohibit Corporation from abiding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Corporation under this Agreement.

Section 16.12 Preservative-treated Wood Containing Arsenic. Corporation may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Corporation may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Corporation from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Section 16.13. Left Blank.

Section 16.14 Nondisclosure of Private Information. As of March 5, 2005, Corporation agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Corporation agrees to all of the following:

(a) Neither Corporation nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The Corporation received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Corporation to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Corporation, or bring a false claim action against Corporation.

Section 16.15 Requiring Health Benefits for Covered Employees

Unless exempt, Corporation agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwih.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Corporation shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Corporation chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Corporation is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Corporation's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Corporation if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Corporation fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Corporation shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Corporation shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Corporation shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Corporation based on the Subcontractor's failure to comply, provided that City has first provided Corporation with notice and an opportunity to obtain a cure of the violation.

e. Corporation shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Corporation's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Corporation represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Corporation shall keep itself informed of the current requirements of the HCAO.

h. Corporation shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

i. Corporation shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five business days to respond.

j. City may conduct random audits of Corporation to ascertain its compliance with HCAO. Corporation agrees to cooperate with City when it conducts such audits.

k. If Corporation is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Corporation later enters into an agreement or agreements that cause Corporation's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Corporation and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 16.16 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Corporation shall remove all graffiti from any real property owned or leased by Corporation in the City and County of San Francisco within forty eight (48) hours of the earlier of Corporation's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Corporation to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building

Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Corporation to comply with this section of this Agreement shall constitute an Event of Default of this Agreement .

Section 16.17 Compliance with Other Laws. Without limiting the scope of any of the preceding sections of this Article 16, Corporation shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

ARTICLE 17 MISCELLANEOUS

Section 17.1 No Waiver. No waiver by the Agency or City of any default or breach of this Agreement shall be implied from any failure by the Agency or City to take action on account of such default if such default persists or is repeated. No express waiver by the Agency or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Agency of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Agency or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

Section 17.2 Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

Section 17.3 Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the director or president, as the case may be, of the Agency who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

Section 17.4 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

Section 17.5 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

Section 17.6 Entire Agreement. This Agreement and the documents set forth as appendices hereto constitute the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and other documents, the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

Appendix A, Management District Plan
Appendix B, Resolution of Formation

Section 17.7 Certified Resolution of Signatory Authority. Upon request of City, Corporation shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Corporation.

Section 17.8 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

Section 17.9 Successors; No Third-Party Beneficiaries. Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 17.10 Survival of Terms. The obligations of Corporation and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 6.4 through 6.8, Articles 7 and 9, Section 10.4, Article 12, Section 13.4, Section 14.3 and this Article 17.

Section 17.11 Further Assurances. From and after the date of this Agreement, Corporation agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY

MAYOR'S OFFICE OF ECONOMIC AND
WORKFORCE DEVELOPMENT

By: 

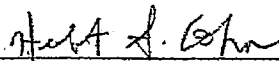
JESSE BLOUT
DIRECTOR

CORPORATION:

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 16.3, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

CASTRO/UPPER MARKET COMMUNITY
BENEFIT DISTRICT, A CALIFORNIA
CORPORATION

By: 

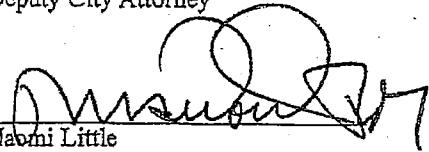
Print Name: Herbert S. Cohn
Title: President
Federal Tax ID #: 20-3417247
City Vendor Number: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

By: 

Naomi Little
Director of Office of Contract
Administration/Purchaser



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: November 5, 2010
RE: *Complaint 10052: Kai Wilson v. North of Market/Tenderloin Community Benefit District (NMT CBD)*

Background

Complainant Kai Wilson ("Complainant") alleges that on August 4, 2010 he made an Immediate Disclosure Request ("IDR") to board members and staff of the North of Market/Tenderloin Community Benefit District ("NMT CBD") requesting "all correspondences between staff and current as well as immediately former board members [] regarding [his] removal from the CBD Board of Directors and any conversations regarding [his] term of service with the [NMT CBD]." Mr. Wilson further alleges that he has not been provided with the records requested.

Complainant also appears to allege that the NMT CBD held a closed session during one or more of its meetings, in violation of the Brown Act.

Complaint

On October 5, 2010, Complainant filed this Sunshine Complaint against NMT CBD, its staff, and its board of directors, alleging violations of public meeting and public records laws.

Discussion and Analysis

Background information

A CBD is a public-private partnership district created by resolution of the Board of Supervisors ("BOS") under state law, and typically operated by an "owners' association," likewise authorized by a BOS resolution. CBDs are formed by a majority of the property owners in a geographic area, who petition the BOS to approve the formation of the district under state law. The City often approves management of such CBDs by nonprofit corporations, which are named as the "owners' association" under provisions of state law.

In this case, in January, 2006, the BOS approved a resolution naming the North of Market/Tenderloin Community Benefit Corporation as the "owners' association" for the NMT CBD under state law. California Streets & Highways Code § 36614.5. provides:

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. *An owners' association is a private entity and may not*

TO: Sunshine Ordinance Task Force
DATE: November 5, 2010
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RE: *Complaint 10052: Wilson v. NMT CBD*

be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the district. [Emphasis added.]

In addition, the City's contracts with CBDs typically include the above language requiring compliance with the Public Records Act ("PRA") and the Brown Act. The contract between the City and the NMT CBD has not been provided by either the complainant or the respondent in this case. However, respondent alleges that their contract with the City provides that they are subject only to Section 67.24(e) of the Ordinance, which governs disclosure of documents related to a bid on a City contract.

Analysis

The language of the state law governing CBDs, quoted above, bears on the jurisdiction of the Task Force to hear the complaint in this case. It is clear from this provision that respondent must comply with the requirements of the PRA and of the Brown Act; however, it also appears that the same provision prevents mandatory application of the Sunshine Ordinance to their activities. Therefore, given that the Task Force is charged with reviewing alleged violations of the Sunshine Ordinance, and not alleged violations solely of the state PRA and Brown Act, it would appear that the Task Force lacks jurisdiction to adjudicate this complaint.

California Streets & Highways Code § 36614.5. specifically provides that "[a]n owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose." Given this language, and given that a provision of state law generally will take precedence over a conflicting provision of a local ordinance, the respondent and its staff and board of directors may not be considered policy bodies, passive meeting bodies (Section 67.3) or departments (Section 67.20) under the Sunshine Ordinance. Therefore, the Task Force lacks jurisdiction to hear a complaint of violation of the Sunshine Ordinance, unless in the contract between the City and the CBD, the NMT CBD agreed to be bound by provisions of the Ordinance.

In addition, the Sunshine Ordinance impliedly provides authority for the Task Force to hear a complaint that alleges *both* a violation of the Ordinance *and* the PRA or Brown Act. Section 67.30(c) or the Ordinance provides in part 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." This makes sense, as the Ordinance incorporates by reference parts of those two state laws when their minimum requirements are not otherwise addressed by the Ordinance. However, Section 67.30(c) cannot be read to extend such implied authority for the Task Force to hear a complaint that alleges *only* a violation of the PRA and/or Brown Act, which are both state laws. Both the PRA and the Brown Act provide their own enforcement mechanisms and do not contemplate adjudication of violations of their provisions by local government entities.

File No. _____

SOTF Item No. 16

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



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

April 4, 2012 – 4:00 PM

Regular Meeting

Members: Chair Hope Johnson, 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 (00.00.00 - 00.25:07)**

The meeting was called to order at 4:03 p.m. Members Snyder, Cauthen, Manneh, and Costa were noted absent. There was a quorum. Member Manneh was noted present at 4:08 p.m. Member Jay Costa was noted present at 4:16 p.m.

Member Knee, seconded by Chair Wolfe, moved to EXCUSE Member Snyder.

Speakers: Jason Grant Garza spoke expressing objection to the motion to excuse the Member.

The motion PASSED by the following vote:

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

Noes: 1 – Johnson

Excused: 1 – Snyder

Absent: 1 – Cauthen

Chair Johnson indicated a request that File No. 11083 – Ray Hartz, Jr. v the Public Library (Item 5) be continued by the Complainant. Chair Johnson announced that File Nos. 11095 and 11096 - Arnita Bowman v Department of Parks and Recreation (Items 10 and 11) were withdrawn by the Complainant. Chair Johnson indicated a request that File No. 11097 - Charles Pitts v the Police Department (Item 12) be continued by the Complainant. Chair Johnson announced the File No. 11098 - Ray Hartz, Jr. v Luis Herrera, City Librarian (Item 13) was tabled due to receipt of Respondent's response prior to March 7, 2012 meeting. Chair Johnson indicated a request that File No. 11099 – Jason Grant Garza v Department of Public Health (Item 14) be continued by the Respondent. Chair Johnson indicated a request that File No. 12005 – Anonymous v Municipal Transportation (Item 17) be continued by the Respondent. Chair Johnson indicated a request that File No. 12006 - Ray Hartz, Jr. v Angela Calvillo, Clerk of the Board (Item 18), was withdrawn by the Complainant.

2. **Approval of Minutes from the February 28, 2012, Regular Meeting.** (00:25:08 - 00:42:43)

Member Wolfe, seconded by Member Knee, moved to CONTINUE to May 2, 2012.

Speakers: Thomas Picarello spoke requesting additional copies of the agenda packets and minutes for the public. Peter Warfield spoke expressing support of the continuance of the item. Ray Hartz, Jr. spoke requesting more detailed minutes of speakers. Jason Grant Garza spoke requesting more detailed minutes of the speakers. David Pilpel spoke requesting that the minutes are heard at the end of the agenda.

The motion PASSED without objection.

3. **Approval of Minutes from the March 7, 2012, Regular Meeting.** (00:42:44 - 00:51:37)

Member Washburn, seconded by Member Knee, moved to CONTINUE to May 2, 2012.

Speakers: Jason Grant Garza spoke requesting more detailed minutes of the speakers. Peter Warfield spoke regarding the lack of detail in the minutes. Ray Hartz, Jr. spoke expressing concern of the Task Force not taking a stand on having detailed minutes.

The motion PASSED without objection.

4. **Survey of Costs of Compliance with Sunshine Ordinance.** (1.33.27 – 2.11.10)

Chair Johnson presented Responses of Survey of Costs of Compliance

Chair Johnson provided an overview of the responses regarding the survey of costs of compliance with the City Sunshine Ordinance. Vice Chair Wolfe commented on whether the survey attacked the SOTF or the Sunshine Ordinance and lack of staff provided for SOTF should be included. Member Washburn commented regarding the data collected and produced and volunteered to extract the most egregious data. Member Costa supported Member Washburn's comments.

Member Wolfe, seconded by Member Knee, moved to TABLE the item to be heard by 10:00 p.m. or before the Administrator's Report.

Speakers: Jason Grant Garza spoke in opposition to tabling the item. Thomas Picarello spoke in opposition to tabling the item. Peter Warfield spoke expressing opposition to tabling the item.

The motion PASSED without objection.

Member Washburn, seconded by Member Knee, moved to CONTINUE the item to May 2, 2012.

The motion PASSED without objection.

5. **File No. 11083:** The Compliance and Amendments Committee has referred File No. 11083, Ray Hartz, Jr. against the Public Library, back to the Task Force for further action including a recommendation to the Ethics Commission. (00.03.00 - 00.03.55)

Chair Johnson indicated a request that File No. 11083 be continued by the Complainant.

Member Knee, seconded by Vice Chair Wolfe, moved to CONTINUE TO THE CALL OF THE CHAIR.

There were no speakers. **The motion PASSED without objection.**

Recess 6:32 – 6:40

6. **File No. 11087:** The Compliance and Amendments Committee has referred File No. 11087, Lars Nyman against Frank Lee, Department of Public Works, back to the Task Force for further action including a recommendation to the District Attorney or Board of Supervisors. (2.11.10 - 3.10.32)

Chair Johnson provided a recap of the prior proceedings. Lars Nyman (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations.

Member Washburn, seconded by Member Knee, moved to REFER TO BOARD OF SUPERVISORS , COPY THE MAYOR and the CONTROLLER’S OFFICE and referral to the Ethics Commission and find Mr. Lee in violation of 67.21(e) based on his failure to appear before the Task Force.

