

Date: Dec. 2, 2008

Item No. 3
File No. 08045

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Determination of jurisdiction on complaint filed by Barry
- Taranto against the Municipal Transportation Authority for
- failure to provide an equal amount of speaking time during a
- public comment session
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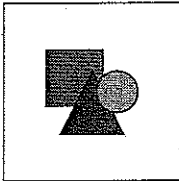
Completed by: Chris Rustom

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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

November 24, 2008

BARRY TARANTO v. MUNICIPAL TRANSPORTATION AGENCY (08045)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On August 19, 2008, Complainant Barry Taranto attended the Municipal Transportation Agency Commission ("MTA") meeting and at the beginning of the public comment section of the meeting, Barry Taranto alleges that the president of the MTA allowed Irwin Lum, president of the Muni Drivers Union to read a statement that took between 4 to 5 minutes to present. Everyone else was restricted to a maximum of two minutes during the public comment period.

COMPLAINANT FILES COMPLAINT:

On August 19, 2008, Barry Taranto filed a complaint against the MTA alleging violations of the Sunshine Ordinance.

MTA'S RESPONSE

On August 26, 2008, Tom Nolan, the Vice Chair of the MTA wrote to Kristen Chu, Chair of the Task Force and stated that he chaired the August 19, 2008 meeting of the MTA and he did allow Irwin Lum to speak longer than the other speakers during the public comment period. He admits to his violation of the public meeting laws. On October 14, 2008, the MTA Commission Secretary, Roberta Boomer appeared before the Complaint Committee to stipulate to Task Force Jurisdiction and to admit that the MTA violated the Public Comment provisions of 67.15 of the Ordinance and was changing its procedures to assure that this violation would not happen again. However, Barry Taranto did not appear for the hearing and the case was continued to the November meeting. On November 12, 2008, Commission Secretary Boomer again appeared for the hearing but Barry Taranto did not appear. The Complaint Committee decided that the matter should be forwarded to the full Task Force for hearing on the complaint.

Memorandum

APPLICABLE STATUTORY SECTION;

I. Sunshine Ordinance Section 67.15 which deals with Public Testimony

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

- The MTA had public meetings on the date stated by the complainant.
- The MTA by its admission allowed one public speaker to speak longer than other public speakers.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- none. The Task Force has to decide the appropriate action following the Commission's admission of its violation of 67.15 of the Ordinance.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

none

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum
ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.15 of the San Francisco Administrative Code provides for public testimony as follows:

a.) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

b.) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

c.) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.



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 Municipal Transportation Agency

Name of individual contacted at Department or Commission President Tom Nolan

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting Tuesday, August 19, 2008

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.

At the beginning of public comment for the Executive Director's Report, the president of the MTA Board of Directors allowed Irwin Lum, president of the Muni drivers union, to read a statement that took between four and five minutes to present. Everyone else was restricted to a maximum of two minutes during this public comment period.

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)¹
 Name BARRY TARANTO Address _____, San Francisco 94114

Telephone No. 415- _____ E-Mail Address _____

Date Aug. 19, 2008 Barry K. Taranto
 Signature

I request confidentiality of my personal information. yes no

¹ 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).



"Boomer, Roberta"
<Roberta.Boomer@sfmta.com>

08/29/2008 12:24 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject Response to SOTF Complaint #08045

Dear Chris:

Attached please find the response to the complaint filed by Barry Taranto (#08045). Please let me know if there is anything else you require.

Have a great weekend,

Roberta Boomer
Secretary, SFMTA Board of Directors and



Parking Authority Commission 20080829111650490.pdf

August 26, 2008

Gavin Newsom | Mayor

Rev. Dr. James McCray Jr. | Chairman

Tom Nolan | Vice-Chairman

Cameron Beach | Director

Shirley Breyer Black | Director

Malcolm Hainicke | Director

Jerry Lee | Director

Bruce Oka | Director

Nathaniel P. Ford, Sr. | Executive Director/CEO

Kristen Chu
Chairman, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Complaint of Barry Taranto against the Municipal Transportation Agency
Complaint No. 08045

Dear Ms. Chu:

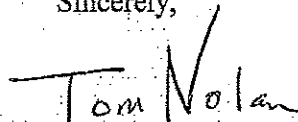
I am writing in response to complaint #08045. I do not dispute the error that I made at the August 19, 2008 San Francisco Municipal Transportation Agency ("SFMTA") Board meeting.

After the meeting, the error was brought to my attention. Since that time, I have re-read the "Good Government Guide" to refresh my understanding of the applicable public meeting laws. In addition, the Chairman of the SFMTA Board of Directors issued a memo to all Board members regarding the importance of adhering to both the Brown Act's and Sunshine Ordinance's public meeting requirements. A copy is attached for your review.

Unfortunately due to prior business commitments, I am not available to attend the Task Force meeting on September 23rd. However, Chairman McCray is available to attend if you feel that a representative from the SFMTA Board of Directors is necessary.

Please know that the SFMTA Board of Directors and staff are very mindful of the importance of full and equal public participation. I appreciate hearing from the public and have always done my best to ensure full public participation.

Sincerely,



Tom Nolan

Vice Chairman, SFMTA Board of Directors

cc: SFMTA Board of Directors
Nathaniel Ford
Debra Johnson
Barry Taranto



MEMORANDUM

Date: August 26, 2008

To: SFMTA Board of Directors
Tom Nolan, Vice Chairman
Cameron Beach, Director
Shirley Breyer Black, Director
Malcolm Heinicke, Director
Jerry Lee, Director
Bruce Oka, Director

From: Rev. Dr. James McCray, Jr., Chairman

Subject: Sunshine Ordinance/Brown Act Reminder

At our August 19 meeting a member of the public stated that the SFMTA Board had violated the Sunshine Ordinance and the Brown Act because the President of Transport Worker's Union, Local 250-A was allowed to continue speaking after his two minutes had elapsed. The SFMTA Board had previously imposed a two minute limit on public comment, which the Board waived when the union representative spoke. A complaint with the Sunshine Ordinance Task Force was filed as a result.

Since the SFMTA Board takes compliance with all public meeting law seriously, I wanted to take this opportunity to remind everyone how important these requirements are. As you are aware, members of the public may directly address us on items of interest that are within our jurisdiction. Although public comment on an agenda item may be limited to less than three minutes per speaker, we are required to apply any such time limit uniformly to all members of the public who wish to testify.

This is a good opportunity for us to "brush up" on our understanding of the open meeting laws. The City Attorney's Office website (www.sfgov.org/cityattorney) has a link to the "Good Government Guide" and Guide supplement. There is also a link to an on-line video training.

In addition to our annual training, I highly recommend that we all regularly review these laws.

Thank you for your attention to this matter.