

Date: 02-12-08

Item No. 9

File No. _____

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Discussion on Complaint Committee & Task Force effience**
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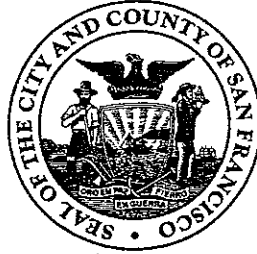
Completed by: Chris Rustom

Date: 02-06-07

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



**SUNSHINE ORDINANCE TASK FORCE
SPECIAL MEETING
MINUTES**

Monday, November 26, 2007
4:00 p.m., City Hall, Room 406

Task Force Members

Seat 1	Erica Craven (Vice Chair)	Seat 8	Bruce Wolfe
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Vacant	Seat 11	Marjorie Ann Williams
Seat 5	Kristin Chu		
Seat 6	Doug Comstock (Chair)	Ex-officio	Angela Calvillo
Seat 7	David Pilpel	Ex-officio	Harrison Sheppard

Call to Order The meeting called to order at: 4:01 P.M.
Roll Call Present: Craven, Knee, Chu, Comstock, Pilpel (in at 4:06 out at 4:57),
Wolfe, Chan, Goldman, Sheppard
Excused: Cauthen, Williams

Agenda Changes: General Public Comment was heard after item #1.

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby

1. Discussion re: the memo from Member Harrison Sheppard.

Member Sheppard discussed his memo and recommendations:

1. That the Board of Supervisors budget for the creation of a record-keeping model and website design that can be used Citywide.
2. The creation of a full time legal counsel in the City Attorney's office that is dedicated to the Task Force.
3. That the Ordinance be amended to allow enforcement of Task Force decisions by the Ethics Commission.
4. Amend the Ordinance to allow more than 45 days to issue a determination.

Public Comment: Kimo Crossman said that additional funding for a City Attorney and the creation of record keeping is unnecessary. He recommended that the 45-day response to complaints not be changed; that does not agree with changing the choices for sanctions by the Ethics Commission. Wayne Lanier said that he supports member Sheppard's recommendations.

He also read a letter suggesting developing e-record keeping practices and the posting of information on the web; a copy of which Member Pilpel asked that he provide to the Task Force.

Allen Grossman suggested that independent counsel rather than a City attorney, provide support to the Task Force; that funding is already available. He said there isn't a need to study record-keeping practices because its not too expensive for the public to know what's going on.

Member Pilpel suggested that the 45-day rule be retained, that the TF invite the Ethics Commission to discuss their process and the Board of Supervisors, City Attorney and Mayor to discuss inconsistencies. He said that what's lacking from the City Attorney's office is a summary of current case law; that the Task Force can't serve as a model for other City departments because the TF has a limited number and type of records.

Member Wolfe said that it's time for the TF to have enforcement powers because repeat offenses are burdensome; that pushing ahead with the amendments will solve problems such as using CA advice as a shield. He said the problem with the 45-day rule is more of logistics.

Member Craven said that Mr. St. Croix has already appeared before the Compliance and Amendments Committee and the suggestions have been incorporated into subsequent Orders of Determination (OD). She suggested that members get a copy of the minutes.

Member Chu suggested that the Task Force have two meetings per month and said that she doesn't see a need for the Complaint Committee.

Member Knee said that he's all for a full time counsel if affordable. He said he doesn't believe that the Task Force is costing the City; that it's important to "do our job."

Chair Comstock said that he supports flexibility with the 45-day rule and the ability to separate the diverse levels of complaints that require more thought and research.

Member Pilpel said that members should be able to respectfully disagree with parties within the City, and suggested that this item be continued to invite others parties to attend.

Member Sheppard asked the Administrator to provide him with a copy of the CAC minutes regarding the meeting that occurred with John St. Croix of the Ethics Commission.

Chair Comstock suggested that issues raised in Member Sheppard's memo be included in the 2006 Annual Report

Member Craven said that a full time legal counsel, but not an independent attorney, is needed for research; that it would be helpful to have more analysis. She said that this item does not need to be continued but rather to incorporate

the recommendations in the proposed amendments and 2007 Annual Report.

Member Sheppard said he agrees with Member Craven's suggestions.

No formal action taken.

2.

Discussion re: the Task Force's draft 2006 Annual Report.

