

Date: Dec. 1, 2009

Item No. 1

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Task Force Oct. 27, 2009**
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Completed by: Chris Rustom

Date: Nov. 24, 2009

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



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

**SUNSHINE ORDINANCE TASK FORCE  
REGULAR MEETING  
DRAFT MINUTES**

Tuesday, October 27, 2009  
4:00 p.m., City Hall, Room 408

**Task Force Members**

Seat 1	Erica Craven-Green (Vice Chair)	Seat 8	Kristin Chu
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Suzanne Manneh	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

**Call to Order** 4:03 P.M.

**Roll Call** Present: Craven-Green, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu  
Excused: Manneh, Chan (in at 6:49 p.m.), Goldman, Williams

**Agenda Changes:** Item 4 heard before Item 1, Items 13 thru 18 withdrawn; Items 33 heard after Item 3

**Deputy City Attorney:** Jerry Threet  
**Clerk:** Chris Rustom

1. Approval of minutes of September 22, 2009, regular meeting.  
  
Motion to approve minutes of September 22, 2009. ( Cauthen / Johnson )  
  
Public Comment: Peter Warfield of the Library Users Association said the minutes should not be approved because although the draft document was in the hands of the Task Force, the public had not reviewed it.  
  
Motion to continue matter to next meeting. Without objection
2. 09033 The Compliance and Amendments Committee has referred to the Task Force a recommendation that File No. 09033, Sue Cauthen v Library Commission, be forwarded to the Ethics Commission on the basis of willful failure as official misconduct by the Library Commission Chair and failure to appear at Committee meetings.

Complainant Sue Cauthen asked for a continuance because there were only six Task Force members present

Motion to continue matter to next meeting. ( Washburn / Johnson )

Public Comment: Peter Warfield of the Library Users Association said the Ordinance allows for automatic referral to an enforcement authority if certain conditions are not met. However, he supported Ms Cauthen's attempt to gain more votes at the next meeting although there was no guarantee on how many members would be in attendance.

Respondent Sue Blackman of the Library Commission said she did not want the hearing continued because she was unsure of her availability at the next meeting. She also said Commission President Jewel Gomez was unable to attend today's hearing.

On the motion:

Ayes:, Washburn, Knoebber, Johnson, Chu

Noes: Craven-Green, Knee

Recused: Cauthen

Excused: Manneh, Chan, Goldman, Williams

Motion passes

3. 09042 The Compliance and Amendments Committee has referred to the Task Force for further consideration its recommendation that the #09042 Peter Warfield v Public Library matter be referred to the Ethics Commission for failure to comply with the Order of Determination ordering the Public Library to allow Mr. Warfield to inspect and receive copies of the 50% plans for the Park Branch.

Complainant Peter Warfield of the Library Users Association said the Public Library did not provide the requested information and what was provided was not done in a timely manner.

Respondent Sue Blackman of the Library Commission said she sent a letter to the Task Force informing it that the documents would be provided to the complainant. Mr. Warfield was provided with a copy of the letter and was not notified in another manner of the respondent's intent, she said.

Mindy Linetzky of the Department of Public Works said it is not the department's policy to keep or retain design documents until it is in its final stage. She produced a copy of the 50% plans in its original size and said Mr. Warfield was welcome to have it provided he pay for the cost of reproducing the document.

Public Comment: Ray Hartz said he was familiar with Mr. Warfield's struggle and supported finding the department in violation and be referred to the Ethics Commission.

Motion finding a referral to the Ethics Commission for failure to comply with the

Order of Determination's requirement to produce the documents for inspection and copying within five days and failure to attend Committee meetings ( Cauthen / Washburn )

In rebuttal, Ms. Blackman said the Library honestly tried to comply and that it was miscommunication that caused the problem with the size of the document.

Mr. Warfield said the Library already had the 50% plans in hand when they were seeking public input and in fact the Library had the full set of plans ready in December of last year.

Motion to separate previous motion ( Cauthen / Washburn )

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes

On motion to refer the matter to the Ethics Commission for failure to comply with the Order of Determination's requirement to produce the documents for inspection and copying within five days.

