

**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227**

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

June 30, 2016

Re: Sunshine Ordinance Task Force 2014-2016 Annual Report

Dear President Breed and Members,

The Sunshine Ordinance Task Force (Task Force) submits the attached Annual Report covering the period of June 1, 2014, through March 31, 2016 to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c). The report reflects the experience of the members who served on the Task Force during the time period covered. The report summarizes the predominant matters addressed by the Task Force during this period.

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

Best Regards,

A handwritten signature in black ink, appearing to read "Chris Hyland", written over a horizontal line.

Chris Hyland
Acting Chair

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

**CITY AND COUNTY OF SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE
2014-2016 ANNUAL REPORT**

The San Francisco Sunshine Ordinance Task Force (Task Force) submits this annual report for the term of June 1, 2014, through March 31, 2016, to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c).

SUNSHINE ORDINANCE

San Francisco Administrative Code Chapter 67

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

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

SUNSHINE ORDINANCE TASK FORCE

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

Members

The Task Force consists of 11 seats for voting members and two seats for non-voting members. Voting members from June 2014 to April 27, 2016, were:

Seat 1: Attorney nominated by the Society of Professional Journalists.
Mark Rumold (6/10/14 to 4/27/16), seat currently vacant

Seat 2: Journalist nominated by the Society of Professional Journalist.
Eric Eldon (10/7/15 to present)

Seat 3: Member of the press or electronic media with an interest in citizen access.
Josh Wolf (6/10/14 to present)

Seat 4: Journalist nominated by New America Media.
Rishi Chopra (10/21/14 to 4/27/15) (term expired – currently serving as a holdover)

Seat 5: Nominated by the League of Women Voters.
Chair Allyson Washburn (6/10/14 to 4/27/16)

Seat 6: Consumer Advocacy
David Pilpel (5/20/14 to 4/27/16)

Seat 7: Consumer Advocacy
Lee Hepner (6/10/14 to 1/30/16), seat currently vacant

Seat 8: General Public
Shaun Haines (6/3/15 to 4/27/16)

Seat 9: General Public
Vice Chair Chris Hyland (6/10/14 to present)

Seat 10: General Public
Louise Fischer (5/20/14 to present)

Seat 11: General Public
Fiona Hinze (10/28/14 to present)

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

All Task Force members are required to have experience and/or demonstrated interest in the issues of citizen access and participation in local government. At all times the Task Force shall include at least one member who is a member of the public and is physically handicapped. Member Fiona Hinze met that requirement when she was appointed on October 21, 2014.

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

Responsibilities

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

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

Meetings

Regular Task Force meetings are currently held on the first Wednesday of each month at 4:00 p.m.

Standing Committees of the Task Force

During this period the Compliance and Amendments Committee (CAC); Complaint Committee (CC); Rules Committee (RLS); and the Education, Outreach, and Training Committee (EOTC) were active.

In an effort to adjudicate complaints in a timely manner, the Task Force authorized the Complaint Committee to conduct initial hearings and make recommendations regarding how they should be decided. This has effectively doubled the capacity of the Task Force to adjudicate complaints each month and has greatly reduced the backlog.

For period of June 1, 2014, through March 31, 2016, the Task Force's committees conducted the compliant hearings and considered other issues as follows:

38 hearings to follow up on the Orders of Determination issued by the Task Force
62 hearings to review complaints and make recommendations to the Task Force

Task Force Administrator

The Task Force is assisted by a full-time Administrator from the office of the Clerk of the Board of Supervisors pursuant to Sunshine Ordinance, Section 67.31. During this period the role of Administrator was filled by Victor Young.

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

Deputy City Attorney

The City Attorney assigns a Deputy City Attorney to serve as legal advisor to the Task Force. Nicholas Colla served in that capacity during this period.

Complaints filed with the Sunshine Ordinance Task Force

2014: 122 complaints filed
2015: 168 complaints filed
2016: 35 complaints filed as of March 31, 2016

Complaints filed against city agencies from January 1, 2014, through March 31, 2016.

