

Date: October 27, 2009

Item No. 21 & 22

File No. 09062

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Debra Benedict against Department of Public Health**
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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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City Attorney

JERRY THREET
Deputy City Attorney

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MEMORANDUM

October 27, 2009:

DEBRA BENEDICT v. DEPARTMENT OF PUBLIC HEALTH (09062)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Debra Benedict alleges that Baker Places, Inc. ("Baker"), a nonprofit which receives funding from the Department of Public Health ("DPH"), has failed for at least the last two years to hold at least two public meetings of its board as required by Section 12L of the San Francisco Administrative Code. Ms. Benedict further alleges that Baker failed to provide notice for any public meetings in the year 2007, as evidenced by an absence of meeting notices in the records of public meetings kept on the fifth floor of the main branch of the public library. She further alleges that she attempted to attend a noticed meeting of Baker on November 5, 2008, but that the meeting did not take place as noticed. This is evidenced by Ms. Benedict's reported complaint to 311 call center, report #2383. She further alleges that a meeting in December, 2008 was noticed, but not 30 days in advance, as required. She further alleges that in 2009, no meeting notices for Baker have been provided to the clerk in City Hall or to the public library.

COMPLAINANT FILES COMPLAINT:

On 10/2/2009, Ms. Benedict filed a Complaint against DPH for Baker's alleged violations of Sections 12L.

JURISDICTION

DPH is a City department under the San Francisco City Charter and thus the Task Force has jurisdiction over it. However, although she filed a complaint against DPH, it is unclear whether she seeks to hold DPH accountable for the alleged violations of Baker.

It appears from records of the San Francisco Controller that Baker is a non-profit receiving several million dollars in City funding from DPH, and thus the Task Force may have jurisdiction over it under Section 12L. It is unclear whether Ms. Benedict seeks to also complain against Baker or whether she has previously brought her complaint to the attention of DPH in order to obtain jurisdiction now for the Task Force to hear a complaint against Baker.

Section 67.4(b) of the Sunshine Ordinance provides that if a City Policy Body contracts with a non-profit corporation to manage the Policy Body's property in a government function in the furtherance of the health, safety or welfare then the non-profit corporation board of directors

MEMORANDUM

meetings may be passive meetings subject to the some requirements of the Ordinance. It is unclear if Baker operates any of its housing facilities on City property.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.4 of the Ordinance deals with meetings of Passive Meeting Bodies, including certain qualifying non-profits.

Section 12L of the San Francisco Administrative Code:

Section 12L.1 addresses intent of this section.

Section 12L.3 deals with definitions.

Section 12L.4 deals with public meeting of qualifying non-profits

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES**

A. Uncontested Facts: Ms. Benedict has tried unsuccessfully to attend meetings of the board of Baker. Baker is a non-profit receiving several million dollars in City funds from DPH to operate affordable housing facilities with supportive services for special needs populations.

B. Contested facts/ Facts in dispute:

Ms. Benedict alleges that Baker has held no public meetings of its board during the last two years. It is unclear whether DPH or Baker contests this allegation. It is unclear whether Ms. Benedict has previously brought her complaint to the attention of DPH. It is also unclear whether Baker operates any of its housing facilities on City owned property. It is unclear from her complaint whether Ms. Benedict also is complaining against Baker.

QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:

- Does Baker operate any facilities on City owned property?
- Is the complaint intended to hold Baker accountable for the alleged violations, or only DPH?
- If only DPH, what is the basis for the complaint?
- Has Baker held any public meetings in the last two years?
- If so, how was notice of such meetings provided to the public?

MEMORANDUM**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Were sections of the Sunshine Ordinance, Public Meetings Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS**Under Section 67.4 of the Ordinance:**

- Does DPH have a contract with Baker?
- If so, does Baker operate or manage any property in which the City has an ownership interest, and on which Baker performs a government function related to the furtherance of health, safety or welfare?
- If so, does the contract require that any meeting of Baker's governing board to address any matter relating to City property or its government related activities on the property, or performance under the contract or grant, shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur?

Under Section 6253 of the Public Records Act:

- Did Mr. Xex's request "reasonably describe an identifiable record or records"?
- If so, did HSA "make the records promptly available [. . .] upon payment of fees covering direct costs of duplication"?
- Did HSA "within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and [. . .] promptly notify [Mr. Xex] of the determination and the reasons therefor"?
- If not, did HSA notify Mr. Xex in writing that there were unusual circumstances that justified a longer time to respond to his request and inform him when the response would be completed?
- If so, did the "unusual circumstances" cited come within the allowable categories of this section?

