

Date: October 27, 2009

Item No. 25 & 26

File No. 09064

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Alvin Xex against the Economic Opportunity Council**
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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:

*ALVIN XEX v. ECONOMIC OPPORTUNITY COUNCIL S.F. (09064)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Alvin Xex alleges that he requested the following information from the Economic Opportunity Council of San Francisco ("EOC"): 1) the date of the next board meeting; 2) open job positions; 3) programs administered by EOC; and 4) any programs or efforts by them specifically targeted to assist ethnic groups or women for the years 2009-09. Mr. Xex makes no further allegation as to whether or how the response of the EOC to his request was deficient.

#### COMPLAINANT FILES COMPLAINT:

On 9/30/2009, Mr. Xex filed a Complaint against the EOC for its alleged violations of "Sections 67.25, et al." the Sunshine Ordinance.

#### JURISDICTION

San Francisco Administrative Code § 12-L.3(e) provides that a non-profit agency that receives more than \$250,000 per year in City provided funds may be subject to the requirements of that statute. Section 12-L.4(a)(1) further provides that all City contracts with such non-profit agencies shall contain a provision requiring that the non-profit hold at least two public meetings of its Board of Directors each year.

Section 67.4(b) of the Sunshine Ordinance provides that a policy body shall include in any contract with an entity that operates or manages any property in which the City has an ownership interest, 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.

The EOC is a nonprofit receiving over \$500,000 in City funding for fiscal years 2008-09 2009-10. The majority of that funding is received from the Children, Youth and Families

**MEMORANDUM**

Commission (the "Commission"), otherwise known as First 5 San Francisco. It is unclear whether EOC operates or manages any City program on City owned property.

Given these facts, it appears that the Task Force has jurisdiction over this matter with regard to compliance with Section 12-L. It is unclear whether it would have jurisdiction with regard to the Sunshine Ordinance.

**APPLICABLE STATUTORY SECTION(S):**

Section 67 of the San Francisco Administrative Code:

Section 67.4 deals with situations where a nonprofit operating a government function on property owned by the city may be subject to certain public meeting and public records requirements.

Section 12-L of the San Francisco Administrative Code:

Section 12-L.3 deals with situations where a nonprofit may be subject to the requirements of Section 12-L.

Section 12-L.4 deals with requirements for public meetings of nonprofits subject to its requirements.

Section 12-L.5 deals with requirements for providing public access to certain documents for nonprofits subject to its requirements.

**APPLICABLE CASE LAW:**

None.

**ISSUES TO BE DETERMINED****1. FACTUAL ISSUES****A. Uncontested Facts:**

Mr. Xex requested information from ECO concerning 1) the date of the next board meeting; 2) open job positions; 3) programs administered by EOC; and 4) any programs or efforts by them specifically targeted to assist ethnic groups or women for the years 2009-09.

**B. Contested facts/ Facts in dispute:**

Mr. Xex makes no further allegation as to whether or how EOC responded to his request, and if so how the response of the EOC to his request was deficient. It therefore is unclear how or whether he alleges a violation of the law. He also alleges no facts regarding the role of the Commission in his complaint or whether he has brought his complaint to the attention of the Commission and sought their mediation of it.

**MEMORANDUM****QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:**

- Does the ECO administer a City program on City owned property
- If so, does the City agency for which it administers the program have a contract with ECO that requires they comply with the requirements of Section 67.4?
- Is Mr. Xex's information request to EOC sufficiently specific to respond to?
- Did ECO respond to Mr. Xex's request?
- If so, what was the response of EOC?
- If not, did ECO have the information or documents requested?
- If so, is the information readily available for production to a requester?
- Did Mr. Xex contact the Commission regarding his complaint against ECO?
- Did the Commission respond to the request of Mr. Xex?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Were sections of the Sunshine Ordinance, Admin. Code Section 12-L and/or California Constitution Article I, Section three violated?

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

- Is ECO covered by this provision of the ordinance?
- If so, was the next board meeting of ECO one where ECO would "address any matter relating to the property or its government related activities on the property, or performance under the contract or grant"?
- Were the documents or information sought by Mr. Xex "[r]ecords made available to the governing board relating to" the property or EOC's government related activities on the property or its performance under the contract of grant?

**Under Section 12-L of the San Francisco Administrative Code:**

- Did Mr. Xex's request for the next meeting of the board of ECO relate to one of the two required designated public meetings per year?
- Was the other information sought by Mr. Xex "financial information" that is allowed to be request of a nonprofit by a member of the public?
- Did Mr. Xex bring his complaint to the Commission once he was dissatisfied with the response of EOC?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

**MEMORANDUM**

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 9a) 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:

**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

**MEMORANDUM**

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.4 of the Administrative Code (The San Francisco Non-Profit Public Access Ordinance) provides:

**PUBLIC ACCESS TO MEETINGS**

(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.

