

Date: June 22, 2010

Item No. 4
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force May 25, 2010**
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Completed by: Chris Rustom

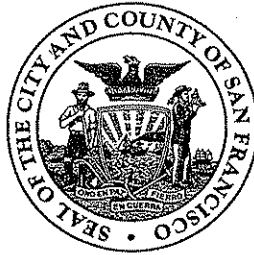
Date: June 17, 2010

***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



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
SPECIAL MEETING
DRAFT MINUTES**

Tuesday, May 25, 2010
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	David Snyder	Seat 8	Bruce Wolfe
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson
Seat 4	Suzanne Manneh	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	Nick Goldman	Ex-officio	(Vacant)

Call to Order 4:18 P.M.

Roll Call Present: Snyder, Knee, Cauthen, Washburn (in at 4:27), Knoebber, Wolfe (in at 4:23) Johnson, Williams
Excused: Manneh, Goldman, Chan

Agenda Changes: Item 21 and 22 heard before Item 20. Item 24 heard before Item 8

Deputy City Attorney: Jerry Threet
Clerk: Chris Rustom

1. Approval of March 23, 2010, meeting minutes.

Motion to approval March 23, 2010, regular meeting minutes (Cauthen / Knoebber)

Public Comment: Ray Hartz said the minutes on the website need to be updated. Allen Grossman wanted to know if it was appropriate for members who were not at a particular meeting be allowed to vote on the minutes.

To Chair Knee, DEA Threet said members who were not at a particular meeting can vote on the minutes of that meeting

Member Williams made a motion to continue the minutes to the June 22, 2010, meeting but it died for lack of a second..

On the motion to approval March 23, 2010, regular meeting minutes:

Ayes: Snyder, Cauthen, Knoebber, Johnson, Knee
Noes: Wolfe, Williams

Motion failed. Matter continued to June 22, 2010, meeting.

2. Approval of April 27, 2010, regular meeting minutes.

Motion to approval March 23, 2010, regular meeting minutes (Cauthen / Knoebber)

Public Comment: Allen Grosman said there were special meetings that occurred in March and need to be included before approving this document.

On the motion:

Ayes: Snyder, Cauthen, Washburn, Knoebber, Johnson, Knee
Noes: Wolfe, Williams

3. Hearing to review new information that could result in the reopening of #09075 Bred Starr v City Attorney's Office.

Item removed from agenda.

4. 10011 Determination of jurisdiction on complaint filed by Juan DeAnda against the Department of Public Health for allegedly withholding information.

The complainant was not present. There was no one in the audience to present facts and evidence on behalf of the complainant.

The respondent was not present. There was no one in the audience to present facts and evidence on behalf of the respondent.

Motion to find jurisdiction (Knoebber / Cauthen)

Public Comment: None

On the motion:

Ayes: Snyder, Cauthen, Washburn, Knoebber, Wolfe, Chan, Johnson, Williams, Knee.

5. 10011 Hearing on complaint filed by Juan DeAnda against the Department of Public Health for allegedly withholding information.

Motion to table matter (Knoebber / Cauthen)

On the motion:

Ayes: Snyder, Cauthen, Washburn, Knoebber, Wolfe, Chan, Johnson, Williams, Knee.

6. 10013 Determination of jurisdiction on complaint filed by Nick Pasquariello against the Bay Area Video Coalition and forwarded to the Department of Technology for

resolution under Chapter 12L of the Administrative Code.

Motion to find jurisdiction (Knoebber / Cauthen)

Members then discussed whether Admin Code 12L requirements had been met.

Motion to continuing the matter to the June 22, 2010, meeting. (Wolfe / Williams)

Ayes: Wolfe, Williams

Noes: Snyder, Cauthen, Washburn, Knoebber, Chan, Johnson, Knee

On the motion: to find jurisdiction

Ayes: Snyder, Cauthen, Washburn, Knoebber, Wolfe, Chan, Johnson, Williams, Knee.

Noes: Knoebber, Knee

7. 10013 Hearing on complaint filed by Nick Pasquariello against the Bay Area Video Coalition and forwarded to the Department of Technology for resolution under Chapter 12L of the Administrative Code.

