

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE
SPECIAL MEETING
MINUTES**

Tuesday, January 25, 2011
4:00 p.m., City Hall, Room 406

Task Force Members

Seat 1	David Snyder	Seat 8	Bruce Wolfe (Vice chair)
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson
Seat 4	Suzanne Manneh	Seat 11	(Vacant)
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	(Vacant)
Seat 7	(Vacant)	Ex-officio	(Vacant)

Call to Order 4:00 P.M.

Roll Call Present: Snyder (leaves at 9:00), Knee, Manneh, Washburn, Knoebber, (in at 4:54), Chan, Johnson
Excused: Cauthen

Agenda Changes: Item 2, 3 & 24 heard before Item 1.

Deputy City Attorney: Jerry Threet
Clerk: Chris Rustom

1. Presentation by Allen Grossman on the 6-vote majority requirement and its impact on complaints and other matters heard by the Task Force.

Allen Grossman made the presentation.

Public Comment: Ray Hartz, Debra Benedict, Jason Grant Garza, Peter Warfield, Anonymous Tenants, Tomas Picarello spoke in favor.
2. 10054 Continued hearing on complaint filed by Ray Hartz against the Library Commission for allegedly violating Section 67.16 by not allowing his 150-word statement to be placed in the minutes.

Ray Hartz said the Sunshine Ordinance allows for the inclusion of a 150-word summary in the minutes. He said the Library Commission argues that their

practice is supported by the Good Government Guide which is not the law. He said he has repeatedly appeared before the Commission and have stated what the law requires. Instead, he said the Commission's practice is to attach it as an addendum and make no mention of it in the minutes. Another problem, he said, the Commission puts their view of what was said in the minutes rather than what was actually said. If he had positive things to say it would be in the minutes but if he had harsh words, the Commission would limit it or tone it down.

Mary Hudson of the City Librarian's Office said she was representing Library Commission Secretary Sue Blackman who had earlier requested in two emails to the Task Force that the item be not placed on the current agenda because she would be unable to attend as she was on a previously planned vacation. Ms. Hudson requested that the item be continued to allow for Ms. Blackman's attendance at a future date. Chair Knee denied the request after sensing that members wanted the case heard. She then told Chair Knee that only Ms. Blackman, who is the Commission's lone staff person, was familiar with the complaint. Chair Knee said if that was the case Commission President Jewel Gomez should have made some kind of arrangement, including sending one of the seven commissioners.

Motion to find violation of Sunshine Ordinance Section 67.15 for altering Mr. Hartz's statement as it constitutes an abridgement, Section 67.16 for attaching the statement as an addendum and not placing it in the body of the minutes and for finding Library Commission President Jewel Gomez in violation of Section 67.21(e) for not sending a knowledgeable person. (Washburn / Chan)

It was noted that the Task Force had found in ruled Chair: TF has previously found that addendum was OK, but no mention in body is worrying. Gomez because Gomez because the buck has to stop there.

PC: Peter Warfield said Exec Dir of Lib Users Asso, Lib has 900 plus employees. Commission has 7 members . commissioners are responsible . any one could have come and provide info as best as they could. Commissioners preparation and approval of the minutes.

On the motion:

Ayes: Snyder, Manneh, Washburn, Knoebber, Chan, Johnson, Knee

To EOTC

3. 10059 Continued hearing on complaint filed by Dorian Maxwell against the SF Municipal Transportation Agency for allegedly refusing to provide information contained in his personnel file.

39:00

Dorian Maxwell said they gave me everything except two docs. And one of those is the email that was attached to the photograph and the inspector's report.

Rumi Uno, employee labor relations manager for the SFMTA, said certain items that Mr. Maxwell was seeking are either to have been premature to have been filed in the personnel records or it would have been inappropriate. If Maxwell was seeking information related to a pending disciplinary matter, it would be premature because he hasn't exhausted all of his appeals. If he was seeking information related to a grievance, it would be inappropriate to put that in the personnel record. These type of documents are filed separately. Max made an appointment to review his record and found the documents to be missing. Based on our procedure, it would have been, in one case, depending on the type of document he was seeking, it would have been premature, and in another case it would have been inappropriate.