City Agency	2014	2015	2016 (partial to 3/31/16)	Total Complaints Filed per Department	Number of Violations Found by the Task Force
Arts Commission	17	35	10	62	7
Assessor/Recorder	2			2	1
Board of Supervisors	10	14	3	27	11
Building Inspection	2			2	1
City Administrator		2		2	1
City Attorney	12	11		23	5
Civil Service Commission	1	2		3	
Controller's Office	5	7		12	3
District Attorney	1	1	2	4	2
DTIS		1		1	
Emergency Management			1	1	
Environment		1	1	2	
Ethics Commission		1	1	2	
Fire Department	1	3		4	1
Housing Authority		1		1	
Human Resources		13		13	
Human Services Agency	4	2	1	7	1
Mayor's Office	9	3		12	3
Planning	6		1	7	
Police Department and Commission	7	3	4	14	4
Port		1		1	
Public Health	13	2		15	3
Public Library and Commission	4	16		20	2
Public Utilities Commission		3		3	1
Public Works	5	3		8	5
Recreation and Parks		2		2	2
Retirement System	1	5		6	
SFMTA	6		3	9	2
Sheriff	2	11	2	15	2
Sunshine Ordinance Task Force		1		1	
Treasurer/Tax Collector	2	2		4	
Zoo	1			1	
311		1		1	

Total complaints filed against a particular department should not be taken as an indicator of that department's compliance with the Ordinance. Rather, violations found by the Task Force serve as a more accurate barometer and should assist departments with achieving a stronger record of compliance in the future.

Highlights of Hearings and Cases

The matters and cases discussed below are representative of those heard by the Task Force as it works to ensure greater transparency in the day-to-day business of City departments. As stated in previous annual reports, the Task Force is seeking both a stronger partnership and accountability by municipal offices with enforcement power through timely action to address these matters and to see the cases through to their important and just conclusions.

- It appears that the Recreation and Parks Department has several internal policies that have not been codified in writing but are characterized as “long-standing policies.” Although the department does not appear to violate the Sunshine Ordinance as strictly interpreted, the question remains as to how the policies were adopted and enforced they are not in a written format. The Task Force is currently attempting to gather more information from Recreation and Parks about how they develop policies but have not receive adequate responses (attachment- letter to and response from Recreation and Parks).
File No. 15087 Alex Aldrich vs. Recreation and Parks
File No. 15159 Tom Borden vs. Recreation and Parks
- Hearings conducted to provide suggestions for amendment to the Administrative Code (Sunshine Ordinance) 67.29-5: Officials Calendars: to expand the requirement to maintain a calendar to additional city officials.
- Review and implementation of certain recommendations from the Civil Grand Jury report title: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense. (File No. 14065)
The Task Force held a series of hearings about the recommendations and was requested to review and submitted a response to the presiding judge in August 2014. The response is attached.
- Hearing with the Ethics Commission to revise and develop additional policies for the effective processing of referrals from the Task Force for enforcement. (File No. 14093)
- Balancing the need for the Police Department and Fire Department to maintain confidential documents for law enforcement purposes against the public’s ability to access public records.
File No. 15010 Thomas Picarello vs. Fire Department. The Fire Department withheld certain documents due to a criminal investigation and for personal privacy purposes. However, Mr. Picarello was an actual victim in the investigation.
File No. 15019 Emmanuel Kourkoulas vs. Police Department. The Police Department would not release unredacted copies of certain reports in order to protect victims of a crime.

- Whistleblower protection. The Public Utilities Commission revised a report in order to delete any possible reference to a whistleblower complaint but did not inform the public of the redaction/amendment. Upon review, the Task Force found that certain practices used to protect whistleblowers actually obstruct the whistleblowers themselves (even though they have gone “public” and no longer wish for anonymity or protection) and also obstruct the ability of members of the public to obtain records that may or may not be related to the whistleblower complaint. The Task Force was not able to obtain satisfactory answers regarding the complaint.

