

**SUNSHINE ORDINANCE
TASK FORCE**



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President London Breed and Members
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

June 30, 2016

Re: Sunshine Ordinance Task Force 2014-2016 Annual Report

Dear President Breed and Members,

The Sunshine Ordinance Task Force (Task Force) submits the attached Annual Report covering the period of June 1, 2014, through March 31, 2016 to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c). The report reflects the experience of the members who served on the Task Force during the time period covered. The report summarizes the predominant matters addressed by the Task Force during this period.

If you have any questions or concerns regarding this report please direct them to me or Task Force Administrator Victor Young at (415) 554-7724 or by email to sof@sfgov.org.

Best Regards,

A handwritten signature in black ink, appearing to read "Chris Hyland", written over a horizontal line.

Chris Hyland
Acting Chair

c: Sunshine Ordinance Task Force Members
Angela Calvillo, Clerk of the Board
Mayor Edwin Lee
City Attorney Dennis Herrera
District Attorney George Gascón
Ethics Commission

**CITY AND COUNTY OF SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE
2014-2016 ANNUAL REPORT**

The San Francisco Sunshine Ordinance Task Force (Task Force) submits this annual report for the term of June 1, 2014, through March 31, 2016, to the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (c).

SUNSHINE ORDINANCE

San Francisco Administrative Code Chapter 67

The Sunshine Ordinance is San Francisco's open government law, enacted in 1993 by the Board of Supervisors and signed by former Mayor Frank Jordan. San Francisco voters amended and approved the current version of the Ordinance in November 1999 as Proposition G.

The Sunshine Ordinance is based on the California Public Records Act and the state open meetings law known as the Ralph M. Brown Act. It draws additional authority and potency from Article I, Section 3 of the California Constitution and is intended to ensure and broaden the public's access to local government guaranteed by state law. San Francisco voters enacted the law to assure that public officials conduct the people's business in full view of the public and that the people remain in control of their government.

SUNSHINE ORDINANCE TASK FORCE

The Task Force is established pursuant to Sunshine Ordinance Section 67.30 to promote transparency and accountability in City government.

Members

The Task Force consists of 11 seats for voting members and two seats for non-voting members. Voting members from June 2014 to April 27, 2016, were:

Seat 1: Attorney nominated by the Society of Professional Journalists.
Mark Rumold (6/10/14 to 4/27/16), seat currently vacant

Seat 2: Journalist nominated by the Society of Professional Journalist.
Eric Eldon (10/7/15 to present)

Seat 3: Member of the press or electronic media with an interest in citizen access.
Josh Wolf (6/10/14 to present)

Seat 4: Journalist nominated by New America Media.
Rishi Chopra (10/21/14 to 4/27/15) (term expired – currently serving as a holdover)

Seat 5: Nominated by the League of Women Voters.
Chair Allyson Washburn (6/10/14 to 4/27/16)

Seat 6: Consumer Advocacy
David Pilpel (5/20/14 to 4/27/16)

Seat 7: Consumer Advocacy
Lee Hepner (6/10/14 to 1/30/16), seat currently vacant

Seat 8: General Public
Shaun Haines (6/3/15 to 4/27/16)

Seat 9: General Public
Vice Chair Chris Hyland (6/10/14 to present)

Seat 10: General Public
Louise Fischer (5/20/14 to present)

Seat 11: General Public
Fiona Hinze (10/28/14 to present)

The Board of Supervisors appoints voting members pursuant to requirements outlined in the Sunshine Ordinance. Voting members serve two-year terms without pay or expense reimbursement. There is no term limit for serving on the Task Force.

All Task Force members are required to have experience and/or demonstrated interest in the issues of citizen access and participation in local government. At all times the Task Force shall include at least one member who is a member of the public and is physically handicapped. Member Fiona Hinze met that requirement when she was appointed on October 21, 2014.

The two non-voting seats are designated for ex-officio members from the offices of the Mayor and the Clerk of the Board of Supervisors. Mayor Edwin Lee failed to designate a person to represent his office. Clerk of the Board Angela Calvillo primarily acts to acclimate new Task Force members to their roles and address transitional issues.

Responsibilities

The Task Force protects the public interest in open government and performs the duties outlined in the Sunshine Ordinance. It monitors the effectiveness of the Ordinance and recommends ways to improve it. The goal is to maximize public access to City records, information, and meetings and help public officials, employees, and entities find effective, efficient, and practical ways to meet open government requirements.

