

Date: January 22, 2008

Item No. 3

File No. 07083

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: John Darmanin v. Fire Commission**
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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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest_llorente@ci.sf.ca.us

MEMORANDUM

November 16, 2007

JOHN DARMANIN v. SAN FRANCISCO FIRE COMMISSION (07083)

Background Information

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

John Darmanin regularly attends the San Francisco Fire Commission ("Commission") hearings. On October 11, 2007, the Commission heard item number 7, Adoption of Annual Statement of Purpose. A motion to adopt the annual statement of purpose was made and seconded. Public Comment was then invited. After public comment was closed, the Commission had discussions and voted on the motion. The motion failed. A new motion was made and more Commission discussion ensued. John Darmanin requested to be allowed to provide public comment on the new motion but the Chair denied the request. John Darmanin then stated that the new motion to accept the Annual Statement of Purpose actually amended statement of purpose and necessitated a new noticing of a new agenda item.

COMPLAINANT FILES COMPLAINT:

On October 17, 2007, John Darmanin filed a complaint against Commission alleging violations sections 67.15 (Public testimony) and 67.7(a) (agenda requirements of regular meetings) of the Sunshine Ordinance.

THE RESPONDENT AGENCY RESPONDS:

At the Complaint Committee hearing on November 13, 2007, San Francisco Fire Commission representative, Tania Bauer, stated that although there was a continued discussion regarding the Annual Statement of Purpose for FY 07-08, that no changes were made to it.

APPLICABLE STATUTORY SECTIONS:

Sunshine Ordinance, Chapter 67 of the Administrative Code

1. 67.15(a) Public Testimony

Memorandum

2. 67.15(b) Public Testimony
3. 67.15(c) Public Testimony

These sections are attached

APPLICABLE CASE LAW:

The Court of Appeals case of *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461 held that under the Brown Act and the Sunshine Ordinance, the requirement that public comment be allowed "before or during the consideration" of any item on the agenda does not require public comment on each procedural step of each agenda item, rather, public comment need be provided only once.

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- The Commission considered a motion to adopt the annual statement of purpose and provided public comment.
- After the motion failed, a new motion was made and Darmanin made a request that he provide public comment. As to that request, the Chair denied it stating that a public comment period had already been provided to the public.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether additional public comment is required when the Commission takes a vote on an agenda item and the motion fails but a new motion is introduced.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- None

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

Memorandum

- **What sections of the Sunshine Ordinance, Brown Act, and/or Public Records Act were violated?**
- **Did the Department violate Section 67.15 (b) and (c)?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**
- **Does the decision of Chaffee v. San Francisco Library Commission apply to the facts of this case?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

REFERENCE

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

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

Memorandum

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 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.



SOTF/SOTF/SFGOV
11/20/2007 11:50 AM

To fdwatchdog@aol.com, Tania Bauer,
cc
bcc
Subject Re: Continuance Requested: #07083_John Darmanin v. Fire
Commission

This is to confirm that by agreement of both parties the above titled complaint has been continued to the January 22, 2008, meeting of the Sunshine Ordinance Task Force.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307
fdwatchdog@aol.com



fdwatchdog@aol.com
11/20/2007 11:08 AM

To sotf@sfgov.org
cc
Subject Re: Continuance Requested: #07083_John Darmanin v. Fire
Commission

I will agree to a continuance to a date after January 1, 2008. My schedule for December is booked solid.

Let me know if this is satisfactory, otherwise we will need to proceed as scheduled for November 27, 2007.

Also, if we reschedule to a date after January 2008, please re-issue a new deadline to submit additional documents/evidence to be considered based on the new hearing date.

Thanks Frank.

John Darmanin



SOTF/SOTF/SFGOV
11/20/2007 11:01 AM

To fdwatchdog@aol.com
cc tania.bauer@sfgov.org
Subject Continuance Requested: #07083_John Darmanin v. Fire
Commission

Mr. Darmanin,

The Fire Commission has requested a continuance of the above titled complaint. Do you agree to a continuance?

Frank Darby, Administrator

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307



Tania Bauer/SFFD/SFGOV

11/15/2007 11:43 AM

To Frank Darby/BOS/SFGOV@SFGOV

cc

Subject SOTF November 27th Meeting

Hi, Frank:

I just wanted to let you know that I will be on vacation from 11/19 through 12/4. I am requesting that the Task Force give me an extension of time for the matter that is before them regarding the Fire Commission and the complaint by John Darmanin.

Thank you for your attention to this matter.

Tania Bauer
Fire Commission Secretary



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

November 5, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: John Darmanin v. San Francisco Fire Commission (07083)

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of John Darmanin against the San Francisco Fire Commission.

BACKGROUND

John Darmanin regularly attends the San Francisco Fire Commission ("Commission") hearings. On October 11, 2007, the Commission heard item number 7, Adoption of Annual Statement of Purpose. A motion to adopt the annual statement of purpose was made and seconded. Public Comment was then invited. After public comment was closed, the Commission had discussions and voted on the motion. The motion failed. A new motion was made and more Commission discussion ensued. John Darmanin requested to be allowed to provide public comment on the new motion but the Chair denied the request. John Darmanin then stated that the new motion to accept the Annual Statement of Purpose actually amended statement of purpose and necessitated a new noticing of a new agenda item.

COMPLAINT

On October 17, 2007, John Darmanin filed a complaint against Commission alleging violations sections 67.15 (Public testimony) and 67.7(a) (agenda requirements of regular meetings) of the Sunshine Ordinance.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under (67.15 and 67.7(a) of the Ordinance. However, the issue regarding public comment has been decided by the Court of Appeals case of *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461.

Letter to the Complaint Committee

Page 2

November 5, 2007

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.15 generally covers Public Comment during Policy Body hearings and 67.7(a) deals with agenda requirements at regular Policy Body meeting.

In this case, John Darmanin's allegations about the denial of further public comment provides the Task Force jurisdiction to hear this complaint. However the issues raised in this part of the complaint has been decided by the Court of Appeals case of *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461. The Court in the *Chaffee* case decided that only one opportunity for public comment need be extended for each agenda item. A copy of the case is attached for your review. The other issue about the need to further agenda an item that has been changed during a public hearing is within the jurisdiction of the Task Force and the Task Force will have to determine if the Commission violated the Ordinance by not continuing the agenda item and issuing a new notice.

Briefs and Other Related Documents

Court of Appeal, First District, Division 2,
California.

James CHAFFEE, Plaintiff and Appellant,
v.

SAN FRANCISCO LIBRARY COMMISSION et
al., Defendants and Respondents.
No. A102550.

Jan. 29, 2004.

Background: An individual filed a complaint seeking injunctive and declaratory relief against a city library commission and its commissioners, alleging a violation of state and local public meeting statutes. The Superior Court, City and County of San Francisco, No. 408077, David A. Garcia, J., granted summary judgment for the commission and commissioners, and the individual appealed.

Holding: The Court of Appeal, Ruvolo, J., held that: library commission was not required by state or local public meeting statutes, in continuing a regularly scheduled public meeting for a second session to consider a single agenda, to provide a general public comment period at each session of the continued public meeting.

Affirmed.

West Headnotes

[1] Municipal Corporations ⇨92
268k92

A city library commission that continued a regularly scheduled public meeting for a second session to consider a single agenda was not required, under either the Ralph M. Brown Act or the city's public meeting statute, to provide a general public comment period at each session of the continued public meeting; plain meaning of both statutes, when considered in their entirety, indicated that every "agenda," rather than every session, required general public comment, and the library commission provided for general public comment during the second day of its two-day meeting held to consider a single agenda, thereby fully complying with both public meeting statutes. West's Ann.Cal.Gov.Code § 54950 et seq.

See 9 Witkin, *Cal. Procedure* (4th ed. 1997) *Administrative Proceedings*, § 15 et seq.; *Cal. Jur. 3d, Administrative Law*, § 104 et seq.

[2] Appeal and Error ⇨863
30k863

On appeal from a grant of summary judgment, the appellate court exercises its independent judgment in determining whether there are triable issues of material fact and whether the moving party is entitled to judgment as a matter of law.

[3] Statutes ⇨181(1)
361k181(1)

[3] Statutes ⇨181(2)
361k181(2)

[3] Statutes ⇨184
361k184

In construing a statute, courts must follow the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.

