

Date: August 26, 2008

Item No. 6
File No. 08038

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Tso v. Animal Care & Control**
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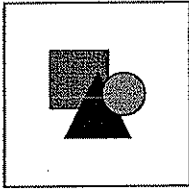
Completed by: Frank Darby

Date: August 20, 2008

***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

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
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MEMORANDUM

August 19, 2008

KIN TSO v. ANIMAL CONTROL AND WELFARE COMMISSION (08038)

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On June 12, 2008, Complainant Kin Tso attended the Animal Control and Welfare Commission ("Commission"). At this hearing approximately 20 members of an animal rights group named Fix San Francisco attended the meeting with intentions to speak during the public comment section of the agenda about the San Francisco Society for the Prevention of Cruelty to Animals ("SPCA"). Complainant Tso is a member of Fix San Francisco. At the public comment section of the meeting, Commission Chairperson Sally Stephens stated that the Commission does not have jurisdiction over private organization in San Francisco. Therefore, discussion of private organizations is not under the purview of the Commission to discuss and of which the Board of Supervisors have no control. Chairperson Stephens stated that the Commission is an advisory body to the Board of Supervisors. Following these statements, the public was discouraged from speaking at the public comment section about the SPCA over the objections and protests from members of the public.

THE COMPLAINANT FILES A COMPLAINT:

On July 28, 2008, Kin Tso filed a complaint against the Commission alleging that Chairperson Stephens prohibited public comment on the topic of the SPCA even though San Francisco Health Code, Article I, Section 41.2 states that the Commission may study and recommend requirements for the maintenance of animals in, public, private, and commercial care.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTIONS:

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.

Memorandum

3. Section 67.15 of the Sunshine Ordinance addresses public comment at meetings.
4. Article I, Section 41.2 of the Health Code addresses the powers and duties of the Commission.

APPLICABLE CASE LAW:

None for this case

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- Kin Tso a member of the public and a member of an animal rights attended the Animal Control and Welfare Commission on June 12, 2008
- Sally Stephens chaired the Commission meeting on June 12, 2008.
- Chairperson Stephens prohibited public comment on the topic of the SPCA citing that the Commission did not have jurisdiction over private entities.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether public comment of the SPCA is within the subject matter jurisdiction of the Commission?
- Whether Chairperson Stephens unlawfully excluded public comment by refusing to allow members of the public to speak about the SPCA?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

What opportunities did the public have for public comment on the topic of the SPCA?

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

Memorandum

- **What sections of the Sunshine Ordinance, and/or Brown Act, were violated?**
- **Did Health Code Section Article I, Section 41.2 confer jurisdiction on the Commission to discuss the activities of private animal service entities?**
- **Did Chairperson Stephens violate Section 67.15 of the Sunshine Ordinance?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004
ARTICLE I, SECTION 3**

§3 Openness in Government

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum
ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.15 of the San Francisco Administrative Code provides for public testimony as follows:

a.) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

b.) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

c.) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

d.) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis of that performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision c) of this section.

Article I, Section 41.2 of the Health Code states the Powers and Duties of the Commission

In addition to any other powers and duties set forth in this Article, the Commission shall have the power and duty to:

Memorandum

- a) Hold hearings and submit recommendation regarding animal control and welfare to the Board of Supervisors and the City Administrator.
- b) Study and recommend requirements for the maintenance of animals in public, private, and commercial care.
- c) ...



<complaints@sfgov.org>
07/30/2008 11:11 AM

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

Submitted on: 7/30/2008 11:11:07 AM

Department: Commission on Animal Control and Welfare

Contacted:

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: June 12, 2008

Section(s)_Violated: 67.1 & 67.15

Description: The Commission on Animal Control and Welfare and Commissioner Sally Stephens censored speech, violated the First Amendment and abused power at the beginning of and during the regularly scheduled ACWC meeting held 5:30 p.m. on June 12, 2008, in Room 408 at City Hall.

Hearing: Yes

Date: 7-28-2008

Name: Kin Tso

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 172.31.2.95
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :

Kin Tso

San Francisco, CA94131

Sunshine Ordinance Task Force
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

Re: Complaints against Commission on Animal Control and Welfare
Violation of Sunshine Ordinance Article I. Sec. 67.1 and Article II. Sec. 67.15
Violation Date: June 12, 2008

Dear Sunshine Ordinance Task Force:

My name is Kin Tso, and I am a resident of the Glen Park neighborhood in San Francisco. I am a member of the newly-formed animal rights group Fix San Francisco. This letter will serve as our filing a formal complaint against San Francisco's Commission of Animal Control and Welfare ("ACWC") and the ACWC Chairperson, Commissioner Sally Stephens.