File No. 15078 Richard Denton vs. Public Utilities Commission.

- The Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement (Panel) requested certain records from the Police Department. Due to the large volume and required analysis of the documents, the Police was unable to meet the deadline to comply with the public records request. The Task Force continues to work with both parties to create timelines for document production.

File No. 16003: Panel vs. the Police Department.

- Steve Kawa, Chief of Staff, Mayor’s Office, was found to have deleted his calendar on a regular basis, maintaining only a 2-week calendar history. It was determined that Mr. Kawa and city employees in general should maintain calendar for a minimum of 2 years and there is no legitimate reason to delete the calendar. A willful violation was found here and has been sent to the Ethics Commission.

File No. 15163 Michael Petrelis vs. Steve Kawa and the Mayor’s Office

Enforcement of the Sunshine Ordinance

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

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

On-going Issues

Volume of Complaints. As mentioned earlier, the Task Force has begun hearing many complaints in the Complaint Committee in an effort to reduce the backlog, as well as the wait time for complainants. That said, the volume of complaints has remained so high that other pertinent Task Force issues, including updating the by-laws, complying with new laws related to technology and digital data storage, working with other City agencies on enforcement, increasing education of City departments, and conducting outreach to the public have not been able to be adequately addressed.

Unfilled Task Force Seats. The aforementioned problem would be addressed, at least in part, if the Task Force had a full complement of 11 members. Members of the Board of Supervisors were asked repeatedly for assistance in filling the two Task Force seats that were empty for most of this period. Moving forward, it is important that all positions on the Task Force are filled so that it can more effectively complete the work that the Ordinance mandates that it do. It is hoped that this situation will be corrected in the upcoming term. The Board of Supervisors Rules Committee is strongly urged to fill any vacant seats on the Task Force within one or two months.

Staffing; Deputy City Attorney. For the past several years, the Deputy City Attorney assigned to the Task Force has not been funded for his role at a level that permits him to attend the entire meeting of the Task Force if it runs long or to attend any of the Committee meetings. This makes it difficult for the Task Force to function optimally as the inevitable questions that arise during hearings go unanswered. The Board of Supervisors is urged to increase the hours that the Deputy City Attorney is assigned to the Task Force so that may better fulfill its responsibilities as mandated by the Sunshine Ordinance.

Long-term Issues

Amending the Sunshine Ordinance. Although transparency in City government is crucial to fostering a working relationship with the public, many sections of the Sunshine Ordinance itself are outdated and require amendment in order to be both current and effective for both the public and City officials. We have made some headway into both internal process changes and, in past years, in drafting recommendations for amendments to the Ordinance and will continue that work in the next term.

Conclusion

In conclusion, the Task Force urges the Board of Supervisors and the Mayor to take a hard look at the Task Force, its purpose in promoting open government, and give it the tools necessary to make it a viable decision-making body that serves the public interest and creates an environment where City officials and agencies can work with the public in a respectful and efficient manner. After close to 20 years of being in operation some substantial reforms and improvements to the Ordinance may be necessary to achieve this end.

**Sunshine Ordinance Task Force
Compliance and Amendments Committee**

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

The members of the CAC has comprised three members: most recently Allyson Washburn, Lee Hepner, and Rishi Chopra.

The CAC normally meets on the 3rd Tuesday every other month at 4 p.m.

During the period from June 1, 2014, through April 6, 2016, the CAC held 11 meetings to hear the following matters:

Hearings following up on departmental compliance with Task Force Order of Determination - 26

Hearings to review complaints and submit recommendations to the Task Force - 11

Other issues of discussion to note

File No. 14065: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense.

File No. 14073: Proposed amendments to Sunshine Ordinance Section 67.29-5 - Calendars of Certain Officials.

File No. 14093: Hearing - Ethics Commission's policy discussion regarding Sunshine Ordinance Task Force referrals.

