

SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee AGENDA PACKET CONTENTS LIST

Education, Outreach and Training Committee

Date: May 10, 2012

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Completed by: Andrea Ausberry Date May 7, 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 Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

April 9, 2012

DATE THE DECISION ISSUED

December 14, 2011

LIBRARY USERS ASSOCIATION v ARTS COMMISSION (CASE NO. 11085)

FACTS OF THE CASE

Complainant Library Users Association alleges that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by failing to provide draft minutes of the Visual Arts Committee's ("VAC") August 17, 2011 meeting in response to the Library Users Association's public records request made on September 7, 2011.

COMPLAINT FILED

On October 14, 2011, Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that the SFAC violated Section 67.16 of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On December 14, 2011, Library Users Association Executive Director Peter Warfield appeared before the Task Force and presented the Library Users Association's complaint. Susan Pontious, Program Director of the Public Art and Collections Programs, appeared on behalf of the SFAC and presented its response.

Based on the Library Commission meeting held on July 21, 2011, Mr. Warfield believed that the Library Commission's Bernal Heights Branch Library mural project item would be heard by the SFAC in September 2011. He contacted the SFAC on September 7, 2011 for the specific hearing date and learned the VAC had already heard the item on August 17, 2011. When he requested an audio recording of the August 17 VAC meeting, he was informed the VAC does not record its meetings. He then requested the draft minutes of the meeting and was notified by VAC staff that office policy was to distribute only final meeting minutes, and those would be available online by September 9.

Mr. Warfield stated he believed draft minutes of the VAC meeting existed at the time of his request because he regularly attends the meetings and has seen staff taking meeting notes on the computer. He alleged the VAC violated Section 67.21(a) of the Sunshine Ordinance by refusing to allow him to inspect the draft minutes without unreasonable delay.

Ms. Pontious stated she was advised by the City Attorney's Office that only boards and commissions listed in the San Francisco City Charter ("Charter") are required to record minutes pursuant to Sunshine Ordinance Section 67.16. She alleged that the VAC is not subject to Section 67.16 because it is an advisory committee to the SFAC and not a board or commission listed in the Charter. She cited the City Attorney's Good Government Guide, Part Three, Section G(2)(c) for support.

Ms. Pontius stated that although it is not required to do so, the VAC provides minutes. She explained that when Mr. Warfield requested the minutes notes did exist but the minutes had not yet been created. Mr. Warfield did not make an Immediate Disclosure Request, and the minutes were made available online on September 9, 2011, two days after the date of his request.

Ms. Pontius further stated that a junior staff person with no experience responding to similar Sunshine requests had responded to Mr. Warfield's request. The person provided Mr. Warfield with a link to the minutes online rather than a pdf version of the document, and Ms. Pontius stated that did not mean he had been denied the document. She advised the Task Force that staff has since been instructed to provide notes with a disclaimer that draft minutes have not yet been approved by senior staff. She stated that the SFAC had provided Mr. Warfield with the requested records and responded in a timely manner.

Mr. Warfield's written reply to the VAC's response to his complaint stated that if subcommittees are not required to comply with Sunshine meeting and minutes requirements, boards and commissions would be allowed to create subcommittees for the purpose of avoiding Sunshine requirements. He stated that the Bernal Heights mural item was placed on the SFAC agenda as a consent item following its hearing at the VAC meeting.

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. 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.

Based on respondent's statements, the Task Force found that either draft minutes or notes did exist at the time of Mr. Warfield's request. The Task Force concluded the draft document, whether in minute or note form, is a public record not exempt from disclosure.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.16 for failure to make draft minutes available within 10 days of the VAC's August 17, 2011 meeting, 67.21(a) for failure to allow Mr. Warfield access to the draft minutes or notes without unreasonable delay, 67.21(b) for failure to provide the requested public records as soon as possible by requiring Mr. Warfield to wait two days for minutes without producing the existing notes, 67.26 for failure to keep withholding of public records to a minimum by refusing to produce the existing notes, and 67.27 for failure to justify withholding public records.

The SFAC shall appear before the Education, Outreach and Training Committee on Thursday, May 10, 2012 at 4:00 p.m. in Room 406 at City Hall. The Committee shall discuss SFAC compliance with the Sunshine Ordinance.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011, by the following vote: (Knee/Costa)
Ayes: Snyder, Knee, Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson
Absent: Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Library Users Association, Complainant
Susan Pontious, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



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: December 13, 2011
RE: *Complaint No. 11085: 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 the Ordinance by failing on September 7, 2011 to provide to LUA the draft minutes for the August 17, 2011 meeting of the Visual Arts Committee ("VAC").

COMPLAINANT FILES COMPLAINT:

On October 11, 2011, Complainant filed a complaint with the Task Force alleging a violation of the Ordinance.