[4] Statutes ⇨223.1
361k223.1

Courts must read every statute with reference to the entire scheme of law of which it is part, so that the whole may be harmonized and retain effectiveness.

[5] Administrative Law and Procedure ⇨124
15Ak124

The Ralph M. Brown Act is intended to ensure the public's right to attend public agency meetings to facilitate public participation in all phases of local government decision-making, and to curb misuse of the democratic process by secret legislation of public bodies. West's Ann.Cal.Gov.Code § 54950 et seq.
**337 *464 Robert J. Moskowitz, for Appellant.

Dennis J. Herrera, City Attorney, Wayne K. Snodgrass, Rafal Ofierski, K. Scott Dickey, Deputy City Attorneys, for Respondents.

RUVOLO, J.

I.
INTRODUCTION

Appellant James Chaffee appeals from a judgment granting respondents' motion for summary judgment. We disagree with appellant that the Ralph M. Brown Act (Gov.Code, § 54950 et seq.) [FN1] (the Brown Act) and the San Francisco Sunshine Ordinance **338 of 1999 (S.F.Admin.Code, ch. 67)

(Cite as: 115 Cal.App.4th 461, *464, 9 Cal.Rptr.3d 336, **338)

(the Sunshine Ordinance) require that a general public comment [FN2] period be provided at *each* session of a continued public meeting held to consider a single published agenda. Accordingly, we affirm.

FN1. Unless otherwise indicated, further statutory references are to the Government Code.

FN2. For simplicity, we will refer to the type of additional public comment at issue in this appeal as "general public comment."

II.

FACTS AND PROCEDURAL HISTORY

On May 16, 2002, the San Francisco Library Commission (Library Commission) held its regularly scheduled meeting. [FN3] Commissioners Bautista, Chin, Higuera, and Steiman were present. The agenda for the May 16th meeting was posted on May 12, 2002, and included the following items: (1) Approval of the April 18, 2002 Minutes (Action); (2) Bond Program Manager's Report (Discussion); (3) Art Enrichment Program (Action); (4) Design Excellence Program (Discussion); (5) Site Acquisition: Portola Branch (Action); (6) Library 2002/2003 Budget Update (Action); (7) Public Comment (Discussion); and (8) Adjournment (Action). The agenda also noted that public comment would be taken before or during the Library Commission's consideration of each agenda item. During the May 16th session, President *465 Higuera announced that due to the potential loss of quorum by 5:30 p.m. that day, he would reorder the taking up of agenda items. [FN4] The commission announced the three agenda items to be considered that day (agenda items (1), (3), and (5)), and proceeded to hear public comment on each item. President Higuera then announced that, as the commission was losing its quorum, the remaining business of the meeting would be continued to Tuesday, May 21, 2002. The meeting was adjourned at 5:27 p.m.

FN3. Respondents' request for judicial notice of meeting minutes, which was taken under submission pursuant to this court's order dated October 1, 2003, is hereby granted.

FN4. President Higuera reordered the taking of agenda items as follows: (2) was changed to (4), (3) to (2), (4) to (5), (5) to (3), followed by items (6) through (8) in the original posted order.

On May 17, 2002, the Library Commission issued the notice and the agenda for the continued portion of the May 16th meeting, and posted both at the door of the main library's Koret Auditorium, where the second session of the continued meeting would be held. The agenda for the continued May 16th meeting only listed the remaining items not heard at the first and in the new order as announced by President Higuera on May 16th: (1) Bond Program Manager's Report (Discussion); (2) Design Excellence Program (Discussion); (3) Library 2002/2003 Budget Update (Action); (4) Public Comment (Discussion); and (5) Adjournment (Action). Also on May 17, 2002, appellant filed a complaint seeking injunctive and declaratory relief against the commission and commissioners Higuera, Steiman, Chin, and Bautista alleging that the parties violated the Brown Act and the Sunshine Ordinance. Appellant sought a permanent injunction requiring the Library Commission and its members to provide for public comment at all meetings, and declaratory relief stating that the Brown Act and the Sunshine Ordinance require general public comment at all regular meetings. Appellant also filed an ex parte application for a temporary restraining order on May 20, 2002, which the trial court denied.

At the continued meeting on Tuesday, May 21, 2002, the same commissioners present at the May 16th meeting heard the **339 remaining agenda items. At this session public comment was allowed on each remaining agenda item, and a general public comment period was also held at the conclusion of meeting, but before adjournment.

Appellant filed a motion for preliminary injunction on July 26, 2002, which the trial court denied. Thereafter, respondents filed a summary judgment motion, which was granted. This timely appeal followed.

*466 III.

DISCUSSION

[1] Appellant argues that the Brown Act and the Sunshine Ordinance require that members of the public be given an opportunity to comment generally on matters within the jurisdiction of a legislative body at *each session* of that body's public meetings, in addition to being allowed comment on specific agenda items. Hence, appellant claims respondents violated both statutes when the Library Commission adjourned and continued its May 16, 2002 meeting without giving him an opportunity to make general public comment. This is so, he argues,

(Cite as: 115 Cal.App.4th 461, *466, 9 Cal.Rptr.3d 336, **339)

notwithstanding that he was allowed to make comments on every agenda item taken up at the May 16th meeting, in addition to being allowed to comment on the remaining agenda items, and to make general public comments, at the continued May 21st meeting session.

[2] On appeal from a grant of summary judgment, we exercise our independent judgment in determining whether there are triable issues of material fact and whether the moving party is entitled to judgment as a matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-335, 100 Cal.Rptr.2d 352, 8 P.3d 1089.) Summary judgment is properly granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843, 107 Cal.Rptr.2d 841, 24 P.3d 493 (*Aguilar*).) In moving for summary judgment, a defendant may show that one or more elements of the cause of action cannot be established by the plaintiff or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (o)(2); *Aguilar, supra*, 25 Cal.4th at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493.) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (*Ibid.*) The plaintiff may not rely upon the mere allegations or denials of his pleadings to show that a triable issue of material fact exists but instead, must set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto. (*Ibid.*)

The moving party must support the motion with evidence including affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice must or may be taken. (Code Civ. Proc., § 437c, subd. (b); *Aguilar, supra*, 25 Cal.4th at p. 843, 107 Cal.Rptr.2d 841, 24 P.3d 493.) Similarly, any adverse party may oppose the motion and "where appropriate," may present evidence including affidavits, declarations, admissions to interrogatories, depositions, and matters of which judicial notice must or may be taken. (*Ibid.*) In ruling on the motion, the court must consider all of the *467 evidence and all of the inferences reasonably drawn therefrom (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 843, 107 Cal.Rptr.2d 841, 24 P.3d 493), and view

such evidence and inferences in the light most favorable to **340 the opposing party. (*Aguilar, supra*, at p. 843, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

Appellant makes no reference in his brief to any material disputed issue of fact in this case. [FN5] Therefore, our independent review of the summary judgment turns solely on an interpretation of the law. More specifically, we are called upon to interpret sections 54950 et seq. and San Francisco Administrative Code chapter 67 as applied to the May 16th and May 21st Library Commission meetings, and determine whether general public comment is required at both the original and the continued session of those assemblies.

FN5. Although appellant disputes whether the Library Commission's choice of the order with which to proceed with agenda items at the May 16th meeting was not really the "most pressing" in appellant's statement of disputed facts, we find that this "disputed" fact is not material to the cause of action for relief because neither the Brown Act nor the Sunshine Ordinance requires that agenda items be put in any specific order. (See § 54950 et seq.; see also S.F. Admin. Code, ch. 67.) Further, appellant's only other "disputed" fact relevant to this appeal is that "[t]he adjournment of defendant library commission on May 16, 2002 was not unexpected or due to any emergency or situation beyond the commission's control." Again, this point is not material because there is no requirement in either the Brown Act or the Sunshine Ordinance necessitating such conditions for adjournment and continuance. (See § 54950 et seq.; see also S.F. Admin. Code, ch. 67.)

Section 54954.3, subdivision (a) provides in pertinent part, "[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public ... that is within the subject matter jurisdiction of the legislative body...." Similarly, San Francisco Administrative Code section 67.15, subdivision (a) provides, "[e]very 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...."