Chair Comstock provided a copy of his proposed summary to members. He said that he wanted to add a sentence on page 4, section 3 of his summary in the last paragraph that says, "A review and report on the availability and efficacy of technological advances to accomplish records maintenance, review, redaction, and release."

Member Craven suggested that the 2006 and 2007 Annual Reports be combined; that language provided by Members Chu, Comstock, and Sheppard be incorporated in the report.

DCA Llorente, in response to Chair Comstock's question, said that the Task Force is required pursuant to Section 67.30 (c) of the Ordinance to submit an annual report each calendar year.

Member Sheppard suggested that the 2006 Annual Report be submitted with one paragraph which says: Pursuant to Section 67.30 (c) of the Sunshine Ordinance the Sunshine Ordinance Task Force would like to bring to the Board of Supervisors attention the fact that there are a number of policy matters which the Task Force has deliberated and we will be forwarding full recommendations respecting each one involving its relationship to other City agencies by XYZ date. That the Task Force is preparing an amalgamated report for 2006-2007 because there are a number of issues that overlap and we would like the Board of Supervisors to accept this as an interim report.

Public Comment: Kimo Crossman said that Member Sheppard could not make motions or provide written comments to the Task Force. He said that the annual report does not point out that the CA is prohibited from denying access to public records, by advising departments to get verbal advice; that the CA refused to provide copies of cited case law. He said that the cost of responding to public records should be compared with positing the records online. He suggested that an article regarding the Sunshine posse be included in the report.

Allen Grossman said that the problem is the CA's involvement with City departments; that an independent person outside the CA office is needed. He said that the department's complaints that responding to public records requests is burdensome is not valid. He said that the notion that the TF is inconsistent is untrue, but that the TF is fair in every regard.

Member Knee moved to combine the 2006 and 2007 annual report, without objection.

Member Sheppard explained that he did not say that the TF is inconsistent

Member Wolfe said that every referral to the Ethics Commission, District Attorney, and Attorney General should be actionable.

Member Craven said that she would submit her suggestions to the annual report to the Task Force. She suggested that the Administrator begin to draft the 2007 report and schedule it for review in January 2008, without objection.

Chair Comstock urged members to submit any comments to his summary and said that his summary is not meant to be an attack on the City Attorney's Office. He said that he did a study from 2002 to 2006; that in 2002 there were more cases filed and more hearings than in 2006.

Member Chu expressed concern that the summary is too negative and suggested that a more positive tone be used.

Member Wolfe said that he prefers not to soften the tone in the summary.

Member Chu offered to rewrite the Annual Report and incorporate all of the member's comments.

Public comment on items not listed on the agenda.

Speakers: Kimo Crossman said that that extending the 45 day rule would not resolve the issue of late responses from departments. He said that he agreed with getting rid of the Complaint Committee, and that the CA needs to cite more case law.

Member Chu said that the Complaint Committee discussed the issue regarding responses from parties and concluded that the Task Force only needed to enforce the rules that it already has. She said that the TF should not accept documents handed out at the meeting.

Allen Grossman said that a lot would be gained if the Task Force enforced its own rules regarding responses from departments. He said that the length of time that it takes from the date the records are requested from the department to conclusion at the Compliance and Amendments Committee is a long period of time. He said that most departments do a real good job and that it is only when there are special issues involving privacy and the CA that they run into problems.

Member Craven suggested that the recommendations from Member Sheppard be referred to the CAC for inclusion in the amendments that are being considered. And including the recommendations in a summary at the beginning of the annual report.

Motion to refer the recommendations made by Member Sheppard and the additional comments made by the Task Force to the CAC for further consideration and potential adoption into the amendments that are under consideration. That the Task Force considers adding the recommendations in a summary at the beginning of the 2006 and/or 2007 annual report.

(Craven/Wolfe).

Ayes: Craven, Knee, Chu, Comstock, Wolfe, Chan, Goldman
Excused: Cauthen, Pilpel, Williams

Member Knee said that the Task Force needs to be careful where in the ordinance each of the recommendations might be added, which might require reopening previously discussed sections in Article III and IV.

Chair Comstock asked the Administrator to schedule a discussion at the next Task Force meeting regarding whether or not the Complaint Committee serves an essential function in its determination of jurisdiction of complaints that could not be performed at the full Task Force, and/or whether the committee should be combined with the Task Force meetings, which could be held twice monthly.

Adjournment

The meeting was adjourned at 5:47 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force.