Complainant Nick Pasquariello said three months ago he appeared before the Task Force because the Bay Area Video Coalition did not respond to a letter asking them to explain their policy of scanning drivers' licenses. BAVC, he said, receives public money and the residents of the City and County of San Francisco have the right to know how they are spending it. Steve Zelster said he also has requested documents from BAVC and had not received a response. BAVC should be subject to rules that other contractors with the city have to follow, he said. This was especially important when there is a decline in the number of users of the station. He said there were 130 producers before and now only 50 people make use of it. He wanted to know where the money was going if fewer people were making use of it. A member of the public claimed he saw numerous items being given away when the station closed in late 2009. The public has the right to know what was given away, he said. The Board of Supervisors, he noted, was denied a \$375,000 grant in January. He also said his computer was recently hacked costing him the loss of numerous passwords and wonder if there was a connection with him having to provide BAVC with a copy of his driver's license. A female speaker said Mr. Pasquariello may be right or wrong about the driver's license issue but understood the need to ascertain for himself how the money was being spent and if the services are being provided in compliance with the contract the City has signed.

Krisana Hodges, who represented BAVC, said the contract with the City stipulates that only the contract and its application documents are subject to Section 67.24(e). There are no other provisions, she said. The document that Mr. Pasquariello wants was available online through the Department of Technology. Admin Code 12L, she said, calls for open board meetings, which it holds, and that there are no complaints against BAVC for not holding open

meetings as required. The other requirements mentioned in 12L have not been requested. She said she has tried several times to contact Mr. Pasquariello but that he has not responded. Barry Frazier, an analyst with the Department of Technology, said the department received one faxed request for documents on December 16 and the department responded to it the next day. Since then, he said, the department has not received anything from Mr. Pasquariello. He offered to help the Task Force resolve the issue and said he was also prepared to talk to Mr. Pasquariello to see what additional documents he wanted. He added that the 50-page budget that Mr. Pasquariello mentioned does not exist.

Motion to find violation of Section 67.21(b) for untimely response (Cauthen / Washburn)

Public Comment: Kimo Crossman said he was for the motion but the Task Force also needs to see if there were violations under Sections 67.4(b) 67.29(vi), 67.29(vii)(c) which also applies to non-profits. Ray Hartz said there are many ways to contact a person and the department should not have waited until the last minute to offer a solution when it seemed that there was going to be a violation vote. Allen Grossman said he was worried about departments outsourcing operations because access that were once open records becomes undisclosable.

Member Washburn made a friendly amendment which was accepted by the maker of the motion.

Motion to find violation of Section 67.21(b) for untimely response and Section 67.26 for withholding (Cauthen / Washburn)

On the motion:

Ayes: Cauthen, Washburn, Wolfe, Chan, Johnson, Williams

Noes: Snyder Knoebber, Knee

Matter referred to the CAC for followup.

8. 10015 Determination of jurisdiction on complaint filed by Ellen Tsang against the Planning Department for violating Sections 67.21(a)(b)(c)(d)(i), 67.21-1(a)(b) and 67.34

Motion to find jurisdiction: Knoebber / Cauthen)

Ayes: Snyder, Cauthen, Washburn, Knoebber, Wolfe, Chan, Johnson, Williams, Knee

9. 10015 Hearing on complaint filed by Ellen Tsang against the Planning Department for violating Sections 67.21(a)(b)(c)(d)(i), 67.21-1(a)(b) and 67.34

Complainant Ellen Tsang said she requested five specific documents from Jonas I of the Planning Department on March 11. She said the department refused to provide her with the documents and on April 14 she filed a

complaint. She said the department, including the department head were notified on April 21 of the complaint and were told that the department had to provide a response within five business days. The department, she said failed to respond to the notification. She also said the department was told that if they had any additional documents the Task Force needed it by 4 p.m. on May 18. The department did not submit anything and till date she has not received the documents she requested. The existence of the documents was based on emails between Jonas and the architect of the project at 2642-2644 Hyde Street, she said. The documents are required by the Planning Department to approve the project and the permit was being appealed before the Board of Appeals. She said she needed the documents before June 3 in order to present her case. She added that she contacted the department on May 24 and again she did not get a response. Anonymous Tenants said this was a simple case that shows that the Planning Department does not want the public to have access to public records, especially if it involves another hearing. He said a similar case was brought before the Task Force and it took more than none months to resolve the issue, but unfortunately it was after the hearing had taken place. He said it seems that the planners have a separated file from what is available to the public. He also said if the public cannot obtain the necessary documents then they cannot present a watertight case at the hearing. If Planning does not have the records, it means that the department is not maintaining documents in a professional manner.

