

Date: November 30, 2010

Item No. 14 & 15  
File No. 10052

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Kai Wilson v North of Market/Tenderloin CBD
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

Completed by: Chris Rustom

Date: Nov. 23, 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

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

**MEMORANDUM**

*November 19, 2010*

*KAI WILSON v. NORTH OF MARKET/TENDERLOIN COMMUNITY BENEFIT DISTRICT ("NMT-CBD") (10052)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Kai Wilson ("Complainant") alleges that on August 4, 2010 she made an Immediate Disclosure Request ("IDR") to board members and staff of the North of Market/Tenderloin Community Benefit District ("NMT-CBD") requesting "all correspondences between staff and current as well as immediately former board members [ ] regarding [her] removal from the CBD Board of Directors and any conversations regarding [her] term of service with the [NMT-CBD]." Ms. Wilson further alleges that she has not been provided with the records requested.

Complainant also appears to allege that the NMT-CBD held a closed session during one or more of its meetings, in violation of the Brown Act.

**COMPLAINANT FILES COMPLAINT:**

On October 5, 2010, Complainant filed this Sunshine Complaint against NMT-CBD, its staff, and its board of directors, alleging violations of public meeting and public records laws.

**APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:  
APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:**

- Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.
- Section 67.25 the immediacy of response.
- Section 67.26 deals with withholding of records.
- Section 67.27 deals with written justification for withholding of records.

**Section 6250 et seq. of the Cal. Gov't Code**

- Section 6253 deals with time of response.

TO: Error! Reference source not found. DATE: November 23, 2010  
 PAGE: 2  
 RE: *Complaint 10052: Wilson v. NMT-CBD*

### Section 36600 et seq. of the Cal. Streets & Highways Code

- Section 36614.5 defines an "owners association" for a Community Benefit District and governs the applicability of public records and public meetings laws to those entities.
- Section 36603.3 provides that any provision in this part that conflicts with any other provision of law shall prevail of the other provision of law.

### RELEVANT CASE LAW:

- *ATTORNEY GENERAL OPINION NO. 05-301* (2005), p.6: "[T]he phrase 'for any purpose' contained in section 36614.5 removes the execution of contracts by an owners' association from the requirements imposed by Government Code section 1090 [restricting self-dealing by public officials]. Here, we have a private contract being made by a private entity, even though the entity is acting under a contract with the City. The existence of the owners' association in executing the contract cannot be disregarded so as to treat the contract as being made by the City. Although the legislature expressly required owners' associations to be subject to the open meeting requirements of the [ ] Brown Act and the records disclosure requirements of the [ ] Public Records Act [ ], it has not made their contracts subject to the strictures of [ ] section 1090."

### BACKGROUND INFORMATION

A CBD is a public-private partnership district created by resolution of the Board of Supervisors ("BOS") under state law, and typically operated by an "owners' association," likewise authorized by a BOS resolution. CBDs are formed by a majority of the property owners in a geographic area, who petition the BOS to approve the formation of the district under state law. The City often approves management of such CBDs by nonprofit corporations, which are named as the "owners' association" under provisions of state law.

In this case, in January, 2006, the BOS approved a resolution naming the North of Market/Tenderloin Community Benefit Corporation as the "owners' association" for the NMT-CBD under state law. The City's contracts with CBDs typically include language requiring compliance with the Public Records Act ("PRA") and the Brown Act, as required by the state law authorizing their formation. The contract between the City and the NMT-CBD has not been provided by either the complainant or the respondent in this case. However, respondent alleges that their contract with the City provides that they are subject only to Section 67.24(e) of the Ordinance, which governs disclosure of documents related to a bid on a City contract.

### JURISDICTION

Complainant complains of violations solely of the Brown Act and Public Records Act. Respondent argues that the Task Force does not have jurisdiction to hear the complaint.

The City Attorney's jurisdiction memorandum to the Complaint Committee of the Task Force concluded that the Task Force lacked jurisdiction to hear the complaint.

The Complaint Committee found jurisdiction and referred the matter to the full Task Force for its consideration.

### Discussion and Analysis of Jurisdiction Issue

TO: Error! Reference source not found. DATE: November 23, 2010  
 PAGE: 3  
 RE: *Complaint 10052: Wilson v. NMT-CBD*

California Streets & Highways Code § 36614.5. provides:

*“Owners' association” means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the district.”*[Emphasis added.]

