



# 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

September 4, 2019 - 4:00 PM

## Regular Meeting

Seat 1	Matthew Cate	Seat 7	Rodman Martin
Seat 2	Lila LaHood	Seat 8	Frank Cannata
Seat 3	Josh Wolf - <b>Vice Chair</b>	Seat 9	Chris Hyland
Seat 4	Rishi Chopra	Seat 10	Matthew Yankee
Seat 5	Leuwam Tesfai	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - <b>Chair</b>		

Ex-officio (*non-voting*) Clerk of the Board of Supervisors or his or her designee

Ex-officio (*non-voting*) Mayor or his or her designee

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

Vice-Chair Josh Wolf called the meeting to order at 4:19 p.m. On the call of the roll Vice-Chair Josh Wolf and Members Cate, Martin, Cannata, Yankee and Hinze were noted present. Members LaHood, Chopra, Tesfai and Chair Bruce Wolfe were noted absent. Member Hyland was noted excused from the meeting. A quorum was present.

Member LaHood was noted present at 4:22 p.m.

Chair Bruce Wolfe was noted present at 4:49 p.m.

Member Tesfai was noted present at 5:30 p.m.

### 2. Approval of minutes from the Sunshine Ordinance Task Force August 7, 2019, meeting.

The SOTF discussed the draft meeting minutes. Member Yankee requested correction to the action in Item No. 4 (File No. 19043) and Item No. 10 (File No. 19031).

**Action: Moved by Member Yankee, seconded by Member Cannata to approve the August 7, 2019, meeting minutes.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 6 - Yankee, Cannata, Martin, Hinze, J. Wolf, Cate

Noes: 0 - None

Absent: 4 - B. Wolfe, LaHood, Tesfai, Chopra

Excused: 1 - Hyland

3. **File No. 19010:** Hearing to consider action to close Sunshine complaints due inactivity and non-compliance with the SOTF Complaint Procedures for the following files:

17026 Ann Treboux V Arts Commission  
17028 Ann Treboux V Arts Commission  
17029 Ann Treboux V Arts Commission  
17033 Ann Treboux V Arts Commission  
17074 Ann Treboux V Arts Commission  
17098 Ann Treboux V Arts Commission  
17106 Ann Treboux V Arts Commission  
17107 Ann Treboux V Office of the Mayor  
17108 Ann Treboux V Arts Commission  
17126 Ann Treboux V Arts Commission  
17127 Ann Treboux V Arts Commission  
17128 Ann Treboux V Arts Commission  
18002 Ann Treboux V Arts Commission  
18003 Ann Treboux V Arts Commission  
18005 Ann Treboux V Arts Commission  
18033 Ann Treboux V Arts Commission  
18042 Ann Treboux V Arts Commission  
18044 Ann Treboux V City Attorney  
18045 Ann Treboux V Arts Commission  
18046 Ann Treboux V Arts Commission  
18053 Ann Treboux V Arts Commission  
18056 Ann Treboux V Arts Commission  
18057 Ann Treboux V Arts Commission  
18063 Ann Treboux V Arts Commission  
18064 Ann Treboux V Arts Commission  
18065 Ann Treboux V Historic Preservation Commission  
18074 Ann Treboux V Arts Commission  
18078 Ann Treboux V War Memorial  
18084 Ann Treboux V Arts Commission

(00:03:45 - 00:07:25)

Victor Young (SOTF) provided a summary of the matter and stated that due inactivity and lack of communication by the Complainant with the SOTF the matters should be close/filed pursuant to the SOTF Complaint Procedures. Mr. Young stated that the Complainant may refile their complaints at a future time.

**Action: Moved by Member Cannata, seconded by Member Cate, to close and file the complaints referenced in File No. 19010.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 7 - Cannata, Cate, Yankee, Martin, J. Wolf, LaHood, Hinze  
Noes: 0 - None  
Absent: 3 - B. Wolfe, Tesfai, Chopra  
Excused: 1 - Hyland

4. **File No. 17101:** Complaint filed by Randy Sinki against the Arts Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (00:07:27 - 00:11:55)

Randy Sinki (Petitioner) was not present at the hearing and did not communicate with the Administrator that they would not be present.

