

Date: Dec. 2, 2008

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force for October 28, 2008**
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Completed by: Chris Rustom

Date: Nov. 21, 2008

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

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

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

Sunshine Ordinance Task Force



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

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

**SUNSHINE ORDINANCE TASK FORCE
DRAFT MINUTES**

Tuesday, October 28, 2008
4:00 p.m., City Hall, Room 408

Task Force Members

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

Call to Order The meeting was called to order at: 4:00 P.M.

Roll Call **Present:** Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Goldman, Williams, Sklar

Agenda Changes: Item 14 heard before Item 5.

Deputy City Attorney: Ernie Llorente
Administrator: Chris Rustom

1. Approval of minutes of September 23, 2008, meeting.

Public Comment: None

Motion to approve the minutes of August 26, 2008 (Goldman / Washburn)

Ayes: Craven, Knee, Cauthen, Washburn, Johnson, Knoebber, Chu, Chan, Goldman, Williams

2. 08046 Determination of jurisdiction of complaint filed by Karl Beale against the Recreation and Park Department and the Public Library for incomplete information.

Members Cauthen and Knoebber asked to be recused because of various associations with the parties involved.

The Task Force by a majority voted in favor for the reclusals.

Motion in favor of jurisdiction. (Goldman / Knee)

Ayes: Craven, Knee, Washburn, Johnson, Chu, Chan, Goldman, Williams

Recused: Cauthen, Knoebber

- a Public Hearing: complaint filed by Karl Beale against the Recreation and Park Department and the Public Library for incomplete information.

Complainant Karl Beale said he filed the complaint against the two departments for failure to adequately provide public notice for the three North Beach Master Plan meetings. He said the first two notices were similar. The third, he said, contained additional information. However, what was not mentioned was Rec & Park's General Manager Yomi Agunbiade's letter to the Library Commission sent 11 days earlier that said the closure of Mason Street was seen by both departments as critical to the plan. Closing Mason would affect the neighborhood, he said as it was also the last unobstructed two-way street in North Beach that connected the city to Fisherman's Warf. MTA data showed that over 6,000 cars use it daily and at least 500 were counted using it hourly, he said. The notice should have mentioned the closure because of the impact it would have on residents and others alike, he added.

Respondent Mindy Linetzky of the Branch Library Improvement Program said the August 18, 2008, gathering was not a public meeting and not a public hearing. It was a community forum where no decisions were made and no formal action was taken. A presentation was made and the public was asked for their opinion. The events were planned because the two departments wanted the public to participate in the process for the new playground and new library. The two departments further held and properly noticed their September official meetings. The fliers announcing the gathering was translated into Spanish and Chinese. It was also mailed to over 400 people including neighborhood groups and hundreds were passed out. City staff and the public shared ideas at the event, which was well attended and no laws were broken, she said.

Dawn Kamalanathan, Planning Director for the Recreation and Park Department, said she was available for questions and comment as Karen Mauney-Brodek, who spoke during the Complaint Committee hearing, was not available.

Member Johnson wanted to know when was the Mason Street closure announced and by whom.

Mr Beale said it was announced during the August 18, 2008, event and a city representative made the announcement. He also said in response to Member Knee's query that the flyer was not adequate noticing of the possible closure of Mason Street.

Mr Beale, in rebuttal, said he attended a Rec and Park Commission meeting where officials from both departments misstated that there was a consensus in supporting the idea. The community, he said, was not able to participate in the process.

Member Craven said even though Section 67.7-1 applies there was no violation because the noticing was sufficient and final decisions were not made at the gatherings.

Member Knee said the meetings were well noticed by the two departments and agreed with the respondent that the meeting requirements and noticing requirements differ.