Cyndia Chambers, Maxwell's superintendent, said he has the right to come into the office with his shop steward and review any of his files he has there. He came with his shop steward last month and reviewed all the files he had. I also assisted him in another matter that he needed documentation. That transpired with him a couple of years ago. As his superin I have tried to help him with everything that he has needed.

Max to James: The only two I haven't received was , I was interviewed by an inspector and there is an inspector report that would exonerate me from this matter. I was looking at the photo and it was not time-stamped so it had to be an attachment to an email or a letter..

Uno: I believe what Max is referring to is a Skelley packet. For a public employee who has a pending disciplinary hearing, we are to provide pre-disciplinary process, that typically entails a notice that says what we are proposing or recommending. In that packet, he believes that packet should contain a document like that. That was not used to support the recommendation. That is where we have a disagreement.

Uno: I do not know if the report exists or not.

On photo:

I do not know if it was attached to a document. If it did the employer chose not to use it. we rely on the packet to support our proposal.

Chambers: Max came to my office on Monday and I gave him his skelly packet I don't think there was an inspector's report. If there was one I do not know the relevancy to this case. ,

Chambers / Snyder. Max asked for docs on Oct 18. I was not there when he had his skelly hearing. When he came in on Monday I gave him his skelly paperwork and some memos and reference to the violation he committed. There was a picture there and there was an email and I gave him that. He hasn't exercised all of his rights for hearings .skelly hearing was at the end of Sept.

I don't remember when I received the letter. But what I gave him on Monday was in response to the letter.

I did not respond to the letter because he had a skelly hearing. We have a procedure and a process. Everytime there is a hearing, he is entitled to the file. He has a shop steward and a union who is supposed to supply what he wants.

In closing, Chambers said he is the superintendent of the Potero division and is responsible for 280 employees who operate busses in the City and County. I am a native San Franciscian, a driver supervisor, a training instructor and now a superintendent. My job is to make sure and ensure that the residents of the City and County get good service from operators that are there to supply good customer service. We do have employees who feel that the company is not doing what they want to do. We do have rules and regulations and we do have procedures and process. My job is to make sure that I work as management with the unions and with the operators comply and give them what they want. When Max came in on Monday, I gave him what he wanted. I do not know what else he wants.

The docs that I am requesting, would have exonerated me in this matter. I had my letter stamped by the divisional secretary. If Chambers read it or not I do not know. As an employee I feel I am entitled to some type of response. I feel disrespected that I put something in writing to them and did not get a response. They are trying to fire me. These docs would have exonerated me in this matter. My constitutional rights do not end at the MTA. My constitutional rights carry me wherever I go. And they are denying me my 6th Amendment right to review incriminating docs that would have in fact saved me. I requested those docs all through the process. The union ignored me, they ignored me.
ors.

Max/ Johnson: The inspector came and searched the bus and the materials that they claim I had did not exist. That report does exist and that report would have cleared me.

Uno/Johnson: when the hearings are over and there is an inspection report, it would be placed in the file and Max will have access to it.

Knoebber: Req is for all docs. Not just personnel file or Skelly file.

Snyder: The SO overlays all other concerns that we are talking about. The MTA when they received the letter from Max needed to respond because he invoked the SO. The MTS needed to respond within a certain amount of time saying we can or can not give you the information and here is the reason we can not

Whether the documents are public records or not, the MTA is subject to Sunshine O, and although it has done a good-faith approach to follow the Skelly procedures, and have come to explain all of it before us, but at some point MTA needed to talk to the CAO or the MTA's PIO to say what do we need to do to respond to a SO request. There is no proofv they did not respond. .

27 justify withholding

25 to respond in a timely fashion.to the SO request.

Chair Knee there wasn't a total lack of response. According to

Max: what I was trying to say was that they did not respond by Oct 27.

67.25 for failure to respond, CPRA 6254 because he was asking for his own files and thus was not an invasion of someone's privace, 67.26 withholding to a minimum, 67.27 justification for withholding. Johnson / Snyder

Garza, chastises TF, Ray Hartz,

On the motion:

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

To CAC

4. 10060 Continued hearing on complaint filed by Charles Pitts against the Local Homeless Coordinating Board for allegedly failing to notice a meeting, denying access, and failing to allow for public comment.