Speakers: Jason Grant Garza spoke expressed concern that Ethics will not act on referral. Allen Grossman said that the Custodian should be present before the Task Force and not Frank Lee. Thomas Picarello stated that the Task Force has failed the Complainant due not naming an individual as the Respondent. Peter Warfield spoke expressing concern of bad behavior of Respondent.

The motion PASSED by the following vote:

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

Absent: 0

Excused: 2 - Snyder, Cauthen

7. **File No. 11084:** Hearing on determination of reconsideration of File No. 11084
Complaint filed by Library Users Association against the Arts Commission for not
providing an audio recording of a meeting. (3:10:42 - 3:35:00)

Chair Johnson provided a recap of the prior proceedings and stated the reconsideration is due to the Section stated previously does not apply to the Visual Arts Commission, because the Commission does not meet in City Hall. Peter Warfield (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. Julio Mantos, Arts Commission, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. Respondent waived his right to rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Johnson, seconded by Member Knee, moved to rehear the complaint on May 2, 2012.

Speakers: Jason Grant Garza expressed support for the rehearing. Allen Grossman expressed concern regarding another option other than to rehear the item.

The motion PASSED by the following vote:

Ayes: 7 – Costa, Knee, Manneh, Washburn, West, Vice Chair Wolfe, Chair Johnson
Absent: 1 - Chan
Excused: 2 - Snyder, Cauthen

8. **File No. 11089:** Complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (3:35:00 - 03:48:04)

Member Wolfe, seconded by Member Manneh, moved to CONTINUE TO THE CALL OF THE CHAIR.

There were no speakers. **The motion PASSED without objection.**

Speakers: Thomas Picarello objected to continuation. Jason Grant Garza objected to continuation.

The motion PASSED by the following vote:

Ayes: 7 – Costa, Knee, Manneh, Washburn, West, Vice Chair Wolfe, Chair Johnson
Absent: 1 - Chan
Excused: 2 - Snyder, Cauthen

9. **File No. 11091:** Complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for allegedly not responding to an Immediate Disclosure Request. (03:48:05 - 04:12:03)

Member Washburn, seconded by Member Manneh, moved to dismiss the complaint with the option to re-file.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

10. **File No. 11095:** Complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents. (00:04:07 - 00:04:48)

Chair Johnson indicated the File No. 11095 was withdrawn by the Complainant.

TABLED BY OPERATION OF LAW.

11. **File No. 11096:** Complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:07 - 00:04:48)

Chair Johnson indicated the File No. 11096 was withdrawn by the Complainant.

TABLED BY OPERATION OF LAW.

12. **File No. 11097:** Complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (00:05:48 - 00:11:16)

Chair Johnson indicated a request that File No. 11097 be continued by the Complainant.

Member Washburn, seconded by Member Wolfe, moved to close the complaint with the option to re-file.

Speakers: Jason Grant Garza spoke expressing objection to closing the complaint. Thomas Picarello spoke expressing objection to closing the complaint. Peter Warfield spoke expressing objection to closing the complaint.

The motion PASSED by the following vote:

Ayes: 8 – Chan, Costa, Knee, Manneh, Washburn, West, Vice Chair Wolfe, Chair Johnson

Excused: 1 – Snyder

Absent: 1 – Cauthen

13. **File No. 11098:** Complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian for allegedly not including a brief written summary of comments into the minutes. (00:11:17 - 00:15:59)

Chair Johnson announced that File No. 11098 be tabled due to receipt of Respondent's response prior to March 7, 2012 meeting.

Member Knee, seconded by Member Wolfe, moved to TABLE the item upholding the original Order of Determination.

There were no speakers. **The motion PASSED without objection.**

14. **File No. 11099:** Complaint filed by Jason Grant Garza against the Department of Public Health for allegedly not providing requested information. (16:00 - 00:20:45)

Chair Johnson indicated that File No. 11099 be continued by the Respondent.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

Jason Grant Garza (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. The Respondent was not present for rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee, seconded by Member Manneh, moved to CONTINUE to May 2, 2012, send a notice to both parties to appear, and find violation of Sunshine Ordinance Section 67.21(e) based on Barbara Garcia (Respondent) failing to appear.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

15. **File No. 12003:** Complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library Mural. (4.33.35 - 05:11:48)

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

There were no speakers. **The motion PASSED without objection.**

Peter Warfield (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. Julio Mantos, Respondent, Arts Commission, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived his right to rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee, seconded by Vice Chair Wolfe, moved to find the Visual Arts Committee in violation of Sunshine Ordinance Sections 67.15 based on failure to provide public testimony, 67.21(e) based on failure to send a knowledgeable representative, Brown Act 54954.3 based on failure to provide general comment; referral to Education Outreach and Training Committee. Require the Visual Arts Committee members to take training on public comment.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

Recess 9:20 – 9:25

16. **File No. 12004:** Complaint filed by the Library Users Association against the Arts Commission for allegedly restricting appointments to one hour, in the middle of the afternoon to listen to recordings of meetings referring to the Bernal Heights Branch Library Mural. (5:11:48 - 05:32:11)

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

There were no speakers. **The motion PASSED without objection.**

Peter Warfield (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. Julio Mantos, Respondent, Arts Commission, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived his right to rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee, seconded by Member Washburn, moved to find Sharon Richie, Secretary, Arts Commission, the Arts Commission and Visual Arts Committee in violation of Sunshine Ordinance Sections 67.14 based on providing an audio recording of a meeting, 67.21(a) based on requiring an appointment to inspect a public record, 67.21 (e) based on failure to send a knowledgeable representative; and California Public Records Act 62.53 for restricting the time of listening access; and referral to Education Outreach and Training Committee.

The motion PASSED by the following vote:

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

Absent: 2 - Chan, Vice Chair Wolfe

Excused: 2 - Snyder, Cauthen

17. **File No. 12005:** Complaint filed by Anonymous against the Municipal Transportation Agency for allegedly not providing camera footage. (00:20:45 - 00:23:58)

Chair Johnson indicated a request that File No. 12005 be continued by the Respondent

By unanimous consent the item was CONTINUED to May 2, 2012

There were no speakers. **The motion PASSED without objection.**

18. **File No. 12006:** Complaint filed by Ray Hartz, Jr. against Angela Calvillo, Clerk of the Board for allegedly failing to perform administrative duties for the Sunshine Ordinance Task Force as required pursuant to the Sunshine Ordinance. (00:23:59 - 00:25:27)

TABLED BY OPERATION OF LAW.

19. **File No. 12007:** Complaint filed by the Library Users Association against Supervisor Campos for allegedly responding late to an immediate disclosure request and redacting information from Bernal Heights Branch Library Mural related documents inappropriately. (0534.15 - 06:50:54)

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

There were no speakers. **The motion PASSED without objection.**

Peter Warfield (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Hillary Ronen (Respondent), Supervisor Campos' Office, provided an overview of the Supervisor's Office defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee, seconded by Member Manneh, moved to find Supervisor David Campos in violation of Sunshine Ordinance Sections 67.25 (a) based on failure to respond to the Immediate Disclosure Request in a timely matter, 67.26 based on failure to keep withholding to a minimum by redacting the contact information; and referral to Compliance and Amendments Committee.

The motion PASSED by the following vote:

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

Absent: 2 - Chan, Vice Chair Wolfe

Excused: 2 - Snyder, Cauthen

20. **File No. 12008:** Complaint filed by Allen Grossman against Scott Minty, Information Systems Administrator, City Attorney's Office for allegedly failing to respond to records request. (06:11:04 - 06:45:12)

Allen Grossman (Complainant) requested that File Nos. 12008, 12009, and 12010 be considered as a combined file.

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

There were no speakers. **The motion PASSED without objection.**

Allen Grossman (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. The Respondent was not present for rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved to find Scott Minty, Marisa Moret, and Susana Martinez, City Attorney's Office, in violation of Sunshine Ordinance Sections 67.21(b) based on the Custodian of Records failure to comply with the public records request, 67.21(e) based on failure to appear before the Task Force for the hearing, 67.26 based on failure to keep withholding to a minimum, 67.27 based on failure to justify a reason, and referral to Compliance and Amendments Committee.

Speaker: Peter Warfield spoke in support of motion.

The motion PASSED by the following vote:

Ayes: 7 – Costa, Knee, Manneh, Washburn, Chair Johnson

Noes: 1 - West

Absent: 2 - Chan, Vice Chair Wolfe

Excused: 2 - Snyder, Cauthen

21. **File No. 12009:** Complaint filed by Allen Grossman against Marisa Moret, Managing Attorney, City Attorney's Office for allegedly failing to respond to records request.

Allen Grossman (Complainant) requested that File Nos. 12008, 12009, and 12010 be considered as a combined file.

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

There were no speakers. **The motion PASSED without objection.**

Allen Grossman (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. The Respondent was not present for rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved to find Scott Minty, Marisa Moret, and Susana Martinez, City Attorney's Office, in violation of Sunshine Ordinance Sections 67.21(b) based on the Custodian of Records failure to comply with the public records request, 67.21(e) based on failure to appear before the Task Force for the hearing, 67.26 based on failure to keep withholding to a minimum, 67.27 based on failure to justify a reason, and referral to Compliance and Amendments Committee.

Speaker: Peter Warfield spoke in support of motion.

The motion PASSED by the following vote:

Ayes: 7 – Costa, Knee, Manneh, Washburn, Chair Johnson

Noes: 1 - West

Absent: 2 - Chan, Vice Chair Wolfe

Excused: 2 - Snyder, Cauthen

22. **File No. 12010:** Complaint filed by Allen Grossman against Susana Martinez, Chief Financial Officer, City Attorney's Office for allegedly failing to respond to records request.

Allen Grossman (Complainant) requested that File Nos. 12008, 12009, and 12010 be considered as a combined file.

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

There were no speakers. **The motion PASSED without objection.**

Allen Grossman (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations. The Respondent was not present for rebuttal. Complainant waived rebuttal.

Member Washburn, seconded by Member Knee, moved to find Scott Minty, Marisa Moret, and Susana Martinez, City Attorney's Office in violation of Sunshine Ordinance Sections 67.21(b) based on the Custodian of Records failure to comply with the public records request, 67.21(e) based on failure to appear before the Task

Force for the hearing, 67.26 based on failure to keep withholding to a minimum, 67.27 based on failure to justify a reason, and referral to Compliance and Amendments Committee.

Speaker: Peter Warfield spoke in support of motion.

The motion PASSED by the following vote:

Ayes: 7 – Costa, Knee, Manneh, Washburn, Chair Johnson

Noes: 1 - West

Absent: 2 - Chan, Vice Chair Wolfe

Excused: 2 - Snyder, Cauthen

23. Permanent designation of Seat No. 2 as the Bruce Brugmann Seat. (Discussion and Action. (1.11.33 – 1.33.27)

Member Knee, seconded by Member Washburn, moved to name Seat No. 2 the Bruce Brugmann Seat pending completion of legal requirements.

Speaker: Jason Grant Garza spoke expressing objection to naming the seat after Bruce Brugmann. Thomas Picarello requested the item be continued to the future incoming Task Force Members.

There were no speakers. **The motion PASSED without objection.**

24. **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. (51.47 – 1.11.33)

Speakers: Ray Hartz spoke expressing praise of SOTF. Jason Grant Garza spoke expressing concern about the Chair not replying to correspondence and him not having access to medical records. Thomas Picarello spoke expressing concern regarding Respondents not being available after 5:00p.m. to present their responses in complaint cases and requested to have SOTF meetings televised. Peter Warfield spoke inquiring which members of the SOTF will reapply. Ace spoke expressing clarity in the time allowed for speakers to speak. Allen Grossman spoke announcing the Joint Ethic Commission SOTF Committee meeting. Male Speaker spoke expressing anonymous' right to remain anonymous.

25. **Report: Compliance and Amendments meeting of March 20, 2012.**

In the interest of time, the report was not heard.

26. **Administrator's Report.**

In the interest of time, the report was not heard.

27. **Announcements, Comments, Questions, and Future Agenda Items.**

There were none.

