

Date: Feb. 24, 2009

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force Jan. 27, 2009**
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Completed by: Chris Rustom

Date: Feb. 19, 2009

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

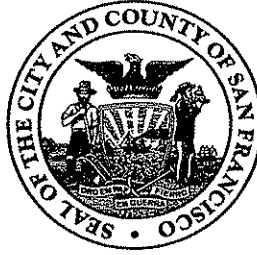
~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** 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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**SUNSHINE ORDINANCE TASK FORCE
SPECIAL MEETING
DRAFT MINUTES**

Tuesday, January 27, 2009
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven (Vice Chair)	Seat 8	Kristin Chu (Chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	(Vacant)	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

Call to Order The meeting was called to order at: 4:00 P.M.

Roll Call **Present:** Craven, Knee, Cauthen, Knoebber, Johnson, Chu, Chan (in at 4: 04), Goldman
Excused: Washburn, Williams

Agenda Changes: None

Deputy City Attorney: Rosa Sanchez
Administrator: Chris Rustom

1. Approval of minutes for December 2, 2008, and January 6, 2009, special meeting.

 Motion to approve minutes (Knoebber / Goldman)

 Public Comment: None

 On the motion:
 Ayes: Craven, Knee, Cauthen, Knoebber, Johnson, Chu, Chan, Goldman
 Excused: Washburn, Williams
2. 08053 Determination of jurisdiction on complaint filed by Peter Witt against the Taxi Commission for failing to include public comment in the minutes, failing to correct the minutes, failing to grant requests for information and failing to disseminate or retain public correspondence intended for PC&N use

Motion to find jurisdiction (Goldman / Cauthen)

On the motion:

Ayes: Craven, Knee, Cauthen, Knoebber, Johnson, Chu, Chan, Goldman

Excused: Washburn, Williams

08053 Public hearing on complaint filed by Peter Witt against the Taxi Commission for failing to include public comment in the minutes, failing to correct the minutes, failing to grant requests for information and failing to disseminate or retain public correspondence intended for PC&N use.

Complainant Peter Witt said this was an old complaint that the Compliance and Amendments Committee had rejected because of incomplete evidence. However, he said:

- The August 12, 2003, Taxi Commission minutes that say he made a presentation before the commissioners was incorrect because he had been ejected from the hearing room.
- The August 22, 2003, minutes said he presented a survey from the Controller's Office but that was also incorrect because what he presented was a survey he had done.
- The April 10, 2007, minutes did not include the names of people who gave public comment.
- The Feb 13, 2006, minutes did not include the names of people who attended the meeting. The error was pointed out to the commission but nothing was done.
- A 2005 memo from Kelly Castagnaro said a survey was to be done but it never happened.

Responding agency was not represented.

Member Knee said a continuance should be considered because Mr. Witt had created an inconvenience for the Task Force with his late submission of evidence.

Motion for continuance (Knee / Johnson)

Motion to dismiss (Chu / Goldman)

Member Cauthen asked the complainant to produce the minutes as evidence.

Member Craven said Mr. Witt should also produce the videotape or DVD of the meetings to see if the minutes were deficient.

In rebuttal, Mr. Witt said an industry expert told the commissioners in 2003 that a taxi ridership survey was critically needed. He said he has come up with his own ridership survey and has presented to the commission annually since 1999. The minutes, he said, have never reflected his presentations and comments. The last survey, he said, involved 2,000 emails sent to City

employees of which 41 responded.

Member Craven reminded Mr. Witt that the Task Force could not order the commission to accept his survey.

Public Comment: Kimo Crossman said the Ethics Commission has a rule to dismiss a case if the evidence is chaotic.

On the motion for continuation:

Ayes: Knee, Cauthen, Johnson, Chan, Goldman

Noes: Craven Knoebber, Chu

Excused: Washburn, Williams

Motion fails. No further action.

DCA Sanchez said the item dies.

3. 08054 Determination of jurisdiction on complaint filed by Anonymous Tenants against the Building Inspection Department for failure to provide a copy of a permit application.

