

Date: Sept. 22, 2009

Item No. 2 & 3

File No. 09043

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Peter Warfield against the Library Commission**
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Completed by: Chris Rustom

Date: Sept. 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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<complaints@sfgov.org>

08/11/2009 02:26 PM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

Submitted on: 8/11/2009 2:26:58 PM

Department: S.F. PUBLIC LIBRARY COMMISSION

Contacted: n/a

Public\_Records\_Violation: No

Public\_Meeting\_Violation: Yes

Meeting\_Date: MEETING THAT DISCUSSED PARK BRANCH PEER REVIEW, (3-19-09 FROM MEMORY)

Section(s)\_Violated: To be provided -- public comment provisions.

Description: At the meeting which had Park Branch library peer review discussion on the agenda, we attempted to make public comment, under an agenda item providing for 'general public comment,' on another subject entirely, and one that was within the purview of the Library Commission. The President of the Commission interrupted us repeatedly, preventing us from making the intended (and announced) comment.

We hope to provide additional information in a subsequent communication.

Hearing: Yes

Date: 2nd meeting in March, 2009

Name: Peter Warfield, Library Users Association

Address: POB 170544

City: San Francisco

Zip: 94117-0544

Phone: 415/7 53-2180

Email: -- -

Anonymous:

Confidentiality\_Requested: No



*San Francisco Public Library*  
100 Larkin Street, San Francisco, CA 94102

August 20, 2009

Honorable Members, Sunshine Ordinance Task Force  
c/o Chris Rustom City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**Re: Complaint #09043, Peter Warfield v. Library Commission**

Dear Task Force Members:

This letter responds to Complaint #09043, that Peter Warfield filed against the San Francisco Public Library Commission (the "Commission"). The Commission received a copy of the Complaint on Thursday August 13, 2009. For the reasons set forth below, the complaint is without merit and the Task Force should dismiss it.

**A. The Complaint**

Mr. Warfield alleges that the Library Commission denied him<sup>1</sup> the opportunity to give public comment at the March 19, 2009 Library Commission meeting under the agenda item for "General Public Comment." The Complaint does not cite any sections of state or local law that the Commission allegedly violated.

**B. The March 19, 2009 Library Commission Meeting**

The agenda for the March 19, 2009 Commission meeting provided an opportunity for "General Public Comment" at the beginning of the meeting (designated as Item #1). The next item on the agenda (designated as Item #2) was titled "Bond Program Manager's Report." This item reports on the current status of construction or reconstruction projects at the branch libraries under the City's Branch Library Improvement Program ("BLIP"). The agenda stated that Item #2 would include a special report on the "Park Branch Peer Review Response." Under this special report, the Library responded to peer reviewer critiques of the proposed plans for renovating the Park Branch Library.

During General Public Comment (Item #1), Mr. Warfield came to the podium and started to speak about the Park branch library renovation. The President asked him to hold his comments on the Park branch library until Item #2, when he would have the opportunity to comment on that subject. Mr. Warfield replied that he wanted to talk about the planning process for the Park Branch renovation, and the President explained that that subject matter would be addressed under Item #2. At that point, Mr. Warfield moved off the subject of Park Branch Library, and continued to speak about other matters for the full three minutes allotted to him under General Public Comment (Item #1).

When General Public Comment concluded, the Commission took up Item #2 and gave Mr. Warfield, and the ten other members of the public who had waited to speak, three

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<sup>1</sup> Although Mr. Warfield uses the pronoun "we" in his Complaint, he spoke at the March 19, 2009 meeting as an individual.

minutes each to comment on the Park branch library renovation. The President allowed members of the public – including Mr. Warfield – to speak about a range of issues related to the Park branch library renovation, including the planning process.

**C. Mr. Warfield's Right of Public Comment Was Honored**

As the meeting tape makes clear, the Commission gave Mr. Warfield the opportunity to speak for three minutes under Agenda Item #1 – General Public Comment. When the Commission President asked Mr. Warfield to hold his comments on the Park Branch renovation until Item #2, Mr. Warfield continued to speak about another subject for the full three minutes allotted to him under General Public Comment.

