

Date: May 26, 2009

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force April 28, 2009
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: May 15, 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



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
MEETING
DRAFT MINUTES**

Tuesday, April 28, 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	Angela Calvillo
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

Call to Order The meeting was called to order at: 4:05 P.M.

Roll Call Present: Craven-Green (in at 4:10), Knee, Cauthen, Washburn,
Knoebber, Chu, Goldman, Williams (in at 4:07)
Excused: Johnson, Chan

Agenda Changes: Item 23 heard before Item 8

Deputy City Attorney: Ernie Llorente
Administrator: Chris Rustom

1. Approval of minutes of March 24, 2009, regular meeting.

 Motion to approve minutes (Goldman / Cauthen)

 Public Comment: None

 On the motion:
 Ayes: Knee, Cauthen, Washburn, Knoebber, Goldman, Chu, Williams
 Absent: Craven-Green
 Excused: Johnson, Chan
2. 09007 Determination of jurisdiction on complaint filed by David Larkin against Public
 Works for withholding reports regarding an employee's behavior

 Motion to find jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

3. 09007 Public hearing on complaint filed by David Larkin against Public Works for withholding reports regarding an employee's behavior

Complainant David Larkin said he is entitled to the statements and reports related to this matter and wants to know why County Surveyor Bruce Storrs refuses to release the maps. DPW, he said, has acknowledged that they have not sought the advice of the City Attorney's Office to justify withholding the documents. Even if the documents contained personal information the entries could have been redacted, he said. He also added that if there was a misconduct investigation, an outside party, rather than the employee's immediate supervisor, should have undertaken it.

The respondent was not present. However, a request for continuance by the respondent was presented.

Chair Chu said there were two options. One was to continue it and give the department an opportunity to present their case or to go ahead and make a decision based on the provided evidence. The complainant said he did not want to continue it. Task Force members agreed.

Member Craven-Green said she wished the department was represented because she wanted to clear up some ambiguities. She said a January 30, 2009, email from Frank Lee, executive assistant to the director, to Mr. Larkin states what was withheld. Under the Sunshine law, preliminary drafts must be released, she said. On the names and statements the department relied on a wrong case law, she added. Withholding of names and addresses could be made only if it was a whistle-blower investigation or if there was the possibility of retribution if the information was released. Those threats did not exist in this case, she said.

Member Williams she was concerned because the department did not send a representative. Member Craven-Green said the issue of department representation has surfaced many times and if the person who could speak on the matter was not available, another representative could come and request a continuance that the Task Force could accept or reject with a vote.

In rebuttal, Mr Larkin said DPW could have sent Nathan Rodis, Mr Lee's assistant, who has been involved in the matter from the very beginning.

Motion to find violation of Sec. 67.21 for failure to produce responsive documents including witness statements, reports and drafts regarding well-founded allegations of employee misconduct. The documents should also have been produced under Sec 67.24 (a) (2) and Sec 67.24 (c) (Craven-

Green / Goldman)

Member Cauthen made a friendly amendment to include Sec. 67.21 (e) for failure to send an authorized representative to the hearing. The friendly motion was accepted.

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

Chair Chu referred the matter to the Compliance and Amendments Committee.

4. 09014 Determination of jurisdiction on complaint filed by Dr. Ahimsa Sumchai against the Board of Supervisors for not providing public notice, agendas and public comment opportunities during the Supervisors' meetings with elected officials in Washington, DC.

Motion to find jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

5. 09014 Public hearing on complaint filed by Dr. Ahimsa Sumchai against the Board of Supervisors for not providing public notice, agendas and public comment opportunities during the Supervisors' meetings with elected officials in Washington, DC.

Complainant Dr. Ahimsa Sumchai said she had information that the majority of the members of the San Francisco Board of Supervisors discussed topics outside of their itineraries during their recent trip to Washington, DC. There were also published documents, she said, that the Board would introduce an ordinance to create a downtown community benefit district. She also said Treasure Island was not on any published agenda but was mentioned in one of the Supervisor's documents. She said Steven Folk, president of the chamber, was quoted by the SF Examiner as saying that Treasure Island was discussed in meetings with Senator Diane Feinstein, Senator Barbara Boxer, Congresswoman Nancy Pelosi and Congresswoman Jackie Spears. The Supervisors, she added, discussed other topics besides the stimulus funds.

Respondent Frank Darby said the Board members did attend the conference and it was not a Board of Supervisors' supervised trip or meeting. Board members were individually invited and the Chamber paid for the trip. He said there is nothing that prohibits attending the conference in the Ralph Brown Act

or the Sunshine Ordinance He also said the Supervisors have indicated that they did not attend any meeting not associated with the conference. There were no indications to support that there was a violation, he said.

