



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

April 2, 2014 – 4:00 PM

Regular Meeting

Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair),
Richard Knee, Allyson Washburn, David Pilpel,
David Sims, Todd David, Chris Hyland, Bruce Oka

1. **Call to Order, Roll Call, and Agenda Changes.** (00:00:00 – 00:16:00)

The meeting was called to order at 4:12 p.m. Members Sims and David were noted absent. There was a quorum. Member Sims was noted present at 4:19 p.m.

Member Hyland, seconded by Member Washburn, moved to continue Item 8 (SOTF Annual Report) to May 7, 2014.

Public Comment:

Peter Warfield noted that since there is no draft annual report it is appropriate to continue the item, expressed his appreciation that items with no attachments were noted in the packet and suggested that the same be inserted into the online version. Mr. Warfield also inquired as to the status of membership on the SOTF and possible resignations.

Ray Hartz Jr. noted that public comment should be taken on Member Pilpel action to be proposed and expressed his concern regarding the lack of effort to fill the 2 vacant seats on the Sunshine Ordinance Task Force and the resulting lack of due process.

Thomas Picarello expressed concern that Mr. Hartz was not addressing the correct subject matter during public comment and request that discussion occur as soon as possible regarding the annual report.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Washburn, Sims, Hyland, Oka, Fischer, Grant

Noes: 1 – Pilpel

Absent: 1 – David

2. **File No. 13058:** Complaint filed by Ray Hartz Jr. against Dennis Herrera, Office of the City Attorney, for allegedly violating Sunshine Ordinance Section 67.34 by advising City boards and commissions to abridge public comment by posting 150 word summaries of public comment as attachments to meeting minutes rather than including the summaries in the body of the minutes. (00:16:00 – 03:17:00)

Mr. Hartz declined to have Items 2 and 3 (File Nos. 13058 and 13061) heard together.

Member Knee, seconded by Member Fischer, moved to find jurisdiction.

Public Comment:

Peter Warfield stated his support that the SOTF find jurisdiction.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Washburn, Sims, Hyland, Oka, Fischer, Grant

Noes: 1 – Pilpel

Absent: 1 – David

Ray Hartz Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Gabriel Zitrin, City Attorney's Office (Respondent), presented an overview of their defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal.

Deputy City Attorney Colla commented on the item.

Additional actions delayed until related complaint has been discussed (Item 3, File No. 13061).

Member Knee, seconded by Member Hyland, moved to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Section 67.21(i).

Chair Grant found the motion to be out of order.

Member Knee moved to appeal the ruling of the Chair.

Chair Grant rescinded the finding that the motion is out of order.

Public Comment:

Patrick Monette-Shaw stated that the Respondent is incorrect and commented on whether or not the charter overrides the Sunshine Ordinance.

Thomas Picarello expressed opposition to the motion to find violation of Section 67.21(i) and stated that the Ethics Commission has previously overruled the SOTF decision regarding the placement of 150 word summary.

Peter Warfield expressed concern regarding the SOTF adding additional violations to a complaint. Mr. Hartz has split the complaint into two parts and public comment should be allowed on the complaint as a whole. Violation should be found as the City Attorney has found violations previously 6 times.

Member Pilpel, seconded by Member Sims, moved to delay/continue the vote on the motion concerning Item 2 (File No. 13058).

The motion PASSED by the following vote:

Ayes: 5 – Washburn, Pilpel, Sims, Fischer, Grant

Noes: 3– Knee, Hyland, Oka

Absent: 1 – David

Member Washburn, seconded by Member Hyland, moved to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Section 67.34.

The motion was withdrawn by Member Washburn, seconded by Member Hyland.

The motion by Member Knee, seconded by Member Hyland, to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Section 67.21(i) was amended by the mover and the second to apply to both Items Nos. 2 and 3 (File Nos. 13058 and 13061).

The action on the motion and speakers is listed under Item No 3, File No. 13061.

Member Washburn, seconded by Member Oka, moved to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Section 67.34.

Public Comment:

Thomas Picarello stated his lack of support of the motion to find violation of Section 67.34.

The Motion was amended by Member Washburn, seconded by Member Oka, as follows:

Member Washburn, seconded by Member Oka, moved to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Sections 67.16 and 67.34.