The language of the state law governing CBDs, quoted above, bears on the jurisdiction of the Task Force to hear the complaint in this case. It is clear from this provision that respondent must comply with the requirements of the PRA and of the Brown Act; however, the same provision prevents treating an owners' association as a public entity, or treating its employees as public officials, for any purpose. Thus, the mandatory application of the Sunshine Ordinance to their activities, would appear to be prohibited by this provision. Therefore, given that the Task Force is charged with reviewing alleged violations of the Sunshine Ordinance, and not alleged violations solely of the state PRA and Brown Act, it would appear that the Task Force lacks jurisdiction to adjudicate this complaint.

California Streets & Highways Code § 36614.5. specifically provides that “[a]n owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.” Section 36603.3 further provides that the above language shall prevail over any conflicting provision of law. Given this language, the respondent and its staff and board of directors may not be considered policy bodies, passive meeting bodies (Section 67.3) or departments (Section 67.20) under the Sunshine Ordinance. Therefore, the Task Force lacks jurisdiction to hear a complaint of violation of the Sunshine Ordinance, unless in the contract between the City and the CBD, the NMT-CBD agreed to be bound by provisions of the Ordinance.

In addition, the Sunshine Ordinance impliedly provides authority for the Task Force to hear a complaint that alleges *both* a violation of the Ordinance *and* the PRA or Brown Act. Section 67.30(c) or the Ordinance provides in part that the Task Force “shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.” This makes sense, as the Ordinance incorporates by reference parts of those two state laws when their minimum requirements are not otherwise addressed by the Ordinance. However, Section 67.30(c) cannot be read to extend such implied authority for the Task Force to hear a complaint that alleges *only* a violation of the PRA and/or Brown Act, which are both state laws. Both the PRA and the Brown Act provide their own enforcement mechanisms and do not contemplate adjudication of violations of their provisions by local government entities.

TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 4  
RE: Complaint 10052: Wilson v. NMT-CBD

## SUBSTANCE OF THE COMPLAINT

### ISSUES TO BE DETERMINED

**Uncontested Facts:** Complainant alleges that on August 4, 2010 she made an IDR to board members and staff of the NMT-CBD requesting "all correspondences between staff and current as well as immediately former board members [ ] regarding [her] removal from the CBD Board of Directors and any conversations regarding [her] term of service with the [NMT-CBD]." Ms. Wilson further alleges that she has not been provided with the records requested. Complainant also appears to allege that the NMT-CBD held a closed session during one or more of its meetings, in violation of the Brown Act.

The NMT-CBD had failed to contest the alleged facts at the time this memorandum was completed.<sup>1</sup> Nevertheless, a late submission by complainant included an email from NMT-CBD to complainant that claimed respondent had previously provided all responsive documents to the complainant, as he was a cc on the emails that would be responsive to her request. In addition, the email from respondent also offered to send all responsive documents to complainant again if she would indicate her preference for certified mail or email. Complainant responded to this email by shifting the focus of her complaint to the alleged Brown Act violation.

### QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did the NMT-CBD respond to the records request?
- If so, how long did the NMT-CBD response take?
- Did the NMT-CBD withhold any responsive records, including redacting any responsive records?
- If it withheld records, did it provide a written justification for such withholding?
- Did the NMT-CBD hold a closed session to consider eliminating complainant from the Board of Directors?

### LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the NMT-CBD responded, did it do so in a timely manner under the law?
- If the NMT-CBD withheld records, or redacted portions of records, did it keep such withholding to a minimum, as required by law?
- If the NMT-CBD held a closed session, did it do so in compliance with the requirements of the law?
- Were sections of the Sunshine Ordinance, Public Records Act, and/or California Constitution Article I, Section three violated?

---

<sup>1</sup> Please note that the Complaint Procedures of the Task Force, which were included with the October 15, 2010 email notification to respondents that a complaint has been filed against them, provides that for information of documents to be considered by the Task Force, it must be "received at least 5 working days before the hearing." This memo was completed on the fifth working day prior to the November 30, 2010 hearing.

TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 5  
RE: Complaint 10052: Wilson v. NMT-CBD

## 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.67.21: PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 6  
RE: Complaint 10052: Wilson v. NMT-CBD

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petitioner, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether

TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 7  
RE: *Complaint 10052: Wilson v. NMT-CBD*

orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

#### **SEC. 67.25. - IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.



TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 8  
RE: *Complaint 10052: Wilson v. NMT-CBD*

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

**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.

**SEC. 67.27. - JUSTIFICATION OF WITHHOLDING.**

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform

TO: **Error! Reference source not found.** DATE: November 23, 2010  
PAGE: 9  
RE: **Complaint 10052: Wilson v. NMT-CBD**

the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

### **CALIFORNIA PUBLIC RECORDS ACT**

#### **SEC. 6254**

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, 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 shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

### **THE RALPH M. BROWN ACT (CAL. GOV'T CODE § 54950 ET SEQ.)**

Section 54957. Closed Sessions; Personnel Matters; Exclusion Of Witnesses

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater

TO: Error! Reference source not found. DATE: November 23, 2010  
PAGE: 10  
RE: *Complaint 10052: Wilson v. NMT-CBD*

treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors.

