

Minutes from Special Meeting of the Sunshine Ordinance Task Force of

5/18/99

1. Meeting was called to order at 4:18pm.

Roll Call: Present: David Pilpel, Bob Planthold, Johnny Brannon, Hilda Bernstein, Sue Cauthen, Ruach Graffis, Tuesday Ray and David Watkins
Absent: Angela Armstrong, Bruce Brugmann, Nancy Sutley and Nicole Wong
Non-Voting Member Present: Rachel Arnstine O'Hara
City Attorney Office Present: Susan Frankel

2. Approval of Minutes

No minutes have been submitted for approval.

3. Election of Officers

- c. Chair – Pilpel was nominated by Planthold. Seconded by Cauthen. Planthold was nominated by Graffis, but nomination was declined. Pilpel elected by unanimous decision.
- d. Vice Chair – Planthold was nominated by Graffis. Nomination was seconded by Cauthen. Planthold elected by unanimous decision.
- e. Secretary – Several individuals were nominated, all declined. This will be discussed at the June 1999 meeting. Until a secretary is elected, one suggestion (from Cauthen) is to have the responsibility of this position rotate within the Task Force. Ray will take the minutes for the May 1999 meeting with Cauthen volunteering for June 1999.
- f. Media Liaison – Some discussion on **what** is required of the position. Brannon was reelected by unanimous vote.

4. Report of the Task Force Clerk

A review of the Communications and Complaint Logs were given.

Pilpel reminded the clerk that copies of all letters sent on the behalf of the Task Force should be **forwarded to members**.

5. Task Force Members' Questions and Comments

- a. A discussion ensued about the fact that there is no attendance requirement for Task Force members. The question is can a member be removed for non-attendance? Pilpel discussed having a provision added that would include attendance. Planthold suggested that since there is no requirement should probably refer to Board of Supervisors to have an amendment made to the appointment process to include attendance as a condition of appointment. Planthold asked if it was possible to add this to the June 1999 meeting for discussion. Cauthen confirmed that the Rules

Committee of the Board of Supervisors does inform appointees that attendance is expected.

Pilpel will speak with Supervisor Leno and City Attorney about drafting legislation regarding this issue for the Task Force. Planthold suggested that the Task Force not hold a hearing on this. Supervisor Leno might want to hold the hearings in front of the Rules Committee since the legislation would more than likely be coming from his office.

Brannon wanted to know has any attempts been made to contact those members who have been absence without cause. Pilpel informed him that attempts have been made. The main concern has been that the tapes for the previous meetings have been with Armstrong and they are the only records of Task Force meetings.

On a new topic, Cauthen handed out to members a copy of the budget for the Planning for 1999 – 2000 FY. The Planning Department was including in its budget a plan for document storage as well as plans to allow for easier accessibility for citizens. She suggested that we send letters to Supervisors Yee and Newsom in support of Planning Department budget and specifically its provision of including a customer service plan.

Pilpel suggested that we invite a representative of the Planning Department to the next meeting to discuss how they decided to add these items to their budget request.

b. Brannon wanted to add an agenda item to the next meeting regarding how records are kept from the Civil Grand Jury. The records of the reports are not obtainable from the County Clerk. A discussion was ensuing, but was reminded by Frankel that this, as an item not on the agenda, could not be discussed at this time.

Pilpel wanted to know should a hearing be held or would a letter be sufficient. Brannon believed that a letter would be enough. Pilpel suggested that Brannon prepares a draft letter could be discussed at the next meeting.

6. Hearing(s) on Pending Complaints
None at this meeting.

7. Review Pending Legislation at the Board of Supervisors Concerning the Sunshine Ordinance and Consideration of Comment to the Board of Supervisors Relative Thereto
No legislation pending.

8. Review Other Pending Legislation Concerning Public Access to Meetings and Records and Open Government Issues

During public comment, Randy _____ mentioned that SB48 had been approved by the Senate and moves on to the Assembly. Pilpel corrected that the bill has moved out of committee and is set for a floor vote in the Senate. Arnstine O'Hara mentioned that there is a web site that individuals can use to follow the progress of any state bill. Individuals can call her to get the name of the web site.

9. Continued Discussion Regarding the Use of the Deliberative Process Privilege in Denying Public Records Requests (DISCUSSION ITEM)

Jacqueline Minor of the City Attorney gave a presentation on the findings of an inquiry that she conducted on when and why the deliberative process had been used by the City Attorney office at the request of City departments. The inquiry was done at the request of the Task Force as a result of an earlier hearing conducted where this was an issue. Frankel noted that this document was not privileged and confidential as stated on the front page.

Planthold found the information useful. He **was** able to see the benefit in invoking this privilege. The listing reflected an extent of its use;

Pilpel commented that it was helpful to see the range of responses. This could be used as a way to establish protocol and procedures to handle such requests in the future. Need to determine where the decision to invoke the privilege is coming from. (As mentioned in an earlier meeting by Frankel, the department head is responsible for 'making such a decision and not the City Attorney office.) It is not clear as to who is making the decision.