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 requirements of the Ordinance. 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 67.3 defines the bodies to which public meeting provisions of the Ordinance apply.
- Section 67.16 governs the requirement that boards and commissions enumerated in the Charter audio record their special and regular meetings.
- Section 67.20 defines "public information" that must be provided to members of the public.
- Section 67.21 governs the timing for responding to a request for public records.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 2
RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

California Gov't Code §§ 6250 Et Seq. (Public Records Act)

- Section 6252 defines "local agency," to which the requirements of the Public Records Act apply.

California Gov't Code §§ 54950 Et Seq. (Brown Act)

- Section 54952 defines "legislative body" to which the requirements of both the Brown Act and the Public Records Act apply.

APPLICABLE CASE LAW:

- *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127-1128 [committee of city council, consisting of 2 of the 5 council members, who also were the sole members of the council's Land Use Committee, and who were charged with studying what should be the council's response to a proposal of the Coastal Commission, was not a "legislative body" under the Brown Act and thus not subject to its open meetings requirements; neither were they an "other body" under the Act; they constituted an "advisory body" not subject to the Act.]
- *Joiner v. City of Sebastopol* (1981) 125 Cal.App. 799 [committee consisting of two members each of the Sebastopol City Council and of the Planning Commission, the number two being less than a quorum of either body, formed by the concurrent action of both the council and the commission, formed to vet candidates for a vacant seat on the Planning Commission, constituted a "legislative body" under the Brown Act.]

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to allow LUA to view on September 7, 2011 the draft minutes of the August 17, 2011 meeting of the VAC. LUA further alleges that the Commission stated that it is its policy "to only distribute final minutes [of the VAC] for public review. These minutes will be posted online by Friday September 9[.]"

The Commission does not dispute the above facts. Rather, the Commission argues that section 67.16 of the Ordinance, specifying requirements for minutes for charter bodies, does not apply to the VAC, arguing that the VAC is not a charter board of commission, but rather an "advisory committee" under the Ordinance. The Commission further responds that, although it is not required by the Ordinance to keep minutes of the VAC, it nevertheless did record such minutes and that a copy of the final minutes were provided to LUA within two days of Mr. Warfield's request.

Complainant responds, twofold. First, section 67.16 requires that draft minutes be made available within 10 days of a meeting. Second, even if section 67.16 does not apply to VAC, the minutes existed, presumably were a public record, and thus should either have been produced when requested, or their non-production justified and alternatives identified by the Commission to LUA.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
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RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

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, the Brown Act and the Public Records Act?
- Can the VAC legally be considered the same as the Commission under section 67.16?
- 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 67.16 apply to its meetings?
- Assuming the VAC is a "policy body", do the requirements of section 67.16 apply to its meetings?
- Even if Section 67.16 does not apply to the VAC, are its draft meeting minutes "public information" under the Ordinance and a "public record" under the Public Records Act?
- Is the VAC a "local agency" under the Public Records Act and/or a "legislative body" under the Brown Act?

SUGGESTED ANALYSIS**Under Section 67.16 of the Ordinance:**

- Determine whether the VAC is legally a charter commission for purposes of Section 67.16 requirements applying to minutes.

Under Section 67.20 of the Ordinance and Section 6252 of the PRA:

- Determine whether the draft minutes of the VAC meeting constitute "public information" and a "public record"
- As a subsection of this analysis, determine whether the VAC is a "local agency" and/or "legislative body" under section 6252 of the PRA and section 54952 of the Brown Act, such that records created or maintained by it constitute "public records"

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
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RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

Under Section 67.21 of the Ordinance:

- Assuming the draft minutes were "public information" under the Ordinance, determine whether the Commission's September 7, 2011 response satisfied the requirements of section 67.21 of the Ordinance that a body should "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."
- If not, determine whether the Commission provided written justification for refusing to do so that complies with the requirements of the Ordinance.

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: 5
RE: *Complaint No. 11085: 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.
- (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;

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TO: Sunshine Task Force
DATE: December 13, 2011
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RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

(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. 67.16. MINUTES.