#### **CAL. STREETS & HIGHWAYS CODE**

##### **SEC. 36603.5.**

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

##### **SEC. 36614.5.**

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the district.



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 OCT -5 PM 2:23

BY AK

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 North of Market/Tenderloin  
Community Benefit District

Name of individual contacted at Department or Commission Elaine Zamora, District Manager  
All 2010-2011 Board of Directors  
for CBD.

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting July 19, 2010; meeting when my  
performance was discussed.

Sunshine Ordinance Section \_\_\_\_\_  
(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.

Did not provide information requested about illegal removal  
from Board of Directors after an FDR was emailed  
in early August 2010. Also, discussed performance of  
a board member in closed session, which violates Brown Act

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 Kai Wilson Address \_\_\_\_\_

Telephone No. 773 \_\_\_\_\_ E-Mail Address \_\_\_\_\_@hotmail.com

Date \_\_\_\_\_ Signature Kai Wilson

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).



Kai Wilson  
<[REDACTED]@hotmail.com>  
10/05/2010 04:59 PM

To <sotf@sfgov.org>  
cc  
bcc  
Subject Attn: Chris FW: Regarding My Letter of Constructive  
Resignation From the North of Market/ Tenderloin  
Community Benefit District

Hello-

My name is Kai Wilson and below you will find the email that I sent to the individuals stated on my Sunshine Ordinance complaint. You will also find attached documents that accompanied the below email. Chris asked me to forward this information.

Please respond letting me know that you have received this because I have sent email messages to this email address previously and received no response.

Also, I would like a prehearing. Please leave that marked 'Yes' on my submission of complaint.

Best,

Kai Wilson

---

From: [REDACTED]@hotmail.com  
To: nomtlcbd@att.net; dinanomtlcbd@att.net; ebyrd@hospitalityhouse.org; tmoss@sftc.org; mtellinger@yahoo.com; pamelacoatestl@yahoo.com; paul@thclinic.org; phogarh@mac.com  
Subject: Regarding My Letter of Constructive Resignation From the North of Market/ Tenderloin Community Benefit District  
Date: Wed, 4 Aug 2010 13:00:46 -0700

Greetings-

\*Please read thoroughly and immediately. There are requests for information that are time sensitive and could result in various actions if each Board Member does not respond individually and within the time frame. It would also be best to read the attached documents as well. I have forwarded the email to all board members except Tony Davidson, whose information I do have. Also, Pam's email address is never accurate. As secretary of the board, I had four different emails for her, and less than two months ago I asked staff for her updated email address, and received no response. If someone could forward this correspondence on to them, that'd be stellar. \*

I regret to follow up to inform the North of Market/ Tenderloin Community Benefit District (CBD) staff and Board of Directors that I will be submitting my letter of forced or constructive resignation shortly; I have attached a preliminary letter. The letter will detail the inappropriate behavior of staff members Dina Hilliard and Elaine Zamora, and all Board Members except Tony Davidson, the new Board Member, and Elvis Byrd, who was not in attendance of the July 19, 2010, leading up to my forced or constructive resignation. I have not been well for months due to the retaliatory or unexplained behavior of these individuals, and have subsequently been forced to seek medical attention.

It will take me several weeks to compile a lengthy, detailed account of all email and other correspondences I have had with board members, staff members and Bay Area residents regarding my constructive resignation; and the extremely hostile, inappropriate or unjustified behavior of the

aforementioned parties.

All of the information and subsequent procedure may have the suggestion that I am considered a staff/personnel person since this is the precise reason that all Board Members and 2 staff persons, except myself, chose to address my dismissal in a closed session; and due to the fact that I was initially voted off the Board in a closed Executive Committee session, which according to the full Board discussion, can only be done in the matters of staff or personnel. I will further investigate my status as staff/personnel verses Board Member and this will be outlined in my full report.

