

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	LaTonia Stokes
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 Grossman 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.

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 continue the matter to 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 Zeltzer 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 Fraiser, 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 what were once open records becomes undisclosable.

Member Washburn made a friendly amendment to include Section 67.26 for withholding. It 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 Compliance and Amendments Committee for follow up.

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 Ionin 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, was notified on April 21 of the complaint and was 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 it

had any additional documents the Task Force needed it by 4 p.m. on May 18. The department did not submit anything and to date she has not received the documents she requested. The existence of the documents was evidenced by emails between Mr. Ionin 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 nine months to resolve the issue, but unfortunately it was after the hearing had taken place. He said it seems that the planners have a separate file from what is available to the public. He also said if the public cannot obtain the necessary documents then citizens 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. Ionin said the department had responded to Ms. Tsang's request about this project repeatedly over the course of many years. He then presented a history of the case but 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. Ionin 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. Ionin 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 stamp, 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 she did not know what the final version looked like.

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

In closing, Mr. Ionin 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. Ionin 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. Ionin'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 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 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; if the fee was related to the size of the project; if departments are 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 number 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 than 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 no 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 request and in fact he had offered to assist 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: Allen Grossman said the City Attorney's Office routinely rejects records requests 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, he added. 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 / Cauthen)

Public Comment: None

Member Wolfe disagreed and made an amendment.

Motion to find violation of Sections 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 the 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.

Motion to find jurisdiction (Knoebber / Cauthen)

Public Comment: None.

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

15. 10016 Hearing 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 in this case with Delene Wolf, the Executive Director of the Rent Board and Tim Lee, an attorney. He said he filed an Immediate Disclosure Request on January 21 asking for information about an employee. His request, he said, was based on Section 67.24 which describes what must be disclosed. He said he received a response on January 22 and found that it did not contain pertinent information. He said he had a conversation with Ms. Wolf before the April 20 Rent Board meeting and told her

that he wanted to know the exact gross salary and benefits of a city employee. He said he was given a one-page chart that listed the salaries of all deputy city attorneys. He said he also asked for the employee's professional information and was told that all responsive information had been provided. Mr. Hartz said Ms. Wolf and Mr. Lee had said at the May 11 Complaint Committee meeting that they wanted to help him and despite having met at various meetings he has not been approached. Besides, he said, the Rent Board had his name, address, telephone number and email address and nothing was forthcoming.

Mr. Lee said the Rent Board responded timely to the Immediate Disclosure Request. He said he was aware that Mr. Hartz had some objections to the response and had been trying to find out what the issue was. He said Mr. Hartz also does not specify the issues in the complaint. He also said Mr. Hartz declined to say anything at the meeting. Only today, he said, was he made known that the Rent Board did not provide him with the gross salary of the hearing officer. If he had mentioned it the document would have been provided.. Mr. Lee noted that the Rent Board's payroll was handled by the City Administrator's Office. The Rent Board, he said, has to disclose public information, but it also has another duty that sometimes conflicts with it and that is not to disclose employees' personal and confidential information.

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

Public Comment: Kimo Crossman said Task Force has to be for the public and help them get public information and public records. The spirit of the Ordinance has been violated in this instance, he said.

On the motion:

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

Noes: Snyder, Cauthen

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.

Complainant Ray Hartz said based on DCA Jerry Threet's Instructional Letter it was up to the Task Force to find or not find jurisdiction.

Respondent 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 to see if there was a violation. Allen Grossman said Mr. Threet is a highly qualified attorney but Mr. Hartz is not. Therefore, it would be unfair to Mr. Hartz if the case was dismissed based on an opinion he did not agree to. Anonymous Tenants said members must vote for jurisdiction because the Ordinance helps and protects 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.

Complainant Ray Hartz said he found out at the February 23 Rent Board meeting that the comments he had made at a previous meeting were mischaracterized. Section 67.16 allows him to include a 150-word summary of what he said at the meeting. The reason he waited so long to file the complaint was because he wanted the Rent Board to finalize the minutes before he presented his case. He said the Rent Board agenda makes its readers be aware of the Sunshine Ordinance but selectively adheres to it. 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, he added.

Respondent 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 added, is alleging a violation of a proposed amendment.

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, he said. Mr. Lee did not have anything to add.

Motion to find no violation (Knoebber / Cauthen)

Public Comment: Kimo Crossman said the spirit of the law is not been acknowledged and followed. The Task Force 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 stick 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 fails.

Motion to find violation (Wolfe / Williams)

Ayes Washburn, Wolfe, Johnson, Williams

Noes: Snyder, Cauthen, Knoebber, Knee

Motion fails.

Matter concluded.

18. 10021 Determination of jurisdiction 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.

Chair Knee said a special meeting may be called June 1.

21. Report: Complaint Committee: meeting of May 11, 2010.

Complaint Committee Member James Knoebber made the report.

Public Comment: None

22. Report: Education, Outreach and Training Committee meeting of May 13, 2010.

Education, Outreach and Training Committee Member Sue Cauthen made the report.

Public Comment: Ray Hartz said the Task Force cannot force rules on others when it does not follow its own rules. The Education, Outreach and Training Committee should approach the public by promoting the Ordinance and also say that it includes some flaws and would seek their support when the time

comes. Kimo Crossman agreed. He said the committee should be highlighting the challenges because the Ordinance needs to be amended.

23. Administrator's Report.

Mr. Rustom made the report.

Public Comment: Kimo Crossman said the Task Force needs to review the performance of the Mr. Threet and Mr. Rustom. Ray Hartz said an analysis needs to be conducted to see if the DCA and the administrator are providing adequate time to see to the needs of the Task Force.

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.

Ray Hartz said he is refiling complaints against the Police Commission, Police Department and the City Attorney's Office for failure to comply with Section 67.29 of the Ordinance. He said he had previously filed the same complaint against the Police Commission, Police Department. The departments have not updated their records as of May 2009, he said. Allen Grossman said the Task Force was in the dark because of a lack of minutes. Members, as previously experienced, did not know where they left off and where they needed to start from when it came to the amendments, he said. He said the one-line agenda description of the amendments was lacking as compared to an 8-line description put out by the Ethics Commission. Kimo Crossman agreed with the previous speaker and added that the amendments need to be shown on a big screen so that the public can see what changes were being made. He also said City Attorney opinions should be in written form.

25. Announcements, comments, questions, and future agenda items from the Task Force.

Member Wolfe welcomed Members Snyder and Johnson to the Task Force.

Adjournment: The meeting was adjourned at 9:31 p.m.
This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force