Ayes:, Cauthen, Washburn, Johnson, Knee  
Noes: Craven-Green, Knoebber, Chu  
Excused: Manneh, Chan, Goldman, Williams

Motion fails

On motion to refer the matter to the Ethics Commission for violating Sections 67.21 (e) and 67.34 by failing to attend Committee meetings.

Ayes:, Craven-Green Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes

4. 09044 The Compliance and Amendments Committee has referred to the Task Force a recommendation that File No. 09044, Peter Warfield v Board of Appeals, be forwarded to the Ethics Commission for failure to comply with the Order of Determination regarding email addresses and failure to appear at Committee meetings.

Chair Knee asked Complainant Peter Warfield if he would object to a continuance because Board of Appeals Executive Director Cynthia Goldstein was out of town and was not informed of the meeting till Friday. Mr. Warfield objected saying that the department has competent staff who could address the matter. He also reminded the Task Force that the department had not attended previous meetings.

Victor Pacheco, legal assistant to the Board of Appeals, said only Ms.

Goldstein was knowledgeable on the issue because she was the policy-maker.

Member Craven-Green said Ms. Goldstein needs to address the Task Force and say why she was not going to follow the Order of Determination.

Motion to continue matter to next meeting ( Chu / Washburn )

Public comment: None

On the motion:

Ayes: Craven-Green, Washburn, Knoebber, Chu

Noes: Cauthen, Johnson, Knee

Excused: Manneh, Chan, Goldman, Williams

Motion passes

5. 09051 Determination of jurisdiction on complaint filed by Marilyn Mollinedo against the Zoological Society for allegedly withholding meeting information.

Motion to find jurisdiction ( Knoebber / Chu )

Public Comment: David Pilpel said the documents presented in this matter do not distinguish whether this complaint should be handled under the Ordinance or under Admin Code 12L.

Complainant Marilyn Mollinedo said jurisdiction is applicable because the Zoological Society has to report once a month to the Department of Recreation and Park and by that is in de facto a City agency.

Respondent Edward Pool, a member of the Zoological Society's Board of Directors, said his organization is a non-profit and not connected to any City department. He said it is also not a policy-making body and advisory body like the Joint Zoo Committee. He said the Admin Code provisions apply only to contracts executed or amended after 1998. The lease and management agreement the Society has with the City dates back to 1993 and has not been amended since, he said. On records, it is limited to financial and not the minutes.

Public Comment: None.

DCA Threet said he requested and was not provided with the Society's detailed analysis on jurisdiction. He also said jurisdiction could be found if the Public Records Act was applied as it was in 1993.

Member Craven Green said jurisdiction can be found because provisions in the lease state that minutes will be kept and that the documents are public documents.

In rebuttal, the respondent said the disclosure of Executive Committee minutes would prevent the Society from having a well debated and beneficial meeting

and that the lease does not provide for releasing of those documents.

The complainant said Michael Rosco of the Society had come before the Task Force in another case and had said that the Society fully supported the Task Force jurisdiction, supported open government and took Sunshine matters seriously. She said the Executive Committee is described in Society documentation as a as-needed decision-making body when the entire board is not available.

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes

6. 09051 Hearing on complaint filed by Marilyn Mollinedo against the Zoological Society for allegedly withholding meeting information

Complainant Marilyn Mollinedo said the Executive Committee minutes are part of the decision making process of the committee. She also said the one meeting they hold every year is open only to the membership and not to the public. She added that the Society has received over \$65 million in public monies since 1993 puts it in the same league as any other non-profit organization.

Respondent Edward Pool said he believes that the Society is in full agreement with the lease agreement. The Joint Zoo Committee has open meetings and it is noticed to the public. He said the Society has one open meeting a year and it is noticed to the public. All documents related to the joint committee are available to the public, he added. David Pilpel said the Task Force needs to determine whether the Ordinance or 12-L applies to this matter because of the complicated nature of the Society and the City. Contract interpretation was needed to solve this issue, he said. He suggested asking the complainant to go through the 12L process and seek more information on the lease agreement.

Member Craven-Green said the issue before the Task Force is the minutes of the meetings. The documents are public records under the lease. The lease agreement says that all records the Society decides to create are public records.

Member Washburn said if the Executive Committee can make decisions for the boards it then becomes a policy-making body and therefore subject to the Sunshine Ordinance.

