

Date: June 11, 2008

Item No. 2

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Frank Darby

Date: June 5, 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.



<http://www.sfgov.org/sunshine>

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

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

Committee Members: Richard Knee, Chair; Doug Comstock Vice-Chair; Erica Craven,
David Pilpel

Harrison Sheppard (ex-officio, non-voting)

Call to Order 4:10 P.M.
Roll Call **Present:** Knee, Comstock, Craven, Pilpel
Excused:: Sheppard

Agenda Changes: None

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

1. Possible revisions to the Sunshine Ordinance Article 4

Sec. 67.34 The Sunshine Commission

Public Comment: Kimo Crossman said he hopes the committee would strike the physically disabled member requirement because that is causing problems.

Motion to strike out sentence regarding the disability requirement (Page 88/line 9 thru 12 . (Pilpel / no second)

Motion to designate one of the four general public seats for a member of the public with a disability that meets the definition of disabled under the American Disabilities Act. and who has demonstrated interest in citizen access and participation in local government. (Pilpel / Knee)

(Amending lines 3 – 5 on 88 to incorporate lines 9 – 12)

Ayes: Pilpel
Noes: Knee, Comstock, Craven

Motion to add “when possible” in line 9 after “shall include.” (Comstock/Pilpel)

Ayes: Knee, Comstock, Pilpel

Noes: Craven

Motion to move sentence starting with "The City Attorney" on line 14 to the end of the section on line 24 to new 67.38 (a) which is on the role of the City Attorney's Office. (Craven/ Comstock)

Ayes: Knee, Comstock, Craven, Pipel
The motion passes

Motion to end sentence on line 20 to end at "pertinent" and to strike out the rest of the sentence. (Pipel/ Comstock)

Ayes: Knee, Comstock, Pipel
Noes: Craven

Public Comment: Grossman said he wants sentence regarding city Attorney's advisory role with the commission removed because the advisor is the assigned deputy city attorney. He also presented a handout.

Motion to change "it" to "the Commission" in line 20. (Pipel/Comstock)
Without objection.

Motion to strike out "at its request" on line 16. (Knee/Comstock)

Ayes: Knee, Pipel
Noes: Comstock, Craven

Motion fails

Motion to change line 9 on page 88 to read "The commission shall include when possible at least one member with a disability as defined by the Federal Americans with Disabilities Act." (Knee/Comstock)
Without objection

Motion to replace "appointive" with "voting" on page 89, line 6. (Knee/Comstock)
Without objection

Changing "District Attorney or the State Attorney General" to "District Attorney and the State Attorney General" on line 20 on page 89. . (Knee/Comstock)
Without objection

Motion to replace "is empowered to" with "may" on page 89 line 19. (Pipel/Comstock)
Without objection

2. 67.31 Sec.67.35 Responsibility of Commission

Public Comment: No Comment:

Line 23 the Board

The Board of Supervisors shall provide sufficient staff, facilities, equipment and any other resources to enable the Sunshine Commission to fulfill its duties under this ordinance. The Clerk of the Board of Supervisors shall provide at least one full time staff person, who shall be the Administrator of the commission, to perform administrative duties for the commission including assisting any person in gaining access to public meetings and public information. (Pilpel/Comstock)
Without objection

67.32 Sec. 67.36 (a) Provision of services to Other Agencies

Public Comment:: None

Member Comstock suggests public comment to be unrestricted, as he believes the privilege will not be abused.

Motion to remove sentence starting on page 92 line 23. (Pilpel/Comstock)

Mr. Grossman said the Task Force needs to consider the private public partnerships where meetings are not open to the public.

Mr. Crossman suggested leaving it the way it is because the City Attorney has already signed off on it.

Ayes: Comstock, Pilpel

Noes: Knee, Craven

The motion fails

67.32 Sec. 67.36 (b)

Motion to start sentence on page 93 line 1 to start as paragraph b. (Pilpel/Comstock)

Subsection (a) on line 11 page 92 is restored.

67.33 Sec. 67.37 Department Head Declaration

Public Comment: Mr. Crossman said the paragraph need not be changed because it is concise.

Continued to June 10, 2008, and include Member Pilpel's letter in packet.

Sec. 67.38 (a) Role of City Attorney's Office, Advice Shall Be Public Information

No change

Sec. 67.38 (b) through Sec. 67.38 (e)

Public Comment: Mr. Grossman said the paragraph is repetitive because most of it is in of 67.21 (k). He wanted "act as legal counsel to" and substitutes it with "assist" (b). He also wanted paragraph (c) to read that the City Attorney's Office should not provide oral advice. Mr. Crossman said this paragraph needs to include the Ethics law as well as confront Sheriff's and DA's assertions that they don't have to release their communications on open government matters.

Motion to replace "act as legal counsel" with "directly or indirectly" in paragraph (b).
(Comstock)

Motion withdrawn

Sec. 67.38 (b) Continued to June 11, 2008.

