

Date: Sept. 28, 2010

Item No. 18

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

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Completed by: Chris Rustom

Date: Sept, 23, 2010

**\*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.

1 **SUNSHINE ORDINANCE TASK FORCE**  
2 **2009-10 ANNUAL REPORT**

3  
4 **The Ordinance and the Task Force**  
5

6 The Sunshine Ordinance Task Force was established by the Sunshine Ordinance (Administrative  
7 Code Sections 67.1 et seq.) to foster City government transparency and accountability.  
8

9 The Ordinance was originally enacted in 1993 by the Board of Supervisors and then-Mayor  
10 Frank Jordan. The current Ordinance was approved as Proposition G by City voters in  
11 November, 1999.  
12

13 The Task Force has 11 seats for voting members. Ten of them are filled as this report is being  
14 written. The members are Chair Richard Knee; Vice-Chair Bruce Wolfe; Sue Cauthen; Hanley  
15 Chan; Hope Johnson; James Knoebber; Suzanne Manneh; David Snyder; Allyson Washburn;  
16 and Marjorie Ann Williams. Seat #7 recently became vacant when Nicholas Goldman left the  
17 Task Force to study law.  
18

19 Members are appointed by the Board of Supervisors, and the appointments receive Mayoral  
20 approval. Members serve for two-year terms, without pay or expense reimbursement. There is no  
21 tenure limit for serving on the Task Force.  
22

23 The Task Force has seats designated for ex-officio, non-voting members from the offices of the  
24 Mayor and the Clerk of the Board of Supervisors. Both seats are vacant as this report is being  
25 written.  
26

27 The Task Force is responsible for monitoring the effectiveness of the Ordinance and  
28 recommending ways to improve it. The goals are to maximize citizens' access to City records  
29 that are by law disclosable and to City meetings that are by law open to the public; and to help  
30 City officials, employees and entities find ways to meet those goals in ways that are  
31 operationally and economically efficient and effective.  
32

33 The Task Force normally meets on the fourth Tuesday of each month at 4 p.m. Committees of  
34 the Task Force normally meet on various days during the second week of each month.  
35

36 The length of Task Force and committee meetings varies with the amount of business before  
37 them. Often, a major determinant for meetings of the Task Force, and of the Complaint, the  
38 Compliance & Amendments and the Education, Outreach & Training Committees is the number  
39 of sunshine-related complaints before them.  
40

41 It is important to note that the number of complaints that the Task Force Administrator receives  
42 is substantially higher than the number of complaints that goes to the Task Force for  
43 adjudication. This is because the Administrator is often able to bring the parties in interest  
44 together for satisfactory clarification and resolution.  
45  
46

## Long-Term Issues

The Task Force also deals with long-term issues. The current list includes:

☼ Amending the Ordinance. The Task Force believes some reforms are necessary to enable it to do its job more effectively. For a variety of reasons, the Task Force could not complete deliberations on the proposed amendments in time to get the reform package on the November, 2010, ballot. The target date is now November, 2011. Because the current Ordinance was enacted by the voters, amendments to it also must go on the ballot. Only in certain, narrowly defined cases may the Board and the Mayor amend the Ordinance.

☼ Ethics Commission handling of sunshine-related complaints. The Commission has invited the Task Force's input in developing a new set of policies in this area. The Task Force has long been troubled with the way the Commission has been handling matters that the Task Force has referred to the Commission. The Task Force believes that the Commission has erroneously placed decisions on these matters with staff when the Commission itself should be making the determinations. The Commission staff has dismissed all of the roughly 15 complaints on which the Task Force has requested enforcement for willful violation of the Ordinance. To the best of the Task Force's knowledge, the staff has taken these actions often without reading through the entire body of material relevant to a given case and never in consulting with the Task Force or an original complainant.

☼ Updating the Index of Records. The City Administrator's Office is revising its guidelines and policies for the Index of Records required by Section 67.29 of the Ordinance, and has told the Task Force that it plans to train City departments to comply with new procedures. These revisions are intended to create an Index that is more useful to the general public. The Task Force continues to provide guideline and policy recommendations and monitor department compliance.

