

Date: April 28, 2009

Item No. 1

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Task Force March 24, 2009
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
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Completed by: Chris Rustom

Date: April 24, 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



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**SUNSHINE ORDINANCE TASK FORCE  
MEETING  
DRAFT MINUTES**

Tuesday, March 24, 2009  
4:00 p.m., City Hall, Room 408

**Task Force Members**

Seat 1	Erica Craven-Green (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	Tanene A. Allyson
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 (in at 4:35 p.m.), Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Goldman, Williams

**Agenda Changes:** Item 26 heard before Item 6

**Deputy City Attorney:** Rosa Sanchez  
**Administrator:** Chris Rustom

1.            Approval of minutes for February 24, 2009, regular meeting.  
  
              Motion to approve minutes ( Washburn / Goldman )  
  
              Public Comment: None  
  
              On the motion:  
              Ayes: Craven, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Williams, Chu  
              Excused: Knee
2.    08057    Determination of jurisdiction on complaint filed by Vince Courtney against Labor Standards Enforcement for not providing documents related to a wage-rate issue  
  
              Motion to find jurisdiction ( Goldman / Cauthen )  
              Public Comment: None

On the motion:

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

Excused: Knee

3. 08057 Public hearing on complaint filed by Vince Courtney against Labor Standards Enforcement for not providing documents related to a wage-rate issue

Member Cauthen said she knows Mr. Courtney from his days on the Sunshine Ordinance Task Force but that she could look at this case objectively.

Complainant Mr. Courtney said he represents Labor International Union Local 261 which is engaged in the construction industry. Labor Standards under Donna Levitt's leadership decided on the electricians' wage rate over the laborers' wage rate when it came to installing conduits. He asked Ms. Levitt for paperwork that she relied on to reach her conclusion and was provided with numerous documents. But, he said, a document that showed Ms. Levitt had exclusive authority to make the decision was not provided. That document, he said, could contain information on the appeal process, which his union intends to undertake.

Respondent Ms. Levitt read part of her Jan 20, 2009, submission to the Task Force that included an event where Oscar De La Torre, Business Manager of Local 261, faxed her a letter that said the state allows contractors to decide on which wage rate they preferred to pay. She said he also suggested that Labor Standards take the same position. She also said Local 261 filed a Sunshine complaint two hours after she had faxed them a letter that said additional time was needed to respond to their latest document request because it was voluminous.

Member Craven said the December 11 request was written like an Immediate Disclosure Request but it could not fall into that category and no violation occurred because it was not asking for a copy of a readily available policy statement but a stack of documents. On the authority, she said, a person can not ask for a document that does not exist. The office, she believed, has provided all the documents and a violation could not be found on a document that does not exist. No argument has been offered by both sides that said the document exists and is being withheld, she added.

Member Craven also urged Ms. Levitt that as a public servant all requests should be treated generously and responded accordingly.

Member Knoebber said he seconds the motion because 550 pages is quite a large number for an IDR and that the complainant seems to be looking for an explanation and not a document.

In rebuttal, Ms. Levitt said the effort took 13 hours of staff time to locate and copy 550 pages. She also said her office takes the Sunshine Ordinance seriously and in this case correctly responded appropriately.

Mr. Courtney said he appreciated the time taken to make the copies but the intention was to answer a simple question – from whom did she get the authority to decide on the wage rate. He added that he wanted the truth now that the union has to appeal the decision.

Motion to find no violation ( Craven / Knoebber)

Public Comment: None

On the motion:

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

Excused: Knee

4. 09006 Determination of jurisdiction on complaint filed by Joshua Arce and Eric Brooks against the Public Utilities Commission for violation of Sec. 67.21 and Sec. 67.29-7

Member Craven said her spouse works for the SFPUC and had to be recused. Member Williams also recused herself because she could not be unbiased.

Motion to recuse Member Craven and Member Williams. Without objection.

Motion to accept jurisdiction ( Goldman / Knoebber )

Public Comment: None

On the motion:

Ayes: Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Knee

Recused: Craven, Williams

5. 09006 Public hearing on complaint filed by Joshua Arce and Eric Brooks against the Public Utilities Commission for violation of Sec. 67.21 and Sec. 67.29-7

Complainant Joshua Arce (are-say), executive director of Brightline Project, said this complaint originated from the debate over the construction of power plants between Bayview Hunters Point and Potero. He said a Sunshine request was made for all communications between the SFPUC and the California Independent System Operator Corporation between March 1, 2008, and May 21, 2008. SFPUC produce 5 emails related to the issue. CISO produced 20 emails. When questioned, SFPUC said they had deleted 15 emails, he said.