I am making an immediate disclosure request regarding any and all correspondences between staff and current as well as immediately former board members (immediate past Board of Directors), regarding my removal from the CBD Board of Directors and any conversations regarding my term of service with the North of Market/ Tenderloin Community Benefit District. This includes emails, text messages, memos, letters, conversations of any fashion, etc. Please forward this information to the email address listed in the Preliminary Letter of Constructive Resignation beginning immediately, and of course within the supposed 10-day allotted time frame. (The address this information has been sent from.) This includes all Board and staff members because the California Public Records Act pertains to all of you, not solely staff members. Katerina Villanueva, City of San Francisco's Mayor's Office of Economic and Workforce Development office who works with all CBDs on behalf of the city has informed me of my right to access information regarding my dismissal after consulting with the city attorney's office.

I have also an email from Ms. Zamora stating that the Sunshine Ordinance also applies to the Community Benefit District regarding requests for information.

Attached is a preliminary letter regarding my constructive resignation. Due to health constraints, I will work on this as time permits, but wanted to inform the CBD of my intent within a reasonable time frame so requested documents are still in place and can begin being forwarded immediately. I think this information is vitally important, and will prove better for the organization as a whole in the long run. Despite the outcome of this situation, documentation has been and will continue to be my main focus, as this is the cornerstone of responsible, civil interactions.

While I am constructing the letter, I will still be attending community meetings, and worthwhile events at the CBD, as the CBD leaders consider this a public space or "community space." There should be no problem with my attendance. If I become too overwhelmed, I will remove myself, but as long as individuals are cordial, as they should have remained all along, I do not foresee problems arising when I visit the location to express my concerns regarding community concerns at large.

If the North of Market/ Tenderloin Community Benefit District staff and Board of Directors deem it inappropriate that I continue to attend meetings in that space, please send written documentation of this.

Per the Executive Committees' reason for voting unanimously to dismiss me (Executive Committee claimed that I had no right to engage community members regarding my concerns about the direction of the CBD and the behavior of staff and Board Members), I have only forwarded this particular email and attached documentation to current and immediately past former Board Members and the City of San Francisco liaisons, Katerina Villanueva and Lisa Pagan.

Please see attached.

Also, I have attached a partial list (what I can remember) of my personal contributions to the North of Market/ Tenderloin Community Benefit District. During the closed session of the Full Board meeting regarding my dismissal, Ms. Zamora stated that my claims that I contributed a lot to the CBD "belied" the facts, and I wanted to ensure Board Members that her statements were false and inaccurate.



August 4, 2010

North of Market/ Tenderloin Community Benefit District Board of Directors  
134 Golden Gate Avenue  
San Francisco, CA 94102

Re: Preliminary Letter of Constructive Resignation

Dear North of Market/ Tenderloin Community Benefit District Board of Directors and Staff:

Please be advised that effective Monday July 19, 2010, I resign from my post as a Board Member of the North of Market/ Tenderloin Community Benefit District. I could no longer tolerate the inappropriate actions of staff members Elaine Zamora and Dina Hilliard, as well as all current Board Members, except Tony Davidson, the new Board Member, and Elvis Byrd, who was not in attendance at the July 19, 2010 Board meeting. I have several documents that I would like to present and therefore I have decided to produce a preliminary letter of resignation prior to my final letter of forced resignation, which will be provided shortly. I reported several times to the Former Board President Tomiquia Moss, and Former Vice-President/Current President Kevin Montreuil the problems staff members were causing me and I do not believe the issue was adequately addressed.

Nine days after the new CBD Board was seated, I was told that the Executive Committee voted me off of the Board of Directors unanimously in a closed session. My choices were to resign immediately or take up my complaint with the Full Board. Within the last year, the Full Board has voted in accordance with the Executive Committee's recommendation one hundred percent of the time. Executive Committee Chair and Board President Kevin Montreuil refused to directly answer a question regarding the Executive Committee verses the Organizational Committee, and upon my request for the question to be answered during a meeting, Ms. Elaine Zamora (staff member and Board Member) called me "irritant" and suggested, "why don't you just leave the Board then if you don't like it?" There is email proof that the question was asked four times previously via email, and staff as well as the Executive Committee refused to answer the question while I was still a Board Member.

My problems with staff and Board Members did not stem from lack of trying on my part. However, I was informed via email that I was unanimously voted off of the CBD Board of Directors in a closed session by the Executive Committee.

My name was removed from the website as Committee Chair of the Public Right of Way Committee before I was asked to resign from the Board, and staff members as well as Board Members refused to answer my email correspondences while I was still a Board Member. In addition, I was unanimously voted off of the Board of Directors by the Executive Committee, which did so without general Board oversight, community oversight or any attempts to reconcile the issues they were claiming through a grievance process. These instances coupled with several other occurrences (which will be outlined in the formal letter of constructive resignation), have created a climate in which I was not able to sustain work on the North of Market/ Tenderloin Community Benefit District under the direction of Elaine Zamora, Dina Hilliard and the 2010-2011 Board of Directors.

