

Date: October 27, 2009

Item No. 2

File No. 09033

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Oct. 21, 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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**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
August 5, 2009
Amended August 13, 2009

DATE THE DECISION ISSUED
July 28, 2009

SUE CAUTHEN v. SAN FRANCISCO PUBLIC LIBRARY COMMISSION (09033)

FACTS OF THE CASE

Complainant Sue Cauthen is the Chair of the Citizen's Advisory Committee ("LCAC") for the San Francisco Public Library ("SFPL"). The LCAC was established by the Board of Supervisors. In her capacity as LCAC Chair, Sue Cauthen regularly attends the San Francisco Public Library Commission meetings. At the June meeting of the SFPL, Sue Cauthen attempted to speak during agenda item # 1, the general public comment portion of the agenda. Her topic was about some concerns at the North Beach Library. On the agenda was item #2 which was peer review of proposed design for the North Beach Branch Library but not the topic that Sue Cauthen wanted to speak on. When Sue Cauthen began to speak, the President of the Commission, Jewelle Gomez, cut her off and said that she was out of order and had to speak only when the agenda item on the North Beach Library was called later in the meeting. Sue Cauthen attempted to explain that she was not speaking on the topic that would be discussed later in the meeting but on another subject involving that branch. Nevertheless, Jewelle Gomez allegedly stopped Sue Cauthen from speaking.

COMPLAINT FILED

On June 23, 2009, Sue Cauthen filed a complaint against the Library Commission for its refusal to allow public comment.

HEARING ON THE COMPLAINT

On July 28, 2009, Complainant Sue Cauthen appeared before the Task Force and presented her claim. Respondent Agency was not represented but submitted a letter explaining its position. There was no one in the audience who wanted to present facts and evidence on behalf of the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on a DVD recording of the meeting, a transcript of the meeting and testimony presented by Sue Cauthen as well as several members of the public, the Task Force finds that Jewelle Gomez willfully violated the Ordinance because Sue Cauthen, who wanted to speak about the North Beach Library during general public comment, was denied the opportunity. The President of the Library Commission required all members of the public who wanted to speak about issues involving the North Beach Library had to wait until item # 2 which dealt with peer review of proposed design for the North Beach Branch Library. For those who wanted to speak on the design of the North Beach Library and other issues involving the North Beach Library, their time was limited to three minutes instead of six minutes. The Task Force also found that the treatment Sue Cauthen received was inexcusable. The Task Force found that the willful failure to allow public comment in this case violated sections 67.15(a) and 67.34 of the Ordinance. In addition to the Order of Determination, Task Force Chair Richard Knee was tasked to write to the Commission to let them know the Task Force's sentiment on the matter.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.15 (a) and 67.34 of the Sunshine Ordinance. The agency shall appear before the Education, Outreach and Training Committee on September 10, 2009, to discuss the matter.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 28, 2009, by the following vote: (Washburn / Goldman)
Ayes: Washburn, Knoebber, Chan, Goldman, Williams, Knee
Recused: Cauthen
Excused: Craven-Green, Johnson, Chu



Richard Knee, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Sue Cauthen, complainant
Jewelle Gomez, respondent
Sue Blackman, respondent

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August 5, 2009

Jewelle Gomez
President
San Francisco Library Commission
100 Larkin Street
San Francisco, California 94102

In re: Sunshine Ordinance Task Force Case No. 09033, Sue Cauthen, Complainant, vs.
San Francisco Library Commission, Respondent

Dear Ms. Gomez:

At its regular meeting of July 28, 2009, the Sunshine Ordinance Task Force voted unanimously to find that you violated Sections 67.15 (a) and 67.34 of the Sunshine Ordinance when you silenced Ms. Cauthen during the General Public Comment portion (Agenda Item #1) of the Library Commission's June 4, 2009, meeting.

The Task Force reached this conclusion after hearing from Ms. Cauthen, viewing a video recording of the incident, reading a transcript of same, and considering the relevant provisions of the Ordinance and the Ralph M. Brown Act.

Section 67.15 (a) of the Ordinance states: "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..."

During General Public Comment at the afore-cited meeting, Ms. Cauthen wanted to address the Commission on some matters affecting multiple branches of the City's Library system. The video and the transcript show that upon hearing her mention North Beach as one of the branches, you silenced her and ordered her to be seated, stating that she would be permitted to speak during the following item, Peer Review of the Proposed Design for the North Beach Branch Library.

Ms. Cauthen had planned to comment on the proposed design peer review during discussion of Item #2, and we note that she was permitted to do so. At the same time, given the specificity of Item #2 as shown on the agenda, she could have been ruled out of order had she wanted at that time to discuss other matters affecting the North Beach Branch Library. Knowing that, she chose correctly to raise those other issues during General Public Discussion – and you did not allow her to do so, the net effect being that

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her total allowed speaking time was three minutes when it should have been six minutes.

The video shows also that you could have and should have consulted with the Deputy City Attorney in attendance for advice on whether your conduct toward Ms. Cauthen was appropriate and defensible under the Ordinance and the Brown Act. Had you done so and received an opinion supporting your position, you could then have rightfully stated that you were acting in accordance with counsel's advice.

But you acted on your own, in light of which the Task Force's finding on July 28 included a violation of Ordinance Section 67.34, which states, "The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. ..."

The Task Force encourages you to review with counsel the Sunshine Ordinance and Brown Act provisions regarding public comment at public meetings in order to foster an environment that will both encourage public participation and ensure adherence to the agenda at future meetings of the Commission. And the Task Force itself stands ready to assist you toward those aims if you wish. Thank you for your kind attention.

Sincerely,



Richard A. Knee
Chairman

Cc: Sue Cauthen