

Date: Oct. 28, 2008

Item No. 7

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Report: Compliance and Amendments Committee meeting of**

- October 8, 2008**

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Completed by: Chris Rustom

Date: Oct. 23, 2008

***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.



<http://www.sfgov.org/sunshine>

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MINUTES**

Wednesday, October 8, 2008
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee (Chair), Erica Craven, Kristin Chu,

Call to Order: 4:07 p.m.

Roll Call: **Present:** Knee, Craven, Chu

Deputy City Attorney: Ernie Llorente
Clerk: Chris Rustom

Agenda Changes: Items were heard in this order: 1, 2, 3, 4, 7, 5, 6, 8, 7, 8

1. Chair Knee acknowledged the presence of recently-appointed Sunshine Ordinance Task Force member Doyle Johnson in the audience.

2. Approval of minutes of September 10, 2008, regular meeting.

Motion to approve minutes of September 10, 2008. (Craven / Chu)

Public Comment: None

On the motion:

Ayes: Knee, Craven, Chu

3. 08024 Discussion on steps taken by the Arts Commission and the Street Artists Committee to ensure that both bodies avoid further seriatim meetings.

Respondent Howard Lazar said the Arts Commission had taken their Sunshine training on September 16, 2008, through the help of Deputy City Attorney Adine Verah, who specifically explained the need for public access to a discussion by city officers.

Chair Knee urged the commission to use the Task Force as a resource if it had questions in the future.

Complainant Mike Addario, a photographer and 5-year member of the Street Artists Program, read and submitted his response. (See Attached A)

Member Craven congratulated Mr. Addario for his detailed research but said the Task Force was unable to provide the relief he sought. Only the courts, she said, had the authority to rescind a vote taken by a committee. On the other issues presented by Mr. Addario, she suggested he approach the Ethics Commission or the Board of Supervisors.

Public comment: Kimo Crossman said there was a remedy for various sections of the Ordinance by finding the department in willful failure and subsequently official misconduct to be investigated by the Ethics Commission under Section 67.34. He also said the Ordinance requires officers to file their paperwork with the Ethics Commission under Section 67.33. He also suggested sending a letter to the commission on their vote count.

The committee found no need for further action.

4. Continued discussion re developing recommendations on the document retention policy of City departments and the Board of Supervisors.

Chair Knee said his quest was continuing and what he had provided to the committee and public was a partial draft. (See Attached B). He intended to complete the final draft in a few weeks and asked for input by the public.

Member Craven suggested to put the focus on electronic records and review what other jurisdictions are doing and also to decide what should or should not be covered by the retention schedule, should there be one.

Public Comment: Kimo Crossman said some electronic records might be over voluminous and become an issue with storage, backup and recovery. He added that the Task Force should use itself as a test bed and refine it later for other departments. He also said the Board of Supervisors had to provide funding in order for SFGTV to be able to screen and caption meetings. Allen Grossman said an explanation of the codes mentioned in the Clerk of the Board's retention and destruction policy is needed to better understand the document. He also said he went to the Clerk's Office to look up the legislative history of a code and found the file contained very little documentation. The file, he said should have contained all correspondence, drafts and anything remotely associated with it. He also said the supervisors send and receive emails on legislation that do not go through the Clerk's office and thus not included in the legislative file.

Member Craven suggested forming a special group to work on the issue because of its enormity and complexity.

Task Force Chair Chu to put item on agenda.

5. Discussion on the status of proposed Sunshine Ordinance amendments and next steps the Task Force will take regarding submitting amendments to the voters.

Public comment: Allen Grossman said he had certain views on who should be responsible to determine what the steps would be to get it on the ballot. Someone has to set up a timetable and review the document, he said. His offer to informally

edit the document for consistency was still open, he added. Kimo Crossman said he hoped former Task Force Chair Doug Comstock would be appointed as an ad hoc member if a committee is formed. He also said he had collected all the amendments to the Sunshine Ordinance since 1993 and found resistance from departments when the documents are pushed through the legislative process. He said the same was happening in Gilroy where there is a push for a Sunshine Ordinance. Because of that he suggested planning to go directly to the voters in 2010. He also said there was some time to improve some of the awkwardly written proposals.

Member Craven said she was currently going through the document and hoped to finish her annotated version by the end of next month. After that comes the cleanup which will be followed by the hearings and approvals of the CAC and TF by the end of the year, she said.

Member Chu said the document should be revisited to see what the supervisors could pass and the rest sent to the 2009 ballot. That decision, she said, should be made in February, when two groups should be formed to push the two packets.

