

Date: Dec 14, 2010

Item No. 5
File No. 10061

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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| <input checked="" type="checkbox"/> | William & Robert Clark v City Attorney's Office |
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Completed by: Chris Rustom

Date: Dec. 8, 2010

***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.



<complaints@sfgov.org>
11/08/2010 04:15 PM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco City Attorney
CONTACTED:none
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:Section 67.26 and Section 67.28(a)
DESCRIPTION:The City Attorney charged the Street Artist Program \$2516.75 in the Fiscal Year 2009/10 to pay for the cost of City Attorney staff time to disclose Sunshine Ordinance public document requests. The result of this is that every street artist was charged a fee to pay for the City Attorney staff's time to process and disclose public documents requested by street artists pursuant to the provisions of the Sunshine Ordinance. Section 67.26 states specifically that :
"...The work of responding to public records requests and preparing documents for disclosure shall be part of the regular work duty of any employee and no fee shall be charged to the requester to cover the personnel cost of responding to a records." Section 67.28(a) specifically states that: "No fee shall be charged for making public records available for review."
HEARING:Yes
PRE-HEARING:No
DATE:November 8, 2010
NAME:William J. Clark and Robert J. Clark
ADDRESS:P.O. Box 882252
CITY:San Francisco
ZIP:94188
PHONE:415-822-5465
CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No

FROM BILL AND BOB CLARK
 SUPPLIED TO THEM FROM HOWARD LAZAR OF THE
 S.F. ARTS COMMISSION

COMPLAINT #10061

Street Artist Program				
FY 09-10 Charges				
<u>Shared Administration Charges</u>				
			REAR10000092 dated 06/28/10	
Admin. Overhead (Rent)			5,053	
Admin Overhead (Postage)			500	
Admin. Overhead (Copying expenses)			529	
Admin. Overhead (Accounting 9.46%)			19,304	
Admin. Overhead (IT Maintenance)			3,541	
Admin. Overhead (DTIS Network)			4,409	
Admin. Overhead (Art HR Director Seervices)			1,534	
Admin. Overhead (DHR Seervices)			3,478	
			38,348	
<u>City Attorney Cost for Sunshine Disclosures</u>				
	11.75 hours		2,516.75	
<u>Supervision Charges</u>				
<u>Director of Programs</u>				
Salary		125,317		
Benefits		35,580		
	Salary & Benefits	160,897		
Supervision 10 %		16,090		
	Total	176,987		
Apportioned to Street Artist Program 5 %		8,849.34		
<u>Director of Cultural Affairs/Dept. Head</u>				
Salary		144,875		
Benefits		37,413		
	Salary & Benefits	182,288		
Supervision 10 %		18,229		
	Total	200,517		
Apportioned to Street Artist Program 5 %		10,025.84		
	Total Supervision Charges	18,875.18	18,875.18	

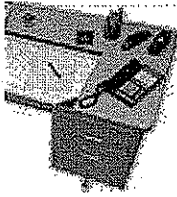
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FROM BILL AND BOB CLARK
 SUPPLIED TO THEM FROM HOWARD LAZAR, DIRECTOR OF
 THE STREET ARTIST PROGRAM

COMPLAINT # 10061

Street Artist Program			
Expenses incurred after 6/25/10 to Year End Close for FY09-10			
Date	Particulars	\$	Cummulative \$
6/25/2010	Telephone Charges	123.05	123.05
6/28/2010	Overhead Exp	38,348.00	38,471.05
6/28/2010	Advisory Honorariums	460.00	38,931.05
6/28/2010	DTIS Services	50.14	38,981.19
6/29/2010	Advisory Honorariums	335.00	39,316.19
6/30/2010	Office Supplies	27.77	39,343.96
7/1/2010	XIAO Y Zhang Honor.	200.00	39,543.96
7/6/2010	Staff Payroll	4,058.35	43,602.31
7/7/2010	Telephone Charges	94.75	43,697.06
7/12/2010	Staff Payroll	1,034.46	44,731.52
7/14/2010	Advisory Honorariums	130.00	44,861.52
7/20/2010	Advertising Charge	456.00	45,317.52
7/20/2010	Advisory Honorariums	67.25	45,384.77
7/22/2010	Payroll expenses	2,138.96	47,523.73
7/23/2010	David Honor	200.00	47,723.73
7/27/2010	City Attorney Fees	2,516.75	50,240.48
7/28/2010	Telephone Charges	52.17	50,292.65
7/29/2010	Supervision Charges	18,875.18	69,167.83
8/6/2010	DTIS Services	351.86	69,519.69
8/6/2010	Data Supplies - C/F	185.07	69,704.76



Jack
Song/CTYATT@CTYATT
12/07/2010 01:44 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject RE: Complaint #10061 _William & Robert Clark v. City
Attorney's Office

Honorable Members
Sunshine Ordinance Task Force
Office of the Clerk, Board of Supervisors
Attention,: Chris Rustom
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Complaint #10061 _William & Robert Clark v. City Attorney's Office

Note: Jurisdictional Hearing Requested

Dear Task Force Members:

Complainants claim that the City Attorney's Office "charged the Street Artist Program \$2516.75 in Fiscal Year 2009/10 to pay for the cost of City Attorney staff time to disclose Sunshine Ordinance public document requests." They further claim this action resulted in every street artist being charged a fee to pay for the City Attorney staff's time to process and disclose public documents requested by street artists under the Sunshine Ordinance.