The Task Force is responsible for determining whether a record or information, or any part of that record or information, is public and must be disclosed; for determining whether meetings of policy, advisory, and passive meeting bodies should be open to the public; and for hearing public complaints alleging violations of the Sunshine Ordinance, California Public Records Act, Ralph M. Brown Act, and the Nonprofit Public Access Ordinance.

Meetings

Regular Task Force meetings are currently held on the first Wednesday of each month at 4:00 p.m.

Standing Committees of the Task Force

During this period the Compliance and Amendments Committee (CAC); Complaint Committee (CC); Rules Committee (RLS); and the Education, Outreach, and Training Committee (EOTC) were active.

In an effort to adjudicate complaints in a timely manner, the Task Force authorized the Complaint Committee to conduct initial hearings and make recommendations regarding how they should be decided. This has effectively doubled the capacity of the Task Force to adjudicate complaints each month and has greatly reduced the backlog.

For period of June 1, 2014, through March 31, 2016, the Task Force's committees conducted the compliant hearings and considered other issues as follows:

38 hearings to follow up on the Orders of Determination issued by the Task Force
62 hearings to review complaints and make recommendations to the Task Force

Task Force Administrator

The Task Force is assisted by a full-time Administrator from the office of the Clerk of the Board of Supervisors pursuant to Sunshine Ordinance, Section 67.31. During this period the role of Administrator was filled by Victor Young.

The Administrator receives complaints related to the Sunshine Ordinance and assists the public in resolving open government issues. The number of complaints received by the Administrator is substantially higher than the number of complaints heard by the Task Force for adjudication, primarily because the Administrator is able to resolve conflicts between parties at times.

Deputy City Attorney

The City Attorney assigns a Deputy City Attorney to serve as legal advisor to the Task Force. Nicholas Colla served in that capacity during this period.

Complaints filed with the Sunshine Ordinance Task Force

2014: 122 complaints filed
2015: 168 complaints filed
2016: 35 complaints filed as of March 31, 2016

Complaints filed against city agencies from January 1, 2014, through March 31, 2016.

City Agency	2014	2015	2016 (partial to 3/31/16)	Total Complaints Filed per Department	Number of Violations Found by the Task Force
Arts Commission	17	35	10	62	7
Assessor/Recorder	2			2	1
Board of Supervisors	10	14	3	27	11
Building Inspection	2			2	1
City Administrator		2		2	1
City Attorney	12	11		23	5
Civil Service Commission	1	2		3	
Controller's Office	5	7		12	3
District Attorney	1	1	2	4	2
DTIS		1		1	
Emergency Management			1	1	
Environment		1	1	2	
Ethics Commission		1	1	2	
Fire Department	1	3		4	1
Housing Authority		1		1	
Human Resources		13		13	
Human Services Agency	4	2	1	7	1
Mayor's Office	9	3		12	3
Planning	6		1	7	
Police Department and Commission	7	3	4	14	4
Port		1		1	
Public Health	13	2		15	3
Public Library and Commission	4	16		20	2
Public Utilities Commission		3		3	1
Public Works	5	3		8	5
Recreation and Parks		2		2	2
Retirement System	1	5		6	
SFMTA	6		3	9	2
Sheriff	2	11	2	15	2
Sunshine Ordinance Task Force		1		1	
Treasurer/Tax Collector	2	2		4	
Zoo	1			1	
311		1		1	

Total complaints filed against a particular department should not be taken as an indicator of that department's compliance with the Ordinance. Rather, violations found by the Task Force serve as a more accurate barometer and should assist departments with achieving a stronger record of compliance in the future.

Highlights of Hearings and Cases

The matters and cases discussed below are representative of those heard by the Task Force as it works to ensure greater transparency in the day-to-day business of City departments. As stated in previous annual reports, the Task Force is seeking both a stronger partnership and accountability by municipal offices with enforcement power through timely action to address these matters and to see the cases through to their important and just conclusions.

