

Date: February 26, 2008

Item No. 3
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Complaint for Dec. 11, 2007, and Feb. 12, 2008**
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Completed by: Frank Darby

Date: February 20, 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.

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
MINUTES**

**Tuesday, December 11, 2007
3:00 p.m., City Hall, Room 406**

Committee Members: Sue Cauthen, Chair; Kristin Chu, Nicholas Goldman

Call to Order: 4:00 p.m.
Roll Call: **Present:** Cauthen, Chu
Excused: Goldman

Agenda Changes: None

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby

1. Approval of minutes of November 13, 2007. (action item) (attachment)

Speakers: None

Motion approving minutes of November 13, 2007. (Chu / Cauthen)
Ayes: Cauthen, Chu,
Excused: Goldman

2. 07082 Determination of jurisdiction of complaint filed by Wayne Lanier against the Department of Telecommunications and Information Services (DTIS) for violation of Sections 67.21 (b), (c), 67.25 (b), and 67.29-7 (a) of the Sunshine Ordinance for alleged failure to provide records, failure to justify withholding, untimely response, and failure to maintain and preserve records.

Speakers: Wayne Lanier, Complainant, said that there is no objection to jurisdiction. Barry Fraser, DTIS representative, said that he does not object to jurisdiction.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu
Excused: Goldman

Mr. Lanier waived the 45-day requirement.

3. 07085 Determination of jurisdiction of complaint filed by Mr. Alvin against the Grants for

the Arts for alleged failure to provided requested records and information.

Speakers: Khan Wong, GA representative, said that he does not contest jurisdiction. He said that he did not receive a request for records indicated by Mr. Alvin.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

4. 07087 Determination of jurisdiction of complaint filed by Allen Grossman against the Mayor's Office for alleged failure to respond to a Immediate Disclosure Request submitted on October 2, 2007, and repeated on October 19, 2007.

Speakers: Allen Grossman, Complainant, said that he had nothing to add on jurisdiction, and that he received no response from the Mayor's Office. Kimo Crossman, in support, suggested that a letter be sent to the Mayor's Office regarding attending the meeting.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Grossman waived the 45-day requirement.

5. 07088 Determination of jurisdiction of complaint filed by Kimo Crossman against the Assessor's Office for alleged violation of Sections 67.1, 67.4 (a), 67.21 (a) and (b), 67.25 (a) and (d), 67.26, 67.27, and 67.34 of the Sunshine Ordinance, Government Code Sections 6253 (a) and (c), 6255 (a), and Constitution Article I, Section 3, for failure to provide requested records, untimely response, failure to provide passive meeting notice, invalid invocation of voluminous documents extension, failure to incrementally deliver records, willful failure and official misconduct.

Speakers: Kimo Crossman, Complainant, said that he did not receive passive meeting notices or emails and that the calendar was late.

Zoon Nguyen, Assessor's Ofc. Representative, said that she agrees to jurisdiction. She asked for clarification of the complaint so that the department can properly respond.

Kimo Crossman, in rebuttal, said that he did not receive a passive meeting notice of the November 1, 2007, WiFi meeting; that the calendars received were not submitted timely.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Crossman waived the 45-day requirement.

6. 07089 Determination of jurisdiction of complaint filed by Kimo Crossman against the District Attorney's Office for alleged violation of Sections 67.1, 67.4 (a), 67.21

(a), (b), (i), (k) and (l), 67.21-1, 67.25 (d), 67.26, 67.27, 67.29-7 (a) and 67.34 of the Sunshine Ordinance, Government Code Sections 6253 (a) and (c), 6255 (a), and Constitution Article I, Section 3, for failure to provide requested records, untimely response, invalid redactions, and invalid exemption for Attorney Client communications.

Speakers: Kimo Crossman, said that he did not receive all email, and that some email provided was heavy redacted. He urged the committee to accept jurisdiction.

Public comment: Allen Grossman said that it is fair that complainants are showing up for meetings but not departmental representatives.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Crossman waived the 45-day requirement.

Note: Sandip Patel, DA representative, arrived at approximately 4:00 PM and was informed that the Committee had moved to accept jurisdiction; that the merits will be heard at the January 8, 2008 special Task Force meeting.

