

Date: January 22, 2008

Item No. 11

File No. .

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: 01-09-08 Compliance and Amendments Committee**
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Completed by: Chris Rustom

Date: January 16, 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.



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

Wednesday, January 9, 2008  
4:00 p.m., City Hall, Room 406

**Committee Members:** Richard Knee, Chair; Doug Comstock; Erica Craven, David Pilpel  
Bruce Wolfe, Harrison Sheppard

**Call to Order** 4:04 P.M.  
**Roll Call** **Present:** Knee, Comstock, Craven, Pilpel, Sheppard (out at 6:15)  
**Excused:** Wolfe

**Agenda Changes:** Item #6 was heard after item #3

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

1. Approval of minutes of December 12, 2007.

Public Comment: None

Motion to approve minutes of December 12, 2007, as amended. ( Comstock / Craven )

Ayes: Knee, Comstock, Craven, Pilpel  
Excused: Wolfe

Member Craven said that she will draft, for circulation to the members, a letter for submittal to the SF Fire Department that conveys the Task Forces concerns regarding calendars and the redaction of calendars, and to provide relevant case law.

Member Comstock asked that a copy be provided to he and the Administrator for inclusion in the Annual Report.

2. 07075 Hearing on the status of the November 27, 2007, Order of Determination of Laura Carroll against the Mayor's Office of Housing (MOH).

Speakers: Laura Carroll, Complainant, said that the MOH continues to violate Sections 67.26, and 67.27. She said that there are still outstanding documents. Dee Modglin, in support of the complainant, said that she received documents form MOH that were not provided to Ms. Carroll

Douglas Shoemaker, MOH Representative, said that all responsive documents that was requested by Ms. Carroll have been provided to her.

Ms. Carroll, in rebuttal, said that she did not receive the list of documents that were withheld as privilege.

Public Comment: Kimo Crossman recommended that the matter be continued because the MOH did not identify the records withheld.

Member Pilpel disclosed that he spoke with Ms. Carroll regarding obtaining an opinion from the Supervisor of Records, and can be fair and impartial

Ms. Carroll, in response to Member Pilpel, said that the outstanding requests are 1) list of properties by first purchase, 2) documents regarding proposed changes to codes, and 3) policy and procedures manual and capital improvement policy.

Douglas Shoemaker, in response to Member Pilpel, said that he does not have a list of properties by first purchase, and will check on the other two request mention by Ms. Carroll.

Member Sheppard said that the MOH has been forthright regarding the status of records.

Member Craven said that she disapproves of the City Attorney's policy advising the departments that oral advice will be provided because written communications are subject to public records laws.

Motion to continue. (Comstock / Pilpel) Without objection.

3. 07080a Continued hearing on the status of the November 27, 2007, Order of Determination of Dan Boreen against the Fire Department.

Speakers: Dan Boreen, Complainant, said that the documents have not been provided and asked for a ruling for willful failure to copy. Rhab Boughn, SFFD Representative, said that the pay type scales policy is in draft form and still under review. He said that the department does not have a standing policy.

Mr. Boreen in Rebuttal said that the Task Force's ruling was that the information is to be disclosed.

Public Comment: Kimo Crossman recommended that a letter be sent to the city attorney who advised the department instructing them to appear at the next meeting.

Member Craven said that she is inclined to continue the matter to allow time for the department to establish a policy. She said that she doesn't see a willful violation. Member Sheppard said that he is concerned about the absence of a Citywide policy. He said that the Task Force should find out who in the City Attorney's office is drafting the policy.

Member Pilpel urged the parties to attempt to resolve the matter regarding the pay type issue.

Member Comstock informed Mr. Boreen that he can partition the Supervisor of Records for an opinion as to rather the pay types are public record as per Section 67.21 (d).

Chair Knee said that consideration should the balancing test as per Prop 59.

Motion to continue. (Comstock / Craven) Without objection.

4. Possible amendments to Sections 67.33, and 67.35 to 67A.1 of the Sunshine Ordinance and subsequent sections as time permits. (discussion and possible action item) (attachment)

Sec 67.33 Department Head Declaration.

Sec 67.35 Enforcement Provisions.

Sec 67.36 Sunshine Ordinance Supercedes Other Local Laws.

Sec 67.37 Severability.

Sec 67A.1 Prohibiting the Use of Cell Phones, Pagers and Similar Sound-Producing Electrical Devices At and During Public Meetings.

Member Pilpel said that he is stilling working on language for Section 67.33 and that the two issues are 1) who files the declaration, and 2) who is subject to the training.

Chair Knee, by consensus of the committee, asked Member Pilpel to provide proposed language in writing for review and discussion by the committee.

Public Comment re Section 67.33: Kimo urged that a written proposal be provided for the public review. Dan Boreen suggested that there be two layers of training. He said that it should be clear who besides the Department Head is required to be trained.

Member Comstock introduced possible language for Section 67.35. He said that he wanted to consolidate all enforcement provisions.

Public Comment re Section 67.35: Kimo Crossman said that there should be at least two additional meetings to discuss this matter. He suggested that Allen Grossman and Terry Franke be consulted. He said that a reference to Government Code Section 1222 is missing; that there should be fines for destruction of records. Dan Boreen suggested that additional meetings be scheduled for discussion. He urged members to review AA343 and AA344 to consider charter language.

Member Sheppard said that he is concerned about due process requirements and suggested that the City Attorney review the language and provide an analysis. Member Craven said that an analysis is needed as to whether the Task Force can enforce such a provision, and whether a fine, criminal or civil penalties can be directed toward an individual.

Member Pilpel said that he doesn't believe that an analysis is needed at this point. He received clarification that section (a) of Member Comstock's proposed language, referred to those who are ignorantly violating the law, and section (b) applies to Order of Determinations that are not complied with.

Member Craven said that enforcement should provide more guidance and direction.

Public Comment re Section 67.36: Kimo Crossman suggested that the first sentence be change to say "other local laws and the charter."

Public Comment re Section 67.37: None

Public Comment re Section 67A.1: Kimo Crossman urged the Committee to leave the language as is.

Members Craven and Pilpel said that this Section is not part of the Sunshine Ordinance, and was added by the Board of Supervisors in 2000. They suggested that the language remain as is.

Motion to add Section 67A.1 into the Sunshine Ordinance as new Section 67.14A, (Comstock) Motion failed for lack of a second.

Sections 67.33, 67.35 through 67.37 and 67A.1 were discussed and the Administrator recorded recommended amendments.

Chair Knee asked the Administrator to agendaize all Sections in Article 4 for discussion at the February 13, 2008, meeting.

5. Administrator's report.

The Administrator made the report.

Public Comment: Kimo Crossman asked the Task Force to agendaize a discussion regarding the duties of the Administrator to make certain that things are improved.

Doug Comstock said that the discussion regarding whether to retain the Complaint committee will be held in February

6. Public comment on items not listed on the agenda.

Public Speakers: Kimo Crossman asked the CAC to agendaize Section 67.24 (a)(2) for discussion. He said that he is concerned that there are no options for the destruction of records.

Dan Boreen, asked for the procedures to recalendar tabled items (07080b and 07080c)

Member Craven explained the procedure. She said that the CAC will reschedule the matter after it receives the policy from the SF Fire Department as requested.

7. Announcements, questions and future agenda items from CAC members.

David Pilpel confirmed that the Supervisor of records report be heard in February. He suggested that there be a discussion at the full Task Force regarding staff duties. He said that he doesn't know if there is a document that lays out in general terms what Mr. Darby and Mr. Rustom does.

Speakers: None

Adjournment: The meeting was adjourned at 6:56 p.m.

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

