

Date: Dec 14, 2010

Item No. 6
File No. 10062

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Tomas Picarello v North of Market/Tenderloin CBD**
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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>
11/16/2010 10:15 AM

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

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:North of Market/Tenderloin
Community Benefit District

CONTACTED:Elaine Zamora

PUBLIC_RECORDS_VIOLATION:No

PUBLIC_MEETING_VIOLATION:Yes

MEETING_DATE:Nov. 15, 2008

SECTIONS_VIOLATED:

DESCRIPTION:I was denied the right to public comment on all agenda items. Although the
CBD was without a quorum, the six present members discussed in depth, all items on the
extensive agenda, including a Sunshine Ordinance complaint against the CBD. I was given 2
minutes at the end of the agenda during public comment to discuss all the items on the agenda.
The CBD and Elaine Zamora, violated my rights under both the Sunshine Ordinance and the
Brown Act.

HEARING:Yes

PRE-HEARING:Yes

DATE:11/16/10

NAME:Tomas Picarello

ADDRESS:

CITY:San Francisco

ZIP:

PHONE:

CONTACT_EMAIL:t_picarello@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No



"Dina"
<dinanomtlcbd@att.net>

12/07/2010 01:02 PM

Please respond to
<dinanomtlcbd@att.net>

To <soff@sfgov.org>

cc "Dina Hilliard" <dinanomtlcbd@att.net>, "Clint Ladine"
<clint_ladine@yahoo.com>, "Elaine Zamora"
<nomtlcbd@att.net>, "Kevin Montreuil "

bcc

Subject Regarding Complaint 10062

Mr. Chris Rustom,

This acknowledges receipt of the notice of Complaint Number 10062 and all supporting documents attached thereto.

I, and other representatives from the North of Market/Tenderloin Community Benefit District, will attend the December 14th Hearing at 3:30pm in San Francisco City Hall Room 406 to contest jurisdiction of the Sunshine Ordinance Task Force in this matter.

We are a private non-profit organization. North of Market/Tenderloin Community Benefit Corporation is our legal name as filed with the California Secretary of State.

In January 2006, the Board of Supervisors passed a resolution that approved an agreement with the nonprofit Owner's Association for administration of the North of Market/Tenderloin Community Benefit District. The North of Market/Tenderloin Community Benefit Corporation is the Owner's Association that has been administering the contract. As the "Owner's Association", we are subject to the Ralph M. Brown Act and the California Public Records Act per the Streets and Highways Code.

The San Francisco City Attorney provided a training on April 28, 2010, to all San Francisco CBD's and BID's where we were given notice that we are not subject to the City Sunshine Ordinance as we do not fit the definitions of a "passive body" or "policy body" (Article II, Section 67.3 (c) and (d)). I am attaching some notes from that training.

The work of our organization is primarily (94%) funded by property owners within our district boundaries, which totaled \$877,980 in fiscal year ending June 2010. The remainder of our funds is from grants and private donations.

Our response to the charges filed by Tomas Picarello is that we are not subject to the jurisdiction of the Sunshine Ordinance Task Force.

Please contact us with any questions.

Thank you for your consideration in this matter.

Dina Hilliard
Associate District Manager
North of Market/Tenderloin Community Benefit Corporation
134 Golden Gate Avenue, Suite A
San Francisco, CA 94102
(415) 292-4812

Dina Hilliard
Associate District Manager
North of Market/Tenderloin Community Benefit District
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Join our Mailing List!



BDS resolution 15-06.pdf 2010-04-28 Sunshine Training BID hand-out.pdf

JAN 25 2006

1 [Contract with Owners' Association for administration of North of Market/Tenderloin
2 Community Benefit District.]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration of the property-based business improvement district known as the**
5 **"North of Market/Tenderloin Community Benefit District" pursuant to Section 36651 of**
6 **the Streets and Highways Code.**