28. **ADJOURNMENT**

There being no further business, the Task Force adjourned at the hour of 11:17 p.m.

File No. _____

SOTF Item No. 17
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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October 25, 2011, Regular Meeting Minutes

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Completed by: Andrea Ausberry Date April 25, 2012

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The complete document is in the file.



**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**

October 25, 2011 – 4:00 PM

Regular Meeting

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

Call to Order, Roll Call and Agenda Changes (4:00 p.m. - 4:36 p.m.)

The meeting was called to order at 4:00 p.m. On the call of the roll, Member Cauthen, Member Knoebber, Member Wolfe, Member Chan, and Member West were noted absent. Member Wolfe was noted present at 4:17 p.m. Member Chan was noted present at 4:53 p.m. Member Manneh was noted absent at 6:58 p.m. Member Chan was noted absent at 9:00 p.m.

Member Knee, seconded by Member Washburn, motioned to excuse Member Cauthen.

The motion was approved without objection.

Chair Johnson said the respondent for Items 8 and 9 was present and the case would be heard as soon as the complainant arrived.

Member Washburn, seconded by Member Costa, motioned to hear the item when the complainant arrives.

The motion was approved without objection.

Chair Johnson moved the annual report to after Item 21.

Member Washburn, seconded by Member Costa, motioned to hear the annual report after Item 21.

The motion was approved without objection.

- 1. Possible adjustment of Sunshine Ordinance Task Force meeting schedule for the 2011 winter holidays (4:03 p.m. - 4:11 a.m.)**

Member Knee, seconded by Member Washburn, moved to cancel the November 22, 2011, meeting and call for a special meeting on November 29, 2011.

The motion was approved without objection.

Member Knee, seconded by Member Costa, moved to cancel the December 27, 2011, meeting and call for a special meeting on January 3, 2012.

The motion was approved without objection.

Public Comment: Peter Warfield, Executive Director of the Library Users Association, said the Task Force and the Board of Supervisors meet on the same day and it poses a conflict for those who would like to participate in both meetings. He urged the Task Force to move its meeting to another day.

2. Approval of the Annual Report

Chair Johnson moved the item to be heard after Item 21. The item was not heard because quorum was lost at 9:42 p.m.

3. Approval of Minutes from the August 23, 2011 SOTF Regular Meeting (4:11 p.m. - 4:32 p.m.)

Member Costa, seconded by Member Washburn, moved to amend and approve the Minutes from the August 23, 2011 SOTF Regular Meeting:

Public Comment: Peter Warfield, , Executive Director of the Library Users Association, said the Task Force's decision to inform the City Attorney that the 150-word statement had to be in the body of the minutes and should be memorialized somewhere. Ray Hartz, Director of San Francisco Open Government, said detailed record-keeping is important because future Task Force members can look at the record to see how the Task Force reached a decision instead of having the topic revisited. Allen Grossman said members need to do more to clear the backlog of meeting minutes.

The motion carried by the following vote:

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

Excused: 1 – Cauthen

Absent: 3 – Knoebber, Chan, West

4. File No. 11021: Hearing on the status of the May 24, 2011, Order of Determination regarding Debra Benedict against the Tides Center (4:32 p.m. - 4:37 p.m.)

The Complainant was not present. No one presented facts and evidence on behalf of the Complainant. Respondent Olaitan Callender-Scott had earlier informed the Task Force that she could not attend because she was out of state.

The Task Force discussed following up with respondent to confirm residents of San Francisco will be able to remotely attend public Board meetings of the Tide Center held out of state.

Chair Johnson moved the item to the December 13, 2011, Compliance and Amendments Committee meeting for follow up.

Public Comment: None.

5. **File No. 11034:** Reconsideration of a complaint filed by Frank McDowell against the San Francisco Municipal Transportation Agency for allegedly not providing documents associated with a drive cam. (5:51 p.m. - 6:37 p.m.)

Complainant presented a graph produced by respondent in a separate matter.

Member Wolfe, seconded by Member Washburn, moved to reconsider the complaint.

Public Comment: Ray Hartz, Director San Francisco Open Government, said the MTA should have helped Mr. McDowell identify the documents he needed. Jason Grant Garza said the Task Force needs to help the complainant and reopen the matter.

The motion carried by the following vote:

Ayes: 5 – Washburn, Costa, Wolfe, Chan, Manneh

Noes: 3 – Snyder, Knee, Johnson

Excused: 1 – Cauthen

Absent: 2 – Knoebber, West

Chair Johnson said the item will be placed on the November 8, 2011, agenda.

6. **File No. 11042:** The Compliance and Amendments Committee has referred Cynthia Carter v the San Francisco Municipal Transportation Agency back to the Task Force with a recommendation that the matter be forwarded to the Ethics Commission for failure to comply with the Order of Determination. (6:50 p.m. - 7:28 p.m.)

Complainant was not present. Respondent stated some document had been provided following the Compliance and Amendment Committee hearing.

Member Knee, seconded by Member Washburn, motioned to continue the matter to the November 29, 2011 full Task Force meeting.

Public Comment: Ray Hartz, Director San Francisco Open Government, said City officials should know and understand the implications of the Order of Determination. Patrick Monette-Shaw said several departments have not made good-faith efforts to comply with an Order of Determination., Jason Grant Garza said if the issue is referred to the Ethics Commission it will respond by saying that the Task Force was wrong in its determination.. Peter Warfield, Executive Director Library Users Association, said promptness is important and it is specified in the Ordinance. David Hill of the MTA said the role a department plays in responding to a request has to be considered because a request for a document involves the

work of several employees. Allen Grossman said a public request should be handled at the same level an employee would to his or her daily duties, and Ethics play an important roll in enforcement of the that duty.

The Task Force discussed the need for timely compliance with Orders of Determination.

Vice Chair Wolfe, seconded by Member Washburn, made a substitute motion to refer Caroline Celaya of the SFMTA to the Ethics Commission for failure to comply with the Order of Determination and for violating Sections 67.21(b) by not providing the documents in a timely manner, 67.21(c) for failure to direct the requestor to the appropriate person, and 67.21(e) for failure to send a knowledgeable representative.

Public Comment: Patrick Monette-Shaw said the Task Force has every reason to support Member Wolfe's motion. Jason Grant Garza wanted to know what would happen after it is referred to the Ethics Commission. Ray Hartz said a referral to the Ethics Commission is a must if respondents do not abide by the dates the Task Force has stipulated in its Order of Determinations. Peter Warfield said he supported the motion.

The motion carried by the following vote:

Ayes: 6 – Knee, Washburn, Costa, Wolfe, Chan, Johnson

Noes: 1 – Snyder

Excused: 1 – Cauthen

Absent: 3 – Knoebber, West, Manneh

- 7. File No. 11049:** The Compliance and Amendments Committee has referred George Wooding v Recreation and Parks Department back to the Task Force with a recommendation that the matter be forwarded to the Ethics Commission for official misconduct by reason of willful failure to comply with the Order of Determination. (7:28 p.m. - 8:24 p.m.)

Several days before the hearing, respondent Olive Gong produced responsive emails recovered from backup tapes as requested by the Compliance and Amendments Committee.

Member Washburn, seconded by Vice-Chair Wolfe, moved to accept the recommendation of the Compliance and Amendments Committee.

Public Comment: Ray Hartz, Director San Francisco Open Government, said Olive Gong, the Custodian of Records for the Recreation and Parks Department, should have told her staff that there was a deadline that she needs to meet in producing the documents. Jason Grant Garza said the Task Force should tell Mr. Wooding that the referral to the Ethics Commission would not get him anywhere. Greg Miller said the matter should be forwarded to the Ethics Commission even if no action is anticipated. Peter Warfield said the Recreation and Parks Department has been given ample time to respond and because they have not the referral to the Ethics Commission is automatic. Allen Grossman said official misconduct only applies to elected official and department heads.

Member Washburn, seconded by Vice-Chair Wolfe, amended the motion to refer Recreation and Parks Department General Manager Phil Ginsburg and Director of Policy and Public Affairs Sarah Ballard to the Ethics Commission for official misconduct by reason of willful

failure, and Recreation and Parks Commission President Mark Buell and Olive Gong for not complying with the Order of Determination.

The motion carried by the following vote:

Ayes: 7 – Snyder, Knee, Washburn, Costa, Wolfe, Chan, Johnson

Excused: 1 – Cauthen

Absent: 3 – Knoebber, West, Manneh

8. **File No. 11046:** Determination of jurisdiction on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress. (4:38 p.m. - 5:31 p.m.)

Vice Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

9. **File No. 11046:** Hearing on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress.

Compliant presented a video of the recess. Respondent stated microphones were on during the recess, but meetings are not recorded. The City's technology department is working with the committee to record meetings.

Member Knee, seconded by Member Chan, moved to find the Shelter Monitoring Committee in violation of Section 67.14(c) for not audio recording its meetings.

Public Comment: Ray Hartz, Director San Francisco Open Government, said the public should have been given a chance to participate in the discussion Shelter Monitoring Committee analyst Bernice Casey had with a committee member. Peter Warfield, Executive Director of Library Users Association, cited the Brown Act and said the edits done to the document should have been done in front of the public. Jason Grant Garza said the Task Force needs to monitor the situation and not forward it to the Ethics Commission.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Manneh, Washburn, Costa, Wolfe, Chan, Johnson

Excused: 1 – Cauthen

Absent: 2 – Knoebber, West

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

10. **File No. 11056:** Determination of jurisdiction on complaint filed by Allen Grossman against City Attorney Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information. (8:24 p.m. - 9:41 p.m.)

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

Public Comment: None.

The motion passed without objection.

- 11. File No. 11056:** Hearing on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Mr. Song stated the City Attorney's Office retains records for two years. He did not know if records are available for the past two years or if they might be attorney privileged.

Chair Johnson, seconded by Member Costa, moved to find Jack Song in violation of Sections 67.25(a) for failure to respond to the two IDR requests in a timely manner and 67.21 (c) for not directing the requester to the appropriate office; and to find City Attorney Dennis Herrera in violation of Section 67.26 for not keeping withholding to a minimum and ordered him to produce the documents that explain how the budget is calculated, explain how a baseline is set and used, and how it relates to the Task Force for the last two years.

Public Comment: Ray Hartz, Director San Francisco Open Government, said if any calculation is based on the prior year the previous year's numbers should be available. Peter Warfield, Executive Director Library Users Association, said the person appearing before the Task Force is not knowledgeable on the issue and the City Attorney's Office is not maintaining its records as the Ordinance states. Jason Grant Garza said baselines for financial situations are the same as baselines for medical purposes. Nick Pasquariello wanted to know how Mr. Song knew that the budget is based on an eight-year baseline.

The motion carried by the following vote:

Ayes: 6 – Snyder, Knee, Washburn, Costa, Wolfe, Johnson

Excused: 1 – Cauthen

Absent: 4 – Knoebber, West, Manneh, Chan

The matter is referred to the Compliance and Amendments Committee.

- 12. File No. 11058:** Determination of jurisdiction on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records.

The item was not heard because quorum was lost at 9:42 p.m.

- 13. File No. 11058:** Hearing on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records.

The item was not heard because quorum was lost at 9:42 p.m.

- 14. File No. 11060:** Determination of jurisdiction on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents.

The item was not heard because quorum was lost at 9:42 p.m.

- 15. File No. 11060:** Hearing on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents.

The item was not heard because quorum was lost at 9:42 p.m.

- 16. File No. 11061:** Determination of jurisdiction on complaint filed by Micki Jones against the Fire Department for allegedly failing to give her a copy of a complaint letter that was placed in her personnel records.

Withdrawn.

- 17. File No. 11061:** Hearing on complaint filed by Micki Jones against the Fire Department for allegedly failing to give her a copy of a complaint letter that was placed in her personnel records.

Withdrawn.

- 18. File No. 11070:** Determination of jurisdiction on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request.

The item was not heard because quorum was lost at 9:42 p.m.

- 19. File No. 11070:** Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request.

The item was not heard because quorum was lost at 9:42 p.m.

- 20. 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.

The item was not heard because quorum was lost at 9:42 p.m.

- 21. 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.

The item was not heard because quorum was lost at 9:42 p.m.

22. Supervisor of Records Report

The item was not heard because quorum was lost at 9:42 p.m.

