

Date: March 12, 2008

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Compliance and Amendments for January 9, 2008
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Completed by: Frank Darby

Date: March 6, 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.



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**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MINUTES**

Wednesday, January 9, 2008
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee, Chair; Doug Comstock Vice-Chair; Erica Craven, David Pilpel, Bruce Wolfe, Harrison Sheppard (ex-officio, non-voting)

Call to Order 4:04 P.M.
Roll Call **Present:** Knee, Comstock, Craven, Pilpel, Sheppard (out at 6:15)
Excused: Wolfe

Agenda Changes: Item #6 was heard after item #3

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby
Chris Rustom

1. Approval of minutes of December 12, 2007.

Public Comment: None

Motion to approve minutes of December 12, 2007, as amended. (Comstock / Craven)

Ayes: Knee, Comstock, Craven, Pilpel
Excused: Wolfe

Member Craven said that she will draft, for circulation to the members, a letter for submittal to the SF Fire Department that conveys the Task Force's concerns regarding calendars and the redaction of calendars, and to provide relevant case law.

Member Comstock asked that a copy be provided to him and the Administrator for inclusion in the Task Force's Annual Report.

2. 07075 Hearing on the status of the November 27, 2007, Order of Determination of Laura Carroll against the Mayor's Office of Housing (MOH).

Speakers: Laura Carroll, Complainant, said the MOH continues to violate Sections 67.26, and 67.27. She said there are still outstanding documents. Dee Modglin, in support of the complainant, said she received documents from MOH that were not provided to Ms. Carroll.

Douglas Shoemaker, MOH representative, said all responsive documents requested by Ms. Carroll have been provided to her.

Ms. Carroll, in rebuttal, said she did not receive the list of documents that were withheld as privileged.

Public Comment: Kimo Crossman recommended that the matter be continued because the MOH did not identify the records withheld.

Member Pilpel disclosed that he spoke with Ms. Carroll regarding obtaining an opinion from the Supervisor of Records, and can be fair and impartial

Ms. Carroll, in response to Member Pilpel, said the outstanding requests are for 1) list of properties by first purchase, 2) documents regarding proposed changes to codes, and 3) policy and procedures manual and capital improvement policy.

Mr. Shoemaker, in response to Member Pilpel, said he does not have a list of properties by first purchase, and will check on the other two requests mentioned by Ms. Carroll.

Member Sheppard said the MOH has been forthright regarding the status of records.

Member Craven said she disapproves of the City Attorney's policy advising the departments that oral advice will be provided because written communications are subject to public records laws.

Motion to continue. (Comstock / Pilpel) Without objection.

3. 07080a Continued hearing on the status of the November 27, 2007, Order of Determination of Dan Boreen against the Fire Department.

Speakers: Dan Boreen, Complainant, said the documents have not been provided and asked for a ruling for willful failure to comply.

Rhab Boughn, SFFD representative, said the pay type scales policy is in draft form and still under review. He said the department does not have a standing policy.

Mr. Boreen in Rebuttal said the Task Force's ruling was that the information is to be disclosed.

Public Comment: Kimo Crossman recommended that a letter be sent to the city attorney who advised the department instructing him/her to attend the next meeting.

Member Craven said she is inclined to continue the matter to allow time for the department to establish a policy. She said she doesn't see a willful violation.

Member Sheppard said he is concerned about the absence of a citywide policy. He said the Task Force should find out who in the City Attorney's office is drafting the policy.

Member Pilpel urged the parties to attempt to resolve the pay type issue.

Member Comstock informed Mr. Boreen that he can petition the Supervisor of Records for an opinion as to whether the pay types are public record per Section 67.21 (d).

Chair Knee said that consideration should be the balancing test per Prop 59.

Motion to continue. (Comstock / Craven) Without objection.

4. Possible amendments to Sections 67.33, and 67.35 to 67A.1 of the Sunshine Ordinance and subsequent sections as time permits. (discussion and possible action item) (attachment)

Sec 67.33 Department Head Declaration.

Sec 67.35 Enforcement Provisions.

Sec 67.36 Sunshine Ordinance Supercedes Other Local Laws.

Sec 67.37 Severability.

Sec 67A.1 Prohibiting the Use of Cell Phones, Pagers and Similar Sound-Producing Electrical Devices At and During Public Meetings.

Member Pilpel said he is stilling working on language for Section 67.33 and that the two issues are 1) who files the declaration, and 2) who is subject to the sunshine and ethics training.

Chair Knee, by consensus of the committee, asked Member Pilpel to provide proposed language in writing for review and discussion by the committee.

Public Comment re Section 67.33: Kimo Crossman urged that a written proposal be provided for public review. Dan Boreen suggested that there be two layers of training. He said it should be clear who besides the Department Head must take the training.

Member Comstock introduced possible language for Section 67.35. He said he wanted to consolidate all enforcement provisions.

Public Comment re Section 67.35: Kimo Crossman said there should be at least two additional meetings to discuss this matter. He suggested that Allen Grossman and Terry Francke be consulted. He said a reference to Government Code Section 1222 is missing; that there should be fines for destruction of records.

Dan Boreen suggested that additional meetings be scheduled for discussion. He urged members to review AA343 and AA344 to consider charter language.

Member Sheppard said he is concerned about due process requirements and suggested that the City Attorney review the language and provide an analysis.

Member Craven said an analysis is needed as to whether the Task Force may enforce such a provision, and whether a fine, or criminal or civil penalties may be imposed.

Member Pilpel said he doesn't believe an analysis is needed at this point. He

received clarification that section (a) of Member Comstock's proposed language referred to those who are ignorantly violating the law, and section (b) applies to Orders of Determination that are not complied with.

Member Craven said enforcement should provide more guidance and direction.

Public Comment re Section 67.36: Kimo Crossman suggested that the first sentence be changed to say "other local laws and the Charter."

Public Comment re Section 67.37: None

Public Comment re Section 67A.1: Kimo Crossman urged the Committee to leave the language as is.

Members Craven and Pilpel said this section is not part of the Sunshine Ordinance, and was added by the Board of Supervisors in 2000. They suggested that the language remain as is.

Motion to add Section 67A.1 to the Sunshine Ordinance as new Section 67.14A, (Comstock) Motion failed for lack of a second.

Sections 67.33, 67.35 through 67.37 and 67A.1 were discussed and the Administrator recorded recommended amendments.

Chair Knee asked the Administrator to agendize all Sections in Article 4 for discussion at the February 13, 2008, meeting.

5. Administrator's report.

The Administrator made the report.

Public Comment: Kimo Crossman asked the Task Force to agendize a discussion regarding the duties of the Administrator to make certain that things are improved.

Doug Comstock said that the discussion regarding whether to retain the Complaint committee will be held in February

6. Public comment on items not listed on the agenda.

Public Speakers: Kimo Crossman asked the CAC to reagendize Section 67.24 (a)(2) for discussion. He said he is also concerned that there are no penalties for the destruction of records.

Dan Boreen, asked about the procedure to recalendar tabled items (07080b and 07080c).

Member Craven explained the procedure. She said the CAC will reschedule the matter after it receives the policy from the SF Fire Department as requested.

7. Announcements, questions and future agenda items from CAC members.

Member Pilpel confirmed that the Supervisor of Records' report will be heard in February. He suggested that there be a discussion at the full Task Force regarding staff duties. He said he doesn't know if there is a document that lays out in general terms what Mr. Darby and Mr. Rustom do.

Speakers: None

Adjournment: The meeting was adjourned at 6:56 p.m.

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