This complaint charges the ACWC and Commissioner Stephens with censorship of speech, violation of the First Amendment and the abuse of power at the beginning of and during the regularly scheduled ACWC meeting held on the date June 12, 2008, in 5:30pm, room 408 at the City Hall.

Statement of Facts and Description of Violations

On June 12, 2008, approximately 20 members of Fix San Francisco attended the regularly scheduled ACWC meeting. Commissioner Chairperson Sally Stephens opened the first Public Comment section of the meeting by stating, "Reminder that ACWC does not have jurisdiction over private organizations in SF. Discussion of such is not under the purview of ACWC to discuss and of which the Board of Supervisors have no control. We are an advisory body to the Board of Supervisors." (See attached Meeting Minutes, Section 2.)

The public was discouraged from speaking before even one member of the audience wishing to speak had been heard. Despite protests from the audience, the ACWC continued to deny my right to speak based on Commissioner Stephens's insistence that the ACWC does not have jurisdiction over private organizations. (See attached Meeting Minutes, Section 2 and 8.) However, according to San Francisco Health Code, Article I, Sec. 41.2 as cited on ACWC's website, "*the Commission may study and recommend requirements for the maintenance of animals in public, private, and commercial care.*" Therefore, the disclaimer that they have no jurisdiction over private organizations would appear to be misleading, to say the least.

Also, according to Commissioner Stephens, the ACWC was informed that there would be hundreds of people attending the meeting who would want to talk about the SPCA, therefore the city attorney was consulted *prior* the meeting. This information was not included in the Meeting Minutes but many members of the audience were present when the discussed occurred. The broad spectrum gag order on any discussion about the SFSPCA was recommended by the city attorney and enforced by Commissioner Sally Stephens. Refusing to even trying to listen to what anyone had to say demonstrates and validates our complaint of censorship.

There is also the issue of our First Amendment rights. It was raised by Commissioner Christine Garcia, who stated: "Public comment is a First Amendment right for the public to raise issues concerning animal welfare in SF". (See attached Meeting Minutes, Section 2.) This was also shot down by Commissioner Stephens by re-quoting the city attorney: "Public comment is to address issues within the jurisdiction of this Commission." (See attached Meeting Minutes, Section 2.)

By stating or mis-stating what the Commission's jurisdiction is, and in addition prohibiting other Commissioners such as Commissioner Garcia the right to hear public comment, Commissioner Sally Stephens demonstrated an abuse of power as the Chairperson of the ACWC.

Since we are the taxpayers, civil servants such as Commissioner Stephens should at the very least listen to what we have to say before imposing a broad-spectrum gag order. The ACWC of San Francsico should work for the people of the City of San Francisco, not catering to special interests such as the SF SPCA.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Kin Tso/Fix SF', written over a horizontal line.

Kin Tso/Fix SF

Commission of Animal Control and Welfare

LISTEN

TEXT ONLY

PRINT

A

A

A

June 12, 2008

June 12, 2008

5:36 PM

1. Call to Order and Roll Call

Present, Commissioners: Laurie Kennedy-Routhier, Philip Gerrie, Andrea Brooks, Christine Garcia, Sally Stephens, Vicky Guldbach – ACC, William Herndon – SF Police

Absent, Commissioners: Mara Weiss DVM, Bob Palacio – SF Rec& Park, Pam Hemphill

2. Public Comment

Comr. Stephens - Reminder that ACWC does not have jurisdiction over private organizations in SF. Discussion of such is not under the purview of ACWC to discuss and of which the Board of Supervisors have no control. We are an advisory body to Board of Supervisors.

Tom Oliver – Questions Chair if SPCA concerns are appropriate for comment.

Comr. Garcia – Suggests that all animal issues in SF are

open for public comment.

Comr. Stephens – Calls a short recess to contact City Attorney.

Comr. Stephens – Advised by City Attorney that public comment is limited to animal issues under jurisdiction of Board of Supervisors. Issues with private organization should be taken to Board of Directors of that organization or the media.

Tom Oliver – There is relationship between ACC, a City agency and SPCA. Question as to policy of ACC euthanizing animals for SPCA. Has approached Supervisors directly and some have shown interest.

Comr. Stephens – Individual Supervisors or Commissioners could approach private organizations on their own. Not as a Board. Board cannot tell SPCA how to allocate resources.

Comr. Guldbeck – If there is a violation of agreement between ACC and SPCA, one can go to Carl Friedman, head of ACC,

Comr Herndon – Suggest obtaining original adoption pack between ACC and SPCA to see if there is a violation. Then Commission could take it up. Would be a violation between a private organization and a City agency.

Comr. Garcia – Curious as to what Mr. Oliver has to say. There may be something Commission could take up as a general policy.

