

Date: July 28, 2009

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force June 23, 2009
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Completed by: Chris Rustom

Date: July 16, 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
REGULAR MEETING
DRAFT MINUTES**

Tuesday, June 23, 2009
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven-Green (Vice Chair)	Seat 8	Kristin Chu (Chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	(Vacant)	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

Call to Order The meeting was called to order at: 4:00 P.M.

Roll Call Present: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Goldman
Excused: Williams

Agenda Changes: Item 18 heard after Item 8 and Items 1 & 2 heard after Item 16

Deputy City Attorney: Ernie Llorente
Administrator: Chris Rustom

1. Election of Officers: Chair and Vice-Chair of the Sunshine Ordinance Task Force.

Members were invited to make nominations for Chair.

Member Goldman nominate Member Craven-Green
Member Knee nominated Chair Chu
Member Chan nominated Member Knee

Chair Chu and Member Craven-Green declined.

Public Comment: None

Motion to vote Member Knee as new Chair of the Task Force

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan,

Goldman, Chu
Excused: Williams

Members were invited to make nominations for Vice-Chair

Member Goldman nominated Member Craven-Green
Member Knoebber nominated Chair Chu

Chair Chu declined.

Public Comment: None

Motion to vote Member Craven-Green as new Vice Chair of the Task Force

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan,
Goldman, Chu
Excused: Williams

2. Approval of minutes for May 26, 2009, regular meeting.

Members made the needed changes.

Motion to approve minutes (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan,
Goldman, Chu
Excused: Williams

3. 09024 Determination of jurisdiction on complaint filed by Paul Weston against the Department of Human Services for alleged failure to respond in a timely manner.

Motion to find jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Johnson, Chu, Goldman
Absent: Washburn, Chan
Excused: Williams

4. 09024 Hearing on the complaint filed by Paul Weston against the Department of Human Services for alleged failure to respond in a timely manner

Respondent Paul Weston said he specifically requested a Statement of Service and Invoice document that the St. Vincent de Paul Society submits to

the Department of Human Services monthly. Pamela Tebo of the department called him May 12 to say that the document was ready. When he got there on May 13, he was given a one-page document instead of the expected two pages. When he pointed out the discrepancy he was told the second document would be available May 14. He also said he asked for applications and resumes of several employees of the Society. Ms. Tebo told him that she did not have access to personnel files and if she did those files would be confidential. She suggested that he contact the Society, which he had done and was refused access based on confidentiality. He said even though Diane Christensen, Custodian of Records, corroborated Ms. Tebo's response, the department could request the files from the Society and redact information based on Braun vs. Taft.

The department was not represented.

Member Craven-Green said the department failed to respond to an IDR for a readily-available document but that she did not see it as a serious violation. On the records issue, she said the documents would be disclosable if they were of city employees but because it was of the Society's employees, Chapters 67 and 12L of the Charter do not apply.

In rebuttal, Mr. Weston said his complaint consists of three parts: (a) the documents were not provided to him on time, (b) the conduct of the staff, and (c) his request for employment applications.

DCA Llorente said the employment applications are with the non-profit and not with the city and that the Braun case was not applicable. The department cannot order the Society to release the information, he said.

Member Craven-Green added that if the department had the information it would be subject to disclosure.

Motion to find violation of 67.25 (a) for failure to respond to an Immediate Disclosure Request. (Craven-Green / Knee)

Public Comment: Ray Hartz said the respondent should have arrived at the hearing at 4 p.m. like everyone else. He also urged Mr. Weston to get more information by searching the contract for employee qualification requirements. The contract could also show how the city pays the Society for services provided. Chris Cody, executive director of the Society, said Mr. Weston has been given all the contract documents he requested.

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

5. 09029 Determination of jurisdiction of complaint filed by Paul Weston against the Department of Human Services for alleged failure to provide requested

records.

Motion to find jurisdiction under 12L (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

6. 09029 Hearing on the complaint filed by Paul Weston against the Department of Human Services for alleged failure to provide requested records.

Respondent Paul Weston said community meetings, according to the contract, are public meetings and as such notes and minutes taken at the event must be disc losable. They would be in violation of the Ordinance if they don't have it or don't do it, he said.

Chris Cody, executive director of the Society said notes and minutes have never been taken at the community meetings during the years it has operated MSC South. Chapter 12L does not require the society to keep such records, he said.

At Member Cauthen's request, DCA Llorente said community meetings are held for the clients and does not fall under 12L.

Member Craven-Green noted that the contract refers to 12L but that no additional requirements were added.

Member Knoebber said no action is needed because the meeting was between program directors and their clients and not with policy makers.