Member Knee requested that the question regarding the 67.16 be divided.

Public Comment:

Thomas Picarello stated his lack of support as the SOTF has already ruled that there was no violation of Section 67.21(i).

The motion to find violation of Sunshine Ordinance sections 67.16 and 67.34 was withdrawn by Member Washburn, seconded by Member Oka.

There being no additional motions the Task Force FOUND NO VIOLATIONS and concluded the matter.

3. **File No. 13061:** Complaint filed by Ray Hartz Jr. against Dennis Herrera, Office of the City Attorney, for allegedly violating Sunshine Ordinance Section 67.21(i) by advising City boards and commissions to abridge public comment by posting 150 word summaries of public comment as attachments to meeting minutes rather than including the summaries in the body of the minutes. (01:57:00 – 03:17:00)

Member Knee, seconded by Member Oka, moved to find jurisdiction.

Public Comment:

None.

The motion passed without objections.

Ray Hartz Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Gabriel Zitrin, City Attorney's Office (Respondent), presented an overview of their defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal.

Deputy City Attorney Colla commented on the item.

Member Knee, seconded by Member Hyland, moved to find Dennis Herrera, Office of the City Attorney, in violation of Sunshine Ordinance Section 67.21(i) for items Nos. 2 and 3 (File Nos. 13058 and 13061).

Patrick Monette-Shaw stated that the Ethics Commission should not be re-adjudicating cases. The Good Government Guide is not a legal document.

Thomas Picarello stated that the SOTF needs to have credibility that should be achieved through consistent decision that coincides with other current laws. The previous decisions by the SOTF were incorrect.

Paula Datesh stated that the SOTF needs to send a message to the departments and issue clear rulings.

The motion FAILED by the following vote:

Ayes: 5 – Knee, Washburn, Sims, Hyland, Oka

Noes: 3 – Pilpel, Fischer, Grant

Absent: 1 – David

There being no additional motions the Task Force FOUND NO VIOLATIONS and concluded the matter.

4. **Public Comment:** (01:40:00 – 01:57:00)

Patrick Monette-Shaw expressed concern over the removal of the SOTF interested persons e-mail list.

Ray Hartz Jr. expressed concern that the Ethics Commission expedited his hearing to coincide with Mr. Hartz's time out of town. The Ethics Commission held the hearing without the presence of Mr. Hartz.

Peter Warfield stated that the SOTF Administrator was aware of Mr. Hartz's schedule. Mr. Warfield agreed with the comments of Mr. Monette-Shaw regarding the interested persons e-mail list. Mr. Warfield expressed concern over the language used by the SOTF Administrator in regard to mediation and requirements for the Respondent to respond. Paula Datesh comment on the Arts Commission procedures and mishandling of various requests.

Thomas Picarello commented on the backlog of SOTF complaints and questions the scheduling of only 1 complainant and 1 subject matter. Mr. Picarello noted that some Members of the Board of Supervisors Staff are unaware of the requirements of the SOTF and suggested additional training.

MEETING RECESSED – 6:10 p.m. to 6:22 p.m.

Member Knee, seconded by Hyland, moved to consolidate the hearing on items Nos. 5, 6 and 7 (File Nos. 13054, 13055 and 13059) due to the similar subject matter.

Rick Caldeira, Clerk of the Board of Supervisors' Office (Respondent), agreed to the motions.

Mr. Hartz (Complainant) agreed to the motion with the provision that only the hearing would be consolidated and that each complaint will be provided a separate decision and violations.

Mr. Hartz requested that Member Pilpel recuse himself from the proceedings on items 5, 6 and 7.

Public Comment:

Thomas Picarello expressed his support to consolidate Items No. 5, 6 and 7 and that the agreement of the complainant is not requirement to combine files and concern regarding the lack of a process to deal with vexatious complaint.