**Sunshine Ordinance Task Force
Education, Outreach, and Training Committee**

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

The members of the EOTC has comprised three to five members: most recently Chair Chris Hyland, David Pilpel, Josh Wolf, Todd David and Ali Winston.(pending recheck)

The EOTC normally meets the second Monday every other month at 4 p.m.

During the period from June 1, 2014, through April 6, 2016, the EOTC held 6 meeting to hear the following matters:

Hearings following up on departmental compliance with Task Force Order of Determination - 12

Hearings to review complaints and submit recommendations to the Task Force - 6

Other issues of discussion to note

File No. 14065: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense.

File No. N/A: Education, Outreach and Training Committee – Member Initiative and Work Plan.

File No. 14073: Proposed amendments to Sunshine Ordinance Section 7.29-5 - Calendars of Certain Officials.

File No. 15020: Hearing - Creating Policies and Procedures Guide: How to Respond to Request for Public Records.

Sunshine Ordinance Task Force Rules Committee

The Rules Committee reviews matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and assists the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force. In addition, the Rules Committee hears on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

The Rules Committee normally meets once every other month and as needed. On many occasions the Rules Committee members served on the Complaint Committee to hear new complaints.

The members of the Rules Committee has comprised three members: most recently Chair Louise Fischer, Fiona Hinze and Mark Rumold.

The Rules Committee meets as needed.

During the period from June 1, 2014, through April 6, 2016, the Rules Committee held 3 meetings to hear the following matters:

Hearing regarding Sunshine Ordinance Task Rules and by-laws amendments

File No. 14030: Sunshine Ordinance Task Force By-laws and Complaint Procedures –Review and Possible Amendments.

- Quorum required for procedural issues
- Attendance policy
- Task Force precedence log of decisions
- Continuance policy
- Revising complaint procedure
- Policy regarding reconsideration of decisions
- Closing files due to lack of communication or attendance at hearing
- Policy for telephone testimony
- Policy for Americans with Disabilities (ADA) accommodations
- Time limits for hearings
- Review and evaluation of Complaint Committee Procedure
- Communications policy
- Documentation deadline

Sunshine Ordinance Task Force Complaint Committee

The Complaint Committee monitors the complaint process and make recommendations to the Task Force regarding how the complaints should be handled. The Complaint Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

The Complaint Committee meets as needed and does not have standing members. The other Committees and/or members are assigned to as the Complaint Committee as needed by the Task Force Chair.

During the period from June 1, 2014, through April 6, 2016, the Complaint Committee held 10 meeting to review 45 complaint. (Upon review the complaints are referred to the Task Force with recommendations for review and possible adoption.)

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TDD/TTY No. (415) 554-5227

The Honorable John Stewart, Presiding Judge
San Francisco County Superior Court
400 McAllister Street Room 008
San Francisco CA 94102-4512

March 13, 2015

Re: 2013-2014 Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense

Dear Judge Stewart,

The Sunshine Ordinance Task Force (Task Force) hereby submits follow-up responses to the subject Civil Grand Jury report pursuant to California Penal Code, Sections 933 and 933.5, where the Task Force's prior August 28, 2014, response stated that further analysis was required.

Recommendation 11: The Ethics Commission in conjunction with the City Attorney should develop a policy to ensure preservation of e-mails and text messages consistent with preservation of other public records. The policy, along with policies on preservation of public records, should be made available for public comment. Once it is completed and published it should be made available on City Attorney and Ethics Commission web pages that lists each Department, its policy, and how to obtain documents.

Task Force's Prior Response: The recommendation requires further analysis.