Section 12L.5 of the Administrative Code provides:

**SEC. 12L.5. 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, 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 performed 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 evaluations (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 to the nonprofit corporation's performance under its contract with the City within the last two years. A member of the public **may request additional financial information** other than that described above, pursuant to Section 12L.5(b) herein; however, the provision of such additional financial information by a nonprofit organization shall be **voluntary, not compulsory**. Members of the public, upon giving ten days' notice to the nonprofit organization, shall be entitled to inspect the packet of financial information during the nonprofit organization's regular business hours or to receive a copy of the packet of information for which the nonprofit organization may recover from the member of the public the organization's direct costs of duplication. Notwithstanding the foregoing, a nonprofit organization described within Sections 12L.4(a)(3) herein may comply with Section 12L.5(a) herein by sending a copy of its financial information packet, by first class mail, with the costs of such mailing prepaid by the member of the public, to a member of the public who has requested such information.

(b) Dispute Resolution. A **member of the public** who requests additional financial information other than that described in Section 12L.5(a), above, or **who has a complaint concerning a nonprofit organization's compliance or noncompliance with**

**MEMORANDUM**

this Chapter, may submit that request or complaint to the City agency or department which is a party to and/or which administers the nonprofit organization's contract. That City agency or department shall consider the request or complaint and shall recommend a resolution thereof in accordance with procedures established by that City agency or department. Following such consideration and recommendation, the member of the public or the nonprofit organization may seek an advisory opinion concerning the request or complaint from the Sunshine Ordinance Task Force, which that Task Force shall be authorized to provide; provided, however, that failure to seek such an advisory opinion from the Sunshine Ordinance Task Force shall not prejudice the right of the member of the public and/or the nonprofit organization to obtain a review of the City agency or department's recommendation by the Board of Supervisors as provided herein. . . . Subject to Section 12L.7. herein, the recommendation of the City agency or department, or the determination of the Board of Supervisors, with respect to any request or complaint by a member of the public shall be nonbinding upon the nonprofit organization.

**SEC. 12L.7. COMPLIANCE.**

In the event that a nonprofit organization materially fails to comply with any contract provision required by this Chapter, the City agency or department which is a party to such contract shall consider such failure a material breach of the contract. The City agency or department may, but is not required to, further consider such material breach as grounds for terminating the contract or not renewing the contract, partially or in its entirety.

**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



**MEMORANDUM**

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.

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.



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2009 SEP 30 PM 2:11

BY: RC

SUNSHINE ORDINANCE TASK FORCE  
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102  
Tel. (415) 554-7724; Fax (415) 554-7854  
<http://www.sfgov.org/sunshine>

**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission Economic Opportunity

Name of individual contacted at Department or Commission COUNCIL of S.F.  
Mrs. Nat. Masood, et al  
415 749 5600

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section 6.25 ET AL  
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

Table requests (6.23.24.09) For WAIVER of  
Next Board Meeting open job positions, programs  
Administered by EOC, and NAME of any programs/  
EFFORTS specifically for ethnic groups and  
women. DATA needed for 2008-09 only!

- Do you want a public hearing before the Sunshine Ordinance Task Force?  yes  no
- Do you also want a pre-hearing conference before the Complaint Committee?  yes  no

(Optional)<sup>1</sup>  
Name Alvin Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ E-Mail Address [Redacted]@Aol.com

Date 9/28/09 Alvin Signature

I request confidentiality of my personal information.  yes  no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

cc: file

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

Report 1000  
 Data As Of:  
 10/18/2009

Vendor Names	Non Profit	Payments				In Process	Remaining Balance
		FY 2007-08	FY 2008-09	FY 2009-10			
ECONOMIC OPPORTUNITY COUNCIL OF S.F. INC.	X	\$607,420	\$573,570	\$48,097	\$0	\$512,347	
<b>Totals:</b>		<b>\$607,420</b>	<b>\$573,570</b>	<b>\$48,097</b>	<b>\$0</b>	<b>\$512,347</b>	