As stated in the body of the email, I am making an immediate disclosure request, pursuant to the California Public Records Act and the Streets and Highway Code, requesting any and all emails, memos, letters, phone records, text messages, correspondences, etc. from staff members and current as well as immediate past Board Members, regarding my removal from the CBD and regarding my performance on the CBD Board of Directors in general.



I have checked with the City of San Francisco several times and although the North of Market/ Tenderloin Community Benefit District is a nonprofit organization, this organization also follows the code of the State Bid Act/ the Streets and Highway Code, which means that your nonprofit status does not supersede requests for information. The requested information is not classified and you are required by law to provide me with the above information; you will be reported accordingly if you do not.

The North of Market/ Tenderloin Community Benefit District has also violated the Brown Act twice, which clearly states that discussion of "the performance of any elected official, or member of the board" is not allowed in a closed session.

My health has been put in jeopardy as result of continued inappropriate behavior, as well as being asked to leave a community-run Board of Directors for asking staff members to clarify Board procedure questions. My complaints of issues have not been adequately addressed or given a proper grievance hearing. Several times simple clarifications of Board procedures were requested, and exclusionary tactics were used to interpret the bylaws in a variety of ways by Elaine Zamora, Dina Hilliard and Kevin Montreuil. I deserve to be treated equally and fairly as anyone else under similar circumstances.

To date, I have still not been offered a proper grievance hearing in front of the Board of Directors; I was voted off of the Board of Directors by the Executive Committee in a closed hearing before being offered these options. The one session I had to discuss this in front of the full Board of Directors consisted of current Board Members explaining to me why I was not a good fit for the Board, and that I was quite "a great worker, and we don't question contribution to the CBD, but that [my] talents would be useful elsewhere."

Please send all correspondences to [REDACTED]@hotmail.com. I am making the immediate disclosure request to all current Board of Directors, as well as staff members, which means that if you are a current Board or staff member with the North of Market/ Tenderloin Community Benefit District you must forward any and all correspondences sent or received regarding my removal from the Board of Directors as well as any correspondence you have received or sent regarding my performance during my term of service with the CBD. If you do not, I will report individual Board Members accordingly. I can expect everyone will handle this matter with the utmost honesty and grace.

If you do not have any correspondences regarding my dismissal, please simply forward an email stating this. All information should be forwarded to [REDACTED]@hotmail.com within the 10-day period allotted by the California Public Records Act. If you questions, please contact Katerina Villanueva at the City, Katerina.Villanueva@sfgov.org, as she is the person who facilitated this information from the city attorney. The aforementioned codes, acts and ordinances can also be googled at your convenience for clarification.

With regrets,

Kai Wilson

CC: North of Market/ Tenderloin Community Benefit District Board of Directors  
CC: Katerina Villanueva  
CC: file

## **Contributions to the North of Market/ Tenderloin Community Benefit District**

**2009-2010**

- Transcribed and Typed:

### **Public Right of Way Committee Agenda for 10 months-**

September 2009, October 2009, November 2009, January 2010, February 2010, March 2010, April 2010, May 2010, June 2010, July 2010 (Created agenda, however was voted off of Board of Directors before sending.)

### **Public Right of Way Committee Minutes for 10 months-**

August 2009, September 2009, October 2009, November 2009, January 2010, February 2010, March 2010, April 2010, May 2010, June 2010

### **Organizational Committee Minutes for 2 months**

July 2009, September 2009

### **Executive Committee Minutes for 3 months**

July 2009, September 2009, November 2009

### **Full Board Minutes – 6 months**

July 2009, September 2009, November 2009, January 2010, March 2010, May 2010

- Organized and Executed Board of Directors Mixer
- Increased Board transparency by requesting that the Board President ensure that staff members are including Board of Directors on all decisions, which did not happen previously.
- Chaired all Public Right of Way Committee Meetings from August 2009 until June 2010.
- Initiated a public event that would have been the only event funded this fiscal year spearheaded by a Board Member of the Community Benefit District. (I was subsequently asked to leave the Board and will be applying for this grant that was going to be put on the CBD credit card by Elaine Zamora or Dina Hilliard.)
- Pushed for the Organizational Committee to restart, which is why I was asked to leave the Board of Directors.
- Written or responded to over 500 emails regarding CBD-related matters during my one-year term of service.



