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Item No. 2
File No.

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒	**Approval of annual report**
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Completed by: Chris Rustom **Date:** Oct. 20, 2011

***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.

DRAFT

SUNSHINE ORDINANCE TASK FORCE
2010-11 ANNUAL REPORT

The Ordinance and the Task Force

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

The Ordinance was originally enacted in 1993 by the Board of Supervisors and then-Mayor Frank Jordan.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

The Task Force has 11 seats for voting members. All of them are filled as this report is being written. The members are Chair Hope Johnson; Vice-Chair Bruce Wolfe; Sue Cauthen; Hanley Chan; Jay Costa; Richard Knee; James Knoebber; Suzanne Manneh; David Snyder; Allyson Washburn; and Jackson West.

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

The Task Force has seats designated for ex-officio, non-voting members from the offices of the Mayor and the Clerk of the Board of Supervisors. Both seats are vacant as this report is being written and neither has been occupied since the Task Force's report for 2009-10.

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

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

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

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

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, 2011, ballot. The target date is now June, 2012. 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 referred to it by the Task Force. 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 18 of the 19 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.

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

The Task Force and its staff continually look for ways to improve operational and economic efficiencies, both at meetings and in record-keeping. At the same time, the Task Force strongly believes that maintaining staffing, equipment, supplies and facilities – and thus, the budget – at least at current levels is of paramount importance. The Task Force notes with appreciation that the Board and the Mayor intend to do that for fiscal 2011-12. But going forward, it is important to remember that reducing the Task Force's budget based on the perceptions or presentations would produce no net benefit and may violate the Sunshine Ordinance provision regarding staffing and resource requirements. Ordinance Section 67.31 states in part, "The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties."

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

On a similar and equally relevant matter, the Task Force remains deeply concerned about the continual limiting of the hours of assistance from the City Attorney's Office. Section 67.30(a) of the Sunshine Ordinance mandates that a deputy city attorney (DCA) be assigned to work with the Task Force. Citing budgetary constraints, the City Attorney is restricting the amount of time that a DCA is available to work with the Task Force. This is causing problems for the Task Force and its committees as they weigh substantive and procedural matters. The Task Force reminded City Attorney Dennis Herrera of the Section 67.30(a) mandate. In an August 31, 2010, letter to Chair Knee, Mr. Herrera expressed his desire to provide the Task Force with "top-notch" assistance as needed but said a reduction in the General Fund budget allocation to his Office made it necessary to pare the number of hours that a DCA could work with the Task Force. The Task Force strongly urges the Board of Supervisors to provide sufficient funding to enable the City Attorney's Office to comply with the 67.30(a) mandate in future fiscal years.

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

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

Respectfully submitted,

Hope Johnson, Chair

Bruce Wolfe, Vice-Chair

Richard A. Knee, Immediate Past Chair

Sunshine Ordinance Task Force
Education, Outreach & Training Committee 2010-11 Annual Report

The Education, Outreach & Training Committee (EOTC) is responsible for educating City agencies and the general public about the provisions of open government laid forth by the Sunshine Ordinance. It also makes recommendations to the Task Force about matters of outreach and publicity surrounding the Sunshine Ordinance. The committee holds its meetings on the second Thursday of each month at 4 P.M.

The EOTC is currently comprised of two members: Jay Costa (chair) and Suzanne Manneh. Over the past year, Hope Johnson, Hanley Chan, Sue Cauthen, and Marjorie Ann Williams also served on the committee, each of them demonstrating great dedication to upholding and promoting Sunshine in the City of San Francisco.

This year, the EOTC has continued to work with entities that the Task Force has determined to be in violation of the Sunshine Ordinance. Specifically, the EOTC ensures that these entities fully understand why the Task Force has found them to be in violation, thereby clarifying how violations can be avoided in the future. Some of the Orders of Determination on which the EOTC has followed up include those on complaints filed by Barry Taranto against the MTA Board of Directors, Nick Pasquariello against the Department of Technology, Thomas Picarello against the SRO Task Force, Ray Hartz against the Library Commission, William Clark against the City Attorney's Office, Charles Pitts against the Local Homeless Coordinating Board, and Jason Grant Garza against the Haight-Ashbury Free Clinic.

The outcome of these hearings has generally been quite successful, with most respondents expressing a clear understanding of why they were found to be in violation and making a commitment to changing their procedures so as to be compliant with the Sunshine Ordinance going forward. Two notable examples of this were the hearings concerning the Department of Technology and the SRO Task Force.

In an effort to spread public awareness about the Sunshine Ordinance, the EOTC has also continued to offer educational presentations about the Ordinance to a diverse array of groups, such as the Coalition for San Francisco Neighborhoods, the Department of Children and Families, and the San Francisco Local Homeless Coordinating Board.