The Sunshine Ordinance Task Force, in conjunction with the City Attorney's Office and Ethics Commission, should develop policies to ensure preservation of e-mails and text messages consistent with preservation of other public records. Before adoption, these policies would be made available for public comment. The finalized policies would then be sent to all City agencies, boards, commissions, and departments and made available on the SOTF's website. Each City agency, board, commission, and department web site should include, in a similar section (i.e., "About Us" or "For More Information"), the applicable Record Retention Policy and Schedule and information about how to request public records, including contact information and forms, if applicable. The SOTF, through the Compliance and Amendments Committee and the Education, Outreach, and Training Committee, intends to review these issues in the next 6 months.

In addition, it should be noted that California Government Code Section 34090 states that the destruction of records less than two years old is not authorized. Section 8.3 of San Francisco Administrative Code, however, authorizes destruction of records in less than two years if this would not be detrimental to the City and County or defeat any public purpose. This section of

the Administrative Code should be amended to comply with California Government Code Section 34090.

Task Force's Follow-up Response: A policy should be developed to ensure preservation of email and text messages consistent with applicable laws and modern business practices. Email and text messages sent to or from City officers or employees related to public business that have any meaningful content should be retained for at least 2 years (or longer if applicable). The Task Force, through its Education, Outreach, and Training Committee, intends to develop such a policy in conjunction with the City Attorney's Office and the Ethics Commission, with outreach to City agencies, boards, commissions, and departments, and subject to public comment.

Recommendation 12: The Jury recommends that the Ethics Commission and the Sunshine Ordinance Task Force review departmental websites for compliance and notify non-compliant departments to immediately post their sources of outside funding, or face a show-cause [hearing] before the Ethics Commission on why the information has not been posted.

Task Force's Prior Response: **The recommendation requires further analysis.** The SOTF, through its Compliance and Amendments Committee and/or its Education, Outreach, and Training Committee, shall review the web sites of each City agency, board, commission, and department for compliance and shall develop a model for content required by Sunshine Ordinance Section 67.29-6. This said, the SOTF is mindful of its limited resources to regularly review and monitor each departmental web site for compliance with this provision alone and to notify non-compliant departments. The SOTF is also skeptical that the Ethics Commission has the power to order a show-cause hearing in the manner that the Jury recommends.

Task Force's Follow-up Response: The Task Force, through its Compliance and Amendments Committee and Education, Outreach, and Training Committee, continues to review the web sites of City agencies, boards, commissions, and departments based on complaints received. For example, the Task Force and its committees have discussed issues with the Arts Commission, Health Department, and Planning Department websites recently. However, limited resources have delayed a complete review of each website and the development of a content model as previously reported. The Task Force is preparing to send a memorandum to department heads reminding them of the requirement to post sources of outside funding on department websites.

Recommendation 17b: The City Attorney and the Ethics Commission ensure that those officials subject to the calendar requirement, and their administrative staff, be trained on the law's requirements.

Task Force's Prior Response: **The recommendation requires further analysis.** The SOTF, through its Education, Outreach, and Training Committee, assists with the annual training provided by the City Attorney under the Sunshine Ordinance. As noted above, the Task Force's Compliance and Amendments Committee and/or the Education, Outreach, and Training Committee intends in the next 6 months to review compliance with the Sunshine Ordinance's calendar requirements and to conduct a larger review of all existing Sunshine Ordinance training materials and programs, with the intent of better tailoring these training materials and programs to the audience (Elected Officials, Members of Board and Commissions, Commission

Secretaries, Department Heads, Department Head Secretaries, Public Information Officers, etc.). Efforts by the City Attorney and the Ethics Commission with respect to this recommendation should be coordinated with the SOTF. Keeping with the best practices of open government, the SOTF also urges that the Board of Supervisors adhere to the public calendar requirements of other city departments and agencies.

Task Force's Follow-up Response: The Task Force has not reviewed compliance with the department head calendar requirement as previously reported due to limited resources. The Task Force is preparing to send a memorandum to department heads reminding them of the department head calendar requirement. The Task Force is also considering recommending an ordinance to the Board of Supervisors to extend the department head calendar requirement to members of the Board of Supervisors. Finally, the Task Force, through its Education, Outreach, and Training Committee, still intends to conduct a larger review of all existing Sunshine Ordinance training materials and programs, as previously reported, as resources permit.

