

Date: Oct. 8, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Compliance and Amendments of Sept. 10, 2008**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: Oct. 3, 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, September 10, 2008
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee (Chair); Erica Craven, David Pilpel, Kristin Chu,

Call to Order: 4:08 p.m.

Roll Call: **Present:** Knee, Craven, Pilpel, Chu

Deputy City Attorney: Ernie Llorente
Clerk: Chris Rustom

Agenda Changes: Items were heard in this order: 1, 3, 5, 6, 9, 4, 2, 7, 8, 10

1. Approval of minutes of August 13, 2008.

Public Comment: None

Motion to approve minutes of August 13, 2008. (Pilpel / Chu)

Ayes: Knee, Craven, Pilpel, Chu

2. Continued discussion re developing recommendations on the document retention policy of the Board of Supervisors.

Chair Knee said his research was continuing and agreed to create a document based on the present practices of the Clerk of the Board.

Member Pilpel suggested merging Items 2 and 2a.

Chair Knee agreed.

Item to read : Recommendations on the document retention policy of City departments and the Board of Supervisors

Public comment: None

a. Discussion re developing recommendations on the document retention policy for City departments.

Merged with Item 2

3. 08023 Hearing on the status of the July 22, 2008, Order of Determination of Anonymous Tenants vs. Planning Department

Complainant Anonymous Tenants said the department had provided him with more documents including a file that contained over 800 emails after the Order of Determination was issued. The emails he said were not in pdf format, some were blanks and a lot were duplicates. And because of that he requested a continuance. He also said the department needs to provide more documents, including a telephone log, and continue assist in identifying documents.

Respondent Linda Avery of the Planning Commission said the department followed procedure approved at the last CAC meeting that included listing and numbering documents. The department has met that requirement timely and had also met the complainant to discuss outstanding issues.

Planner Scott Sanchez said the electronic document is in searchable pdf format whereas the complainant had asked for the emails be printed and scanned making it non-searchable, duplicate emails were unavoidable because multiple planners would forward or respond to certain documents and requests, the permit was provided in the same shape and form that was on file, and the telephone log was not retained, meaning, nobody knows what happened to it.

Member Pilpel wanted a copy of the Planning Department's transmittal to Anonymous Tenants placed in the SOTF file.

The respondent did not rebut.

The complainant, in rebuttal, said among others, his understanding of a pdf file is different from Mr Sanchez and that it was very difficult to read and was one of the reasons for requesting a continuance.

Public Comment: Kimo Crossman said the day's meeting has not resolved a lot of issues brought forward by the complainant, the department needs to be helpful in identifying documents and suggested a continuance. He also said he was concerned that departments were not being told to provide a written response in five days. He asked that the Task Force direct the administrator to include the language in all Orders of Determination. Ray Hartz congratulated department representatives for their presence and said the department needs to say exactly what happened to the telephone log, giving half of a full document is disingenuous and a department must produce a requested document and not opine on its relevancy to other documents requested by the same requester.

Member Craven lauded the complainant's advocacy and tenacity but said she believed all documents had been produced. She also praised the department for creating a list of documents that were provided to the complainant, but added that she would like the department to improve on their records management procedures and better response times. She said there was no need for further action.

Member Pilpel said the OD was written without the five-day requirement because

Task Force members wanted to get the parties together and resolve the issue. He also said no further action was needed.

No further action taken.

4. 08024 Hearing on the status of the July 22, 2008, Order of Determination of Michael Addario vs. Arts Commission.

Respondent Howard Lazar had emailed the Task Force and said he would not be in attendance because the Arts Commission meeting coincides with the CAC's. Chair Knee said that was unfortunate because it deprives the committee the chance to question Mr Lazar should the need arise. The chair without objection ruled that the committee should proceed hearing the case.

Complainant Michael Addario said he attended the San Francisco Street Artists meeting which respondent Howard Lazar mentioned and because the meeting ended at 5 p.m. Mr Lazar could have attended the CAC meeting as well. He said the Arts Commission meeting rules have been compromised and felt it was impossible to repair it. He said nobody wanted the meeting schedule changed from monthly to bi-monthly except Mr Louis Cancel, the director of Cultural Affairs. The item was agendaized and all members were allowed to speak, but the vote was 2-1 in favor even though everybody who spoke was in opposition.