- It appears that the Recreation and Parks Department has several internal policies that have not been codified in writing but are characterized as “long-standing policies.” Although the department does not appear to violate the Sunshine Ordinance as strictly interpreted, the question remains as to how the policies were adopted and enforced they are not in a written format. The Task Force is currently attempting to gather more information from Recreation and Parks about how they develop policies but have not receive adequate responses (attachment- letter to and response from Recreation and Parks).
File No. 15087 Alex Aldrich vs. Recreation and Parks
File No. 15159 Tom Borden vs. Recreation and Parks
- Hearings conducted to provide suggestions for amendment to the Administrative Code (Sunshine Ordinance) 67.29-5: Officials Calendars: to expand the requirement to maintain a calendar to additional city officials.
- Review and implementation of certain recommendations from the Civil Grand Jury report title: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense. (File No. 14065)
The Task Force held a series of hearings about the recommendations and was requested to review and submitted a response to the presiding judge in August 2014. The response is attached.
- Hearing with the Ethics Commission to revise and develop additional policies for the effective processing of referrals from the Task Force for enforcement. (File No. 14093)
- Balancing the need for the Police Department and Fire Department to maintain confidential documents for law enforcement purposes against the public’s ability to access public records.
File No. 15010 Thomas Picarello vs. Fire Department. The Fire Department withheld certain documents due to a criminal investigation and for personal privacy purposes. However, Mr. Picarello was an actual victim in the investigation.
File No. 15019 Emmanuel Kourkoulas vs. Police Department. The Police Department would not release unredacted copies of certain reports in order to protect victims of a crime.

- Whistleblower protection. The Public Utilities Commission revised a report in order to delete any possible reference to a whistleblower complaint but did not inform the public of the redaction/amendment. Upon review, the Task Force found that certain practices used to protect whistleblowers actually obstruct the whistleblowers themselves (even though they have gone “public” and no longer wish for anonymity or protection) and also obstruct the ability of members of the public to obtain records that may or may not be related to the whistleblower complaint. The Task Force was not able to obtain satisfactory answers regarding the complaint.

File No. 15078 Richard Denton vs. Public Utilities Commission.

- The Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement (Panel) requested certain records from the Police Department. Due to the large volume and required analysis of the documents, the Police was unable to meet the deadline to comply with the public records request. The Task Force continues to work with both parties to create timelines for document production.

File No. 16003: Panel vs. the Police Department.

- Steve Kawa, Chief of Staff, Mayor’s Office, was found to have deleted his calendar on a regular basis, maintaining only a 2-week calendar history. It was determined that Mr. Kawa and city employees in general should maintain calendar for a minimum of 2 years and there is no legitimate reason to delete the calendar. A willful violation was found here and has been sent to the Ethics Commission.

File No. 15163 Michael Petrelis vs. Steve Kawa and the Mayor’s Office

Enforcement of the Sunshine Ordinance

Sunshine Ordinance, Section 67.30 (c) provides that “the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.”

Municipal offices with enforcement power under the Sunshine Ordinance are the District Attorney and the Ethics Commission. The District Attorney’s office has failed to respond to any referral for enforcement from the Task Force, including a failure to provide any explanation to the Task Force or the underlying complainant. Enforcement of the Ordinance is essential to protecting the public’s right to open government. The Ordinance is not merely local law; it also encompasses open government rights guaranteed by state law. The Task Force recommends that the Board of Supervisors take meaningful steps to improve enforcement of the Ordinance.

On-going Issues

Volume of Complaints. As mentioned earlier, the Task Force has begun hearing many complaints in the Complaint Committee in an effort to reduce the backlog, as well as the wait time for complainants. That said, the volume of complaints has remained so high that other pertinent Task Force issues, including updating the by-laws, complying with new laws related to technology and digital data storage, working with other City agencies on enforcement, increasing education of City departments, and conducting outreach to the public have not been able to be adequately addressed.

Unfilled Task Force Seats. The aforementioned problem would be addressed, at least in part, if the Task Force had a full complement of 11 members. Members of the Board of Supervisors were asked repeatedly for assistance in filling the two Task Force seats that were empty for most of this period. Moving forward, it is important that all positions on the Task Force are filled so that it can more effectively complete the work that the Ordinance mandates that it do. It is hoped that this situation will be corrected in the upcoming term. The Board of Supervisors Rules Committee is strongly urged to fill any vacant seats on the Task Force within one or two months.

Staffing; Deputy City Attorney. For the past several years, the Deputy City Attorney assigned to the Task Force has not been funded for his role at a level that permits him to attend the entire meeting of the Task Force if it runs long or to attend any of the Committee meetings. This makes it difficult for the Task Force to function optimally as the inevitable questions that arise during hearings go unanswered. The Board of Supervisors is urged to increase the hours that the Deputy City Attorney is assigned to the Task Force so that may better fulfill its responsibilities as mandated by the Sunshine Ordinance.

Long-term Issues

Amending the Sunshine Ordinance. Although transparency in City government is crucial to fostering a working relationship with the public, many sections of the Sunshine Ordinance itself are outdated and require amendment in order to be both current and effective for both the public and City officials. We have made some headway into both internal process changes and, in past years, in drafting recommendations for amendments to the Ordinance and will continue that work in the next term.