Minor mentioned that there was a varying level of detail 'given in the letter in the package forwarded to Task Force members regarding this..

In Public Comment; **Judith Appel** of Coalition on <Homelessness still **does not** believe that the original request for **information from** the Task Force had been fulfilled. Section 62.55 was being evoked. The listing seemed to be voluntary compliance to -the request. She would recommend taking **a** broader look at this issue.

Frankel confirmed that the letters were from the Government Team and a few others that they (Frankel and Minor) knew of. This was not meant to be a comprehensive listing.

Appel commented that the request should have been more far reaching in scope. She knows of more letters evoking this privilege.

Pilpel wants to see the number of denials using this privilege and the range of letters that go out regarding this issue.

Frankel commented that that information is probably hard to obtain since there are a number of teams and each deputy City Attorney can be assigned to various city departments.

Pilpel asked if the City Attorney office can distinguish between deliberative process privilege being needed and policy development.

Frankel stated that she was unable to answer.

Appel wanted to know how, and if, the Task Force would be giving a recommendation to the Board of Supervisors regarding this issue.

Pilpel stated that 67.24 and 67.45a may be about deliberative privilege process. However, drafts and memos are not exempted under 67.5. The Task Force could make an amendment to the **Sunshine Ordinance**.

Appel wondered if the Task Force can even make a recommendation regarding this. Should this be referred to Terry Francke to study.

Pilpel stated that sections 67.24 and 67.54 could have the, reference deleted. Asked Frankel what was the advisability of doing this.

Frankel thought that it might be better to add a, new section (67.55a).

Bernstein stated that it 'was a fine line between 'making things public and prohibiting the deliberative process. **We risk limiting the creative process.** This could be a loss to the way government functions.

Cauthen mentioned that the Planning department **usually takes public** comment before making decisions.

Bernstein stated that she didn't mean allowing a free rein, but she didn't want to make decision-making so difficult to do.

Arnstine O'Hara reminded the members that the Task Force is not a policy making body. Members need to consider what the consequences are in making a decision regarding this,

Pilpel asked Frankel to brief members on what those consequences might be.

Frankel stated the departments would need to be consulted.

Bernstein asked if a summary was available on where to draw the lines in evoking this privilege.

Richard Knee of the San Franciscans for Sunshine stated that the Sunshine initiative would prevent the use of the deliberative process privilege in total.

Pilpel asked if the City Attorney office establish any clear protocols. He also asked how did the Task Force want to further discuss this issue.

Bernstein stated that we should proceed carefully and cautiously.

Brannon mentioned that the members should probably wait for Brugmann to be in attendance before discussing further since he made the original request. We should also consult with Brugmann how his ideas on how to proceed with this.

Graffis asked if this could be continued until the next meeting.

Cauthen wanted to know if a distinction could be made between a preliminary draft and a final draft.

Bernstein stated that this should be continued until another meeting and to also give thought to setting up a sub-committee on working on this.

No further comments made.

10. Consideration of sending all San Francisco Boards and Commissions a letter re: taping public meetings (ACTION ITEM)

Brannon gave a background as to why letter was needed. He suggested that the letter which was forwarded in the members' package for this meeting be sent out. Brannon moved that letter be sent out. Graffis seconded.

Some discussion ensued regarding the tone of the letter. It was decided that the letter was fine.

With no objections, the motion passed.

Brannon wanted to know if there was listing available on who the letter should be forwarded to.

Pilpel stated that the letter would be forwarded to the City Clerk's office for distribution.

11. Discussion of Task Force Procedures and Outstanding Work Items
(DISCUSSION ITEM)

This was continued until the next meeting. Pilpel reminded the members that the Task Force needs to start work on producing the Annual Report.

12. Continued Consideration of San Franciscans for Sunshine proposed
Sunshine Initiative (DISCUSSION ITEM)

The Task Force needs to have the analysis from the City Attorney office to discuss how and if the Sunshine Ordinance initiative would effect the present ordinance.

Frankel stated that the City Attorney office would look into this.

Knee would the Task Force to make a recommendation to the Board of Supervisors to support the initiative.,

Pilpel stated that the analysis from the City Attorney office is needed first.

Knee also stated that he hopes that each member of the Task Force would come out in favor of the initiative..

13. Review schedule and agenda items for the next meeting

- Election of Secretary
- Discussion of the lack of minutes
- City Planning – discussion of their record keeping and Customer Service goals. Possible letter to Board of Supervisors in support of their efforts.
- Letter to County Clerk on retention of records from Civil Grand Jury
- Further discussion of SB48
 - Further discussion on the use of the deliberative privilege process
 - Task Force procedures and work items
 - Further discussion on the Sunshine Ordinance initiative as proposed by the San Franciscan for Sunshine. Also consider as a possible action item.

Meeting was adjourned at 5:55pm. The next meeting of the Task Force will be held on Tuesday, 6/22/99.