Tom Oliver – Prepared a packet of information on issue.

Comr. Stephens – Can distribute to Commissioners individually after meeting.

Martha Hoffman – SPCA volunteer – Question to Vicky, if numbers of turned down animals, and for what reason, are public?

Comr. Guldbech – ACC's records are public. Unsure if SPCA's records are. Can check.

Martha Hoffman – Would like to know past records of euthanasia at ACC.

Julianne Johnson – Can we raise the issue of the City's no-kill policy?

Comr. Garcia – Public comment is a first amendment right for the public to raise issues concerning animal welfare in SF.

Comr. Stephens – Public comment is to address issues within the jurisdiction of this Commission.

Julianne Johnson – Has talked with Supervisor about a no-kill policy for ACC.

Lisa Vittori – Gives legal advise to Commission. Commission is empowered to listen to the public about anything within the purview of this Commission which is animal control and animal welfare. Commission job is to take in all concerns and hone them into an appropriate form for the Supervisors. Commission job is first to listen to the public and then decide to hone or eliminate. Commission not doing its job by refusing to listen to the public.

Cynthia Cox - Reads from ACWC website of Commissions responsibilities . Sites several past issues addressed by Commission about private animal welfare issues. Begs Commission to hear what public has to say.

Kim So – SPCA behaviorist – Raises issue of fraud by SPCA in getting donations from the public who support a no-kill policy. While the SPCA has turned to a low-kill policy. Cannot change policy without telling donors. That is fraud. Comr. Stephens – Unable to reach City Attorney. Unfair to those that already left to allow public comment for only those that stayed.

Comr. Garcia- Encourages Chair to allow those present to speak. Nexus between SPCA and government on ACWC website. Public request to speak about general policy of no-kill.

Comr. Herndon – Encourages public comment but questions if SPCA comments would be productive. Suggests examining ACC's no-kill policy, then agendaizing specific recommendation for ACWC to take to Supervisors.

Comr. Brooks- Sympathizes with Chair's difficult position of trying to follow City Attorney's guidelines.

Comr. Stephens – Can hear comments of policy of no-kill in SF. Cannot hear comments about how a private organization allocates its resources.

3. Approval of Draft Minutes from May 8, 2008 Meeting

Minutes approved unanimously with minor corrections.

4. Chairperson's Report and opening Remarks

Comr. Stephens – Update on zoo recommendations to Supervisors. Supervisor Daly submitted an ordinance generally following Commission's recommendations. Public can follow progress of ordinance on Board of Supervisors

website.

4 Public Comment

Dr. Elliot Katz – Thanks Commission for following up on zoo issues to turn zoo into a rescue zoo.

5. Committee Reports/Commissioner's Reports

A) Update of Rules Committee hearing to fill expired seats
Comr. Routhier – Update on when Rules Committee will hold hearings for appointment of the three open seats on Commission. Tentatively planned for June 27th. Information will be posted the Friday before hearing including copies of applications of those applying for the open seats.

6. Old Business

A) Discussion and possible action on "Humanitarian Art Ordinance"

Comr. Garcia – Spoken with many people about the ordinance including City Attorney. Presently thinking of presenting a resolution to create a policy versus an ordinance. Criminalizing artistic expression can run into first amendment free speech issues. Suggest policy include withholding grants from the Arts Commission to artists that practice or contribute to animal abuse in the name of art. Introduces speakers.

David Green – Executive director of First Amendment Project – guest speaker -Commission is treading on dangerous ground but sympathetic to the cause, reprehensible actions in the name of art. Ordinance would blunt message of the artist. First amendment does not allow government to take sides in a debate. Ordinance could not just prohibit one side

from showing animal cruelty. It would also have to prohibit showing photos/videos to prevent animal cruelty. Issue has many grey areas. Can practices legal in other states but illegal in SF be shown in SF? Such as SF bar owner showing video of greyhound racing? Bar owner would have violated ordinance. Showing animal cruelty as entertainment. Restricting art funding does not violate first amendment rights. But government selecting content must be viewpoint neutral.

Comr .Stephens – Can you give a real world example of that?

David Green – You can't say that you will not fund art that contains animal abuse. You can say that you will not fund art that involves animals.

Comr. Garcia – What about not funding art that breaks a City law concerning animal abuse?

David Green – City can prosecute anyone that breaks the law whether or not they were making art as a result. Making art doesn't exempt them. They can't be punished differently from someone who was breaking the law and not making art. Could say that you don't want City money to break the law. If the City law was broken in Mexico but the result is displayed in SF, what ability does the City have? The City has a say over creation of art but also display and exhibit.

Dr. Elliot Katz – IDA – guest speaker – Thought intent of policy was to say that animals should not be abused or killed in the creation of art. City should say they don't want an animal killed to make a work of art. Let Board of

Supervisors deal with the technicalities. Send clear simple statement to the Board.