Appellant urges us to interpret these laws to mean that there must be general public comment allowed at every session when a public body meets, in

(Cite as: 115 Cal.App.4th 461, *467, 9 Cal.Rptr.3d 336, **340)

addition to allowing comment on specific agenda items. Appellant argues that because a continued meeting is a separate and regular meeting under sections 54952.2, subdivision (a), and 54955, and respondents failed to provide for a general public comment period at both "meetings," respondents violated both the Brown Act and the Sunshine Ordinance. [FN6] We disagree.

FN6. Although appellant contends that "the actions of defendants violated the law by refusing to allow public comment that is mandated by both ... the 'Brown Act' ... and ... the 'Sunshine Ordinance,'" appellant fails to provide us with any argument relating to *how* respondents have violated the Sunshine Ordinance. Nevertheless, because of the textual similarity of the two public meeting statutes, we will also address any potential Sunshine Ordinance violations.

[3][4] *468 In determining the meaning of a statute, we are guided by settled principles of statutory interpretation. "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898, 276 Cal.Rptr. 918, 802 P.2d 420 (*Pieters*)). To determine this intent, we begin by examining the words of the statute. (*Ibid.*) We must follow the construction that "comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246, 40 Cal.Rptr.**341 2d 903, 893 P.2d 1224.) Further, we must read every statute, "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*Pieters, supra*, 52 Cal.3d at p. 899, 276 Cal.Rptr. 918, 802 P.2d 420, quoting *Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 814, 114 Cal.Rptr. 577, 523 P.2d 617.)

Here, the words of both public meeting statutes are clear: "[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address a legislative body on any item of interest to the public ... that is within the subject matter jurisdiction of the legislative body" (§ 54954.3, subd. (a), italics added; see S.F. Admin. Code, § 67.15, subd. (a).) The Library Commission provided for general public comment during the second day of its two-day meeting held to consider a

single agenda. Thus, the commission fully complied with the plain meaning requirements of both section 54954.3 and San Francisco Administrative Code section 67.15.

If we were to accept appellant's interpretation of the statute requiring general public comment at every session or "meeting" of a public body, and not for every "agenda," we would render the Legislature's use of the word "agenda" mere surplusage. (See *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 330, 87 Cal.Rptr.2d 423, 981 P.2d 52 ["[S]ignificance must be given to every word in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage".])

[5] In addition, construing section 54954.3 and San Francisco Administrative Code section 67.15 to require a single general public comment period where a public body meets in multiple sessions to consider its agenda is fully consonant with the plain meaning of the applicable open government statutes and avoids absurd results. The Brown Act's statement of intent provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the *469 agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950.) The Brown Act is intended to ensure the public's right to attend public agency meetings to facilitate public participation in all phases of local government decisionmaking, and to curb misuse of the democratic process by secret legislation of public bodies. (*International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293, 81 Cal.Rptr.2d 456.)

When the Brown Act and the Sunshine Ordinance are read in their entirety, we conclude that the lawmaking bodies clearly contemplated circumstances in which continuances and multiple sessions of meetings to consider a published agenda would be required, and thus they mandated that a

single general public comment period be provided *per agenda*, in addition to public comment on each agenda item as it is taken up by the body. For example, section 54955.1 allows for any hearing by a legislative body of a local agency to be continued in the manner set forth in section 54955. Section 54955 provides that less than a quorum may adjourn from time **342 to time and a copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. In addition, section 54954.2, subdivision (b)(3) mandates that action on continued agenda items must occur within five calendar days of the meeting at which the continuance is called. Similarly, San Francisco Administrative Code section 67.15, subdivision (e) states that continuances shall be announced at beginning of meeting, or soon thereafter, while section 67.7, subdivision (e)(2) prevents policy bodies from taking action on items not appearing on posted agenda if less than two-thirds of members are present.

The Library Commission fully adhered to the language of these enactments and the Legislature's intent embedded in the statutes by hearing public comment on every agenda item taken up at the May 16th meeting. When the commission then lost its quorum, and in accordance with sections 54955, 54955.1, and 54954.2, subdivision (b)(3) and San Francisco Administrative Code sections 67.15, subdivision (e), and 67.7, subdivision (e)(2), the meeting on the May 16th agenda was continued for a period not to exceed the prescribed five-day limit with notice of the continued hearing time and date posted on the door of the meeting place within 24 hours. Further, the commission provided public comment on every remaining agenda item at the session held on May 21st, including providing for general public comment. Thus, the Library

Commission did all that was required under both the plain *470 meaning of pertinent provisions of the Brown Act and the Sunshine Ordinance, and in accordance with the Legislature's purpose in facilitating and providing for public participation in legislative decisionmaking.

Therefore, we conclude that respondents were entitled to judgment as a matter of law.

IV. DISPOSITION

The judgment is affirmed.

We concur: HAERLE, Acting P.J., and LAMBDEN, J.

115 Cal.App.4th 461, 9 Cal.Rptr.3d 336, 4 Cal. Daily Op. Serv. 889, 2004 Daily Journal D.A.R. 1125

Briefs and Other Related Documents (Back to top)

. 2003 WL 23153415T2 (Appellate Brief) Appellant's Reply Brief (Sep. 16, 2003)Original Image of this Document (PDF)

. 2003 WL 23153414T2 (Appellate Brief) Respondents' Brief (Aug. 27, 2003)Original Image of this Document (PDF)

. 2003 WL 23153413T2 (Appellate Brief) Appellant's Opening Brief (Jul. 09, 2003)Original Image of this Document (PDF)

A102550 (Docket)
(May. 05, 2003)

END OF DOCUMENT



<complaints@sfgov.org>
10/17/2007 11:36 AM

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

Submitted on: 10/17/2007 11:36:23 AM

dept: Fire Commission

contacted: Commissioner Paul Conroy

violation: Failure to provide public comment on action item

meeting: SF Fire Commission Regular Meeting

mtg_date: October 11, 2007

section: Sec. 67.15. (a) & (b) Public Testimony. AND Sec 67.7(a)
AGENDA REQUIREMENTS; REGULAR MEETINGS.

description: The alleged violation is as follows: Agenda item no. 7 (Action to be taken: Adoption of Annual Statement of Purpose) was heard at the SF Fire Commission Regular meeting held on October 11, 2007.

A motion to adopt the annual statement of purpose was made and seconded. Then public comment was open. I made a public comment and then public comment was closed. Then, significant discussion ensued AFTER public comment was closed. Then there was a vote and the motion failed.

Another NEW motion significantly changing the content of the original motion was made and there was lengthy discussion by the commissioners. Then a vote was called on the NEW motion. I asked to make a public comment on the NEW motion and President Conroy denied my request. President of the Fire Commission Paul Conroy stated that only 1 public comment opportunity is required per agenda item. This is not the first time that the SF Fire Commission has manipulated their discussion and motion process to restrict and prevent members of the public from giving public testimony.

Since the original action and motion item was summarily defeated and a NEW motion was made and seconded, I explained to President Conroy that a NEW action item within the same agenda item deserved public review and comment since it was not introduced until AFTER he closed public comment. Moreover, the agenda listed action on an "Annual Statement of Purpose" that was substantively changed AFTER public comment was closed. That means that a copy of the "Annual Statement of Purpose" that was up for a vote that night was available for the public to review prior to that vote. Since, that "Annual Statement of Purpose" was edited during the time the agenda item was being heard, the Fire Commission failed to provide proper (72 hour) notice to the public prior to any action/vote.

I believe two violations of Sunshine occurred. First, Public Comment should have been allowed for the NEW motion made AFTER public comment was closed. By not allowing additional public comment AFTER a NEW motion is made, the ability to pass NEW motions after public comment is closed gives the perception of a closed meeting without public input. It also provides unethical temptation to members of a commission to abuse their authority by purposefully stalling pertinent commission or board member discussions until AFTER public comment is closed.

Second, the change to the Annual Statement of Purpose should have triggered a new agenda item so the new language or re-write of the Annual Statement of Purpose could have been properly noticed to the public 72 hours prior to any ACTION or VOTE being taken to adopt the item.

The discussion that ensued AFTER public comment should have taken place prior

to opening public comment, instead a lengthy discussion and debate over the content of the Annual Statement of Purpose occurred AFTER public comment was closed which killed the motion that was made prior to opening public comment. Then, as a result of the new debate that started up AFTER public comment was closed, a motion was made that amended the Annual Statement of Purpose and President Conroy refused to allow me to speak on the NEW motion. I believe that President Conroy incorrectly stated that only one public comment opportunity per agenda item is required.