7. 07090 Determination of jurisdiction of complaint filed by Kimo Crossman against the Municipal Transportation Agency and Commission for alleged violation of Sections 67.1, 67.24 (a)(2) and (e)(3)(iii), and 67.21 (b) of the Sunshine Ordinance for failure to provide records for review in a timely manner, invalid invocation of an extension for records access, and failure to provide a summary of verbal positions.

Speakers: Kimo Crossman, Complainant, said that the public was not allowed to see the final contract before adoption.

Chair Cauthen asked the Administrator to cite Section 67.21 (e) of the Ordinance when notifying the departments of the meeting.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Crossman waived the 45-day requirement.

Note: Murray Bond, MTA representative, arrived at approximately 4:29 PM and was informed that the Committee moved to accept jurisdiction; that the merits will be heard at the January 8, 2008 special Task Force meeting.

8. 07091 Determination of jurisdiction of complaint filed by Dr. Ahimsa Porter Sumchai against Supervisor Sophie Maxwell for allegedly delaying public comment on an item at the October 29, 2007, Land Use and Economic Development Committee.

Speakers: Patrick Monk, in support of the Complainant, said that Supervisor Maxwell changed the order of the meeting without making an announcement, and that he has filed an identical complaint. He asked if it could be combined with Dr. Sumchai's.

DCA Llorente, in response to Chair Cauthen, said that generally speaking a body can change the order of the agenda, as is done by the Board of Supervisors, the Task Force, etc.; that there is some discretion. He said that Mr. Monk can ask to have his complaint combined at the January 8, special meeting.

Public Comment: Kimo Crossman asked if the complaints will be resolved in 45 days pursuant to Section 67.21 (e) of the Ordinance.

Allen Grossman, asked if complainants were notified of the January 8, 2007, meeting.

Chair Cauthen informed all parties present that the merits of the complaints will be heard at the January 8, 2007, special Task Force meeting. In response to Chair Cauthen's question, all parties present agreed to waive the 45-day requirement.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Note: Dr. Ahimsa Sumchai, Complainant, arrived at approximately 4:10 PM and was informed that the Committee had moved to accept jurisdiction. She agreed to waive the 45-day requirement.

9. 07092 Determination of jurisdiction of complaint filed by Patrick Monette-Shaw against the Board of Supervisors (BOS) and Human Resources Department (DHR) for alleged violation of Sections 67.10, 67.8 (a)(5) of the Sunshine Ordinance and Government Code Section 54957.6 (a) for improperly holding a closed session.

Speakers: Patrick Monette-Shaw, Complainant, said that the Board should not say that the complaint lacks merit. He said that DHR's response that they have no authority over the agenda of the legislative body is not valid; that they should have known that the closed session was in violation of section 67.10 of the Ordinance.

Frank Darby, BOS representative, said that the Board does not contest jurisdiction.

Jennifer Johnston, DHR representative, said that DHR does not contest jurisdiction, and that they do not have discretion over the Board Agenda.

Public Comment: Kimo Crossman, said that Mr. Shaw sent out a public notice to the parties indicating that they could not go into closed session prior to the meeting; that DHR should be held responsible since they attended after receiving the notice. He said that he is offended by the Clerk of the Board's response because merit is not a legal reason, but rather a conclusion.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Monette-Shaw waived the 45-day requirement.

10. Administrator/s Report

The Administrator submitted his report.

Speakers: Kimo Crossman alleged that he has been unable to get a response from the Administrator regarding the complaints he filed. He said that tomorrow's CAC packet is not posted; that he received a digital recording of the November 27 Task Force meeting in a format that he could not play back.

Chair Cauthen, said a full time Administrator will start in January.

11. Public Comment for items not listed on the agenda

Speakers: Kimo Crossman alleged that he can never get a response to e-mails from the Administrator and urged the Task Force to take action.

Chair Cauthen, responded that the Administrator works for the Board of Supervisors, and that they are the appropriate body to approach.

Allen Grossman, said that the 6 vote requirement is a problem when only 6 members are present. He urged the Task Force to establish their own voting rules, since they are not a chartered body.

Chair Cauthen said that her understanding is that a quorum is required regardless of the number of members present.