The motion PASSED by the following vote:

Ayes: 8 – Knee, Washburn, Pilpel, Sims, Hyland, Oka, Fischer, Grant

Absent: 1 – David

5. **File No. 13054:** Complaint filed by Ray Hartz Jr. against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Sunshine Ordinance Sections 67.15(d) and 67.34 by posting Complainant's 150-word summary of his public comment as an addendum to the meeting minutes rather than including the summary into the body of the minutes of June 18, 2013. (03:17:00 – 04:40:00)

The actions and speakers for Items 5, 6 and 7 (File Nos. 13054, 13055 and 13059) are listed under Item No. 7 (File No. 13059.)

6. **File No. 13055:** Complaint filed by Ray Hartz Jr. against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Sunshine Ordinance Sections 67.15(d) and 67.34 by posting Complainant's 150-word summary of his public comment as an addendum to the meeting minutes rather than including the summary into the body of the minutes of June 11, 2013. (03:17:00 – 04:40:00)

The actions and speakers for Items 5, 6 and 7 (File Nos. 13054, 13055 and 13059) are listed under Item No. 7 (File No. 13059.)

7. **File No. 13059:** Complaint filed by Ray Hartz Jr. against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Sunshine Ordinance Sections 67.15(d) and 67.34 by posting Complainant's 150-word summary of his public comment as an addendum to the meeting minutes rather than including the summary into the body of the minutes of June 25, 2013. (03:17:00 – 04:40:00)

The actions and speakers for Items 5, 6 and 7 (File Nos. 13054, 13055 and 13059) are listed under Item No. 7 (File No. 13059.)

Member Knee, seconded by Member Oka, moved to find jurisdiction on File Nos. 13054, 13055 and 13059.

Public Comment:

None.

The motion passed without objections.

Ray Hartz Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Angela Calvillo, Clerk of the Board of Supervisors' Office, (Respondent), presented an overview of their defense. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal.

Deputy City Attorney Colla commented on the item.

Member Oka stated that Member Pilpel should recuse himself from voting on complaints filed by Mr. Hartz.

(Each motion shall be considered to find a separate violation for each of the listed files).

Member Oka, seconded by Member Sims, moved to find Angela Calvillo, Clerk of the Board of Supervisors, in violation of Sunshine Ordinance Sections 67.16, 67.15(d) and 67.34 (File Nos. 13054, 13055 and 13059).

Member Knee requested that the question regarding 67.34 be divided.

Member Oka, seconded by Member Sims, moved to find Angela Calvillo, Clerk of the Board of Supervisors, in violation of Sunshine Ordinance Sections 67.16 and 67.15(d). (File Nos. 13054, 13055 and 13059).

Member Oka, seconded by Member Sims, moved to find Angela Calvillo, Clerk of the Board of Supervisors, in violation of Sunshine Ordinance Sections 67.34. (File Nos. 13054, 13055 and 13059).

Member Hyland, seconded by Member Washburn, moved to find Angela Calvillo, Clerk of the Board of Supervisors, in violation of Sunshine Ordinance Sections 67.21(e). (File Nos. 13054, 13055 and 13059).

Public Comment:

Thomas Picarello expressed opposition to the motions and does not agree that the First Amendment has been violated.

Paula Datesh stated that there have been previous cases decided by the SOTF with similar circumstances.

The motion concerning the violations of Sunshine Ordinance Section 67.16 and 67.15(d) FAILED by the following vote:

Ayes: 5 – Knee, Washburn, Sims, Hyland, Oka

Noes: 3 – Pilpel, Fischer, Grant

Absent: 1 – David

The motion concerning the violations of Sunshine Ordinance Section 67.21(e) FAILED by the following vote:

Ayes: 3 – Washburn, Hyland, Oka

Noes: 5 – Knee, Pilpel, Sims, Fischer, Grant

Absent: 1 – David

The motion concerning the violations of Sunshine Ordinance Section 67.34 FAILED by the following vote:

Ayes: 4 – Washburn, Sims, Hyland, Oka

Noes: 4 – Knee, Pilpel, Fischer, Grant

Absent: 1 – David

There being no additional motions the Task Force FOUND NO VIOLATIONS and concluded the matter in regards to File Nos. 13054, 13055 and 13059.

8. Sunshine Ordinance Task Force – Annual Report.

Item 8 continued to May 7, 2014, during Call to Order, Roll Call, and Agenda Changes.

MEETING RECESSED – 8:46 p.m. to 8:50 p.m.