This year, the EOTC has also undertaken several additional efforts to further raise public awareness regarding the Sunshine Ordinance. For example, the committee devoted a great deal of discussion to the possibility of creating a Sunshine Award, which the Task Force would bestow annually upon City agencies outstanding in their compliance with the Sunshine Ordinance. The EOTC also discussed the idea of building a social media presence for the Task Force – for example, creating a Sunshine Ordinance Task Force Facebook page. The extensive preparatory debate and research by the EOTC on each of the aforementioned leaves both ideas in a state of readiness for consideration by the full Task Force. The EOTC has also contacted a variety of San Francisco media outlets, including many ethnic newspapers, in an attempt to garner publicity for the Sunshine Ordinance and the topic of open government in San Francisco.

The EOTC has encountered several problems over the past year that are worthy of note. First of all, we continue to be hampered when a knowledgeable representative from the respondent City agency or other group does not attend our meetings, as is required under Section 67.21(e) of the Sunshine Ordinance. The absence of such a representative makes it impossible to pursue voluntary compliance with Task Force Orders of Determination.

Secondly, as stated previously, the EOTC would be aided immeasurably by the presence of a Deputy City Attorney at our meetings. The Deputy City Attorney assigned to the Task Force does not currently attend committee meetings as a result of cutbacks by the City Attorney's Office. The presence of the Deputy City Attorney at our meetings would allow the EOTC to rely on a legal voice in its deliberations.

Finally, the EOTC has encountered several instances wherein a City agency has refused to comply with an Order of Determination by the Task Force on the grounds that the City Attorney's office – or the City Attorney's office by proxy of its Good Government Guide – was the entity that originally advised the agency to proceed in the manner that the Task Force ultimately found to be in violation of the Sunshine Ordinance (for example, Ray Hartz against the Library Commission). It is troubling that there have been instances in which the City Attorney has given advice that, from the view of the Task Force, runs counter to the Sunshine Ordinance. It is even more troubling that some of this advice comes in the form of a widely consulted publication such as the Good Government Guide. Going forward, it is essential that discrepancies between reference materials such as the Good Government Guide and the Sunshine Ordinance be rooted out and eliminated, and that the Ordinance be upheld as the ultimate source of authority on issues of open government in the City of San Francisco.

Despite these problems, the EOTC is encouraged by its many successes and greatly looks forward the opportunity to continuing to work for a more open government in our City in the year to come.

Respectfully submitted,
Jay Costa, Chair

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Sunshine Ordinance Task Force
Complaint Committee 2010-11 Annual Report

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

The Complaint Committee comprises three members: Chair Richard A. Knee, Sue Cauthen and Allyson M. Washburn.

The Complaint Committee normally has normally met on the second Tuesday of each month at 3:30 p.m. As this Annual Report is being drafted, the Task Force is considering suspending the Complaint Committee because (1) the Task Force wants to create a Technology Committee, and this would overburden members and staff if the Complaint Committee were kept active; and (2) the full Task Force could easily handle the issues that go before the Complaint Committee.

In fiscal year 2010-11, the Complaint Committee heard 23 complaints. It should be noted that the full Task Force held hearings on many more complaints than these. This is because the complaint underlying a particular hearing may not necessarily come before the Complaint Committee. This happens if jurisdiction is not contested. The following matters came before the Complaint Committee in FY 2010-11:

July, 2010
- Case #10026, Ray Hartz vs. City Attorney, public-record complaint.
- Case #10030, Michael Wright vs. Human Services Agency, public-meeting complaint.
- Case #10034, Nick Pasquariello vs. Department of Technology, public-record complaint.

August, 2010
- Case #10036, Tomas Picarello vs. Single Room Occupancy Hotel Safety & Stabilization Task Force, public-meeting complaint.

September, 2010
- Case #10041, William and Robert Clark vs. Mayor, Board of Supervisors and Arts Commission, complaint regarding Commission fee-setting authority legislation.
- Case #10045, Randall Evans vs. Mo' Magic, public-record complaint.
- Case #10046, Joseph Victor Lagana vs. Police Department, public-record complaint.

October, 2010
- Case #10035, Nick Pasquariello vs. Bay Area Video Coalition, public-record complaint.
- Case #10047, Kellee Lanza vs. District Attorney, public-record complaint.

November, 2010
- Case #10052, Kai Wilson vs. North of Market/Tenderloin Community Benefit District, public-record complaint.