- 23. Approval of Minutes from the January 4, 2011, special meeting.**

The item was not heard because quorum was lost at 9:42 p.m.

24. Approval of Minutes from the January 20, 2011, special meeting.

The item was not heard because quorum was lost at 9:42 p.m.

25. Approval of Minutes from the January 25, 2011, regular meeting.

The item was not heard because quorum was lost at 9:42 p.m.

26. Report: Education, Outreach and Training Committee meeting of October 13, 2011.

The item was not heard because quorum was lost at 9:42 p.m.

27. Report: Compliance and Amendments Committee meeting of October 11, 2011.

The item was not heard because quorum was lost at 9:42 p.m.

28. Administrator's Report.

The item was not heard because quorum was lost at 9:42 p.m.

29. Public Comment (5:31 p.m. - 5:50 p.m.)

Jason Grant Garza inquired about the process in filing an Immediate Disclosure Request and several other Sunshine Ordinance Task Force procedures. Patrick Monette-Shaw wanted to know if the Task Force would contact the Mayor's Office and inquire what the outcome of the Ethics Commission's referral of Jewelle Gomez would be. Ray Hartz, Director San Francisco Open Government, said he has warned the Ethics Commission not to dismiss Sunshine referrals but to enforce the law and if they did not he would keep reminding them of their duties whenever he gets a chance at its meetings. Peter Warfield, Executive Director Library Users Association, said if members wanted to have their meeting date changed it could be planned well ahead of schedule to give members a chance to adjust. Allen Grossman said the Task Force needs to review the material that is in the Ethics Commissioners agenda packet for Nov. 14 and be prepared to discuss it extensively. Charles Pitts said the Task Force needs to make sure that all libraries and law offices have the latest edition of the Sunshine Ordinance.

30. Administrator's Report

The item was not heard because quorum was lost at 9:42 p.m.

31. Future Agenda Items

The item was not heard because quorum was lost at 9:42 p.m.

32. Adjournment

Having lost quorum at 9:42 p.m. the Task Force did not discuss the remaining agenda items.

File No. _____

SOTF Item No. 18

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Completed by: Andrea Ausberry Date April 25, 2012

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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**

November 29, 2011 – 4:00 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 (4:00 p.m. - 4:02 p.m.)

The meeting was called to order at 4:02 p.m. On the call of the roll, Member Manneh, Member Costa and Member West were noted absent. Member Manneh was noted present at 4:07 p.m. Member West was noted present at 4:10 p.m. Member Chan was noted absent at 7:30 p.m. Member Cauthen was noted absent at 8:30 p.m.

Member Wolfe, seconded by Member Washburn, moved to excuse Member Costa.

Public Comment: Jason Grant Garza said Task Force members should attend all meetings in order to serve the community well.

The motion passed without objection.

2. Changing the time and day of the week the Sunshine Ordinance Task Force holds its regular monthly meetings (4:35 p.m. - 4:40 p.m.)

Chair Johnson moved to continue the item to the December 14 meeting.

Public Comment: Peter Warfield, Executive Director of the Library Users Association, suggested delaying the move to the new schedule so that members can adjust their schedules accordingly.

The motion passed without objection.

3. Approval of Annual Report to the Board of Supervisors (4:40 p.m. - 4:53 p.m.)

Member Cauthen, seconded by Member Knee motioned to move the item to the December 14 meeting.

Public Comment: Peter Warfield, Executive Director of the Library Users Association, said the issue of serial violators, long-term issues, and the 45-day requirement should also be included in the report.

The motion passed without objection.

4. Approval of Minutes from the October 25, 2011 Regular Meeting (4:40 p.m. - 4:53 p.m.)

Member Cauthen, seconded by Member Knee motioned to move the item to the December 14 meeting.

Public Comment: Peter Warfield, Executive Director of the Library Users Association, said he may not be able to attend the December 14 meeting but supports to motion because the document was not in the packet.

The motion passed without objection.

5. File No. 11058: Determination of jurisdiction on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records (4:41 p.m. - 5:25 p.m.)

Member Washburn, seconded by Vice Chair Wolfe, motioned to find jurisdiction.

Public Comment: None.

The motion was passed without objection.

6. File No. 11058: Hearing on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records

Member Washburn, seconded by Member Knee, motioned to find the Film Commission in violation of Sections 67.26 for withholding records and 67.27 for not providing justification for the withholding.

Public Comment: Allen Grossman said there was no expectation of privacy when somebody applies for a permit. Peter Warfield, Executive Director of the Library Users Association, said various state and local laws allow for the redaction of certain information and the respondent in this case did not cite any.

The motion, as amended, carried by the following vote:

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

Excused: 1 – Costa

Chair Johnson referred the matter to the Compliance and Amendments Committee.

7. File No. 11060: Determination of jurisdiction on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents. (7:57 p.m. - 8:05 p.m.)

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

Public Comment: None.

The motion was passed without objection.

8. File No. 11060: Hearing on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents.

The complainant was not present. There was no one in the audience to present facts and evidence in support of the complainant. Frank Lee represented the Department of Public Works.

Chair Johnson, seconded by Vice Chair Wolfe, motioned to dismiss the complaint.

Public Comment: None.

The motion carried on the following vote:

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

Excused: 1 – Costa

Absent: 1 – Chan

9. File No. 11070: Determination of jurisdiction on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request. (8:05 p.m. - 9:34 p.m.)

Vice Chair Wolfe, seconded by Member Manneh, motioned to find jurisdiction.

Public Comment: None.

The motion was passed without objection.

10. File No. 11070: Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request.

Complainant Jason Grant Garza presented his case. The Department of Public Health was represented by Public Information Officer Eileen Shields, Compliance Officer Chona Peralta and Privacy Officer Dr. Alice Clegghorn

Vice Chair Wolfe motioned to find the department in violation of Section 67.27(d) for withholding the records. The motion died for lack of a second.

Matter concluded.

Member Snyder, seconded by Member Knee, motioned to reopen the matter for public comment.

Public Comment: Peter Warfield said regardless of content, all documents are public records and subject to disclosure. Ray Hartz, Director San Francisco Open Government, said the Library Commission took 25 days to produce 13 documents in response to an Immediate Disclosure Request.

Vice Chair Wolfe motioned to find the department in violation of Section 67.27(d) for withholding the records. The motion died for lack of a second.

Matter concluded.

Chair Johnson called for a brief recess.

11. File No. 11081: Determination of jurisdiction on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly not responding to an Immediate Disclosure Request. (9:43 p.m. -10:23 p.m.)

Vice Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion was passed without objection.

12. File No. 11081: Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly not responding to an Immediate Disclosure Request.

Complainant Jason Grant Garza presented his case. The Department of Public Health was represented by Public Information Officer Eileen Shields, Compliance Officer Chona Peralta and Privacy Officer Dr. Alice Clegghorn

Chair Johnson, seconded by Member Washburn, motioned to find the department in violation of Sections 67.21 (c) for failing to assist a requestor, 67.25(a) for failure to respond to an Immediate Disclosure Request and 67.27 for not providing a justification for withholding records.

Public Comment: None.

The motion carried on the following vote:

Ayes: 6 – Snyder, Knee, Washburn, Wolfe, West, Johnson

Excused: 1 – Costa

Absent: 3 – Cauthen, Manneh, Chan

The matter was forwarded to the Compliance and Amendments Committee where the issue of the medical record would continue to be discussed.

13. 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. (10:24 p.m. - 10:41 p.m.)

Vice Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion was passed without objection.

14. 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.

Member Knee, seconded by Member Washburn, motioned to move the item to the next meeting.

Public Comment: Peter Warfield said the matter should be heard and not to delay the complainant by postponing the case.

Vice Chair Wolfe, seconded by Member Snyder, motioned to hear #11085 before #11071.

Public Comment: Peter Warfield wanted to know what would happen if time ran out and a decision on his complaint had not been reached.

Member Knee, seconded by Member Washburn, motioned to continue Items 14, 33 and 34.

Public Comment: Zoe Taleporos of the Arts Commission said the agenda should be limited to a certain number of cases because it is unconscionable to have people sit from 4 p.m. to 11 p.m. and yet have their item not heard. Ray Hartz said the Task Force needs to do what it needs to do to hear the complaints. Peter Warfield said he appreciates the time the Task Force spends to try and do justice to the complainants.

The motion carried on the following vote:

Ayes: 5 – Snyder, Knee, Washburn, West, Johnson

Noes: 1 – Wolfe

Excused: 1 – Costa

Absent: 3 – Cauthen, Manneh, Chan

15. File No. 11072: Determination of jurisdiction on complaint filed by Anonymous against Supervisor Sean Elsbernd for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting. (6:44 p.m. - 7:56 p.m.)

Member Knee, seconded by Vice Chair Wolfe, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

16. File No. 11072: Hearing on complaint filed by Anonymous against Supervisor Sean Elsbernd for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.

Pastor Gavin presented her complaint. The respondent was not present. There was no one in the audience to present facts and evidence in support of the respondent.

No motion was made.

Public Comment: Ray Hartz, Director San Francisco Open Government, said Supervisor Elsbernd should have taken his fellow Supervisor's and constituents' concerns into consideration and should have voted against the ParkMerced Development Agreement. Jason Grant Garza said the non-appearance of a knowledgeable representative from Supervisor Elsbernd's office is a Sunshine violation.

Chair Johnson announced that the matter was concluded.

Member Knee, seconded by Member Manneh, motioned to reopen the matter to allow Vice Chair Wolfe to make a motion

Public Comment: None.

The motion passed without objection.

No motion was made.

Chair Johnson announced that the matter was concluded.

17. File No. 11073: Determination of jurisdiction on complaint filed by Anonymous against Supervisor Malia Cohen for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.

Continued.

18. File No. 11073: Hearing on complaint filed by Anonymous against Supervisor Malia Cohen for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.

Continued.

19. File No. 11074: Determination of jurisdiction on complaint filed by Anonymous against Supervisor Carmen Chu for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.

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

Public Comment: None.

The motion passed without objection

- 20. File No. 11074: Hearing on complaint filed by Anonymous against Supervisor Carmen Chu for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Pastor Gavin presented her complaint. Seven members of the public spoke in support of Pastor Gavin. Gillian Gillette, legislative aide to Supervisor Scott Weiner read a statement from Supervisor Carmen Chu.

No motion was made.

Public Comment: Jason Grant Garza said public officials should be held responsible for their actions.

Matter concluded.

- 21. File No. 11075: Determination of jurisdiction on complaint filed by Anonymous against Supervisor Scott Wiener for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 22. File No. 11075: Hearing on complaint filed by Anonymous against Supervisor Scott Wiener for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 23. File No. 11076: Determination of jurisdiction on complaint filed by Anonymous against Supervisor Mark Farrell for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 24. File No. 11076: Hearing on complaint filed by Anonymous against Supervisor Mark Farrell for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 25. File No. 11077: Determination of jurisdiction on complaint filed by Anonymous against Supervisor David Chiu for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 26. File No. 11077: Hearing on complaint filed by Anonymous against Supervisor David Chiu for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting.**

Continued.

- 27. File No. 11078: Determination of jurisdiction on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating certain sections of the Sunshine Ordinance.)**

Continued.

- 28. File No. 11078: Hearing on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating certain sections of the Sunshine Ordinance.**

Continued.

- 29. File No. 11079: Determination of jurisdiction on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating certain sections of the Sunshine Ordinance.**

Continued.

- 30. File No. 11079: Hearing on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating certain sections of the Sunshine Ordinance.**

Continued.

- 31. File No. 11080: Determination of jurisdiction on complaint filed by Anonymous against Deputy City Charles Sullivan for allegedly violating certain sections of the Sunshine Ordinance.**

Continued.

- 32. File No. 11080: Hearing on complaint filed by Anonymous against Deputy City Charles Sullivan for allegedly violating certain sections of the Sunshine Ordinance.**

Continued.

- 33. 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.**

Continued.

- 34. File No. 11085: Hearing on complaint filed by Library Users Association against the Arts Commission for not providing the draft minutes of a meeting.**

Continued.

