

Date: October 13, 2009

Item No. 1

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Compliance and Amendments Sept. 8, 2009**
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Completed by: Chris Rustom

Date: Oct. 7, 2009

**\*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



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**SUNSHINE ORDINANCE TASK FORCE  
COMPLIANCE AND AMENDMENTS COMMITTEE  
DRAFT MEETING MINUTES  
Tuesday, September 8, 2009  
4:00 p.m., City Hall, Room 406**

**Committee Members:** Erica Craven-Green (Chair), Kristin Chu, Doyle Johnson, Richard Knee, Allyson Washburn

**Call to Order:** 4:00 p.m.

**Roll Call:** Present: Craven-Green, Chu, Knee  
Excused: Johnson, Washburn

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**Deputy City Attorney:** Ernie Llorente (excused)  
**Clerk:** Chris Rustom

**Agenda Changes:** 10 heard after 5

1. Approval of August 11, 2009, regular meeting minutes.  
Motion to approve August 11, 2009, regular meeting minutes. ( Knee / Chu )  
Public Comment: None  
On the motion:  
Ayes: Chu, Knee, Craven-Green  
Excused: Johnson, Washburn
2. 09032 Hearing on the status of the July 28, 2009, Order of Determination of Dominic Maionchi against the Department of Recreation and Park.  
Chair Craven-Green noted that documents provided at the meeting by Mr. Dominic Maionchi and Olive Gong of the Department of Recreation and Park showed that the documents were released after the Order of Determination was issued.  
Public Comment: None  
No further action
3. 09031 Hearing on the status of the August 25, 2009, Order of Determination of Kenneth Kinnard against the Human Rights Commission.

Chair Craven-Green noted that a document provided at the meeting by Melinda Kanios of the HRC indicates that she will be unable to attend the meeting and that the box that contains the information has been ordered from storage.

Motion to continue to next regular meeting.

Public Comment: None

On the motion:  
Without objection

4. 09038 Hearing on the status of the August 25, 2009, Order of Determination of Anmarie Mabbutt against the Department of Recreation and Park.

Complainant Anmarie Mabbutt said she submitted her reprioritized list to Olive Gong of the Department of Recreation and Park on August 27. The new list resembles the old list but with a few changes. She also said the department has not stated in writing that a particular meeting did not take place and therefore no minutes were available. She said she found that several documents that should have taken minutes to approve for release were held for several days before release. She then provided a status report on all of her Immediate Disclosure Requests. She also added that she has submitted more requests since the last Task Force meeting.

Respondent Olive Gong, Custodian of Records for the Department of Recreation and Park, said the department continues to respond and work with the complainant. She also said the deadlines cannot be met because of the voluminous and complicated nature of the complainant's requests.

Chair Craven-Green noted that the complainant has narrowed her requests in 64-66 and 73-79 to 2007 through 2009 to ease the burden on the department. She also noted that there was a good-faith effort on both sides to solve the issue and recommended both sides to continue to work together.

Chair Craven-Green added that the item would be taken off calendar but would be added to the next regular meeting's agenda if Ms. Mabbutt felt that there wasn't any substantive compliance.

Member Knee suggested Ms. Gong inquire within the department as to when the documents could be produced and to notify Ms. Mabbutt and the Task Force by email on the approximate date.

Public Comment: Peter Warfield said departments have to respond to requests the way the Ordinance mandates.

Ms Gong did not rebut. Ms Mabbutt said any member of the public can make an infinite amount of requests for documents if he or she so pleases. The misconduct she sees at the department is what motivates her, she added.

Chair Craven-Green restated that the item is now off calendar.

5. 09042 Hearing on the status of the August 25, 2009, Order of Determination of Peter

Warfield against the Public Library.

Chair Craven-Green mentioned that the Library had submitted a letter stating that they would not be appearing before the committee.

Respondent Peter Warfield said he has not heard from the library even though the September 4, 2009, letter from the Library to the Task Force states that the documents would be provided. He also said the letter suggests that the information he sought was being limited to the preliminary stage and does not include the plan as it progresses. Non-attendance is also a violation of Sec. 67.21, he added. He urged the committee to send the matter to the Task Force for referral to the District Attorney and the State Attorney-General under Sec 67.21 ( e ).

Member Knee suggested referring this item to the full Task Force without recommendation. If there is compliance, nothing happens, he said. But if Mr. Warfield does not get the documents by September 22, the Task Force can then forward it for enforcement.

Chair Craven-Green and Member Chu disagreed because of the indications that the Library would comply and because the Order of Determination did not specify whether the response timeline was five calendar days or five business days.

Members continued discussing the issue and finally no motion was made.

In rebuttal, Mr. Warfield said he was dismayed by the discussion because Sec. 67.21 (e) addresses the timeline issue. The Library's absences also show that it is not a cooperative department, he said. The Task Force referral was important because it shows what the department is up to. What the enforcement agencies do with the referral was not important to him, he added.

