

Date: June 28, 2011

Item No. 12 & 13
File No. 11038

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Anonymous against the Taxi Advisory Council**
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Completed by: Chris Rustom

Date: June 24, 2011

***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.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 21, 2011
RE: *Complaint No. 11038, Anonymous v. Taxi Advisory Council*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

The anonymous Complainant ("Complainant") alleges that, on April 25, 2011, the Taxi Advisory Council ("TAC") violated public meetings laws by considering and passing a motion that was not on the published agenda for the meeting.

COMPLAINANT FILES COMPLAINT:

On May 9, 2011, Complainant filed this complaint against TAC, without specifying which specific provision(s) of the public meetings laws were violated.

JURISDICTION

TAC is a body created by the Municipal Transportation Agency ("MTA"), as directed by section 1116(k)(1) of the San Francisco Transportation Code. Section 67.3(d)(4) defines a "policy body" to include a "body [] created by the initiative of a policy body". The MTA is a policy body and created TAC. TAC therefore constitutes a "policy body" under the Ordinance, which must comply with requirements for public meetings provided therein. The Task Force therefore appears to have jurisdiction to adjudicate this complaint. TAC did not contest jurisdiction and the Complaint Committee recommended that jurisdiction be found by the Task Force.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.7 governs the requirement that items must appear on a duly published agenda in order to be legally voted upon, with certain exceptions.

Section 54950 et seq. of the Cal. Gov't Code

- Section 54954.2 governs the requirement that items must appear on a duly published agenda in order to be legally voted upon, with certain exceptions.

APPLICABLE CASE LAW:

- *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 555-556.

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ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that, on April 25, 2011, TAC violated public meetings laws by considering and passing a motion that was not on the published agenda for the meeting. The motion allegedly was "to recommend in favor of the Medallion Sales Pilot Program." Complainant further alleges that the motion was passed "without allowing completion of public discussion of many important issues regarding the effect of the program on the work force, the drivers themselves." Complainant further alleges that the motion "was never part of any [TAC] agenda." Finally, complainant alleges that "[t]he MTA representative [on the TAC] actively recommended it was all right for the motion to be considered." Complainant did not provide the agenda[s] in question or any other documentary evidence to support these allegations.

Neither MTA nor TAC had responded to these allegations at the time that this memorandum was completed.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did the TAC consider a motion "to recommend in favor of the Medallion Sales Pilot Program" at its meeting of April 25, 2011?
- Was this action included in the description of any item on the published agenda for the meeting?
- When and how was that agenda published?
- Had the item in question been on the agenda for any previous meeting of the TAC? If so, what was the date of that meeting? If so, had the agenda item been continued from that previous meeting?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements of the Ordinance and the Brown Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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TO: Sunshine Task Force
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CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.**

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

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TO: Sunshine Task Force
DATE: June 21, 2011
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BROWN ACT (GOVT. CODE §§ 54950, ET SEQ.)**SECTION 54954.2. AGENDA; POSTING; ACTION ON OTHER MATTERS**

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 9, 2011
RE: *Complaint 11038: Anonymous v. TAC*

Background

The anonymous Complainant ("Complainant") alleges that, on April 25, 2011, the Taxi Advisory Council ("TAC") violated the public meetings laws by considering and passing a motion that was not on the published agenda for the meeting.

Complaint

On May 9, 2011, Complainant filed this complaint against TAC, without specifying which specific provision(s) of the public meetings laws were violated.

Discussion and Analysis of Jurisdiction

TAC is a body created by the Municipal Transportation Agency ("MTA"), as directed by section 1116(k)(1) of the San Francisco Transportation Code. Section 67.3(d)(4) defines a "policy body" to include a "body [] created by the initiative of a policy body". The MTA is a policy body and created TAC. TAC therefore constitutes a "policy body" under the Ordinance, which must comply with requirements for public meetings provided therein. The Task Force therefore appears to have jurisdiction to adjudicate this complaint.



<complaints@sfgov.org>
05/09/2011 12:15 PM

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

To:soft@sfgov.org
Email:complaints@sfgov.org
DEPARTMENT:SFMTA Taxi Advisory Council

CONTACTED:

PUBLIC_RECORDS_VIOLATION:No

PUBLIC_MEETING_VIOLATION:Yes

MEETING_DATE:April 25, 2011

SECTIONS_VIOLATED:Public review of discussion violated.

DESCRIPTION:On April 25, 2011, the Taxi Advisory Council passed a motion to recommend in favor of the Medallion Sales Pilot Program, which it is supposedly researching, WITHOUT allowing completion of public discussion of many important issues regarding the effect of the program on the work force, the drivers themselves. The motion was not on the agenda. I think it was never part of any agenda. The MTA representative actively recommended it was all right for the motion to be considered. This motion was the result of a "filibuster" on the part of only two members of the Council, Carl Macmurdo and Dan Hines, who over a three-meeting period quite effectively blocked discussion of any issues other than the recommendation they wanted passed. These two Members took turns presenting the motion and seconding each other. I believe it is quite fair to say that they wasted five full hours of meeting time over the three meetings in question. There still exists several lists of items for discussion, approximately 30 in number, none of which have been discussed as needed. Macmurdo is a PAID member of the Medallion Holders Association and I also believe an investigation should be made into whether he is violating Lobbying laws. PROPER discussion of these items could have led to an opposite resolution, hence the filibuster. Several members of the Council - on both sides of the issue - expressed disappointment that the two individuals were wasting so much time. As Holder of Medallion 43 I attended all of these meetings and witnessed the whole situation. The events around the passage of this motion are part of the general dissatisfaction that was expressed last Tuesday by the assembled drivers around City Hall and at the SFMTA Board Meeting, May 3, 2011. The Filibuster BLOCKED discussion and the motion CONFIRMS THE FINDING that the TAC is going to send to the SFMTA in its upcoming Report. I believe the entire proceeding violates the proper use of a public forum for the presentation of issues in a spirit of good will as part of civil political process, and thus violates one of the express purposes of the Sunshine Ordinance. There is now NO political process, as the finding and recommendation of the Council ARE PURPOSEFULLY ALREADY DETERMINED IN ADVANCE. After the motion was passed, the Member in charge of presenting "Effects on Drivers" of the proposed Code changes expressed extreme concern that the issues were now settled in advance of discussion. "Why am I even here," asked Barry Korengold, Member, and head of the Cab Drivers' Association. I also believe that it was a strident violation of proper public involvement of concerned and otherwise honored concerned members of the public that the United Taxicab Workers are not represented on the Council. THE PEOPLE'S BUSINESS HAS BEEN PREVENTED FROM BEING CONDUCTED BEFORE THE PUBLIC.

HEARING:Yes

PRE-HEARING:Yes

DATE:ASAP

NAME: [REDACTED]

ADDRESS: [REDACTED] Turner Terrace #6

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ZIP:94401

PHONE:650-[REDACTED]

CONTACT_EMAIL: [REDACTED]@ [REDACTED].com

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CONFIDENTIALITY_REQUESTED:Yes