

Date: January 22, 2008

Item No. 6

File No. 07093

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Patrick Monk v. Supervisor Sophie Maxwell**
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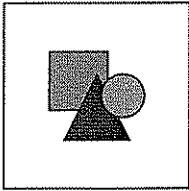
Completed by: Chris Rustom

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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MEMORANDUM

January 14, 2008

PATRICK MONK v. SUPERVISOR SOPHIE MAXWELL (07093)

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On October 29, 2007, Patrick Monk attended the Land Use Subcommittee Meetings of the Board of Supervisors with intentions to provide public comment on Agenda Item # 1 which was the San Francisco Electrical Reliability Plan. Supervisor Sophie Maxwell chairs the Land Use Subcommittee. During the course of the October 29, 2007 hearings, Supervisor Maxwell changed the order in which the agenda items were to be heard and put agenda item # 1, the Electrical Reliability Plan to later in the hearing process. Because of the change in the time when agenda item # 1 was to be heard, Patrick Monk had to wait four hours before the item was called. During that time, Patrick Monk saw numerous people who had come to provide public comment on Agenda Item # 1 leave because they could not stay to provide public comment. Patrick Monk also observed that Supervisor Maxwell did not call on speakers in the order that the speaker's cards were submitted.

THE COMPLAINANT FILES A COMPLAINT:

On November 27, 2007, Patrick Monk filed a complaint against Supervisor Sophie Maxwell alleging that Supervisor Maxwell change in the time when agenda item # 1 was to be heard violated the Sunshine Ordinance.

APPLICABLE STATUTORY SECTIONS:

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Section 67.15 of the Sunshine Ordinance addresses public comment at meetings.

APPLICABLE CASE LAW:

None for this case

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

The parties agree to the following facts:

- Patrick Monk attended the October 29, 2007 Land Use Committee meeting with intentions of providing public comment on item # 1, which was the Electrical Reliability Plan.
- Supervisor Maxwell chaired the public meeting.
- Supervisor Maxwell changed the order of items to be heard and item # 1 was scheduled for later in the meeting.
- Patrick Monk observed that people who had come to the meeting to provide public comment on Agenda item # 1 left the meeting before item # 1 was called.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether the Chair of the Land Use Committee violated the Ordinance by scheduling item #1 on the agenda at a later time in the hearing process?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

What were the reasons for the rescheduling of the agenda items?

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **What sections of the Sunshine Ordinance, and/or Brown Act, were violated?**
- **Did Supervisor Maxwell violate Section 67.15 of the Sunshine Ordinance?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

Memorandum

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004
ARTICLE I, SECTION 3**

§3 Openness in Government

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

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

Section 67.1 addresses Findings and Purpose

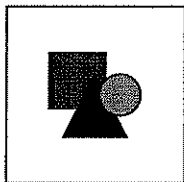
The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

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 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.
- d.) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis of that performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision c) of this section.



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December 27, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Patrick Monk v. Supervisor Sophie Maxwell (07093)

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 Patrick Monk against San Francisco Supervisor Sophie Maxwell.

BACKGROUND

On October 29, 2007, Patrick Monk attended the Land Use Subcommittee Meetings of the Board of Supervisors with intentions to provide public comment on Agenda Item # 1 which was the San Francisco Electrical Reliability Plan. Supervisor Sophie Maxwell chairs the Land Use Subcommittee. During the course of the October 29, 2007 hearings, Supervisor Maxwell changed the order in which the agenda items were to be heard and put agenda item # 1, the Electrical Reliability Plan to later in the hearing process. Because of the change in the time when agenda item # 1 was to be heard, Patrick Monk had to wait four hours before the item was called. During that time, Patrick Monk saw numerous people who had come to provide public comment on Agenda Item # 1 leave because they could not stay to provide public comment. Patrick Monk also observed that Supervisor Maxwell did not call on speakers in the order that the speaker's cards were submitted.

COMPLAINT

On November 27, 2007, Patrick Monk filed a complaint against Supervisor Sophie Maxwell alleging that Supervisor Maxwell change in the time when agenda item # 1 was to be heard violated 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 of the Ordinance.

Letter to the Complaint Committee
Page 2
December 3, 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 meetings.