## Issues for the Board of Supervisors to Consider

The Task Force believes some clarifications regarding statements and perceptions about the procedures and resources needed to manage the Task Force can help to inform future decisions regarding the Task Force's annual budget. It seems there is a perception that "action minutes" can be used for a quasi-judicial body. The Task Force does not conduct business in the same way that the Board of Supervisors and its committees do. Evidence and testimony presented to the Board and its committees are meant to shape policies that will revise or be added to existing code; thus "action minutes" are pretty much the standard for policy bodies and the results are what ultimately matter.

The operational process for the Task Force is quite different. It is, again, a quasi-judicial body that, when receiving a sunshine-related complaint, takes specific testimony and evidence from the complainant, from the respondent, and from persons supporting either party in interest. Such hearings also include public comment. All of the foregoing and the resulting finding for the complainant or the respondent go into a file that is at times quite voluminous. In addition, the docket must be available for review, as it serves as "case law" under the Sunshine Ordinance.

93

94 There are other City policy bodies that operate much like the Task Force – including but not  
95 limited to the Rent Board, Ethics Commission and Appeals Board –all of which have budgets  
96 and staffs far larger than those of the Task Force.

97

98 The Task Force and its staff continually look for ways to improve operational and economic  
99 efficiencies, both at meetings and in record-keeping. At the same time, the Task Force strongly  
100 believes that maintaining staffing, equipment, supplies and facilities – and thus, the budget – at  
101 least at current levels is of paramount importance. The Task Force notes with appreciation that  
102 the Board and the Mayor intend to do that for fiscal 2010-11. But going forward, it is important  
103 to remember that reducing the Task Force’s budget based on the perceptions or presentations  
104 would produce no net benefit and may violate the Sunshine Ordinance provision regarding  
105 staffing and resource requirements. Ordinance Section 67.31 states in part, “The Clerk of the  
106 Board of Supervisors shall provide a full-time staff person to perform administrative duties for  
107 the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings  
108 or public information. The Clerk of the Board of Supervisors shall provide that staff person with  
109 whatever facilities and equipment are necessary to perform said duties.”

110

111 The Task Force encourages the Board to consult with the Clerk of the Board, Angela Calvillo,  
112 and with Task Force Administrator Chris Rustom when questions arise about what the Task  
113 Force needs in staffing, facilities, equipment and supplies to meet its responsibilities.

114

115 On a similar and equally relevant matter, the Task Force is deeply concerned about a paring of  
116 assistance from the City Attorney’s Office. Section 67.30(a) of the Sunshine Ordinance mandates  
117 that a deputy city attorney (DCA) be assigned to work with the Task Force. Unfortunately,  
118 budgetary constraints have caused the City Attorney to limit the number of hours per year that a  
119 DCA is available to work with the Task Force. This is causing problems for the Task Force and  
120 its committees as they weigh substantive and procedural matters. The Task Force has reminded  
121 City Attorney Dennis Herrera of the Section 67.30(a) mandate. In an August 31, 2010, letter to  
122 Chair Knee, Mr. Herrera expressed his desire to provide the Task Force with “top-notch”  
123 assistance as needed but said a reduction in the General Fund budget allocation to his Office  
124 made it necessary to pare the number of hours that a DCA could work with the Task Force. The  
125 Task Force strongly urges the Board of Supervisors to provide sufficient funding to enable the  
126 City Attorney’s Office to comply with the 67.30(a) mandate in future fiscal years.

127

128 A final note: The Task Force has for more than five years been requesting live videocasting of its  
129 meetings on the City’s cable channel, SFGOV-TV, and on the City’s web site. The Task Force  
130 has proved a viable, vital resource for the public, and its activities are sufficiently instructive as  
131 to be a compelling subject for regular videocast. And this should not be difficult, as the Task  
132 Force and its committees meet regularly in hearing rooms each equipped with at least one video  
133 camera.