Motion to find jurisdiction (Goldman / Cauthen)

On the motion:

Ayes: Craven, Knee, Cauthen, Knoebber, Johnson, Chu, Chan, Goldman

Excused: Washburn, Williams

- 08054 Public hearing on complaint filed by Anonymous Tenants against the Building Inspection Department for failure to provide a copy of a permit application

Member Cauthen disclosed that she had contacts with the department but did not ask for documents. Her knowledge of the inner workings of the department would benefit the case, she added.

Complainant Anonymous Tenants said based on one of the emails presented as evidence, the department has the ability to scan and email the documents Sec. 67.29-2 and Sec. 67.21-1 require the department to have a web presence and public documents be made available to the public. On the issue of whether the department has to scan and email documents, the Task Force has ruled in the affirmative for the complainant. The Board of Supervisors has also approved a policy that requires that a document be produced in the requested format. He also added that DBI wants him to go and pickup that one document and pay a \$6.50 fee. An anonymous female, in support of the complainant, said she has evidence that DBI emails documents in pdf format.

Respondent William Strawn, who was the communications manager for the department, said Alan Whiteside, the custodian of records, had explained to the complainant the department's long-established procedure and policy. He said the department does not make pdfs because of the multiple steps

involved in the process and that the department does not have the capability. Mr. Whiteside also said that the department does not have the capability to fulfill the request by simply pressing one button. He said all customers are treated equally and Anonymous Tenants will be treated the same way.

Upon questioning by Member Craven, Mr. Whiteside said the department uses PaperFlow software and that the documents are stored on a server. Department inspectors, like the public, have to fill out paperwork to get a copy of a document. Mr. Strawn said the Board of Supervisors had recently unanimously approved a new fee schedule and that the table of costs was located in Table A1L on the website. DBI, he said, was an enterprise department that does not receive any General Fund monies.

Member Craven said she empathizes with the complainant but was hard-pressed to find a violation because there are records that the city provides at a certain cost that was approved by the Board of Supervisors.

Mr. Strawn and Mr. Whiteside did not rebut.

Anonymous Tenants said times have changed and the department needs to keep up and be Sunshine compliant.

Motion to find violation of Sec. 67.21-1 (b) (I) (ii) (iii) (Knee / Cauthen)

Public Comment: Kimo Crossman said DBI could print the document and have the Clerk's staff email the document. The department, he said, also did not present material costs. The costs, he added, are a way to discourage people from getting a document and are discriminatory toward the poor. Peter Witt said he totally agrees with Mr. Crossman.

On the motion:

Ayes: Knee , Cauthen, Johnson, Chan, Craven

Noes: Knoebber, Goldman, Chu

Motion fails.

Motion to reopen motion (Cauthen / Chan)

Ayes: Cauthen, Johnson, Chan

Noes: Craven, Knee, Knoebber, Goldman, Chu

Excused: Washburn, Williams

Item dies

4. 09002 Determination of jurisdiction on complaint filed by Michael Petrelis against the Department of Public Health for failure to notify the public about a meeting and failure to provide the agenda.

Motion to find jurisdiction (Knoebber / Chu)

On the motion:

Ayes: Craven, Knee, Cauthen, Knoebber, Johnson, Chu
Noes: Goldman
Excused: Chan, Washburn, Williams

09002 Public hearing on complaint filed by Michael Petrelis against the Department of Public Health for failure to notify the public about a meeting and failure to provide the agenda.

Complaint Michael Petrelis said the Health Department's STD control unit at their Mission Street office held a Community Partners meeting. There was no advance notice to this public meeting, no mention on the DPH website and no announcements in the gay press, he said. Two people who attended the meeting leaked him the agenda and some of the documents that were handed out. His concern was that DPH was conducting a very serious meeting and should have publicized the event and taken public comment. DPH needs to answer why this meeting was not open to the public, he added.

The department was not represented.