DCA Llorente in response said that this matter was reviewed in the past and that the City's position is that the passage of any substantive issue or motion has to be by a majority of the total number of the body, rather than a majority of the members present. He said that a vote of 6 is needed by the Task Force to pass a matter.

Chair Cauthen said that meetings should not be allowed to drag on till late at night when some members have to leave.

DCA Llorente said that one of the reasons for the long meetings is that the Task Force does not have strict limitations on its own members' speaking time. He said that if strict speaking times among the members is equitably enforced by cutting to the chase and getting to the vote, up or down, then the Task Force could do a better service to those who appear. He said that neither complainants nor respondents like to sit for six or seven hours then lose a quorum. He said that meetings could be limited to 4 hours if members are disciplined and focused.

Member Chu asked DCA Llorente to provide a list of what the Task Force can do to change how meetings are conducted.

Chair Cauthen suggested a formal motion to urge that in the interest of efficient

meetings the Task Force strictly and equitably enforce its rule regarding members debate.

Member Chu said that there should be no member discussion on jurisdiction.

Chair Cauthen said that when a member(s) monopolizes the meeting it discourages participation by other members.

DCA Llorente said that the times specified for items are not being complied with. He said that there has to be uniformity in terms of application; that it all resides with the Chair who must control the meeting and be fair about how rules are applied so that everyone has the opportunity to be heard and the discussion is limited to relevant issues.

DCA Llorente, in response to Member Chu, said that an agenda item can be requested of the Chair that says, "We need to streamline these meetings and I am requesting an agenda item dedicated to a discussion of how the Task Force can reduce the seven-hour meetings to a three-hour meeting, and the approach to receiving evidence and deliberating.

Chair Cauthen suggested a rule that no person could speak twice until others have had an opportunity to speak once, and that speaking time be limited to ten minutes on an item. She said that the Task Force would be more productive, and fully staffed, if the rule on member comments were strictly enforced, and there was a limit on how long and how often one member can speak.

Chair Cauthen said that she will urge the Chair to agendize a discussion on this matter for the January meeting.

12. Announcements, questions, and future agenda items from Committee members.

The Administrator, in response to Chair Cauthen, said that an agenda item to discuss whether to discontinue the Complaint Committee will be scheduled for the January 8, 2008, meeting.

DCA Llorente, said that in the short run Chair Comstock may set out a rule for the January 8, meeting to try to limit the discussion time and question time that members use, and if that doesn't work, to calendar a formal agenda item for the second meeting in January.

Member Chu asked if there is a reason why the Complaint Committee can't hear only those complaints that have an issue regarding jurisdiction. DCA Llorente responded that the Task Force still has to accept jurisdiction on all complaints.

Chair Cauthen said that work tends to expand to fill the time available for it and she does not want to go to two long meetings per month.

The Administrator, in response to Chair Cauthen, said that he is not agreeable to having two long meetings. He said that discontinuing the Complaint Committee would require revising the Complaint Procedures, changing filing and support

document deadlines for complaints, and might pose problems for staff meeting agenda and packet deadlines.

Speakers: Murray Bond from the MTA's External Affairs division said that he was here for item #7 and apologized for arriving late. He said that he thought that the meeting started at 4 PM.

Chair Cauthen informed Mr. Bond that jurisdiction was recommended and the date of the special meeting in January.

Adjournment

The meeting was adjourned at 4:39 p.m.

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

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
DRAFT MINUTES
Tuesday, February 12, 2008
4:00 p.m., City Hall, Room 406**

Committee Members: Sue Cauthen, Chair; Kristin Chu, Nicholas Goldman

Call to Order: 4:00 p.m.

Roll Call: **Present:** Cauthen, Chu (left 6:55 pm), Goldman

Agenda Changes: None

Deputy City Attorney: Rosa M. Sanchez

Clerk: Chris Rustom

1. Approval of minutes of December 11, 2007.

Speakers: None

Motion approving minutes of December 11, 2007. (Goldman / Chu)

Ayes: Cauthen, Chu, Goldman

2. 08001 Determination of jurisdiction of complaint filed by Kimo Crossman against the District Attorney's Office for alleged failure to provide the calendar of District Attorney Kamala Harris in electronic format and without charging a fee.