**San Francisco Sunshine Ordinance Task Force
Complaint Committee
Mission and Work Plan
Approved 9/26/00
Reapproved 11/9/04 by Complaint Committee**

Mission

The Complaint Committee will facilitate the complaint process of the Sunshine Ordinance Task Force, towards the goal of helping members of the public obtain the greatest possible access to city government that is permissible by law.

Work Plan

Towards this end, the Complaint Committee shall:

1. Thoroughly review petitions/complaints submitted to the Sunshine Ordinance Task Force (SOTF) so as to ensure their prompt and satisfactory resolution.
2. Make a determination regarding subject matter jurisdiction after hearing the recommendation made by the city attorney.
3. Where the SOTF has jurisdiction and a hearing has been requested, the committee will prepare for the hearing by identifying pertinent legal questions and requesting the necessary legal research, identifying key issues for questioning at the hearing, making sure that all of necessary and other helpful parties have been invited to the hearing, and assisting in the determination of possible conflicts of interest.
4. Where the SOTF has jurisdiction and no hearing has been requested, the committee will first ask the SOTF Administrator to ask the complainant if they want a hearing held on their complaint, and if no hearing is desired, the committee will make an Order of Determination based on the petition/complaint, supporting materials, the response of the City entity in question, and any other relevant information for recommendation to the full SOTF.
5. Work with the SOTF Administrator and legal counsel to further the best level of communication between the SOTF, members of the public and representatives of the city policy body most knowledgeable about the allegations made in a complaint.

6. Ensure that the SOTF, the SOTF Administrator and the city attorney are all following the complaint procedure. This includes helping to make sure that the representatives of the city are cooperating with requests for responses to complaints and sending a representative to the hearings.
7. Review and revise the complaint procedure as needed, and make recommendations to the full SOTF regarding any proposed changes.
8. Address any additional concerns regarding the complaint process and make recommendations for reform to the full SOTF.
9. Other duties as may be determined by the committee or assigned by the full SOTF.



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12/18/2007 02:16 PM

To Dougcoms@aol.com
cc soft@sfgov.org, SCau1321@aol.com,
Ernest.Llorente@sfgov.org
bcc
Subject Consideration of Complaint Committee Dissolution Needs
Committee Scrutiny First

Hi Doug:

Kristin Chu and I discussed this briefly at the last Complaint Committee but member Goldman was absent. I think it would be appropriate for the Complaint Committee to look at our mission statement and procedures, discuss them and take public comment. Then we can come up with a thoughtful recommendation as to our future, untrammled by the politics of a full Task Force meeting -- or the fatigue caused by the late hour at which Item 24 will be considered at our 1/8/08 meeting. .

The committee was formed after Prop G passed and we revised and streamlined the complaint process in 2004. Our meetings generally last 90 minutes and our work plan is to determine jurisdiction and assist in preparation for the hearing by identifying pertinent legal questions, requesting the necessary legal research, identifying key issues for questioning at the hearing, and making sure that all necessary parties have been invited to the hearing.

While our first priority is jurisdiction, we also attempt to focus the issues brought to the full Task Force to facilitate an efficient Task Force hearing. At times, we have been able to bring the two parties together to effect resolution.

The Complaint Committee's future is at the end of a very long agenda January 8 and I am not sure I will be able to stay for a discussion. It would be productive if the longtime chair of the committee were present to answer questions and present her views. I am happy that you agreed to postpone the discussion if the item is to remain on the agenda. I believe it could be removed from the agenda as well.

I listened to the last hour of the November TF meeting, which included Ms. Chu's departure. I did not hear anything about discontinuing the Complaint Committee. I now learn that the subject came up in general public comment at the special meeting, although it was not agendized. I did not attend the special meeting as I was on deadline. However, if I had known the dissolution of the Complaint Committee was to be discussed, I would have dropped my other work and attended the special meeting. So I think it would be appropriate to defer the "without objection" decision till the Complaint Committee can make a recommendation. This will address TF meeting length and controls on member debate as well per our discussion at the last Complaint Committee meeting.

Thank you for agreeing that if the item remains on the agenda, it be reworded to read: "Discussion of the purpose and function of the Complaint Committee and whether the full Task Force should perform this function." (Frank: Doug asked me to tell you this replacement language is acceptable to him so please make the changes if the item remains on the 1/8 agenda.)

I again urge Chair Comstock to defer the item to the February TF agenda.

Sue.

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