7
8
9 **WHEREAS**, on June 7, 2005, acting pursuant to Article XIID of the California
10 Constitution ("Article XIID"), Section 53753 of the California Government Code, and the
11 Property and Business Improvement District Law of 1994, Part 7 of Division 18 of the
12 California Streets and Highways Code (commencing with Section 36600), as augmented by
13 Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), the Board
14 of Supervisors adopted Resolution No. 422-05 ("Resolution of Intention") declaring the
15 Board's intention to form a property-based business improvement district and to levy
16 assessments on parcels to be included within the district, setting the public hearing, initiating
17 mail ballot majority protest proceedings, approving the North of Market/Tenderloin Community
18 Benefit District Management District Plan (the "Management District Plan" or "Plan"), making
19 various findings and taking other legislative actions required to form the proposed district and
20 levy the proposed assessments (Board File No. 050877); and,

21 **WHEREAS**, on August 9, 2005, acting pursuant to the aforementioned legal
22 authorities, the Board of Supervisors adopted Resolution No. 584-05 ("Resolution of
23 Formation"), establishing the property-based business improvement district designated as the
24 **"North of Market/Tenderloin Community Benefit District"** and levying multi-year special-
25 assessments on Identified Parcels (as defined in Section 53750(g) of the Government Code)

1 included within the District (the "Assessments")(Board File No. 051192). The Controller's
2 designation for the Assessments for the North of Market/Tenderloin Community Benefit
3 District is Special Assessment No. 62; and,

4 **WHEREAS**, pursuant to the aforementioned legal authorities and the Resolution of
5 Formation, the Assessments may only be used to fund property-related services,
6 "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and
7 "Activities" (as defined in Section 36613 of the Streets and Highways Code) within the District
8 in accordance with the Management District Plan (collectively, such authorized services,
9 improvements and activities are referred to as "District Programs"); and,

10 **WHEREAS**, the District is not a governmental, corporate or separate legal entity, but is
11 a geographic area containing all of the Identified Parcels subject to the Assessments for
12 District Programs described in the Plan and included in the annual budgets submitted to and
13 approved by the Board of Supervisors. The annual budget for District Programs for the first
14 year of operations is set forth in the Plan, and for subsequent years, shall be set forth in the
15 Annual Reports submitted to the Board of Supervisors as required by Section 36650 of the
16 Streets and Highways Code; and,

17 **WHEREAS**, pursuant to the Resolution of Formation and Sections 36614.5 and 36650
18 of the Streets and Highways Code, the Board of Supervisors may contract with a private
19 nonprofit entity referred to as an "Owners' Association" to administer the District Programs.
20 An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity.
21 An Owners' Association is a private entity and may not be considered a public entity for any
22 purpose, nor may its board members or staff be considered to be public officials for any
23 purpose; provided, however, that an Owner's Association must comply with the Ralph M.
24 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
25 Government Code), at all times when its board of directors or any committee thereof hears,

1 considers or deliberates on matters concerning the District, and must comply with the
2 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government Code), for purposes of providing public access to records relating to
4 the District; and,

5 **WHEREAS**, an Owners' Association is obligated to hold in trust all funds it receives
6 from the City that are derived from the City's levy and collection of the Assessments, and to
7 use such funds exclusively for the purposes of implementing the Management District Plan
8 and administering, managing and providing District Programs set forth in the Plan, Resolution
9 of Formation, and annual budgets submitted by the Owners' Association and approved by the
10 Board of Supervisors; and,

11 **WHEREAS**, pursuant to the Resolution of Formation, the Mayor's Office of Economic
12 and Workforce Development is the City agency responsible for coordination between the City
13 and the Owners' Association for the District; and,

14 **WHEREAS**, the Mayor's Office of Economic and Workforce Development has
15 negotiated an agreement with the North of Market/Tenderloin Community Benefit Corporation,
16 a California nonprofit corporation, to, in good faith and with diligence as the Owners'
17 Association for the District, develop, implement, direct, manage, administer, operate and
18 ensure the timely provision of the District Programs ("Management Agreement" or
19 "Agreement"). The Management Agreement is on file with the Clerk of the Board of
20 Supervisors in File No. 052018 and is incorporated herein by reference; and,

21 **WHEREAS**, pursuant to the Property and Business Improvement District Law of 1994,
22 the Resolution of Formation and the express terms of the Management Agreement, the
23 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
24 resolution. In addition, pursuant to Charter Section 9.118, the Management Agreement is
25

1 subject to approval by the Board of Supervisors by resolution because the term of the
2 Agreement is in excess of 10 years; and,

3 **WHEREAS**, it is in the best interest of the City and the property owners within the
4 District for the City to enter into the Management Agreement with the North of
5 Market/Tenderloin Community Benefit Corporation according to the terms and conditions set
6 forth therein; now, therefore, be it

7 **RESOLVED**, that the Board of Supervisors declares as follows:

8 **Section 1. AUTHORIZATION TO EXECUTE CONTRACT.** The Mayor's Office of
9 Economic and Workforce Development is duly authorized to execute the Management
10 Agreement on behalf of the City and County of San Francisco.

