

Date: Oct. 26, 2010

Item No. 8

File No. 10041

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William and Robert Clark v Mayor, BOS Arts Commission**
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Completed by: Chris Rustom

Date: Oct. 21, 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.



DENNIS J. HERRERA
City Attorney

JANA CLARK
Deputy City Attorney

Direct Dial: (415) 554-3968
Email: jana.clark@sfgov.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Jana Clark
Deputy City Attorney
DATE: September 23, 2010
RE: 10041 William and Robert Clark v. Mayor, Board of Supervisors, Arts Commission

COMPLAINT

Complainants William and Robert Clark allege that the Mayor, the Board of Supervisors, and the San Francisco Arts Commission (the "Departments") violated section 67.26 and 67.28(a) of the Ordinance by approving an annual fee to be charged to street artists to pay for City Attorney staff time spent in processing public records requests.

COMPLAINANT FILES COMPLAINT:

On July 28, 2010, the complainants filed a complaint alleging a public records violation.

JURISDICTION

The Mayor and Board of Supervisors are charter departments under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear a complaint under the Ordinance against the Mayor and the Board of Supervisors. The Arts Commission is a policy body and legislative body under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission.

The Departments filed a joint response to this complaint, challenging the Task Force's jurisdiction to hear the complaint on the grounds that the complaint is in effect a challenge to a permit fee, not regulated or addressed by the Ordinance.

The complaint alleges that increasing the street artist fee to cover the costs of staff time spent processing public records requests violates the Ordinance by, in effect, amending section 67.26 and 67.28(a) of the Ordinance. The Departments' response is that the fee is designed to support the overall costs of administering and enforcing the Street Artists Ordinance. According to the Departments, the administrative costs of the program include costs of all administrative and enforcement requirements, a small part of which includes administration of public records requests. The Departments contends that increasing the fee is within the authority and discretion of the Board of Supervisors.

Section 67.26 of the Ordinance states in relevant part:

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The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.28(a) states in relevant part:

No fee shall be charged for making public records available for review

The question before the Task Force is whether a challenge to the increase in a permit fee to cover increased enforcement or administrative costs, is brought under the jurisdiction of the Task Force by virtue of the fact that part of the increased administrative costs sought to be covered include costs associated with responding to public records requests.

ISSUES TO BE DETERMINED

Uncontested Facts: On or about August 27, 2010, the Street Artists Certificate Fee was increased from \$154.16 to \$166.02 per quarter.

Contested Facts: Complainants appear to allege that the Street Artist Certificate Fee was increased solely to cover the costs of responding to public records requests. The Departments allege that the fee was increased to cover all administrative costs associated with the program, only part of which includes the administrative costs associated with responding to public records requests, but not intended to charge any individual for reviewing public records or to specifically cover the personnel costs of responding to a records request.

APPLICABLE STATUTORY SECTION(S):

SEC. 67.28. - Fees For Duplication.

SEC. 67.26. - Withholding Kept To A Minimum.

APPLICABLE CASE LAW:

None

LEGAL ISSUES/LEGAL DETERMINATIONS:

Would a permit fee increase designed to cover increased enforcement and administrative costs of a program, which includes increased administrative costs associated with responding to public records request, violate the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three?

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.28. - FEES FOR DUPLICATION.

(a)

No fee shall be charged for making public records available for review.

SEC. 67.26. - WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.



Bill and Bob Clark
<billandbobclark@access4less.net>

10/18/2010 12:24 PM

Please respond to
Bill and Bob Clark
<billandbobclark@access4less.net>

To soft@sfgov.org

cc Michela.Alioto-Pier@sfgov.org, Chris.Daly@sfgov.org,
Dalystaff@sfgov.org, addariophotography@myastound.net,
Scubaohio@hotmail.com

bcc

Subject File#10041

Hi,

Please put a copy of this email in File #10041 so the Task Force members can read it before the next meeting.

The email below from Luis Cancel, the Director of the Arts Commission, is his response to Ben Rosenfield after Mr. Rosenfield explained to the Arts Commission that they should withdraw their Street Artist Certificate fee increase proposal for the 2010-11 fiscal year because the Controller's office had determined there is more than enough surplus revenue remaining in the Street Artist Special Fund at the end of the 09-10 fiscal year to cover next years expenses without the need to raise the fee for a Street Artist Certificate.

Mr Cancel states in his email that the Arts Commission will not withdraw the proposed fee increase because the Arts Commission needs the fee increase to cover the expense of processing public document requests from Street Artists pursuant to the Sunshine Ordinance.

We didn't receive a copy of this email until after last month's SOTF meeting otherwise we would have presented it at the hearing.

William J. Clark

Robert J. Clark

Rebekah Krell/MAYOR/SFGOV@SFGOV,
Steve Kawa/MAYOR/SFGOV@SFGOV, Greg
Wagner/MAYOR/SFGOV@SFGOV

Subject

Re: URGENT !!! -Fw: Legislation
#100710 Street Artist Certificate
fee increase(Document link: Ben
Rosenfield)

Ben,

I am very dismayed with the 11th hour intervention of your office in this matter.

The Arts Commission makes a point of closely monitoring the expenses of the Street Artists program in order for it to be cost neutral to the City, as

per the Ordinance. The increased Sunshine requests by certain individuals associated with the Street Artists program have presented our agency with unexpected legal and staff time increases that the modest fee increase is designed to cover these variable costs in the next fiscal year. We have followed every procedure in the preparation of this fee increase and it has been approved by the City's Budget Director.

The Arts Commission will not withdraw this request and I ask that you reconsider your position on this matter. Leo is WRONG to look at the so called surplus of one fund and assume that all expenses have been posted to it. We won't know if this program has a surplus for several months.

Feel free to call me on my cell phone 415-519-2406 if you wish to have more details.

Thanks,

Luis

Luis R. Cancel
Director of Cultural Affairs
San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102
Tel: 415-252-2591
www.sfartscommission.org