134

135 Again, the Task Force strongly urges that Board and the Mayor keep the Task Force’s budget at  
136 least at its current level, and recognize the Task Force’s needs and requirements under the  
137 Sunshine Ordinance for full-time staff and resources that will enable it to continue providing  
138 services to the City and the public.

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140 Respectfully submitted,  
141 Richard A. Knee, Chair  
142 Bruce Wolfe, Vice-Chair  
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185 **Sunshine Ordinance Task Force**  
186 **Complaint Committee 2009-10 Annual Report**

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188 The Complaint Committee determines whether the Task Force has jurisdiction on a given  
189 complaint, helps complainants focus their complaints, monitors the complaint process and makes  
190 recommendations to the Task Force regarding how complaints should be handled.

191  
192 The Complaint Committee comprises three members: Chair James Knoebber, Richard Knee and  
193 Allyson Washburn. Member Knee on July 1 replaced Doyle Johnson, who is no longer on the  
194 Task Force. Member Johnson consistently showed genuine interest in ensuring informed and fair  
195 decisions on the issues that came before the Committee and the full Task Force.

196  
197 The Complaint Committee normally meets on the second Tuesday of each month at 3:30 p.m.

198  
199 In 2009 the Complaint Committee heard 22 complaints. It should be noted that the full Task  
200 Force held hearings on many more complaints than these. This is because the complaint  
201 underlying a particular hearing may not necessarily come before the Complaint Committee. This  
202 happens if jurisdiction is not contested. Following are the matters that came before the  
203 Complaint Committee in 2009, by month:

204  
205 **January**

206 Witt v. Taxi Commission  
207 Anonymous Tenants v. DBI

208  
209 **February**

210 Anonymous v. City Attorney's Office

211  
212 **March**

213 Rita O'flynn v. DTI  
214 David Larkin v. DPW  
215 Charles Pitts v. Health Dept.

216  
217 **April**

218 Banks v. SF HIV Health Svcs. Planning Council

219  
220 **May**

221 Anonymous v. MTA

222  
223 **June**

224 Weston v. DHS  
225 Leung & Fong v. DHS  
226 Xex v. DHS  
227 Xex v. DHS

228  
229 **July**

230 Grogan v. Police Commission

231 Maionchi v. Dept. Rec Park  
232 Tomina v. DBI  
233  
234 **August**  
235 Kinnard v. HRC  
236 Mabbutt v. Dept. Rec Park  
237  
238 **September**  
239 No meeting  
240  
241 **October**  
242 Mollinedo v. Zoological Society  
243 Garcia v. Entertainment Commission  
244  
245 **November**  
246 Lawrence v. MTA  
247  
248 **December**  
249 Banks v. DPH  
250  
251 In 2010, the Complaint Committee has heard 13 complaints:  
252  
253 **March**  
254 Lawrence v. MTA  
255 Datesh v. Arts Commission  
256 Daly v. Mayor's Office (Yarne and Arellano)  
257  
258 **April**  
259 Bretherton v. Emergency Management Dept.  
260  
261 **May**  
262 Crawford v. City Attorney's Office  
263 Datesh v. Arts Commission  
264 Robinson v. Rent Board  
265 Hartz v. Rent Board (2 complaints)  
266 Kinnard v. Human Rights Commission  
267  
268 **June**  
269 Ptashnaya v. Adult & Aging Services Dept.  
270 Xex v. Children & Families Commission  
271 Dumont v. Recreation & Parks Dept.  
272  
273 Respectfully submitted,  
274 James Knoebber, Chair  
275  
276

277 **Sunshine Ordinance Task Force**  
278 **Compliance & Amendments Committee 2009-10 Annual Report**  
279

280 The Compliance & Amendments Committee (CAC) takes the lead in monitoring the  
281 effectiveness of the Sunshine Ordinance and in proposing revisions thereto. In addition, the CAC  
282 follows up on Orders of Determination that the Task Force issues when finding violations of the  
283 Ordinance, investigating whether the Orders have been met and recommending when necessary  
284 that the Task Force refer cases of willful violation to entities empowered to impose penalties.  
285