I believe the spirit and intent if not the letter of the Sunshine Ordinance requires that public testimony opportunities be made available BEFORE any action takes place. President Conroy had an opportunity to allow me 3 minutes to speak on this matter BEFORE taking a vote on this item. He chose to deny my right to make that public comment.

I respectfully request that you review this inappropriate conduct and request that President Conroy himself be required to appear before the Sunshine Task Force to explain his actions and thought process directly to the full Sunshine Ordinance Task Force. In the past, the Fire Commission secretary has been the representative for the Fire Commission and she is unable to respond to what was going through President Paul Conroy's mind when he refused to open Public Comment on this agenda item.

Thank you for consideration of this complaint

hearing_yes: radiobutton

name: John Darmanin

address: 402 Edgewood Road

city: Redwood City

zip: 94062-1808

date: October 17, 2007

phone: 650.642.8646

email: fdwatchdog@aol.com

anonymous:

User Data

Client IP (REMOTE_ADDR) : 172.31.2.228
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



Tania Bauer/SFFD/SFGOV
11/01/2007 12:30 PM

To soft@sfgov.org
cc fdwatchdog@aol.com
bcc
Subject Response to Sunshine Complaint #07083_John Darmanin vs
SF Fire Commission

Attached is the response from the Fire Commission. Should you have any further questions, please feel free to call me at 558-3451.

Tania Bauer
Commission Secretary



Response to SOTF Complaint No. 07083.pdf

FIRE COMMISSION
City and County of San Francisco
Gavin Newsom, Mayor

Paul A. Conroy, *President*
George Lau, *Vice President*
Stephen A. Nakajo, *Commissioner*
Clementine Clarke, *Commissioner*
Victor Makras, *Commissioner*



698 Second Street
San Francisco, CA 94107
Telephone 415.558.3451
Fax 415.558.3413
Taria Bauer, *Secretary*

November 1, 2007

VIA EMAIL

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlet Place
Room 244
San Francisco, CA 94102

Re: Sunshine complaint 07083 re: public comment during
October 11, 2007 Fire Commission meeting

Dear Chairperson Comstock and Honorable Members:

A complaint has been made regarding public comment during the October 11, 2007 regular meeting of the Fire Commission ("Commission") and the sufficiency of the agenda for that meeting. Mr. Darmanin makes two complaints: 1) He was not permitted to speak a second time during agenda item number five and 2) The action taken by the Commission on agenda item number seven was not consistent with the agenda.

I respectfully request that the Task Force dismiss the complaint. Mr. Darmanin was afforded all of his rights under the Sunshine Ordinance to provide public comment during item five. The Commission's discussion and action taken in respect to item seven concerned matters that were properly noticed by the meeting's agenda.

1. The Complainant Was Afforded Full Rights To Provide Public Comment:

This Task Force previously considered complaints made by Mr. Darmanin at its July 26, 2005 meeting. One of those complaints, number 05015, concerned the complainant's assertion that he should be able to speak for up to three minutes before each of the four votes taken by the Commission during a single agenda item, approval of the minutes. This complaint was not upheld. However, the Task Force recommended that the Commission clarify its rules in regards to public comment on agenda items.

The Commission adopted revised Rules of Order at its March 23, 2006 meeting. These rules are posted on the Commission's website on the page entitled "Meeting Calendar". In addition to specifying rules for "general public comment", the new Rules now separately describe how public comment is to be taken on agenda items:

3.2. Public Comment on Agenda Items. The Commission will provide for public comment on each item on the agenda, whether scheduled for discussion or action. Public comment on action items on the agenda will take place before the Commission takes action. Persons addressing the Commission on an agenda item shall confine their remarks to the agenda item before the Commission. **For each agenda item, each member of the public may address the Commission once, for up to three minutes.** The Commission will apply this time limit uniformly to members of the public, although the Commission will extend additional time as an accommodation to a member of the public with a disability that impairs his or her ability to speak. The President or the Commission may limit the public comment on an agenda item to less than three minutes per speaker, based on the nature of the agenda item, the number of anticipated speakers for that item, and the number and anticipated duration of other agenda items. (emphasis added)

A partial copy of the transcript of the October 11, 2007 meeting is attached, recording the dialogue that took place concerning, ironically, the contract for the transcription of Commission meetings, item 5 on the agenda. Vice President Lau had moved that the transcription contract be approved. Following extensive discussion among the Commissioners and Department personnel, I called for public comment before proceeding with consideration of the motion. Mr. Darmanin and one other member of the public spoke on the topic. I then closed public comment, asked if there was a second to Vice President Lau's motion and there was no second. Following further discussion a new motion was made by Commissioner Makras to reject the contract and instruct Department staff to explore options with other bidders. This motion was seconded:

"COMMISSION PRESIDENT PAUL CONROY: Okay, thank you. So there's a motion and a second. Is there any further discussion? All right. Commissioner Nakajo?

COMMISSIONER STEPHEN NAKAJO: I need a point of clarification on Vice President Lau's suggestion. I thought that we could only discuss the secondary vendor if we rejected the primary vendor.

DEPUTY CITY ATTORNEY KATHARINE PORTER: I think that probably is right. The department would have to end negotiations -- regardless of how in-depth those negotiations were, there was obviously preparation of the contract. So they would need to end those in order to move on to a different bidder.

COMMISSIONER STEPHEN NAKAJO: Okay. So as a point of clarification, commissioner Makras's motion was to reject and to instruct administrative staff to find options in terms of what we can come up with in terms of a local [taker]. Is that correct?

DEPUTY CITY ATTORNEY KATHARINE PORTER: That's what it sounded like to me [laughs].

COMMISSION PRESIDENT PAUL CONROY: Pretty much.

COMMISSIONER STEPHEN NAKAJO: Thank you, Mr. President.

COMMISSION PRESIDENT PAUL CONROY: Okay. If there's no further discussion we'll take a vote. All those in --

JOHN DARMANIN: Public comments? A new motion?

COMMISSION PRESIDENT PAUL CONROY: No, you get public comment per agenda item. We've discussed that before.

JOHN DARMANIN: Per action item.

COMMISSION PRESIDENT PAUL CONROY: No, per agenda item.

JOHN DARMANIN: Very good."

The vote was taken and the motion passed.

Section 67.7(a) of the Sunshine Ordinance requires that each "item of business" be listed on the agenda.

Section 67.15(c) requires that public comment be afforded to each person once per agenda item:

"...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..." (emphasis added)

Here, the agenda item, or "item of business", was listed as follows:

"5. TRANSCRIPTION CONTRACT - Four Season Transcription [Action]
(Continued from 9/27/07)

Submitting for review and approval a proposed contract in the amount of \$50,000 for Four Seasons Transcription to provide transcription services for commission meetings, special meetings and for other required recordings. The term of the contract is for two years.

Action: Transcription Contract to be approved"

Before a vote was taken, the public was invited to speak and Mr. Darmanin spoke on the matter. The fact that a new motion was made subsequent to public comment does not require additional public comment. Members of the public, including Mr. Darman, were afforded all of their rights under the Sunshine Ordinance to provide public comment on agenda item number 5.

2. Agenda item seven was sufficiently described in the agenda.

The complaint raises a second issue concerning the sufficiency of the agenda or whether the Commission acted beyond the scope of the agenda with respect to item number seven. Agenda item seven reads:

"7. ANNUAL STATEMENT OF PURPOSE FOR FY 2007-2008 [Action]

Action to be taken: Adoption of Annual Statement of Purpose"

A reading of the transcript shows that the Annual Statement of Purpose, which had last been adopted by the Commission in 2006, was submitted for approval. A discussion occurred among some of the Commissioners. Public comment was taken. Further discussion ensued among the Commissioners concerning whether the Statement should be revised. The existing (2006) Statement was then adopted without revision.

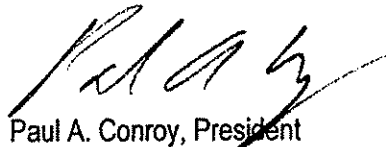
Copies of the 2006 Statement were provided to the Commissioners in their packets. The agenda was posted at least 72 hours before the meeting. Copies of the 2006 Statement were on the table at the front of the Commission hearing room, available to members of the public, before action was taken. The complainant appears to be under the misimpression that the Statement was revised by the Commission. Although it would have been proper for the Commission to have made revisions to the Statement, this was not done.

Agenda item seven was properly described and the Commission acted within the scope of the agenda item, adopting the Annual Statement of Purpose without revision.