Item No. 23 was hearing out of order without objection.

9. **Sunshine Ordinance Task Force Bylaws and Complaint Procedure – Review and Possible Amendments.** (04:40:00 – 05:01:00)

Chair Grant provided an overview of the proposed process to discuss and adopt changes to the SOTF bylaws and procedures. Discussion occurred.

Public Comment:

Thomas Picarello suggested that any enactments be delayed until new members of the SOTF are appointed and commented on proposed amendments.

Continued to the May 7, 2014, meeting of the Sunshine Ordinance Task Force without objections.

Member Pilpel, seconded by Member Knee, moved to continued Item Nos. 10 through 20 to the May 7, 2014, meeting of the Sunshine Ordinance Task Force.

Public Comment:

Thomas Picarello expressed his appreciation of Member Pilpel trying to be sure that the SOTF minutes are correct and encourages the SOTF to approve and post the minutes as soon as possible.

The motion was approved without objection.

10. **Approval of Minutes from the May 1, 2013, Regular Meeting.**

Continued to May 7, 2014.

11. **Approval of Minutes from the June 5, 2013, Regular Meeting.**

Continued to May 7, 2014.

12. **Approval of Minutes from the July 9, 2013, Special Meeting.**

Continued to May 7, 2014.

13. **Approval of Minutes from the August 7, 2013, Regular Meeting.**

Continued to May 7, 2014.

14. **Approval of Minutes from the September 4, 2013, Regular Meeting.**

Continued to May 7, 2014.

15. **Approval of Minutes from the October 2, 2013, Regular Meeting.**

Continued to May 7, 2014.

16. **Approval of Minutes from the November 6, 2013, Regular Meeting.**

Continued to May 7, 2014.

17. **Approval of Minutes from the December 4, 2013, Regular Meeting.**

Continued to May 7, 2014.

18. **Approval of Minutes from the January 30, 2014, Special Meeting.**

Continued to May 7, 2014.

19. **Approval of Minutes from the February 5, 2014, Regular Meeting.**

Continued to May 7, 2014.

20. **Approval of Minutes from the March 5, 2014, Regular Meeting.**

Continued to May 7, 2014.

21. **Report: Education, Outreach and Training Committee meetings of February 10, 2014.**

Member Pilpel provided a report on the Education, Outreach and Training Committee meeting of February 10, 2014, and stated pending issues before the committee.

Public Comment:

None.

22. **Administrator's Report.**

Administrator Young provided a report concerning the administration of the Sunshine Ordinance Task Force.

Public Comment:

Thomas Picarello expressed concern regarding the backlog of complaints and complying with the SOTF 45 day requirement. Mr. Picarello proposed changing the scheduling process to speed up the complaint process.

23. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Pilpel provided information concerning a Court of Appeals Case regarding City of San Jose v. Ted Smith regarding public records on personal devices and request a future hearing regarding the matter.

Member Pilpel provided information concerning Court of Appeals Case A140308 regarding attorney client privileges and request a hearing on the matter.

Member Pilpel requested a hearing regarding e-mail notice of agenda being posted online.

Member Pilpel requested a hearing regarding the Clerk of the Board of Supervisors policy concerning SOTF referrals.

Member Pilpel requested that the SOTF adjourn the meeting in memory of Jean Lum, former Deputy Director with the San Francisco Board of Supervisors and Charlotte Burke, former President of the Sunshine Ordinance Task Force.

Member Knee provided an update on SOTF appointment by the Board of Supervisors Rules Committee. The meeting is anticipated to occur on April 17, 2014, or May 7, 2014. Members who are not reapplying to the SOTF shall continue to serve as holdover members until the seats are filled.

Public Comment:

Thomas Picarello suggested that the SOTF meeting schedule should continue to be provided to the public via email. Notice of upcoming meetings should be included in the agendas.

24. **ADJOURNMENT**

Member Pilpel, seconded by Member Hyland, moved to adjourn the meeting at the hour of 9:55 p.m. in memory of Jean Lum and Charlotte Burke.

The motion passed without objection.

APPROVED: April 30, 2014



Victor Young
Administrator
Sunshine Ordinance Task Force