Chair Knee said it would be easier to qualify for the ballot in 2010 than in 2009 because of the number of signatures needed for a proposal to be eligible is 10 percent of the voter turnout in the last election. He also wanted the proposed amendments to be placed on the next CAC agenda for discussion.

6. Discussion on moving Compliance and Amendments Committee's monthly meeting from second Wednesday of the month to second Monday of the month without change in time.

Member Craven suggested that the committee recommend to the full Task Force to change their monthly meeting from Wednesday to 4:00 p.m. on the second Tuesday of the month and the discussion to take place at the full Task Force meeting.

Public comment: None

Without objection.

7. Administrator's Report.

Public comment: Kimo Crossman said he had asked for a copy of the digital recording of a meeting and had asked Mr. Rustom to bring it to the meeting but he refused. That, he said, is bad customer service. It was common for other commissions to accommodate members of the public and he wanted the Task Force to instruct Mr Rustom to provide better service to the public. He also wanted the Task Force to review Mr. Rustom and Mr. Llorente's performance twice a year.

Mr. Rustom, asked by Chair Knee if he would like to respond, said the office works out of Room 244 where all cash transactions are done and recorded.

8. Public Comment on items not listed on the agenda to be taken at 5:00 p.m. or as soon thereafter as possible.

Public comment: Kimo Crossman said SOTF staff had not posted the audio

recordings online and if DTIS will not post it there were other places where it could be posted. He also quoted Section 67.29 (iv) (c) and posed the question if supervisors would be in violation of the ordinance if they wanted to reverse a decision. On the rise of complaints, he said, it was the price to pay for open government.

9. Announcements, questions, and future agenda items from Committee members.

Member Chu said the Task Force was in receipt of a memo from the City Attorney regarding DCA Llorente's time constraints and she sought advice on how to title it on the agenda.

Member Craven said one of the ways to maximize use of the DCA's time was to rely on past rulings and findings and not to ask him or her to do additional research on the subject.

After further discussion it was agreed to title the item as "Discussion and possible action on allocation and restrictions on Deputy City Attorney's time."

Chair Knee reminded members and the audience that the California First Amendment Coalition would be holding its free speech and open government assembly at the UC Berkeley Graduate School of Journalism on October 17 and 18 and details were available at www.cfac.org.

Public comment: Kimo Crossman wondered if the person who wrote the memo on the Deputy City Attorney's time be invited to speak on the matter or if it was just a discussion item for the Task Force. Chair Knee reminded him that it was going to be a discussion and possible action item. Mr. Crossman also said past decisions and research results by the Deputy City Attorney should be put online in a searchable format. He also said the Task Force needs to make its own policy on redaction. Allen Grossman said it was important for the letter from the City Attorney to Mr. Darby be part of the package and comments submitted in advance be included

Member Craven said the packet should also include Mr. Llorente's memo and submissions made by the public.

Mr. Rustom said he did not refuse service to a member of the public but was informing that person of the procedure.

Adjournment

This meeting has been audio recorded and is on file in the office of the Sunshine Ordinance Task Force

The meeting adjourned at 4:33 p.m.

Dear Honorable Members of the Sunshine Task Force Ordinance,

Re: Michael Addario v. San Francisco Arts Commission (08024)

After the Arts Commission was found in violation of Section 67.5 of the Sunshine Ordinance, it circumvented the Sunshine Ordinance Task Force (SOTF) Compliance and Amendments hearing by bringing up this issue again at the San Francisco Street Artist (SFSA) Program committee meeting held on August 13, 2008.

1.) In Mr. Lazar's Oct 1, 2008 letter to the SOTF committee he states:

"At its meeting of September 8th, the full Arts Commission heard the matter, unanimously voted to rescind its earlier resolution (Res. No. 0407-08-096) which had changed the Street Artists Committee's schedule of meeting from monthly to bi-monthly, and unanimously voted to change the Street Artist Committee's schedule of meeting from monthly to bi-monthly.

By taking these actions at both Committee and Commission levels, we hereby affirm that the Arts Commission has adequately remedied the seriatim meeting issue under the Task Force's "Decision and Order of Determination" of July 22nd."

Contrary to Mr. Lazar's assertion it should be noted that the SOTF Compliance and Amendment meeting had yet to be held to inform the Arts Commission how to comply. In addition, Mr. Lazar or any other Arts Commission representative failed to attend the Compliance and Amendment hearing to know what the SOTF would require to adequately remedy the present violation.