3. Conclusion.

The complainant was afforded full opportunity to provide public comment in regards to item five, item seven was accurately described in the agenda and the Commission acted within the confines of the agenda item. I therefore request that the Sunshine Ordinance Task Force determine that the complaint is without merit and dismiss the complaint.

Very truly yours,



Paul A. Conroy, President
San Francisco Fire Commission

Encl.: Partial transcript of the October 11, 2007 Fire Commission Regular Meeting

Cc: San Francisco Fire Commission

John Darmanin (with enclosure)

FIRE COMMISSION REGULAR MEETING
Thursday, October 11, 2007 – 6:00 p.m.
698 Second Street, Room 102, San Francisco, CA 94107

COMMISSION SECRETARY TANIA BAUER:

Item
No.

1. ROLL CALL

President	Paul A. Conroy	present
Vice President	George Lau	present
Commissioner	Stephen A. Nakajo	present
Commissioner	Clem Clarke	present
Commissioner	Victor Makras	present

Acting Chief of Department Gary Massetani present

5. TRANSCRIPTION CONTRACT - FOUR SEASON TRANSCRIPTION (Continued from 9/27/07)

Submitting for review and approval a proposed contract in the amount of \$50,000 for Four Seasons Transcription to provide transcription services for commission meetings, special meetings and for other required recordings. The term of the contract is for two years.

COMMISSION PRESIDENT PAUL CONROY: Chief? Did you want to discuss this? Or --

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: There was some discussion the last meeting, where Commissioner Makras asked some questions. I believe they were addressed by the city attorney. And Tania had some other questions answered, I think, also.

COMMISSION PRESIDENT PAUL CONROY: Okay. Commissioner Makras, did you have anything you wanted to discuss on this?

COMMISSIONER VICTOR MAKRAS: Yes, commissioners. I reviewed the bids and I do believe that the recommendation brought to the commission was the low bid. In the initial view of it, you couldn't quite tell because the accepted bid had a per-line charge and all of the others talked about an hourly rate. Staff informed me that they did the mathematical calculations to even them out and it was the low bid.

I believe it's appropriate for the chief to bring it forward to us with the recommendation of adoption. I won't be supporting the item for adoption. I'm not speaking against my colleagues voting against it, but it's a rather small contract. I believe it contrary to local businesses and encouraging San Francisco or even state of California operators. And I also think there is compelling reason to take our minutes and ship them across the country and have them come back is not a practical way to do secretarial services and transcribing services. It candidly doesn't even pass the sniff test.

It's nominal in money, and I would be in a position to pay what it takes to get it done in San Francisco, even if that was not the low bid. And I think that that's also consistent with city policy. If you look

at the programs that they have to incentivize, and the [EWBE] programs and give preferential points -- if you look at the bottom line, the low bidders are always not the cheapest because there are other overriding interests that the city has. And I think we can accomplish that with this contract.

COMMISSION PRESIDENT PAUL CONROY: Vice President Lau?

COMMISSION VICE PRESIDENT GEORGE LAU: Thank you, Mr. Conroy. That's exactly the question I asked in that meeting, about why ship it all the way to Virginia. But we did get a response -- I did get an explanation from Ms. Bauer that it was all done electronically. Whether it's Virginia or San Francisco or San Jose. So that explained my question.

As to the local, I do support the local businesspeople and minorities. But given the bureaucracy and the system we have, I think we really have to move this contract along tonight. And for that I move to approve this contract.

COMMISSION PRESIDENT PAUL CONROY: Anybody else wish to discuss this?

COMMISSIONER STEPHEN NAKAJO: Thank you, President Conroy. I'll direct this to the chief. In terms of the service that we have presently, are we working with this firm that we're adopting? What are the circumstances behind that?

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: It's my understanding that this is a new firm. Ms. Bauer has been working with this other firm the last couple of years. This went through DHR and the proper bidding process, and they were considered the low bidder and a qualified bidder. That's why this bid was accepted.

COMMISSIONER STEPHEN NAKAJO: Okay. Ms. Bauer, is this the present staff person that we have? Is this the company that we're adopting, this motion for?

COMMISSION SECRETARY TANIA BAUER: This contract is for the out of state service via the Internet.

COMMISSIONER STEPHEN NAKAJO: So the present person that we have working for us, is that an agency here in the city and county?

COMMISSION SECRETARY TANIA BAUER: Correct.

COMMISSIONER STEPHEN NAKAJO: And how long have we worked with them?

COMMISSION SECRETARY TANIA BAUER: Over two years.

COMMISSIONER STEPHEN NAKAJO: So if this process occurs, that we don't approve this for the local [flavor], what's the process that occurs? What happens next? Do we go back to bid? What goes on?

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: It would be my understanding we'd have to go back to bid, and go back to DHR to have them accept the second bidder or whoever else.

COMMISSIONER STEPHEN NAKAJO: Okay. Because they're ranked in some order?

COMMISSION SECRETARY TANIA BAUER: There was a panel of three people. Neither the CFO nor I participated on the panel. And the panel ranked the four bids according to the parameters that were given to them by the CFO.

COMMISSIONER STEPHEN NAKAJO: I want to ask you a question, but I don't know if I'd violate anything in terms of -- I want to find out who the second bidder is, in terms of national or local. Or is that not appropriate?

COMMISSION SECRETARY TANIA BAUER: I don't know.

DEPUTY CITY ATTORNEY KATHARINE PORTER: What's before you right now is whether you want to approve this contract or not.

COMMISSIONER STEPHEN NAKAJO: Okay.

DEPUTY CITY ATTORNEY KATHARINE PORTER: Just on the issue of preferences -- local preferences or preferences for other companies -- the MBE/WBE ordinance is no longer in effect. It's been replaced by a local business ordinance. That's the law of the city and county, and the commission can't come up with its own requirements for local preferences. So I want to make sure that point is clear, first of all.

And it's my understanding from the commission secretary that the human rights commission, which is responsible for overseeing the local business enterprise ordinance, did look at this contract and assessed it under the city law and decided that it didn't get run through it for whatever reason. I haven't looked into that myself, but I don't know the particulars.

COMMISSIONER STEPHEN NAKAJO: I lost that last point.

DEPUTY CITY ATTORNEY KATHARINE PORTER: I haven't looked at what the Human Rights Commission's assessment or analysis was of this particular contract in connection with what the local business ordinance requires.

COMMISSIONER STEPHEN NAKAJO: Okay. Just as a point of clarity, that new ordinance means that the local priorities don't have any weight? No priority?

DEPUTY CITY ATTORNEY KATHARINE PORTER: No. But there's a structure established in the local business ordinance which has a formula or has a structure that gives preferences under legal circumstances or appropriate circumstances that would be the policy call of the Board of Supervisors.

COMMISSIONER STEPHEN NAKAJO: And that applied to this -- or it didn't -- and that's why we're in this process?

DEPUTY CITY ATTORNEY KATHARINE PORTER: That is the law of the city and county, and it's my understanding that the Human Rights Commission, which enforces the local business ordinance, concluded that for whatever reason -- possibly the size or the value of the contract -- it didn't trigger the LBE. But I'm -- that's just what I've been told. I don't have any personal knowledge of what the HRC looked at.

COMMISSIONER STEPHEN NAKAJO: Okay. I had two more questions to ask. Is this unusual, or is it practice, that in the interview process -- since the secretary of the fire commission works with the staff

person -- that that person is not part of the interview process? We don't any [illegible]? I was just concerned about that, or I wanted to ask the question in clarity. Is that practice?

DEPUTY CITY ATTORNEY KATHARINE PORTER: I think the HRC looks at the composition of panels to make sure that they think that they're going to be fair and neutral, impartial panels. And it sounds like in this particular contract situation they asked that the secretary and the CFO not participate in the panel.

COMMISSIONER STEPHEN NAKAJO: Okay. Then if we don't approve this, then the [relationship] in terms of our business and discipline hearings would go on with the process of the present situation? Month by month, until we amendize this? Commissioner Makras, is that some information that you might have me understand?

COMMISSIONER VICTOR MAKRAS: I'll take a crack at a few of those. First, my recollection was that this was the low bid, to answer your one question, and that the other two bids were very similar in rate. And one of them was a local, San Francisco firm.