"North of Market Tenderloin"  
<nomtlcbd@att.net>

10/22/2010 10:06 AM

Please respond to  
<nomtlcbd@att.net>

To <soft@sfgov.org>

cc "Kevin Montreuil" <kmontreuil@gmail.com>, "Dina Hilliard-CBD" <dinanomtlcbd@att.net>, "Lisa Pagan" <Lisa.Pagan@sfgov.org>

bcc

Subject Response to Sunshine Complaint Received: #10052\_Kai Wilson vs. North of Market/Tenderloin CBD

History:

This message has been forwarded.

Mr./Ms. Chris Rustom,

This acknowledges receipt of the notice of Complaint Number 10052 and all supporting documents attached thereto.

I, and other representatives from the North of Market/Tenderloin Community Benefit District, will attend the November 9<sup>th</sup> Hearing at 3:30pm in San Francisco City Hall Room 406 to contest jurisdiction of the Sunshine Ordinance Task Force in this matter.

We are a private non-profit organization. North of Market/Tenderloin Community Benefit Corporation is our legal name as filed with the California Secretary of State.

In January 2006, the Board of Supervisors approved the resolution that authorizes the North of Market/Tenderloin Community Benefit Corporation as the Owner's Association who will administer the North of Market/Tenderloin Community Benefit District. Per Section 336614.5 of the California Streets and Highways Code, Part 7- The Property and Business Improvement District Law of 1994, "Owners' associations" means "a private entity and may not be considered a public entity for any purpose, nor may board members or staff be considered to be public officials for any purpose."

As the "Owner's Association" administering the Management District Plan for the North of Market/Tenderloin Community Benefit District, we are subject to the Ralph M. Brown Act and the California Public Records Act.

The San Francisco City Attorney provided a training on April 28, 2010, to all San Francisco CBD's and BID's where we were given notice that we are not subject to the City Sunshine Ordinance as we do not fit the definitions of a "passive body" or "policy body" (Article II, Section 67.3 (c) and (d) as none of our members, staff, or Directors are public officials, elected officials, or city employees). We also do not fit the definition of a "department" as defined in Section 67.20. We have a Management Agreement with the City and County of San Francisco and according to Section 12.2 of our agreement, we are only subject to Sunshine Ordinance Section 67.24(e).

The work of our organization is primarily (94%) funded by property owners within our district boundaries, which totaled \$877,980 in fiscal year ending June 2010. The remainder of our funds is from grants and private donations.

Our response to the charges filed by Kai Wilson is that we are not subject to the jurisdiction of the Sunshine Ordinance Task Force.

Please contact us with any questions.

Thank you for your consideration in this matter.

**Elaine Zamora**  
**District Manager**  
**North of Market/Tenderloin Community Benefit Corporation**  
**134 Golden Gate Avenue, Suite A**  
**San Francisco, CA 94102**  
**(415) 292-4812**



Kai Wilson  
<[REDACTED]@hotmail.com>  
11/19/2010 12:22 PM

To <sotf@sfgov.org>  
cc <clint\_ladine@yahoo.com>, <nomtlcbd@att.net>, <kmontreuil@gmail.com>, <pamcoatestl@gmail.com>, <rhicks@tndc.org>, <ebyrd@hospitalityhouse.org>, bcc

Subject Case File Addendum Regarding #10052\_Kai Wilson vs North of Market/Tenderloin CBD

Greetings-

This email is in response to Dina Hilliard (North of Market Community Benefit District's Associate Manager). Below you will find the first and only correspondence (regarding my Immediate Disclosure Request) that was sent to me by the North of Market CBD on Wednesday November 17, 2010, 95 plus days after my original August 4, 2010 Immediate Disclose Request, and 8 days after the Sunshine Ordinance Complaint Task Force found that the North of Market CBD is subject to the Sunshine Ordinance.

Please add this information to case files and this email will be provided on November 30th.

The Sunshine Ordinance Administrator informed me that the North of Market Community Benefit District's attempt to make contact with this information now does not interfere with the original alleged violation because they did not respond, even to state receipt, within the one day time frame. I even sent a second email to E. Zamora and K.Montreuil dated September 29, 2010; the email is as follows:

*Greetings-*

*Because I did not hear back from you all regarding this issue in a timely manner, I am making one last Immediate Disclosure Request in conjunction with the California Public Records Act, as well as the Sunshine Ordinance.*

*If I do not hear back from you within 4 days with the previous information, I have been advised to file a complaint with the Sunshine Ordinance Task Force, which will be on Monday.*

*Best,*

*Kai Wilson*

\*\*\*\*

The email I send now is to also confirm that E.Zamora was in attendance at the November 9, 2010 Sunshine Ordinance Task Force Complaint hearing in which (there is public record) she was in agreement with the City Attorney's belief that North of Market CBD did not have to comply with the Sunshine Ordinance. They were both wrong; the Sunshine Ordinance Complaint Task Force voted 2-1 that they have jurisdiction and they are subject to the Sunshine Ordinance.