Public Comment: Ray Hartz said people should be notified if city representatives are acting in their official positions on matters concerning the city in a public setting. To say that it is not technically a meeting is disingenuous, he said. Kimo Crossman said he believes that it was a passive meeting that was funded by city money and attended by city officials. He urged finding a violation on the noticing. He also wanted a letter sent to the departments asking them to improve the quality of their agenda items. Allen Grossman said the departments should have done a better job even though it was not required. Failure to put in the notice that the closure was a distinct part of the plan was a form of deception, he added. Peter Witt said the possibility of the street's closure is troubling because Mason Street is a major route for taxis serving tourists. The business community should have been notified, he said, because the impact would affect businesses in the area.

Motion to find no violation (Goldman / Knee)

Member Washburn made a friendly amendment that encouraged the departments to anticipate a community's interest and include it in future community notices.

Members Goldman and Knee agreed.

On the motion:

Ayes: Craven, Knee, Washburn, Johnson, Chu, Chan, Goldman

Noes: Williams

Recused: Cauthen, Knoebber

- 3 08040 Hearing to consider the appeal filed by Eula Walters on the September 23, 2008, Order of Determination issued by the Task Force against the Recreation and Parks Commission.

Appellant Eula Walters said the Task Force did not discuss the commission's failure to check facts provided by Ms Ernestine Weiss, the proposed recipient of a plaque. She said the claims made by Ms Weiss were untrue. Most of the items in her list of accomplishments had nothing to do with the park and the commission accepted it without checking it.

Member Craven said she appreciated Ms Walters coming to the Task Force and raising the issues but the Task Force does not have jurisdiction over the issues she was raising.

Member Cauthen said the Task Force does not have the authority to rule on Ms Weiss' accomplishments.

Member Williams urged Ms Walters to go back to the commission and get the information from them or ask for help from her district supervisor.

No motion was presented.

- 4 08039 Determination of jurisdiction of complaint filed by Allen Grossman against the City Attorney's Office for alleged failure to provide requested records.

Motion to find jurisdiction (Goldman / Cauthen)

Allen Grossman said Mr Llorente has been assigned to the Task Force for seven years and is its legal counsel and advocate. Mr Grossman said he has taken issue with many of the positions of the City Attorney's Office because Mr Llorente does not advocate for the Task Force. Because of that there were basic disagreements between him and Mr Llorente. Mr Grossman said he had asked Mr Llorente to recuse himself in this case but has yet to respond. Mr Grossman said since City Attorney Dennis Herrera has said Mr Llorente works for the City Attorney's Office the deputy city attorney could not be objective when he was concerned. His letter to Task Force Chair Kristin Chu detailed specific reasons why Mr Llorente harbored animosity toward him, he said.

Member Craven said Mr Llorente's recusal was not necessary and noted that the deputy city attorney had disagreed with a number of positions taken by the City Attorney's Office on a number of occasions. In a perfect situation, she said, the Task Force would have an independent lawyer, but such was not the case.

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Goldman, Williams

- a. Public Hearing, complaint filed by Allen Grossman against the City Attorney's Office for alleged failure to provide requested records.

Complainant Allen Grossman said his complaint was filed because the City Attorney has undisclosed public records related to DCA Paul Zarefsky's February 2007 letter to the Task Force. He claimed that the documents were not subject to disclosure because it was subject to the work-product doctrine. The case, he said, is whether the work-product exemption applies to the records under Section 67.24 (b) (1). The City Attorney, he said, believes that everything they do is legal related and has to contain some work-product. That is incorrect, he said, because the concept of work-product has to include a client, Mr Zarefsky did not have a client. He produced the document as a business record. On exemption, he said the suggestion that Section 67.24 (b) (1) (iii) does not apply to these records because the work-product doctrine is not mentioned specifically is strange. He also mentioned the outcome of a March 2007 case when the Task Force decided that these sections prevail

over applicable state law.

Respondent Virginia Dario Elizondo of the City Attorney's Office said she is a member of the Government Team and had reviewed Mr Grossman's complaint. She said the communications and drafts pertaining to the letter are work-product related because they are the thoughts, impressions and thoughts of an attorney's work-product. She handed out a document that explained how City Attorney opinions are issued.

