

Date: August 13, 2008

Item No. 4

File No. 08029

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Order Of Determination of Barry Taranto vs. Taxi Commission
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Completed by: Frank Darby

Date: August 8, 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. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
August 4, 2008

DATE THE DECISION ISSUED
July 22, 2008

BARRY TARANTO v. TAXI COMMISSION (08029)

FACTS OF THE CASE

Complainant Barry Taranto claims that when he attended the May 27, 2008 meeting, the Commission committed the following acts: 1. Commission President Paul Gillespie allowed an unidentified public speaker to defame the character of another public Speaker in light of warnings provided by the Deputy City Attorney who advises the Commission; 2. The Commission President arbitrarily sets the time for public comment on agenda items without regard to the urgency/seriousness of the items(s); 3. The Commission President allows more time to some members of the public without giving more time to others.

COMPLAINT FILED

On 5/29/08 Barry Taranto filed a complaint that did not specifically list the sections of the Sunshine Ordinance that was violated but described the violations as listed above.

HEARING ON THE COMPLAINT

On July 22, 2008, Complainant Barry Taranto appeared before the Task Force and presented his Complaint. Respondent Commission was represented by Jordanna Thigpen who presented the Commission's defense.

The issue in the case is whether the Commission violated Section(s) 67.15 & 67.7 of the Ordinance and Sections 54957.9 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that public speaking time was not uniformly allocated. The Task Force did not vote or find a violation with respect to the other two allegations.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission violated Section(s) 67.15 (c) of the Sunshine

ORDER OF DETERMINATION

Ordinance that allows each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify. The Commission shall appear before the Compliance and Amendments Committee on August 13, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 22, 2009, by the following vote: (Pilpel / Cauthen)

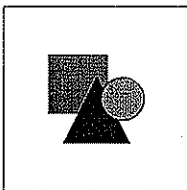
Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel, Chu, Goldman, Williams

Excused: Gokhale, Chan



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Barry Taranto
Jordanna Thigpen, Director, SF Taxi Commission
Tom Oneto, Commissioner, SF Taxi Commission



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

July 14, 2008

BARRY TARANTO v. TAXI COMMISSION (08029)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant Barry Taranto claims that when he attended the May 27, 2008 meeting, the Commission committed the following acts: 1. Commission President Paul Gillespie allowed an unidentified public speaker to defame the character of another public Speaker in light of warnings provided by the Deputy City Attorney who advises the Commission; 2. The Commission President arbitrarily sets the time for public comment on agenda items without regard to the urgency/seriousness of the items(s); 3. The Commission President allows more time to some members of the public without giving more time to others.

COMPLAINANT FILES COMPLAINT:

On 5/29/08 Barry Taranto filed a complaint that did not specifically list the sections of the Sunshine Ordinance that was violated but described the violations as listed above.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTION;

1. Sunshine Ordinance Section 67.15 which deals with Public Testimony
2. Sunshine Ordinance Section 67.7 which deals with agenda requirements.
3. State Government Code Section 54957.9 deals with meeting disruptions.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

Memorandum

1. FACTUAL ISSUES

A. Uncontested Facts:

- The Taxi Commission had public meetings on the date stated by the complainant

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the Commission allowed a defaming of a public speaker.
- Whether the Commission deprived public speaker(s) equal speaking time.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

none

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED**

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.7 deals with Agenda Requirements for public meetings and provides:

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently 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. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B)

Memorandum

that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE
(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE
OR TO REPORT A VIOLATION OF THE ORDINANCE,
CONTACT THE SUNSHINE ORDINANCE TASK FORCE**

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and contact person's name for the Sunshine Ordinance Task Force Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

Section 67.15 of the San Francisco Administrative Code provides for public testimony as follows:

a.) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already

Memorandum

been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

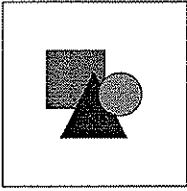
b.) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

c.) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

The State Brown Act is located in the California Government Code Sections 54950 et seq.

Government Code Section 54957.9 provides:

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupt the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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MEMORANDUM

June 16, 2008

BARRY TARANTO v. TAXI COMMISSION (08029)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

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COMPLAINANT FILES COMPLAINT:

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APPLICABLE CASE LAW:

none

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(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

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Memorandum

that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

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Memorandum

been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

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c.) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

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<complaints@sfgov.org>
05/29/2008 09:32 AM

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

History:  This message has been forwarded.

Submitted on: 5/29/2008 9:32:56 AM

Department: Taxi Commission

Contacted: Paul Gillespie, commission president

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: May 27, 2008

Section(s)_Violated: Regarding Commission's handling of Public Comment

Description: 1. Commission President allowed an unidentified public speaker to defame the character of another public speaker in light of warnings provided by the Deputy City Attorney.

2. Commission President arbitrarily sets the time for public comment on agenda items without regard to urgency/seriousness of item(s).

3. Commission President allows more time to some members of the public without giving more time to others.

Hearing: Yes

Date:

Name: Barry Taranto

Address:

City:

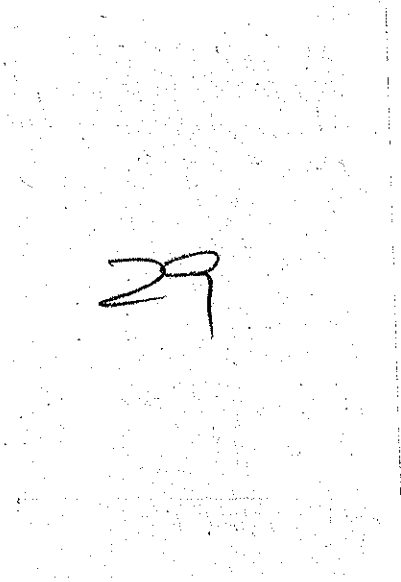
Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes





05-28-2008 RCVD

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Taxi Commission

Name of individual contacted at Department or Commission President Paul Gillespie

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting Tuesday, May 27, 2008

Sunshine Ordinance Section _____

(If known, please cite specific provision(s) being violated)

Regarding Commission handling of Public Comment

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

- ① Commission President allowed an unidentified public speaker to defame the character of another public speaker in light of warnings previously by deputy city attorney.
- ② Commission president arbitrarily sets the time for public comment on agenda items w/o regard to urgency/seriousness of items.
- ③ Commission President allows more time to some members of public without giving more time to others.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no

Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
Name Barry Taranto Address _____

Telephone No. _____ E-Mail Address _____

Date May 28, 2008 Barry R. Taranto
Signature

I request confidentiality of my personal information. yes no

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. COMPLAINANTS CAN BE ANONYMOUS AS LONG AS THE COMPLAINANT PROVIDES A RELIABLE MEANS OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).

