

Date: May 26, 2009

Item No. 10 & 11
File No. 09023

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Save Our Richmond Environment v SFPUC
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Completed by: Chris Rustom

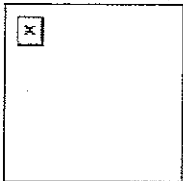
Date: May 15, 2009

***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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MEMORANDUM

May 18, 2009

*SAVE OUR RICHMOND ENVIRONMENT ("SORE") v. THE SAN FRANCISCO
PUBLIC UTILITIES COMMISSION (09023)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On March 16, 2009, Wing Fat on behalf of the Save Our Richmond Environment PUC Committee made of public records inquiry to the Public Utilities Commissions regarding Contract WW 476 0 Job Order- Spot Sewer Repair. The contract was referenced as part of an agenda item on the March 10, 2009 PUC meeting.

Agenda item e) stated:

Staff Recommendation: Approve Modification No.1 to Wastewater Program-funded Contract No. WW-476, Job Order Contract, Spot Sewer Repair (A-license), San Francisco with Synergy Project Management, Inc., to increase the contract by \$1,500,000 for a total contract amount of \$4,500,000, and with a time extension of one (1) year for a total contract duration of three (3) years. This Modification will allow repair and replacement of approximately six deteriorated segments of the City's sewer system.

The March 16, 2009 letter stated: Please provide documentation or response to this inquiry regarding the captioned contract. Thanks.

- The spot sewer backlog listing of 2950 locations
- The spot sewer backlog listing of 539 high priority locations.
- The criteria for distinguishing priorities'
- The locations for the 12 projects completed.
- The costs for each project: estimated vs. actual.
- The location for the 6 proposed projects.
- The estimated cost to repair each.

Memorandum

- Who selected the initial 12 projects: The proposed 6 projects?

In response to the inquiry, the PUC asked Wing Fat for clarification of his request. Wing Fat claims that the PUC's actions of asking questions of the requestor were in fact the PUC purposefully evading their responsibility to respond to the inquiry.

COMPLAINANT FILES COMPLAINT:

On May 11, 2009, Wing Fat who identified himself as Chair of the PUC Committee of the SORE group filed a complaint against the PUC alleging that the PUC did not respond to the Public Records request that was filed on March 16, 2009.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

(As of the date of the drafting of this instructional memorandum, I am not aware of the PUC Response to the complaint.)

APPLICABLE STATUTORY SECTION:

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.1 addresses Findings and Purpose.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses
3. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
5. California Public Records Act, Government Code Section 6253 deals with public records open to inspection; agency duties and time limits. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.
6. California Constitution, Article I, Section 3 addresses Assembly, petition, open meetings.

APPLICABLE CASE LAW: none**ISSUES TO BE DETERMINED****1. FACTUAL ISSUES****A. Uncontested Facts:**

Memorandum

- SORE made a Public Records Inquiry of the PUC .
- The PUC responded and asked questions of the representative of SORE in order to understand the inquiry.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Was the PUC response to the public records inquiry appropriate to the request.
- Was the Custodian of Records of the PUC assisting the requestor or not?
- If so, was the response in compliance with the Sunshine Ordinance?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS: none

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 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.

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

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.21 addresses general requests for public documents.

This section provides:

a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

b.) A custodian of a public record shall as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

...
k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

l.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department t program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Section 67.25 provides:

a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business

Memorandum

on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

b.) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.

c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

d.) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected.

Section 67.26 provides:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute.

Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

Memorandum

b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of elsewhere.

c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

The California Constitution as Amended by Proposition 59 in 2004 provides for openness in government.

Article I Section 3 provides:

a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.

b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.

3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

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

Memorandum

permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses. The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- c) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6253.9 provides:

a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in any electronic format.

b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision a.), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

Memorandum

(2) The request would require data compilation, extraction, or programming to produce the record.

c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

e. Nothing in this section shall be construed to permit an agency to make information available only in electronic format.

f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

Section 6255 provides:

a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



<complaints@sfgov.org>
05/11/2009 10:25 AM

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

Submitted on: 5/11/2009 10:25:17 AM

Department: SFPUC

Contacted:

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated:

Description: See attached.

Hearing: Yes

Date:

Name: Wing Fat

Address: 535 39th Ave

City: San Francisco

Zip: CA 94121

Phone: 386-8372

Email: S-O-R-E@att.nt

Anonymous:

SAVE OUR RICHMOND ENVIRONMENT



May 8, 2009

Kristin Chu, Chair
Sunshine Ordinance Task Force
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94102-9991

Dennis Herrera
City Attorney
1 Carlton B. Goodlett Place 234
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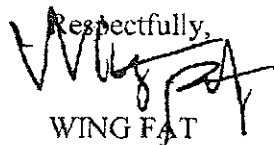

RE: **PUC violation of Sunshine Ordinance**
March 16, 2009 request re Contract WW4760 Job Order Contract – Spot Sewer Repair

On March 16th, SORE made a Sunshine Ordinance inquiry to the Public Utilities Commission concerning the referenced contract (**attachment A**). The inquiry was based on PUC March 10th agenda item 7a (**attachment B**). PUC has evaded responding with purposefully unintelligent questions asking SORE to define, as an example, the word "project" though it is the precise term the PUC used in the agenda item. An additional example: We are asked, again, to define "project" when we inquired as to the location of "completed projects" as used in the same agenda item.