Respondent Tony Winnicker, Director of Communications for the SFPUC, said most of the conversations with the CISO took place over the phone and when the department received the request it did a search made available to the complainants all the emails that were responsive to the request. SFPUC employees get hundreds of emails daily and do not keep them all, he said. Staff has discretion over the deletion of emails including those sent by CISO.

Retained emails would include those related to the core mission. Ms Barbara Hale, assistant general manager for power, for example would delete emails regarding appointments after making a note in her calendar. Since then the general manager has reminded staff that that they have to be careful when clearing their emails especially if the topic is of great public concern, he said.

On Chair Chu's questioning, Mr. Winnicker said there was much less communications between the agencies during that period than it was perceived to be; the agency has a roving Sunshine training group; and the agency does not go into backup tapes for document requests but only does it for litigation purposes.

Member Knee, who just entered the room, disclosed that he was acquainted with co-complainant Eric Brooks but felt that it would not prejudice him in this case.

Chair Chu wanted to know if burdensome was the legal authority why the SFPUC did not have to go back into their deleted files and retrieve documents. DCA Sanchez said it was an issue she had not addressed before but would ask DCA Llorente to present a response at the next meeting.

In rebuttal, Mr. Winnicker said, emails that contain important documents are kept and that it isn't actually possible to keep every email staff receive. It had to be deleted if not the system would be compromised. He also said it certainly would be an extreme burden if the agency had to look at backup tapes whenever a request was received.

Mr. Brooks said he has emails that date back to 1993 and storage was not an issue. He said the power plant issue was not a routine matter because it was a contentious issue before the BOS and staffers at PUC were fired over it. Emails suggesting certain events such as an alert over a protest at City Hall is not routine because it raises more questions, he said. Many times, he said, SFPUC staffers have gone before committees and twisted the facts. He requested an investigation of the agency besides finding them in violation of the Sunshine Ordinance.

Motion to find violation of 67.29-7 and for the SFPUC to review their backup tapes for additional records ( Goldman / Johnson )

Public Comment: Ray Hartz said the emails would be very easy to retrieve using delimiters because it was a very short time frame to search and they should have done it to present evidence to Task Force. He also said he had not heard anything from the agency on changing the arbitrarily email deletion practice.

On the motion:

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

6. 09013 Determination of jurisdiction on complaint filed by Steve Lawrence against the

PUC for violating Sec. 67.21 (b).

Continued to April 28, 2009, meeting

7. 09013 Public hearing on complaint filed by Steve Lawrence against the PUC for violating Sec. 67.21 (b).

Continued to April 28, 2009, meeting

8. 09003 Determination of jurisdiction on complaint filed by Rita O'Flynn against the Department of Technology for not providing emails related to an inquiry made to the Mayor's Office of Housing

Motion to find jurisdiction ( Johnson / Goldman )

Public Comment: None

On the motion:

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

9. 09003 Public hearing on complaint filed by Rita O'Flynn against the Department of Technology for not providing emails related to an inquiry made to the Mayor's Office of Housing

Complainant Rita O'Flynn said she requested to see a file at the Mayor's Office of Housing. She was able to review the file and requested a copy. When she received the copy she noticed that some of the emails she saw in the original file were not included. On contacting the office she was told that what she had was what was in the file and that all electronic copies had been deleted. She then contacted the Department of Technology and was told several days later to come and collect a disc. Her husband went to get the disc but was denied access, she said.

Mark O'Flynn said the Charter allows documents to be destroyed after five years but nothing is said about emails. That, he said, could lead to the deletion of emails within a shorter time period. The Department of Technology is the document retention center mentioned in the Charter because it does the backups for all city departments, agencies and offices, he said.

Respondent Ron Vinson of Department of Technology said the complainant's request were of records of current and past city employees and that it was the responsibility of the departments they worked in. The backups that the department does are only for disaster recovery. He said he told Mr. O'Flynn that the document was in a form that could not be read. During that same period the department received a subpoena for the exact same documents. However, the legal action was denied by the courts and the department considered it final for the complainant's request as well. He said the Task Force had indicated in past complaints that it was not required to produce backup copies because the system was designed only for disaster recovery of

records

Member Craven said deleting the records should not have happened after they were produced because it was an operative Sunshine request at that stage and similar to a document preservation request during litigation. She suggested complaining against the Mayor's Office of Housing because the respondent in this matter is the Department of Technology. She said documents on the backup tapes are public records and subject to Sunshine. She also said 6253.9 allows for the requestor to be charged a recovery fee based on time and cost involved. Mr. Vinson said the technology to index and search the backup tapes does not exist and would be very costly to create.