286 The CAC comprises five members: Chair Allyson Washburn, Hope Johnson, Richard Knee,  
287 David Snyder and Bruce Wolfe. Mr. Snyder replaces Erica Craven-Green on the CAC and on the  
288 Task Force, holding the Task Force seat designated for an attorney nominated by the Society of  
289 Professional Journalists, Northern California Chapter. Ms. Craven-Green contributed extensive  
290 knowledge of statutory and case law, and of their applicability to matters that came before the  
291 CAC, which she chaired from July, 2009, to April, 2010, and the Task Force.  
292

293 The CAC normally meets the second Tuesday of each month at 4 p.m.  
294

295 The CAC in March, 2010, completed a long series of exhaustive public deliberations on  
296 proposed amendments to the Sunshine Ordinance, and sent the package for in-public review, still  
297 in progress, by the Task Force.  
298

299 The CAC is taking the lead in developing guidelines for the Task Force on public access to  
300 electronic records, including backup, storage and retrieval. This is a long, complex process,  
301 given the immense volume of information to be gathered on available and evolving technology,  
302 work in progress by the Committee on Information Technology, and best practices in other  
303 jurisdictions around the country.  
304

305 The CAC in 2009 followed up on 20 Orders of Determination that the Task Force issued after  
306 finding violations of the Sunshine Ordinance:  
307

308 **February**

309 Crossman v. Dept. of Telecommunications & Information Services (DTIS): Partial compliance  
310 found; matter continued.

311 Xex v. Arts Commission: Compliance found. No further action taken.  
312

313 **May**

314 O'Flynn v. Dept. of Technology (formerly DTIS): Continued.

315 Arce & Brooks v. SFPUC: Referred back to Task Force with recommendation to refer to Ethics  
316 Commission due to willful violation.

317 Larkin v. Dept. of Public Works: Referred back to Task Force with recommendation to refer to  
318 Ethics Commission due to willful violation.

319 Anonymous Tenants v. Dept. of Building Inspection: Continued to July meeting.  
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**June**

O’Flynn v. Dept. of Technology (continued from previous month): Ms. O’Flynn could not attend; matter continued.  
SORE v. SFPUC: Neither party was present or represented. Matter was deemed concluded.

**July**

O’Flynn v. Dept. of Technology (continued from previous month): CAC determined it could take no further action.  
Anonymous Tenants v. Dept. of Building Inspection (continued from May meeting): Continued.

**August**

Anonymous Tenants v. Dept. of Building Inspection (continued from previous meeting): Compliance found. Matter concluded.

**September**

Maionchi v. Dept. of Recreation & Parks: Compliance found. No further action taken.  
Kinnard v. Human Rights Commission: Continued.  
Mabbutt v. Dept. of Recreation & Parks: Good-faith effort by both sides found. Matter taken off calendar.  
Warfield v. Public Library: Continued.  
Warfield v. Board of Appeals: Respondent not present or represented. Matter continued.

**October**

Cauthen v. Library Commission: Referred to Task Force with recommendation of referral to Ethics Commission due to willful violation by Commission President Jewelle Gomez.  
Kinnard v. Human Rights Commission (continued from previous month): There was tentative indication of compliance. CAC asked complainant to meet with respondent and inform the CAC if Order of Determination had not been met. CAC took no formal action.  
Mabbutt v. Dept. of Recreation & Parks: CAC encouraged parties to work together; took no formal action.  
Warfield v. Public Library (continued from previous month): Agreed CAC Chair Craven-Green would write a letter to the Library expressing displeasure at its failure to appear at hearings, and asking why documents were not provided and why an unusable copy of a draft was provided after five days. Library was also to respond as to when the original of a requested blueprint was deleted and whether it could provide full-sized copies. If the Library does not respond within five days following receipt of the letter, the CAC was to refer matter to Task Force.  
Warfield v. Board of Appeals (continued from previous month): Matter referred to Task Force with recommendation to refer it to Ethics Commission due to willful violation.  
O’Flynn v. Mayor’s Office of Housing: Further information needed; matter continued.  
Evans v. Ella Hill Hutch Community Center: Further information needed; matter continued.  
Evans v. African-American Art & Culture Complex: CAC Chair Craven-Green said she would urge respondent produce a list of employees and other documents sought by complainant. She would also inform the Arts Commission that it needs to produce documents it may have on the Art and Culture Complex. No further action.