Under Section 12L.4 of the S.F. Administrative Code:

- Did Baker designate and hold at least two designated public meetings per year over the last two years?
- If so, were the issues addressed by the Board of Directors at designated public meetings of approximately the same general nature and significance to the nonprofit organization as issues typically addressed by the Board of Directors at its other regular or special meetings?
- If so, did the designated public meetings provide the public with the opportunity to directly address the Board of Directors on any item of interest to the public relating to the operations of or services provided by the nonprofit organization"?
- If meetings were held, did Baker provide the public with notice of each meeting at least 30 days in advance of the meeting?

MEMORANDUM

- If meetings were held, did Baker cause a written notice of the date, time and location of each designated public meeting to be submitted to the Clerk of the Board of Supervisors and to the San Francisco Main Library Government Information Center?
- Did Ms. Benedict request from Baker the date, time and location of its designated public meetings? Did Baker disclose them to Ms. Benedict?

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

Section 67.4 of the Administrative Code (Sunshine Ordinance) deals with passive meetings as follows:

a. All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

....

b. To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

ATTACHED STATUTORY SECTIONS FROM CHAPTER 12 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 12L.1 of the Administrative Code (The San Francisco Non-Profit Public Access Ordinance) provides:

MEMORANDUM

INTENT

a.) The intent of this Chapter is to establish a policy wherein the City ensures that non-profit organizations with which the City chooses to do business operate with the greatest possible openness and maintain the closest possible ties to communities they intend to serve. Section 12L.3(e) of the Administrative Code provides:

DEFINITIONS

e.) "Non-profit Organization" shall mean any corporation formed pursuant to California Corporations Code sections 500 et seq. for any public or charitable purpose, and/or any organization described with 26 USC section 501(c), which receives a cumulative total per year of at least \$250,000 in City-provided or City-administered funds.

Section 12L.5(a) of the Administrative Code (The San Francisco Non-Profit Public Access Ordinance) provides:

PUBLIC ACCESS TO RECORDS

a) Disclosure of Financial Information. Subject to Section 12L.5(c) each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for , in or in connection with the review and/or renewal of, the nonprofit organization's contract, 2.) its most recently filed state and federal tax returns except to the extent those returns are privileged and 3.) any financial audits of such organization performed by or for the City and any performance evaluations of such organization by or for the City pursuant to a contract between the City and the nonprofit organization to the extent that such financial audits and performance evaluation i.) are in the nonprofit organization's possession, ii.) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and iii.) relate the nonprofit corporation's performance under its contract with the City within the last two years.

PUBLIC ACCESS TO MEETINGS

Section 12L.4

(a)(1) provides that each nonprofit organization shall designate and hold at least two designated public meetings per year. Issues addressed by the Board of Directors at designated public meetings shall be of approximately the same general nature and significance to the nonprofit organization as issues typically addressed by the Board of Directors at its other regular or special meetings.

....

(c) Public Comment.

MEMORANDUM

(1) At every designated public meeting the public shall have an opportunity to directly address the Board of Directors on any item of interest to the public relating to the operations of or services provided by the nonprofit organization.

(2) At any designated public meeting, the Board of Directors may adopt reasonable regulations to insure that the intent of this Section is carried out, provided that the Board of Directors allows for at least 30 minutes of public comment at each designated public meeting.

(d) Notice.

(1) Each nonprofit organization shall provide the public with notice of each designated public meeting at least 30 days in advance of the meeting.

(2) The Board of Directors shall cause a written notice of the date, time and location of each designated public meeting to be submitted to the Clerk of the Board of Supervisors who shall post the written notice where notices of meetings of the Board of Supervisors are posted, and to the San Francisco Main Library Government Information Center which shall post the written notice where notices of meetings of City boards and commissions are posted. In addition, upon inquiry by a member of the public, the nonprofit organization shall disclose the date, time and location of the designated public meeting. (Added by Ord. 198-98, App. 6/19/98)

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.

b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.

3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.

MEMORANDUM

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.



<complaints@sfgov.org>
10/02/2009 02:08 PM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 10/2/2009 2:08:37 PM

Department: Department of Public Health

Contacted:

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date:

Section(s)_Violated: 12L.4

Description: Pursuant to Chapter 67 of the San Francisco Administrative Codes, section 12L.4 talks about the necessity of nonprofit subcontractors of the city to have two open to the public meetings annually. I am writing to inform you of the fact that the organization called Baker Places, Inc. has not been in compliance for over two years. This can be substantiated by records kept on the fifth floor of the SF Public library, main branch (reference desk). No notices were given for the year 2007 at all.