Complainants allege that these actions constitute violations of the following provisions of the San Francisco Sunshine Ordinance:

The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. S.F. Admin. Code §67.26.

No fee shall be charged for making public records available for review. S.F. Admin. Code §67.28(a).

Background Information

You are familiar with the background regarding this complaint because it is a variation on one that the Task Force has already considered by the same complainants. Complainants argued in the previous complaint that an ordinance setting the fee for street artist certificates under the Street Artists Ordinance violated the Sunshine Ordinance. See SOTF Complaint No. 10041. They argued that a fee that was calculated to pay the costs of processing public records requests conflicts with the Sunshine Ordinance, citing the two provisions that they relied on in the complaint now before you.

The fee-setting ordinance giving rise to the complaint is Ordinance No. 189-10 (copy attached). Ordinance No. 189-10 was adopted pursuant to San Francisco Police Code Section 2404.2,

which requires that the fee for a street artist certificate "be equal to, but not greater than, the fees necessary to support the costs of administering and enforcing the provisions of the Street Artists Ordinance."

Administration and enforcement of the Street Artists Ordinance includes many operational activities, including – to name just a few – reviewing and processing Street Artist Certificate applications, managing budget issues, coordinating Police Department enforcement of the program rules, and conducting hearings for program violations. Also included are costs for legal services provided by the City Attorney's Office, including legal advice relating to State and local laws governing access to public records.

The Task Force Lacks Jurisdiction To Adjudicate The Complaint

The City Attorney's Office contests jurisdiction in this matter for the reasons discussed below and requests a hearing on jurisdiction with the Complaint Committee on December 14, 2010.

The complainants do not allege that the City Attorney's Office has improperly charged a fee to a person requesting a public record. Rather, they argue that the City Attorney's Office "charged the Street Artist Program" to pay for its costs in providing Sunshine-related legal services. The Task Force has no jurisdiction to adjudicate questions concerning legal costs associated with administration of the Street Artists Program. Nothing in the Sunshine Ordinance purports to regulate such matters.

The word "charged," used by complainants, suggests a more simple process by which the Board of Supervisors funds the City Attorney's Office than in fact exists. It is accurate to say, however, that the Arts Commission asked the City Attorney's Office to provide the total number of hours that the City Attorney's Office provided to the Arts Commission regarding the Street Artists Program on matters relating to State and local laws governing public records, as well as the dollar-cost to the City Attorney's Office to provide those services, and that the City Attorney's Office provided the Arts Commission with this information. The Arts Commission then included this information when reporting to the Board of Supervisors the total costs of the street artist program so that the Board could set the street artist certificate fee consistent with Police Code Section 2404.2.

Thus the conduct complained of in this matter is part of the process for setting street artist certificate fees that is required by City ordinance. Nothing in the Sunshine Ordinance gives the Task Force jurisdiction to determine the legality of fees charged to street artists or to any other individuals or entities for the issuance of certificates or permits. Challenges to the legality of such fees are properly brought in a court of law, not before the Task Force. Therefore, the Task Force should dismiss the complaint because it lacks jurisdiction to adjudicate the validity of Ordinance No. 189-10 or the actions taken by City departments in compliance with San Francisco Police Code Section 2402.4.

The Complaint is Without Merit

In the event that the Task Force decides to address the merits of the complaint, it should find that the City Attorney's Office has not violated the Sunshine Ordinance.

Section 67.26 of the Sunshine Ordinance prohibits City departments from charging a fee to requesters to cover the personnel costs of responding to public records requests. But

complainants allege that this office "charged" the Arts Commission, not public records requesters.

Section 67.28(a) of the Sunshine Ordinance provides that no fee may be charged for making public records available for review. This provision simply says that a person requesting to inspect records cannot be charged for the inspection. Again, the complainants complain of "charges" made to the Arts Commission, not to requesters.

Moreover, as already noted, the cost information that this office provided to the Arts Commission was made part of the fee charged to certificated street artists, not to public records requester. The Sunshine Ordinance does not regulate fees charged to participants in City programs.

Conclusion

The Task Force should dismiss the complaint because it lacks jurisdiction over the complaint. If the Task Force addresses the merits, it should dismiss the complaint because it presents no violation of the Sunshine Ordinance.



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Best regards,

JACK SONG
Deputy Press Secretary

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