11 **Section 2. APPROVAL OF AGREEMENT.** The Board of Supervisors hereby
12 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
13 File No. 052018, which is incorporated herein by reference.

14 **Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.**
15 The Mayor's Office of Economic and Workforce Development, Controller and all other
16 Departments, City Officers and Employees are authorized to take all actions, make
17 determinations, exercise discretion, grant or deny approval, and otherwise take all reasonable
18 steps necessary for full performance of the Management Agreement on behalf of the City and
19 County of San Francisco according to its terms.

20 **Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT.** Subject to
21 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
22 Board, the Mayor's Office of Economic and Workforce Development may execute
23 amendments to the Agreement on behalf of the City and County of San Francisco that are
24 consistent with the Management District Plan, Resolution of Formation, official City policies
25 and applicable law.

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Section 5. DELIVERY. The Clerk of the Board of Supervisors shall cause certified copies of this resolution to be delivered to the North of Market/Tenderloin Community Benefit Corporation and the Mayor's Office of Economic and Workforce Development.



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 052018

Date Passed:

Resolution approving an agreement with the nonprofit Owners' Association for administration of the property-based business improvement district known as the "North of Market/Tenderloin Community Benefit District" pursuant to Section 36651 of the Streets and Highways Code.

January 10, 2006 Board of Supervisors — ADOPTED

Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval

Excused: 1 - Alioto-Pier

The foregoing document is certified
to be a full, true, and correct copy of
the original on file.

Gloria L. Young, Clerk
Board of Supervisors
City and County of San Francisco

By: *[Signature]*
Date: JAN 19 2006

JAN 13 2006

Date Approved

I hereby certify that the foregoing Resolution
was ADOPTED on January 10, 2006 by the
Board of Supervisors of the City and County
of San Francisco.

[Signature]
Gloria L. Young
Clerk of the Board

[Signature]
Mayor Gavin Newsom

BUSINESS IMPROVEMENT DISTRICTS (BIDs), COMMUNITY BENEFIT DISTRICTS (CBDs), AND OPEN GOVERNMENT LAWS

**Paul Zarefsky
Marie Blits
Deputy City Attorneys**

April 2010

Scope of Presentation

- BIDs/CBDs formed under the Property and Business Improvement District Law of 1994 (Streets and Highways Code secs. 36600 et seq.)

Streets and Highways Code Section 36614.5

- Owners' Association: Private nonprofit entity under contract with City to administer or implement activities and improvements specified in management district plan
- Not a public entity, board members and staff not public officials
- BUT when conducting BID/CBD business, subject to

State Open Government Laws

- Open Meetings: Ralph M. Brown Act (Government Code sec. 54950 et seq.)
- Public Records: California Public Records Act (Government Code sec. 6250 et seq.)

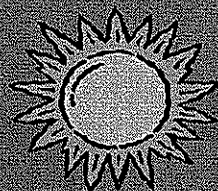
Not City Sunshine Ordinance

- BIDs/CBDs not subject to San Francisco Sunshine Ordinance
- Except as provisions of Sunshine Ordinance may be included in individual Management Agreements between Owners' Association and City

State Law Terminology Applied to BIDs/CBDs

- Legislative body (Brown Act) = owners association and its board of directors when conducting business as BID/CBD
- Agency (Public Records Act) = BID/CBD includes records of business conducted as or on behalf of the BID/CBD, including records of employees and directors that pertain to the BID/CBD

Open Meetings



Philosophy

The people do not give their public servants the right to decide what is and is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Ralph M. Brown Act

Basic Rules

1. Legislative bodies operate in public meetings
2. Public notice of meetings
3. Right of public to attend and participate in meetings

Meetings Of Legislative Bodies

What is a Meeting?