The clerk or secretary of each **board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission.** The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. 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 minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
PAGE: 7
RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "**Public Information**" shall mean **the content of "public records" as defined in the California Public Records Act (Government Code Section 6252)**, whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

**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.

CALIFORNIA GOV'T CODE §§ 6250 ET SEQ. (PUBLIC RECORDS ACT)**§ 6252. DEFINITIONS**

As used in this chapter:

- (a) "**Local agency**" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or **any board, commission or agency thereof; other local public agency; or entities that are *legislative bodies*** of a local agency pursuant to subdivisions (c) and (d) of **Section 54952**.
- (b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.
- (c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
- (d) "Public agency" means any state or local agency.
- (e) "Public records" **includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained *by any state or local agency* regardless of physical form or characteristics.** "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 13, 2011
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RE: *Complaint No. 11085: Library Users Association v. S. F. Arts Commission*

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 10:26 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 67.16

DESCRIPTION:Art Commission Did Not Draft Minutes 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 #2 of 2: Art Commission Did Not DRAFT MINUTES of its Visual Arts Committee Meeting of August 17, 2011 to Library Users Association**

Ladies and Gentlemen:

The Art Commission did not provide for inspection the draft Minutes of its August 17, 2011 Visual Arts Committee (VAC) meeting when Library Users Association asked to inspect them more than 10 days after the meeting. The staff member we contacted said that the Minutes would not be ready until the agenda for the September 12 full Art Commission meeting was issued.

We were notified of Minutes availability in an email dated Friday, September 9, 2011, the Friday before the Art Commission's meeting of Monday, September 12, 3pm. The email did not provide Minutes as an attachment, but instead referred to availability of the Minutes on the Art Commission website. A memo to Library Users Association dated September 7 referred to our prior request and stated the following:

*We spoke on the phone earlier regarding the draft minutes for the August 17, 2011 Visual Arts Committee Meeting. Unfortunately, **it is office policy to only distribute final minutes for public review.** These minutes will be posted online by Friday, September 9th and can be found here: <http://www.sfgov3.org/index.aspx?page=2510>*

(Emphasis added)

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
415/753-2180



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

JD 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

From: "Taleporos, Zoe" <zoe.taleporos@sfgov.org>
To: SOTF <sotf@sfgov.org>
Cc: "Pontious, Susan" <susan.pontious@sfgov.org>, "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>

Date: Wednesday, October 19, 2011 11:11AM
Subject: Arts Commission Response to Complaints # 11084 and #11085

History: ↗ This message has been forwarded.

Dear Mr. Rustom,

Please see the Arts Commission response to complaints #1084 and #1085 attached with one additional document for review.

Thank you,

Zoë Taleporos
Public Art Program Associate
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
415-252-3215 (p)
415-252-2595 (f)
<http://www.sfartscommission.org>

Attachments: Save All to a Lotus Quickr Place...

SFAC Sunshine Task Force Response.doc.pdf | August 17 VAC Minutes.pdf | Save to a Lotus Quickr Place...
Save to a Lotus Quickr Place...

VISUAL ARTS COMMITTEE

Wednesday August 17, 2011

3 p.m.

25 Van Ness Avenue, Suite 70

Minutes

Commissioners Present: Lorraine Garcia-Nakata, PJ Johnston, Barbara Sklar.

Commissioners Absent: Greg Chew, Dorka Keehn.

Staff Present: JD Beltran, Mary Chou, Allison Cummings, Carol Marie Daniels, Marcus Davies, Jennifer Lovvorn, Jill Manton, Kate Patterson, Susan Pontious, Zoë Taleporos.

Note: All votes are unanimous unless recorded otherwise.

The meeting commenced at 3:01 p.m.

1. Consent Calendar

1. Motion to authorize the Director of Cultural Affairs to enter into a contract with the Independent Curators International for an amount not to exceed \$2,750 for touring the *FAX* exhibition to the SFAC Gallery.

2. Motion to increase the contract amount for Tom Otterness Studio authorized by Resolution Number 1206-10-340 by \$150,000 to correct an error in the amount listed in the resolution, from an amount not to exceed \$600,000 to a new total amount not to exceed \$750,000 for design development, fabrication of molds, fabrication of sculptures, transportation and consultation during installation for Central Subway: Moscone Station.

3. Motion to approve *Excelsior Portal* a tile mural by Elizabeth A. O'Connor on the 280 freeway overpass between Mission and Trumbull streets. The mural will be executed by Excelsior Boys & Girls Club youth and is sponsored by the Excelsior Action Group.

4. Motion to authorize the Director of Cultural Affairs to enter into a contract with Scott Attie, selected by the Public Safety Building Artist Selection Panel for design and engineering of an artwork for the Public Safety Building: Police Memorial in an amount not to exceed \$74,000.

5. Motion to approve Construction Document Phase deliverables (budget, material samples, written costs estimates, schedule and maintenance plan) by Moto Ohtake for Fulton Playground.