Recommendation 20a: The Mayor's Office should establish a blue-ribbon committee of experts and stakeholders in open government, sunshine, and transparency, including former Sunshine [Ordinance] Task Force members. The Committee of Experts should review and update the Sunshine Ordinance as necessary and should report to both entities and the Board of Supervisors recommendations that would result in coordination and respect for the functions of each entity.

Task Force's Prior Response: **The recommendation requires further analysis.**

The SOTF strongly encourages efforts by any office or entity to further the aims of transparent and open government. Nonetheless, whether a blue-ribbon committee is created or not, the SOTF has the power and duty to "propose to the Board of Supervisors amendments to the Sunshine Ordinance" pursuant to San Francisco Administrative Code Section 67.30(c). The SOTF, through its Compliance and Amendments Committee, intends in the next 6 months to initiate a new review of the Sunshine Ordinance to, in part: (1) identify sections of the Sunshine Ordinance which overlap and/or conflict with the rules governing the city's Ethics Commission, and (2) identify areas of the Sunshine Ordinance that should be updated to reflect new technologies implemented since its passing. Such a review should consider the views of City agencies, boards, commissions, and departments as to both policy goals and practical implementation issues; the views of "experts and stakeholders in open government, sunshine, and transparency, including former Sunshine Ordinance Task Force members;" and the views of the City Attorney and the Ethics Commission in order to foster greater harmony among those entities involved.

Task Force's Follow-up Response: The Task Force again notes its power and duty to "propose to the Board of Supervisors amendments to the Sunshine Ordinance," including the proposed ordinance discussed above regarding Recommendation 17b. The Task Force's Compliance and Amendments Committee is responsible for, among other things, recommending to the Task Force amendments to the Sunshine Ordinance. The Task Force, in turn, may recommend amendments to the Board of Supervisors. However, since the voters amended the Sunshine Ordinance in 1999 and did not provide for further amendments through the legislative process, most substantive amendments would have to go back to the voters for approval.

Recommendation 20b: For now, arrangements should be made jointly by the Ethics Commission and the Sunshine Ordinance Task Force to have complaints heard by an independent hearing officer who would develop a consistent legally sufficient record of the case for the decision of each body. This would allow the meetings of the Task Force and the Commission to focus on broader policy issues.

Task Force's Prior Response: The recommendation requires further analysis.

The SOTF would be interested in fully vetting a proposal to have particularly complex cases heard by an independent hearing officer in order to develop complete and legally sufficient records.

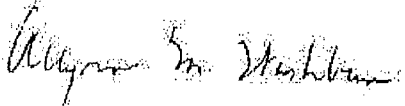
Regarding whether this recommendation is warranted at this time: The SOTF is keenly aware of the backlog in its caseload and concerted efforts are already underway to address it. In particular, the SOTF has scheduled an additional full SOTF meeting each month through the end of this year and has reinstated a complaint procedure to focus and narrow the issues in dispute. Further, the SOTF intends in the next 6 months to review and update its bylaws and complaint procedures, review due process regarding SOTF complaints and referrals, and review SOTF and Ethics Commission procedures regarding referrals. The SOTF will seek public comment on any proposed changes to the bylaws and complaint procedures.

Regarding whether the recommendation is feasible: SOTF members have raised several concerns, including how this hearing officer would be selected in order to ensure expertise and impartiality, how this hearing officer would be compensated, and how his or her independence would be assured.

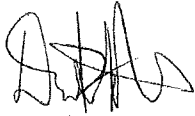
Task Force's Follow-up Response: The Task Force has made substantial progress in reducing its backlog of cases and has, in fact, changed its complaint procedures to allow different and faster ways to address complaints. Further, the Ethics Commission reviewed its procedures for handling referrals from the Task Force and made new policy choices that will also allow more options for enforcement while continuing to give an appropriate level of deference to Task Force decisions. As such, the Task Force will not pursue the independent hearing officer idea further.