Mr. Warfield had an opportunity to comment on matters related to the Park branch library renovation for three minutes during the Commission's consideration of Item #2. Mr. Warfield exercised his right of public comment on the Park Branch renovation at that time. The Commission violated neither the Brown Act nor the Sunshine Ordinance.<sup>2</sup> Rather, the Commission honored Mr. Warfield's right of public comment on both agenda items.

**D. The Commission President Properly Exercised Her Authority To Restrict Public Comment To The Topic At Hand**

By limiting comment during the General Public Comment period to items not listed elsewhere on the agenda, and permitting public comment under Item #2 for matters related to the Park branch library, the Commission President properly exercised her discretion to manage the meeting in an efficient manner.

It is well established that chairs of public meetings may restrict public speakers to the subject of an agenda item, or stop a speaker whose speech becomes irrelevant or repetitious. See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990). The "role of a moderator involves a great deal of discretion" in determining at what point speech becomes unduly repetitious or irrelevant. *Id.* at 1426. Such limitations on public comment serve to ensure the public body is not "prevented from accomplishing its business in a reasonably efficient manner." *Id.*; see also *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995) (recognizing public body's "legitimate interest in conducting efficient, orderly meetings").

Item #1 on the Commission's agenda – "General Public Comment" – allows members of the public to comment on matters that are within the Commission's subject matter jurisdiction and that are not to be discussed elsewhere on the agenda. The courts have recognized this distinction between general public comment and public comment on specific agenda items. See e.g., *Galbiso v. Orosi Public Utility Dist.*, 167 Cal.App.4th 1063, 1079 (2008) ("there must be a period of time provided for general public comment on any matter within the subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each specific agenda item as it is taken up by the body") (emphasis added).

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<sup>2</sup> The Brown Act requires that every agenda for a regular meeting "provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body ...." Cal. Gov. Code § 54954.3. The Sunshine Ordinance similarly provides a right of public testimony. S.F. Admin. Code §67.15(a).

In this case, by limiting comment during the General Public Comment period to matters not listed elsewhere on the agenda, and asking members of the public to hold comments related to the Park branch library renovation until Item #2, the President properly exercised her discretion to "restrict[] public speakers to the subject at hand" and to ensure the Commission could accomplish "its business in a reasonably efficient manner." *White*, 900 F.2d at 1425-26. The Commission's interest in completing its business in an efficient manner was particularly strong in this case, where 10 other persons in the audience wanted to speak about matters related to the Park branch library renovation.

By limiting the period for General Public Comment to matters not related to the Park branch library, and permitting comment on matters related to Park branch during the discussion of Item #2, the President acted well within her discretion as chair to keep members of the public on the agenda topic at hand, and to ensure the Commission completed its business in a timely manner.

**E. The Commission President's Actions Ensured Compliance With the Sunshine Ordinance's Uniformity Requirement**

In addition, the President's actions ensured compliance with the Sunshine Ordinance's requirement that time limits on public comment be applied to members of the public uniformly. See S.F. Admin. Code § 67.15(c).

Had the President permitted Mr. Warfield to speak during General Public Comment about the Park branch library, and again under Item #2, Mr. Warfield would have received a total of six minutes to speak on matters related to the Park branch library renovation, while the rest of the crowd waiting for Item #2, was limited to three minutes each. But Section 67.15(c) of the Sunshine Ordinance does not allow disparate treatment of public speakers in this manner. See S.F. Admin. Code § 67.15(c).

**F. Conclusion**

Nothing in the Commission President's actions at the March 19, 2009 meeting violated the law. To the contrary, she acted well within her discretion as chair of the meeting, and honored Mr. Warfield's right of public comment. Mr. Warfield had an opportunity to comment for three minutes under General Public Comment about matters not elsewhere on the agenda, and he fully exercised that right by speaking for three minutes under Item #1. What's more, he had the opportunity to comment for three minutes on matters pertaining to the Park branch library renovation under Item #2. Accordingly, the Task Force should dismiss Mr. Warfield's complaint.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Very truly yours,



Sue Blackman  
Custodian of Records  
Library Commission Secretary

cc: Jewelle Gomez, President of Library Commission  
Luis Herrera, City Librarian