Michael Aquino – Professor of political science at GG University - guest speaker - Responds to first amendment concerns. Suggests raising policy to level of ordinance to set a moral standard. Something that has teeth.

7A Public Comment None

Comr. Garcia – Inspired by last speaker to try for an ordinance versus settling on a policy. Concern for animal welfare is worth being challenged in court.

Comr. Herndon – Confused. In the past Commission has recommended a resolution or an ordinance that then goes to our city Attorney for its legality. Commission has not sought legal advice from the public for a proposed recommendation.

Comr. Stephens – Sees difficulties with item as is in prohibiting city funding specific to exhibits or displays of animal abuse. Government has to be neutral so must prohibit funding of any animal exhibit just to prevent funding of exhibits of animal abuse. SFAI canceled the exhibit. The Institutes reputation was damaged. The public expressed strong disapproval of the exhibit. Believes this is the proper forum for these issues.

Comr. Herndon – Suggest that voting members of Commission vote of whether to forward as a policy or as an ordinance.

Comr. Routhier – Supports sending a resolution condemning animal cruelty in art exhibits.

Comr. Gerrie – Supports sending recommendation as an

ordinance not for its punitive aspect but to discourage copycats in the future.

Comr. Stephens – Doubts if copycatting is a concern. Artist's name that did the animal abuse video is forgotten. Proposed voting whether to send a resolution or an ordinance.

Comr. Garcia – Would like to work on it some more to be clear on what is proposed to vote on.

Comr. Stephens – Item is continued until next month.

8. Public Comment

Anonymous male – Questions definition of what is public and private. When does a dog or cat become private property if its history is not known? Adopting out animals to unstable people can become a public concern.

Julienne Ladd – Wonders if ACWC is the right forum to introduce the question if animals are property. If harm is done to a pet, is the owner only entitled to what was paid for the animal in compensation?

Julianne Johnson – Questions what appears to be a change in SF from no-kill to low-kill policy. Supports more transparency at ACC as to animals going in and out.

Suggests Commission support increased adoption and decreasing euthanasia. Suggests Commission also support increased use of animals for people with disabilities.

Tom Oliver – Points out that Commission is dealing with animal abuse exhibit at a private school. Hopes that at next meeting animal issues at other institutions will be heard.

Mary Kennedy – Hopes SF can be completely a no-kill City.

Michael Kinney – Supports no-kill resolution from

Commission to the Board. Board has at least the power to "encourage" private organizations to be more open so public can judge what organizations they want to support.

Dr. Elliot Katz – Supports no-kill in both art exhibits and in shelters.

Anonymous female – Challenges Commission to censure any institution, private or public, to be no-kill. Care not kill.

Tom Volt – SF has strong tradition of caring for animals. No-kill is an important issue to many people.

Gloria Rogan – Graduate of SFAI – Against any one that kills an animal in the name of art. Film of a human being killed is not art. Art is not the destruction of life.

Bonnie Baron – Wonders why Commission can consider censuring SFAI but not an organization not fulfilling its humane mission.

9. Calendar Items

Comr. Brooks – Will update hearings on Rescue Zoo Ordinance. Comr. Garcia will bring her Art Ordinance.

10. Closing Review of Task allotment

Already discussed.

11. Adjournment 7 PM

Respectfully submitted by

Philip Gerrie

Commission Secretary



Sally Stephens

[Redacted]

08/07/2008 10:40 PM

Please respond to
Sally Stephens
[Redacted]

To SOTF <sotf@sfgov.org>, Aaron Peskin
<Aaron.Peskin@sfgov.org>, David Noyola
<David.Noyola@sfgov.org>, Rose Chung

cc

bcc

Subject Sunshine Complaint Response: #08038_Kin Tso vs Animal
Welfare & Control Commission

Dear Sunshine Ordinance Task Force,

I have attached my response to complaint #08038, Kin Tso vs Animal Welfare and Control Commission. Please let me know if you have any trouble reading the Word file. Thank you.

Sally Stephens
Chair, Animal Control and Welfare Commission
415-[Redacted]

-----Original Message-----

>From: SOTF <sotf@sfgov.org>
>Sent: Aug 4, 2008 4:43 PM
>To: Aaron Peskin <Aaron.Peskin@sfgov.org>, David Noyola
<David.Noyola@sfgov.org>, Rose Chung <Rose.Chung@sfgov.org>
>Subject: Sunshine Complaint Received: #08038_Kin Tso vs Animal Welfare &
Control Commission

>

>

>This e-mail is to confirm that the attached complaint and support documents
>have been received. The Department is required to submit a response to the
>charges to the Task Force within five business days of receipt of this
>notice. Please refer to complaint number #08038 when submitting any new
>information and/or supporting documents pertaining to this complaint.