Chair Knee said release of the minutes would prohibit an open and frank conversation is a bogus argument. The requirements for closed door sessions are defined in the Brown Act and the Sunshine Ordinance, he said.

Public Comment: Louie Dillion said he concurs with the Task Force on the

matter before them.

In closing, Mr. Pool said the lease provides for the minutes of the Board of Directors meetings and the Task Force is, by extension, is reaching out to the Executive Committee meeting. By forcing an organization not to create minutes, the Task Force is forcing an organization not to maintain its institutional memory.

Ms. Mollinedo said she is shocked to hear that the Society wants to conduct its business in secret. The Society needs to review the Internal Revenue Service requirements for a non-profit because they stand to lose their status with their argument.

Motion to find violation of Sec. 67.21 for failure to produce requested minutes which pursuant to the Zoological Society's lease agreement are public records that must be released. This order is not only consistent with the lease terms, and prior orders of Determination of the Sunshine Ordinance Task Force and also by past admissions of the Zoological Society that they are required to comply with the Sunshine Ordinance requirements with respect to public records. ( Craven-Green / Knoebber )

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes. Forwarded to Compliance and Amendments Committee hearing on Nov. 10, 2009.

7. 09053 Determination of jurisdiction on complaint filed by Louis Dillon against the Department of Recreation and Park for alleged deception.

Motion to find jurisdiction ( Knoebber / Chu )

Public Comment: None

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes

8. 09053 Hearing on complaint filed by Louis Dillon against the Department of Recreation and Park for alleged deception.

Complainant Louis Dillon said the complaint was filed after viewing that the meeting information posted in the City Hall foyer and on the department's agendas differed. This shows that the department wants to make decisions behind the public's back, he added.

Respondent Olive Gong of the Department of Recreation and Park said the

meeting information provided in the foyer was not provided by the department. It was an error made by the City Hall management, she said. The correct time was posted on the agenda and all notices that went out had the same meeting time and place, she added.

Public Comment: David Pilpel said the listing of meetings in City Hall does not fall under the Sunshine Ordinance and the Brown Act. Therefore, he said, there was no violation.

In closing, Mr. Dillon said the Task Force should consider the fact that the public could pass through City Hall and be interested in attending the open government meeting only to find out that it was not being held at the time it was supposed to. He also said the City Hall management staff told him that the times and room numbers were provided by the department.

No motion was made. Matter concluded. No further action.

9. 09056 Determination of jurisdiction on complaint filed by Peter Warfield against the Clerk of the Board of Supervisors for alleged unlawful and unjustified redaction of documents.

Motion to find jurisdiction ( Knoebber / Cauthen )

Public Comment: None

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Knee  
Excused: Manneh, Chan, Goldman, Williams

Motion passes

10. 09056 Hearing on complaint filed by Peter Warfield against the Clerk of the Board of Supervisors for alleged unlawful and unjustified redaction of documents.

Complainant Peter Warfield of the Library Users Association said he requested copies of letters of support and opposition to a particular legislation and found that emails and home addresses were redacted. No explanation for each redaction was provided as required by the Ordinance, he said. He then read the Clerk's redaction policy as appeared in the agenda packet and also from the Order of Determination issued in the #09044\_Peter Warfield v Board of Appeals case. The Clerk's action, he said, was in violation of the law.

Respondent Rick Caldeira, Legislative Deputy Director of the Clerk of the Board's Office, said staff have been redacting according to current office policy which is currently under review. An update is expected within the next month, he said. The reason the Clerk pursued the current policy, he said, is because a person's personal information has a privacy dimension and they should not give up their privacy as a price for serving or contacting the government.

Member Cauthen said when a member of the public writes to the public they



have waived their right to privacy.

Member Craven-Green was told by Mr. Caldeira that street addresses, phone numbers and email addresses were redacted under the current policy.

Member Craven-Green said each redacted document has to be looked at on an individual basis and the Task Force cannot take a blanket position. In this case, she said, it was about legislation and the names and addresses need to be revealed because of the nature of the category.

She said there was a an argument to be made that individual home telephone numbers could be redacted if that individual is not acting as a representative of an organization or the owner of a business. Email addresses and home and fax addresses need not be redacted, she said, because they do not pose the kind of intrusion a telephone call poses.