Member Craven explained to members the issues related to the section as well as how Task Force decisions were reached in other cases that cited this section. Members then discussed the case.

In rebuttal, Ms Dario Elizondo said she had nothing more to add because she had stated the department's position.

Mr Grossman said the earlier handout was posted on the city's website and was there because of the outcome of a complaint he had filed. He said he doesn't need to be told how a law office works and what he should expect to get or not get. He then proceeded to read Section 67.24 (b) (1) (iii) and said that if those drafts were a partial analysis and if there was a communication between the person who drafted the document and another member of the City Attorney's Office two deputy city attorneys then the general language in the section covered it. He also quoted 67.24 (a).

Member Craven explained the exceptions of Section 67.24 (a).to members.

Several Task Force members had praise for all the attorneys involved in the case and admitted that it was a complicated issue.

Member Goldman said the work-product doctrine applied in this case and was surprised that Mr Grossman, an attorney, would go to the City Attorney and ask for a work-product.

Motion to find no violation.(Goldman / Knoebber)

Public Comment: Kimo Crossman said there has been a confusion about what Section 67.24 (a) (1) says about drafts and believed Member Craven had misread it. Drafts, he said, are not exempt under Section 67.21 (l). There was also public interest in the documents and should be disclosed, he added. Ray Hartz said the letter was to the Task Force, hence its client and if a client waives its privilege, the attorney has to release the document. The Task Force, he said, should make use of this opportunity so that other departments can use it as an example. Peter Warfield said there shouldn't be a problem in looking at work-product or any potion to what went on with regard to the process. He said the document or documents would let citizens see the real inside workings of the City Attorney's Office.

Member Craven reminded members that the Task Force was not the client in the case but rather the letter was an opinion by the City Attorney's Office. Mr

Grossman was asked to explain. Mr Grossman said he had written a letter to the Task Force regarding the role of the City Attorney in ghost-writing letters for department heads that contained copious legal analysis. Mr Zarefsky, he said, chose to write his client to inform the Task Force what the real issues were.

Members continued to discuss the issue and later voted on the motion.

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Chu, Chan, Goldman

Noes: Johnson, Williams

- 5 08047 Determination of jurisdiction of complaint filed by Peter Witt against the Taxi Commission for not including his 150-word public comment summary in the minutes

Motion to find jurisdiction (Goldman / Cauthen)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Goldman, Williams

Excused: Chan

- a. Public Hearing, complaint filed by Peter Witt against the Taxi Commission for not including his 150-word public comment summary in the minutes.

Complainant Peter Witt said the Taxi Commission should act independently in the interest of serving the public. The commission, he said, is a quasi-adjudicated government body that directly affects the lives of thousands of drivers and hundreds of thousands of customers and its actions should be a grave and immediate concern to the Task Force. He then asked for a continuance so that Jordanna Thigpen, the commission's executive director, could appear before the Task Force.

Member Craven said a continuance was not necessary because the Task Force had already received Ms Thigpen's response.

Member Knoebber said that Section 67.16 is clear on the requirement.

Mr Witt in rebuttal said he started submitting 150-word statements as soon as he heard that it was permitted and red flags went up in his mind when the practice stopped. He added that the Task Force had ordered Ms Thigpen to include the 150 word statements at an earlier hearing. He added that the surveys that he has submitted was at the center of the issue. He did not elaborate.

Motion to find violation of 67.16 (Craven / Cauthen)

Public Comment: Kimo Crossman said he was disturbed by Member Chu's obsession for efficiency over justice. Peter Warfiled said the Task Force should strongly condemn the commission for stating that it has a policy to violate the law. Ray Hartz said the departments should respond only to the complaint and

not include other comment.