Speakers: Kimo Crossman, complainant, said he requested Ms. Harris' calendar to be scanned in pdf and emailed to him but the DA's Office made a print out and wanted to charge him \$0.10 per page. The DA, he said, thinks the Sunshine Ordinance pertains to them in general but Section 67.24 (d) does not exclude the department. Dan Boreen said the DA's Office is subject to open access and transparency in the absence of a specific exception. Stephen Worsley said \$0.10 is a small amount compared to the time spent in going to the office, tagging the documents for print and collecting and paying for it on another trip. Transparency in the modern day means it should be available on the Internet

Santip Patel of the DA's Office said his department accepted limited jurisdiction pursuant to *Revero v Superior Court* which was an Appellant Court case. His office, he said, also reserves the right to object to jurisdiction at any point if it exceeds the holding of *Revero vs Superior Court*.

In rebuttal, Mr. Crossman said he would like to see the DA's arguments in writing.

Chair Cauthen asked Mr. Patel to provide the committee with a copy of Revero v Superior Court case and have it included in the Task Force packet. Member Chu also requested an opinion from the DCA Erne Llorente.

Public comment: Dan Boreen said the Sunshine Ordinance makes it very clear that attorneys are not supposed to act on behalf of a department in order to support withholding a public document.

Motion to find jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

3. 08003 Determination of jurisdiction of complaints filed by Christian Holmer against the Mayor's Office for alleged failure to provide records in response to Immediate Disclosure Requests for press releases the Mayor issued the previous day.

Speakers: None.

Motion recommending jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen asked the clerk to notify the Mayor's Office that not appearing before the committee was in violation of the Ordinance and that she expected them to be present at the Task Force meeting.

Note: Mr Holmer arrived after the motion was made and voted on. He was told jurisdiction was found and to appear before the Task Force on February 26, 2008.

4. 08004 Determination of jurisdiction of complaint filed by Kimo Crossman against the
08005 City Attorney's Office for alleged failure to provide communications between the
08007 City Attorney and District Attorney on Sunshine matters, detailed billing records for this advice, and calendars of city attorneys who provided advice.

Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide communications between the City Attorney and Harrison Sheppard on Sunshine matters, detailed billing records, and calendars of city attorneys who interacted with Mr. Sheppard..

Determination of jurisdiction of complaint filed by Kimo Crossman against City Attorney's Office for alleged failure to provide communications between the City Attorney and the Clerk of the Board of Supervisors on Sunshine matters, detailed billing records for this advice, and calendars of city attorneys who provided advice.

Chair Cauthen noted that files 08004, 08005,08006,and 08007 were identical with the exception of 08006 which has an extra request. She suggested combining 08004, 08005 and 08007, but wanted to hear from Mr. Crossman and the other committee members before proceeding.

Kimo Crossman, the complainant, said the CAO has not responded to any of his requests and would like the department to state why his requests could not be acted on within the permitted periods. He said the department was prioritizing his requests but was not told how it was being prioritized. Mr. Crossman also said the committee agenda was missing sections of the Ordinance the department had violated.

Member Goldman suggested combining 08004, 08005 and 08007. Member Chu agreed. Complainant also agreed.

Motion finding jurisdiction on 08004, 08005 and 08007. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

5. 08006 Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide all materials related to the Buck Delventhal meeting of October 9, 2007, regarding Sunshine Task Force hearings against Supervisors Peskin and Maxwell, and failure to provide any materials or communications before or after the meeting relating to the matters discussed.

Kimo Crossman, complainant, said he wants to know what was discussed during an apparent meeting between DCA Buck Delventhal and representatives of Supervisors Aaron Peskin and Sophie Maxwell as suggested in a document made available in a different Sunshine document request. The supervisors, he said, had pending Sunshine complaints at the time the meeting occurred. His request also included a 15-minute phone conversation with Mr. Delventhal.

Chair Cauthen was pleased the CAO was not contesting jurisdiction but emphasized the need for representation at the committee meeting.