My belief is that if we reject the bid that staff can continue with the current operator as long as they would be willing to do it. And at some point, we'd want to clean it up. I would be in the position to recommend that -- my belief for not supporting the item would be this: I would reject it because it ain't local. I would send it back to HRC and have them re-look at the local business ordinance. I would ask them to put particular emphasis on the fact that San Francisco has a minimum wage ordinance of \$9.12, and I doubt that that's the minimum wage ordinance in Virginia.

And the next step is we send it to Virginia and then two years from now we're going to send it outside of the country to go do our transcribing. And I would beg the question of HRC to look at that, and factor that into their interest in weight to this particular contract.

The local business portion is not limited to the actual item of the contract, just for transcribing. They can [impute] where they buy their equipment; they could impute what copy service they use, what delivery service they use. And I would guess that if we asked them to re-look at it and we had the desire for it that the mere dollar amount of the contract would have been their excuse for passing it on without participation to it.

And there would be no loss to the Commission if we challenged that, particularly in light of the minimum wage differential between Virginia and the city and county of San Francisco.

COMMISSION PRESIDENT PAUL CONROY: Let me just express my thoughts on this. I agree with Commissioner Makras's point. My interest would be in rejecting this contract at this point and asking that the HRC take another look at this. Take possibly other factors into account along the lines of what Commissioner Makras has suggested.

It sounds to me like there's not much of a difference in dollars, and I think that this has been -- this contract is caught in some type of bureaucratic limbo, which is unfortunate. I think a disservice could be done to the local business laws.

And another very important point is that we've had very satisfactory service with the current vendor. And I think that that should be taken into account, too. This is not like buying so many nuts and bolts from one hardware store or another. This is a service that's provided. It's very important that the information be

transcribed accurately. And I've found that the vendor has done an excellent job. So I would support that.
Commissioner Nakajo?

COMMISSIONER STEPHEN NAKAJO: Thank you, President Conroy; thank you, Commissioner Makras. I just wanted to see if -- before I conclude -- is there any comment by the deputy city attorney or the chief on this [copy of such manner] that Commissioner Makras has laid out in terms of the rejection? That we would pretty much follow a continuing contract until we [unintelligible] a decision mechanism?

DEPUTY CITY ATTORNEY KATHARINE PORTER: It's my understanding that the commission is using a purchase order process. I don't know how long they can continue to do that.

COMMISSION SECRETARY TANIA BAUER: There is no contract, because [that was severed]. I give them purchase orders for each meeting.

[Crosstalk]

COMMISSION PRESIDENT PAUL CONROY: Commissioner [Nakajo]?

COMMISSIONER STEPHEN NAKAJO: Having heard that, Chief Massetani -- do you -- on the subject matter of the work order, could we continue that?

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: Well, we already are probably close to a limit of close to \$10,000, continuing in purchase orders. It would be to the department's best interest if we were to move this contract along. We do not have a contract at all. The vendor, since we had a good working relationship with them for the last two years, they're continuing to be a good vendor in working with us. We are going out of our way to make sure that they're being able to be paid, but they're not being paid as quickly as they were when they had a contract with us.

If you give us a direction to go back to HRC, we will do that and try to expedite it. But we'll have to make sure that we're able to keep this PO open for approximately another 60 to 90 days because the whole bidding process will again open up and take that long. It will not be turned around by the next commission meeting.

COMMISSIONER STEPHEN NAKAJO: Okay. Thank you, Chief. Thank you, President Conroy. [This is a pleasure] in terms of it.

COMMISSION PRESIDENT PAUL CONROY: Well, we do have a motion on the table. And I know we want to take public comment as well. Why don't we take public comment right now? Is there any public comment on this?

JOHN DARMANIN: Good evening. John Darmanin. I think I want to clarify what I hear. There's some confusion on Commissioner Nakajo's part. He had mentioned -- and I don't believe he got an answer -- but he had mentioned concern on whether or not this might hold up the disciplinary process hearings and whatnot. This vendor does not have anything to do with the disciplinary hearings. That's a legal transcription stenographer that is hired under a separate contract or budget. This is strictly for the regular meetings and the non-disciplinary meetings, to transcribe the audiotape that is running. So that way you don't need someone taking copious notes throughout the whole meeting.

And then after that transcription is up -- 60, 70, 80 pages; maybe even 100 pages tonight, who knows? -- the secretary will look at that and take the highlights so she can get an accurate reflection of the

minutes. Before we got this method where we get a transcription, the minutes best were sketchy. Sometimes I didn't even believe I was at that meeting, they were so sketchy. That's through no fault of the secretary; it's just the nature of the beast.

Since we've had this transcription service, you had fairly accurate reporting of the meetings. And in some cases where it maybe wasn't as accurate, the transcripts could be reviewed by the commissioners, chief, officers, and the public. So it's been a very good system, and I can attest that looking at most of the transcripts they have been very accurate. Several times when I thought they weren't, I listened to the live videotape and the transcript proved me wrong. So they've been very accurate.

It would help, though, if when anyone is speaking they'd talk into a microphone because that's where the blanks are in the transcripts. I mean anyone that's from the public or the staff that's talking, because it's very difficult for the transcriptionist. But this particular transcriptionist has been excellent, in my opinion, and I think it's a very valid point that we have a local person doing this work that does this work well and now we're shipping this work off to -- I don't even know. North Carolina or wherever it is. Maybe they're already shipping it off to India. I mean I don't know why you think that -- Commissioner Makras was saying that they might be shipped out to India or outside the country in the future -- they may already be doing that. I would, if I was looking at it. I would want to make the few extra bucks.

So we have control right now. We won't have control where it's going later. And even though all the stuff is through emails and electronically or maybe some verification by telephone, they are local. We know they're local. And if we had to go knock on their door, we could do that if we had a problem. So I would urge the commission to find out first if you can just go ahead and pick that vendor rather than sending it back out to bid before you do send it out to bid.

Thank you.

PRESIDENT SFF LOCAL 798 JOHN HANLEY: John Hanley, representing the men and women of the Firefighters Local 798. Thank you, Commissioners, for acknowledging that to keep the work in San Francisco, acknowledging that there is a cost of living here. They're acknowledging that there is a per-hour cost that is not reflected in Virginia or wherever this is going. And the local men and women of the Local appreciate your concern. Thank you.

COMMISSION PRESIDENT PAUL CONROY: Any other public comment? Okay. We'll close public comment. There is a motion that Commissioner Lau made. I didn't ask for a second; is there a second to the motion? I don't hear a second. The motion dies for lack of a second.

Is there another motion on this matter?

COMMISSIONER VICTOR MAKRAS: I would move to reject the contract. [And thrust it back] to work with HRC and review the local business ordinance and see if we'll have a preference and put the contract out to bid. And in the meantime, use our current operator to provide the services [on a purchase order basis].

COMMISSION PRESIDENT PAUL CONROY: Is there a second to that motion?

COMMISSIONER STEPHEN NAKAJO: Second the motion.

COMMISSION PRESIDENT PAUL CONROY: All right. Any discussion among the commissioners before we take the vote? Chief?

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: Commissioners, are you willing to give us the opportunity to talk to HRC and see if we're able to select the second bidder, who is local, before going out to total bid again?

COMMISSION PRESIDENT PAUL CONROY: Let's see. Now that would be a separate -- that's not actually in the motion. Why don't we address that -- Commissioner Makras?

COMMISSIONER VICTOR MAKRAS: To me, that would be up to the Chief. This is a \$50,000 contract. I'd look to see what your limit is on contracts that you can do on your own. If you can do \$25,000 on your own then you can sign a one-year contract with them and just include it in the chief's report and tell us what you did. I believe it's here because you combined two years and reached \$50,000 and you wanted commission approval. I think you can figure out a way.

ACTING CHIEF OF DEPARTMENT GARY MASSETANI: We've been coming to you for all our contracts over \$10,000 now.

COMMISSION PRESIDENT PAUL CONROY: Okay. So can I read into what you said, Commissioner Makras, that the department could go ahead and -- under a revised or amended motion -- to award the bid to the second bidder if that is appropriate? As opposed to going out to new bid?

COMMISSIONER VICTOR MAKRAS: I'm okay with it, if someone tells me how to do it. I don't think there's a vehicle to get there.

DEPUTY CITY ATTORNEY KATHARINE PORTER: Depending on what the RFP said. For example, if the RFP said we will select the low bidder -- and it sounds like there's more flexibility than that in the RFP -- then the city does have the right to reject or end negotiations with the first bidder and move on to the second bidder. So that's an option that would save the department from having to go out with a whole new RFP process -- which is another option that the city could do.