In 2008, I tried to attend their noticed meeting of November 5th, 2008 at 600 Townsend St. and discovered that no meeting was occurring and, with the exception of a late working accounting division worker named Michelle (who knew nothing of the meeting), no one was present in the office. I called and reported this meeting (which, by the way was announced less than the required 30 days notice) not being held by calling 311 and was given report number 2383.

No re-noticing of the Nov. 5th meeting was made.

An early December 2008 meeting was announced, again in less than the required 30 days notice, which I missed and have no knowledge of occurring either. This year, 2009, as of today, September 29, 2009, no notices of board meeting from Baker Places, Inc. have been given to either the clerks offices in city hall or in the public library.

I would like you to inform the compliance person at the Department of Public health when your investigations have concluded that the information about this pattern of non compliance has been substantiated by your own investigations.

I have been told that person is Norma Castro. (#252-3805)

I would like to attend these board meeting, if you can bring them into compliance, in 2009.

I will be checking for notices in the aforementioned required meeting notice locations.

Thank you kindly for your attention to this matter,

Hearing: Yes

Pre-Hearing: No

Date: 09/29/2009

Name: Debra Benedict

Address:

City:

Zip:

Phone:

Email: [REDACTED]@yahoo.com

Anonymous:

Confidentiality_Requested: Yes

of 1

City and County of San Francisco
Vendor Payment Summaries Website
Search Results by Vendor and Department

Report 1200a
Data As Of:
09/27/2009

Vendor Names	Non Profit	Departments	Payments				Remaining Balance
			FY 2007-08	FY 2008-09	FY 2009-10	In Process	
BAKER PLACES INC	x	HUMAN SERVICES	\$188,997	\$0	\$0	\$0	\$0
		MAYOR	\$0	\$52,624	\$0	\$0	\$0
		PUBLIC HEALTH	\$12,728,535	\$12,988,556	\$4,931,942	\$0	\$6,307,521
Totals:			\$12,917,532	\$13,051,180	\$4,931,942	\$0	\$6,307,521

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RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

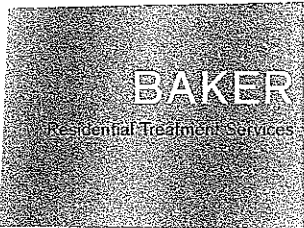
2009 OCT 15 PM 2:27

BY DR

October 14, 2009

RE: Complaint #09062

Chris Ruston
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689



600 Townsend St.
Suite 200 E

San Francisco
California 94103

P 415 / 864 / 4655
F 415 / 869 / 6623

Dear Mr. or Ms. Ruston:

I am writing this letter in response to the complaint filed against Baker Places Inc., regarding failure to publicly notice meetings of the Board of Directors. The complaint was forwarded to us by the Department of Public Health.

Our Board of Directors meets quarterly. Our Executive/Finance Committee meets more frequently to review the agency's financial position. We have reviewed all of our records for recent fiscal years and find the following notices, which we have enclosed for your review:

Meetings of 12/13/06, 3/7/07, 5/30/07, 11/28/07, and 11/15/08 were properly noticed.

The 11/13/08 meeting was cancelled on short notice when we were notified there would not be a quorum present. We issued a cancellation notice, immediately followed by a rescheduling notice for 12/3/08. We are aware that the 12/3/08 meeting was not noticed 30 days in advance, but due to pressing business we found it necessary to hold the rescheduled 11/13 meeting as quickly as possible and we acted in good faith with our attempts to keep the public informed.

We also believe we noticed the meeting of February 2009 but cannot find the documentation of that notice in our files.

It is clear that we did not hold the required number of publicly-noticed meetings and we sincerely apologize for that oversight. There was certainly no attempt on our part to avoid public participation.

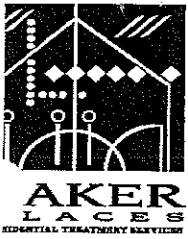
Baker Places has been doing business with the City and County of San Francisco for over 40 years and has always acted in good faith. Our meetings are open to the public and our Board Minutes are available in a binder at our Front Desk, as well as for inspection by City monitoring and compliance staff.

We have noticed a meeting scheduled for November 11, 2009 and will bring our schedule into full compliance with the Sunshine Ordinance immediately.

Sincerely,



Jonathan Vernick



Administrative Offices
600 Townsend Street, Suite 200e
San Francisco, Ca 94103
Tel: (415) 864-4655
Fax: (415) 626-2398

NOTICE OF DESIGNATED PUBLIC MEETING

Pursuant to San Francisco Administrative Code Chapter L, Section L Interested members of the public are hereby notified of a twice yearly-designated public meeting of the Board of Directors of Baker Places, Inc., and A California Non-profit Corporation.