35. Public Comment (5:22 p.m. - 5:36 p.m.)

Ray Hartz, Director, San Francisco Open Government appealed to the Task Force to forward his complaint in #10050_Ray Hartz v Police Commission to the Ethics Commission. (submits summary) Jason Grant Garza said the Chair and Administrator of the Task Force do not respond to his emails on the 45-day rule. Randall Panter said the 45-day rule allows a committee not to take action immediately. Peter Warfield, Executive Director of the Library Users Association, said the Task Force needs to take care of the complaints promptly and make it visible to the public. Allen Grossman said the Task Force needs to review the administrative support it gets because Mr. Rustom has taken an inordinate amount of time off and in his absence the Clerk has not provided adequate coverage. Chair Johnson called a brief recess.

36. Announcement, Comments, Questions, and Future Agenda Items (10:36 p.m. - 10:50 p.m.)

Vice Chair Wolfe suggested having all jurisdictional items to be called first to see who is present and who is absent. It would also allow the parties to leave and come back at an estimated time. Chair Johnson instructed Mr. Rustom to forward all emails from both parties who say they will not be attending the meetings.

Public Comment: Ray Hartz said he would prefer to have #10054 brought back before the Task Force. Peter Warfield said the administrator did not promptly forward him the Arts Commission's response to a recent complaint and requested that all emails from respondents be forwarded to him electronically.

37. Adjournment

With time being close to City Hall closing hour, the Task Force adjourned at 10:53 p.m.

File No. _____

SOTF Item No. 19

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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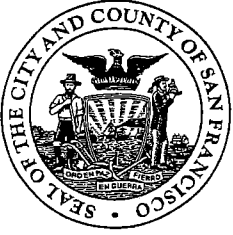
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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

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The complete document is in the file.



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

January 3, 2012 – 4:00 PM

Special Meeting

Members: Chair Hope Johnson, 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.** (5:00 p.m. - 5:01 p.m)

The meeting was called to order at 5:00 p.m. Vice Chair Wolfe, Members Snyder, Cauthen, Wolfe, and Chan were noted absent. There was a quorum. Vice Chair Wolfe was noted present at 5:07 p.m.

Member Washburn, seconded by Member Knee, moved to EXCUSE Members Snyder and Cauthen.

There were no speakers. **The motion PASSED without objection.**

Chair Johnson announced that File No. 11086_Che Hashim v. Jarvis Murray of the San Francisco Municipal Transportation Agency (Item Nos. 19 and 20) were withdrawn by the Complainant. Chair Johnson indicated a request that File No. 11091_Nick Pasquariello v. Office of Supervisor David Chiu (Item Nos. 27 and 28) be continued by the Respondent.

2. **Approval of Minutes from the Regular Meeting of October 25, 2011.** (5:04 p.m. - 5:06 p.m.)

Member Knee, seconded by Member Costa, moved to CONTINUE to January 24, 2011.

There were no speakers. **The motion PASSED without objection.**

3. **Approval of Minutes from the Special Meeting of November 29, 2011.** (5:04 p.m. - 5:06 p.m.)

Member Knee, seconded by Member Costa, moved to CONTINUE to January 24, 2011.

There were no speakers. **The motion PASSED without objection.**

4. **Approval of Minutes from the Special Meeting of December 14, 2011.** (5:04 p.m. - 5:06 p.m.)

Member Knee, seconded by Member Costa, moved to CONTINUE to January 24, 2011.

There were no speakers. **The motion PASSED without objection.**

5. **Approval of the Task Force Annual Report to Board of Supervisors.** (5:07 p.m. - 5:35 p.m.)

Members reviewed the report and commented on the matter. A question and answer period followed. Members proposed additional amendments as follows:

Chair Johnson, on Page 10 by adding a fourth paragraph under Enforcement of the Sunshine Ordinance as follows: 'In addition, enforcement of the Sunshine Ordinance may uncover other improper actions within a department. The Task Force wrote letters to the Board of Supervisors on June 17, 2011, and July 6, 2011, documenting its increasing concern regarding repeated violations of the Sunshine Ordinance by the Arts Commission since 2010 and lack of enforcement of the Ordinance. Many of the Sunshine complaints were related to the Street Artists concern over financial expenditures. By mid-July the Head of the Arts Commission was replaced amid allegations of improper financial expenditures and failure to properly track spending. The allegations were then confirmed by the City's Controller Audit Commission in November.'

Member Washburn, on Page 10 by replacing 'LONG TERM ISSUES' with 'ISSUES OF CONCERN'; on Page 10 by adding an additional sentence to the fourth paragraph under Enforcement of the Sunshine Ordinance as follows: 'The Sunshine Ordinance Task Force also found that no public input had been possible prior to the noise ordinance.'

Chair Johnson, on Page 12 by replacing '350' with '280'.

Member Knee, on Page 14 by deleting the first reference to 'normally' in the third paragraph; on Page 19 by replacing the first sentence of the second paragraph with 'The EOTC has three voting seats, two of which are filled; the holders are Jay Costa (Chair) and Suzanne Manneh.'; on Page 19 by deleting 'h' in 'Thomas'; on Page 19 by spelling out 'Municipal Transportation Agency (MTA)' and 'Single Room Occupancy (SRO)'; and throughout the Committee pages to standard the listed complaints format.

Ray Hartz, expressed various concerns relating to people's rights, violations by Boards and Commissions, and resources provided by the Offices of the Clerk of the Board and City Attorney. Jason Grant Garza, expressed various concerns relating to Sunshine Ordinance Task Force violations of the Ordinance and failure to follow process. David

Pilpel, expressed various concerns relating to the reporting period, Administrator's Reports, and lack of an overall date.

Member Knee, seconded by Vice Chair Wolfe, moved to AMEND the Task Force Annual Report through December 2011, as detailed above.

There were no speakers.

The motion PASSED by the following vote:

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

Excused: 2 – Snyder, Cauthen

Absent: 1 – Chan

Vice Chair Wolfe, seconded by Member Knee, motioned to CONTINUE AS AMENDED to January 24, 2011.

There were no other speakers. **The motion PASSED without objection.**

6. **Discussion of Task Force Press Releases. (5:35 p.m. - 6:02 p.m.)**

Member Costa provided an overview of the Education, Outreach and Training Committee's discussion and intention. Members commented on the matter.

Member Washburn, seconded by Member Knee, moved that the Education, Outreach, and Training Committee, begin work on the concept of Press Releases.

Jason Grant Garza, spoke expressing various concerns relating to the process and in support of press releases. Ray Hartz (San Francisco Open Government), spoke expressing various concerns and in support of press releases. Lin Danny, expressed various concerns relating to meeting accessibility. David Pilpel, expressed various concerns relating to seriatim meetings. Female Speaker, spoke expressing various concerns and in support of press releases.

There were no other speakers. The motion PASSED by the following vote:

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

Excused: 2 – Snyder, Cauthen

Absent: 1 – Chan

7. **Discussion of Changing Time and Day of Week the Sunshine Ordinance Task Force Regular Meetings. (6:02 p.m. - 6:06 p.m.)**

Chair Johnson provided an overview of the proposed change in schedule and indicated that additional resources needed to be review and therefore this matter would be **CONTINUED to January 24, 2012.** Ray Hartz (San Francisco Open Government), expressed concern relating to start time. Male Speaker, expressed concerns relating to rooms. There were no other speakers. Members commented on the matter. No further action was taken.

8. **File No. 11008:** Continued hearing on complaint filed by William Clark against the Arts Commission including the Compliance and Amendments Committee's recommendation to the Task Force. (6:20 p.m. - 6:43 p.m.)

Chair Johnson provided a recap of the prior proceedings. William Clark (Complainant) provided an overview of the complaint, findings, follow-up, and further requested the Task Force to find further violations. There were no speakers in support of the Complainant. There was no Respondent present. There were no speakers in support of the Respondent. A question and answer period followed. Complainant responded to questions raised throughout the discussion and further requested the Task Force to find further violations.

Vice Chair Wolfe, seconded by Member Knee, moved to RECONSIDER THE ORIGINAL ORDER OF DETERMINATION and CONTINUE to January 24, 2012.

There were no other speakers.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

RECESS

The Task Force reconvened at 6:44 p.m.

9. **File No. 11063:** Determination of jurisdiction on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating Ordinance Section 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), 67.15 (Public Testimony), and 67.33 (Department Head Declaration) at a recent Board of Supervisors Land Use Committee meeting. (6:44 p.m. - 7:46 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

10. **File No. 11063:** Hearing on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating Ordinance 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), and 67.15 (Public Testimony), and 67.33 (Department Head Declaration) at a recent Board of Supervisors Land Use Committee meeting. (6:44 p.m. - 7:46 p.m.)

Anonymous (Complainant) provided an overview of the complaint, responded to questions raised throughout the discussion, and further requested the Task Force to find violation. Male Speaker; Female Speaker; spoke expressing various concerns and in support of the Complainant. Brian Smith (Respondent), Planning Department, provided

an overview of the Agency's defense, responded to question raised throughout the discussion, and further requested the Task Force to dismiss the complaint. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

David Pilpel; spoke expressing various concerns and in support of the finding. Ray Hartz; spoke expressing various concerns and in opposition to the finding. There were no other speakers. Task Force Members commented on the matter. No further action was taken.

11. **File No. 11078:** Determination of jurisdiction on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating certain sections of the Sunshine Ordinance. (7:46 p.m. - 7:48 p.m)

Vice Chair Wolfe, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

12. **File No. 11078:** Hearing on complaint filed by Anonymous against John Rahaim of the Planning Department for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting. (7:47 p.m. - 8:16 p.m.)

Anonymous (Complainant) provided an overview of the complaint, responded to questions raised throughout the discussion, and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Brian Smith (Respondent), Planning Department, provided an overview of the Agency's defense, responded to question raised throughout the discussion, and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

David Pilpel; spoke expressing various concerns and in support of the finding. Ray Hartz; spoke expressing various concerns and in opposition to the finding. There were no other speakers. Task Force Members commented on the matter. No further action was taken.

13. **File No. 11068:** Determination of jurisdiction on complaint filed by Anonymous against the Planning Department for allegedly violating various sections of the Sunshine Ordinance. (8:16 p.m. - 8:31 p.m.)

A question and answer period followed. Anonymous (Complainant) provided an overview of the jurisdiction and further requested the Task Force to find jurisdiction. There were no speakers in support of the Complainant. Brian Smith (Respondent),

Planning Department, provided an overview of their contest to jurisdiction. There were no speakers in support of the Respondent.

Member Manneh, seconded by Member Costa, moved to find jurisdiction.

Ray Hartz (San Francisco Open Government), spoke expressing various concerns relating to jurisdiction. David Pilpel, spoke expressing various concerns and in support of finding jurisdiction. There were no other speakers.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

14. **File No. 11068:** Hearing on complaint filed by Anonymous against the Planning Department for allegedly violating various sections of the Sunshine Ordinance. (8:31 p.m. - 10:10 p.m.)

Anonymous (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. Male Speaker, Female Speaker, spoke expressing various concerns and in support of the Complainant. Brian Smith (Respondent), Planning Department, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Costa, seconded by Member Manneh, moved to find violation of Sunshine Ordinance Sections 67.21(a),(b) and 67.25(d) based on the excessive timeliness of the Complainants receipt of said documents, and referral to Compliance and Amendments Committee.

Ray Hartz (San Francisco Open Government); spoke expressing various concerns and in support of the finding. David Pilpel; spoke expressing various concerns in opposition to the finding. There were no other speakers

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. **File No. 11075:** Determination of jurisdiction on complaint filed by Anonymous against Supervisor Scott Wiener for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting. (10:12 p.m. - 10:14 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

16. **File No. 11075:** Hearing on complaint filed by Anonymous against Supervisor Scott Wiener for allegedly violating certain sections of the Sunshine Ordinance at a recent Board of Supervisors meeting. (10:12 p.m. - 10:14 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

17. **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. (10:12 p.m. - 10:14 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

18. **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. (10:12 p.m. - 10:14 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

19. **File No. 11086:** Determination of jurisdiction on complaint filed by Che Hashim against Jarvis Murray of the San Francisco Municipal Transportation Agency for allegedly failing to produce documents related to a video recording system. (5:04 p.m. - 5:05 p.m.)

