

Date: Nov. 10, 2009

Item No. 5
File No. 09051

SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
AGENDA PACKET CONTENTS LIST*

- Marilyn Mollinedo v Zoological Society**
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Completed by: Chris Rustom

Date: Nov. 5, 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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**ORDER OF DETERMINATION
November 3, 2009**

DATE THE DECISION ISSUED

October 27, 2009

MARILYN MOLLINEDO V. ZOOLOGICAL SOCIETY (09051)

FACTS OF THE CASE

Complainant Marilyn Mollinedo alleges that on or about July 27, 2009 she submitted a public records request to the Zoological Society ("ZS") for a number of categories of records. Ms. Mollinedo further alleges that the ZS refused to provide documents in response to her request for agendas and minutes of the Zoological Society's Executive Board meetings for the period of September 1, 2008 until July 27, 2009. Complainant further alleges that the ZS, while admitting that its lease and management agreement with the City requires compliance with some aspects of public records laws, claims that their lease does not require production of the agendas and minutes of their Executive Boards meetings, and the ZS therefore is not legally required to produce them. Ms. Mollinedo further alleges that the ZS previously has publicly committed to the Task Force to comply with all aspects of public records and meeting laws, but has not lived up to that commitment.

COMPLAINT FILED

On August 14, 2009, Ms. Mollinedo filed a complaint against the Zoological Society alleging violations of public records laws for failure to provide agendas and minutes of the Executive Committee meetings.

HEARING ON THE COMPLAINT

On October 27, 2009, Complainant Marilyn Mollinedo appeared before the Task Force and presented her claim. Respondent Agency was represented by Edward Pool, a member of the Zoological Society's Board of Directors.

Ms. Mollinedo told the Task Force that, under the Society's bylaws, the Executive

Committee is authorized to act as the Board of Directors ("Board") when the Board does not have a meeting scheduled and that it otherwise has the same powers as the Board. She therefore argued that the Executive Committee must be considered a "policy body" under the Sunshine Ordinance. She said if the Board of Directors minutes are public records, so must the Executive Committee's minutes. The lease agreement states that the Society will create minutes for the Executive Committee and in turn make such minutes available as a public record. She added the Society receives more than \$4 million annually from the City and that they should visit the Internal Revenue rules regarding non-profits because they stand to lose their status if they refuse to create minutes of their meetings in response to the determination of the Task Force in response to her complaint. Ms. Mollinedo also noted that the ZS had publicly agreed that it was bound by and would comply with the requirements of the Sunshine Ordinance.

Mr. Pool, for his part, said that the Society is in full agreement with the lease agreement. The Society believes that the lease agreement requires minutes to be made public only with regard to the Board and the Joint Zoo Committee. The Joint Zoo Committee has open meetings which are noticed to the public. He said the Society has one open meeting a year and it is also noticed to the public. All documents related to the joint committee are available to the public, he added. Further, the Society believes that they are not required to comply with any provisions of the Sunshine Ordinance because their original lease was signed prior to enactment of that ordinance. The Society's position is that finding them in violation of the Sunshine Ordinance would amount to an illegal amendment of their lease and make the City in violation of that agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force considered the parties' arguments and further considered the actual language of the lease. The Society's lease includes the following provision:

16.2 Public Access to Records and Information. [The Society] shall provide public access to information concerning the operation of the Zoo **to the same extent that such information would have been available to the public pursuant to local ordinances if the Department [of Recreation and Parks] had continued to operate the Zoo in the same manner as it did prior to the date of this Agreement.** In addition, the Zoo shall comply with all state and federal laws, rules and regulations that govern access by the public to records and information, including without limitation the California Public Records Act. . . . **Without limiting the forgoing,** the Zoo further agrees that (a) minutes shall be taken at each meeting of its Board of Directors, and that they minutes of those meetings shall be considered public documents available for public inspection in accordance with the Public Records Act, and (b) all information house

or cared for at the Zoo shall be deemed public information subject to public inspection under the Public Records Act. [emphasis added]

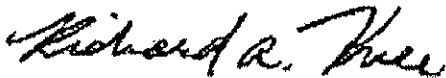
Based on the testimony and evidence presented the Task Force finds that the Society has agreed through its lease to be bound by local and state public records laws in effect at the time that any complaint against it is filed. The Task Force further finds that the Society itself has previously taken the very same position in hearings before the task force on previous complaints against it. Under the lease, all "information concerning the operation of the Zoo" maintained by the Society therefore is a public record to the same extent it would be if the Department were now operating the Zoo. Based on these preliminary findings, the Task Force finds that the agendas and minutes of the meetings of the Executive Board of the Society must be released to the public because they are public records under the terms of the lease.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.21 of the Sunshine Ordinance for failing to produce requested agendas and minutes which pursuant to the Zoological Society's lease agreement are public records that must be released. This order is consistent not only with the lease terms, and prior Orders of Determination of the Task Force, but also with past admissions of the Zoological Society that they are required to comply with the Sunshine Ordinance requirements with respect to public records.

The agency shall release the agendas and minutes requested within five business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday November 10, 2009.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 27, 2009, by the following vote: (Craven-Green / Knoebber)
Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee
Excused: Manneh, Chan, Goldman, Williams



Richard Knee, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Marilyn Mollinedo complaint
Edward Pool, respondent