369 **November**

370 O'Flynn v. Mayor's Office of Housing (continued from previous month): Information from  
371 respondent needed; matter continued.

372 Mollinedo v. Zoological Society: Continued with instruction to respondent to produce minutes  
373 that had been redacted.

374 Warfield v. Clerk of the Board: Compliance found. No further action.

375 Warfield v. Clerk of the Board: Continued with instruction that respondent provide written  
376 policy regarding personal-information redactions.

377

378 **December**

379 Kinnard v. Human Rights Commission: Consensus to correspond with respondent for  
380 clarification on pending issues.

381 O'Flynn v. Mayor's Office of Housing (continued from previous month): Non-compliance and  
382 willful violation found; matter referred back to Task Force.

383 Mollinedo v. Zoological Society (continued from previous month): Compliance found. No  
384 further action.

385

386 The CAC has in 2010 followed up on 10 Orders of Determination that the Task Force issued  
387 after finding violations of the Sunshine Ordinance:

388

389 **January**

390 Mabbutt v. Dept. of Parks & Recreation: Continued.

391

392 **February**

393 Mabbutt v. Dept. of Parks & Recreation (continued from previous meeting): Matter referred to  
394 Task Force with recommendation to refer it to Ethics Commission due to willful violation.

395 Banks v. Dept. of Public Health: Complainant advised to make broad request for information.  
396 Matter concluded.

397 Anonymous Tenants v. Planning Dept.: Evidence from both sides found lacking. No further  
398 action.

399 Tsang v. Dept. of Building Inspection: Compliance found. Matter concluded.

400 Addario v. Arts Commission: Compliance found but certain aspects of the matter needed  
401 attention of Education, Outreach & Training Committee.

402

403 **March**

404 Starr v. City Attorney's Office: Referred to Task Force for referral to an enforcement entity to be  
405 determined, due to willful violation.

406 Kinnard v. Human Rights Commission: Compliance found except for non-timely response  
407 violation. No further action.

408

409 **July**

410 Ptashnaya v. Dept. of Aging & Adult Services: Referred to Task Force for referral to an  
411 enforcement entity to be determined, due to willful violation.

412 Dumont v. Recreation & Parks Dept.: Compliance found. Matter concluded.

413 Hartz v. Police Commission: Continued.

414

415 **The CAC would be aided immeasurably by the presence of a Deputy City Attorney at our**  
416 **meetings. Economy moves within the City Attorney's office have eliminated our ability to**  
417 **rely on a legal voice to assist us as we deliberate.**

418

419 Respectfully submitted,  
420 Allyson Washburn, Chair

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461 **Sunshine Ordinance Task Force**  
462 **Education, Outreach & Training Committee 2009-10 Annual Report**

463  
464 The Education Outreach & Training Committee (EOTC) is active on several fronts as it pursues  
465 its mission to communicate the precepts of open government to City departments and the  
466 residents of San Francisco.

467  
468 The EOTC comprises five members: Chair Hanley Chan, Sue Cauthen, Hope Johnson, Suzanne  
469 Manneh and Marjorie Ann Williams. Ms. Johnson on July 1 replaced Doyle Johnson, who is no  
470 longer on the Task Force. Mr. Johnson consistently showed genuine dedication to the work of  
471 the Committee and the full Task Force.

472  
473 The EOTC normally meets on the second Thursday of each month at 4 p.m.