On February 21st 2007 beginning at 6:30pm a Board Meeting will be held in the conference room of the Administrative Offices of Baker Places, Inc., @ 600 Townsend Street, Suite 200e San Francisco.

Conference room capacity at Baker Places, Inc. is limited and will be available to the public on a first come basis. The 600 Townsend Street building, elevator and offices is wheelchair accessible.

Date of notice: January 22nd 2007

Notices to: Baker Places, Inc., Board of Supervisors
The Clerk of the Board of Supervisors
San Francisco Main Library Government Information Center
Director of Substance Abuse Services & Mental Health, CBHS



Administrative Offices
600 Townsend Street, Suite 200e
San Francisco, Ca 94103
Tel: (415) 864-4655
Fax: (415) 626-2398 / 581-0797

NOTICE OF DESIGNATED PUBLIC MEETING

Pursuant to San Francisco Administrative Code Chapter L, Section L Interested members of the public are hereby notified of a twice yearly-designated public meeting of the Board of Directors of Baker Places, Inc., and A California Non-profit Corporation.

On March 7th 2007 beginning at 6:30pm a Board Meeting will be held in the conference room of the Administrative Offices of Baker Places, Inc., @ 600 Townsend Street, Suite 200e San Francisco.

Conference room capacity at Baker Places, Inc. is limited and will be available to the public on a first come basis. The 600 Townsend Street building, elevator and offices is wheelchair accessible.

Date of notice: January 30th 2007

Notices to: Baker Places, Inc., Board of Directors
The Clerk of the Board of Supervisors
San Francisco Main Library Government Information Center
Director of Substance Abuse & Mental Health Services, CBHS



Administrative Offices
600 Townsend Street, Suite 200e
San Francisco, Ca 94103
Tel: (415) 864-4655
Fax: (415) 626-2398 / 581-0797

NOTICE OF DESIGNATED PUBLIC MEETING

Pursuant to San Francisco Administrative Code Chapter L, Section L Interested members of the public are hereby notified of a twice yearly-designated public meeting of the Board of Directors of Baker Places, Inc., and A California Non-profit Corporation.

On May 30, 2007, beginning at 6:30pm a Board Meeting will be held in the conference room of the Administrative Offices of Baker Places, Inc., @ 600 Townsend Street, Suite 200e San Francisco.

Conference room capacity at Baker Places, Inc. is limited and will be available to the public on a first come basis. The 600 Townsend Street building, elevator and offices is wheelchair accessible.

Date of notice: 4/27/07

Notices to: The Clerk of the Board of Supervisors
San Francisco Main Library Government Information Center



Administrative Offices
600 Townsend Street, Suite 200e
San Francisco, Ca 94103
Tel: (415) 864-4655
Fax: (415) 626-2398

NOTICE OF DESIGNATED PUBLIC MEETING

Pursuant to San Francisco Administrative Code Chapter L, Section L Interested members of the public are hereby notified of a twice yearly-designated public meeting of the Board of Directors of Baker Places, Inc., and A California Non-profit Corporation.

On November 5, 2008 beginning at 6:30pm a Board Meeting will be held in the conference room of the Administrative Offices of Baker Places, Inc., @ 600 Townsend Street, Suite 200e San Francisco.

Conference room capacity at Baker Places, Inc. is limited and will be available to the public on a first come basis. The 600 Townsend Street building, elevator and offices is wheelchair accessible.

Date of notice: October 20, 2008

Notices to: Baker Places, Inc., Board of Directors
The Clerk of the Board of Supervisors
San Francisco Main Library Government Information Center
Director of Substance Abuse & Mental Health Services, CBHS



Administrative Offices
600 Townsend Street, Suite 200e
San Francisco, Ca 94103
Tel: (415) 864-4655
Fax: (415) 626-2398 / 581-0797

NOTICE OF DESIGNATED PUBLIC MEETING

Pursuant to San Francisco Administrative Code Chapter L, Section L Interested members of the public are hereby notified of a twice yearly-designated public meeting of the Board of Directors of Baker Places, Inc., and A California Non-profit Corporation.

On November 28, 2007, beginning at 6:30pm a Board Meeting will be held in the conference room of the Administrative Offices of Baker Places, Inc., @ 600 Townsend Street, Suite 200e San Francisco.

Conference room capacity at Baker Places, Inc. is limited and will be available to the public on a first come basis. The 600 Townsend Street building, elevator and offices is wheelchair accessible.

Date of notice: 10/25/07

Notices to: The Clerk of the Board of Supervisors
San Francisco Main Library Government Information Center

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