December, 2010
• Case #10057, Rita O'Flynn vs. Controller's Whistleblower Program, public-record complaint.
• Case #10060, Charles Pitts vs. Local Homeless Coordinating Board, public-meeting complaint.
• Case #10061, William and Robert Clark vs. City Attorney, complaint on fee charged to Arts Commission to discuss public-record requests.

January, 2011
• Case #10065, Debra Benedict vs. San Francisco Bar Association, public-meeting complaint.
• Case #10071, Jason Grant Garza vs. Haight Ashbury Free Clinics, public-record complaint.

February, 2011
• Case #10067, Charles Pitts vs. Local Homeless Coordinating Board, public-information complaint.

March, 2011
• Case #11003, Matt Smith vs. District Attorney, public-record complaint.

April, 2011
• Case #11009, Jason Grant Garza vs. San Francisco Community Clinic Consortium, public-record complaint.

May, 2011
• Case #11027, Cynthia Carter vs. Municipal Transportation Agency, public-record complaint.
• Case #11034, Frank McDowell vs. Municipal Transportation Agency, public-record complaint.

June, 2011
• Case #11035, Marlon Crump vs. Police Commission, public-meeting and public-record complaints.
• Case #11038, Anonymous vs. Taxi Advisory Council, public-meeting complaint.
• Case #11041, Christine Harris vs. Police Department, civil-, constitutional- and human-rights complaint.

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

Respectfully submitted,

Richard A. Knee, Chair

Sunshine Ordinance Task Force
Compliance & Amendments Committee 2011 Annual Report

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

The CAC comprises five members: Chair Allyson Washburn, Hope Johnson, Richard Knee, David Snyder, and Bruce Wolfe. The composition is unchanged from our last annual report.

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

Hearings on Orders of Determination

From July 2010 to June 2011, the CAC followed up on 11 Orders of Determination that the Task Force issued after finding violations of the Sunshine Ordinance:

July 2010

Svetlana Ptashnaya v the Dept. of Adult and Aging Services (10018)
Finding of noncompliance with Order of Determination; referred back to the Task Force for violation of Sections 67.21(c) and 67.24(c)(7) as well as possible referral to an enforcement agency such as the Ethics Commission, The State Attorney General, the District Attorney and/or the Board of Supervisors

Suzanne Dumont v the Recreation and Parks Department (10022)
Finding of compliance with Order of Determination

August 2010

Nick Pasquariello v the Department of Technology (10013)
Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission because of willful failure to comply with Order of Determination

Ray Hartz v the Police Commission (10025)
Finding of noncompliance with Order of Determination; referred back to the full Task Force to provide another opportunity for the Police Commission to demonstrate that the Police Commission's Index of Records enables members of the public to learn the types of information and documents maintained by and for the Commission per

Section 67.29 and if the Police Commission does not satisfy then to refer to an enforcement agency for willful failure to comply.

September 2010

Michael Wright v. the Human Services Agency (10030)
Finding of noncompliance with Order of Determination; matter referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for enforcement

November 2010

Kellee Lanza v the District Attorney's Office (10047)
Matter referred back to the full Task Force to determine compliance with Order of Determination

February 2011

Kai Wilson v. North of Market/Tenderloin Community Benefit District (10052)
Finding of compliance with Order of Determination

Dorian Maxwell v. SF Municipal Transportation Agency (10059)
Finding of noncompliance with Order of Determination; matter continued to March 2011 CAC meeting because the Order of Determination had not yet been met.

Debra Benedict v. Mayor's Office of Economic & Workforce Development (10063)
Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for disciplinary action because of inaction on the Order of Determination

William and Robert Clark v. Arts Commission (10069)
Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for disciplinary action because the Order of Determination was not met within the prescribed period

March 2011

Dorian Maxwell v. SF Municipal Transportation Agency (10059)
Continued hearing on the status of the Order of Determination; finding of noncompliance with the Order; matter referred back to the full Task Force with a recommendation that SF Municipal Transportation Agency Executive Director and CEO Nathaniel P. Ford, Sr. be found in violation of Section 67.33 for failure to instruct MTA employees on Sunshine requirements and the matter be forwarded to the Ethics Commission.

William J Clark and Robert J Clark v. Arts Commission (10074)

Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation for referral to the Ethics Commission for non-compliance with the Order of Determination

Review of Ethics Commission's Proposed Regulations Changes

The Compliance and Amendments Committee completed a thorough review of the Ethics Commission staff's August 17, 2010 draft "Regulations for Complaints Alleging Violations of the Sunshine Ordinance" (Staff's Draft) in May 2011. Suggested changes, many of which reflected extensive public input at seven meetings of the Committee when the matter was heard, were forwarded to the Commission in June 2011.

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

Respectfully submitted,
Allyson Washburn, Chair