Public Comment: David Pilpel said the redaction policy currently maintained by the Clerk's Office should be maintained because should there be a contentious legislative matter, harm can be caused through the release of an individual's address. The name, though, should not be redacted, he added.

In conclusion, Mr. Warfield said the law does not support the redaction that had taken place. The review of its policy suggests that the Clerk knows that as well, he said. The law does allow for the redaction of certain types of information, but not personal contact information, he said.

Motion to find violation of Sections 67.21 (a) and 67.21 (g) for redacting contact information. The matter is referred to the Compliance and Amendments Committee on Nov. 10, 2009. ( Washburn / Cauthen )

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

11. 09057 Determination of jurisdiction on complaint filed by Peter Warfield against the Clerk of the Board of Supervisors for alleged unlawful and unjustified redaction of a committee's contact information.

Motion to find jurisdiction ( Knoebber / Chu )

Public Comment: David Pilpel pointed out an error in the agenda.

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

12. 09057 Hearing on complaint filed by Peter Warfield against the Clerk of the Board of Supervisors for alleged unlawful and unjustified redaction of a committee's contact information

Complainant Peter Warfield said he approached the Clerk's Office following the issuance of the Order of Determination in the #09044\_Peter Warfield v Board of Appeals case. He said he wanted to see the current membership of the Library Citizens Advisory Committee and was asked to return after three hours so that redactions could be made. This caused an unnecessary delay to review the file and thus violated the Sunshine Ordinance's promptness requirement. When he asked for the contact information, the document was redacted with correction tape and no explanation was provided. People have plenty of time to decide on what kind of information they would like to give out and withhold, he said. Identity theft happens on a large scale involving spammers and not on a singular level, he added.

Respondent Rick Caldeira, Legislative Deputy Director of the Clerk of the Board's Office, said he has no additional information to add only that in this instance a line should have been drawn to show where in the document the redaction had happened. This is the policy until a new one is issued next month, he said.

Public Comment: None

In conclusion, Mr. Warfield said the violation through the use of correction tape should be mentioned in the Order of Determination because an individual needs to know when they are getting a copy of an original document and when they are not. And, he said, a short delay by a department can cause an enormous problem for an individual who has to travel to and from City Hall to get a document.

Member Craven-Green said when a person volunteers to serve in the public domain, he or she is giving up privacy rights that a private citizen may enjoy. That individual, who may choose to serve on policy-making bodies or passive bodies, may choose to open a Google account and a Post Box to avoid giving out his or her contact information.

Motion to find violation of Sections 67.21 (a) and 67.21 (b) for failure to provide records for inspection or review on a timely basis and also for making impermissible redactions. ( Knee / Johnson )

On the motion:

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes. The matter is referred to the Compliance and Amendments Committee.

13. 09058 Determination of jurisdiction on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in File No. 090717.  
Withdrawn
14. 09058 Hearing on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in File No. 090717.  
Withdrawn
15. 09059 Determination of jurisdiction on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in Board File No. 050990.  
Withdrawn
16. 09059 Hearing on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in Board File No. 050990.  
Withdrawn
17. 09060 Determination of jurisdiction on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in Board File No. 080756.  
Withdrawn
18. 09060 Hearing on complaint filed by Anmarie Mabbutt against the Clerk of the Board of Supervisors for alleged inaccuracies in Board File No. 080756.  
Withdrawn
19. 09061 Determination of jurisdiction on complaint filed by Alvin Xex against the Human Services Agency for allegedly not providing data related to the stimulus fund.  
Motion to find jurisdiction ( Knoebber / Chu )  
Public Comment: None  
On the motion:  
Ayes:, Craven-Green, Washburn, Knoebber, Johnson, Chu, Chan, Knee  
Excused: Cauthen, Manneh, Goldman, Williams  
Motion passes
20. 09061 Hearing on complaint filed by Alvin Xex against the Human Services Agency for allegedly not providing data related to the stimulus fund.  
Complainant Alvin Xex said Pamela Tebo, Custodian of Records for the Human Services Agency, did not respond to his emails.

No one was in the audience was present to speak on behalf and in support of the respondent.

To Member Craven-Green, Mr. Xex said one of the questions he had was because the agency has a bilingual program and he wanted to know what other languages besides Cantonese, Mandarin and Spanish are used and who decides which language falls under the term "bilingual."