Member Knee said 12L does not require minutes and notes but strongly urged the Society to make it a practice so that it could be referenced when disputes arise.

Mr. Cody did not rebut.

Mr. Weston read a section of the contract that he believes identifies the gatherings as policy meetings.

Member Craven-Green noted that 12L does not address policy.

Motion to find no violation (Goldman / Knee)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan,

Goldman, Chu
Excused: Williams

7. 09026 Determination of jurisdiction of complaint filed by Hanna Leung & Lydia Fong against the Department of Human Services for allegedly withholding information.

Motion to find jurisdiction (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu
Excused: Williams

8. 09026 Hearing on the complaint filed by Hanna Leung & Lydia Fong against the Department of Human Services for allegedly withholding information.

Complainant Hanna Leung said her co-complainant Lydia Fong was in the audience and that they both filed for an RFP with the Department of Human Services for Real Estate Services at the end of 2008. She said they were notified in March 2009 that they were not selected. Keynote Properties was selected for the services, she said. She then contacted David Curto, the Director of Contracts, to see how the decision was reached and to understand the process. Since there was no response from the department they decided to file a complaint in April of 2009. Two days later, Mr. Curto called to say that he would be releasing the documents on the advice of the City Attorney. What they have received are score sheets with brief notes on the four applicants and not the items mentioned on their detailed list, she said. When pressed for more details he said the contract was to be awarded on July 1, she added.

Department representatives were not present.

Member Knoebber said there was a violation but wanted the department's version of events.

Member Craven-Green said this case falls under 67.24 (e) (i) and that the department was in violation because not all documents under the section have been produced. She recommended that the matter be heard at the next Task Force meeting because she would like to hear what Mr. Curto, who was directly involved in the matter, would say. Mr. Curto was currently out of state.

DCA Llorente said Mr. Curto's response was needed because 67.24 (e) (i) deals with RFPs and not RFQs. He said there were significant parallels between the two and Mr. Curto needs to explain whether he believes that it falls or does not fall under this section.

Member Craven-Green also urged Ms. Leung to submit or ask for documents that were mentioned during the hearing but not included in the packet.

Motion to continue to July meeting (Craven-Green / Cauthen)

Public Comment: Ray Hartz said to continue this matter would be to deny the complainant a chance to make the appropriate approach and response when the contract is awarded on July 1. If the department is doing this process in an open and fair way, they should be willing to show what's in the files, he said.

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Goldman

Noes: Knoebber, Johnson, Chan, Chu

Excused: Williams

9. 09027 Determination of jurisdiction on complaint filed by Alvin Xex against the Office of Economic and Workforce Development for alleged failure to respond.

Motion to find jurisdiction (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

10. 09027 Hearing on the complaint filed by Alvin Xex against the Office of Economic and Workforce Development for alleged failure to respond.

Complainant Alvin Xex said he made a verbal request and did not follow up. He said he did not receive the information he was seeking.

Respondent Kriztina Palone said she did receive a phone call from Mr. Xex, but did nothing because she believed that requests have to be written. On the advice of the City Attorney she provided the response on June 1.

Mr. Xex, while responding to Member Cauthen's questioning, said he wanted a continuance because he wanted to make a detailed request and that the verbal request was left on a message system.

Ms Palone, responding to Member Knoebber, said the response was provided through the Task Force because the telephone conversation was cutoff before he could provide his contact information and his email and address on the complaint form was redacted.

Mr. Xex said he would provide the contact information.

Both parties did not rebut.

Motion to find violation of untimely response and referred matter to the

Education, Outreach and Training Committee. (Cauthen / Goldman)

Member Craven-Green suggested the matter be sent to the Compliance and Amendments Committee.

Chair Chu sent the matter to the Education, Outreach and Training Committee for one hearing and then to the Compliance and Amendments Committee if the matter was not resolved.

Public Comment: Ray Hartz said 10 years after the law was passed, city officials are still claiming ignorance. If that happened in a court, the response would be that ignorance of the law is not an excuse.

Motion to find violation of 67.21 (b) for untimely response (Knee / Johnson)

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

11. 09028 Determination of jurisdiction on complaint filed by Alvin Xex against the Department of Human Resources for alleged failure to respond.

Motion to find jurisdiction (Goldman / Cauthen)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

12. 09028 Hearing on the complaint filed by Alvin Xex against the Department of Human Resources for alleged failure to respond.

Respondent was not present. No one was present to give evidence in support of the complainant.

