

Date: Oct. 14, 2008

Item No. 2
File No. 08045

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Determination of jurisdiction on complaint filed by Barry**
- Taranto against the Municipal Transportation Authority for**
- failure to provide an equal amount of speaking time during a**
- public comment session**
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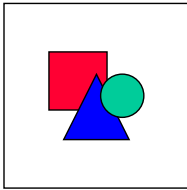
Completed by: Chris Rustom

Date: Oct. 10, 2008

***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.



DENNIS J. HERRERA
City Attorney

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DIRECT DIAL: (415) 554-4236
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October 7, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: BARRY TARANTO v. MUNICIPAL TRANSPORTATION AGENCY BOARD
(08045)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Barry Taranto against the San Francisco Municipal Transportation Agency Board ("MTA").

BACKGROUND

On August 19, 2008, Complainant Barry Taranto attended the MTA meeting and at the beginning of the public comment section of the meeting, Barry Taranto alleges that the president of the MTA allowed Irwin Lum, president of the Muni Drivers Union to read a statement that took between 4 to 5 minutes to present. Everyone else was restricted to a maximum of two minutes during the public comment period.

COMPLAINT

On August 19, 2008, Barry Taranto filed a complaint against the MTA alleging violations of the Sunshine Ordinance.

BOARD'S RESPONSE

On August 26, 2008, Tom Nolan, the Vice Chair of the MTA wrote to Kristen Chu, Chair of the Task Force and stated that he chaired the August 19, 2008 meeting of the MTA and he did allow Irwin Lum to speak longer than the other speakers during the public comment period. He admits to his violation of the public meeting laws.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under 67.15 of the Ordinance.

Letter to the Complaint Committee

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DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

In this case, section 67.15 governs public comment at policy body meetings. Barry Taranto alleges a violation by the MTA and the MTA by its Vice Chair admits to the violation. Vice Chair Tom Nolan admitted that he allowed Irwin Lum to speak longer than the other speakers during the public comment period. The Task Force has jurisdiction over the complaint will determine the appropriate action in light of the admitted violation.



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

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Municipal Transportation Agency

Name of individual contacted at Department or Commission President Tom Nolan

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting Tuesday, August 19, 2008

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

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

At the beginning of public comment for the Executive Director's Report, the president of the MTA Board of Directors allowed Irwin Lum, president of the Muni drivers union, to read a statement that took between four and five minutes to present. Everyone else was restricted to a maximum of two minutes during this public comment period.

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

(Optional)¹
 Name BARRY TARANTO Address _____ San Francisco 94114

Telephone No. 415-_____ E-Mail Address _____

Date Aug. 19, 2008 Barry K. Taranto
 Signature

I request confidentiality of my personal information. yes no

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

August 26, 2008

Gavin Newsom | Mayor
Rev. Dr. James McCray Jr. | Chairman
Tom Nolan | Vice-Chairman
Cameron Beach | Director
Shirley Breyer Black | Director
Malcolm Heinicke | Director
Jerry Lee | Director
Bruce Oka | Director
Nathaniel P. Ford, Sr. | Executive Director/CEO

Kristen Chu
Chairman, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint of Barry Taranto against the Municipal Transportation Agency
Complaint No. 08045

Dear Ms. Chu:

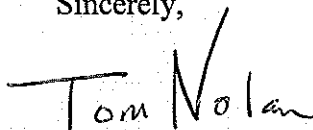
I am writing in response to complaint #08045. I do not dispute the error that I made at the August 19, 2008 San Francisco Municipal Transportation Agency ("SFMTA") Board meeting.

After the meeting, the error was brought to my attention. Since that time, I have re-read the "Good Government Guide" to refresh my understanding of the applicable public meeting laws. In addition, the Chairman of the SFMTA Board of Directors issued a memo to all Board members regarding the importance of adhering to both the Brown Act's and Sunshine Ordinance's public meeting requirements. A copy is attached for your review.

Unfortunately due to prior business commitments, I am not available to attend the Task Force meeting on September 23rd. However, Chairman McCray is available to attend if you feel that a representative from the SFMTA Board of Directors is necessary.

Please know that the SFMTA Board of Directors and staff are very mindful of the importance of full and equal public participation. I appreciate hearing from the public and have always done my best to ensure full public participation.

Sincerely,



Tom Nolan
Vice Chairman, SFMTA Board of Directors

cc: SFMTA Board of Directors
Nathaniel Ford
Debra Johnson
Barry Taranto



Municipal Transportation Agency


Board of Directors & Parking Authority



MEMORANDUM

Date: August 26, 2008

To: SFMTA Board of Directors
Tom Nolan, Vice Chairman
Cameron Beach, Director
Shirley Breyer Black, Director
Malcolm Heinicke, Director
Jerry Lee, Director
Bruce Oka, Director

From: Rev. Dr. James McCray, Jr., Chairman 

Subject: Sunshine Ordinance/Brown Act Reminder

At our August 19 meeting a member of the public stated that the SFMTA Board had violated the Sunshine Ordinance and the Brown Act because the President of Transport Worker's Union, Local 250-A was allowed to continue speaking after his two minutes had elapsed. The SFMTA Board had previously imposed a two minute limit on public comment, which the Board waived when the union representative spoke. A complaint with the Sunshine Ordinance Task Force was filed as a result.

Since the SFMTA Board takes compliance with all public meeting law seriously, I wanted to take this opportunity to remind everyone how important these requirements are. As you are aware, members of the public may directly address us on items of interest that are within our jurisdiction. Although public comment on an agenda item may be limited to less than three minutes per speaker, we are required to apply any such time limit uniformly to all members of the public who wish to testify.

This is a good opportunity for us to "brush up" on our understanding of the open meeting laws. The City Attorney's Office website (www.sfgov.org/cityattorney) has a link to the "Good Government Guide" and Guide supplement. There is also a link to an on-line video training.

In addition to our annual training, I highly recommend that we all regularly review these laws.

Thank you for your attention to this matter.



"Boomer, Roberta"
<Roberta.Boomer@sfmta.com>

08/29/2008 12:24 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject Response to SOTF Complaint #08045

Dear Chris:

Attached please find the response to the complaint filed by Barry Taranto (#08045). Please let me know if there is anything else you require.

Have a great weekend,

Roberta Boomer
Secretary, SFMTA Board of Directors and



Parking Authority Commission 20080829111650490.pdf