Member Craven said the meeting was a procedural issue and not within the jurisdiction of the Task Force. The TF's concern, she said, was whether members of the Arts Commission knew what is and how not to hold a seriatim meeting. She suggested sending a letter to Mr Lazar.

Mr Addario told Chair Knee that he did not know of any additional seriatim meeting occurring since the Order of Determination was issued.

Mr Addario in summary said a letter should be sent to all the members because they have shown a disrespect to the CAC by walking out of the last meeting and have refused to attend the current meeting. He also would want the commission members attend the SOTF training.

Chair knee agreed to send a letter to Howard Lazar, program director, PJ Johnston, president of the Arts Commission, and Alexander Lloyd, chair of committee, asking them what they've done on training and how they hope to avoid seriatim meetings in the future. The letter was also to note that the commission was not present at the meetings. A copy of the letter was to be sent to Mr Addario, the complainant

Public Comment: Ray Hartz said there is a fine line between aggressive and assertive and the committee needs to be assertive. Many times, he said, the city doesn't show up at meetings and the committee doesn't do anything because he thinks members will get the non-response they get from the EC. Doing that lets the citizens bear the burden, he said. He said in his case against the city he attended all four meetings and the city was not present at any. The non-presence of departments at meetings is a show of disrespect to residents of San Francisco, he added. Mr Crossman's comment on Member Pilpel is not a personal attack, he said, but stating the fact that he was going to vote in favor of the city 90 percent of the time

regardless of the facts. Looking at the list of referrals, he questioned the purpose of the SOTF. He also said he has visited the SOTF website twice this year and asked why commissioners are not required to brush up on Sunshine requirements.

No further action.

5. 08031 Hearing on the status of the July 22, 2008, Order of Determination of Kimo Crossman vs. Ethics Commission.

Chair Knee recused himself for reasons stated at the August Task Force meeting. He named Member Craven as acting chair.

Complainant Kimo Crossman said there was a problem with an OD that doesn't require a five-day response, which is not for producing records but a response from the department to say what it is going to do to comply with the OD. The EC has not produced the document in pdf format and the CAC was not the place to reargue the case. He urged a finding of non-compliance and send the matter back to the Task Force for referral to the Board of Supervisors for willful failure and official misconduct finding. He recalled that the Clerk's Office also was found in violation and was now posting more records on line.

Respondent John St. Croix of the EC said the City Attorney has been clear and consistent on the issue. The law does not require departments to convert paper-only documents to electronic documents. The decisions of the Task Force and actions of the complainant have a chilling effect on departments, he said. Agencies willing to create a record as a courtesy, he added, are afraid that months later that act of generosity is going to be used against them and transformed into a policy even if it not feasible.

Acting Chair Craven said the Task Force has already found that where feasible and reasonable, the department has to comply if it has the resources to do so without any additional burden and cost. She noted that the Clerk's Office's scanning policy was a result of the CAC finding Frank Darby in violation.

Motion to refer the matter to the Task Force to determine which agency should undertake enforcement. (Craven / Chu)

Member Pilpel said he agreed with Mr St Croix that it is not a legal requirement. He said the Task Force could ask and urge a department to do something but never compel. Past experience had shown, he added, that the EC referred enforcement to other agencies if it was a party to the case.

Public Comment: Ray Hartz said it appears that the agency does not want to provide the record in a usable format. A requestor's personality has no bearing on that person's record request – produce it or put it in writing why the document is not being produced. A look at the Referral Log showed the EC's position on the issues, he added. Allen Grossman said the day's discussion is a prime example of an orphan defense and that the EC is in total non-compliance of Sunshine laws. He could not find where it was written that the official need not comply because the City Attorney could overrule a Task Force finding. He said the issue at hand was whether the respondent complied or not. The EC has not provided the kind of courtesy offered by

the Task Force, he added.

Chair Chu agreed.

6. 08038 Hearing on the status of the August 26, 2008, Order of Determination of Kin Tso against the Animal Welfare Commission.

