



SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

CITY AND COUNTY OF SAN FRANCISCO

Minutes - Draft

October 25, 2022 - 4:30 PM

Members: Lila LaHood (Chair), Jennifer Wong and Laurie Jones Neighbors

Remote Access to Information and Participation

In accordance with Governor Newsom's Executive Order No. N-33-20 declaring a State of Emergency regarding the COVID-19 outbreak and Mayor London N. Breed's Proclamation declaring a Local Emergency issued on February 25, 2020, including the guidance for gatherings issued by the San Francisco Department of Public Health Officer, aggressive directives were issued to reduce the spread of COVID-19. On March 17, 2020, the Board of Supervisors authorized their Board and Committee meetings to convene remotely (via Microsoft Teams) and will allow remote public comment via videoconference.

Members of the public may participate by phone or may submit their comments by email to: sotf@sfgov.org; all comments received will be made a part of the official record. Sunshine Ordinance Task Force agendas and their associated documents are available at <https://sfbos.org/sunshine>.

As the COVID-19 disease progresses, please visit the Sunshine Ordinance Task Force website regularly to be updated on the current situation as it affects the legislative process.

Meeting Decorum: Any member of the Sunshine Ordinance Task Force may call for decorum due to disorderly conduct of meeting participants. Persons who engage in threatening and/or menacing behavior may be asked to leave.

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Chair LaHood called the meeting to order at 4:34 p.m. On the call of the roll Chair LaHood and Members Neighbors and Yankee were noted present. A quorum was present.

SOTF Chair Yankee appointed himself in place of Member Wong to the Compliance and Amendments Committee meeting of October 25, 2022.

SOTF Administrator Leger noted that Mark Norton contacted the SOTF Administrator and stated that he did not want to participate in the hearing regarding Items No. 4 (File No. 21124).

Action: Moved by Chair LaHood, second by Member Neighbors, to move File No. 22014 to follow File No. 22092.

Public Comment:

Anonymous stated that they did not have an issue with moving the items on the agenda.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Yankee

Noes: 0 - None

Absent: 1 - Wong

2. **Approval of the August 23, 2022, Compliance and Amendments Committee meeting minutes.**

Action: Moved by Member Neighbors, seconded by Member Yankee, to approve the August 22, 2022, minutes as amended.

Public Comment:

Wynship Hillier stated that the usual procedure at a hearing is for the Petitioner to speak first.

Anonymous raised the issue with the minutes, reading public comments into the record and that the burden falls on the requestor.

Member Neighbors revised their motion.

Action: Moved by Member Neighbors, second by Member Yankee, to approve the minutes of the August 23, 2022, Compliance and Amendments Committee as amended to include the rewording of public comments and authorize the Chair to review and approve the amended minutes.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Neighbors, Yankee, LaHood

Noes: 0 - None

Absent: 1 - Wong

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Speakers:

None.

4. **File No. 21124:** Complaint filed by Marc Norton against the Department of Public Health (DPH) for violating Administrative Code (Sunshine Ordinance), Section(s) 67.21 by failing to provide guidance on locating records; 67.25 by failing to respond to an Immediate Disclosure Request in a timely manner; 67.26 by failing to keep withholding to a minimum and 67.27 by failing to provide justification for withholding.

Natalie Pojman (Department of Public Health (DPH)) (Respondent), stated that following the August 23, 2022, Compliance and Amendments hearing, DPH was instructed to provide clear redacted records which were already provided on September 7, 2022.

Chair LaHood stated that the DPH complied with the Committee's request but Mr. Norton was not satisfied with the response.

Action: Moved by Chair LaHood, seconded by Member Yankee, that the Committee remove the files that were accidentally duplicated in this file which is everything before PDF page 48 and include any emails received from Mr. Norton received after August 23, 2022, and that the Committee close the case.

Public Comment:

Anonymous explained what you are seeing.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Yankee, Neighbors

Noes: 0 - None

Absent: 1 - Wong

5. **File No. 22014:** Complaint filed by Sergei Severinov against Lt. Lynn Reilly and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21(b), by failing to respond to a public records request in a timely and/or complete manner.