The city could close this RFP and issue a new one and start afresh, but they also have the option -- generally, and I can't see why it would be different in this case -- of simply closing negotiations with the first bidder and moving to the second bidder.

COMMISSIONER VICTOR MAKRAS: If I hear you accurately, if I was to make a motion to reject this bid and inspect the bid that was the local operator, you're saying I could do that?

DEPUTY CITY ATTORNEY KATHARINE PORTER: No. You could reject the contract and send the department back to come back to you with a new contract. And the department, administratively, would have several different options under the RFP process, and one of them would be to move on to the second bidder. Another one would be to cancel the RFP process and start all over again. So the department would have a number of options.

COMMISSIONER VICTOR MAKRAS: I'm happy to explore them, and I'm not trying to be difficult but where you lose me is where we're negotiating with the operator. I saw no negotiation in this contract. I saw a rate sheet, and they took it. I'm not aware of any negotiation that took place to be able to sign on to we're rejecting them because we negotiated and we reached impasse. There is no impasse. The mere fact that it came to us without [it].

DEPUTY CITY ATTORNEY KATHARINE PORTER: We're able to reject the first bidder if that's what the commission wants to do. And I believe -- and I can confirm if the commission does reject this contract I can confirm that one option would be to go second bidder. Generally that would be an option.

COMMISSION PRESIDENT PAUL CONROY: Do we know who the second bidder is? Is the second bidder the current vendor?

COMMISSIONER VICTOR MAKRAS: I don't believe that they rated them one, two, three. At least that wasn't my observation in viewing them.

COMMISSION PRESIDENT PAUL CONROY: Okay.

COMMISSIONER VICTOR MAKRAS: Let me throw out a suggestion. If I was to withdraw my motion and put a different motion to reject this bid and instruct staff to explore the options with the other bidders. And B, if they would have a new recommendation for us. And incorporate the discussion and desire of the commission.

COMMISSION PRESIDENT PAUL CONROY: That's your motion?

COMMISSIONER VICTOR MAKRAS: Does that work? I withdraw my motion and put that forward for consideration by the commission.

COMMISSION PRESIDENT PAUL CONROY: Okay. So that motion, and is there a second to that motion before we have discussion? All right. Vice President Lau?

COMMISSION VICE PRESIDENT GEORGE LAU: I don't want a walk-away on this item as if I don't support local business. I was given [a very clear] impression in the last meeting that DHR has not allowed us to get involved in choosing the bid. So on a practical term, I thought we have to move this contract along. Because of the services that we need to use. And the city regulations that we have to deal with.

What I suggest is why don't we -- instead of rejecting this contract -- why don't we table this and not reject it, giving time for the city attorneys and deputy chief to look into possibilities knowing where we want to go, and then we'll take care of it in our next meeting -- rather than rejecting bids, wasting all this time in developing this contract. Maybe we'll eventually have to salvage and use this contract again.

COMMISSION PRESIDENT PAUL CONROY: Okay, thank you. So there's a motion and a second. Is there any further discussion? All right. Commissioner Nakajo?

COMMISSIONER STEPHEN NAKAJO: I need a point of clarification on Vice President Lau's suggestion. I thought that we could only discuss the secondary vendor if we rejected the primary vendor.

DEPUTY CITY ATTORNEY KATHARINE PORTER: I think that probably is right. The department would have to end negotiations -- regardless of how in-depth those negotiations were, there was obviously preparation of the contract. So they would need to end those in order to move on to a different bidder.

COMMISSIONER STEPHEN NAKAJO: Okay. So as a point of clarification, commissioner Makras's motion was to reject and to instruct administrative staff to find options in terms of what we can come up with in terms of a local [taker]. Is that correct?

DEPUTY CITY ATTORNEY KATHARINE PORTER: That's what it sounded like to me [laughs].

COMMISSION PRESIDENT PAUL CONROY: Pretty much.

COMMISSIONER STEPHEN NAKAJO: Thank you, Mr. President.

COMMISSION PRESIDENT PAUL CONROY: Okay. If there's no further discussion we'll take a vote. All those in --

JOHN DARMANIN: Public comments? A new motion?

COMMISSION PRESIDENT PAUL CONROY: No, you get public comment per agenda item. We've discussed that before.

JOHN DARMANIN: Per action item.

COMMISSION PRESIDENT PAUL CONROY: No, per agenda item.

JOHN DARMANIN: Very good.

COMMISSION PRESIDENT PAUL CONROY: All those in favor?

COMMISSIONER VICTOR MAKRAS: Aye.

COMMISSIONER STEPHEN NAKAJO: Aye.

COMMISSIONER CLEM CLARKE: Aye.

COMMISSION PRESIDENT PAUL CONROY: Aye. And all those opposed?

COMMISSION VICE PRESIDENT GEORGE LAU: I will oppose to this approach.

COMMISSION PRESIDENT PAUL CONROY: All right. So by a vote of four to one, with Commissioner Lau voting no, the motion passes.

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7. ANNUAL STATEMENT OF PURPOSE FOR FY 2007-2008

COMMISSION PRESIDENT PAUL CONROY: Okay. As I understand it, the Commission is required each year to adopt an annual statement of purpose. And there have been over the years revisions that have been made to that statement of purpose. The statement that you see before you does not have any revisions or changes since the one that was adopted a year ago.

I myself have looked at it and I'm satisfied with the language. I think it accurately describes what we're about, what the department is about. But of course this is open to discussion and revision and change and amendment. So if anybody else has any other thoughts or comments about it, or if they want to take some additional time and think about it -- Commissioner Nakajo?

COMMISSIONER STEPHEN NAKAJO: President Conroy, having reviewed this annual statement of purpose -- again, just a comment. In terms of the mission of the fire department, part of the experience or relationship that I particularly relate to, beyond all of the good language -- it's all good language, and I

wanted to make an emphasis ... terms of the last two lines of the mission statement, which provides a work environment that values cultural diversity and is free of harassment and discrimination.

Also to the point of these eight points in terms of supplemental to the [end] of the Fire Commission. It's always helpful because I get asked a lot by folks in the community as to -- you're a fire commissioner? The next question that comes is, "So what do you do?" And very often run we through this whole scenario as to what you do. So it's nice to have this statement which I'll be able to put in my back pocket [laughter] to verify what we do.

And then usually the third question is how do I become a fire commissioner? And I [usually lend] something to that. I wholeheartedly support this and I'd like to make a motion in consideration for my colleagues.

COMMISSION VICE PRESIDENT GEORGE LAU: I second.

COMMISSION PRESIDENT PAUL CONROY: Okay, so there's been a motion and a second. Is there any -- we will take public comment. Any discussion among the commissioners before we take public comment? No? Public comment?

JOHN DARMANIN: Good evening, John Darmanin. I just wanted to try to understand what was just said with respect to sheets of paper that show what you do. I think it's what you are supposed to, not what you do.

I think by saying that I would like to see a critique of yourselves and the fire department when this comes up every year to see how well you score. Sort of like a self-rating. Report card. And let's see how well you've done. See if you excelled in all areas or been lacking in some.

And I'm serious. It sounds a little funny, but that is the best self-examination that we can give is I think an honest one, and that will reap some rewards because it will concentrate on our weaknesses. And if anyone in this room or this commission or senior staff thinks that we scored As across the board then we do have a problem.

We were lacking in some areas, and it was just mentioned a few minutes ago regarding discrimination and workplace environment and whatnot. Maybe something to discuss would be the number of complaints that have been filed during the course of the year. I know we've had a couple, and probably dozens. You don't have to discuss who filed them, but maybe the nature of those complaints.

Let's have some Sunshine as to what's going on so everyone is not thinking that this is what we do in this statement of purpose. This is what our goals are. How close have we come to attaining those goals? I think that would be a lot more honest way of approaching this, rather than assuming that we've attained all these goals to an acceptable level.

I would hope that would be -- I know it's not going to happen tonight, but I would hope that that would be something in the future that you could think about, and you'd come up with a report card and grade yourselves saying how close we came to the mark. I think it would be more reflective of an honest evaluation if we show where our mistakes were, where we were lacking, and where we need to focus more attention on. Thank you.

COMMISSION PRESIDENT PAUL CONROY: Any additional public comment?