In the email below regarding the information I requested in August, Hilliard states "You have previously received this information from us by way of being included in the list of receiving individuals on the emails." This sentence is not only grammatically embarrassing, it is also an attempt to defraud myself, the Sunshine Ordinance Task Force, the City & County of San Francisco, their own Board of Directors, and most importantly, the community. She was also present at the November 9, 2010 when Zamora stated the CBD believed they did not have to provide the information because they were not subject to the Ordinance. (Geez, why am I having to type this? Logic, people, logic...)

The 2010-2011 Board of Directors and Staff of the North of Market/CBD all received my Immediate Disclosure Request; and whether they were told not to answer it, is not my concern. Lack of response is in direction violation of the Sunshine Ordinance.

Therefore in a public forum, it is still the option of the Board of Directors and Staff of the North of Market/ Tenderloin CBD if they wish to supply me with the information or not. They all received the letter and email dated August 4, 2010, which requested the information, which I received no response to. Whether or not the Respondents decided to provide the previously requested information or not, will have no effect on my pursuit to seek justice dating back to when my rights were initially violated.

The North of Market/ Tenderloin CBD Board of Directors and Staff members had and still have my current email contact information, which they can use freely for whatever purposes they see fit (except to hack my email account; in this day and age, you never know :)

They have always been able to access me via email. However, the November 17, 2010 email is the first attempt regarding this specific Immediate Disclosure Request, dated August 4, 2010.

My contact information is [wilson.kai@hotmail.com](mailto:wilson.kai@hotmail.com). As stated the CBD can provide whatever information they wish.

And to clarify Hilliard's inaccurate statement in her email below, *I am not requesting information regarding my constructive resignation*; I know why I constructively resigned; Zamora and Hilliard and various Board Members contributed to my near mental collapse due to inappropriate actions and constant lies.

*My letter dated August 4, 2010 requested information regarding why my performance was discussed and why I was voted off of the North of Market/ CBD Board of Directors in a closed Executive session, which is a violation of the Brown Act. Please note the difference.*

You also know what else? *Even if you can go into closed session, which you can't*

*about the performance of policy body member (aka ME),* you are still suppose to:

"prior to any closed session, a policy body shall state the general reason or reasons for the closed session, *and* shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held."

To the best of my knowledge, Hilliard's statement "I just don't feel comfortable discussing this in public" does not satiate the above requirement of the law your Board of Directors and Staff decided to violate.

Best,

Kai Wilson

---

From: [dinanomtlcbd@att.net](mailto:dinanomtlcbd@att.net)

To: [REDACTED]@hotmail.com

CC: [dint\\_ladine@yahoo.com](mailto:dint_ladine@yahoo.com); [nomtlcbd@att.net](mailto:nomtlcbd@att.net); [kmontreuil@gmail.com](mailto:kmontreuil@gmail.com); [pamcoatestl@gmail.com](mailto:pamcoatestl@gmail.com); [rhicks@tndc.org](mailto:rhicks@tndc.org)

Subject: information

Date: Wed, 17 Nov 2010 10:11:08 -0800

Kai,

We are preparing a packet of the information you requested regarding your resignation from the North of Market/Tenderloin Community Benefit District Board of Directors. You have previously received this information from us by way of being included in the list of receiving individuals on the emails.

We would like to send the packet to you by way of certified mail, please provide a mailing address. If you would prefer electronic submission of this packet, we request you give notice upon receipt of the information.

Thank You,  
Dina Hilliard

-----  
Dina Hilliard  
Associate District Manager  
North of Market/Tenderloin Community Benefit District  
134 Golden Gate Ave Suite A SF, CA 94102  
P. 415.292.4812 | F.415.292.7520  
[www.nom-tlcbd.org](http://www.nom-tlcbd.org)



"Dina"  
<dinanomtlcbd@att.net>

11/23/2010 12:42 PM

Please respond to  
<dinanomtlcbd@att.net>

To <soft@sfgov.org>

cc "Katerina Villanueva" <Katerina.Villanueva@sfgov.org>,  
"Clint Ladine" <clint\_ladine@yahoo.com>, "Elaine Zamora"  
<nomtlcbd@att.net>, "Kevin Montreuil "

bcc

Subject Regarding November 30th Hearing

Mr./Ms. Chris Rustom,

I, and other representatives from the North of Market/Tenderloin Community Benefit District, will attend the November 30<sup>th</sup> Hearing at 3:30pm in San Francisco City Hall Room 406 to continue to contest jurisdiction of the Sunshine Ordinance Task Force in the matter of Sunshine Complaint #10052.