Sergi Severinov (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Severinov stated that the San Francisco Police Department (SFPD) refuses to disclose any records or provide a written statement related

to the existence and form of any requested records. Mr. Severinov has filed multiple complaints and against the SFPD and made multiple records requests where the SFPD refuses to provide those records. Mr. Severinov requested that his case be referred to the District Attorney.

The Respondent was notified of the hearing but did not advise the SOTF Administrator that they would not be present.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, seconded by Chair LaHood, to refer the matter back to the SOTF for full consideration and noted the following three concerns: 1) the respondent did not appear at the Compliance and Amendments Committee hearing which violates 67.21(e); 2) the SFPD in their supplemental response dated September 13, 2022, narrows the scope of the records request instead of performing a broader search for records; and 3) the SFPD stated that they were able to locate the responsive information instead of providing responsive documents and referred the petitioner to the Department of Emergency Management to obtain those responsive records; and suggested that the SOTF consider enforcement mechanisms for full compliance.

Public Comment:

David Pilpel stated that there should have been a search and the records should have been provided.

Anonymous agreed with the previous commentator. Anonymous stated that this matter should be referred to the SOTF for consideration of referral to the District Attorney or Attorney General.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, LaHood, Neighbors

Noes: 0 - None

Absent: 1 - Wong

6. **File No. 22012:** Complaint filed by Anonymous (SFT) against Director Grant Colfax and the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21, by failing to respond to a public records request in a timely and/or complete manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he received records that are unreadable. Anonymous requested that this matter be continued to another hearing date and hopes to receive the attachments before that time. Anonymous stated that DPH is claiming that they do not have certain texts because of a citywide policy. Anonymous

requested that the referenced policy and was provided the citywide retention policies from the Mayor's Office which proves that DPH is lying.

Natalie Pojman (Department of Public Health) (Respondent), provided a summary of the department's position. Ms. Pojman stated that since the most recent hearing, DPH has provided the most recent emails which were requested and provided by staff. Ms. Pojman stated that a new NextRequest application was submitted and the DPH retention policy was provided, however the requested texts were unavailable.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, seconded by Member Neighbors, to request that the Respondent submit a letter detailing their retention policy regarding MS Teams chats by November 8.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Neighbors, LaHood

Noes: 0 - None

Absent: 1 - Wong

7. **File No. 21153:** Complaint filed by Anonymous (ARE) against Dennis Herrera for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.29-5(a), by failing to keep or cause to be kept a calendar with certain minimum information about his business meeting, and to disclose them as public records and willful failure to discharge any duties imposed by the Sunshine Ordinance, Brown Act or the Public Records Act and 67.34 willful violation constituting official misconduct

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee find a violation. Anonymous stated that the SOTF found Dennis Herrera in violation of 67.34 and directed SOTF Member Wolfe to make a presentation to the Ethics Commission. Anonymous stated that the SOTF will determine if Mr. Herrera is complying with the law and that he will continue to file complaints against Mr. Herrera until he provides correct calendar entries.

Mayara Ruski Augusto Sa (Public Utilities Commission) (Respondent), provided a summary of the department's position. Ms. Augusto Sa stated that Anonymous was seeking calendar entries on August 24, 2021, and made a request for those records on September 8, 2021. Ms. Augusto Sa stated that Anonymous was provided 20 pdfs for several dates and provided a few weeks of calendar entries. **Ms. Augusto Sa also stated**

that the records of recurring meetings, such as the regularly scheduled meetings Mr. Herrera has with his direct reports, to be transparent, were also provided.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, seconded by Member Neighbors, to close the file and found that no further actions are necessary.

Public Comment:

Sergi Severinov stated that he has been a spectator in this case and the behavior of Dennis Herrera and staff is egregious.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Neighbors, LaHood

Noes: 0 - None

Absent: 1 - Wong

8. **File No. 22092:** Hearing to review the Behavioral Health Commission's compliance with the Sunshine Ordinance (Sections listed below) for meetings that occurred after April 13, 2021.