If you have any questions regarding these follow-up responses please direct them to Task Force Administrator Victor Young at (415) 554-7724 or by email to sotf@sfgov.org. The Task Force thanks the 2013-2014 Civil Grand Jury for their work.

Sincerely,



Allyson Washburn
Chair, Sunshine Ordinance Task Force



David Pilpel
Member, Sunshine Ordinance Task Force

- c: Members, Sunshine Ordinance Task Force
- Nicholas Colla, Deputy City Attorney
- Civil Grand Jury
- Angela Calvillo, Clerk of the Board, Board of Supervisors
- Mayor Edwin Lee
- City Attorney Dennis Herrera
- District Attorney George Gascón
- Ethics Commission
- Victor Young, Sunshine Ordinance Task Force Administrator

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Dennis Herrera, City Attorney
Office of the City Attorney
1 Carlton B Goodlett Pl Ste 234
San Francisco CA 94102-4682

December 1, 2015

Re: The City Attorney's Budget for, and Participation at, the Sunshine Ordinance Task Force

Dear Mr. Herrera,

The Sunshine Ordinance Task Force (Task Force) writes regarding two matters, the City Attorney's budget for, and participation at, the Sunshine Ordinance Task Force. Regarding these matters, we begin with the language of the Sunshine Ordinance: "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 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 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." (San Francisco Administrative Code section 67.21 (e).)

The Task Force has had several Deputy City Attorneys assigned to advise it over the years pursuant to Administrative Code section 67.30 (a). However, the Task Force is not aware of, and to our knowledge has not been involved in, its assigned annual budget of City Attorney time in hours or dollars. A recent complaint filed with the Task Force by Patrick Monette-Shaw, File No. 14099, sought such information for three past fiscal years. The Task Force ultimately found a violation but was later informed by Matt Dorsey of your office that the requested records did not exist. Our first question now is exactly what is the Task Force's assigned annual budget of City Attorney time in hours or dollars for this fiscal year, and if our budget is not assigned in this way, how exactly is City Attorney time allocated to the Task Force, so that we might use it efficiently, monitor its use, and advocate for sufficient resources if needed under the Ordinance?

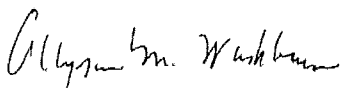
Further, the Task Force changed its Complaint Procedures and practices in the past year to address our continuing backlog of cases. As a result, some complaints are now heard at committees, who make recommendations that the Task Force can accept or reject. This has helped somewhat, but it also means that some complaints are heard on the merits at committee meetings instead of Task Force meetings. However, we do not have the benefit of our assigned

Deputy City Attorney at committee meetings, where legal questions about complaints often arise. Our second question now is can our assigned Deputy City Attorney attend committee meetings of the Task Force “to allow the Sunshine Task Force to fulfill its duties under” section 67.21 (e)?

Finally, we understand that as a result of your office’s disagreement and / or frustration with the Task Force’s decision and handling of the Patrick Monette-Shaw complaint referred to above, your office has taken a much more narrow view of section 67.21 (e) and re-interpreted the Ordinance generally, such that your office will limit its response to and appearance at Task Force meetings to only “explain the basis for its decision to withhold the records requested” and for no other reason. We find this reaction an extreme position that is totally unwarranted, counter-productive, and frustrating to the intent of the Ordinance, the needs of the Task Force, and our collective goal of facilitating compliance with the Ordinance’s provisions. If the Ordinance only requires attendance by departments for the quoted purpose, the Task Force’s practical intentions to understand the dispute at issue through fact-finding, make its determination as to whether or not a violation has occurred, attempt to remedy the situation or change policies or practices to avoid its recurrence, and finally determine if the remedy or change has been implemented, is rendered nearly impossible. The Task Force wants and needs to hear from respondent City departments to accomplish these things. We also note that other departments have now started to use the same argument to limit their participation, thus exacerbating the problem. Our third and final question now is will you reverse that narrow view and again respond to and appear at Task Force meetings regarding complaints and other matters, understanding that there will be disputes between your office and the Task Force from time to time over interpretation and other issues?