In this case, Patrick Monk claims that Supervisor Sophie Maxwell as chair of the Land Use Subcommittee changed the time when agenda item # 1 was to be heard during the meeting and in so doing deprived several potential speakers of the opportunity to provide public comment because they had to leave the meeting before the agenda item was called. The Task Force has subject matter jurisdiction and will have to determine if there is a violation of the Ordinance.



<complaints@sfgov.org>
11/27/2007 10:37 AM

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

Submitted on: 11/27/2007 10:37:03 AM

Department: Land Use Subcommittee/Supervisor Maxwell.

Contacted: Frank Darby

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: October 29th. 2007

Section(s)_Violated: Section 67.15 (e)

Description: Please see separate email marked attention of Frank Darby. Nov 27th.2007.

Thankyou.
Patrick Monk.RN.

Hearing: Yes

Date: Nov.27th.2007.

Name: Patrick Monk.RN.

Address: 3854 24th St

City: SF

Zip: 94114

Phone: 4156411471

Email: patnlisa@sbcglobal.net

Anonymous:

User Data

Client IP (REMOTE_ADDR) : 76.200.191.99
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Subcommittee / Sure Martell
 Name of individual contacted at Department or Commission _____

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting OCT. 29. 2007

Sunshine Ordinance Section 67.15 (e)
 (If known, please cite specific provision being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

Please see attached.

Do you wish a public hearing before the Sunshine Ordinance Task Force? yes _____ no.

(Optional)¹
 Your name PATRICK MONK RN. Address 3854 24th St. SF. Ca. 94114
 Date 11.27.07.

Telephone 415-644-1471 If anonymous, please let us know how to contact you.

Signature Patrick Monk

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. COMPLAINANTS CAN BE ANONYMOUS AS LONG AS THE COMPLAINANT PROVIDES A RELIABLE MEANS OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).

Sunshine Ordinance Task Force
1 Dr Carlton B Goodlett Place,
Room 244,
SF. Ca. 94102.
November 27th. 2007.

Patrick Monk.RN.
3854 24th Street
San Francisco
Ca. 94114.
415-641-1471
patnlisa@sbcglobal.net.

Attention. Frank Darby.
Sir,

I am writing to file a formal complaint against Supervisor Sophie Maxwell, suggesting violation of Section 67.15 (e). in her conduct of Land Use Subcommittee hearing on October 29, 2007.

Like many residents of this city I am extremely concerned about the many negative impacts on the residents of Bayview Hunters Point resulting from the activities of Lennar Corporation and decisions being made by political and corporate leaders, the most recent example being the proposal to site three more polluting fossil fuel powered 'peaker' plants in the Community. As a regular citizen I have been doing my best to attend as many public meetings on these issues as my schedule permits.

By way of background I am a senior, temporarily disabled, require a cane to assist in walking and prolonged sitting is uncomfortable. This item on siting of 'peaker' plants was scheduled as #1 on the agenda. I arrived approximately half an hour before the start of the meeting. I then had to sit for four hours while issues such as changing one way streets to two way, erecting sculptures in Japantown and creating sidewalk space for the convenience of latte drinkers were discussed. **At no point did I hear any announcement regarding this schedule change announced to the public,** as required by Section 67.15; paragraph (e).

During this time I observed many concerned Bayview residents who had come to speak finally give up and leave. I had already cleared my afternoon to attend this meeting and, despite my discomfort, stuck it out. I had filled out and submitted my speaker card in advance of start of meeting, however when the time for Public comment finally arrived I did not wait for my name to be called but immediately took a place near the front of the line. This was because at various other meetings I have attended on Redevelopment issues concerning the Bayview, I had noticed that Supervisor Maxwell appears to have adopted a practice of 'cherry picking' and prioritizing the order of public speakers with little regard to the order cards may have been submitted, I suggest that stricter controls be instituted to prevent her from future such manipulations. Her bias in favor of Lennar Corporation and Redevelopment Agency plans are well known and transparent. I suggest that her actions in the conduct of meetings serves not only to disadvantage concerned residents and discourage their participation, but also violates the provisions of the Sunshine Ordinance which is intended to ensure that the public's business be conducted in a fair, honest and open manner.

Sincerely,

Patrick Monk.RN. Noe Valley. SF.