Mr. Ionas said the department had responded to Ms. Tang's request about this project repeatedly over the course of many years. He then presented a history of the case and was not able to explain the department's response to the March 11 request because his five-minute allocation had expired.

Member Cauthen wanted to know if certain documents mentioned in the request existed and if so were they provided.

Mr I said the documents existed but if the complainant wanted a copy she needed to contact the Department of Building Inspection.

On the Assessor's map, Mr I said he directed the complainant to go to the Assessor's Office to get a copy. On the request for architect Robert Mittelstadt's final signed and stamped revision drawings, he said, the applicant and the architect need to approve the document's release. He added that a copy of the revised drawings, but without the signature and stamped had been provided to the complainant. Once it is stamped, he said, it becomes a copyright issue and is governed by state law.

To Member Cauthen, Ms Tsang said the plan had undergone 13 revisions and did not know what the final version looked like.

Chair Knee wanted to know if he had responded to the March 11 request. Mr. I conceded that he had not even though he had answered the same question the previous day.

In closing, Mr I said the department has responded the Ms Tsang's requests in good faith and would continue to do so in the future provided that the department was in possession of the document she requests. Ms. Tsang said the bottom line was that Mr. I did not produce the documents she requested. She said even though the documents were forwarded to other agencies, the Planning Department was in possession of the master file.

Motion to find violation of Sections 67.21, 67.25, 67.26 and 67.27 (Washburn / Wolfe)

Public Comment: Ray Hartz said Mr. I's decision to not respond to the request was a willful violation. Allen Grossman said there was a lack of sensibility at Planning and Building Inspection to make files available to the public. Kimo Crossman said California Public Records Act Section 6253(b) requires that an exact copy must be produced and Section 67.26 of the Ordinance says responding to the public is part of an employee's duties.

Member Cauthen said knowing how the departments operated, she believes that the department made a good faith effort and was against finding a violation.

Member Williams disagreed. She said Mr Ionin himself has said that he did not respond to the March 11 request.

On the motion:

Ayes: Snyder Cauthen, Washburn, Wolfe, Chan, Johnson, Williams, Knee
Noes: Cauthen, Knoebber

Matter referred to June 15, 2010, Compliance and Amendments Committee.

10. 10009 Determination of jurisdiction on complaint filed by Majeid Crawford against the City Attorney's Office for allegedly not providing public information.

Motion to find jurisdiction (Knoebber / Wolfe)

Ayes: Snyder Cauthen, Washburn, Knoebber, Wolfe, Johnson, Williams, Knee

11. 10009 Hearing on complaint filed by Majeid Crawford against the City Attorney's Office for allegedly not providing public information.

Complainant Majeid Crawford said he wanted to know the policy on how much the City Attorney's Office charges departments and agencies for work associated with RFPs, RFQs and IFBs, if the fee was on a case by case basis, was the fee related to the size of the project, are departments charged differently and if the fee based on time spent on the project. He also wanted to know the last 20 projects the City Attorney's Office worked on and how much was charged. He said the CAO should have a database regarding his questions and all that was needed was a printout. The community needs to know which department is paying how much for what, he said. The CAO has not provided any information, he added.

Jack Song said the City Attorney's Office does not keep a list or log of the amount of RFPs and RFQs it reviews. The office, he said, has a system in which the deputy city attorney bills a department on the time spent on a particular project. He said the complainant mentioned that he felt that the office was charging more that it ought to on the Fillmore Muni substation project. He said he contacted the deputy city attorney assigned to the project and was told work on it had not started and therefore there was not dollar figure associated with it.

To Member Wolfe, Mr. Song said information on how much a department was charged is attorney-client privilege and not disclosable.

In closing, Mr. Song said the office rarely writes RFPs and RFQs, which are available on line at the Office of Contract Administration's website. He also said to look for the last 20 requests was a broad and wide request and in fact he had offered the complainant if he was interested in one particular department. Mr. Crawford said Mr. Song did not answer any of his questions and should be found in violation.

Motion to find violation of Sections 67.26 and 67.27 (Wolfe / Washburn)

Public Comment: The City Attorney's Office routinely rejects records request by claiming attorney-client and work product doctrine. There wasn't a good faith effort to deal with the request and they used their standard response. Kimo Crossman said the department should have helped the requestor by trying other ways to get the information. Anonymous Tenants said the mission of the Task Force was to help citizens get public records.