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Goldman, Williams

Excused: Chan

Member Chu referred case to the Compliance and Amendments Committee

- 6 08048 Determination of jurisdiction of complaint filed by Anonymous Tenants against the Building Inspection Department for alleged failure to provide requested records.

Withdrawn 10/27/08

- a. Public Hearing, complaint filed by Anonymous Tenants against the Building Inspection Department for alleged failure to provide requested records.

Withdrawn 10/27/08

- 7 Report: Compliance and Amendments Committee meeting of October 8, 2008.

Compliance and Amendments Committee Chair Richard Knee gave the report.

Doug Comstock to be added to committee's mailing list.

Public Comment: Kimo Crossman said the CAC should concentrate on creating an email policy for the Task Force administrator first and then use it as a model for other departments to follow.

- 8 Report: Education Outreach and Training Committee: meeting of October 9, 2008.

Education Outreach and Training Committee members each gave a partial report.

Public Comment: Kimo Crossman said Supervisor Aaron Peskin's issue was not resolved because the office sent an intern, not a paid staff member, who refused to say that the office would comply. He also said Task Force members should listen to the September 11, 2008, EOT meeting tape because negative comments were made during the meeting. Ray Hartz said Supervisor Peskin needs to respond in writing as to what he would do in the future. He also said city officials need to cut their speeches and give the public more time to express themselves. Peter Warfield said the Task Force should have a snack break or bathroom break during so that the public can follow the meetings without interruption.

9. Allocation of the Deputy City Attorney's Time.

DCA Llorente said City Attorney Dennis Herrera has allocated 350 hours for

the Task Force for fiscal year 2009. He said he was a fulltime litigator on the Code Enforcement Team when he was additionally assigned to the Task Force as an advising attorney. He had dedicated 25 percent of his time then to the Task Force. He said the current 350 hours breaks down to a little less than 30 hours a month and looking back at work he had done since July of this year, he has approximately spent the same number of hours every month. The Task Force would have to prioritize what it wanted from him, he said. He added that he is now on the Workers Compensation Appeals Board.

To Member Craven, he said his workload had consistently been in the 30-40 hour range but at one point it shot up to 60 hours a month.

To Member Knee he said that he did not see a reduction in his workload because the numbers were about the same provided that there weren't any big assignments like the one he was asked to do on the legislative intent on a particular code section.

On the email that he sent to Member Chu and Member Craven, DCA Llorente said he would have to approach Therese Stewart, his supervising attorney, if the Task Force made a request for a research paper or opinion to discuss how to get it done. He said they had teamed up before to do a research memo for the Task Force.

To Member Goldman he said he could save time by leaving the meeting when the Task Force reached a section of the agenda that dealt only with administrative issues and did not need his advice.

Chair Chu said she, Member Craven and DCA Llorente would meet separately to further explore the issue so that should the need arise they could present Ms Stewart with the data and request for more time allocation. She also asked committees to state their legal needs.

Public Comment: Kimo Crossman recalled that there was a long battle to get a fulltime administrator for the Task Force. He also asked why DCA Llorente is also working elsewhere when the Ordinance calls for an attorney to work solely for the Task Force. The deputy city attorney, he said, is doing the easy things and not the opinions that the Task Force wants. Ray Hartz said the allocation numbers drop down to seven hours a week if the deputy city attorney takes his regular vacation time. He said the Task Force, and not the deputy city attorney, should go to his supervisor and ask for additional commitment time to use when needed. He suggested the deputy city attorney provide the chair with a weekly report that includes the hours he spent that week on Task Force business and what specific projects were included in those tasks. Peter Warfield said the Task Force is being shoved under water by the City Attorney when it tries to come up for air because although the Ordinance says an attorney is to be provided his hours are being limited. He added that it was incumbent upon the Task Force to draw a line because with the current economic crisis, the City Attorney could limit the deputy city attorney's time to two hours every month.

10

Discussion on Task Force Initiatives and creation of Ad Hoc committee.