Chair Johnson indicated that File No. 11086_Che Hashim v. Jarvis Murray of the San Francisco Municipal Transportation Agency (Item Nos. 19 and 20) were withdrawn by the Complainant. (See Item No. 1)

TABLED BY OPERATION OF LAW.

20. **File No. 11086:** Hearing on complaint filed by Che Hashim against Jarvis Murray of the San Francisco Municipal Transportation Agency for allegedly failing to produce documents related to a video recording system. (5:04 p.m. - 5:05 p.m.)

Chair Johnson indicated that File No. 11086_Che Hashim v. Jarvis Murray of the San Francisco Municipal Transportation Agency (Item Nos. 19 and 20) were withdrawn by the Complainant. (See Item No. 1)

TABLED BY OPERATION OF LAW.

21. **File No. 11087:** Determination of jurisdiction on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents. (10:14 p.m. - 10:15 p.m.)

Member Knee, seconded by Vice Chair Wolfe, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

22. **File No. 11087:** Hearing on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents. (10:15 p.m. - 11:15 p.m.)

Lars Nyman (Complainant) provided an overview of the complaint and further requested the Task Force to find violation. There were no speakers in support of the Complainant. Frank Lee (Respondent), Department of Public Works, provided an overview of the Agency's defense and further requested the Task Force to dismiss the complaint. There were no speakers in support of the Respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Vice Chair Wolfe, seconded by Member West, moved to find violation of Sunshine Ordinance Sections 67.21(c),(e) based on not identify the existence, form, and nature of any records and failure to produce the documents; and referral to Compliance and Amendments Committee.

Ray Hartz (San Francisco Open Government); David Pilpel; spoke expressing various concerns and in support of the finding. There were no other speakers.

The motion PASSED by the following vote:

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

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

23. **File No. 11088:** Determination of jurisdiction on complaint filed by Ray Hartz against the Ethics Commission for allegedly failing to include his 150-word summary in the body of its meeting minutes. (11:15 p.m. - 11:16 p.m.)

Member West, seconded by Member Manneh, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

24. **File No. 11088:** Hearing on complaint filed by Ray Hartz against the Ethics Commission for allegedly failing to include his 150-word summary in the body of its meeting minutes. (11:15 p.m. - 11:16 p.m.)

Member West, seconded by Member Manneh, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

25. **File No. 11089:** Determination of jurisdiction on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (11:15 p.m. - 11:16 p.m.)

Member West, seconded by Member Manneh, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

26. **File No. 11089:** Hearing on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (11:15 p.m. - 11:16 p.m.)

Member West, seconded by Member Manneh, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED without objection.**

27. **File No. 11091:** Determination of jurisdiction on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for not responding to an Immediate Disclosure Request. (5:03 p.m. - 5:04 p.m. & 6:19 p.m. - 6:20 p.m.)

Chair Johnson indicated a request that File No. 11091_Nick Pasquariello v. Office of Supervisor David Chiu (Item Nos. 27 and 28) be continued by the Respondent.

Member Washburn, seconded by Member West, made a motion to CONTINUE to January 24, 2012. The motion was withdrawn.

Member Manneh, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED by the following vote:**

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

Excused: 2 – Snyder, Cauthen

Absent: 1 – Chan

28. **File No. 11091:** Hearing on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for not responding to an Immediate Disclosure Request. (5:03 p.m. - 5:04 p.m. & 6:19 p.m. - 6:20 p.m.)

Chair Johnson indicated a request that File No. 11091_Nick Pasquariello v. Office of Supervisor David Chiu (Item Nos. 27 and 28) be continued by the Respondent.

Member Washburn, seconded by Member West, made a motion to CONTINUE to January 24, 2012. The motion was withdrawn.

Member Manneh, seconded by Vice Chair Wolfe, moved to CONTINUE to January 24, 2012.

There were no speakers. **The motion PASSED by the following vote:**

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

Excused: 2 – Snyder, Cauthen

Absent: 1 – Chan

29. **Public Comment:** (6:05 p.m. - 6:19 p.m.)

Jason Grant Garza, spoke expressing various concerns relating to the Task Force. David Pilpel, spoke of the passing of Sanjiv Handa and further requested the Task Force to adjourn in his memory. Ray Hartz (San Francisco Open Government), spoke expressing various concerns relating to open government. Female Speaker, spoke expressing various concerns relating to appearance of Respondents. Male Speaker, spoke expressing various concerns relating to a complaint. There were no other speakers.

Chair Johnson and Jerry Threet (City Attorney's Office) responded to questions raised throughout the public comment period.

30. **Announcements, Comments, Questions, and Future Agenda Items.** (11:15 p.m. - 11:16 p.m.)

There were none.

31. **ADJOURNMENT**(11:16 p.m. - 11:17 p.m.)

Member Manneh, seconded by Member West, moved to ADJOURN in memory of Sunshine Advocate, Sanjiv Handa of Oakland.

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Task Force adjourned at the hour of 11:17 p.m.

File No. _____

SOTF Item No. 20

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

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January 24, 2012, Special Meeting Minutes

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



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

January 24, 2012 – 4:00 PM

Regular 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.** (4:06 p.m. - 4:12 p.m.)

The meeting was called to order at 4:06 p.m. On the Call of the Roll, Member Snyder, Member Costa, Member Chan and Member West were noted absent. Member Cauthen was noted absent at 6:55 p.m. Member Costa noted absent at 6 p.m. Member Chan noted absent at 6:52. Member Costa noted present at 9:33 p.m. Member Snyder noted absent at 11:03 p.m.

Vice-Chair Wolfe, seconded by Member Knee, motioned to excuse Member West.

Public Comment: None.

The motion passed without objection.

Member Snyder, Member Costa and Member Chan were noted present at 4:08 p.m.

Chair Johnson announced that Items 22 and 23 would not be heard because the complainant had requested a continuance.

Items 16 and 17 were heard before Item 11.

One break was taken at 5:55 p.m. and another at 8:28 p.m..

2. **Approval of Minutes from the October 25, 2011, Regular Meeting.** (4:12 p.m. - 4:46 p.m.)

Wolfe, seconded by Member Manneh, motioned to approve the minutes.

Several amendments were made to the minutes.

Member Knee motioned to continue the minutes but died for a lack of a second.

Public Comment: Peter Warfield, Tomas Picarello, Ray Hartz, Doug Comstock and Charles Pitts expressed their views.

Member Washburn, seconded by Member Knee, motioned to continue the minutes to the February 28, 2012, meeting.

The motion carried by the following vote:

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

Excused: 1 – West

3. **Approval of Minutes from the November 29, 2011, Special Meeting.** (4:47 p.m. - 5:08 p.m.)

Items 3 and 4 were taken at the same time.

Member Washburn, seconded by Member Knee motioned to have the Rules Committee review it before placing it on the February 28, 2012, meeting agenda.

A substitute motion was offered.

Chair Johnson, seconded by Wolfe, motioned to have members submit their suggested corrections to the administrator before the February 28, 2012, meeting

Public Comment: Ray Hartz, Peter Warfield, Nick Pasquariello, Tomas Picarello and Charles Pitts expressed their views.

4. **Approval of Minutes from the December 14, 2011, Special Meeting.**

Please see Item 3.

5. **Approval of the Task Force Annual Report to Board of Supervisors.** (5:20 p.m. - 5:37 p.m.)

Members discussed the document and moved to finalize it.

Public Comment: Peter Warfield expressed his views.

Wolfe, seconded by Member Washburn, motioned to approve the amended report.

The motion carried by the following vote:

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

Excused: 1 – West

6. **Discussion of Changing Time and Day of Week the Sunshine Ordinance Task Force holds Regular Monthly Meetings.** (5:37 p.m. - 5:56 p.m.)

Members discussed various dates for the Task Force and its committees.

Public Comment: Ray Hart expressed his view.

Member Costa, seconded by Vice-Chair Wolfe, motioned to change the Task Force's regularly monthly meetings to the 1st Wednesday of the month, effective March 7, 2012.

Public Comment: None.

The motion carried by the following vote:

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

Excused: 1 – West

7. **File No. 11067:** Determination of jurisdiction on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating Ordinance Section 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), 67.15 (Public Testimony), and 67.21 (Access to Public Records) at a recent Board of Supervisors Land Use Committee meeting. (6:06 p.m. - 7:25 p.m.)

Vice-Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion carried without objection.

8. **File No. 11067:** Hearing on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating Ordinance Section 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), 67.15 (Public Testimony), and 67.21 (Access to Public Records) at a recent Board of Supervisors Land Use Committee meeting.

Complainant Anonymous presented her case. An unidentified, female, Ray Hartz, and two unidentified males spoke in support of the Complainant. The Respondent was not present. No one in the audience presented facts and evidence in support of the Respondent.

Task Force members were discussing the complaint when the Respondent withdrew the case.

9. **File No. 11079:** Determination of jurisdiction on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating certain sections of the Sunshine Ordinance. (7:26 p.m. - 8:20 p.m.)

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

Public Comment: None.

The motion carried without objection.

10. **File No. 11079:** Hearing on complaint filed by Anonymous against Deputy City Attorney Cheryl Adams for allegedly violating certain sections of the Sunshine Ordinance.

Complainant Anonymous presented her case. An unidentified male spoke in support of the Complainant. The Respondent was not present. No one in the audience presented facts and evidence in support of the Respondent.

Vice-Chair Wolfe, seconded by Member Washburn, motioned to find DCA Cheryl Adams in violation of Section 67.21(e) for not attending the hearing and a letter to be forwarded to the City Attorney's Office because of their lack of appearance.

Public Comment: An unidentified male, Ray Hartz, and an unidentified female expressed their views.

The motion carried by the following vote:

Ayes: 6 – Snyder, Knee, Manneh, Washburn, Wolfe, Johnson

Excused: 1 – West

Absent: 3-- Cauthen, Costa, Chan

11. **File No. 11066:** Determination of jurisdiction on complaint filed by Anonymous against Deputy City Attorney Charles Sullivan for allegedly violating Ordinance Section 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), 67.15 (Public Testimony), and 67.21 (Access to Public Records) at a recent Board of Supervisors Land Use Committee meeting. (8:38 p.m. - 9:57 p.m.)

Items 11 and 13 were taken together as requested by the Complainant.

Vice-Chair Wolfe, seconded by Member Washburn, motioned to find jurisdiction.

Public Comment: None.

The motion carried without objection.

12. **File No. 11066:** Hearing on complaint filed by Anonymous against Deputy City Attorney Charles Sullivan for allegedly violating Ordinance Section 67.7 (Agenda Requirements: Regular Meetings), 67.7-1 (Public Notice Requirements), 67.8 (Agenda Disclosures: Closed Session), 67.15 (Public Testimony), and 67.21 (Access to Public Records) at a recent Board of Supervisors Land Use Committee meeting.

Items 12 and 14 were taken together as requested by the Complainant.

Complainant Anonymous presented her case. An unidentified male, Ray Hartz, and an unidentified male spoke in support of the Complainant. The Respondent was not present. No one in the audience presented facts and evidence in support of the Respondent.

Member Knee, seconded by Vice-Chair Wolfe, motioned to find DCA Charles Sullivan in violation of Section 67.21(e) for not attending the hearing and for a letter to be forwarded to the City Attorney's Office because of their lack of appearance.

Public Comment: An unidentified male expressed his view.

The motion carried by the following vote:

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

Excused: 1 – West

Absent: 2:-- Cauthen, Chan

13. **File No. 11080:** Determination of jurisdiction on complaint filed by Anonymous against Deputy City Charles Sullivan for allegedly violating certain sections of the Sunshine Ordinance.

Please see Item 11.

14. **File No. 11080:** Hearing on complaint filed by Anonymous against Deputy City Attorney Charles Sullivan for allegedly certain sections of the Sunshine Ordinance.

Please see Item 12.

15. Reconsideration of **File No. 11008:** Complaint filed by William Clark against the Arts Commission regarding incomplete audio cassette tape of the January 12, 2011 Street Artists Program Committee meeting. *9:57 p.m. - 10:56 p.m.*)

William Clark presented his complaint. Julios Mattos represented the Arts Commission.

Member Knee, seconded by Member Washburn, motioned to continue the matter.

Public Comment: Ray Hartz expressed his view.