Member Snyder said Section 67.21 was more relevant because the department was tardy in its incomplete response. The sections mentioned in the motion were inappropriate because Section 67.26 was about redaction and Section 67.27 was on justification.

Motion to find violation of Sections 67.21.(Snyder / Cauthenn)

Public Comment: None

Member Wolfe disagreed and made an amendment.

Motion to find violation of Sec(s) 67.21, 67.26 and 67.27.(Wolfe / Williams)

Public Comment: Kimo Crossman said Section 67.27 was clearly violated because the department did not assist the complainant.

On motion to find violation of Sections 67.21, 67.26 and 67.27

Ayes: Washburn, Wolfe, Williams, Knee

Noes: Snyder, Cauthen, Knoebber, Johnson

Motion fails

On motion to find violation of Sections 67.21

Ayes: Snyder Cauthen, Washburn, Wolfe, Williams
Noes: Knoebber, Johnson, Knee
Motion fails

Member Wolfe made a friendly motion to include Section 67.21. Second agreed.

Member Knoebber proposed splitting Section 67.21 from Sections 67.26 and 67.27.

Member Wolfe conceded.

Motion to split 67.21 from Sections 67.26 and 67.27. Without objection.

Motion to find violation of 67.26 and 67.27.

Ayes: Washburn, Knoebber, Wolfe, Johnson, Williams, Knee
Noes: Snyder, Cauthen

Motion to find violation of Section 67.21

Ayes: Snyder, Cauthen, Washburn, Williams

Noes: Knoebber, Wolfe, Johnson, Knee

Motion fails.

Matter referred to June 15, 2010, Compliance and Amendments Committee.

12. 10010 Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly not notifying her of an agenda item.

Continued to June 22, 2010. Without objection.

13. 10010 Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly not notifying her of an agenda item.

Continued to June 22, 2010. Without objection.

14. 10016 Determination of jurisdiction on complaint filed by Ray Hartz against the Rent Board for an allegedly violating Section 67.24 of the Sunshine Ordinance.

Ray Hartz said he was dealing with Deleine Wolf ec of the Rent Board and Tim Lee who is an attorney.

Filed an IDR on Jan 21 asking information about an employee based on what 67.24 which describes what must be disclosed.states. resdponse on 22 and found that some areas did not have the pertinent information.complaint filed on April 10, April 20 had a conversation with Wolf before the rent board meeting and told her which portions of her response where deficient. 67.24(iv) that exact gross salary and benefits of a city employee . He had received a 1-page chart that included the salaries of all deputy city attorneys. He also raised questions about 67.24 (i) and (ii) for professional information related to that individual. Wolf said the city attorney has advised her that she has given everything she had to. They said at the May 11 CC meeting that they wanted

to help him. Also met at 2nd rent board meeting and was not approached. May 18, Rent Board said they do not know what the requestor seeks. The three met at the two rent board meetings and at the hearing. They had my name, address, tel no and email address and no contact was made during the entire process..did not at any time clarify and give me the information I requested. Whenever an employee gets a raise there is a document in his personnel file that justifies the raise.

Tim Lee, a senior hearing officer with the rent board said the rent board timely responded to the IDR. We know that Hartz had some objections to the response and had been trying to find out what they were. He also does not specify what the issues were in the complaint. Also at the meeting he was asked but he declined to say anything. Only today, he says that we did not provide the gross salary of the hearing officer he was looking into. If he had said that he wanted the exact gross salary as it would have been provided. The rent board does not do payroll. It is done by admin services. Step 14, Jan 1 2010. Step 15 Jan 1 2011. The rent board has to disclose public information to the public. But it also has another duty that sometimes conflicts with that and that is not to disclose personal and confidential information of our employees. we did the best that we could do

Rh 67.24 his exact gross salary, wages and benefits.

No audio recording available.

In closing, Mr. Lee said the IDR did not ask for how long the employee had worked for the city. Admin Services

Motion to find violation of 67.24(c) (Knoebber / Wolfe)

Public Comment: Kimo Crossman said TF has to be biased for the public in order to get public information and public records. Spirit has been violated.

On the motion:

Ayes: Washburn, Knoebber, Wolfe, Johnson, Williams, Knee

Noes: Snyder, Cauthen

Chair Knee said the Rent Board is making a big mistake by not

Enumerated

re was question about

15. 10016 Hearing on complaint filed by Ray Hartz against the Rent Board for an allegedly violating Section 67.24 of the Sunshine Ordinance.
16. 10017 Determination of jurisdiction on complaint filed by Ray Hartz against the Rent Board for an allegedly violating Section 67.16 of the Sunshine Ordinance.