- a majority of the members
- are together at the same time and place
- To hear, discuss, deliberate, or act on an item within the body's jurisdiction

Examples of Meetings

- Formal meetings
- Retreats
- Site tours

Unlawful Meetings

- "Pre-meetings"
- "Post-meetings"
- "Seriatim" meetings

Types of Seriatim Meetings

- Sequential – A to B, B to C, C to D
- Simultaneous – A, B, C, and D have a joint conversation, by phone rather than in person
- Hybrid

How Seriatim Meetings Occur

- Technology
 - Phone
 - Fax
 - E-mail **BEWARE OF E-MAIL EXCHANGES!**
- Human intermediaries

Non-Meetings of a Majority

- Individual communications with another person (nonmember)
- Attendance at
 - educational/professional conference
 - local meeting open to the public
 - social, recreational, ceremonial event not sponsored by or for the body
- IF no collective discussion of business

What is a Legislative Body?

- Multi-member groups (here, the BID/CBD) – not one member
- Group created by formal action of legislative body
 - If includes nonmembers
 - Certain standing committees

Notice Of Meetings

Posting the Agenda – When

- Regular meetings: At least 72 hours before meeting
- Special meetings: At least 24 hours before meeting

Posting the Agenda – Where

- Freely accessible location
 - Government Information Center at SF Public Library (required)
 - Website (if one exists)
 - Office (if one exists)
 - Meeting room (if feasible)
 - Other

Mailing the Agenda

- To those with "standing request" for agenda
- Standing request should be renewed each January
- E-mail versus U.S. mail

Describing an Agenda Item

- Brief general description
- Each item of business
- To be transacted or discussed

A Meaningful Description

"[S]ufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item."

Why does it matter what is listed on the agenda?

**A LEGISLATIVE BODY
(here, the BID/CBD)
CANNOT DISCUSS OR ACT
ON BID/CBD ITEMS NOT ON
AN AGENDA.**

Questionable Descriptions

- Real estate – legal description but not street address
- Contract – name of contractor but not amount or purpose
- Legislation – bill or ordinance number, but not subject matter

Questionable Descriptions

- "New Business"
- "Director's Report"?

Limited Exceptions to Agenda Requirement

- Public health/safety emergency
- Immediate need to avoid serious injury to public interest
- Item on previous agenda, and continued to next meeting no more than 5 days later

Other Exceptions

- Announcements
- Request to agendaize future items
- Direction to staff
- Limited follow-up to general public comment

Rights Of The Public

Basic Rights

- To notice of meetings
- To attend meetings
- To record meetings
- To receive agenda materials
- To comment at meetings

The Right To Attend

- Nondiscriminatory admission
- Accessible to disabled persons
- No precondition to attend
- If sign-in sheet, must clearly state if is optional

The Right To Record

- Photograph, film, audio record, broadcast
- Can curb only if body makes reasonable finding that activity would "persistently disrupt" meeting
- No obligation of body to provide equipment

The Right to Receive Agenda Materials

- More than 72 hours before meeting – available on request, without delay
- Less than 72 hours before meeting – available for public inspection
- At meeting
 - Staff materials - Same time as members
 - Materials from public - After meeting

The Right To Comment

- On each agenda item
- On any matter within the body's jurisdiction that is not an agenda item – "General Public Comment"

Comment on Agenda Items

- Before conclusion of consideration of item (discussion item)
- Before action taken (action item)

General Public Comment

- May schedule for any time in meeting
- Members may not discuss or respond substantively
- Not required at special meetings

Rights of the Speaker

- Equal time
- Anonymity
- Freedom to criticize legislative body, members, and staff

Limits on Public Comment

- Reasonable limit on total public comment time on an item
- No right to speak off-topic
- No right to disrupt
- No right to a response from legislative body or its members

Closed Sessions

Subjects

- Personnel matters
- Pending litigation
- Instruct labor negotiator
- Instruct real estate negotiator
- Miscellaneous

Requirements Before

- Special agenda format
- Public comment before going into closed session
- Deciding to go into closed session

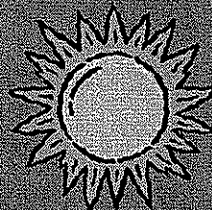
Requirements During

- Stay on topic
- Limit attendance

Requirements After

- Notice of certain final actions
 - Announce
 - Post
- Confidentiality of closed session