Complainant Kin Tso said the case was about an Animal Welfare Commission meeting held June 10, 2008, regarding censoring speech, violation of the First Amendment and the abuse of power by Chairperson Sally Stephens. He said a group of people attended the meeting was told not to mention the private ASFSPCA group. The group found that was unacceptable because Section 42.1 of the Code does encourage the participation of various groups and entities.

Respondent Sally Stephens said she has a better understanding of the Sunshine Ordinance because she has watched the online training video, taken the self-test and had read the Good Government Guide with regards to meetings. She said she was compiling 10 to 15 questions related to real world situations and plans to invite a SOTF member to provide the answers. to help educate her commission. She noted that she was a Mac user and the Website video was in Windows format.

Member Pilpel offered his services and questioned both parties on agenda contents and meeting rules.

Member Craven said this was an unfortunate event and was pleased that the commission had taken it upon itself to educate themselves. She was hopefully it would not happen again.

Ms Stevens had nothing to rebut.

Mr Tso also did not.

Public Comment: Kimo Crossman said the department should have been given five days to respond in writing and the requirement to be included in all further ODs.

No motion made.

7. Discussion on the status of proposed Sunshine Ordinance amendments and next steps the Task Force will take regarding submitting amendments to the voters.

Member Craven volunteered to review the proposed amendments and look for inconsistencies and issues that have been overlooked.

Clerk to email document to Member Craven.

Public Comment: None

8. Administrator's Report. (discussion only) (attachment)

The Assistant Administrator made the report.

Public Comment: None

9. Public Comment on items not listed on the agenda; to be taken at 5:00 p.m. or as soon thereafter as possible. (no action) (no attachment)

Speakers: Allen Grossman said during the August CAC meeting when Member Craven was absent a matter was voted 2-1 with Mr Pilpel voting in the minority. The chair then asked DCA Llorente for advice and was told it was substantive and therefore it required a majority of the committee. With three members present and one voting against, the motion failed. Following that meeting he sent two emails to Chair Knee and Member Chu and pointed out the reasons why the ruling was incorrect. He did not email Member Pilpel and only copied DCA Llorente. Task Force by-laws do not address voting at the committee level and a committee vote is not binding on the Task Force, he said. Committee votes are recommendations and there was no need for absolute majority. There would not be a referral if there was an absence, a member recused, or if Member Pilpel was on the committee, he said. Kimo Crossman said the committee should not be fooled and confused by departments appearing at hearings with a stack of documents. Deference should be given to the complainant and allow them to work with the department. Departments have used the tactic to get the TF off its backs, he said. Mr Pilpel, he added, has been one of the worst aspects of the TF he has dealt with and doesn't know how the CAC member could live with himself. Chair Knee said personal attacks on members of the committee are inappropriate. Mr Crossman said Member Pilpel's votes are a discredit to the public and he was just voicing what various members of the TF had said to him in private. Member Pilpel, he said, is a perfect example of how open government can be destroyed from within. Ray Hartz said he would be attending every meeting till the middle of next year. He praised the committee for helping the public access records but said it could not also side with departments by postponing hearings because the city was not represented. He also said by looking at the Referral Log, the TF should announce that nothing will happen eventually because all referrals are not acted upon. He said the system was rigged and the TF a farce. Mr St Croix has made it very clear that the EC would not support the TF, he added.

10. Announcements, questions, and future agenda items from Committee members. (discussion only) (no attachment)

Member Craven requested a change in CAC meeting days because of a child care issue. She noted that CAC used to meet on Mondays but was moved it to Tuesdays because of former Task Force Chair Doug Comstock's schedule. Chair Knee noted that the meeting was moved to Monday because of a class Mr Comstock was attending. Mr Llorente said he also had a class on Monday.

Member Pilpel suggested agendizing it for next month.

Chair Knee agreed.

Public Comment: None

Member Pilpel said he strongly believes the public could react to the actions of members but it needed to be done respectfully. He also appreciated the chair for exercising his discretion.

Adjournment: The Meeting was adjourned at 6:07 p.m.
Next regular meeting: Wednesday, October 8, 2008.

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