Charles Pitts said this was a meeting that was not disclosed to the public. He said he received a flyer and when he arrived to attend the meeting he was prevented from participating by Allison Schlageter, a policy analyst with the Local Homeless Coordinating Board, whom he said jabbed him in the side. Jason Grant Garza said the outcome of this hearing has to be in the

complainant's favor because the respondent, by not appearing, has waived her right for a fair hearing.

The respondent was not present. No one in the audience spoke or presented facts and evidence in support of the respondent.

In closing, Mr. Pitts said Ms. Schlageter 's action demonstrates that she is not accountable to the citizens of the City and County of San Francisco. He said this was the third meeting she has not shown up. He recalled a meeting when she appeared but she left before the matter was called because she had to attend a social event. He wanted to know how long was Ms. Schlageterbe allowed to flout the laws of San Francisco and California? He said he needed to consider how far he wanted to escalate the issue so that it results in either she starts complying or gets removed from her job.

Motion to find Ms. Schlageter in violation of 67.21(e) for failure to send a knowledgeable person and Section 67.34 for official misconduct by failing to appear. (Washburn/Snyder).

Knoebber said he knows what was said the preconference, but she needs to tell her side to the full Task Force.

PC: Tomas Picarello said the TF needs to discuss presumptions if a respondent does not appear. That, he said, will force the City to pay attention. He said Mr. Pitts should have been allowed to attend the event because the venue of the meeting was where the Local Homeless Coordinating Board holds its committee meetings, the agenda item was a continuation of care matter and the contact person was a City employee.

On the motion:

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

To EOTC

5. 10063 Continued hearing on complaint filed by Debra Benedict against the Mayor's Office of Economic & Workforce Development for allegedly failing to provide copies of a local contract.

Debra Benedict said she is a disabled person living in San Francisco and is also the coordinator for Chapter 16 San Francisco and Bay Area Californians for Disability Rights. She said her complaint was against Martha Cohen and not the Mayor's Office of Economic & Workforce Development. She said she has a copy of her telephone records to show how many times she tried to contact Cohen personally. On Nov. 1 there was a presentation of the playoff game for the giants in front of City Hall which was well attended. I brought in

my cart so that I could enjoy. Expecting any event operated by the City of SF in and outdoor space would have an ADA area as required by law, I requested the ADA area from the people that were working at the site. And I kept asking individual after individual who is in charge until finally after the event I was able to speak with Ms. Cohen, who, when I said there was no ADA area. She said sorry., .

This complaint is based on the Nov 3 event which occurred in front of City Hall in the same location for the celebration of the Giants which was extremely crowded. After fighting my way through crowds to get to an officer to get to the ADA area, I was first told I had to walk all the way around the crowds to the other side and then because it was an open area I said I am disabled I need access to the ada area. The officers conferred and called someone from the production company running the event for the Giants. i was having a first-person interaction with this person and was told the ADA area was full. Being an activist I said show me. That person made me leave my things with the officers at Grove and Carlton, and I had to walk through the areas that were blocked off and we came to the disabled area which had probably had 25 people or less in one area and 25 – 30 people in another area. Both sections had a few wheelchairs. The rest of the seats were vacant. Needless to say, as an activist, I counted the chairs and the number of people and then walked out and looked where the ada sign was and the entrance for ada which was completely packed with people with no officers around to help ada persons gain entrance. I was upset that the ada was being given lip service. And ada people were not being allowed into an ada area at a public event that was run through the city of SF. My only contact was Ms Choen and since I needed to ask her for information about who was responsible for writing the contract for the Giants to utilize this space I asked her first in letting her know that the Brown Act allows me to get records from her. Bottom line is I made a complaint about this and she refused to give me information until the TF took in the complaint. And it was an unsigned letter.

Myisha Harvey of the OEWD said DB asked for a copy of the contract for that event and it does not exist. The contract is between the SF Giants and Hartmann Studios and we do not have a copy. We were delayed in responding to her because the request went to Cohen who did not know the rules and was out of the office. DB filed the complaint Nov 17, she was still out of the office for other events, she then forwarded to me on the 22nd. I responded to DB on the 23rd. indicating to her that we do not have a copy of the contract because it was between two private entities.

Harvey/Wolfe: were you involved in this process: No. Do u have any details: No. I am here responding to the public request. Was Cohen directly involved in any of this. She would have spoken to the Giants and probably the PD. She was coordinating with the SF Giants. Do u know what the process is for informing a group like the giants when they hold an event , what the

requirements are: No.