>

>If the Department contests jurisdiction or if the parties request a
>prehearing conference a hearing will be scheduled with the Complaint
>Committee of the Sunshine Ordinance Task Force who will determine whether
>the Task Force has jurisdiction over this matter, and/or to focus the
>complaint or to otherwise assist the parties to the complaint.

>

>Date: Tuesday, September 9, 2008
>Location: City Hall, Room 406
>Time: 4:00 P.M.

>

>If the Department does not contest jurisdiction or if the parties don't
>request a prehearing conference a hearing will be scheduled with the full
>Sunshine Ordinance Task Force who will hear the merits of the complaint and
>issue a determination.

>

>Date: Tuesday, August 26, 2008
>Location: City Hall, Room 408
>Time: 4:00 P.M.

>

>Complainants: Your attendance is required at this meeting/hearing.

>

>Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance,
>the custodian of records or a representative of your department, who can
>speak to the matter, is required at the meeting/hearing.

>

>Any support document to be considered by the Complaint Committee prior to
>the meeting, must be submitted by 4:00 P.M. Tuesday, September 2, 2008, if
>jurisdiction is contested or Tuesday, August 19, 2008, if jurisdiction is
>not contested.

>
>Also, attached is the Sunshine Ordinance Task Force's complaint procedures.

>
>(See attached file: 1_Complaint Procedures_3-25-08_Final.pdf)

>
>
>(See attached file: 08038 Complain.pdf)

>
>Chris Rustom
>Asst. Administrator
>Sunshine Ordinance Task Force
>1 Dr. Carlton B. Goodlett Place
>City Hall, Room 244
>San Francisco, CA 94102-4689
>OFC: (415) 554-7724
>FAX: (415) 554-7854
>SOTF@sfgov.org



SOTF.Response.doc

August 6, 2008

Dear Sunshine Ordinance Task Force,

I am writing with regard to complaint #08038 regarding the Animal Control and Welfare Commission, of which I am Chair. The Commission's powers and duties are defined in Sec. 41.2 of the SF Health Code as:

In addition to any other powers and duties set forth in this Article, the Commission shall have the power and duty to:

- (a) Hold hearings and submit recommendations regarding animal control and welfare to the Board of Supervisors and the Chief Administrative Officer.
- (b) Study and recommend requirements for the maintenance of animals in public, private, and commercial care.
- (c) Work with the Tax Collector to develop and maintain dog licensing procedures and make recommendations for fees.

Before the Commission's June 2008 meeting, I had been told by a number of different people that a lot of people planned to come to the meeting to condemn the decision of the SF/SPCA to abruptly shut down its Hearing Dog Program. Regardless of what one thought of the decision (and I personally was very upset by it), it seemed to me to lie entirely within the SF/SPCA's organizational purview, and not that of the Board of Supervisors. Although extremely important to the people involved, the Hearing Dog Program was an enrichment or service program of the SF/SPCA not part of the organization's animal protection mandate. As such, its closure does not fall under Sec. 41.2 of the SF Health Code because it relates to a funding allocation rather than to animal control and welfare. Therefore, I did not think it fell within the purview of the Commission.

A few months prior to my appointment to the Commission, I attended a Commission meeting where an individual upset with the way a veterinarian had treated his dog verbally attacked the veterinarian. The then-acting Chair of the Commission allowed the man to continue to speak and slander the veterinarian even after it became clear that his comments were not appropriate for the Commission because there were more suitable options for him to pursue his complaint (e.g., the California Veterinary Medical Association, the Better Business Bureau, or through litigation) and because the subject did not seem to fall within the Commission's duty to examine general welfare issues. The veterinarian was not present to defend herself and I found the entire incident very disturbing. Moreover, I was told that many others were bothered by the incident and felt that the commission had overstepped its authority by allowing a person to occupy commission time with a personal vendetta.

I was concerned that an extensive discussion of the closing of the Hearing Dog Program at our Commission meeting would overstep boundaries in a similar way. I sought counsel before the meeting about the Commission's jurisdiction, but I did not clearly understand what I was told. Therefore I began public comment by asserting that I believed this program was outside of the Commission's jurisdiction. In hindsight, I did not explain

what program I was talking about nor did I explain my reasoning well during the meeting and that caused the confusion.

During the course of the public comment that was given at the June meeting, however, it became clear to me that people did not want to talk about the Hearing Dog Program, but actually wanted to talk about broader issues of changes in the SF/SPCA's policy on euthanizing animals. This apparently had been the subject of an article in SF Weekly that had recently come out, but I had not read that article when the Commission meeting happened. The issue of "no-kill" policies and the euthanasia policies of organizations that have entered into rescue agreements with the City (as the SF/SPCA had) clearly does fall within our jurisdiction, and when I realized that was what people wanted to talk about, I said that I would take public comment on the issues raised relating to no-kill.