Motion: Motion to approve consent calendar item

Moved: Sklar/ Johnston

THE FOLLOWING ITEM WAS SEVERED FROM THE CONSENT CALENDAR

2. Bernal Heights Library

Susan Pontious

Program Director Susan Pontious presented the mural designs for the Bernal Heights Library by the artist team of Precita Eyes Muralists and Reuben Rude. Ms. Pontious explained that the design had gone through an extensive community process and is now approved by the Library Commission. She introduced City Librarian Luis Herrera to discuss the process to date. Mr. Herrera reported that the renovation of the Bernal Heights Library was completed in 2009. However, the treatment of the existing mural on the library's façade had not been resolved at that time. Mr. Herrera noted that following the restoration, a community mediation process began to address the different opinions expressed by the community regarding the removal or replacement of the mural. Mr. Herrera explained that eventually consensus was reached among the Library Commissioners to commission a new artwork for the exterior of the library. Mr. Herrera reported that following that decision, an artist team was selected and their initial artwork concepts were presented to the Library Commission as well as to the Bernal Heights community. Mr. Herrera clarified that in July the design was granted a resolution of approval and is now being presented for endorsement by the Visual Arts Committee ("VAC"). Commissioner Garcia-Nakata commented on the complex nature of the process and thanked the Library Commission for all its work. She then opened the discussion to public comment.

Ellen Egbent addressed the Commissioners stating that she had been to all Library Commission meetings regarding this item and recognized the VAC's role in endorsing the project. She noted that the Library Commission was placing the aesthetic evaluation of the mural design under the jurisdiction of the VAC. Ms. Egbent expressed her hope for a beautiful artwork for the exterior of the library, but did not think the current design proposal was of artistic merit.

Commissioner Johnston congratulated the Library Commission for navigating a contentious debate and arriving at a good solution for what he thought was a tough but appropriate discussion for the Bernal Heights Library. He recalled seeing the original mural presented at an earlier VAC meeting and commented on its state of disrepair. Commissioner Johnston expressed that he felt the Library Commission had done due diligence to arrive at an approved design and felt the VAC should endorse it. Commissioner Johnston noted that although the design will be executed in tile, it should go through the same review process of murals implemented on city property.

Rosanne Liggett addressed the Commissioners in opposition to the proposed mural design. She stated her opinion that the Library Commission's vote did not indicate broad community support for the project. Ms. Liggett added that because the library building

represented historic WPA era architecture, it was a popular opinion that no artwork should be placed on its façade at all. Ms. Liggett presented comments by community members compiled on a blog devoted to the issue and communicated the shared belief that the mural design looked more like illustration than fine art. She added that she hoped the VAC will consider the aesthetic quality of the design as they vote on the item.

Commissioner Garcia-Nakata expressed her appreciation of all perspectives on the mural design and thanked those who made public comment for taking the time to express their viewpoints. Commissioner Garcia-Nakata explained that while some may not be in favor of the design, it had been vetted through the Library Commission and the VAC's role was to facilitate the next steps in the design process. Commissioner Johnston added that Precita Eyes Muralists had a good track record of producing high quality work and felt confident in their ability to execute this project. Interim Director of Cultural Affairs JD Beltran commented that the color palette of the mural should be muted to compliment the WPA era style architecture of the library building. Commissioner Johnston agreed, citing Owen's Smiths mosaic artworks at Laguna Honda as a good example to follow. Ms. Pontious suggested that the artist team present tile samples and a revised color palette at a VAC meeting in the future.

Motion: Motion to approve mural designs for the Bernal Heights Library by the artist team of Precita Eyes and Reuben Rude with the stipulations that the team change the color palette to colors prevalent during the WPA period, which also compliment the architecture of the period and present tile samples at VAC for design approval.

Moved: Johnston/Sklar

3. WritersCorps Market Street Kiosk Poster Series

Melissa Hung

WritersCorps Program Manager Melissa Hung presented the designs developed by Adrienne Aquino for the WritersCorps Market Street Kiosk Poster Series. Ms. Hung explained that 36 posters will be produced for bus shelter kiosks along Market Street from October to January displaying three designs, each featuring a poem from students of the WritersCorps Program. Ms. Hung reported that the writing consists of a series of love poems to San Francisco, and are created by youth ranging from age 16-20. Ms. Hung noted that the posters include themes of transit, neighborhoods and movement. She added that all the poets selected for this project were thrilled to participate.

Motion: Motion to approve designs developed by designer Adrienne Aquino for the WritersCorps Market Street Kiosk Poster Series based on the youth writing from the San Francisco Arts Commission's WritersCorps program. Exhibition will be displayed in 36 bus shelter kiosks on Market Street from October 31, 2011 to January 27, 2012.

Moved: Johnston/Sklar.