Conclusion

In conclusion, the Task Force urges the Board of Supervisors and the Mayor to take a hard look at the Task Force, its purpose in promoting open government, and give it the tools necessary to make it a viable decision-making body that serves the public interest and creates an environment where City officials and agencies can work with the public in a respectful and efficient manner. After close to 20 years of being in operation some substantial reforms and improvements to the Ordinance may be necessary to achieve this end.

**Sunshine Ordinance Task Force
Compliance and Amendments Committee**

The Compliance and Amendments Committee (CAC) takes the lead in monitoring effectiveness of the Sunshine Ordinance and proposing revisions thereto. The CAC also follows up on Orders of Determination that the Task Force issues when finding violations of the Ordinance, investigates whether the Orders have been met, and recommends when necessary that the Task Force refer cases of willful failure to comply with the Orders to offices with enforcement power.

The members of the CAC has comprised three members: most recently Allyson Washburn, Lee Hepner, and Rishi Chopra.

The CAC normally meets on the 3rd Tuesday every other month at 4 p.m.

During the period from June 1, 2014, through April 6, 2016, the CAC held 11 meetings to hear the following matters:

Hearings following up on departmental compliance with Task Force Order of Determination - 26

Hearings to review complaints and submit recommendations to the Task Force - 11

Other issues of discussion to note

File No. 14065: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense.

File No. 14073: Proposed amendments to Sunshine Ordinance Section 67.29-5 - Calendars of Certain Officials.

File No. 14093: Hearing - Ethics Commission's policy discussion regarding Sunshine Ordinance Task Force referrals.

**Sunshine Ordinance Task Force
Education, Outreach, and Training Committee**

The Education, Outreach, and Training Committee (EOTC) makes recommendations to the Task Force regarding outreach and publicity to the media and the general public about the Sunshine Ordinance and the Task Force. The EOTC also assists City departments to develop procedures to comply with the Ordinance.

The members of the EOTC has comprised three to five members: most recently Chair Chris Hyland, David Pilpel, Josh Wolf, Todd David and Ali Winston.(pending recheck)

The EOTC normally meets the second Monday every other month at 4 p.m.

During the period from June 1, 2014, through April 6, 2016, the EOTC held 6 meeting to hear the following matters:

Hearings following up on departmental compliance with Task Force Order of Determination - 12

Hearings to review complaints and submit recommendations to the Task Force - 6

Other issues of discussion to note

File No. 14065: Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense.

File No. N/A: Education, Outreach and Training Committee – Member Initiative and Work Plan.

File No. 14073: Proposed amendments to Sunshine Ordinance Section 7.29-5 - Calendars of Certain Officials.

File No. 15020: Hearing - Creating Policies and Procedures Guide: How to Respond to Request for Public Records.

Sunshine Ordinance Task Force Rules Committee

The Rules Committee reviews matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and assists the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force. In addition, the Rules Committee hears on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

The Rules Committee normally meets once every other month and as needed. On many occasions the Rules Committee members served on the Complaint Committee to hear new complaints.

The members of the Rules Committee has comprised three members: most recently Chair Louise Fischer, Fiona Hinze and Mark Rumold.

The Rules Committee meets as needed.

During the period from June 1, 2014, through April 6, 2016, the Rules Committee held 3 meetings to hear the following matters:

Hearing regarding Sunshine Ordinance Task Rules and by-laws amendments

File No. 14030: Sunshine Ordinance Task Force By-laws and Complaint Procedures –Review and Possible Amendments.

- Quorum required for procedural issues
- Attendance policy
- Task Force precedence log of decisions
- Continuance policy
- Revising complaint procedure
- Policy regarding reconsideration of decisions
- Closing files due to lack of communication or attendance at hearing
- Policy for telephone testimony
- Policy for Americans with Disabilities (ADA) accommodations
- Time limits for hearings
- Review and evaluation of Complaint Committee Procedure
- Communications policy
- Documentation deadline

Sunshine Ordinance Task Force Complaint Committee

The Complaint Committee monitors the complaint process and make recommendations to the Task Force regarding how the complaints should be handled. The Complaint Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

The Complaint Committee meets as needed and does not have standing members. The other Committees and/or members are assigned to as the Complaint Committee as needed by the Task Force Chair.

During the period from June 1, 2014, through April 6, 2016, the Complaint Committee held 10 meeting to review 45 complaint. (Upon review the complaints are referred to the Task Force with recommendations for review and possible adoption.)