We are a private non-profit organization. North of Market/Tenderloin Community Benefit Corporation is our legal name as filed with the California Secretary of State. I am attaching a copy of our Articles of Incorporation which clearly indicate the Corporation was not formed by a resolution of the Board of Supervisors. Therefore, according to Section 67.3 (d)(3), the Sunshine Ordinance does not apply to our Corporation, nor does the Task Force have jurisdiction in this matter.

In August 2005, the San Francisco Board of Supervisors approved Resolution 584-05 which established the boundaries of the North of Market/Tenderloin Community Benefit District. This resolution simply created the geographical boundaries of the District, it did not establish the North of Market/Tenderloin Community Benefit Corporation. According to Resolution 584-05, the exterior District boundaries were determined to be :

- O'Farrell, North side/Jones to Taylor, South side/Larkin to Mason;
- Ellis, Larkin to Mason;
- Eddy, Larkin to Mason;
- Larkin, O'Farrell to Turk (both sides);
- Turk, Larkin to Mason;
- Golden Gate Ave., Larkin to Taylor
- McAllister, Larkin to Jones
- United Nations Plaza, Hyde to Leavenworth
- Grove Street, Hyde to Market;
- Market Street, Mason to Hyde (North side only);
- Hyde, O'Farrell to McAllister;
- Leavenworth, O'Farrell, -- Market St.;
- Jones, O'Farrell -- Market St.;
- Taylor, O'Farrell -- Market St.;
- Mason, O'Farrell -- Market St.

Furthermore, in January 2006, the Board of Supervisors approved a resolution [15-06] that authorizes the North of Market/Tenderloin Community Benefit Corporation as the Owner's Association who will administer the North of Market/Tenderloin Community Benefit District. As the "Owner's Association" administering the Management District Plan for the North of Market/Tenderloin Community Benefit District, we are subject to the Ralph M. Brown Act and the California Public Records Act.

Per Section 336614.5 of the California Streets and Highways Code, Part 7- The Property and



Business Improvement District Law of 1994, "Owners' associations" means "a private entity and may not be considered a public entity for any purpose, nor may board members or staff be considered to be public officials for any purpose." Given that California State Law states the North of Market/Tenderloin Community Benefit Corporation may not be considered a public entity for any purpose, we feel the Sunshine Ordinance Task Force lacks jurisdiction in this matter.

The San Francisco City Attorney provided a training on April 28, 2010, to all San Francisco CBD's and BID's where we were given notice that we are not subject to the City Sunshine Ordinance as we do not fit the definitions of a "passive body" or "policy body" (Article II, Section 67.3 (c) and (d) as none of our members, staff, or Directors are public officials, elected officials, or city employees). We also do not fit the definition of a "department" as defined in Section 67.20. We have a Management Agreement with the City and County of San Francisco and according to Section 12.2 of our agreement, we are only subject to Sunshine Ordinance Section 67.24(e).

The work of our organization is primarily (94%) funded by property owners within our district boundaries, which totaled \$877,980 in fiscal year ending June 2010. The remainder of our funds is from grants and private donations.

Our response to the charges filed by Kai Wilson is that we are not subject to the jurisdiction of the Sunshine Ordinance Task Force. However, in the event jurisdiction is granted at the November 30<sup>th</sup> Hearing, we will be submitting the requested documents to Kai Wilson prior to the Hearing. We continue to contest jurisdiction, and the submission of the requested documents does not indicate our acknowledgment of jurisdiction by the Sunshine Ordinance Task Force in this matter.

Please contact us with any questions.

Thank you for your consideration in this matter.

**Dina Hilliard**  
Associate District Manager  
North of Market/Tenderloin Community Benefit Corporation  
134 Golden Gate Avenue, Suite A  
San Francisco, CA 94102  
(415) 292-4812

-----  
Dina Hilliard  
Associate District Manager  
North of Market/Tenderloin Community Benefit District  
134 Golden Gate Ave Suite A SF, CA 94102  
P. 415.292.4812 | F. 415.292.7520  
[www.nom-tlcbd.org](http://www.nom-tlcbd.org)

Join our [Mailing List!](#)



NOMTLCBD Articles of Incorporation.pdf BOS Resolution 584-05.pdf BOS resolution 15-06.pdf