Because we were running late and had several invited speakers for other agenda items who were waiting to speak, I continued the public comment in agenda item #2 until the public comment in agenda item #8 to ensure compliance with the requirement to allow for general public comment (the Commission schedules public comment at both the beginning and end of the meeting). At the time of agenda item #8 Public Comment, the Commission did take the public comment of those who had wanted to speak at the beginning of the meeting regarding SF/SPCA policies that affect animal welfare.

The minutes for the meeting that were attached to the complaint were actually a first draft of the minutes that was distributed only to the Commissioners, not to the general public. When I received them, I pointed out several clarifications to the minutes to the Secretary, especially the fact that I had made clear that I was continuing the public comment in item #2 to the second public comment agenda item #8 at the end of the meeting. I asked for this clarification because I thought the way the minutes were written in this first draft made it seem like people were not allowed to speak on SPCA policy at all. The Secretary listened to the tapes of the meeting and agreed that I had made the additional comment during the meeting, and so he added the clarification to the draft minutes. I am the person who copies the minutes that are distributed to the public at our meetings. I copied and distributed the modified draft minutes to the public at the July meeting. The modified draft was what the Commission considered and approved at the July meeting and is the version that is posted on our website:

http://www.sfgov.org/site/awcc_page.asp?id=84014

I have included a copy of the approved minutes with this response.

I have been on the Commission for a little over a year, and have presided as Chair only since February 2008. I am still learning how to run meetings and ensure Sunshine and other requirements are met. I'm still learning what the Commission has authority to do and what it cannot do and I am working with the Commission to determine what direction we, as a body, feel we should take. I wish I had said things differently during the meeting in question, that things had run more smoothly, and that people did not feel they had been censured. In fact, I didn't sleep well that night, as I kept re-running what happened, and wishing I had said/done almost everything differently.

In hindsight, I clearly over-thought the issue of Commission jurisdiction before the meeting, colored in large part by my concerns that the Commission not repeat an incident like that with the man slandering the veterinarian. It was not my intent to censure what people wanted to say because I did not like what they had to say or out of some attempt to protect the SF/SPCA from criticism. In fact, I personally agree with the concerns raised about no-kill by the people who did speak during public comment at the meeting. After the meeting, I sought counsel about public meeting laws and the issues raised at the meeting and I feel I now have a much better understanding of them. This has been a huge learning experience for me and I can assure the Sunshine Ordinance Task Force, as well as the complainant, that it will not happen again.

I am personally committed to the First Amendment and Sunshine Ordinance requirements. Free speech is important and necessary but it is the Commission's duty to hear about animal welfare. I take my role as Chair very seriously. In fact, I remind my fellow Commissioners of Sunshine Ordinance requirements and caution them to make sure no violations occur. This experience has helped me better understand how Sunshine relates to public comment.

If the complainant or others truly feel they were not heard during the public comment period at the end of the meeting, I would be happy to schedule an agenda item at the next meeting of the Commission to accommodate them. However, at its July 10, 2008 meeting, the Commission calendared an agenda item for the August 2008 meeting on "no-kill" policies in San Francisco based on the public comment taken during the June and July meetings. The Commissioner who requested the calendaring is no longer with the Commission. The August agenda item is, therefore, a discussion of whether another Commissioner wishes to take on the subject and, if so, possible approaches to the subject.

We are all human and we occasionally make mistakes. Hopefully, we learn from those mistakes. I feel that I am learning from what happened during the June meeting and will come out a better Commissioner as a result.

Thank you for your time.

Sally Stephens

Commission of Animal Control and Welfare

Commission of Animal Control and Welfare >> Meeting Information

- 0. LISTEN
- 0. TEXT ONLY
- 0. PRINT
- 0. A
- 0. A
- 0. A

June 12, 2008

June 12, 2008

5:36 PM

1. Call to Order and Roll Call

Present, Commissioners: Laurie Kennedy-Routhier, Philip Gerrie, Andrea Brooks, Christine Garcia, Sally Stephens, Vicky Guldbech – ACC, William Herndon – SF Police

Absent, Commissioners: Mara Weiss DVM, Bob Palacio – SF Rec& Park, Pam Hemphill

2. Public Comment

Comr. Stephens - Reminder that ACWC does not have jurisdiction over private organizations in SF. Discussion of such is not under the purview of ACWC to discuss and of which the Board of Supervisors have no control. We are an advisory body to Board of Supervisors.