Chair Chu said the department has always acknowledged the existence of a problem in producing public documents but never has addressed how it would be fixed. Mr. Vinson said the program from the beginning was not designed for the needs of the Task Force. It was, he said, to be used for recovery when a disaster occurs.

In rebuttal, Mr. Vinson said the O'Flynn's were very patient and worked with the department.

Ms O'Flynn said she was disturbed that the Mayor's office deleted the emails and she was about to become financially responsible for it. The burden, she said, should be borne by the Mayor's office because it was in existence when she requested a copy.

Motion stating that the electronic records of the City and County of San Francisco stored in backup tapes are public documents covered by the Sunshine Ordinance and the SPRA. The department's position to the contrary is in violation of CPRA 6253.9. The department in this case failed to respond to Ms O'Flynn's request with an estimation of the cost to retrieve the records at a minimum under 6253.9. ( Craven / Goldman )

Member Knee made a friendly amendment to add 67.21-1. Motion sponsors agreed.

Public comment: None

On the motion:

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

10. 09007 Determination of jurisdiction on complaint filed by David Larkin against the Department of Public Works for not releasing documents related to an internal misconduct investigation

Continued to April 28, 2009, meeting

11. 09007 Determination of jurisdiction on complaint filed by David Larkin against the Department of Public Works for not releasing documents related to an internal



misconduct investigation

Continued to April 28, 2009, meeting

12. 09009 Determination of jurisdiction on complaint filed by Charles Pitts against the Health Department for not providing information and identifying the person who finally provided the response

Member Knoebber said he has worked with the person mentioned in the complaint but was able to be impartial.

Motion to find jurisdiction ( Goldman / Johnson )

Public Comment: None

On the motion:

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

13. 09009 Public hearing on complaint filed by Determination of jurisdiction on complaint filed by Charles Pitts against the Health Department for not providing information and identifying the person who finally provided the response

Complainant Charles Pitts said the department made reference to a document that was not provided. He said the department said they discussed it at the January meeting but it was not reflected in the minutes. By that, he said, the department did not tell him the truth. He also said he does not know where the document originated because it was not signed.

The department was not represented.

Member Craven said it was problematic that Health Department PIO Eileen Shields did not attend because there could have been questions for her to answer.

In rebuttal, Mr. Pitts said it was egregious that Ms. Shields could give him any type of document she wanted and she was not present to be accountable for it.

Motion to commend the department for creating a document to assist the requestor understand the issues and that the department violated 67.21 (e) for not attending the hearing (Cauthen / Goldman )

Public Comment: None

On the motion:

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

Noes: Craven

Members take a 5-minute break at 7:20 p.m.

14. 09010 Determination of jurisdiction on complaint filed by Ray Hartz against the Arts Commission for violating Sec. 67.29 by failing to properly maintain the Index of Records

Motion to find jurisdiction ( Goldman / Johnson )

Public Comment: None

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knöebber, Johnson, Chan, Goldman, Williams, Chu

15. 09010 Public hearing on complaint filed by Ray Hartz against the Arts Commission for violating Sec. 67.29 by failing to properly maintain the Index of Records.

Complainant Ray Hartz said he called the Arts Commission and made an IDR to see its equal opportunity plan. Deputy Director Nancy Gonchar called back three days later to say the document did not exist although it was listed on the Index of Records. He requested that the Arts Commission be found in violation for failure to maintain the index.

Respondent Sharon Page-Richie, the Arts Commission secretary, said she had to call Mr. Hartz to understand his request and was subsequently told by Ms. Gonchar that the document did not exist because of a change in city policy. That information was forwarded to Mr. Hartz, she said. She also said she was not aware of the index till recently but was working with Ms. Gonchar and Administrative Services to bring it up to date.

Member Craven said the Education, Outreach and Training Committee should make it a priority to see that the index is up to date.

During clarification by Member Cauthen, Mr. Hartz said he wanted to know the reason behind sending the matter to the EOT when in fact officials have violated the ordinance because they have read and signed the Sunshine declaration.

In rebuttal, Ms. Page-Richie said the department is interested in complying and is in the process of updating the index.

Mr. Hartz said all the documents on the index are retention schedules regardless of the department. Agencies have to update their records because it is the only way the public could identify the record they need from a particular department. To accept the reasons behind why the index was not updated is not reasonable, he said. That is not the way it is done in the military, he added.

Public comment: None

Matter closed.

Chair reopens matter at Member Craven's request.

Member Craven suggested the chair notify the commission that the matter is to be referred to the EOT and that the chair of the committee contact Administrative Services to see which department has not updated their index in the last two years. She thanked Mr. Hartz for bringing up the issue but found that working through the EOT department wide was far better than finding one department in violation.