Harvey/Snyder: Did the city participate in establishing the ada areas? The only areas that were blocked off were for the players and the press. So there wasn't a plan for how to provide for disability access? I do not know because I do not know how that was coordinated. Perhaps now that we know what DB is looking for maybe she can send in a new request . If we have the document we will certainly provide her with a copy.

Johnson said Harvey seems to have all the answers 67.21(c) for not assisting the requestor. And also for timeliness and if a person is constantly out of the office they should have a response tht says what other department they could go to and who within the department is designated to answer sunshine questions. Which is required under the ordinance. They have the information and could have assisted DB where to go, at least in some direction.

Nov 23 and 29

21(b) response was not within 10 days

In closing, Harvey said the delay was because of Cohen did not know the timeferame. I responded immediately. Rather than say contract, Had DB explained further, I would have sent her in the right direction to get some answers. The response was short and straight to the point because we do not have a contract.

DB she is not an expert does not know the law and the correct verbiage

Motion to find violation of Sections 67.21bc and 67.25a for immediacy of response (Wolfe / Johnson)

Motion to separating 67.21b (Knoebber / Knee)

On motion to separate:

Ayes: Knoebber

Noes: Snyder, Manneh, Washburn, Wolfe, Chan, Johnson, Knee

Motion fails:

Public Comment: JGG

On the first motion:

Ayes: Snyder, Manneh, Washburn, Wolfe, Chan, Johnson, Knee

Noes: Knoebber

CAC

6. 10065 Determination of jurisdiction on complaint filed by Debra Benedict against the San Francisco Bar Association for allegedly not meeting Chapter 12L requirements.
7. 10065 Hearing on complaint filed by Debra Benedict against the San Francisco Bar Association for allegedly not meeting Chapter 12L requirements.
8. 10066 Determination of jurisdiction on complaint filed by Dorian Maxwell against the SF Municipal Transportation Agency for allegedly not providing documents related to a union contract.
9. 10066 Hearing on complaint filed by Dorian Maxwell against the SF Municipal Transportation Agency for allegedly not providing documents related to a union contract.

Dorian Maxwell said Nov 9, wrote requesting from Human Resources asking for copies of addendums and side letters to our MOU between SFMTA and 9163 transit operator Local 258 (transport workers Union)

I also tried to get from our union copies of side letters and addendums . we were told we had to go to the Human Resources department to get it.

We are under contract and any changes to our contract members should have access. We are entitled to it because it affects us.

No response from MTA. It's like talking o a wall.No respect for employees.

Rumi Uno, employee relations manager said she spoke to Max after she understood it was more than viewing his personal files.so I spoke to him to ask him wehat hi specific concern was. My understanding was the Max objected to a postponement of a hearing and thought that perhaps there was a sideletter related to the postponement. I told him that there were no side letters. There were waivers on time limits that is contained in the labor agreements between 9163 transit operator and sfmta. So I asked him if he was speaking about that. Part of the difficulty is that both parties agreed to the postponement of the hearing.. He is represented by TWU Local 258 and when his union rep agreed to the postponement that's basically what we honored. We are prevented and precluded from dealing with him directly because he is represented. Our assumption is that the union agreed to the postponement we would go forward on the new date.There is no side letter covering that he is looking for. We can't produce something that doesn't exist. His objection about the postponement we can deal with through his union. I did not know he objected to it but his

union agreed to it.

Knoebber---he asked for all copies of the memorandum. He did not say postponement.

Wolfe to Uno: Max sent u letter Sept 9. Did u respond. I do not recall receiving it. 2 mnths later on Nov 9 he sent a same exact letter. Did u respond. I do not recall receiving it..

In closing, I believe max's request is based on his understanding that there are a number of side letters exit. It had in the past but a number had been invalidated or replaced. We don't have side letters to provide to him. We had a face to face discussion to find out what he was seeking. That's when I discovered that he objected to the postponement.that's not covered by a sideletter. There is no sideletter.we have a labor agreement which I believe he already has.