PRESIDENT SFF LOCAL 798 JOHN HANLEY: John Hanley, representing the men and women of San Francisco Firefighters Union Local 798. The firefighters give the five commissioners As. Your lack of understanding, your lack of compassion your I-- excuse me [laughter].

[Crosstalk]

PRESIDENT SFF LOCAL 798 JOHN HANLEY: Your enhanced understanding, your enhanced participation in the fire department, your enhanced volunteerism to the city are all reflected. And the five of you -- the men and women recognize -- each one of you, and I'm pointing at you -- what you give back to the city. You do this for the good of the city. The men and women of the firefighters union recognize that and we thank every one of you, and we don't have a problem with giving you all As. Thank you very much for your time. And excuse my initial [unintelligible] [laughter].

COMMISSION PRESIDENT PAUL CONROY: Thank you very much.

COMMISSIONER VICTOR MAKRAS: One observation and question to the individual that's served here the longest. When I'm out on the street and people sort of ask what the fire commission do, if I was to list ten things one of the top ten if not one of the top three would be processing disciplinary hearings. And I beg to question -- for those of you who have been here a lot more years than me -- why is that not part of the purpose, the rationalization -- [is that being silent to that]?

COMMISSIONER STEPHEN NAKAJO: Commissioner posed the question [on both] points of view in terms of it. Again, being 13 years on this commission, at one point we didn't have our mission statement on our calling cards or anywhere in this headquarters or anywhere in the department. So for myself in terms of having a mission statement, and then with the good infrastructure of the commission in terms of accomplishment and goals, it is very important that we have this material in front of us.

I have no problem referring -- and I often talk about discipline as part of our duty -- but I [stop] traditionally right at that particular point just because I know that discipline pretty much encompasses personnel and personnel issues. It's difficult enough in terms of what goes on in our sense of reality in the community and in terms of the department that we do good things, but very often individuals might have difficulties or have some issues in terms of their work or their environment with the fire department. And very often the press has a way of jumping on that, and so very often part of my exposure in the community is defending the good name or the duties or basically deflecting in terms of that's not a reflection totally of the department.

So again, I don't have a problem of discipline in terms of the verbalization. Part of what I see here on this is certainly correct in terms of it's not specifically put on, but I always considered that inherent as a duty and task of us commissioners. And it was a duty and task, again, that was learned.

Having said all of that -- and I said a lot of words -- this commissioner has no problem of an evaluation process whether it's self or community or any structure or mechanism. As long as it's a fair process. And I welcome it, in terms of duty [and task] for ourselves, Commissioners, in terms of the department as well. I think there are several benchmarks that we can make to measure that. So I hope I answered the question, fellow Commissioner.

COMMISSIONER VICTOR MAKRAS: Thank you.

COMMISSION PRESIDENT PAUL CONROY: I'd like to address that, too. I know -- in fact, I think the Police Commission has discipline in its statement of purpose. I think discipline is inherent in any

organization. Every major [en. . . .er of many] minor organizations have a statnt of purpose or a mission statement. I don't think it needs to necessarily be called out that a part of management involves discipline.

I personally feel that inserting the word discipline in there -- I'm uncomfortable with it in that I think it calls out a negative. It certainly is what we do; it's right there in the charter what we do. There's no secret about it, and I don't think we're trying to keep it a secret. But I think as a mission statement I like not having it in there. It's interesting that many times a member will -- I might meet a member of the department and then after saying hi and nice to meet you they say I hope I don't ever have to see you [laughter]. Because I think a lot of the membership already feels that when they think Commission they think discipline. So I'd like to downplay that, personally.

COMMISSIONER CLEM CLARKE: President Conroy, to Commissioner Makras's comment: we might not look at adding -- I somewhat agree to what he's saying. When people ask what is the role of the commission, we carefully take into consideration and review on the rules and regulations of this department as it pertains to disciplinary situations with personnel here.

And I think that some kind of way, in regards to the wording -- maybe not putting in disciplinary hearings or whatever -- but we spend a lot of time and a lot of energy going through all of the fire department's rules and regulations and having a clear understanding and making sure that every fire department personnel has due process.

I think that's very important, and it's not something that we should minimize because we spend a tremendous amount of hours just reviewing, whether it's here at the headquarters having a disciplinary hearing or whether I'm at home trying to juggle my son with one hand and read these 50,000 binders and understanding the rules and regulations of the fire department as we prepare to come, like we did today at 4:00, to consider a situation here at the department.

COMMISSION PRESIDENT PAUL CONROY: Commissioner Lau?

COMMISSION VICE PRESIDENT GEORGE LAU: I think the disciplinary part of it is -- to put it clearly in this statement of purpose -- is getting negative. We can consider -- for example, what we are doing right now is [posed] under number one, setting policies. And what we did an hour ago at 4:00 is actually posed under "support the administration to accomplish the mission of the department."

If you ask the purpose of a cop, and he says my job is to arrest the bad guys -- no. His job is really not to arrest the bad guys, but to support the safety of the community. So if you go through the whole statement, everything is put in that in a positive tone without being negative. But that does not exclude the other things that we are doing like disciplinary.

COMMISSIONER CLEM CLARKE: I somewhat beg to differ, Vice President Lau, in that yes, we're of course here to support the administration, but we're not here to rubber stamp the administration. Our roles as policy --

[Crosstalk]

COMMISSION VICE PRESIDENT GEORGE LAU: [No, help them] to accomplish the mission of the department. Not to rubber stamp, but to help them accomplish the missions.

COMMISSION PRESIDENT PAUL CONROY: I'm sorry. Were you finished, Commissioner Clarke?

COMMISSIONER CLEM CLAI...: Oh. Let him go ahead [laughs]. I'm g... to let him finish his thought.

COMMISSION PRESIDENT PAUL CONROY: Are you finished?

COMMISSION VICE PRESIDENT GEORGE LAU: [No].

COMMISSION PRESIDENT PAUL CONROY: All right. Okay. That's it? All right. I wonder if maybe what we should do is give some further consideration to this. Because there are two of the five members who would like to see something else in the statement, three who don't necessarily but maybe depending upon what language we might come up with in the interim might satisfy all five of us.

And it might actually come up with a better statement and everybody will be satisfied. I think that for a statement of purpose, I think that to the extent that we can possibly do so I think it's best if we reach a statement with unanimity. It's not always possible, but maybe we should take a crack at it. Commissioner Makras?

COMMISSIONER VICTOR MAKRAS: Mine was just a question; it wasn't a recommendation to change the statement of purpose. I'm prepared to go forward. I just asked for a little history and brought one issue out to get an understanding of why it wasn't included. I'm satisfied; I support the issue. If someone in the future wanted to tackle a broader statement of purpose we can take that on, but I think we should go forward with this statement of purpose.

COMMISSION PRESIDENT PAUL CONROY: Commissioner Nakajo?

COMMISSIONER STEPHEN NAKAJO: A point of clarification: is this an annual resolution that we can adopt at this point and with a good dialogue among the commissioners look towards satisfying the kind of concerns that we've had? So it's annually that it comes up?

COMMISSION PRESIDENT PAUL CONROY: Right. Yes. I think we're obligated to --

COMMISSIONER STEPHEN NAKAJO: So we can make amendments to it?

COMMISSION PRESIDENT PAUL CONROY: It's under the charter.

COMMISSION SECRETARY TANIA BAUER: Four months late.

[Crosstalk]

[Laughter]

COMMISSION PRESIDENT PAUL CONROY: So in another eight months we have to do it again.

COMMISSIONER STEPHEN NAKAJO: I'm trying to get some reinforcement that we can spend some time between now and next year to work it out. All right. Thank you.

COMMISSION PRESIDENT PAUL CONROY: Presumably.

COMMISSIONER STEPHEN NAKAJO: I so move the motion.

COMMISSIONER VICTOR M. KAS: I'll second the motion.

COMMISSION PRESIDENT PAUL CONROY: Commissioner Clarke, are you satisfied with the --

COMMISSIONER CLEM CLARKE: Yes.

COMMISSION PRESIDENT PAUL CONROY: Okay. All right. So we've had public comment, and we've had discussion. There's a motion and a second. All those in favor?

ALL: Aye.

COMMISSION PRESIDENT PAUL CONROY: Okay. So the annual statement of purpose is adopted unanimously and this time we get to take a break [laughter] for five minutes.