2.) Again from Mr. Lazar's Oct 1, 2008 letter to the SOTF he states:

Mr. Knee's September 23rd letter also asks "to know what training and other steps the commission and the Street Artist Committee are taking or have taken to ensure that both bodies avoid further seriatim meetings." We wish to inform you that at next Monday's meeting, Oct 6th, of the full Arts Commission, Deputy City Attorney Adine K. Varah will be giving a training session to all Arts Commissioners, staff, and public present at the meeting. This will be listed on the agenda as follows:

*City Attorney's Presentation on Sunshine Ordinance and Brown Act
Discussion*

Presentation by Deputy City Attorney Adine Varah reviewing the Sunshine Ordinance and Brown Act requirements for the Arts Commission

The City Attorney office was advising the Arts Commission since the beginning, regarding this complaint, and was instrumental in crafting not one, but two letters from the Art Commission that mistakenly claimed that the SOTF did not have jurisdiction over this area. In addition, I attended the presentation that Deputy City Attorney Ms. Varah held on Oct. 6, 2008 at the Full Arts Commission and it was an approximately 25 minute abbreviated slide version of the two hour training session that the Commissioners and Staff are required to fulfill.

3.) And again from Mr. Lazar's Oct 1, 2008 letter to the SOTF he states:

The Street Artist Committee did indeed hear the matter at its meeting of August 13th; various street artists, including Michael Addario, spoke, and the Committee voted to recommend to the Full Arts Commission that the Committee change its schedule of meetings from monthly to bi-monthly."

What's missing in Mr. Lazar's statement is that when the SFSA Committee meeting was held, as seen in the minutes below, six Street Artist - some with over three decades in the program - were adamantly opposed to this change of the meetings from monthly to bi-monthly. Not one street artist spoke in favor of this resolution.

STREET ARTISTS COMMITTEE

Wednesday, August 13, 2008

Minutes

Members present: Commissioners Alexander Lloyd, Chair, Ninive Calegari, Sherene Melania

Members absent: Pop Zhao

Hearing and possible motion to change the schedule of meetings of the Street Artists Committee from monthly to bi-monthly.

Program Director Lazar clarified that the reason for his request that the Committee meet bi-monthly was due to the fact that there was not always enough items to warrant the Committee's consideration on a monthly basis.

Director of Cultural Affairs Cancel [8 months in this position] stated that the second issue was that, because the Commissioners serve on multiple committees, it was his recommendation that work on the Street Artists Committee's calendar be concentrated so that the Commissioners' time is best used to balance their activities among the various committees. Going to a bi-monthly schedule would be a more efficient use of the Commission's time.

Street Artist Tad Sky [34 years as a SFSA member] urged that the meetings be held monthly and that any meeting be cancelled if there is an insufficient amount of items to warrant it. Otherwise, if the meetings were bi-monthly, certain issues that are important to the artists would not be heard for a long time. Over the years he noted that, even with the current monthly schedule, there were no more than eight or nine meetings held per year.

Street Artist Michael Addario, [5 years as a SFSA member] stated that this matter was originally submitted to a vote of the April 7, 2008 meeting of the full Arts Commission without "our knowledge, discussion or approval by the street artists or public." He filed a complaint with the Sunshine Ordinance Task Force, and the Task Force found that the Commission "violated Section 67.5 of the Sunshine Ordinance for holding a seriatem meeting at committee level through two committee members at a non-public meeting and without public input." Because a further hearing of the Task Force was scheduled for August 13th, both Mr. Addario and Program Director Lazar requested a continuance because of the Street Artists Committee's meeting scheduled for the same date.

Mr. Addario stated that he was "strongly opposed to any further voting on this matter until all

parties can meet with the San Francisco Task Force Ordinance Compliance and Amendments Committee in September, 2008." He added that any motion "to re-introduce this resolution will only reinforce in the minds of many that this hearing is only a charade, and that the San Francisco Art Commissioners have already formulated their decision; and this could possibly generate another complaint."[Underline mine]

Street Artist Edward Steneck [28 years as a SFSA member] stated he agreed with Tad Sky's statement; it was very important that the meetings be held monthly unless there are reasons for some meetings to be cancelled.

Street Artist Madeline Marrow [20 years as a SFSA member] stated that people's interest and memory of items tend to fade if they have to wait two months for their item to be heard.

Mr. Cancel wanted it noted for the record that there were at least 12 individuals of the public present.

Street Artist Sureyya Ozsoy[1 Year as a SFSA member] stated that she agreed with the statements made by the other artists.

Street Artist Kathleen Hallinan [34 years as a SFSA member] stated that she favored monthly meetings.