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of 1  100%

**City and County of San Francisco**  
**Vendor Payment Summaries Website**

**Search Results by Vendor and Department**

Vendor Names	Non Profit	Departments	Payments				In Process	Remaining Balance
			FY 2007-08	FY 2008-09	FY 2009-10			
ECONOMIC OPPORTUNITY CO	x							
		CHILDREN AND FAMILIES COMM	\$81,259	\$67,761	\$36,133	\$0	\$500,000	
		CHILDREN: YOUTH & THEIR EA	\$51,797	\$33,839	\$3,147	\$0	\$20,152	
		HUMAN SERVICES	\$395,145	\$463,168	\$1,012	\$0	\$0	
		MAYOR	\$79,219	\$8,802	\$0	\$0	\$0	
		<b>Totals:</b>	<b>\$607,420</b>	<b>\$673,570</b>	<b>\$40,292</b>	<b>\$0</b>	<b>\$520,152</b>	

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## Children & Families Commission

TEXT FONT SIZE

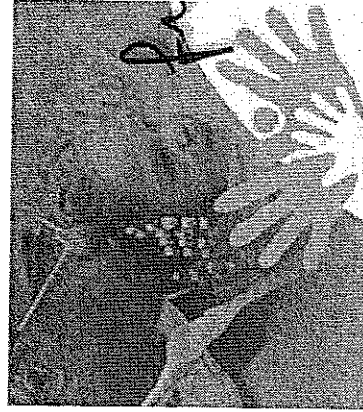
San Francisco Children and Families Commission provides grants to both public and private entities. Funds are intended to promote, support and improve early childhood development through coordinated resources and programs that emphasize family support, parent education, early care and education, and health care.

The San Francisco Children and Families Commission provides grants to both public and private entities. Funds are intended to promote, support and improve early childhood development through coordinated resources and programs that emphasize family support, parent education, early care and education, and health care.

Visit Agency Website (outside of SFGov navigation):  
Children & Families Commission\*

**Contact:**

First 5 San Francisco  
Children & Families Commission  
Fox Plaza  
1390 Market Street, Suite 318  
San Francisco, CA 94102  
Tel: (415) 934-4849  
Fax: (415) 565-0494





"Kahala Drain"  
<kahala@first5sf.org>  
10/21/2009 12:35 PM

To <SOTF@SFGov.org>  
cc  
bcc  
Subject FW: #09064\_Alvin Xex v First 5 San Francisco

Greetings Chris,

Hope all is well and this email finds you in good health.

First 5 San Francisco has been gathering information for Mr. Alvin Xex and we are inquiring what steps we need to take to have an extension to get this information to him. If I understand correctly we have a 10 day window. Please advise me.

Kindly,

Kahala Drain  
415-934-4849



SOTF/SOTF/SFGOV  
10/22/2009 07:11 AM

To "Kahala Drain" <kahala@first5sf.org>  
cc yalanda@packbell.net  
bcc  
Subject Fw: Sunshine Complaint Received: #09064\_Alvin Xex v First 5 San Francisco

Kahala,

This notice went out on the 7th. Although the Oct. 20 deadline has passed, the best way to go about it is to get the documents to him asap and tell the Task Force on the 27th that you are working with Alvin Xex to get him the additional documents, if there are any.

Chris

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
SOTF@SFGov.org  
OFC: (415) 554-7724  
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.  
[http://www.sfgov.org/site/sunshine\\_form.asp?id=34307](http://www.sfgov.org/site/sunshine_form.asp?id=34307)

--- Forwarded by SOTF/SOTF/SFGOV on 10/21/2009 02:48 PM ---

SOTF/BOS/SFGOV  
Sent by: SOTF

10/07/2009 02:21 PM

To admin@first5sf.org, laurel@first5sf.org, gloria@first5sf.org  
cc  
Subject Sunshine Complaint Received: #09064\_Alvin Xex v First 5 San Francisco

This e-mail is to confirm that the attached complaint has been received. The Sunshine Ordinance Task Force has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints. Under Sec.12L, the funding agency is required to resolve the issue first. Attached are documents related to the complaint. The Task Force will review the progress when it meets October 27, 2009. Please refer to complaint number #09064 when submitting any information and/or supporting documents pertaining to this complaint.

Date: Tuesday, October 27, 2009  
Location: City Hall, Room 408  
Time: 4:00 P.M.

Complainants: Your attendance is required at this hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the hearing.

Any support documents to be considered by committee members, prior to the meeting, must be submitted by 4:00 P.M. Tuesday, October 20, 2009.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.



09064\_Complaint.pdf 09064\_Support\_1.pdf 1\_Complaint Procedures\_4-28-09\_Final.pdf

Chris Rustom  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
OFC: (415) 554-7724  
FAX: (415) 554-7854  
SOTF@sfgov.org