Date: April 9, 2008

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

☒	**Draft Minutes: Compliance and Amendments for March 12, 2008**
☐	
☐	
☐	
☐	
☐	
☐	
☐	
☐	
☐	

Completed by: Chris Rustom **Date:** April 2, 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.

Sunshine Ordinance Task Force

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MINUTES

Wednesday, March 12, 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 4:03 P.M.
Roll Call **Present:** Knee, Comstock, Craven, Wolfe (in at 4:50 p.m.)
Excused: Pilpel, Sheppard

Agenda Changes: Item #2 was heard after Item #3; Items #5 & 6 were combined; Item #12 was heard after Item #6.

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

1. Continued: Approval of minutes of January 9, 2008. (action item) (attachment)

Public Comment: None

Motion to approve the minutes of January 9, 2008, as amended. (Comstock / Craven)
Ayes: Knee, Comstock, Craven
Absent: Wolfe
Excused: Pilpel

2. Approval of minutes of February 13, 2008. (action item) (attachment)

Public Comment: None

Motion to approve the minutes of February 13, 2008, as amended. (Comstock / Craven)
Ayes: Knee, Comstock, Craven
Absent: Wolfe
Excused: Pilpel

3. 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 outstanding documents are the list of units released from the condo program and attorney-client-privileged documents. Douglas Shoemaker said he agreed the process is slow but that the MOH has been responsive to Ms. Carroll. He submitted documents to the Task Force that he said were provided to Ms. Carroll, and said the City Attorney's Office is reviewing the attorney-client privileged documents prior to their release, which should be completed in a month.

Ms. Carroll, in rebuttal, said she doesn't know why MOH doesn't believe it must comply with §67.21(c) of the Ordinance. She said she needs to know the nature and scope of the withheld documents.

Public Comment: Kimo Crossman urged the Task Force to continue the matter since there are still documents in dispute. He said MOH should provide a description of the records being withheld.
Dee Modglin asked if the header information in attorney-client-privileged documents is subject to disclosure. She urged the committee to change the Ordinance to give the Supervisor of Records more power to investigate matters. She said Complainants have no place to go other than the Task Force. She also said there are no clear guidelines as to who can do the redactions.

Ms. Carroll, in response to Member Craven's question, said she just received the final records today from Mr. Shoemaker and that she believes she can work the other matters out with MOH.
Mr. Shoemaker, in response to Member Craven, said the only outstanding documents are the attorney-client-privileged documents being reviewed by the City Attorney.

Member Craven recommended that the matter be tabled until the call of the Chair, since the parties appear to be resolving the matter. Tabled without objection.

Chair Knee instructed Ms. Carroll to notify the Administrator in a month if the matter has not been resolved, to schedule a hearing with the Committee.

4. 07080a Continued hearing on the status of the November 27, 2007, Order of Determination (OD) of Dan Boreen against the Fire Department.

Speakers: Dan Boreen, Complainant, asked to combine items 4, 5 and 6. Rhab Boughn, Respondent, asked that only items 5 and 6 be combined.

Items 5 & 6 were combined, without objection.

Dan Boreen said the Department is not complying with the OD and urged that the matter be referred for a finding of willful failure. Rhab Boughn said records are still being reviewed by the City Attorney's Office (CAO) regarding the redaction of City-paid benefits. He said he contacted the Oakland and San Jose fire departments, which also refer such matters to their respective CAOs.

Mr. Boreen, in rebuttal, said the CAO is holding up the documents and urged a

finding of willful failure via the CAO; that it be referred to other parties.

Public Comment: Kimo Crossman said nothing was provided regarding redactions and urged a finding of willful failure against Chief Hayes-White.

Mr. Boughn, in response to Member Comstock, said he has communicated verbally with the CAO.

Member Craven said she doesn't feel the information was appropriately withheld and the withholding is a violation of the Sunshine Ordinance.

Mr. Boughn, in response to Chair Knee, said he had not consulted outside counsel who are experts in sunshine matters and he did not have a problem doing so. Member Knee suggested that he contact the California First Amendment Coalition, the First Amendment Project, or Californians Aware.

Member Comstock said he wants to ensure that Mr. Boreen gets the information.

Motion to refer the item to the Task Force with a recommendation that the Fire Department be found in violation of the Sunshine Ordinance for failure to produce all requested records, and failure to comply with the Order of Determination issued by the Task Force on November 27, 2007; that referral, based on that finding, to the Board of Supervisors for investigation and potential enforcement be considered. (Craven / Comstock)
Ayes: Knee, Comstock, Craven, Wolfe
Excused: Pilpel

5. 07080b 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 he did not receive the requested calendars. Rhab Boughn, Respondent, said the chief's Prop G calendars will continue to provide minus the information that can be redacted, and submitted a copy of the Department's Prop G calendars for November 1, 2007 to March 7, 2008.