Member Craven-Green said Mr. Xex was asking for legal justification over a department's policy. Under Sunshine, she said, a department is not required to provide a written explanation. The department has to provide the document only if it exists, she said.

Chair Knee told Mr. Xex that he needs to produce some proof of the document's existence.

Public Comment: David Pilpel said no violation should be found because the agency has provided with all requested information.

In conclusion, Mr. Xex said he hopes the Task Force understands the effect of preferences in hiring people.

Motion to find no violation ( Craven-Green / Knoebber )

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

21. 09062 Determination of jurisdiction on complaint filed by Debra Benedict against the Department of Public Health for allegedly violating 12L requirements by not holding public meetings.

Motion to find jurisdiction ( Knoebber / Chu )

Public Comment: David Pilpel said it is not clear from the public documents that the department has exhausted the 12L process.

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

22. 09062 Hearing on complaint filed by Debra Benedict against the Department of Public Health for allegedly violating 12L requirements by not holding public meetings.

Complainant was not present and was not represented.

Respondent Jonathan Vernick of Baker Places said the non-profit was not in compliance in 2008 but has since been in compliance with the Ordinance.

Public Comment: None

No concluding remarks were made.

No motion was presented. Matter concluded. No further action

23. 09063 Determination of jurisdiction on complaint filed by Alvin Xex against the Human Services Agency for allegedly not providing data related to the stimulus fund job postings.

Motion to table item ( Knee / Craven-Green )

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

24. 09063 Hearing on complaint filed by Alvin Xex against the Human Services Agency for allegedly not providing data related to the stimulus fund job postings.

Motion to table item ( Knee / Craven-Green )

Ayes:, Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Knee

Excused: Manneh, Goldman, Williams

Motion passes

25. 09064 Determination of jurisdiction on complaint filed by Alvin Xex against the Economic Opportunity Council of San Francisco for allegedly withholding information.

Motion to find jurisdiction ( Knoebber / Chu )

Public Comment: David Pilpel said this is a 12L matter and requires the necessary process.

Laurel Kloomok of First 5 SF said she was working with the Economic Opportunity Council of San Francisco to get the documents that Mr. Xex wants.

Motion withdrawn.

No further action required.

26. 09064 Hearing on complaint filed by Alvin Xex against the Economic Opportunity

Council of San Francisco for allegedly withholding information.

See above.

27. Ethics Commission proposed rules on handling Sunshine complaints.

Members said they required more time to review the document.

Continued to next meeting.

28. Report: Complaint Committee: meeting of October 13, 2009. (Nick Goldman)

Committee Member Knoebber made the report.

29. Report: Compliance and Amendments Committee: meeting of October 13, 2009. (Erica Craven-Green)

Committee Chair Erica Craven-Green made the report.

30. Report: Education, Outreach and Training Committee meeting of October 8, 2009. (Sue Cauthen)

Committee Chair Sue Cauthen and Member Johnson jointly made the report.

31. Proposal to cancel the Task Force's regular meetings of November 24, 2009, and December 22, 2009, and schedule special meetings on December 1, 2009, and January 5, 2010

Members agreed.

32. Administrator's Report.

Mr. Rustom made the report.

33. Public comment for items not listed on the agenda.

Ray Hartz said he was misled by representatives of the Police Department and Police Commission because they came before the Task Force and showed printouts of what the Index of Records would look like. But what they have posted as Index is their document retention and destruction schedules, he said. He also said he has created a presentation about his Sunshine experience and would be showing it to the Board of Supervisors three minutes at a time. A City employee wanted to know how the Task Force could vote on a motion when it was not properly calendared. Louis Dillion said there has been a fundamental change in which government is no longer serving the people but dictating to the people. David Pilpel said he is looking forward to the annual Supervisor of Records report and suggested having a pdf copy of the entire agenda packet made available online. Peter Warfield agreed with Mr. Pilpel and added that the inside secret to supporting documents was to click on the item numbers that have a different color. He also said the packet should

be changed to have the complain presented first..

34. Announcements, comments, questions, and future agenda items from the Task Force:

Adjournment:

The meeting was adjourned at 8:50 p.m.

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

