

Date: Feb. 23, 2010

Item No. 3

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

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Jan. 26, 2009**
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Chris Rustom

Date: Feb. 18, 2010

**\*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  
SPECIAL MEETING  
DRAFT MINUTES**

Tuesday, January 26, 2010  
4:00 p.m., City Hall, Room 408

**Task Force Members**

Seat 1	Erica Craven-Green (Vice Chair)	Seat 8	(Vacant)
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** 4:00 P.M.

**Roll Call** Present: Craven-Green, Cauthen, Manneh, Washburn, Johnson, Goldman, Williams  
Excused: Knee, Knoebber  
Absent: Chan

**Agenda Changes:** Item 11 heard before Item 4.

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

1. Approval of December 1, 2009, special meeting minutes.

Acting Chair Craven-Green said Chair Knee had requested that the minutes not be approved because he wanted to make some changes.

Motion to continue December 1, 2009, special meeting minutes (Craven-Green / Goldman )

Public Comment: Peter Warfield of the Library Users Association said a paragraph each in Item 3 and Item 7 do not reflect what he said.

On the motion:

Ayes: Cauthen, Manneh, Washburn, Johnson, Goldman, Williams, Craven-Green

2. Approval of January 5, 2010, special meeting minutes

Member Cauthen said she would like to review the minutes and wanted the same action that was taken in the previous item.

Motion to continue January 5, 2010, special meeting minutes (Cauthen / Williams )

Public Comment: Raymond Banks said the Orders of Determination for #09077 and #09082 were missing in the minutes. Peter Warfield said draft minutes should be available on request 10 days after the date of the meeting. Doug Comstock said the minutes were a big improvement over what was provided when he was chair of the Task Force.

Member Cauthen said the Ordinance requires minimal minutes.

On the motion:

Ayes: Cauthen, Manneh, Washburn, Johnson, Goldman, Williams, Craven-Green

3. 09075 (0:15)

Hearing on complaint filed by Bred Starr against the City Attorney's Office for withholding public information.

Complaint Bred Starr said she had asked for documents regarding the investigation of Mary Ellen O'Brien from the Department of Parking and Traffic in 2004. The investigation was done on behalf of the City and not on behalf of the tax payers and that made access to documents difficult, she said. She wanted to know why Ms. O'Brien is still a City employee and what was said during the investigation. She said she received only four pages about the case from the City Attorney's Office whereas the Chronicle was able to provide numerous pages about the matter. It sounds confidential but SF is supposed to have transparency and open government. By protecting this particular employee, the City Attorney's Office is encouraging similar act of corruption within the City government. She also claimed that she and her neighbours had received threatening notes and letters and was willing to produce the proof if the Task Force was interested. If they have nothing to hide why are they withholding information. Why are they protecting this particular employee (under open government.) who definitely did things that

There was no one in the audience to present facts and evidence on behalf of the complainant.

Respondent Virginia Dario Elizondo of the City Attorney's Office said the request was for an internal investigation that was leaked to the press. There is a report that is confidential under the attorney work product doctrine and the attorney client privilege. Two disciplinary letters sent to the subject of the investigation was released. That answered one of Ms. Starr's questions as to what happened to the employee. Just because a document or portions of it are leaked to the press does not make it a public document. Lawyers have the

responsibility to maintain the privilege.

There was no one in the audience to present facts and evidence on behalf of the respondent.

Member Cauthen wanted to know if the leak was a waiver of the privileges.

DCA Threet said in the absence of a waiver the attorney is obligated under state law to keep the matter confidential.

Acting Chair Craven-Green said there was not much information on the waiver issue but believed that the factual background in an investigation is critical to the public to digest and understand once the case is closed. And where the allegations have been found to be substantial or discipline has been imposed, justifiable redactions can be made

Member Cauthen said she was concerned by the amount of time the City took because the Ordinance says that an IDR needs to be responded to before the close of business the next day.

In closing, Ms. Dario Elizondo said the City's ethics rules also demands that attorneys have the duty to maintain confidentiality. Ms. Starr said Ms. Dario Elizondo is not qualified to be representing the City because she was relying on other people's information and did not take part in the actual collection and review of documents.

Motion to find violation of Sec(s) 67.21 and 67.24 for failure to produce responsive documents, specifically the 16-page memo regarding the employee's misconduct ( Craven-Green / Washburn )

Motion to find violation of Sec(s) 67.21 ( b ) for untimely response and 67.25 for failure to provide documents in a timely fashion ( Cauthen / Williams )

Public Comment: Kimo Crossman said the work product cover dies the moment the City Attorney's Office shares the report with the department. He also said the City Attorney's Office has provided active investigative records because it does not have penal authority. Melvyn Banks said investigations done with taxpayer money should be made available to taxpayers. Peter Warfield said weak excuses from City officials are offensive, insulting and unlawful. A concerned citizen said the 16-page memo needs to be viewed in Chambers and then only a decision on the privilege issue be made.

On Member Cauthen's motion:

Ayes: Cauthen, Manneh, Washburn, Johnson, Goldman, Williams  
Noes, Craven-Green

On Acting Chair Craven-Green's motion:

Ayes: Manneh, Washburn, Johnson, Goldman, Williams, Cauthen, Craven-Green

Matter is placed to the call of the chair.

4. 09079 Hearing on complaint filed by Kenneth Kinnard against the Human Rights Commission for failing to respond to an Immediate Disclosure Request.