Mr. Boreen, in rebuttal, expressed objections to the handout and said the Department needs to comply with the law, and has not responded to his request for retroactive calendars.

Public Comment: Kimo Crossman said there is value in referring the matter to the Ethics Commission and urged a finding of willful failure.

Member Craven said the information provided by Mr. Boughn is important but should have been provided before the meeting. She said she is concerned that the Department is referencing only the Prop G calendar and not all calendars. Member Comstock said providing the Prop G calendar only is not sufficient, because it would provide less sunshine.

Member Wolfe said the redactions were noted as requested and moved that the matter be referred.

Member Craven said the CAC requested, as part of the continuation of the OD, that a review of the redacted information be made and notation of the information that's been withheld be provided by the Department. She said that since the Department has not provided the requested information, she is not comfortable that the appropriate criteria were applied in making the redactions.

Motion to refer the item to the Task Force with a recommendation that the Fire Department be found in violation of the Sunshine Ordinance for failure to provide all necessary information that is releasable from the calendar, and failure to comply with the Order of Determination issued by the full Task Force on November 27, 2007; that referral, based on that finding, to the Board of Supervisors for investigation and potential enforcement be considered. (Wolfe / Knee)
Ayes: Knee, Comstock, Wolfe
Noes: Craven
Excused: Pilpel

6. 07080c Continued hearing on the status of the November 27, 2007, Order of Determination of Dan Boreen against the Fire Department.

Previously combined with item #5.

7. 07087 Hearing on the status of the January 8, 2008, Order of Determination of Allen Grossman against the Mayor's Office (MO).

Speakers: Allen Grossman, Complainant, said he still has not received the requested records. He said an anonymous source provided him with the documents that the MO should have given to him. He said the MO made no effort made to find the records and that they have not appeared before the Task Force.

Public Comment: Kimo Crossman urged the committee to refer the matter to the Ethics Commission for official misconduct and failure to appear.
Dan Boreen urged referral to the Ethics Commission and the Board of Supervisors. He said the MO should be setting an example and at least appear before the Task Force and its committees.

Member Craven questioned whether the search was done and whether there was timely response. She said referral of matters to Ethics Commission must be on the ground of willful failure.

Mr. Grossman, in response to Member Wolfe, said that he did not want to identify his source.

Motion to refer the item to the Task Force with a recommendation that the Mayor's Office be found in willful failure for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the full Task Force on January 8, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered. (Craven / Wolfe)
Ayes: Knee, Comstock, Craven, Wolfe
Excused: Pilpel

Member Wolfe asked if names of individual respondents should be included with the

motion. Member Craven responded that ultimately the Department head is responsible but that individuals' names may be added by the full Task Force.

8. 07088 Hearing on the status of the January 8, 2008, Order of Determination of Kimo Crossman against the Assessor's Office (AO).

Speakers: Kimo Crossman, Complainant, said the AO's response letter was not sent directly to him; that he did not receive all calendars, only the Prop G calendar, and that redactions were not specifically keyed. He asked that the matter be referred to the Ethics Commission (EC) and the Board of Supervisors.

Public Comment: Allen Grossman urged the committee to refer the matter to the EC. Dan Boreen said the Department doesn't have the dignity to appear and urged referral.
Dee Modglin said she echoes the frustration of others who appear but can't get matters done by the Task Force.

Member Craven said the AO complied with the Order of Determination, though she doesn't agree that there is justification for the redactions. She recommended that Chair Knee write a letter to the AO thanking them for providing the information and indicating that the following categories were impermissibly redacted and the reason:

1) ...events in which business pertaining to the Office of the Assessor-Recorder was not discussed.
   [*Task Force Reasoning: Too narrow – if they are discussing city business it should be listed.*]
2) Entries involving meetings with the City Attorney...due to attorney-client privilege.
   [*Task Force Reasoning: The fact that the meeting took place and which CA the AO met with are not covered by attorney-client privilege; only the subject matter.*]
3) Names of Assessor-Recorder staff ... were replaced by job title.
   [*Task Force Reasoning: There is no justification for redacting the names of staff and replacing them with job titles.*]

She said the letter should also request that they appear in person at the April 9, 2008, meeting to justify the redactions and to describe what steps the AO is taking to implement a policy on redaction of calendars, and that the AO provide a written response by April 2, 2008. Without objection.

Member Wolfe said the letter should also indicate that the Complainant did not receive the January 24, 2008, letter. Member Comstock said the AO should be instructed to address replies to the Complainant as well as to the Task Force

Member Comstock suggested that the letter also point out the specific section of the Ordinance (§67.26) regarding redactions.

Continued to the April 9, 2008, meeting.

9. 07094 Hearing on the status of the February 26, 2008, Order of Determination (OD) of Kimo Crossman against the City Attorney's Office (CAO).