Commissioner Calegari moved that the schedule of meetings of the Street Artists Committee be changed from monthly to bi-monthly; the motion was seconded by Commissioner Melania. The Commissioners voted as follows:

Yes — Calegari, Melania
No — Lloyd.

The motion passed.

Source: http://www.sfgov.org/site/sfac_page.asp?id=87827

4.) The vote taken by the SFSA program committee on August 13, 2008 regarding the issue of changing the SFSA program meetings from monthly to bi-monthly did not pass according to San Francisco city charter rules.

Since there were four commissioners listed on the SFSA August 13, 2008 agenda as members on the San Francisco Street Artist Program Committee; Commissioners Lloyd, Melania, Calegari and Zhao, and the vote was two members for the resolution, with one member against, and one members absent, this does not constitute a majority of the members needed to pass a resolution, according to the city charter (Charter §. 4.104.) (see below.) According to charter §4.104 all three commissioners present at the meeting, out of four total commissioners that are members of the SFSA program committee, would have been required to vote in the affirmative to pass this resolution.

"The Charter requires that the number of votes necessary to approve an action (i.e. majority, 2/3, 3/4, etc) be based on the total number of seats, rather than the number of seats

currently filled, the number of members present, or the number of members qualified to vote on the item. Charter § 4.104.”

Source: [http://www.sfgov.org/site/uploadedfiles/cityattorney/GGG_2007-08\(1\).PDF](http://www.sfgov.org/site/uploadedfiles/cityattorney/GGG_2007-08(1).PDF)

CITY AND COUNTY
OF SAN FRANCISCO
1996 CHARTER

Codified through
Ordinance 113-08, File Number 080350,
approved June 30, 2008.
(Supplement No. 17)

SEC. 4.104. BOARDS AND COMMISSIONS--RULES AND REGULATIONS.

Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.

Source: <http://www.municode.com/Resources/gateway.asp?pid=14130&sid=5>

5.) In addition, a recently completed audit done by myself, of the Ethics Commissions records, Statement of Economic Interests (SEI) Form 700 and Sunshine Ordinance Declaration and Certificate of Ethics Training, discovered that Art Department supervisors and many of the San Francisco Arts Commissioner are apparently not complying with these laws.

Name	Position	SEI Filings	Sunshine and Ethics Filings
Johnson	President	Compliant	Compliant
Delaney	Commissioner	Compliant	Compliant
Hunter	Commissioner	Compliant	Compliant
Przyblyski	Commissioner	Compliant	Compliant
Rinder	Commissioner	Compliant	Compliant
Wilsey	Commissioner	Compliant	Compliant
Young	Commissioner	Compliant	Compliant
Zhao	Commissioner	Compliant	Non-compliant
Lazar	SFSA Director	Compliant	Non-compliant

Cancel	Director	Compliant	Non-compliant
Kriken	Commissioner	Compliant	Non-compliant
Draisin	Vice Pres.	Non-compliant	Non-compliant
Gonchar	Deputy Dir.	Non-compliant	Non-compliant
Bihan	Commissioner	Non-compliant	Non-compliant
Calagari	Commissioner	Non-compliant	Non-compliant
Lloyd	Commissioner	Non-compliant	Non-compliant
Melania	Commissioner	Non-compliant	Non-compliant

Go to: [http://nf4.netfile.com/pub/\(S\(5wzs2irdgkottwmryzxvkqja\)\)/Default.aspx?aid=SFO](http://nf4.netfile.com/pub/(S(5wzs2irdgkottwmryzxvkqja))/Default.aspx?aid=SFO)
Sorted by Department, Arts Commission, from 2005 to 2008, accessed Sept. 24, 2008

Therefore, I am appealing to the Sunshine Task Force, to render relief by rescinding this resolution since:

- a.) The resolution was voted on again, in defiance and prior to the SOTF Compliance and Amendments hearing.**
- b.) The voting tally did not constitute a majority**
- c.) Not one of the San Francisco Street Artist Program Committee Commissioners; Lloyd, Calegari, Melania, Zhoa, were in compliance with the Sunshine and Ethics requirements at the time this resolution was heard, and voted on.**

Sincerely,

**Michael Addario
October 8, 2008**

RECOMMENDED GUIDELINES FOR RETENTION AND DISPOSAL OF ELECTRONIC RECORDS FOR THE CITY AND COUNTY OF SAN FRANCISCO

DRAFT

In general: All electronic records created and maintained in the conduct of City/County business are City/County property. Therefore, they are to be organized and retained in such a way as to maximize public access thereto.