Member Washburn asked Dr Sumchai to present the evidence she had allured to that showed that the Supervisors conducting city business during the trip.

Dr Sumchai alleged that at least five Supervisors attended an overview on the final day and the event was not on the itinerary. The overview, she said, appeared to be the Chambers recommendations to the Board of Supervisors.

Chair Chu said the case was to be continued to the next meeting or to continue it based on the available information because nobody had seen the evidence Dr. Sumchai purportedly had.

Dr Sumchai decided to present the evidence before the next meeting.

Member Craven-Green urged Dr Sumchai to provide the evidence together with a cover letter in an effort to bolster her case.

DCA Llorente said six members was the majority that attended the conference but that five members could do whatever they wished.

Motion to continue to the next meeting (Chu / Knee)

Public Comment: Thomas Picarello said the six Supervisors violated the Sunshine Ordinance by canceling a Board meeting to go to Washington, DC. He also said he is troubled by Mr Darby, who is supposed to promote the Sunshine Ordinance, representing the respondents. He said the Task Force should compel the Supervisors rather than Mr Darby to tell them what actually occurred.

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

6. 09015 Determination of jurisdiction on complaint filed by Raymond Banks against the San Francisco HIV Health Services Planning Council for failure to provide contract information. (action item) (15 min) (attachment)

Motion to find jurisdiction (Goldman / Knee)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

7. 09015 Public hearing on complaint filed by Raymond Banks against the San Francisco HIV Health Services Planning Council for failure to provide contract information. (action item) (15 min) (attachment)

Complainant Raymond Banks said he has received some contracts but needed more information. He said there have been a few allegations made against him but nobody would provide him with the information. He said a letter sent to the Mayor about him mentioned that the authors had evidence to substantiate their claim. But when he asked for it, they would not provide it. That denies him the opportunity to respond, he said.

Michelle Long, who introduced herself as the director of HIV Health Services for the Dept of Public Health, said she was not named in the case but the contract for Planning Council Support is a DPH contract and is held by her office.

Respondent Mark Molnar, co-chair of the Planning Council and employee of Shanti which handles the administration support contract, said the request was sent in November to Greg Zhovreboff at the time when Mr. Zhovreboff was on medical leave. Mr. Molnar said he provided Mr. Banks with copies of the contracts and invoices related to Veronica Neil when he was made aware of the situation in April.

Chair Chu said the Planning Council needs to keep in mind San Francisco's open government laws in matters such as this.

In rebuttal, Mr. Molnar said Mr. Banks received the documents supplied by contractor Shanti through HIV Health Services. Ms. Long said the Council would benefit from a Sunshine presentation. Mr. Banks said numerous people have made egregious claims against him and he wants the claims substantiated.

Member Craven-Green said failure of the Council to adhere to their bylaws, whether or not someone was maligned in a letter, whether or not someone should or should not have been removed from a position, whether or not there has been compliance with a contract are some of the issues that were not within the jurisdiction of the Task Force. The Task Force only deals with failure to produce documents that exist.

Motion to find violation of Sec 67.21 (b) for failure to produce documents in a timely manner (Cauthen / Goldman)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

8. 09016 Determination of jurisdiction on complaint filed by Peter Green against the

Department of Public Health for not releasing all communications, including hard copy and e-mail, regarding proposed EMS regulations. (action item) (attachment)

Motion to find jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Goldman, Williams, Chu

Excused: Johnson, Chan

9. 09016 Public hearing on complaint filed by Peter Green against the Department of Public Health for not releasing all communications, including hard copy and e-mail, regarding proposed EMS regulations. (action item) (attachment)

Complainant Peter Green said he is a resident of the City and County of San Francisco and has been a paramedic for 28 years. He said he is very familiar with the California Public Records Act having pushed for a bicycle element in Sunnyvale's Transportation Plan at the age of 15. The SF EMS agency is part of the Health Department and works under Tittle 22 as an agent of the state's emergency management system, he said. This fall the state determined that the SF service was in violation of a state regulation that requires a bidding process. He said he made four Sunshine requests including one about response times. On March 5, he made two separate requests, one as a portion of Prop 218 that requires agencies to justify their fees. Dr Brown has 10 years experience in SF and in his monthly emergency personnel meetings, he said. What he has received was dozens of documents that were unrelated to the request. Another request was for any communications from interested parties. Dr Brown produced a number of documents that were unresponsive, he said. About three weeks later a staff member sent him a 31-page document that included comments from interested parties, he said. The department also provided more emails connected to the request after filing the Sunshine complaint, he added.

The responding department was not present. In lieu, the department sent a letter stating that the swine flu outbreak has them occupied full time.

Member Craven-Green told the complainant to provide, if the case is continued to the next regularly scheduled meeting, a detailed letter stating what was requested and what was provided as well as evidence of what he thinks is being withheld and why. She also told the complainant not to forget the dates if timeliness is an issue.