Respondent Paul Greene of the Department of Human Resources said although Mr. Xex alleged that he made the request on May 8, the first contact with him was May 13 when he left a message for Director Micki Callanhan requesting a meeting and made no mention of a records request. Ms. Callanham's assistant Jessica Williams called Mr. Xex the next day and when it became known that he was making a request for records, he was forwarded to Jennifer Johnston. During that conversation he asked to whom he should address the request and never did make a records request. The department became aware of the request only when it received the complaint notification from the Task Force. And because his contact information on the complaint

was blacked out, the documents were sent to the Task Force.

Member Washburn said a decision cannot be made because the complainant was not present.

Member Knoebber said he is leaning toward finding no violation because of the amount of information provided by the department.

Motion to find no violation (Knoebber / Goldman)

Public Comment: None

On the motion:

Ayes: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chan, Goldman, Chu

Excused: Williams

13. 08056 Status of the Orders of Determination of Ray Hartz v Police Department

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09008

Member Chan asked to be recused because of a financial interest. Without objection.

Education, Outreach and Training Committee Chair Cauthen said Lt. Daniel Mahoney of the Police Department's Legal Division told the committee that the matter was being given top priority but needed the Chief's approval to follow through completely. Two months later he told the committee that he still had not complied with the Index posting. At the last Education, Outreach and Training Committee meeting, the committee, she said, was going to invite Lt. Mahoney again but Ray Hartz had asked that the matter be sent to the full Task Force. Unfortunately, Mr. Hartz was not notified of the meetings, she said.

Lt Mahoney said Lt. Joe Reilly was also present because this matter also involved the Police Commission. Lt. Mahoney said he has to deal with multiple agencies before the information becomes available. The work also involves contacting all sections within the agency and has them update their records, which are now with the City Attorney for his approval. The Police Commission's documentation is also with the City Attorney, he said. The department had earlier submitted the documents to the City Administrator but it was sent back because it was not in the proper format. One of the major reasons for the delay is that the department has lost four members to the budget crisis and yet had to meet its other obligations. It's going to take more time, he said.

Ray Hartz said the Task Force should have sent the Orders of Determination for the Police Department and Police Commission to the Compliance and Amendments Committee for monitoring. He also said the Orders of Determination for #08056_Ray Hartz v Police Department is also not available on the Task Force's website. He said the information gathering events were also a violation of its own rules because it gives the impression that whatever

was said and done had official acknowledgement. The minutes of the events gave rise to many questions which he would have presented if he had been invited. In the March meeting, he was surprised to see DCA Llorente giving an update on what the department had done. Again, he said, he was not invited. He said the Education, Outreach and Training Committee should look up the Index to see the violators and do the outreach instead of hijacking the ones he did. He said the chair of the Education, Outreach and Training Committee has not given him any chance to participate in the complaints that he has fought for.

Member Craven-Green wanted to know when the department would be in compliance. Lt. Mahoney said with the reduced staff that he has, he is should have the Index sent to the City Administrator by August 1.

Member Knee wanted to know if he had received approval from the Chief. Lt. Mahoney said he has approval from the Chief to take the information, put it in the format it needs to be and get the City Attorney's opinion. When he gets it, he will get final approval from the Chief. He also said he did not believe the change of Chiefs would cause a delay.

Public Comment: None

Member Craven-Green suggested that Mr. Rustom contact Lt. Mahoney by August 1 and inform the Task Force chair and Mr. Hartz on the progress. If the chair decides that further action is required, the chair can calendar it for a committee or Task Force meeting. Chair Chu agreed.

14. Report: Complaint Committee meeting of June 9, 2009.

Complaint Committee Chair Nick Goldman made the report.

Public Comment: None

15. Report: Compliance and Amendments Committee: meeting of June 9, 2009.

Compliance and Amendments Committee Chair Rick Knee made the report.

Public Comment: None

16. Report: Education, Outreach and Training Committee meeting of June 11, 2009.

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

Public Comment: Ray Hartz said he finds it impossible to accept that the Education, Outreach and Training Committee Chair Cauthen would handle his complaints in a fair manner. Not notifying complainants, holding illegal meetings, redirecting Orders of Determinations, seems to suggest that the chair wants do everything except what the complainant wants. He said he was

going to file an ethical complaint against Chair Cauthen to compel someone to make an attempt or an appearance of being fair.

17. Administrator's Report

Mr. Rustom made the report.

Public Comment: Ray Hartz wanted the administrator to look into the link to the Order of Determination for complaint #08056_Ray Hartz v Police Department.

18. 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.

Sandy Close, director of the New American Media said she and a few of her colleagues were in the audience to observe the role of the Sunshine Ordinance Task Force. She said New Media was made aware of their obligations in the past few days by members of the public. She said the next nominee would be someone who could fill the post much longer than the previous representative.

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

Chair Knee said former Ethics Commissioner Joe Lynn is recovering 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 was adjourned at 6:25 p.m.

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