These records include electronic communications; the Sunshine Ordinance Task Force believes it is important to call attention to this, because certain City/County officials have taken it upon themselves to destroy e-mails prematurely, in clear violation of the Sunshine Ordinance and the California Public Records Act. The Good Government Guide prepared by the City Attorney's Office states, "Any e-mail that is created or received in connection with the transaction of public business and which (1) the department retains as evidence of the department's activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City, must be retained in accordance with the department's records retention schedule."

The Task Force strongly recommends that all City/County boards, commissions, committees and subcommittees of boards and commissions, departments, agencies and all other entities under the jurisdiction of the Sunshine Ordinance (1) establish and abide by written policies on organizing, retaining and destroying electronic records; (2) develop detailed schedules for electronic records destruction; (3) post those guidelines and schedules on their web sites, such posting to include conspicuous and clearly understandable links on the sites' home pages; and (4) provide training on those guidelines and schedules at least annually to all of their personnel.

The Task Force further strongly recommends that all City/County boards, commissions, committees and subcommittees of boards and commissions, departments, agencies and all other entities under the jurisdiction of the Sunshine Ordinance, in accordance with Ordinance Sec. 67.14, make it permanent practice to air all of their meetings live on SFGTV and/or over the Internet, where technologically feasible; to video- and/or audio-record all of their meetings; and to make such recordings available to the public on their web sites and on portable media including but not limited to DVD and CD.

In the development of schedules for electronic records destruction, the Task Force strongly recommends that the default policy be permanent preservation of each record and type of record unless it can be established that (1) the destruction of a specific record or type of record will not compromise the public's right to know about the matter to which the record pertains; or (2) retention of the record or type of record will strain the City/County's record-storage capacity.

The Task Force also advises that City/County and State sunshine laws stipulate that electronic records are to be provided in their native formats upon request, and that where any such record contains data or metadata that are exempt or prohibited from disclosure, those data or metadata must be deleted and the rest of the record provided.

Authorities: The Sunshine Ordinance Task Force advises that policies regarding electronic records retention and destruction are to be governed by California and San Francisco open-government laws including but not limited to:

I. Article I, Section 3, of the California Constitution (passed by the voters as Proposition 59 in November, 2004).

II. The San Francisco Sunshine Ordinance.

III. The California Public Records Act.

IV. The California open-meetings statutes embodied in the Ralph M. Brown Act.

RECOMMENDED REVISIONS TO THE ELECTRONIC RECORDS RETENTION AND DESTRUCTION SCHEDULE OF THE CLERK OF THE BOARD OF SUPERVISORS

A0200 series: Retention in most cases should be at least 5 years and storage in most cases should be indefinite.

A202A, Emergency plans: Retention should be "until superseded."

C0100 series

C0102, Annual reports, City departments: Retention should be "until superseded" and storage should be "permanent."

C0105, Attendance reports: Retention should be "tenure duration +5 years" and storage should be "indefinite."

C0106, Board & committee calendars, marked: Retention should be "tenure duration +5 years" and storage should be "permanent."

C0107, Board closed session notes: Storage should be "permanent."

C0108, Boards & commissions files: Storage should be "permanent."

C0109, Budget analyst report: Storage should be "permanent."

C0110, Budget, mayors program (counter): Retention should be "active +2 years" and storage should be "permanent."

C0111, Calendar, department head: Storage should be "permanent."

C0113, Civil service rules: Storage should be "until superseded."

C0114, Claims report, City Attorney: Retention should be "active +5 years" and storage should be "permanent."

C0115-C0129, Various codes: Retention and storage should be "until superseded."

C0132-C0133, Dealing with conflict of interest: Storage should be "permanent."

C0134, Conflict of interest, Regulation 18730: Retention should be "until superseded" and storage should be "permanent."

C0135-C0143, Dealing with correspondence: Storage should be "permanent."

C0146, Election files: Storage should be "permanent."

C0162, Local Agency Formation Commission: Storage should be "permanent."

C0163, Meeting notices, City departments: Retention and storage should be "active +1 year."

C0167, Opinions, City Attorney: Storage should be "permanent."

C0170, Pamphlet, voter: Storage should be "permanent."

C0171, Petitions, general: Storage should be "permanent."

C0178, Rules of order: Retention and storage should be "until superseded."

C0180, State of City message: Storage should be "permanent."

C0183-C0184, Meeting tapes: Retention should be at least "6 months."

D0300 series

D0301-D0303, Board and committee agendas and packets: Retention and storage should be "permanent."

D0304-D0318 and D0320-D0327, Various: Storage in all cases should be "permanent."

D0319, Minutes, draft: Retention and storage should be "until finalized."

Still to come: Series L, R, S, T and Y.