Motion to continued to next regular meeting. Without objection

10. 09017 Determination of jurisdiction on complaint filed by Save Our Richmond Environment against the SFPUC for not providing requested information. (action item) (attachment)

Member Craven said her spouse works for the SFPUC and needed to be recused.

Motion to recuse Member EC. Without objection

Motion to find jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes:, Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Excused: Washburn, Johnson, Chan

Recused: Craven-Green

11. 09017 Public hearing on complaint filed Save Our Richmond Environment against the SFPUC for not providing requested information. (action item) (attachment)

Complainant was not present.

Respondent Suzanne Gautier of the SFPUC said her role is to oversee staff who reply and respond to requests and make sure they comply with the Sunshine Ordinance. She said the agency has appeared before the Task Force several times of late because it has been late in responding to requests but are trying to close the gap. This request, she said, was basically a set of questions that did not ask for a particular document or a set of documents. However, the agency created documents to help the requestor. The agency is also awaiting the requestor's response to pertaining to documents, she said. The agency said it was guilty on the timeliness issue.

Chair Chu reminded Ms Gautier that no matter where the request was received, all employees need to know that they have to respond. The reminder was because Ms Gautier had said that SORE sends its requests to various fax machines in the department and that it took time for the requests to reach her desk.

Member Williams said City departments should have the courtesy to redirect requestors if they do not have what is asked of them.

In rebuttal, Ms Gautier said the document in question was created by an outside contractor at the request of the homeowner. The city would not have ownership of those documents, she said.

Motion to find violation of Sec 67.21 (b) for failure to produce documents in a timely manner (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Recused: Craven-Green
Excused: Washburn , Johnson, Chan

12. 09013 Determination of jurisdiction on complaint filed by Steve Lawrence against the SFPUC for violating Sec. 67.21 (b). (action item) (15 min) (attachment)

Member Craven continued to be recused because her spouse works for the SFPUC.

Motion to find jurisdiction (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Recused: Craven-Green

Excused: Washburn, Johnson, Chan

13. 09013 Public hearing on complaint filed by Steve Lawrence against the SFPUC for violating Sec. 67.21 (b). (action item) (15 min) (attachment)

Complainant was not present and had indicated in an email that he did not intend to attend the hearing but wanted the agency to be put on record as to violating a section of the Sunshine Ordinance.

Respondent Suzanne Gautier of the SFPUC said the agency violated Sec. 67.21 (b) and has no plan to contest it. She noted that the Agency has already produced the records that he requested.

Motion to find violation of Sec 67.21 (b) for failure to produce documents in a timely manner (Cauthen / Goldman)

Member Cauthen commended the agency for creating documents even though it was not required.

Public Comment: None

On the motion:

Ayes: Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Recused: Craven-Green

Excused: Washburn , Johnson, Chan

Chair Chu said an Order of Determination would be issued for this and the previous case and the matters to be referred to the Education and Outreach Training Committee to further assist the department from violating the Ordinance.

14. 09018 Determination of jurisdiction on complaint filed by Anonymous Tenants against the Dept. of Building Inspection for violating Sec. 67.28 by charging \$6.50 for a copy of a public record. (action item) (15 min) (attachment)

Motion to find jurisdiction (Goldman / Craven)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Excused: Washburn, Johnson, Chan

15. 09018 Public hearing on complaint filed by Anonymous Tenants against the Dept. of Building Inspection for violating Sec. 67.28 by charging \$6.50 for a copy of a public record. (action item) (15 min) (attachment)

Complainant Anonymous Tenants said he has filed two complaints and neither one was about cost. This complaint, he said, is over a request for a one-page document. William Strawn of the Department of Building Inspection, he said, demanded that he fill out a records request form. Anonymous Tenants asked to see the itemized cost analysis because he felt the cost was high. The itemized cost analysis, which was not provided, is a requirement of the Sunshine Ordinance, he said. He recalled that Mr Strawn told members at an earlier hearing that the cost could be found in a Matrix Report. After repeated requests, he said, Mr Strawn quoted sections from the Building Code for which he requested pdfs and was ignored. An anonymous speaker said she and Anonymous Tenants asked for one page and was asked to pay 650 times that is allowed under Sunshine. She said she had spoken to a software representative and was told that the department can easily scan, print and email documents. She said she has seen employees at 1660 Mission call up a document on the screen and have it printed in seconds. The department also does not post the itemized cost analysis on line as required by the Sunshine Ordinance, she said. She added that the department should not be allowed to charge any amount it wants.