Complainant Kenneth Kinnard said this complaint dates back to 2005 when allegations were made against him that cost him his certification. He said he received a letter last year from the Human Rights Commission that said no such documents existed. He said he responded by asking that the HRC remove the allegations mentioned in documents posted on the Internet. The HRC responded by saying that he needed to address the Commission so that a motion will be made to make the correction. Mr. Kinnard said he does not need to attend. He said he made another IDR request on Jan.6 to the HRC and they have not responded. He said even the arbitrator has said that no such information was presented. The HRC he said is dragging its feet while his family suffers at the hands of rouge HRC employees.

There was no one in the audience to present facts and evidence on behalf of the complainant.

Respondent Melinda Kanios of the Human Rights Commission said Mr. Kinnard has made several requests through the years and the department has been responsive. His requests for documents have been duplicative and that was why she believed that all the information requested by Mr. Kinnard has been produced. She said she could not produce information that she did not have. He once asked for files on different trucking entities. All that info was provided

There was no one in the audience to present facts and evidence on behalf of the respondent.

To Member Cuathen, Mr. Kinnard said there are no documents to support the allegations posted on the Internet which says that his P&K Trucking company no longer was a trucker but a brokerage firm. What he wanted was for the Task Force to support him and force the HRC to admit that there were no documents to support the slanderous allegations mentioned by the HRC.

Ms. Kanios said the minutes of the January 2005 Commission reflect what was said during a hearing by arbitrator Harry Upstein. The minutes reflect that Mr. Upstein had agreed with the Commission that Mr. Kinnard was not operating as a trucker but as a broker. His certification as a trucker was revoked because he was not producing his own trucks but was subbing the work out to other trucking companies. She also said she was willing to work with Mr. Kinnard and contact Mr. Upstein as well as look for the documents in other areas including commission meetings.

Acting Chair Craven-Green also reminded Ms. Kanios the importance of the duty to respond to a request, even if it was duplicative. She also said the department needs to respond to the administrator who could be prepared if the respondent has a 200-page document.

In closing, Ms Kanios said she was looking orward to working with Mr. Kannard. Mr. Kinnard said the arbitrator has said that there were no documents in response to his request. The HRC, he said, has supported the rights of other races but not those of the African-Americans.

Acting Chair Craven-Green told Mr. Kinnard that the Task Force cannot ask an agency to remove a document from their website. The Task Force can only request a department to comply with the law by producing a document if it existed.

Motion to find violation of Sec(s) 67.21 for failure to comply with an Immediate Disclosure Request and 67.25 for failure to provide responsive documents. The HRC is also recognized for saying that they are willing and able and will work with Mr. Kinnard to get the documents to him as soon as possible. ( Craven-Green / Goldman )

Public Comment: Melvyn Banks said the respondent was complicating a simple issue. Given the timing of the events, he said the HRC maybe trying to hide something that could be embarrassing in today's litigious society.

On the motion:

Ayes: Cauthen, Manneh, Washburn, Johnson, Chan, Goldman, Williams, Craven-Green

Matter is placed to the call of the chair.

5. Supervisor of Records Report

Public Comment: Kimo Crossman said many requestors are getting the documents they want only after appealing to the Supervisor of Records and that he wants the report in Word format so that he can insert his remarks. Peter Warfield said there was a time when the Supervisor of Records would always side with the departments but that seems to be changing. He also said dates in the report need to be checked to see if the Supervisor of Records is meeting the mandated timelines.

Continued to Feb. 23, 2010. Without objection

6. Ethics Commission proposed rules on handling Sunshine complaints.

Public Comment: Kimo Crossman said the Task Force also needs to consider items submitted by the public. Peter Warfield said the agenda item needs more information to show what kind of outcome was being sought. Doug Comstock said the Task Force should tell the Ethics Commission that it should move forward with the proposal.

Member Cauthen said she was going to recommend to Chair Knee that he call a special meeting to discuss the topic because of its complexity.

Continued to Feb. 23, 2010. Without objection

7. Report: Compliance and Amendments Committee: meeting of January 12, 2010. (Erica Craven-Green)

Committee Chair Craven-Green made the report.

Public Comment: kimo Crossman said he was unsure why departments do not post their meeting audio on line because the SOTF, BOS and Ethics are already doing it. Peter Warfield said the draft minutes and Orders of Determination schedules should be followed and adhered to. Doug Comstock said Supervisor Mirkarimi should be told that departments are not following his legislation in posting audio files. He also said he hopes that the amendments are well on their way to the November ballot.

8. Report: Education, Outreach and Training Committee information gathering meeting of January 14, 2010. (Sue Cauthen)

Committee Chair Cauthen made the report.

9. Task Force and committee meeting schedules. Shall the Task Force and its committees revise their meeting schedules to enable the Task Force to meet twice a month?

Continued to Feb. 23, 2010. Without objection

10. Administrator's Report

Mr. Rustom made the report.

11. Public comment for items not listed on the agenda. Public comment shall be held at 5:00 p.m., or as soon thereafter as possible.

Former Task Force chair Doug Comstock said departments do not take the Task Force seriously because it does not have enforcement powers. However, he said, the body has the power of the press and should use it to annually bestow departments with "Sunshine" and "Moonshine" awards. Melvyn Banks acknowledged the fact that DCA Threet had responded to his email on New Year's Day, a public holiday.

12. Announcements, comments, questions, and future agenda items from the Task Force. None

Adjournment:

The meeting was adjourned at 7:15 p.m.

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

This page purposely left blank