Tom Oliver – Questions Chair if SPCA concerns are appropriate for comment.

Comr. Garcia – Suggests that all animal issues in SF are open for public comment.

Comr. Stephens – Advised by City Attorney that public comment is limited to animal issues under jurisdiction of Board of Supervisors. Issues with private organization should be taken to Board of Directors of that organization or the media.

Tom Oliver – There is relationship between ACC, a City agency and SPCA. Question as to policy of ACC euthanizing animals for SPCA. Has approached Supervisors directly

and some have shown interest.

Comr. Stephens – Individual Supervisors or Commissioners could approach private organizations on their own. Not as a Board. Board cannot tell SPCA how to allocate resources.

Comr. Guldbach – If there is a violation of agreement between ACC and SPCA, one can go to Carl Friedman, head of ACC,

Comr Herndon – Suggest obtaining original adoption pack between ACC and SPCA to see if there is a violation. Then Commission could take it up. Would be a violation between a private organization and a City agency.

Comr. Garcia – Curious as to what Mr. Oliver has to say. There may be something Commission could take up as a general policy.

Tom Oliver – Prepared a packet of information on issue.

Comr. Stephens – Can distribute to Commissioners individually after meeting.

Martha Hoffman – SPCA volunteer – Question to Vicky, if numbers of turned down animals, and for what reason, are public?

Comr. Guldbach – ACC's records are public. Unsure if SPCA's records are. Can check.

Martha Hoffman – Would like to know past records of euthanasia at ACC.

Julianne Johnson – Can we raise the issue of the City's no-kill policy?

Comr. Garcia – Public comment is a first amendment right for the public to raise issues concerning animal welfare in SF.

Comr. Stephens – Public comment is to address issues within the jurisdiction of this Commission.

Julianne Johnson – Has talked with Supervisor about a no-kill policy for ACC.

Lisa Vittori – Gives legal advise to Commission. Commission is empowered to listen to

the public about anything within the purview of this Commission which is animal control and animal welfare. Commission job is to take in all concerns and hone them into an appropriate form for the Supervisors. Commission job is first to listen to the public and then decide to hone or eliminate. Commission not doing its job by refusing to listen to the public.

Cynthia Cox - Reads from ACWC website of Commissions responsibilities . Sites several past issues addressed by Commission about private animal welfare issues. Begs Commission to hear what public has to say.

Kim So – SPCA behaviorist – Raises issue of fraud by SPCA in getting donations from the public who support a no-kill policy. While the SPCA has turned to a low-kill policy. Cannot change policy without telling donors. That is fraud.

Comr. Stephens – Unable to reach City Attorney. Unfair to those that already left to allow public comment for only those that stayed.

Comr. Garcia- Encourages Chair to allow those present to speak. Nexus between SPCA and government on ACWC website. Public request to speak about general policy of no-kill.

Comr. Herndon – Encourages public comment but questions if SPCA comments would be productive. Suggests examining ACC's no-kill policy, then agendizing specific recommendation for ACWC to take to Supervisors.

Comr. Brooks- Sympathizes with Chair's difficult position of trying to follow City Attorney's guidelines.

Comr. Stephens – Calls a short recess to contact City Attorney.

Unable to contact city attorney. Meeting resumes

Comr. Stephens – Can hear comments of policy of no-kill in SF. Cannot hear comments about how a private organization allocates its resources. Issues of item # 2 are continued during the public comment time at the end of the meeting .

3. Approval of Draft Minutes from May 8, 2008 Meeting

Minutes approved unanimously with minor corrections.

4. Chairperson's Report and opening Remarks

Comr. Stephens – Update on zoo recommendations to Supervisors. Supervisor Daly submitted an ordinance generally following Commission's recommendations. Public can follow progress of ordinance on Board of Supervisors website.

4 Public Comment

Dr. Elliot Katz – Thanks Commission for following up on zoo issues to turn zoo into a rescue zoo.

5. Committee Reports/Commissioner's Reports

A) Update of Rules Committee hearing to fill expired seats

Comr. Routhier – Update on when Rules Committee will hold hearings for appointment of the three open seats on Commission. Tentatively planned for June 27th. Information will be posted the Friday before hearing including copies of applications of those applying for the open seats.

6. Old Business

A) Discussion and possible action on "Humanitarian Art Ordinance"

Comr. Garcia – Spoken with many people about the ordinance including City Attorney. Presently thinking of presenting a resolution to create a policy versus an ordinance. Criminalizing artistic expression can run into first amendment free speech issues. Suggest policy include withholding grants from the Arts Commission to artists that practice or contribute to animal abuse in the name of art. Introduces speakers.