Ray Hartz said based on DCA Threet's instructional letter it was up to the TF to

find or not find jurisdiction.

Tim Lee said there was no jurisdiction because the complaint was not an alleged violation of the Ordinance but a violation of the proposed amendments.

Motion to find no jurisdiction (Knoebber / Washburn)

Public Comment: Kimo Crossman urged members to find jurisdiction and then discuss the matter. No violation could be found after hearing the evidence, he said. Allen Grossman said Mr. Threet is a highly qualified attorney but Mr. Hartz is not. And so It would be unfair to Mr. Hartz if the case is dismissed based on an opinion he did not agree. Anonymous Tenants said members must vote for jurisdiction because the Ordinance is to help and protect the public.

Motion to continue (Cauthen / Williams)

Public Comment: Kimo Crossman said the matter should be heard today because all the parties were present.

On the motion to continue:

Ayes: Cauthen

Noes: Snyder, Washburn, Knoebber, Wolfe, Johnson, Williams, Knee

Motion to find jurisdiction (Wolfe / Williams)

Public Comment: None

On the motion to find jurisdiction:

Ayes: Cauthen, Washburn, Knoebber, Wolfe, Johnson, Williams

Noes: Snyder, Knee

17. 10017 Hearing on complaint filed by Ray Hartz against the Rent Board for an allegedly violating Section 67.16 of the Sunshine Ordinance.

Ray Hartz said he found out at the Feb 23 Rent Board meeting that the comments he had made at a previous meeting were mischaracterized. 67.16 allows him to include a 150-word summary of what he said at the meeting. The reason he waited so long was because he wanted the Rent Board to finalize the minutes before he made the complaint. He said the agenda makes readers be aware of the existence of Sunshine Ordinance but adheres to it selectively. He also said the agency deletes public comment when the document is posted online. Any member of the public has the right to petition the government for redress of grievances.

Tim Lee said Mr. Hartz is saying that one does not need to consider the law but only work by the spirit of the law. Mr. Hartz, he said, is alleging a violation of a proposed amendment.

Difficulty : whether rent board was or was not a Charter board or commission.

Spirit of the law and letter of the law.
The regular common practice of boards and commissions

In closing, Mr. Hartz said if the department has never taken minutes, it would be fruitless for him to ask to have his 150-word summary be included. The minutes offer other uses besides being the legal record. Mr. Lee did not.

Motion to find no violation (Knoebber / Cauthen)

Public Comment: Kimo Crosman said the spirit of the law is not been acknowledged and followed. The TF needs to interpret the letter and spirit of the law. There was no harm in putting the statement in the minutes, he said. Allen Grossman said if the agenda noted that their meeting process was going to follow the Ordinance, they have implied that they would adhere to all Sunshine requirements. He also said the minutes have to accurately reflect what was during the meeting because there is no audio recording. Anonymous Tenants said it was up to the Task Force to do what it deemed fit. Ellen Tsang said rules need to be followed.

Chair Knee strongly encouraged the Rent Board to record their meetings in the spirit of Sunshine.

On the motion:

Ayes: Snyder, Cauthen, Knoebber, Knee

Noes: Washburn, Wolfe, Johnson, Williams

Motion to find violation (Wolfe / Williams)

Ayes Washburn, Wolfe, Johnson, Williams

Noes: Snyder, Cauthen, Knoebber, Knee

Matter concluder

18. 10021 Determination on complaint filed by Anonymous against the Recreation and Park Department for refusing to provide access to the Master Plan for the Botanical Gardens at Strybing Arboretum

Withdrawn.

19. 10021 Hearing on complaint filed by Anonymous against the Recreation and Park Department for refusing to provide access to the Master Plan for the Botanical Gardens at Strybing Arboretum.

Withdrawn.

20. Consideration of proposed amendments to Articles I through IV of the Sunshine Ordinance

21. Report: Complaint Committee: meeting of May 11, 2010. (Nick Goldman)

22. Report: Education, Outreach and Training Committee meeting of May 13, 2010. (Doyle Johnson)
23. Administrator's Report.
24. 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.
25. Announcements, comments, questions, and future agenda items from the Task Force.

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