Chair Chu said she was very frustrated with what happened with the Task Force when her term ended the last time. A lot, she said, had to do with the Ethics Commission and its enforcement process. Having to listen to the public's response and feeling that the Task Force could not deliver much was very troublesome, she said..

Chair Chu said she is forming the Electronic Records Ad Hoc Committee at the recommendation of the Compliance and Amendments Committee.

Member Goldman said the Task Force needs to deputize members of the public who are technologically savvy and wanted to participate.

Members Allyson, Knee, Craven volunteered to participate.

Public Comment: Kimo Crossman said looking at the statistics compiled by Chair Chu, the issue is enforcement and not outreach because city departments know what to do. He wanted the number of times found in favor of the complainant added to the statistics so that it would reflect that the person was not filing frivolous complaints. Ray Hartz said his experience has shown that the best way to get somebody to do something is to get them to want to do it. The ad hoc committee could use that as a guideline and tell departments to post their documents online because it removes the need for city employees to search and print while wasting ink, paper and time. If a report is 40 pages long, he said, he would only be printing the pages he needed at home and not have the department print all 40 pages. Peter Warfield said he was the most frequent filer and winner during 20002 and 2004 and had hardly filed since . The Task Force should contact all complainants to see if they had lost faith in the Task Force, did they find other ways to achieve their goal or did they get excellent results from the committee. He added that a follow up was needed.

11

Discussion on Complaint Committee's recommendation to change its monthly meeting time on second Tuesday of the month at 4 p.m. to 3:30 p.m.

This item was heard together with Item 12.

Members agreed to move the meetings to the recommended days and times.

Motion to move Compliance and Amendments Committee's meeting to 4 p.m. on the second Tuesday of the month and to move Complaint Committee to 3:30 p.m. on the second Tuesday of the month. (Craven / Goldman)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Goldman, Williams

Excused: Chan

12

Discussion on Compliance and Amendments Committee's recommendation to change its monthly meeting from second Wednesday of the month at 4:00

p.m. to second Tuesday of the month with no change in meeting time.

See Item 11.

13 Administrator's Report.

Asst. Administrator Chris Rustom made the report.

14 Public comment for items not listed on the agenda.

Ray Hartz said the draft document mentioned in #08039_ Allen Grossman v City Attorney's Office may reveal the relationship between the City Attorney and the Task Force. If for example Mr Llorente was told to write an opinion and his supervisor told him to change it the Task Force would be getting not Mr Llorente's view but that of his superiors. Allowing for the release of the draft document would reveal Mr Llorente's fairness in dealing with the Task Force, he said. He also said he would be asking for Mr Llorente's timesheets to see what percent of his time is devoted to the Task Force. Chair Chu told Mr Hartz that allocation of Mr Llorente's time was to be discussed later in the evening. Mr Kimo Crossman said it was Mr Llorente's sole responsibility to advise the Task Force. He said members should listen to the tapes of the last two EOT meetings. He also disagreed with certain aspects of the hearings and its procedures. Mr Grossman wanted to know what standard the Task Force would use to determine when the deputy city attorney was going to be recused or not. Any doubt, he said, should be resolved in favor of the complainant. He also said he had noticed over a period of three years that the Task Force was marginalizing itself because anybody who appeared before the body with clear-cut legal issues was not heard out. He noted that he does not get the chance to respond when Member Craven's expresses herself during the hearings. Peter Witt said he sent an email to the Task Force on June 10, 2008, regarding the #08020_Peter Witt v. Taxi Commission Order of Determination and had yet to receive a response. The letter, he said, listed 10 complaints and more have been added since. He wanted direction as to where he should go to get it resolved.

15 Announcements, questions, and future agenda items from the Task Force.

Chair Chu announced that the November 25, 2008, meeting was being moved to December 2, 2008., and the December meeting date to be agendized.

Adjournment

The meeting was adjourned at 8 p.m.

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