The Task Force looks forward to your considered response to this letter. Please contact us if you have questions or need any clarification.

Sincerely,



Allyson Washburn
Chair, Sunshine Ordinance Task Force

- c: Members, Sunshine Ordinance Task Force
- Victor Young, Administrator, Sunshine Ordinance Task Force
- Nicholas Colla, Deputy City Attorney, Office of the City Attorney
- Jerry Threet, Deputy City Attorney, Office of the City Attorney
- Matt Dorsey, Communications Director, Office of the City Attorney
- Angela Calvillo, Clerk of the Board, Board of Supervisors
- Patrick Monette-Shaw, Complainant (File No. 14099)

**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227**

Phil Ginsburg, General Manager
Recreation and Park Department
501 Stanyan St
San Francisco CA 94117

December 1, 2015

Re: Codification of Recreation and Park Department Policies

Dear Mr. Ginsburg,

The Sunshine Ordinance Task Force (Task Force) writes regarding a recent complaint we heard from Alex Aldrich, File No. 15087, in which we found a violation of the Sunshine Ordinance for failure to respond to a public records request in a timely and / or complete manner. The underlying request sought the specific Recreation and Park Department policy banning bicycle use on trails in McLaren Park. In response, your department represented that Park Code section 3.02 requires compliance with posted signage and that the ban on bicycle use at issue was a long-standing unwritten department policy.

The Task Force takes no position on bicycle use here; that policy matter is properly left to the Recreation and Park Commission (Commission) and your discretion. However, the Task Force feels strongly that department policies, particularly controversial ones affecting public use of City facilities, programs, and services, should be in writing, available on request and on the department's website, and adopted by the Commission as a rule or regulation following a public hearing pursuant to Charter section 4.104 (a) (1). We agree that proper signage should be obeyed and believe that use restrictions displayed on such signs should be based on clear, written policies and not long-standing unwritten policies presumably passed on from staff orally.

The Task Force looks forward to your considered response to this letter. Please contact us if you have questions or need any clarification.

Sincerely,

A handwritten signature in cursive script that reads "Allyson M. Washburn".

Allyson Washburn
Chair, Sunshine Ordinance Task Force

c: Members, Sunshine Ordinance Task Force
Victor Young, Administrator, Sunshine Ordinance Task Force

Nicholas Colla, Deputy City Attorney, Office of the City Attorney
Jerry Threet, Deputy City Attorney, Office of the City Attorney
Angela Calvillo, Clerk of the Board, Board of Supervisors
Members, Recreation and Park Commission
Members, Park, Recreation, and Open Space Advisory Committee (PROSAC)
Members, Bicycle Advisory Committee
Alex Aldrich, Complainant (File No. 15087)



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

December 14, 2015

Allyson Washburn, Chair
Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Sunshine Ordinance Task Force File No. 15087

Dear Ms. Washburn,

This letter is written in response to your December 1, 2015 letter referencing Sunshine Ordinance Task Force File No. 15087. On behalf of the Recreation and Parks Department, we thank you for your correspondence. We are always eager for feedback on how to improve the Department's services to—and communications with—the public.

We also appreciate your sharing the Task Force's position that bicycle use in city parks is a matter properly left to the Recreation and Parks Department's discretion.

As land stewards and recreational providers our job is to balance park users' diverse recreational interests with our responsibility to ensure we are preserving and protecting the environment and lands we manage. We are currently working with the off-road cycling community to add safe, designated multi-use trails to our system. We agree with the Task Force that more clarity with respect to off-road cycling policy is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip A. Ginsburg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Philip A. Ginsburg
General Manager