

Date: Jan. 27, 2009

Item No. 4

File No. 09002

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Michael Petrelis v Health Dept
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Completed by: Chris Rustom

Date: Jan. 23, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



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City Attorney

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MEMORANDUM

January 21, 2009

RE: MICHAEL PETRELIS v. SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH STD CONTROL AND PREVENTION UNIT (09002)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Complainant alleges that on or about December 4, 2008, the Department of Public Health STD Control and Prevention Unit held a meeting without giving proper public notice. The STD unit convened a "community partners meeting" on that date to discuss with the general public and gay community information about syphilis statistics and programs as well as future actions.

On January 8, 2009, in response to Complainants allegations, Eileen Shields, Public Information Officer to the Department of Public Health, alleges that the meeting was not intended to include the "gay community" or the public, but was a meeting for the STD Director to meet with those who provide services to the community and businesses who have an interest in the activities of the STD Office.

COMPLAINANT FILES COMPLAINT

On January 5, 2009, Complainant filed a complaint with the Sunshine Ordinance Task Force alleging that the Public Health Control and Prevention Unit had violated Sections 67.7, 67.9, and 67.15 of the Sunshine Ordinance, by its alleged failure to provide advanced notice and an agenda to the December 4, 2008 meeting.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.3 has definitions.

Memorandum

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Whether the San Francisco Department of Public Health STD Control and Prevention Unit is a passive meeting body or policy body for purposes of complying with the Sunshine Ordinance.

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance (Section 67.7, 67.9 or 67.5), Brown Act, and/or Public Records Act were violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

Memorandum

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.

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

Sunshine Ordinance Section 67.3 addresses general definitions for Article II of the Sunshine Ordinance.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
 - (1) A congregation of a majority of the members of a policy body at the same time and place;
 - (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 - (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
 - (4) "Meeting" shall not include any of the following:
 - (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the

Memorandum

(d) "Policy Body" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the Charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

Sunshine Ordinance Section 67.4 deals with passive meetings.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

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(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE
(Chapter 67 of the
San Francisco Administrative Code)

Memorandum

Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

Sunshine Ordinance Section 67.7 deals with public testimony:

- (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 that the 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.
- (e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.



<complaints@sfgov.org>
01/06/2009 12:07 PM

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

History: This message has been forwarded

Submitted on: 1/6/2009 12:07:39 PM

Department: Public Health STD Unit

Contacted:

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: December 4, 2008

Section(s)_Violated: 67.7, 67.9 & 67.15

Description: The DPH failed to issue advance notice to the public about the meeting, its time and place, along with releasing the agenda. Hence, the public was not allowed to observe the STD unit's decision-making process, nor were members of the public permitted to offer public comment.

Hearing: Yes

Pre-Hearing: No

Date: January 6, 2009

Name: Michael Petrelis

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes



██████████@aol.com
01/05/2009 03:01 PM

To: sotf@sfgov.org
cc:
bcc:
Subject: Complaint against DPH STD control unit filed

January 5, 2009

Sunshine Task Force
City Hall
San Francisco, CA

Dear Sir or Madam,

I wish to file a complaint against the STD control and prevention unit of the Department of Public Health, over the failure to properly give the public notice about a meeting held on December 4 at the unit office on Mission Street.

The STD unit convened a "community partner's meeting" on that date to discuss with the general public and the gay community information about syphilis statistics and programs. DPH managers explained future actions by this unit, especially about new social marketing campaigns.

At this meeting, a slide presentation was made and handouts were distributed to those in attendance.

However, the DPH failed to issue advance notice to the public about the meeting, its time and place, along with releasing the agenda. Hence, the public was not allowed to observe the STD unit's decision-making process, nor were members of the public permitted to offer public comment.

I believe this is a clear violation of municipal sunshine laws and ask that the matter be put on the agenda for the task force's next meeting.

Please contact me at 415-██████████, if you need clarification or have questions.

I look forward to a prompt reply.

Sincerely,

Michael Petrelis

New year...new news. Be the first to know what is making headlines.



Eileen Shields/DPH/SFGOV
01/08/2009 01:27 PM

To SOTF/SOTF/SFGOV@SFGOV
cc Jeff Klausner/DPH/SFGOV@SFGOV
bcc
Subject Re: Fw: Sunshine Complaint Received: #09002_Michael
Petrelis v Public Health

History: This message has been forwarded.

Dear Sunshine Task Force:

While the meeting was indeed called a "community partner's meeting," the meeting was with CBO directors and select business leaders with whom Dr. Klausner regularly meets. The meeting was not intended to include the 'gay community' or the public but was a meeting for the STD Director to meet with those who provide services to the community and businesses who have an interest in the activities of the STD Office.

As Director of STD, Dr. Klausner hosts many meetings with people in and outside of government to attend to the business of STD prevention. This was one of them.

We concede that a meeting unadvisedly named "Community Partner's Meeting" would lead one to assume that the structure and agenda would be open to the public and include the requirements set forth in the Sunshine Ordinance, but a poor choice of names for a meeting between the STD Director and those he needs to confer with to conduct his programs does not advance it to the level Mr. Petrelis envisions.

No STD prevention program would be successful without input from all aspects of the community. Mr. Petrelis and any member of the public is always welcome to submit input regarding the activities of the STD Unit without waiting for a formal public hearing or invitation.

We apologize for the confusion that lead this complainant to assume this meeting was a public hearing opportunity.

=====
Eileen Shields
Public Information Officer
San Francisco Department of Public Health
101 Grove St., Room 316
San Francisco, CA 94102
Office phone: 415/554-2507
Cell phone/Pager: 415/370-3377