4:23:30

Max said the request was for sl of an agreement and an addendum that was done to the current MOU.y

10. 10068 Determination of jurisdiction on complaint filed by Nick Pasquariello against the SF Municipal Transportation Agency for allegedly not providing him with documents related to the Clipper program.
11. 10068 Hearing on complaint filed by Nick Pasquariello against the SF Municipal Transportation Agency for allegedly not providing him with documents related to the Clipper program.
12. 10069 Determination of jurisdiction on complaint filed by William Clark against the Arts Commission for allegedly not providing him with a breakdown of the salaries and benefits of its employees.
13. 10069 Hearing on complaint filed by William Clark against the Arts Commission for allegedly not providing him with a breakdown of the salaries and benefits of its employees.
William Clark said he has been trying to find out the salaries and paid benefits for Street Artists Program employees Howard Lazar and Evelyn Russell for the year 2009/10. He said also verbally asked for it and was not given the

information. He said he specifically asked for a breakdown of the amount reported to the Controller Office as salaries and benefits in a letter addressed to Mr. Lazar on November 8. Mr. Lazar responded on November 22 with a letter and two printouts that mean nothing to the man on the street. The reason he is asking for this information was for budgetary purposes. He said Ms. Russell quit or was fired in February of last year and so her salary and benefits could be used in other ways. He also said he was told by Director of Cultural Affairs Luis R. Cancel at the last Arts Commission that he and his brother could not ask questions about the budget during Public Comment session. And if they did, it would be ignored.

The respondent was in the audience earlier but had left a not stating that he had to leave at 6:30 because he is taking care of a person in Marin. No one in the audience presented facts and evidence on behalf of the respondent.

Snyder: Request was really clear and it appears that the agency's response is that to provide a breakdown is to create a new record. He said he has researched this for another matter. He said there is a doctrine that says government agencies are not required to create new record and there is a lot of case law not very clear about what constitutes a new record. But in this case, he said, isolating one person's salary could not possibility constitute the creation of a new record/ The commission, he believes, has a records somewhere in their offices that says Mr. Lazar's salary for the year 2010/2011 is x amount of dollars. If Mr. Lazar were present he could not see Mr. successfully argue that such a record does not exist. It is clear the commission did not provide the request and the requested information is public. Member Knoebber said the Task Force could ask Mr. Lazar his salary orally and it would be difficult for him to say that he does not know. Vice Chair Wolfe said there has to be a document that shows how the commission plans to spend the money the Clarks and other street artists give them. Member Johnson wanted to know if such information is available on the City website. DCA Threet said he is not aware of such a site but the Chronicle newspaper produced a spreadsheet with the salaries and benefits of all city employees. Member Chan said asking Mr. Lazar his Civil Service Classification and looking it up the list should produce immediate results. Clark told Johnson that he has asked Lazar personally as well as in emails and he would not respond.

Motion to find the Arts Commission in violation of Sec(s) 67.21(b) for 10 days 67.21(c) assisting requestor and 67.26 withholding be kept to a minimum (Snyder / Knoebber)

Public Comment: None

On the motion:

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

14. 10071 Determination of jurisdiction on complaint filed by Jason Grant Garza against the Haight Ashbury Free Clinics for not providing him with documents related to two visits he made in 2010.
15. 10071 Hearing on complaint filed by Jason Grant Garza against the Haight Ashbury Free Clinics for not providing him with documents related to two visits he made in 2010.
16. 10072 Determination of jurisdiction on complaint filed by Bruce McLellan against the Recreation and Park Department for allegedly not releasing the Stow Lake lease.
17. 10072 Hearing on complaint filed by Bruce McLellan against the Recreation and Park Department for allegedly not releasing the Stow Lake lease.
18. Approval of January 4, 2011, special meeting minutes.
19. Approval of January 20, 2011, special meeting minutes.
20. Report: Complaint Committee meeting of January 11, 2011.
21. Report: Compliance and Amendments Committee meeting of January 11, 2011.
22. Report: Education, Outreach and Training Committee meeting of January 13, 2011.
23. Administrator's Report.
24. Public comment on matters not listed on the agenda. Public comment shall be taken at 5:00 p.m., or as soon thereafter as possible.
25. Announcements, comments, questions, and future agenda items from the Task Force members.

Adjournment

There being no further business, the Task Force adjourned at the hour of 9:56 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force, Rm. 244, City Hall, No. 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, Phone 554-7724 and at <http://www.sfbos.org/index.aspx?page=9811>

APPROVED: December 3, 2014



Victor Young
Administrator
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.