Public Records



Philosophy

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state

- Public Records Act

Process

The Request

- Must specify particular record or category of record (but not too rigorous a requirement)
- Need not be written (though written is better for all but a simple, routine request)
- Need not use "magic words"

Types of Requests

- Inspect vs. receive copy
- Requester's choice – but may choose both

Time for Response

- 10 calendar days
- Extension of time to respond – up to 14 calendar days more

Bases For Extension

- Voluminous records
- Off-site storage
- Consult with another entity, such as OEWD, another City department, another BID/CBD
- Electronic data that must be compiled

Time for Response – Nuances

- Without unreasonable delay
- Production of records on “rolling” basis

Duty to Assist Requester

- Clarify unclear request
- Narrow open-ended request
- Identify types of existing records
- Direct requester to other entities, such as OEWD, other City departments, other BIDs/CBDs

Duty to Conduct Reasonable Search

- A matter of degree
- Not have to search for “needle in haystack”
- Should consult relevant people/files
- Must keep records in orderly files to facilitate search

No Duty:

- To respond to written interrogatories
- To create record that doesn't exist
- To create privilege log

Nature of Response

- Written
- Options
 - No responsive records
 - Responsive records
 - Disclose
 - Not disclose (exempt)
 - Partially disclose (partially exempt)

- If withholding a record (in full or part), identify legal justification
- Explain process for requester to inspect and/or copy records
- State any copying fees

Fees

- Cost of duplication
- Cost of medium
- Cost of postage

May Not Charge For ...

- Time to search/locate/collect records
- Time to oversee requester's on-site inspection of records
- Time to redact records
- Time to respond

Substance

What is a Public Record?

- any writing, regardless of physical form or characteristics
- containing information relating to the conduct of the public's business (includes BID/CBD business)
- prepared, owned, used, or retained by state or local agency (includes BIDs/CBDs)

What is a "Writing"?

Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and **every other means of recording upon any tangible thing any form of communication or representation**, including letters, words, pictures, sounds, or symbols.

An Emerging Issue: Use Of Personal Electronic Devices

- Personal computers
- Personal cellphones
- Text messaging

The Basics

- Disclosure the rule, withholding the exception
- Redaction preferable to complete withholding
- Discretionary exemption vs. mandatory exemption
- Exemptions in Act vs. exemptions elsewhere

More Basics

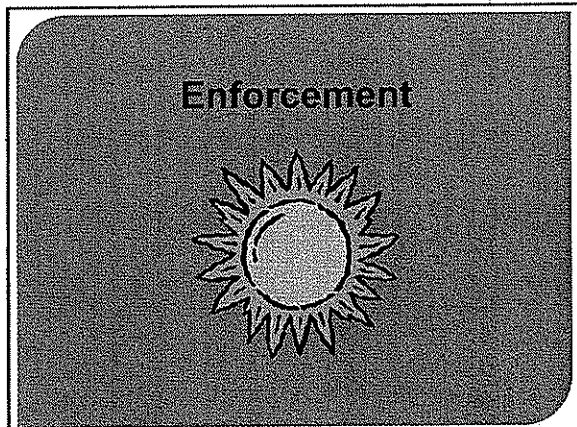
- Purpose of request
 - No purpose requirement
 - Can't inquire into purpose
- Waiver: Disclosure to one equals disclosure to all

Exemptions

- General balancing: public interest in nondisclosure clearly outweighs public interest in disclosure
- Deliberative process privilege

More Exemptions

- Private information
- Many personnel records
- Medical records
- Trade secrets
- Informants, complainants, whistleblowers
- Attorney-client communications



Brown Act

- Willful violation: A crime
 - Action taken in violation of Brown Act
 - Intent to deprive the public of information to which it is entitled

Additional Remedies for Brown Act Violation

- Voiding of action taken in violation of Act
- Injunction or declaratory relief to stop or prevent violations of Act
- Prevailing plaintiff may get attorneys' fees and costs

Public Records Act

- Declaratory and injunctive relief ordering disclosure of record
- Attorneys' fees and costs

COMING ATTRACTION

2010 edition

The City Attorney's
GOOD GOVERNMENT GUIDE

(available at City Attorney's
website on sf.gov.org)