

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

August 31, 2009

DATE THE DECISION ISSUED

August 25, 2009

*DAVID SCHNEIDER v. SAN FRANCISCO BOARD OF SUPERVISORS, CLERK OF
THE BOARD AND SUPERVISOR CHRIS DALY (09035)*

FACTS OF THE CASE

Complainant David Schneider attended the July 2, 2009, Board of Supervisors Rules Committee meeting that was chaired by Supervisor Chris Daly. Item 7, a proposed Charter taxi reform measure, was listed on the agenda for hearing and Mr. Schneider attended the hearing with the intention of making public comment on the item. Mr. Schneider alleges that at the beginning of the hearing, Supervisor Daly, who was the author of the proposed Charter measure, stated that the item was withdrawn from the agenda and did not allow public comment on the withdrawn item.

COMPLAINT FILED

On July 13, 2009, Mr. Schneider filed a complaint against the Board of Supervisors (BOS), the Clerk of the Board and Supervisor Daly for his barring public comment on the item that was withdrawn at the beginning of the afore-cited Rules Committee meeting.

HEARING ON THE COMPLAINT

On August 25, 2009, Mr. Schneider aired his complaint before the Task Force. Respondent Clerk of the Board of Supervisors was represented by BOS Rules Committee Clerk Linda Wong and Legislative Deputy Director Rick Calderia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force was told that the Sunshine Ordinance clearly states that there has to be public comment before action is taken on an item. But the question was: Does the action to take the item off the agenda warrant public comment?

The Task Force was told that there was not any known case law to help adjudicate the matter. The Task Force recalled that at the start of the August 25, 2009 meeting, when the clerk said an item was withdrawn, there was no discussion on whether the item needed to be withdrawn. And, more generally, when an item is continued, it is at the Chair's discretion

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on whether or not to have public comment. The Task Force also recognized that because the Task Force provides an item on each agenda for general public comment, members of the public are allowed to comment on withdrawn or continued items during that time. It was noted, however, that BOS committees do not allow for general public comment and, therefore, members of the public have no opportunity to comment on withdrawn or continued matters.

DECISION AND ORDER OF DETERMINATION

In light of 67.15 (a)'s requirement that every agenda of a policy body "provide an opportunity for members of the public to directly address a policy body on items that are within the policy body's subject matter jurisdiction," and 67.15 (e)'s requirement that "to facilitate public input, any agenda changes or continuances shall be announced. at the beginning of a meeting," (emphasis added), the Task Force issued an Order of Determination finding a violation of Sec. 67.15 (a) and (e) for the Rules Committee's failure to provide general public comment or otherwise provide members of the public the right to comment on agenda changes, (Knoebber / Williams)

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Williams, Knee

Noes: Goldman

Excused: Chan, Chu

A motion was also approved requesting the Chair, Richard Knee, to write to the Clerk of the Board, President David Chiu of the Board of Supervisors and the committee chairs to express the Task Force's concern over the lack of general public comment at Board of Supervisor's committee meetings. (Cauthen / Williams)

Ayes: Craven-Green, Cauthen, Washburn, Knoebber, Johnson, Goldman, Williams, Knee

Excused: Chan, Chu.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 25, 2009.



Richard A. Knee, Chair

Sunshine Ordinance Task Force

- c: Ernest Llorente, Deputy City Attorney
David Schneider, complainant
Angela Calvillo, Clerk of the Board, respondent
David Chiu, President, Board of Supervisors, respondent
John Avalos, Chair, Budget and Finance Committee
Bevan Dufty, Chair, City Operations & Neighborhood Services Committee
Ross Markarimi, Chair, Government Audit & Oversight Committee
Sophie Maxwell, Chair, Land Use & Economic Development Committee
David Campos, Chair, Rules Committee
Sean Elsbernd, Chair, Joint City & School District Select Committee