4. Central Subway

Jennifer Lovvorn

A. Project Manager Jennifer Lovvorn presented the Project Outline for the 4th and Brannan Platform Public Art Project. Ms. Lovvorn explained that this project is an extension of the Third Street Light Rail line (known as “T-Third”), which will connect to the future Central Subway line. Ms. Lovvorn presented examples of completed T-Third line platform artworks, demonstrating the uniformity of integrated pole mounted sculptural elements, shadow casters, and paving designs at these platform stations. She reported that the Central Subway Arts Master Plan, which was approved on November 3, 2008 by the Arts Commission, called for the commissioning of a large unique sculpture for the marquee pole for the 4th and Brannan Platform, which would be in keeping with the pole-mounted sculptures on the other T-Third Street platforms.. Ms. Lovvorn explained that a new Request for Qualifications will be issued nationally due to regulations from the funding agency and a selection panel process will take place over the next few months.

Motion: Motion to approve the Project Outline for 4th and Brannan Platform Public Art Project.

Moved: Sklar/Johnston

Motion: Motion to approve the following arts professionals as potential panelists for the 4th and Brannan Platform Public Art Project Artist Selection Panel: Jennifer Easton, Project Manager, San Jose Public Art Program; Lex Leifheit, Executive Director, SOMArts; Justin Hoover, Curator and Gallery Director, SOMArts; Ellen Oh, Director, Kearney Street Workshop; Julia Hamilton, Adjunct Professor, UC Berkeley; Steven Huss, Cultural Arts Manager, Oakland Public Art Program; and Judy Moran, Former Project Manager, San Francisco Arts Commission.

Moved: Sklar/Johnston

B. Ms. Lovvorn gave a project update regarding the landmark artwork at the Chinatown Station of the Central Subway Project. She reminded Commissioners that artist Yumei Hou was selected for the project and presented her approved proposal. Ms. Lovvorn reported that Public Art Program staff was having difficulty entering into contract with the artist due to a language barrier and her concerns about certain contract provisions. Ms. Lovvorn is working with the City Attorney to explore modifications to the contract to address the artist’s concerns. Ms. Lovvorn is also working with the project team to coordinate the structural design specifications that are required as part of the Construction Documents which will be at 100% in October. Ms. Lovvorn also noted that the location of the artwork had changed due to revisions of the station’s architecture. She stated that she would present the new location to Commissioner for approval at an upcoming meeting.

5. Memorial Court

Susan Pontious

Ms. Pontious presented an update on the Memorial Court Veteran's Memorial Project. Ms. Pontious reported that the Memorial Court Artist Selection Panel recently selected the proposal *Passage of Remembrance* by the team of artist Susan Narduli and landscape architect Andrea Cochran. Ms. Pontious described the central elements of *Passage of Remembrance* as a basalt octagon with a stainless steel walkway over a reflecting pool. Ms. Pontious noted that the octagon creates pathways for the viewer to navigate with poems by famous poet and World War I veteran Archibald MacLeish inscribed on its walls. In addition to the octagon form, Ms. Pontious explained that Ms. Cochran had altered the landscape design of the court to include a slight sloping of the lawn, and the addition of a material under the grass to allow wheelchair accessibility. Commissioner Johnston, who served on the selection panel, commented on the redesign of the court noting that the changes will allow the space to become activated by public use. Ms. Pontious added that *Passage of Remembrance* has been approved by the Board of Trustees of the War Memorial Complex.

Motion: Motion to approve the proposal design submitted by Susan Narduli Studio and Andrea Cochran Landscape Architecture for a veteran's memorial located in Memorial Court in the War Memorial Complex.

Moved: Sklar/Johnston

Motion: Motion to authorize the Director of Cultural Affairs to enter into contract with Susan Narduli Studio for \$420,560 for design and project management services (schematic design through construction) for a veteran's memorial located in Memorial Court in the War Memorial Complex.

Moved: Sklar/Johnston

6. Mission Playground

Marcus Davies

Project Manager Marcus Davies presented the final design revisions of artwork fence panels by Michael Bartalos for Mission Playground. Mr. Davies explained that due to a reduction in the panel height, Mr. Bartalos had been required to make alterations to his original design in order to accommodate the new dimensions. The new designs for the ten individual panels were then presented to the committee. Mr. Davies also explained that the new designs had been carefully reviewed by both the artist and the fabricator to assure that all openings within the panels were in strict compliance with San Francisco Department of Building Inspection code and that any areas of potential structural fragility had been reinforced. Upon review of the modified design the committee was in agreement that the revision process not only addressed structural needs, but resulted in an overall aesthetic enhancement of the artwork.

Motion: Motion to approve final design revisions of artwork fence panels by Michael Bartalos for Mission Playground.