The motion carried by the following vote:

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

Excused: 1 – West

Absent: 2:-- Cauthen, Chan

16. **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. *(8:22 p.m. - 8:28 p.m.)*

Chair Johnson said the Complaint could not attend the hearing but the respondent was in the room.

Chair Johnson, seconded by Member Knee, motioned to dismiss the case but giving Anonymous the chance to re-file the complaint.

Public Comment: None.

Joy Houlihan, Deputy Director of Parking Enforcement with the SFMTA, said the department did respond to the request but was late because of confusion among transiting personnel.

The motion carried by the following vote:

Ayes: 6 – Snyder, Knee, Manneh, Washburn, Wolfe, Johnson

Excused: 1 – West

Absent: 3:-- Cauthen, Costa, Chan

17. **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.

Please see Item 16.

18. **File No. 11088:** Determination of jurisdiction on complaint filed by Ray Hartz against the Ethics Commission for allegedly failing to include his 150-word summary in the body of its meeting minutes. (10:56 p.m. -11:09 p.m.)

Complainant Ray Hartz argued for jurisdiction. Member Knee, seconded by Member Costa, motioned to find jurisdiction. The Respondent was not present. No one in the audience presented facts and evidence in support of the Respondent.

Vice-Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction and to send a response letter to the Ethics Commission Member citing Section 67.30(c) with Chair Johnson's signature.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 – Knee, Manneh, Washburn, Costa, Wolfe, Johnson

Excused: 1 – West

Absent: 3:-- Snyder, Cauthen, Chan

19. **File No. 11088:** Hearing on complaint filed by Ray Hartz against the Ethics Commission for allegedly failing to include his 150-word summary in the body of its meeting minutes.

Continued to the February 28, 2012, meeting.

20. **File No. 11089:** Determination of jurisdiction on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents.

Continued to the February 28, 2012, meeting.

21. **File No. 11089:** Hearing on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents.

Continued to the February 28, 2012, meeting.

22. **File No. 11090:** Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format.

Continued to the February 28, 2012, meeting.

23. **File No. 11090:** Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format.

Continued to the February 28, 2012, meeting.

24. **File No. 11091:** Determination of jurisdiction on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for allegedly not responding to an Immediate Disclosure Request.

Continued to the February 28, 2012, meeting.

File No. 11091: Hearing on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for allegedly not responding to an Immediate Disclosure Request.

Continued to the February 28, 2012, meeting.

25. Report: Compliance and Amendments Committee meeting of January 10, 2012.

Not heard.

26. Report: Education, Outreach, and Training Committee meeting of January 12, 2012.

Not heard.

27. Administrator's Report.

Not heard.

28. **Public Comment:** (5:08 p.m. - 5:20 p.m.)

William Clark, Nick Pasquariello, Ray Hartz, Peter Warfield, Doug Comstock and Tomas Picarello expressed their views.

29. **Announcements, Comments, Questions, and Future Agenda Items.**

30. None.

31. **ADJOURNMENT**

With the hour being past City Hall closing time, the Task Force adjourned at 11:09 p.m.

File No. _____

SOTF Item No. 21

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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February 28, 2012, Regular Meeting Minutes

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

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The complete document is in the file.



**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**

February 28, 2012 – 4:00 PM

Regular Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe, 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. (1:05 - 6:47)

The meeting was called to order at 4:11 p.m. Vice Chair Wolfe, Members Cauthen, Manneh, and Washburn were noted absent. There was a quorum. Member Manneh was noted present at 4:47 p.m. Member Chan left at 7:30 pm.

Member Snyder, seconded by Member Knee, moved to EXCUSE Vice Chair Wolfe and Member Washburn.

There were no speakers. **The motion PASSED without objection.**

Chair Johnson announced Deputy City Attorney Michael Karns as the interim Sunshine Ordinance Task Force attorney until the arrival of Deputy City Attorney Jerry Threet; and that Complainant Nick Pasquariello, File No. 11091, Nick Pasquariello v. the Office of David Chiu, would be absent.

2. Approval of Minutes from the October 25, 2011, Regular Meeting. (6:48 - 11:40)

Member Knee, seconded by Member Snyder, moved to accept the October 25, 2011, Minutes.

There were no speakers.

The motion PASSED by the following vote.

Ayes: 6 - Snyder, Knee, Costa, Chan, West, Johnson

Excused: 2 - Washburn, Wolfe

Absent: 1 - Cauthen, Manneh

3. **Approval of Minutes from the November 29, 2011 Special Meeting. (11:41 - 14:18)**

Members expressed concern the minutes needed more detail to be meaningful.

Member Knee, seconded by Member West, moved to CONTINUE to the regular meeting of March 7, 2012.

There were no speakers. **The motion PASSED without objection.**

4. **Approval of Minutes from the December 14, 2011 Special Meeting. (14:19 - 25:33)**

Member Knee, seconded by Member Costa, moved to accept the December 14, 2011, Minutes.

Members requested and accepted edits to the draft minutes.

Speaker: Peter Warfield, expressed clarification to the minutes to reflect specific violations in accordance with Sunshine Ordinance and that his Compliant did not receive draft minutes from the Art's Commission as promptly as required by law. There were no other speakers.

The motion PASSED by the following vote.

Ayes: 6 - Snyder, Knee, Costa, Chan, West, Johnson

Excused: 2 - Washburn, Wolfe

Absent: 1 - Cauthen, Manneh

5. **Approval of Minutes from the January 3, 2012 Special Meeting. (25:34 - 46:30)**

Member Knee, seconded West, moved to accept the January 3, 2012, Minutes.

Chair Johnson indicated that the minutes are generic and requested to have at least one line of detail for each speaker.

Member Knee, seconded by Member West, made a substitute motion to continue to the regular meeting of March 7, 2012.

Speakers: Allen Grossman, expressed concern regarding the quality of minutes; Ray Hartz, expressed the importance of having summary minutes versus action minutes; Thomas Picarello, expressed concern regarding the minutes not being specific or timely; Peter Warfield, spoke in support of the substitute motion to continue. There were no other speakers.

The motion PASSED without objection.

6. **Approval of Minutes from the January 24, 2012 Regular Meeting. (46:31 - 55:20)**

Member Knee, seconded West, moved to CONTINUE to the regular meeting of March 7, 2012.

Speakers: Peter Warfield indicated that the minutes do not meet the requirements of the Sunshine Ordinance; Ray Hartz, recited a Mark Twain quote; Thomas Picarello, spoke in support of having specific detail of speaker comments. There were no other speakers.

The motion PASSED without objection.

7. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance. (1:19:38 - 1:55:53)

Member Knee provided an overview of the survey of costs of compliance with the City Sunshine Ordinance. Chair Johnson commented on the matter. Member Snyder commented on the cost analysis by the Budget and Legislative Analyst's Office on the Sunshine Ordinance Task Force.

Speakers: Patrick Monette-Shaw, spoke expressing opposition to the survey of costs of compliance. Thomas Picarello, advised the Task Force to respond with comments to the Budget and Legislative Analyst's Office regarding the survey. Peter Warfield, spoke expressing concerns regarding the survey of costs of compliance and reluctance of Budget and Legislative Analyst's Office to release survey information. Ray Hartz, spoke expressing concern relating to nondisclosure of the survey of costs of compliance. There were no other speakers.

Member Costa, seconded by Member Knee, moved to Continue to the regular meeting of March 7, 2012 meeting.

The motion PASSED without objection.

RECESS

The Task Force reconvened at 6:31 p.m.

8. **File No. 11056:** The Compliance and Amendments Committee has referred Case No.11056, Allen Grossman v Dennis Herrera and Jack Song of the City Attorney's, Office, back to the Task Force with a recommendation that it be referred to the Ethics Commission with a request for enforcement of the Order of Determination, and to find Mr. Song in violation of Sunshine Ordinance Section 67.21(e) for being absent during the latter part of the committee's hearing on the item. (2:16:53 -2:42:31)

Member Chan disclosed he knew Jack Song, but did not believe that would prejudice him on this matter.

Complainant Allen Grossman provided an overview of the status of compliance with the Order and further requested the Task Force not refer the case to the Ethics Commission. There were no speakers in support of Complainant. Respondent Jack Song of the City Attorney's Office requested to present a presentation during his time allotted for rebuttal. There were no speakers in support of Respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal.

Speakers: Thomas Picarello, spoke expressing support for the violation to be referred to the Ethics Commission. Ray Hartz, spoke expressing support for the item to be referred to the Ethics Commission. Peter Warfield, spoke expressing concerns regarding Mr. Song and the City Attorney's Office. Charles Pitts, spoke expressing concern that complainant should not have the right to sweep findings under the rug. There were no other speakers.

Member Costa, seconded by Member Manneh, moved to find Jack Song in violation of Sunshine Ordinance Section 67.21(e) based on his walking out of the Compliance and Amendments hearing, and refer both the 67.21(e) violation and Order of Determination to the Ethics Commission for appropriate action and enforcement.

The motion PASSED by the following vote:

Ayes: 6 - Snyder, Knee, Manneh, Costa, Chan, West, Johnson

Excused: 2 - Washburn, Wolfe

Absent: 1 - Cauthen

9. Reconsideration of **File No. 11008**: Complaint filed by William Clark against the Arts Commission regarding incomplete audio cassette tape of the January 12, 2011 Street Artists Program Committee meeting. (2:44:24 - 3:29:37)

Complainant William Clark provided an overview of the complaint, and expressed concern of not receiving an unredacted audio cassette of the meeting. There were no speakers in support of complainant. Respondent Julio Mattos Arts Commission, provided an overview of the Commission's response, responded to questions raised throughout the discussion, and further requested the Task Force to dismiss the complaint. There were no speakers in support of respondent. A question and answer period followed. Respondent declined his time allotted for rebuttal. Complainant provided a rebuttal and further requested the Task Force to find violation.

Member Knee suggested sending the item to the Compliance and Amendments Committee.

Chair Johnson, seconded by Member Knee, moved to find violation of Sunshine Ordinance Sections 67.14(b), 67.16, 67.21(e), 67.34 based on the willful failure to provide an audio recording that was not erased or destroyed, include missing dialogue in the minutes, and send a knowledgeable representative to the hearing. Respondent is to work with complainant to have the minutes reflect the missing portion and mark tape to refer to the minutes; referral to Compliance and Amendments Committee.

Speaker: Ray Hartz, spoke expressing concern regarding the Arts Commission's audio equipment being in compliance with Sunshine Ordinance. There were no other speakers.

The motion PASSED by the following vote:

Ayes: 6 - Snyder, Knee, Manneh, Costa, West, Johnson

Excused: 2 - Washburn, Wolfe
Absent: 1 - Cauthen, Chan

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

10. **File No. 11050:** Determination of jurisdiction on complaint filed by, Barbara Thompson against the Board of Appeals for allegedly interrupting her during public comment. (3:29:00 - 3:29:37)

Member Knee, seconded by Member Costa, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

11. **File No. 11050:** Hearing on complaint filed by Barbara Thompson against the Board of Appeals for allegedly interrupting her during public comment. (3:29:38 - 4:17:14)

Complainant Barbara Thompson provided an overview of the complaint, responded to questions raised throughout the discussion, and requested the Task Force find violation. There were no speakers in support of complainant. Respondent Cynthia Goldstein, Board of Appeals, provided an overview of the Board's response, responded to questions raised throughout the discussion, and further requested the Task Force to dismiss the complaint. There were no speakers in support of respondent. A question and answer period followed. Respondent provided a rebuttal and further requested the Task Force to dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force to find violation.

Respondent stated that only speakers who wish to have their comments considered in the Board's deliberations are required to take an oath; members of the public are not required to take an oath to speak during general public comment.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

Speaker: Ray Hartz, expressed concern on having to be sworn in to speak at the Board of Appeals. There were no other speakers

RECESS

The Task Force reconvened at 8:50 p.m.

12. **File No. 11088:** Hearing on complaint filed by Ray Hartz against the Ethics Commission for allegedly failing to include his 150-word summary in the body of its meeting minutes. (4:46:58 - 5:26:15)

Complainant Ray Hartz provided an overview of the complaint, responded to questions raised throughout the discussion, and further requested the Task Force find violation. There were no speakers in support of complainant. Complainant reminded the Task Force of its previous rulings in File Nos. 10054 and 11054. Respondent Ethics

Commission did not appear to respond or answer questions. There were no speakers in support of respondent. Complainant provided a rebuttal and further requested the Task Force find violation.