Public comment: none

Motion accepting jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

6. 08008 Determination of jurisdiction of complaint filed by Stephen Worsley against the Recreation and Park Department for alleged failure to provide requested records, namely: Procedures used to select COIT Partner and areas of background investigation, findings on the partners, and complete review and acceptance signatures.

Chair Cauthen announced that she has had previous contact with the complainant, but would not recuse herself because she believed she could be impartial.

Mr. Worsley, the complainant, said Coit Tower was about to be privatized and the contract going to a businessman who runs the Santa Monica Boardwalk. He said he was seeking various documents from Margo Staub, the department's property management division manager, to see what Rec & Park knows about the businessman. He also said the 75-year-old Depression Era heritage site is going to be turned into a carnival where beer and wine sales are going to be all

day long, and tourist bric-a-brac being sold in the rotunda.

Rose Dennis, representing Park & Rec, said the department has provided Mr. Worsley with numerous documents many times and is still trying to accommodate his requests. In fact at Mr. Worsley's request she had brought him a copy of a document he requested instead of him going to collect it. Ms. Dennis said if jurisdiction was found, the department has documentation that shows their efforts.

In rebuttal, Mr Worsley said he feels that there is a secret hope among Rec & Park officials that they want to close the deal without public scrutiny.

Public comment: Kimo Crossman, commented on Ms Dennis' use of "inordinate amount of time" spent on assisting Mr. Worsley. He said the Ordinance says information requests must be considered as part of a city employee's daily workload. Dan Boreen said the committee should automatically find official misconduct if the department produces the document at the hearing.

Member Chu and Chair Cauthen reminded Mr Worsley to provide the Task Force with detailed information to help them decide his case.

Motion finding jurisdiction (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

7. Discussion regarding the direction of the Complaint Committee and Task Force efficiency.

The committee went through the Dec11, 2007 meeting minutes and discussed issues related to the topic: The topics included Member Chu's suggestion that the Complaint Committee be disbanded and let the Task Force hold two meetings a month, Mr Grossman's statement that if it would make things easier if departments were forced to abide by the deadlines; and Mr. Crossman's position for disbandment.

The committee also took into consideration Administrator Frank Darby and DCA Ernie Lorrente's position that said it would become more complicated if certain work was not done in committee. They also revisited the committee's mission statement and went over complaint procedures.

They decided to recommend to the task force that the committee would be discouraged from spending excessive time debating jurisdiction when both the City Attorney and the department have no objection to it. It would also apply when the complainant and respondent have not objected to jurisdiction and to exercise Rule 4 of the Mission and Work Plan.

Public Comment: Kimo Crossman said people don't know the process. They automatically want to argue their case even though it is just on jurisdiction. If jurisdiction is not disputed it should go automatically go to the Task Force. Hold two task force meetings a month for a few months and assess the situation. He said he has to take off from work just to attend the hearings. Dan Boreen said the task force has in the past allowed a jurisdictional and hearing on the merits

at the same time. He said the only objection to jurisdiction would be from the department or an individual. If that happens, the burden should shift to the person or department and ask for the reason in writing, send it to the Task Force and limit presentation time.

Chair Cauthen suggested helping complainants understand the process and helping them collect evidence should also be part of the committee's role. It was agreed that Chair Cauthen would ask the Task Force chair to have the committee agendaized at its next meeting so that she would tell members that the committee would only discuss contested jurisdictions. She also wanted to further hear from Administrator Frank Darby and DCA Llorent and request that they attend the next Task Force meeting.

8. Administrator's Report

The Administrator submitted his report.

Speakers: Kimo Crossman complained that he was not provided with a copy of the City Attorney's response to two of his files on two different two occasions. Chair Cauthen asked the clerk to make sure documents are provided to both parties.

9. Public Comment

Speakers: Dan Boreen said if the Task Force is to meet twice a month, it is because of a department's failure to comply. He said he filed four complaints in November 2007. Jurisdiction was found and Orders of Determination issued and yet it has turned out to be a long protracted process. As discussed earlier in the evening, he said, other Sunshine committees also have to tighten the process. Giving departments ample time and opportunity and using all of the city's resources including the city attorneys to look for an excuse not to comply is wrong, he said.

Adjournment

The meeting adjourned at 7:00 p.m.

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