Moved: Johnston/Sklar

THE FOLLOWING ITEM MOVED FROM ITEM SIX TO ITEM SEVEN

7. Public Utilities Commission

Jill Manton

Director of Programs Jill Manton reported on the status of the Memorandum of Understanding (“MOU”) between the San Francisco Arts Commission (“SFAC”) and the Public Utilities Commission (“PUC”). Ms. Manton explained that consensus was reached between the SFAC and senior level staff at the PUC to finalize the MOU. Ms. Manton noted that the agreement to allocate 65% of funds to the Community Arts and Education Program (“CAE”) and 35% to the Public Art Program remained. Ms. Manton stated that she, Ms. Pontious, CAE Program Director Judy Nemzoff will meet to devise a comprehensive cultural arts plan for the PUC that will include support to cultural centers and temporary public art projects. Ms. Manton reported that the San Francisco Foundation was added as a partner to the cultural arts plan. She commented that the trio of agencies working together will be successful in revitalizing various communities through the arts.

THE FOLLOWING MOTION WAS TABLED

Motion: Motion to approve the Memorandum of Understanding between the San Francisco Arts Commission and the Public Utilities Commission.

Moved:

8. Art on Market Street Kiosk Poster Series

Mary Chou

Project Manager Mary Chou presented proposals by artists Julie Chang, Christina Empedocles, Paul Madonna and alternate Guillermo Gomez-Pena, recommended by the Artist Selection Panel for the 2012 Art on Market Street Kiosk Poster Series. Ms. Chou reminded the Commissioners that the artists chosen for this series were asked to create proposals responding to the theme of “celebrating the arts in San Francisco.” Ms. Chou noted that the panel was comprised of Commissioner Johnston, artist Katherine Aoki, Director of the Kearney Street Workshop Ellen Oh, and former SFAC Art on Market Street Project Manager Judy Moran.

Ms. Chou described Ms. Chang’s art practice as often appropriating ethnic imagery and combining it with that of gift cards or wall paper in a strong graphic style. For this series, Ms. Chou explained that the artist will create six designs, each focusing on a different genre of art. Ms. Chou noted that the panel liked how the artist included elements that would reveal themselves over multiple viewings. They did, however, recommend that the artist fully develop her concept through continued research into each artistic genre. Ms. Chou stated that the panel felt confident in the artist’s ability to execute an interesting poster series, and assured the Commissioners that Public Art staff will work with her to accomplish this. Commissioner Garcia-Nakata commented that permissions to use specific imagery may be necessary for this project. Ms. Chou replied that she would work

with the artist to secure permissions or change imagery if permissions become cost prohibitive.

Ms. Chou presented the work of Christina Empedocles, an artist that creates hyper-realistic drawings using wax pencil. For the poster series, Ms. Empedocles has proposed to monumentalize six classic films pertinent to San Francisco by combining found movie posters and collage elements into her drawings. Ms. Chou noted that the panel thought this series was successful and that many people will find it enjoyable and engaging. Ms. Chou reported that the panel recommended that the artist include more contemporary movie references instead of focusing predominantly on one time period. Additionally, the panel noted that they hoped for more integration of the found movie posters and collage elements.

Ms. Chou described the work of Paul Madonna, an artist best known for his comic strip *All Over Coffee* published in the San Francisco Chronicle. Ms. Chou noted that Mr. Madonna has proposed a series of posters that pair quotes from local arts figures with a classic San Francisco scene. Ms. Chou stated that the panel enjoyed the pairing of text with the street scenes, but felt that the artist could bring more of his unique perspective of the work. Commissioner Johnston, who served on the panel, remarked that the scenes chosen by the artist should be less iconic and more evocative of a place. Ms. Chou explained that the panel also questioned some of the artist's choice of images and stated that she he would bring revised designs to the VAC to review in the future.

Ms. Chou presented the work of the alternate for the poster series, Guillermo Gómez-Peña. Ms. Chou explained that the artist is well known for his performance work that often explores cross-cultural issues. Ms. Chou reported that for this poster series, the artist proposed a series of poetic statements paired with photos of local artists and personalities produced from staged, improvisational photo shoots. Ms. Chou noted that the panel was concerned about the poetic statements and felt they would have to be developed to specifically address the theme of "celebrating the arts in San Francisco." They were also less interested in the artist's studio photography practice and more attracted to portraits created outdoors in San Francisco. Ms. Chou stated that should Mr. Gómez-Peña be asked to replace one of the three selected artists, she would work with him to address the panel's concerns.

Motion: Motion to approve the kiosk poster proposal by artist Julie Chang for the 2012 Art on Market Street Kiosk Poster Series and to authorize the Director of Cultural Affairs to enter into contract with the artist to develop and complete six unique poster designs for an amount not to exceed \$10,000.

Moved: Johnston/Sklar

Motion: Motion to approve the kiosk poster proposal by artist Christina Empedocles for the 2012 Art on Market Street Kiosk Poster Series and to authorize the Director of Cultural Affairs to enter into contract with the artist to develop and complete six unique poster designs for an amount not to exceed \$10,000.