Chair Johnson, seconded by Member Costa, moved to find John St. Croix in violation of Sunshine Ordinance Sections 67.16 for failure to include the 150 word statement in the body of the minutes and 67.21(e) for failure to appear at the hearing based on Task Force's prior rulings interpreting the phrase "in the minutes" regarding inclusion of 150 word statements and its implied jurisdiction pursuant to 67.30(c), and refer the matter to Compliance and Amendments Committee.

Speaker: David Pilpel, spoke expressing disagreement with the proposed motion. There were no other speakers.

The motion PASSED by the following vote:

Ayes: 6 - Snyder, Knee, Manneh, Costa, West, Johnson

Excused: 2 - Washburn, Wolfe

Absent: 1 - Cauthen, Chan

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

13. **File No. 11089:** Determination of jurisdiction on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents (5:27:44 - 5:29:47)

Member Knee, seconded by Member Costa, moved to CONTINUE to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

14. **File No. 11089:** Hearing on complaint filed by Bobb Birkhead against the City Attorney's Office for allegedly withholding documents. (5:27:44 - 5:29:47)

Member Knee, seconded by Member Costa, moved to CONTINUE to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

15. **File No. 11090:** Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:17:18 - 1:19:05)

Complainant requested a continuance. Respondent agreed to the requested continuance.

Member Knee, seconded by Member West, moved to CONTINUE to the regular meeting of March 7, 2012.

There were no speakers. **The motion PASSED without objection.**

16. **File No. 11090:** Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:19:06 - 1:22:10)

Complainant requested a continuance. Respondent agreed to the requested continuance.

Member Knee, seconded by Member West, moved to CONTINUE to the regular meeting of March 7, 2012.

There were no speakers. **The motion PASSED without objection.**

17. **File No. 11091:** Determination of jurisdiction on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for allegedly not responding to an Immediate Disclosure Request.

Complainant requested a continuance.

Member West, seconded by Member Chan, moved to CONTINUE to the Call of the Chair

There were no speakers. **The motion PASSED without objection.**

18. **File No. 11091:** Hearing on complaint filed by Nick Pasquariello against the Office of Supervisor David Chiu for allegedly not responding to an Immediate Disclosure Request. (5:30:28 - 5:32:49)

Complainant requested a continuance.

Member West, seconded by Member Chan, moved to CONTINUE to the Call of the Chair

There were no speakers. **The motion PASSED without objection.**

19. **File No. 11093:** Determination of jurisdiction on complaint filed by John Darmanin against Fire Marshal Thomas Harvey for allegedly not releasing several internal documents. (5:30:28 - 5:34:00)

Member Knee, seconded by Member Manneh, moved to dismiss the case with the option to re-file due to the Complainant's absence.

There were no speakers. **The motion PASSED without objection.**

20. **File No. 11093:** Hearing on complaint filed by John Darmanin against Fire Marshal Thomas Harvey for allegedly not releasing several internal documents. (5:30:28 - 5:32:49)

Member Knee, seconded by Member Manneh, moved to dismiss the case with the option to re-file due to the Complainant's absence.

There were no speakers. **The motion PASSED without objection.**

21. **File No. 11094:** Determination of jurisdiction on complaint filed by Charles Pitts against the non-profit Community Housing Partnership for allegedly not providing requested information. (4:22:54 -4:46:16)

Complainant Charles Pitts argued for jurisdiction based on respondent's contract with the City. There were no speakers in support of complainant. Respondent Jeffery Kohler, Community Housing Partnership, provided a response. There were no speakers in support of respondent. A question and answer period followed. Respondent provided a rebuttal and requested the Task Force dismiss the complaint. Complainant provided a rebuttal and further requested the Task Force find jurisdiction.

Member Knee, seconded by Member Snyder, moved to find no jurisdiction.

Speaker: David Pilpel stated opposition to the motion.

There were no speakers. **The motion PASSED without objection.**

The motion PASSED without objection.

22. **File No. 11094:** Hearing on complaint filed by Charles Pitts against the non-profit Community Housing Partnership for allegedly not providing requested information. (4:22:54 -4:46:16)

The Task Force found no jurisdiction.

23. **Public Comment:** (55.22. - 1:17:17)

Speakers: Peter Warfield, expressed concerns regarding Ethics and Library Commissions. Patrick Monette-Shaw, expressed concern the Sunshine Ordinance Task Force subscribers list was not retained from the prior administrator and interest in being added. William Clark, spoke expressing concern relating to Street Artist program. Allen Grossman, spoke expressing concern relating to the Administrator's role and duties. Peter Warfield, spoke expressing concern regarding the lack of detail with the history of complaints in the complaint log. Ray Hartz, spoke expressing the improvements made due to the Task Force. Thomas Picarello, spoke expressing concerns of not having the Ex-officio Member present and the inconvenience of having hearings called late into the evening due to the number of items on the agenda. There were no other speakers.

24. **Report: Education, Outreach and Training Committee meeting of February 9, 2012.** (5:33:12 - 5:35:01)

Member Costa made the report.

There were no speakers.

25. **Report: Compliance and Amendments meeting of February 14, 2012.** (5:35:02 - 5:39:02)
Chair Johnson and Member Knee made the report.

Speaker: David Pilpel expressed concern regarding the date of a joint Ethics meeting of the Ethics Commission and the Task Force's Compliance and Amendments Committee.

26. **Report: Technology Committee meeting of February 10, 2012.** (5:40:07 - 5:44:02)

Members West and Costa made the report.

Speaker: David Pilpel expressed concern regarding the objective of the committee.

27. **Administrator's Report.** (5:44:03 - 5:46:12)

The Administrator made the report.

Speaker: David Pilpel expressed concern regarding the transition and complaint backlog.

28. **Announcements, Comments, Questions, and Future Agenda Items.** (5:46:13 - 5:55:12)

Member Knee made an announcement that the Society of Professional Journalists, Northern California Chapter, will hold its annual James Madison Awards Dinner on March 15, 2012. Chair Johnson announced that the non-profit meeting announcements binder in the library is not posted electronically and asked if a committee member would assist. Chair Johnson also suggested designing a Good Guide from the Sunshine Ordinance Task Force's perspective.

Speaker: David Pilpel, spoke expressing the benefit of having a pending list for items to be heard.

29. **ADJOURNMENT**

Member Knee, seconded by Member West, moved to ADJOURN.

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Task Force adjourned at the hour of 10:18 p.m.

File No. _____

SOTF Item No. 22

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: May 2, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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March 7, 2012, Regular Meeting Minutes

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Completed by: Andrea Ausberry Date April 25, 2012

Completed by: _____ Date _____

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The complete document is in the file.



**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**

March 7, 2012 – 5:00 PM

Rescheduled Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe,
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. (00:00:01 – 00:04:47)

The meeting was called to order at 5:17 p.m. Vice Chair Wolfe, Members Cauthen, Costa, and Chan were noted absent. There was a quorum. Member Costa was noted present at 5:40 p.m.

Member Knee, seconded by Member Washburn, moved to EXCUSE Vice Chair Wolfe and Member Chan.

Public comment: Jason Grant Garza spoke against the motion. Patrick Monette Shaw spoke in support of the motion.

The motion PASSED without objection.

2. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance (00:24:33 – 1:27:06)

Task Force members discussed the Controller's survey of City agencies and departments, requested by Supervisor Scott Wiener, of costs of compliance with San Francisco's Sunshine Ordinance.

Member Washburn, seconded by Member Knee, moved that the Chair send a letter to Supervisor Wiener, on behalf of the Task Force, acknowledging the survey, expressing concern with the secrecy of the survey request, requesting clarification of motive and expected benefits, expressing concern with the survey instrument, offering input, and inviting Supervisor Wiener to attend a meeting to discuss the survey.

Public comment: Patrick Monette-Shaw; Thomas Picarello; Ray Hartz, Director, San Francisco Open Government; Peter Warfield, Executive Director, Library Users Association; and Hal Smith spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

3. **File No. 11090:** Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:16 - 1:31:47)

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

There were no speakers. **The motion PASSED without objection.**

4. **File No. 11090:** Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:48 - 2:49:10)

Complainant Patrick Monette-Shaw provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Monique Zmuda, Deputy Controller, provided an overview of the Controller's response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and again requested the Task Force to find violation.

Respondent stated the data requested by complainant existed in raw form and would require many hours to generate accurately in report form. The parties agreed to work to resolve the request with alternate data.

Member Snyder, seconded by Member Washburn, moved to CONTINUE THE MATTER TO THE CALL OF THE CHAIR.

Public comment: Ray Hartz, Jr., San Francisco Open Government, asked if program used to provide information to San Francisco Chronicle columnists Matier and Ross was still available. Peter Warfield inquired as to the purpose for the postponement of the item and for what result.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

RECESS

The Task Force reconvened at 8:19 p.m.

5. **File No. 11095:** Determination of jurisdiction on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the Task Force's regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

6. **File No. 11095:** Hearing on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

7. **File No. 11096:** Determination of jurisdiction on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

8. **File No. 11096:** Hearing on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

9. **File No. 11097:** Determination of jurisdiction on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (Discussion and Action) (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

10. **File No. 11097:** Hearing on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

11. **File No. 11098:** Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:06 – 3:08)

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

There were no speakers. **The motion PASSED without objection.**

12. **File No. 11098:** Hearing on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:08 – 4:07)

Complainant Ray Hartz, Jr. provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent was not present. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Deputy City Attorney Michael Karns responded to questions from Task Force members. Complainant provided a rebuttal and again requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved (1) to find Luis Herrera in violation of Sunshine Ordinance Sections 67.16 and 67.21(e) for failure to include the 150-word summary of the Complainants's comments in the Library Commission meeting minutes and the Respondent's failure to appear at this hearing, and (2) refer the matter to Compliance and Amendments Committee.

Public comment: Peter Warfield, Executive Director, Library Users Association, said the Task Force should find that the Respondent committed a willful violation.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.**RECESS**

The Task Force reconvened at 9:25 p.m.

13. **File No. 12001:** Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:12 – 4:13)

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

There were no speakers. **The motion PASSED without objection.**

14. **File No. 12001:** Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:13 – 5:17)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Arts Commission response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Member Washburn, seconded by Member Manneh, moved (1) to find the Arts Commission in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing unredacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 – Cauthen

Excused: 2 – Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. **File No. 12002:** Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:17 – 5:18)

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

There were no speakers. **The motion PASSED without objection.**

16. **File No. 12002:** Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:18 – 5:42)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force to find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Agency's defense and requested the Task Force to dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Respondent provided documentation demonstrating the Arts Commission has revised the language on its speaker cards to notify members of the public they are not required to submit speaker cards in order to speak at meetings.

Due to lack of a motion, the Task Force FOUND NO VIOLATION. MATTER IS CONCLUDED.

17. **File No. 12003:** Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

18. **File No. 12003:** Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. **The motion PASSED without objection.**

19. **General Public Comment:** (00:10:07 – 00:24:32 and 1:27:07 – 1:30:53)

A member of the public expressed concerns about the Library Commission splitting off 150-word comment summaries from their minutes. Patrick Monette-Shaw expressed concerns about his complaint pending at the Ethics Commission. Peter Warfield, Executive Director, Library Users Association, thanked the Task Force for changing the Task Force meeting day to Wednesday, and expressed concerns about the Library. Jason Grant Garza expressed concerns about what he termed lack of progress in handling complaints he has filed. Thomas Picarello expressed concerns about Jason Grant Garza's complaints, and suggested that Task Force meetings commence at 5:00 p.m. Ray Hartz, Jr. expressed various concerns.

20. **Administrator's Report** (5:44 – 5:45)

The Administrator's Report was reviewed.

Public comment: Peter Warfield suggested that more information be listed in the compliant log.

21. **Announcements, Comments, Questions, and Future Agenda Items** (5:45 – 5:46)

There were none.

22. **ADJOURNMENT** (5:46 – 5:47)

Member Knee, seconded by Member Manneh, moved to ADJOURN.

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Task Force adjourned at 11:00 p.m.