On April 6, SORE again inquired as to the same contract.

PUC ignored the Sunshine Ordinance request.

Please let us know what next steps are appropriate to pursue our complaint.

Respectfully,

WING FAT
Chair
PUC Commit 

c: Gavin Newsom
David Chiu
Eric Mar

S-O-R-E@att.net Ψ phone fax 415 386 8372
535 39th Avenue Ψ San Francisco Ψ California Ψ 94121-2619





SAVE OUR RICHMOND ENVIRONMENT

March 16, 2009

San Francisco Public Utilities Commission
1155 Market Street 5th Floor
San Francisco California 94103-1524

Public Information Request

Contract WW 476 0 Job Order Contract – Spot Sewer Repair

Please provide documentation or responses to this inquiry regarding the captioned contract. Thanks.

- The spot sewer backlog listing of 2,950 locations.
- The spot sewer backlog listing of 539 high priority locations.
- The criteria for distinguishing priorities.
- The locations for the 12 projects completed.
- The costs for each project: estimated vs. actual.
- The location for the 6 proposed projects.
- The estimated cost to repair each.
- Who selected the initial 12 projects? The proposed 6?

Thank you for your prompt cooperation.

Wing Fat
Chair
PUC Committee

c: Gavin Newsom
David Chiu
Eric Mar

ATTACHMENT A

535 39th Avenue, San Francisco, California 94121-2619
mlb52@juno.com ‡ 415 386 8372 phone & fax ‡

750 to
1.5
double
why
what
was it
for

- a) **Staff Recommendation: Approve Amendment No. 1 to Hetch Hetchy Water and Power (HHWP) Water Enterprise Project-Funded Agreements No. CS-923A & B, HHWP Power System Condition Assessment and Upgrade Services, with Stantec and Black & Veatch for professional consulting services related to the upgrade of the power facilities, and authorize the General Manager of the San Francisco Public Utilities Commission to execute these amendments to increase each agreement by \$750,000, for a total amount of 1,500,000 per agreement. This Amendment will enable the completion of the following: 1) complete design work for Holm Powerhouse Vacuum Breakers; 2) complete documentation for Transmission Owner/Transmission Operator Western Electricity Coordinating Council documentation; 3) complete direct current upgrades at Holm Powerhouse, Kirkwood Powerhouse and Moccasin Powerhouse; 4) complete design for digital governors at Kirkwood Powerhouse 1 & 2; and 5) complete design of fire suppression for Kirkwood Powerhouse and Holm Powerhouse.**
- b) **Staff Recommendation: Approve Modification No. 4 for HHWP Water Enterprise Program-funded Contract No. HH-910, Kirkwood Powerhouse Rewind Units I and II, with National Electric Coil, for generator refurbishment services, increasing the contract by \$205,000, for a total contract amount of \$3,491,990. This Modification is for generator refurbishment services needed during installation.**
- c) **Staff Recommendation: Approve the plans and specifications and award Wastewater Enterprise Repair and Replacement (R&R) Program-funded Contract No. WW-459R, Southeast Water Pollution Control Plant Bldg. 930 Wastewater Coordination Center, in the amount of \$829,792 to the lowest, qualified, responsible and responsive bidder, BCCI Construction Company.**
- d) **Staff Recommendation: Approve Amendment No. 1: Water Enterprise Water System Improvement Program-funded; Agreement No. CS-764, Environmental Analysis Services for Lower Crystal Springs Dam Improvement Project, with the joint venture (JV) of Entrix/MSE to finalize environmental analyses, acquire resource agency permits, and respond to public comments; and authorize the General Manager of the San Francisco Public Utilities Commission to negotiate and execute this amendment increasing the agreement by \$450,000, for a total agreement amount of \$2,650,000, and extending the agreement by one (1) year with an option to renew for an additional year, for a total possible agreement duration of six (6) years. This Amendment is necessary due to unforeseen complexities related to biological resource on site.**
- e) **Staff Recommendation: Approve Modification No. 1 to Wastewater Program-funded Contract No. WW-476, Job Order Contract, Spot Sewer Repair (A-license), San Francisco with Synergy Project Management, Inc., to increase the contract by \$1,500,000, for a total contract amount of \$4,500,000, and with a time extension of one (1) year for a total contract duration of three (3) years. This Modification will allow repair and replacement of approximately six deteriorated segments of the City's sewer system.**

ATTACHMENT B