Moved: Johnston/Sklar

Motion: Motion to approve the kiosk poster proposal by artist Paul Madonna for the 2012 Art on Market Street Kiosk Poster Series and to authorize the Director of Cultural Affairs to enter into contract with the artist to develop and complete six unique poster designs for an amount not to exceed \$10,000.

Moved: Johnston/Sklar

9. Suspension of the Civic Art Collection Loan Program

Allison Cummings

Senior Registrar Allison Cummings opened a discussion regarding the Civic Art Collection City Office Loan Program and requested temporary suspension of the program. Ms. Cummings explained that the program had been suspended previously in 2004 when it was apparent that limited staff could not maintain the program. Ms. Cummings stated that the program was reinstated in 2009 by the Director of Cultural Affairs, but still lacked adequate staffing to ensure its effectiveness. Ms. Cumming commented that during this fiscal year, the Civic Art Collection's primary goal is to make significant progress on the collection inventory. She noted that temporarily suspending the City Office Loan Program would aid in this task, as artwork location changes need to be at an absolute minimum during the inventory. Ms. Cummings added that the program deserved a full analysis to determine its mission, its associated costs and how it can be run efficiently. During the suspension, no new loan projects will be undertaken; however exiting loans and return requests will continue to be administered.

Motion: Motion to rescind Resolution No. 0504-09-120, which re-implemented the Civic Art Collection Loan Program in May 2009 at the request of the Director of Cultural Affairs, with the borrowing department assuming all costs associated with the loan.

Moved: Johnston/Sklar

Motion: Motion to suspend the Civic Art Collection Loan Program until further notice in order to facilitate the completion of the collection inventory and subsequent evaluation of resources required to maintain the loan program successfully.

Moved: Sklar/Johnston

10. Relocation of Artwork at Boeddeker Park

Carol Marie Daniels

Project Manager Carol Marie Daniels gave an update on relocating the mosaic mural *Flying Dragon-Snake-Monkey-Bird*, by Johanna Poethig. Ms. Daniels reminded the Commissioners that the mural currently resides at the clubhouse at Boeddeker Park which is soon to be demolished. Three options for relocating the mural were previously presented at the May 18, 2011 VAC meeting. Ms. Daniels reported that the option to relocate the mural to an exterior wall on private property adjacent to the clubhouse was no longer available. Ms. Daniels explained that relocation to Hamilton Pool was another option, but would require that the artist redesign her work to fit within a smaller wall space. Ms. Daniels noted that this is the artist's preferred option. She explained that the

artist is proposing to add additional elements to other walls in the building to create a unified artwork that looks intentional in that space. Ms. Daniels reported that she is meeting with a conservator to discuss the feasibility of moving the mural and will also investigate the costs associated with relocation to Hamilton Pool. Ms. Daniels stated that the third option for the mural is to demolish it along with the clubhouse at Boeddeker Park, and use the funds that would have been spent on the relocation on a new artwork by Ms. Poethig. Ms. Daniels commented that the staff at Hamilton Pool is excited about the possibility of receiving the artwork. She will report back on progress at a future VAC meeting.

11. SFAC Rebranding

Kate Patterson

Public Relations Manager Kate Patterson gave an update on the SFAC rebranding efforts. Ms. Patterson reported that she held a meeting with staff and Studio 1500 to discuss the main values, philosophies, and functions of the agency and how that may be communicated through branding. Ms. Patterson noted that the meeting was well attended with representatives from each program present. Ms. Beltran commented that she attended the meeting and felt it was productive, not only for the purpose of rebranding, but as a staff exercise to define the principals of the agency. Ms. Patterson stated that Studio 1500 will use the comments supplied at the meeting to compile a creative brief which will be shared with SFAC staff.

12. Moscone Center West

Jill Manton

Ms. Manton presented an update on the *Facsimile* project by Diller + Scofidio at Moscone Center West. Ms. Manton reported that the LED screen on the building's façade is currently non operational. She noted that she met with an LED engineer to determine how to resolve issues of functionality. An action plan for maintenance will be carried out in late August, early September of this year. Ms. Manton commented that certain companies had expressed interest in using the screen for promotional use. She noted that she will contact Diller + Scofidio to determine if the screen may be used for non-art projects.

13. New Business

Ms. Pontious reported that the sculpture *Conquest of Space* by Rufino Tomayo has been refurbished and will be reinstalled at the San Francisco International Airport later this month.

14. Old Business

15. Adjournment

The meeting adjourned at 5:06

ZT 8/17/11

Notices

Explanatory documents are available for public inspection and copying at the Arts Commission office, 25 Van Ness Avenue, Suite 345, San Francisco, CA 94102 during regular business hours. INFO: Zoe Taleporos (415) 252-3215.

Public comment in regard to specific items will be taken before or during consideration of the item.