Speakers: Kimo Crossman, Complainant, said he asked for all calendars, not just

the Prop G calendar, and they were not provided. He said the OD was not complied with and the Department did not attend. He urged the Task Force to find a violation for willful failure and official misconduct.

Public Comment: Allen Grossman said the Complainant has nowhere to go but to the Task Force, except for a lawsuit. He said the CAO sets a pattern in all complaints with regard to responsiveness and attendance; that the CAO has no problem putting people requesting records through hurdles.
Dan Boreen said the CAO should set the example by appearing, and should be held to a higher standard. He said there is another working calendar that is not being provided. He urged the Task Force to refer the item for willful failure.

Motion to refer the item to the Task Force with a recommendation that the City Attorney's Office be found in willful failure to comply with the Sunshine Ordinance, and failure to keep withholding to a minimum and to provide the requested daily calendar in compliance with the Order of Determination issued by the full Task Force on February 26, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered. (Comstock / Wolfe)
Ayes: Knee, Comstock, Craven, Wolfe
Excused: Pilpel

DCA Llorente suggested that the Committee also identity §67.26 (withholding kept to a minimum), so the CAO can respond appropriately.

Member Wolfe said it should be clear that the Sunshine laws refer to all calendars and not just the Prop G calendar.

10. Possible amendments to Sections 67.30, 67.33, and 67.35 to 67.37 of the Sunshine Ordinance and subsequent sections as time permits.

Sec 67.30 The Sunshine Ordinance Task Force.
Sec 67.33 Department Head Declaration.
Sec 67.35 Enforcement Provisions.
Sec 67.36 Sunshine Ordinance Supersedes Other Local Laws.
Sec 67.37 Severability.

Public Comment (PC) re Section 67.30: Kimo Crossman said he is disappointed that the Committee has to wait for Member Pilpel to discuss.

PC re Sections 67.33 and 67.35: Kimo Crossman said he is disappointed that DCA Llorente is not doing the research on enforcement as requested by the Task Force. He asked the Task Force to require that DCA Llorente provide all research as used by the Ethics Commission.
Allen Grossman urged the Committee to develop uniform enforcement because there are enforcement provisions in Sections 67.34, 67.35, and 67.40. He said it's hard to tell which is being followed.
Dan Boreen said he heard that the Ethics Commission is too busy to properly address referrals from the Task Force. He urged the Task Force to develop its own enforcement authority.
Dee Modglin urged the Task Force to obtain more authority to resolve matters, to get paid for attending meetings, and to receive meals during meetings.

PC re Section 67.36: Allen Grossman urged the Task Force to amend the language to make reference to the charter in addition to local laws as being equaled or superseded by the Ordinance.
Kimo Crossman said he agreed with Mr. Grossman. He said language addressing public forums should be added, including a provision for enforcement of the 10-day rule.
Dan Boreen said language should be added regarding the destruction of records.

Sections 67.36 and 67.37 were discussed and the Administrator recorded recommended amendments.

Chair Knee, by consensus of the Committee, asked the Administrator to agendize Sections 67.30 (b), 67.33, 67.35 for the April 9, 2008, meeting.

11. Administrator's report.

The Administrator made the report.

Public Comment: None

12. Public comment on items not listed on the agenda. Public comment will be held at 5:00 p.m. or as soon thereafter as possible.

Public Speakers: Kimo Crossman urged the Committee to review §67.21(c) and to broaden the Supervisor of Records role.

Dee Modglin asked the Committee to answer questions as to what constitutes a redaction and who may make the redactions. She also asked if the header and footer could be redacted in attorney-client-privileged e-mails.

DCA Llorente, in response to Member Knee, said he believes the entire communication is privileged.
Member Craven said only the content/substance could be redacted, and that redactions may be made by anyone.

Allen Grossman said the Task Force should not be discouraged from referring matters to the Ethics Commission. He said the Ethics Commission's responsibility is only to enforce the Task Forces referrals and not to investigate them.

Laura Carroll asked for guidance on enforcement of §67.21(c). She said she wants to be able to appropriately request records.
Member Craven responded that this was not an appropriate forum to provide legal interpretation and urged her to forward her questions to the Administrator or the Supervisor of Records.

Dan Boreen apologized for his prior outburst and asked that complainants be allowed to clarify statements made during members' discussions of complaints. He urged the Task Force to take a stronger position on timeliness and said referring matters to the Ethics Commission would show a pattern.

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

Chair Knee announced that the Society of Professional Journalists, Northern California chapter, will hold its annual James Madison Awards dinner honoring champions of the First Amendment and freedom of information at 6 p.m. on Tuesday March 18, at the New Delhi Restaurant, 160 Ellis St., San Francisco.

Adjournment: The meeting was adjourned at 7:10 p.m.

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