Member Craven said the unit could be in violation is if it was not a passive body and that Ms Eileen Shields' response did not indicate that it was a passive meeting body. She did not see a violation.

In rebuttal, Mr. Petrelis said Sunshine should be applicable because the meeting included a number of DPH employees and contractors who were setting city policy.

Motion to find no violation (Craven / Goldman)

Public Comment: None

On the motion:

Ayes: Craven, Knee, Knoebber, Johnson, Goldman, Chu
Excused: Washburn, Williams
Absent: Cauthen, Chan

5. Report: Education, Outreach and Training Committee meeting of January 8, 2009.

Chair Cauthen was absent. The report was not presented.

Public Comment: None

6. Report: Compliance and Amendments Committee: meeting of January 21, 2009

Chair Knee made the report

Member Craven added that members would be reviewing the proposed annotations for Articles I & II at the next Compliance and Amendments

Committee meeting. She also welcomed suggestions from the departments and the public.

Chair Chu said the Compliance and Amendments Committee was to hold a joint meeting with the Ethics Commission and any member is welcome to be appointed to the committee.

Public Comment: Kimo Crossman said there was a move afoot to draft an alternate ordinance because he and others do not agree to the proposed amendments.

7. Supervisor of Records Report

Supervisor of Records Paula Jesson made the report. She noted that the state court had found that the Charter trumped the Ordinance in a matter brought by Myrna Lym against the Ethics Commission. She noted perhaps more members of the public are aware of the ordinance because that there were more petitions and new petitioners during the current reporting period.

Member Craven said she disagreed with some of the findings but nonetheless thanked Ms Jesson for her efforts.

Public Comment: Kimo Crossman said the court case was poorly argued and there was no precedence set when it came to investigative records. He then said the Supervisor of Records for not being independent of the City Attorney's Office.

8. Administrator's Report

Mr. Rustom made the report.

Member Craven wanted to know if it was appropriate for the administrator to decide if a complaint needs or need not be heard by the Task Force. Member Knoebber said the Task Force should make that decision. Chair Chu directed Complaint Committee Chair Nick Goldman to discuss the issue at the committee level and report back to the Task Force.

Public Comment: Kimo Crossman said the Task Force should liberally allow people to file complaints.

9. Public comment for items not listed on the agenda. Public comment shall be held at 5:00 p.m., or as soon thereafter as possible

Public Comment: Michael Petrelis said he wanted a complaint that was rejected be placed on the Task Force agenda. His complaint was that four city employee including two department heads are part of the Equality California Institute's board of directors. He said he is entitled to the directors' meeting minutes and agenda because of the city's participation in the 501 (c) 4. organization. Kimo Crossman said the Task Force represents the public and

the rule says that members are to find all inferences for the public when departments come up with ways to make obtaining records difficult. Also he said the six-vote majority that was needed to pass a particular item was unfair to the public and needs to be changed. Peter Witt said the Task Force's due diligence is a slap in the face. He said he submitted evidence to the Task Force regarding his case before the Board of Appeals, which issued an order but was not followed through. Records related to the case are not to be found and considered lost. He wanted to know why the Task Force, given the same evidence, could find an agency in violation in 2007 and not in 2003. An anonymous female said open government means that the department should submit a written response so that the complainant knows what the department's rationale for withholding the document. Money wasn't an issue, she said. Anonymous Tenants said whenever he was before a city panel pleading his case he found and proved that city employees would always lie and make false statements. The issue could be the same in his case against the Department of Building Inspection. The statements made by city employees should be backed up by proof, he said.

Member Cauthen said she would like to reopen Item 3 because Mr. Crossman alluded to Sec. 67.21 (g) that says there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

10. Announcements, comments, questions, and future agenda items from the Task Force

Chair Chu noted the passing away of Ex-officio Richard Sklar. Member Craven suggested writing to the Mayor's Office to express the Task Force's condolences and to encourage an appointment at the appropriate time.

Adjournment:

The meeting was adjourned at 6:10 p.m.

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