Mr. Grossman said the playing field has to be leveled by keeping the City Attorney out of the process. Mr. Crossman said the section needs to be rewritten and members of the public requesting documents be directed to the administrator to review past Task Force decisions. by way of an annotated ordinance.

Motion to reinsert "or any person having custody" in paragraph (b). (Erica/Comstock)

Public Comment: None

Ayes: Knee, Comstock, Craven
Noes: Pilpel

Sec. 67.39 (a) Hearing and Orders of Determination

Public Comment: Mr. Crossman wanted to know if undisclosed records could be subpoenaed. He also said the language should be changed to cover any violation of the ordinance.

Motion to reorganize the section. (Pilpel/Comstock)

Comstock withdraws motion.

Motion to call question. (Comstock/Knee)

Ayes: Comstock
Noes: Knee, Craven, Pilpel

Discussion continues.

Motion to replace "the public meetings or public records provisions of the" with "this" in paragraph (a). (Craven/Comstock)

Ayes: Knee, Comstock, Craven
Noes: Pilpel

Sec. 67.39 (b)

Motion to strike out "other" in first line of paragraph (b) (Erica)
Without objection

Public Comment: Mr. Grossman said the City Charter can be amended in a lot of ways including prohibiting the commission from doing something it wants to do. Mr. Crossman said to allow for in camera review otherwise it does not solve anything.

Motion to strike out the City Charter in paragraph (b). (Comstock/Knee)

Public Comment: Mr. Crossman recommended the motion.

Ayes: Knee, Comstock, Craven

Noes: Pilpel

Sec. 67.39 (c)

No changes

Sec. 67.39 (d)

Motion to replace paragraph with "The Order of Determination shall be issued to the complainant and the respondent and shall be posted on the Commission's website."
(Pilpel/Comstock)

Public Comment: Mr. Crossman was against removing the timing mentioned in the section.

Ayes: Comstock, Craven, Pilpel

Noes: Knee

Motion to move first 2 sentences of (a) to (d). (Pilpel)

Motion failed because of lack of second

Motion to move last section in (d) and insert it at the end of (a). (Craven/Comstock)

Public Comment: None

Without objection.

Sec. 67.40 Administrative Enforcement Provisions

Public Comment: Mr. Crossman suggested including timing in paragraph (a) and expressed concern that the section allows for enforcement of other provisions of the Sunshine Ordinance that are not related to public records. He also said the Ordinance should provide for change in anti-Sunshine department policies. Mr. Grossman said paragraph (g) is not clear and needs to be rewritten.

Motion to start paragraphs (b) and (c) with "Upon issuing an Order of Determination."
(Knee)

Without objection.

Motion to adopt the section. (Erica/

Public Comment: None

Ayes: Knee, Comstock, Craven

Excused: Pilpel

Sec. 67.41 Wilful Failure Shall Be Official Misconduct

Public Comment: Mr. Grossman said it is difficult to find an office or entity guilty of official misconduct. Mr. Crossman said he wanted the Task Force to be aware that the City Attorney's Good Government Guide says the Ethics Commission can hear complaints against elected officials and department heads and not against other City employees.

Motion to adopt. (Comstock/Knee)

Without objection

Sec. 67.42 (a) Referrals and Enforcement by Ethics Commission

Public Comment: Mr. Crossman said he hopes this section will be effective and related an event in Florida where an entire governing body was found to be in violation of their open government laws and fined. Mr. Crossman said this section allows the Ethics Commission to question the Commission's referrals because the Charter overrules the Ordinance.

Motion to add a new paragraph (v) to read as "The Sunshine Commission may, in a referral of a finding of official misconduct, recommend the amount of fine that may be imposed" and renumber the following paragraphs.

Public Comment: Mr. Crossman said the Task Force already has the authority to recommend a fine.

Ayes: Knee, Comstock, Craven
Excused: Pilpel

67.42 (b)

Motion to approve section. (Comstock/Knee)

Ayes: Knee, Comstock, Craven
Excused: Pilpel

Sec. 67.43 Public Enforcement Provisions

Public Comment: None

Motion to approve section. (Comstock/Knee)

Ayes: Knee, Comstock, Craven
Excused: Pilpel

Member Craven said the committee needs to address three significant parts.

- Look at the entire proposals and check for consistency and see if any section or paragraph has been overlooked.
- Review prior amendments that were submitted in conjunction with Supervisor

Chris Daly's July 12, 2004, memorandum that included suggestions.

- Start work on the annotations.

The administrator, she said, also has to look at provisions that were adopted or considered by the full Task Force, accept the changes to get a clean document, and redline it against the existing ordinance.

The same also has to be done, she added, to what was passed by the Compliance and Amendments Committee but have yet to be adopted by the Task Force. Article 3, based on Member Craven's suggestion was discussed and the Administrator recorded recommended amendments.

Motion to accept changes and adjustments. (Craven/Comstock)

Public Comment: Mr. Crossman said he was pleased with the changes.

Adjournment: The meeting was adjourned at 7:30 p.m.

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