Public Comment: None

Matter continued to October 13, 2009, meeting.

6. 09044 Hearing on the status of the August 25, 2009, Order of Determination of Peter Warfield against the Board of Appeals.

Chair Craven-Green noted that the Board of Appeals had submitted a letter and had stated among other things that they would not be appearing at the hearing.

Complainant Peter Warfield said he was in receipt of the letter that Chair Craven-Green mentioned. Mr. Warfield read from the letter that was addressed to the Task Force and said he was not happy with the position the Board of Appeals had taken. He was also displeased that the Board of Appeals had not followed the Order of Determination to appear before the committee.

Member Knee said the failure of the Board of Appeals to send a representative as required by the Order of Determination was troubling.

He also said he agreed with the complainant that the respondent was in open defiance of the Order of Determination by deciding the type of information they will

redact or not redact.

Motion to refer the matter to the full Task Force for willful violation and the matter to be sent to the Ethics Commission for enforcement. ( Knee / )

No second. Motion fails.

Chair Craven-Green said she the letter was problematic because it did not address the issue of names because Mr. Warfield was not able to get the names of the supporters and opponents of the demolition plans. She was of the opinion that addresses, phone numbers and email addresses of businesses and organizations are releasable. Home phone numbers are not releasable while email addresses used to contact the government must be released, she said.

On home addresses, she quoted a case regarding a contraceptive ad campaign where the court ruled that the recipient could put the ads in the trash if he or she objected to the subject matter. She was of the opinion that the same applied to emails whereas if the recipient did not like receiving email from a particular person or organization, the sender's email could be blocked and trashed.

Chair Craven-Green wanted the Board of Appeals to appear before the committee and confirm that names, business information and private email addresses would be released.

Motion to continue matter to next regular and ask Ms. Cynthia Goldstein to appear before the next regular meeting. ( Craven-Green / Knee )

Member Chu said she preferred having an open conversation with the offending departments rather than sending the issue to an enforcement agency. She agreed with Chair Craven-Green's motion because sending matters to the Ethics Commission was ineffective.

In rebuttal, Mr. Warfield said there are many ways to prevent someone from contacting a person. He did not agree that home phone numbers could be redacted. He said regardless of the Supreme Court rulings, the Ordinance is very specific on what can and cannot be redacted.

On the motion:

Ayes: Chu, Knee, Craven-Green

Excused: Johnson, Washburn

7. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force.

Chair Craven-Green update members on the topic.

Public Comment: None

Matter continued to next regular meeting.

8. Continued discussion on the proposed amendments to the Sunshine Ordinance.

Chair Craven-Green thanked Member Knee for his additional work on the amendments. The committee then discussed his proposals. Mr. Peter Warfield, a member of the public, was also given the opportunity to comment on the amendments.

Member Knee suggest the insertion of certain language in new Sec. 67.39(c), to read: "... as well as provide a detailed description of the records search conducted, and the statutory or case law basis for any decision to withhold or redact the records requested, or to bar public attendance at and/or participation in the meeting(s), as applicable."

Members agreed

The specific date referenced in Sec. 67.14(d) regarding digital recording of meetings to read: "Within six months of the enactment of this provision..."

Members agreed

To replace "Board of Supervisors" with "the voters of the City and County of San Francisco in new Sec. 67.23(e) which the drafters of Prop. G (November, 1999) should have changed.

Members agreed.

Clarifying time window in new Sec. 67.33-2 [old 67.29-4 (b)] to read: "No person shall be deemed a lobbyist ... unless that person receives or becomes entitled to receive at least \$300 total compensation in any 30-day period for influencing legislative or administrative action on behalf of the City and County..."

Members agreed.

Members decided not to reword new Sec. 67.42(a) (iv) as proposed by Member Knee.

Members also decided not to change language in new Sec. 67.43(f) [old 67.35(c)] regarding the recovery of "reasonable attorneys' fees and costs."

Other changes agreed upon were:

Pg 46, Ln 12: "~~Sunshine Commission for Open Government~~"

Pg 51, Ln 3: Should the provision say "shall" instead of "should"?

Pg 57, Ln 16: "body\_is"

Pg 67, Ln 6: "San Francisco residents members of the public" should be "San Francisco residents members of the public".

Pg 72, Ln 8: "...cause\_Each"

Pg 108, Ln 13: "Each Department's and policy bodies's"

Pg 113, Ln 16: "maintaineded and preserveded"

Matter continued to next regular meeting.

9. Administrator's Report.

Mr. Rustom made the report.

Public Comment: None

10. Public Comment on items not listed on the agenda.

Public Comment: Peter Warfield said the issues that come before the Task Force and its committees are very important to the complainants. In the case of the Library it is about the life and death of the city's assets and therefore he is eagerly seeking prompt decisions from the Task Force.

11. Announcements, questions, and future agenda items from Committee members.

Public Comment: None

**Adjournment**

**The meeting adjourned at 6:20 p.m.**

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