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 of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 - 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness, Suite 220, San Francisco, CA 94102 - telephone (415) 252-3100, fax (415) 252-3112 and <http://www.sfethics.org/ethics/2009/12/lobbyist-ordinance-2010.html>

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

Government's duty is to serve the public, reaching its decision 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 or to report a violation of the ordinance, contact Frank Darby, Jr. by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org

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 #2 of 2-- (Art Commission Did Not Provide DRAFT MINUTES of its Visual Arts Committee (VAC) Meeting of August 17, 2011 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. Please note the reply is in two parts: Part One is essentially the same as for the complaint about failure to provide an audio recording; Part Two adds additional reasons for violation.

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. Their reply is the same for each of our two complaints, regarding failure to record a meeting of the Visual Arts Committee (VAC) # 11084, and failure to provide Minutes of that meeting on a timely basis, # 11085.

PART ONE

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 Department, **Interim Director** ; eltran; 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.

PART TWO, REGARDING MINUTES OF THE VISUAL ARTS COMMITTEE (VAC):

The Draft Minutes should have been available upon request, when we requested the minutes on or before September 7, 2011. Sunshine 67.16, Minutes, says:

"The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting."

But even if the VAC were not subject to this rule, the draft Minutes existed, and should have been provided promptly -- or else alternatives might have been suggested, for example the rough notes the secretary prepares on her PC as she sits at the meeting. We were given no assistance with alternatives. But we were told at the time that the reason for not getting the minutes was "office policy." That is not a justification for refusing to provide an already-prepared, and recent, document. The

Arts Commission made it wait because of “policy.” Sur Section 67.21 requires “every person having custody of any public record or public information” to provide public inspection “at normal times, and during normal and reasonable hours of operation, **without unreasonable delay**, and without requiring an appointment.” [Emphasis added]

We quoted from the relevant memo sent by the Arts Commission in our complaint, and will undertake to bring it for inspection to any hearing.

Conclusion

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. In this case, that meant production within 10 days of the August 17, 2011 meeting. **In addition, we ask that you affirm the requirement to provide any requested materials without unreasonable delay.**

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
415/753-2180

Library Users Association

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

Tel./Fax (415) 753-2180

December 8, 2011

Honorable Members
Sunshine Ordinance Task Force
City Hall
San Francisco

Subject: *Addendum to Complaint Against Art Commission, No. 11085--
Draft Minutes of August Visual Arts Committee were not
Provided Promptly*

Ladies and Gentlemen:

For your information, we provide the memo sent to us by the Arts Commission giving its reason for not promptly providing Minutes of the Visual Arts Committee (VAC) meeting.

Please see the attached document.

This should help to confirm what our letter said about inappropriate delay in providing the requested draft Minutes.

Library Users Association thanks you for the time and effort you have expended on this matter.

Sincerely yours,

Peter Warfield
Executive Director
Library Users Association



Fw: VAC minutes and North Beach Library Panelists
Library Users Association

to:

sotf

12/08/2011 08:56 PM

Hide Details

From: Library Users Association <libraryusers2004@yahoo.com>

To: sotf@sfgov.org

Please respond to libraryusers2004@yahoo.com

FYI - for attaching to the letter...please await my call though.

Thanks.

PW

--- On **Wed, 9/7/11, Taleporos, Zoe** <zoe.taleporos@sfgov.org> wrote:

From: Taleporos, Zoe <zoe.taleporos@sfgov.org>
Subject: VAC minutes and North Beach Library Panelists
To: "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>
Date: Wednesday, September 7, 2011, 2:31 PM

Hello,

We spoke on the phone earlier regarding the draft minutes for the August 17, 2011 Visual Arts Committee Meeting. Unfortunately, it is office policy to only distribute final minutes for public review. These minutes will be posted online by Friday, September 9th and can be found here: <http://www.sfgov3.org/index.aspx?page=2510>

The public art proposals for the North Beach Branch Library are currently on display at the library

and are on our website:

<http://www.sfartscommission.org/pubartcollection/news/2011/08/31/public-art-proposals-for-the-new-north-beach-branch-library/>

The artist selection panel for this project will take place on Monday September 19, 2011, 9am – 1pm at 25 Van Ness Avenue, Suite 70 , San Francisco , CA 9410. The voting panelists are:

Robert Carleson, Branch Manager

Marsha Maytum, Project Architect

Rene Bihan, Former Arts Commissioner

Abby Herget, Community Representative

Howard Wong, Community Representative

If you have more questions regarding the proposals or the artist selection panel, please contact Mary Chou, Public Art Project Manager at (415) 252-2551 or by email at mary.chou@sfgov.org.

Thank you,

Zoë Taleporos
Public Art Program Associate
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco , CA 94102
415-252-3215 (p)
415-252-2595 (f)
<http://www.sfartscommission.org>