474  
475 The EOTC works with City departments on compliance issues. It explains the Sunshine  
476 Ordinance to community groups and government entities. It contacts local news media to  
477 acquaint them with open government issues.

478  
479 **OUTREACH: In 2009, the EOTC took on a new function: working with City departments**  
480 **found in violation of the Sunshine Ordinance. The goal is to bring them into voluntary**  
481 **compliance and avoid punitive measures.**

482  
483 **We are pleased to report a high degree of success. A notable example is the Historic**  
484 **Preservation Commission, which upgraded its minutes to conform to the Sunshine**  
485 **Ordinance by providing a brief summary of each public comment.**

486  
487 **Other groups pursuing voluntary compliance** with Sunshine law at the behest of the EOTC  
488 include the Planning Department, the Public Utilities Commission, Shanti, the Shelter  
489 Monitoring Committee, the Mayor's Office of Economic & Workforce Development, the SF  
490 HIV Health Services Planning Council, and the Arts Commission, among others.

491  
492 Recently, the EOTC proposed giving Sunshine awards to encourage government entities to  
493 undertake full compliance with open-government precepts, following both the spirit and the  
494 letter of the law. We believe our awards will draw more attention to the Sunshine Ordinance and  
495 the many positive features of participatory democracy.

496  
497 **EDUCATION:** In pursuing our charge to transmit the principles of open government to the  
498 public, the Committee was effective on two fronts: (1) presentations to community and  
499 government groups, and (2) development and distribution of educational materials.

500  
501 The EOTC has met with such diverse groups as Police Department Community Relations teams,  
502 Shanti, the Mayor's Office of Economic & Workforce Development, the SF HIV Health  
503 Services Council and North Beach Neighbors. We are set to appear before the Shelter  
504 Monitoring Committee, as well as the Coalition for San Francisco Neighborhoods, a 35-member  
505 umbrella group. Once amendments to the Ordinance are in place, we anticipate a lively business  
506 explaining the new rules to the public.

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We have also developed a brochure to explain the Sunshine Ordinance and its administration to the public, including tips on how to file a Sunshine complaint and other helpful facts. With the assistance of YBR Promotions, we created a compact, full-color handout on glossy paper, titled “We Love Sunshine in SF.” We also helped the Public Utilities Commission’s revise its government procedures to ensure compliance.

We are hampered when an informed representative from a City department does not attend our meetings, a requirement under Section 67.21(e) of the Sunshine Ordinance. Failure to appear makes it impossible for us to pursue voluntary compliance with Task Force findings.

Nonetheless, the EOTC is encouraged by the positive response to our efforts from both City government and the general public. We welcome the opportunity to continue fostering open government.

Respectfully submitted,  
Hanley Chan, Chair  
Sue Cauthen, Immediate Past Chair

**Sunshine Ordinance Task Force  
Rules Committee 2009-10 Annual Report**

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The Rules Committee’s job is to set guidelines to help the Task Force meet its missions of monitoring the effectiveness of the Sunshine Ordinance; recommending revisions to the Ordinance; and helping City entities such as policy bodies and departments to comply with the Ordinance.

The Rules Committee is dormant; Task Force Chair Richard Knee has stated it will be reactivated when necessary.

Toward the end of his service on the Task Force in mid-2010, Committee Chair Doyle Johnson proposed what he envisioned as a low-cost marketing campaign aimed at generating Sunshine awareness among young adults and to encourage their participation in the political process.

The campaign would include production of printed materials for distribution at major city festivals, street fairs, park events, etc.; use of online resources such as social networking sites and the City’s own website; and an online newsletter.

These goals could be met by finding sponsors such as green printers and online media; obtaining free printing in exchange for tax breaks and publicity; getting volunteers or interns to pass out handbills and other materials; getting interns to create campaign graphics designs; and distributing a monthly Task Force newsletter, in electronic and print versions, to City entities to make officials aware of their Sunshine responsibilities.

Respectfully submitted,  
Richard A. Knee, Task Force Chair