David Greene –Executive director of First Amendment Project – guest speaker - Commission is treading on dangerous ground but sympathetic to the cause, reprehensible actions in the name of art. Ordinance would blunt message of the artist. First amendment does not allow government to take sides in a debate. Ordinance could not just prohibit one side from showing animal cruelty. It would also have to prohibit showing

photos/videos to prevent animal cruelty. Issue has many grey areas. Can practices legal in other states but illegal in SF be shown in SF? Such as SF bar owner showing video of greyhound racing? Bar owner would have violated ordinance. Showing animal cruelty as entertainment. Restricting art funding does not violate first amendment rights. But government selecting content must be viewpoint neutral.

Comr .Stephens – Can you give a real world example of that?

David Greene – You can't say that you will not fund art that contains animal abuse. You can say that you will not fund art that involves animals.

Comr. Garcia – What about not funding art that breaks a City law concerning animal abuse?

David Greene – City can prosecute anyone that breaks the law whether or not they were making art as a result. Making art doesn't exempt them. They can't be punished differently from someone who was breaking the law and not making art. Could say that you don't want City money to break the law. If the City law was broken in Mexico but the result is displayed in SF, what ability does the City have? The City has a say over creation of art but also display and exhibit.

Dr. Elliot Katz – IDA – guest speaker – Thought intent of policy was to say that animals should not be abused or killed in the creation of art. City should say they don't want an animal killed to make a work of art. Let Board of Supervisors deal with the technicalities. Send clear simple statement to the Board.

Michael Aquino – Professor of political science at GG University - guest speaker - Responds to first amendment concerns. Suggests raising policy to level of ordinance to set a moral standard. Something that has teeth.

7A Public Comment None

Comr. Garcia – Inspired by last speaker to try for an ordinance versus settling on a policy. Concern for animal welfare is worth being challenged in court.

Comr. Herndon – Confused. In the past Commission has recommended a resolution or an ordinance that then goes to our city Attorney for its legality. Commission has not sought legal advise from the public for a proposed recommendation.

Comr. Stephens – Sees difficulties with item as is in prohibiting city funding specific to exhibits or displays of animal abuse. Government has to be neutral so must prohibit funding of any animal exhibit just to prevent funding of exhibits of animal abuse. SFAI canceled the exhibit. The Institutes reputation was damaged. The public expressed strong disapproval of the exhibit. Believes this is the proper forum for these issues.

Comr. Herndon – Suggest that voting members of Commission vote of whether to forward as a policy or as an ordinance.

Comr. Routhier – Supports sending a resolution condemning animal cruelty in art exhibits.

Comr. Gerrie – Supports sending recommendation as an ordinance not for its punitive aspect but to discourage copycats in the future.

Comr. Stephens – Doubts if copycatting is a concern. Artist's name that did the animal abuse video is forgotten. Proposed voting whether to send a resolution or an ordinance.

Comr. Garcia – Would like to work on it some more to be clear on what is proposed to vote on.

Comr. Stephens – Item is continued until next month.

8. Public Comment

Anonymous male – Questions definition of what is public and private. When does a dog or cat become private property if its history is not known? Adopting out animals to unstable people can become a public concern.

Julienne Ladd – Wonders if ACWC is the right forum to introduce the question if animals are property. If harm is done to a pet, is the owner only entitled to what was paid for the animal in compensation?

Julianne Johnson – Questions what appears to be a change in SF from no-kill to low-kill policy. Supports more transparency at ACC as to animals going in and out. Suggests Commission support increased adoption and decreasing euthanasia. Suggests Commission also support increased use of animals for people with disabilities.

Tom Oliver – Points out that Commission is dealing with animal abuse exhibit at a private school. Hopes that at next meeting animal issues at other institutions will be heard.

Mary Kennedy – Hopes SF can be completely a no-kill City.

Michael Kinney – Supports no-kill resolution from Commission to the Board. Board has at least the power to “encourage” private organizations to be more open so public can judge what organizations they want to support.

Dr. Elliot Katz – Supports no-kill in both art exhibits and in shelters.

Cynthia Cox – Challenges Commission to censure any institution, private or public, to be no-kill. Care not kill.

Tom Volt – SF has strong tradition of caring for animals. No-kill is an important issue to many people.

Gloria Rogan – Graduate of SFAI – Against any one that kills an animal in the name of art. Film of a human being killed is not art. Art is not the destruction of life.

Bonnie Baron – Wonders why Commission can consider censuring SFAI but not an organization not fulfilling its humane mission.

9. Calendar Items

Comr. Brooks – Will update hearings on Rescue Zoo Ordinance. Comr. Garcia will bring her Art Ordinance.

10. Closing Review of Task allotment

Already discussed.

11. Adjournment 7 PM

Respectfully submitted by
Philip Gerrie
Commission Secretary

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