Respondent William Strawn of the Dept. of Building Inspection said the Matrix Report has been online since April 2008. He also said the department is digitizing its records and is in the midst of a three-year project. The department, he said, has explained during deliberations in #08054 Anonymous Tenants v Dept. of Building Inspection that the cost-recovery fee table was established by ordinance and approved by the Board of Supervisors and the Mayor. The \$6.50 issue was also brought up and addressed during the previous hearing, he said.

Member Craven-Green said she did not see PaperFlow mentioned in the Matrix Report and also missing was the itemized cost analysis for copies of permits and documents. Mr Strawn said the table on page 13 discusses full-cost recovery but did not itemize it down to a particular piece of software.

Member Craven-Green said she is concerned about imposing requirements on enterprise departments that are mandated to cover their cost by fee structures but the department should have done, at least, an itemized cost report when it comes to producing copies for public records. The ordinance requires it, she

added.

Mr Strawn said he would take the message back to the director.

Member Craven-Green said she would like to see if the department was charging over or under for public records.

Member Cauthen said she has heard from several residents on the monetary burden it creates when numerous documents need to be requested.

Member Knee reminded Mr Strawn that the fees for duplication was covered under Sec. 67.28 (d).

In rebuttal, Anonymous Tenants said Mr Strawn has not fulfilled his promised to Member Cauthen because he has not provided information on the itemized cost analysis.

Motion to find violation of Sec. 67.28 (d) (Chu / Knee)

Public Comment: None

On the motion:

Ayes: Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Recused: Craven-Green

Excused: Washburn , Johnson, Chan

16. 08054 Hearing on request for reconsideration of complaint #08054 Anonymous Tenants v Dept. of Building Inspection, where no action was taken by the Task Force. (action item) (20 min) (attachment)

Anonymous Tenants said a reconsideration was requested because he was unaware that DBI had PaperVision, which has an export function, at the time of his hearing. With PaperFlow and PaperVision DBI can scan, convert and send pdf documents in an email to the requestor, he said. He also said Mr. Strawn's Jan. 14, 2009, letter and its attachments contained a pdf that would prove his case.

Mr Strawn said the software has the capability to convert documents to pdf but the feature is not included in the department's service contract with the vendor. To satisfy Anonymous Tenant's request involved a multiple-step process that is a burdern to a staff that handles numerous public records requests, he said. The case does not merit reconsideration, he added.

Member Knoebber said reconsideration was unnecessary because a March 9, 2009 email to Anonymous Tenants mentions that the image needed to be exported out of PaperFlow with a version that had export. DBI does not have that feature, he said.

Member Craven-Green said the reason the Task Force ruled against the Clerk's Office was the same process that involved making a copy and a pdf

document. A same ruling was made in the Ethics Commission case, she said. In this case it is a different enough scenario to merit reconsideration, she added.

No action taken

Public Comment: None

17. Report: Complaint Committee meeting of April 14, 2009 (Nick Goldman) (discussion and possible action) (5 min)

Member Goldman made the report.

Public Comment: None

18. Report: Education, Outreach and Training Committee meeting of April 9, 2009. (Sue Cauthen) (discussion and possible action) (5 min)

Member Cauthen made the report.

Member Chu named Member Chan to the committee.

Public Comment: None

19. Report: Rules Committee meeting of March 31, 2009. (Hanley Chan) (discussion and possible action) (5 min)
- Amended By-Laws and revised Complaint Procedures (discussion and action item) (5 min)

Member Chu made the report.

Member Craven-Green suggested further revisions be made to the By-Laws.

Motion to approve By-Laws (Craven-Green / Goldman)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Excused: Washburn, Johnson, Chan

Motion to accept amendments to Complaint Procedure (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Excused: Washburn, Johnson, Chan

20. Report: Compliance and Amendments Committee: meeting of April 14, 2009. (Richard Knee) (discussion and possible action) (5 min)

Member Knee made the report.

Public Comment: None

21. Annual report to the Board of Supervisors (discussion and possible action) (15 min)

Chair Chu and Member Craven-Green suggested more tweaks.

Motion to accept the annual report as amended (Goldman / Craven-Green)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Knoebber, Goldman, Williams, Chu

Excused: Washburn, Johnson, Chan

22. Administrator's Report. (discussion) (5 min) (attachment)

Mr. Rustom made the report.

23. 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. (no action) (12 min)

Public Comment: Steve Manley, co-chair of the HIV Health Services Planning Council, said the body has policies and procedures that deal with the other issues that Mr. Banks addressed or alluded to. The internal process was in play and that two were currently running, he added.

24. Announcements, comments, questions, and future agenda items from the Task Force. (no action item) (5 min) (no attachment)

Member Knee discussed several emails that he sent to the administrator to be forwarded to other members.

Member Knee updated the Task Force on the outcome of the SOTF-EC meeting on April 24, 2009.

Adjournment:

The meeting was adjourned at 7:15 p.m.

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