On April 6, 2022, the SOTF referred the matter to the Compliance and Amendments Committee to monitor future Behavioral Health Commission's meetings for compliance with the following sections of the sunshine Ordinance:

- 67.7(a) providing an adequate description of the agenda items;
- 67.7(a) posting Agenda 72 hours in advance of the meeting;
- 67.7(b) providing a clear description of the agenda matters;
- 67.7(b) posting supporting documents on-line or making them available as soon as they are available;
- 67.7(g) including notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) posting supplementary documents for the meeting on the internet;
- 67.15(a) allowing public comment for each item on the agenda.

In addition, the SOTF requests that the Behavioral Health Commission provide their manual or description of their procedure/practices implemented to address the code sections listed. In an effort to document compliances with posting requirements of the Sunshine Ordinance, the SOTF requests that the Behavioral Health Commission maintain a log of when agendas and supporting documents are posted along with any other relevant data.

Wynship Hillier (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hillier stated that he objects to giving testimony at

this time because there is no motion on the floor. Mr. Hillier stated that this item is for discussion only and refuses to participate in this hearing.

Geoffrey Grier (Behavioral Health Commission (BHC)) (Respondent), provided a summary of the department's position.

Amber Gray (Behavioral Health Commission) stated that continued training is recommended for the Commissioners and that they are open to suggestions from the SOTF. Ms. Gray stated that her department wants to have a Brown Act training and that she is in communication with the City Attorney to become more aware of the ordinance.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Chair LaHood, seconded by Member Neighbors that the Compliance and Amendments Committee continue the matter to the call of the chair and continue to monitor the Behavioral Health Commission for compliance with the Order of Determination specifically the Committee will be keeping a close eye on notice of meetings and in the event meetings are not noticed 72-hours in advance, how the Commission handles that and make sure that public comment is called every time it is required and that staff provide the Committee a description of their procedures and practices with regard to the Ordinance, which the Committee recommended that they use as the basis for a public document describing their procedures and practices or be incorporated into their by-laws.

Public Comment:

Anonymous congratulated the Petitioner for not backing down.

David Pilpel noted that he has attended several meetings of the Behavioral Health Commission and due to the concerns about compliance with the Ordinance he thinks education is important.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Yankee

Noes: 0 - None

Absent: 1 - Wong

9. **File No. 22120:** The members of the Compliance and Amendments Committee are inviting members of the public who wish to propose amendments to the Sunshine Ordinance to present their proposals at this meeting. Each person who makes a presentation will be given equal speaking time of five minutes. We will take public comment once all the presentations are complete. Each person who makes a presentation will be given an equal amount of speaking time. Each presenter will have at least five minutes to speak.

Allyson Washburn spoke on behalf of San Franciscans for Sunshine. Ms. Washburn stated that San Francisco has the strongest Sunshine materials and that many people have ideas for Sunshine.

Anonymous stated that he has a different approach to get enforcement but does have an appreciation for San Franciscans for Sunshine. Anonymous noted that you can show how criminals can use holes that prevent effective enforcement of the law and believes the most important thing that SOTF can prevent is the destruction of public records.

David Pilpel noted that he did have disagreements with the two previous commentors, but in general the SOTF shares a belief in government, public participation and where we disagree is how to do it. .

Public Comment:

Allyson Washburn stated that there are a lot of commonalities and invites them to contact San Franciscans for Sunshine because they have the ability to comment to the Board of Supervisors and correct drafting errors and clear up ambiguities in the text.

Anonymous agrees with the points made by Ms. Washburn and David Pilpel and hopes that the SOTF can get drafting errors in the Ordinance corrected.

David Pilpel agrees with the suggestions provided by Ms. Washburn. Mr. Pilpel expressed concern that there is no central website that has all City meetings each month.

Chair LaHood requested that Item 9 be continued to the call of the Chair until the December Compliance and Amendments Committee meeting.

No actions taken.

10. Announcements, Comments, Questions, and Future Agenda Items by Members of the Compliance and Amendments Committee.

Public Comment:

Anonymous suggested that the items addressed by the public commentors be included in the next agenda and suggested that the Committee provide direction about what it hopes to accomplish.

David Pilpel thinks that the items addressed by the public would be useful and suggested having the speaker comment summaries included using the same bullet points.

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:20 p.m.

APPROVED: DRAFT

Compliance and Amendments Committee

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.