Chair Chu agreed.

16. 09004 Hearing to consider an appeal filed by Ray Hartz of the February 24, 2009, Order of Determination issued by the Task Force against the City Attorney's Office PIO Matt Dorsey.

Mr. Ray Hartz said his arguments were based on a 150-page document that was on file and never reproduced. Also, he said, two Task Force members indicated they had not seen the document. He wanted to know how the Task Force could make a fair decision without looking at the main piece of evidence. It is new information, he said, because only at the meeting did members get to look at it.

Member Craven said she knew what the document looked like because Mr. Hartz had held it up during his presentation. She said she did not need to look at the document because the matter was based on the kind of document and the arguments presented. She said the request should be denied.

Public comment: Matt Dorsey, PIO for CAO, said he supports a rehearing because previously Mr. Hartz had claimed anonymity but has since attached his name to his complaints. That allows for the public to know who is filing a complaint against whom, he said.

Motion for reconsideration ( Williams / Johnson )

Ayes: Johnson, Williams, Cauthen

Noes: Craven, Knee, Washburn, Knoebber, Chan, Goldman, Chu

17. 09001 Determination of jurisdiction on complaint filed by Ray Hartz against the City Attorney's Office PIO Matt Dorsey for incomplete responses, non-responsive information and failure to comply on a timely basis

Motion to find jurisdiction ( Goldman / Johnson )

Public Comment: None

On the motion:

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

18. 09001 Public hearing on complaint filed by Ray Hartz against the City Attorney's Office PIO Matt Dorsey for incomplete responses, non-responsive information

and failure to comply on a timely basis

Withdrawn

19. 09011 Determination of jurisdiction on complaint filed by Ray Hartz against the City Attorney's Office PIO Matt Dorsey for not keeping withholding to a minimum and not providing justification for the withholding

Withdrawn

20. 09011 Public hearing on complaint filed by Ray Hartz against the City Attorney's Office PIO Matt Dorsey for not keeping withholding to a minimum and not providing justification for the withholding

Withdrawn

21. Report: Complaint Committee meeting of March 10, 2009

Committee Chair Nick Goldman gave the report.

Public Comment: None

22. Report: Education, Outreach and Training Committee's meeting of March 12, 2009.

Member Cauthen made the report

Motion to adopt updated Mission Statement ( Cauthen / Goldman )

Public Comment: None

On the motion:

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

23. Report: Compliance and Amendments Committee: meeting of March 10, 2009

Chair Knee made the report. He also announced that the committee was meeting with Ethics Commission members on April 24, 2009, from 2 p.m. to 4 p.m. in Rm. 400. because the room is wired for audio and video broadcasting. He also said the amendments were aimed for the 2010 elections.

24. Annual report to the Board of Supervisors

Chair Chu said the message of the report was to let the Supervisors know that the issues have been identified and the Task Force would be approaching them with answers in the form of amendments. Member Craven said resource issues with the Clerk's Office and the City Attorney's Office should be brought to the attention of the Supervisors. She also suggested making changes to complaints received column.

Public comment: Ray Hartz said the report was written in such a way so that nobody gets upset and that is because there are several members of the Task Force who are trying to get City jobs. He said he is going to attend every Task Force meeting and tell complainants that they are not going to get a fair hearing.

25. Administrator's Report

Mr. Rustom made the report.

Public comment: Ray Hartz said the administrator does a bad job and did not trust information coming from him.

26. 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: Anonymous Tenants passed out several papers that listed documents that he never received for #08054\_ Anonymous Tenants v Building Inspection. He requested a second hearing. Ray Hartz said he had sent a letter to Chair Chu and had asked her to forward it to all Task Force members because he was worried about the Task Force not following procedures. Stated on the website. An anonymous person wanted to know if #08054\_ Anonymous Tenants v Building Inspection was going to be reheard. Member Cauthen said the administrator's understanding was that the complainant did not identify the new information needed to satisfy Section E. Member Craven said the only recourses were (a) to file a new complaint and have it heard next month or (b) file the reconsideration next month and wait an additional month for it to be heard.

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

Chair Chu said the Rules Committee under Chair Doyle Johnson would be meeting soon and to send him any suggestions members may have. She also introduced the Clerk's ex-officio Tanene A. Allison to the Task Force.

Member Williams said she appreciates what Mr. Hartz does because he is calling the Task Force's attention to its shortcomings. She also said everybody needs to come together to be more productive.

Adjournment:

The meeting was adjourned at 7:30 p.m.

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

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