

Date: June 23, 2009

Item No. 15
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Compliance and Amendments for June 9, 2009**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Frank Darby

Date: June 17, 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
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MEETING MNUTES**

Tuesday, June 9, 2009
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee (Chair), Erica Craven-Green, Doyle Johnson

Call to Order: 4:06 p.m.

Roll Call: Present: Knee, Craven-Green, Johnson

Deputy City Attorney: Ernie Llorente

Clerk: Chris Rustom

Agenda Changes: Item 8 heard before Item 6

1. Approval of May 12, 2009, regularly scheduled meeting minutes

Motion to approve the May 12, 2009, minutes (Johnson / Craven-Green)

Public Comment: None

On the motion:

Ayes: Craven-Green, Johnson, Knee

2. 09003 Continued hearing on the status of the March 24, 2009, Order of Determination of Rita O'Flynn against the Department of Technology (discussion and possible action item) (attachment)

Complainant Rita O'Flynn was not present. She had informed the committee that she would not be able to do so.

Respondent Barry Fraizer said the Department of Technology has responded to the complainant's request regarding Iron Mountain and that no records were available because the request was made verbally. On the original complaint, he said the only way to restore back-up data is to recreate the account and then search folder by folder.

Member Craven-Green said the information including cost should be provided to the complainant as early as possible so that the committee could hear what she had to say at the next meeting and perhaps be able to close the case.

Item continued. Without objection

3. 09021 Hearing on the status of the May 26, 2009, Order of Determination of SORE against the SFPUC (discussion and possible action item) (attachment)

Member Craven-Green recused herself as she had done during the original hearing.

Complainant was not present and nor represented.

Respondent was also not presented.

Public Comment: A member of the public reminded the committee that the Order of Determination did not require any action from the part of the respondent. Ray Hartz said departments must make documents available to the public and should be penalized if they don't.

No motion for action. Matter concluded

4. Discussion on vexatious complainants. (discussion and possible action item)

Chair Knee said the issue has come before the committee before and has taken a cautious approach because of how to define vexatious and what constituted vexatious behavior. He also recalled that a member of the State Assembly had introduced a "vexatious requestor" bill but that it was withdrawn because of opposition from various fronts.

Member Johnson, who is also on the Task Force's Complaint Committee, said if someone wants to file 100 complaints against a department, he was willing to hear all the cases.

Member Craven-Green says the difficulty is what legal standard would be used to see what kind of complainants fall within that category. She recalled that there was an effort by the City Attorney Dennis Herrera to take a vexatious complainant to Superior Court.

Chair Knee added that the Sunshine Ordinance and the CPRA prevents an agency or department from asking the public why they need the document.

Public Comment: Paul Weston said there would not be a need for vexatious complainants if the public had easy access to documents. Ray Hartz said Kimo Crossman does a service to the city because he is one of the few people who have been willing to take on the agencies and departments in pursuit of Sunshine. Labeling a person as a vexatious complainant is code for calling that person a true believer in Sunshine. Doug Comstock said a lot of people would support the inclusion of vexatious complainants in the amendments and that would help at the ballot box. The trick would be to make the standard very high, he said.

Chair Knee said if the amendments passed and the courts removed the vexatious clause, the other amendments would stay.

Item closed

5. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force

Chair Knee said he was still working on the draft proposal but the issue of emails should be done first.

Member Craven-Green said it was a complex issue because emails also included attachments and documents. The document needs to be revised to meet new realities, she said. She also said the committee needs to know the capacity of the system and its limitations.

Member Johnson said the departments need to keep an electronic document and a paper document for the same length of time.

Public Comment: Barry Fraizer of the Department of Technology said the Committee on Information Technology should be involved in this effort and said he would forward details to the Task Force. The city, he said, receives about 100 million emails a year and one department alone could not handle it. To have a system that could be applied citywide would be labor intensive, time intensive and complicated, and besides that all departments have to see that their needs are met. The effective way is for each department to hold its own, he added. Ray Hartz said cities always find funds for projects they want but when it comes to public records they act differently. He found it incredible that 10 years after Sunshine was introduced, departments are still coming up with excuses for not preserving emails. Doug Comstock said when he volunteered at a supervisor's office about a year ago he was told that the Clerk of the Board had instructed the office to delete emails after a certain date.

Item continued to next meeting. Without objection

6. Continued discussion on the proposed amendments and annotations to the Sunshine Ordinance. (discussion and possible action item)

Chair Knee lauded Member Craven-Green for her work on the amendments and annotations. Member CG acknowledged former Chair Doug Comstock who was seated in the audience and said he needs to be recognized for his remarkable work on the amendments.

Members later discussed the significant provisions of the amendments.

Public Comment: Doug Comstock thanked Member Craven-Green and Chair Knee for the work they had done over the years. He said the next hurdle was to write the cover letter. Ray Hartz said the Education, Outreach and Training Committee should start planning public presentations because if four Supervisors do not agree to the amendments the Task Force needs to go to the voters.

Item continued to next meeting. Without objection

7. Administrator's Report. (discussion only) (attachment)

Mr. Rustom made the report

Public Comment: None

8. Public Comment on items not listed on the agenda; to be taken at 5:00 p.m. or as soon thereafter as possible. (no action) (no attachment)

Ray Hartz said he is very concerned that no action has been taken on two of his Orders of Determination. The two cases were sent to the Education, Outreach and Training Committee and not the Compliance and Amendments Committee as required by the Task Force's By-Laws. He said he was not told when his case would be heard at the Education, Outreach and Training Committee. He requested that the cases be brought back to the Compliance and Amendments Committee and be notified when the case is to be heard.

Mr. Rustom, to Member Craven-Green's question, said he believed that Mr. Hartz was notified the first time.

Member Craven-Green said it was incumbent upon the Task Force to notify complainants when their cases are being discussed.

Mr. Hartz, at the invitation of the chair, added that he had contacted members of the Task Force several times and nobody had responded. He also said he wanted to see the email Mr. Rustom allegedly said.

Member CG said she would like the cases be sent back to the Task Force for further action.

Member Johnson said he is on the Education, Outreach and Training Committee and although he missed a meeting an informational gathering was held to get information from the Police Department.

Chair Knee said the Task Force knows that many complainants are frustrated but asked them to stay the course because people like them are needed.

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

Chair Knee said former Ethics Commissioner Joe Lynn is seriously ill at the California Pacific Medical Center at Buchanan and Clay and those who want to cheer him up can call (415) 600-6000.

Adjournment

The meeting adjourned at 5:36 p.m.

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