**Action: Moved by Member Cannata seconded by Member Cate to close and file the item due to non-appearance and lack of communication.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 7 - Cannata, Cate, Yankee, Martin, J. Wolf, LaHood, Hinze  
Noes: 0 - None  
Absent: 3 - B. Wolfe, Tesfai, Chopra  
Excused: 1 - Hyland

5. **File No. 18018:** Complaint filed by Randy Sinki against the Arts Commission for allegedly violating Administrative Code, Sections 67.14, by failing to make audio recording available online within 72 hours. (00:11:54 - 00:12:53)

Randy Sinki (Petitioner) was not present at the hearing and did not communicate with the Administrator that they would not be present.

**Action: Moved by Member Cannata seconded by Member Cate to close and file the item due to non-appearance and lack of communication.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 7 - Cannata, Cate, Yankee, Martin, J. Wolf, LaHood, Hinze

Noes: 0 - None

Absent: 3 - B. Wolfe, Tesfai, Chopra

Excused: 1 - Hyland

6. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (00:12:58 – 00:16:43)

**Public Comment:**

Ray Hartz spoke about the Friends of the Public Library and that very little of the money raised each year is earmarked for the Public Library. Mr. Hartz stated that under the law the Library cannot accept money without listing the donors.

7. **File No. 17134:** Complaint filed by Thomas Busse against the San Francisco Public Utilities for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, 67.24(g)(i), 67.27 by failing to respond to a public records request in a timely and/or complete manner and against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21(i), for acting as legal counsel for denying access to a public record. (00:16:05 – 00:31:00)

Thomas Busse (Petitioner) was not present at the hearing and did not communicate with the Administrator that they would not be present.

Cassini Yep (Public Utilities Commission, PUC) (Respondent), provided a summary of the department's position. Ms. Yep stated that on October 6, 2017, Mr. Busse requested all documents at the PUC regarding Emergency Action Plans. Ms. Yep stated that at that time it was the policy of the PUC to not disclose those materials due to a security risk and pursuant to California Government Code Section 8589.85(e) and California Water Code 6161. Ms. Yep also stated that the City Attorney's Office advised the PUC to not disclose those documents to the Petitioner. On April 17, 2018, the PUC sent the SOTF and Mr. Busse an update regarding the complaint. Ms. Yep stated that the Complainant has received all requested documents in a redacted format.

A question and answer period occurred.

**Action: Moved by Member Martin seconded by Member LaHood to close and file the item due to non-appearance and lack of communication.**

**Public Comment:**

Ray Hartz spoke about the failure of timeliness and failure of producing the requested records on a rolling basis.

**The motion PASSED by the following vote:**

Ayes: 7 – Martin, LaHood, Cannata, Cate, Yankee, J. Wolf, Hinze

Noes: 0 - None

Absent: 3 - B. Wolfe, Tesfai, Chopra

Excused: 1 - Hyland

8. **File No. 18013:** Complaint filed by Thomas Busse against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21(i), for acting as legal counsel to denying access to a public record.  
(00:31:05 – 00:42:01)

Thomas Busse (Petitioner) was not present at the hearing and did not communicate with the Administrator that they would not be present.

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote reference their written responses regarding this matter dated December 21, 2017, January 23, 2018, and July 25, 2018. Mr. Cote asked the SOTF to dismiss the complaint.

A question and answer period occurred.

**Action: Moved by Member Martin seconded by Member Yankee to close and file the item due to non-appearance and lack of communication.**

**Public Comment:**

Ray Hartz spoke about the memos submitted in this case because they are very similar to his case. Mr. Hartz stated that the City Attorney's Office does not deal in good faith.

**The motion PASSED by the following vote:**

Ayes: 8 - Martin, Yankee, Cannata, Cate, LaHood, J. Wolf, Hinze, B. Wolfe

Noes: 0 - None

Absent: 2 - Tesfai, Chopra

Excused: 1 - Hyland

9. **File No. 17086:** Complaint filed by Ray Hartz against Dennis Herrera and Bradley Russi, Office of the City Attorney, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(i), by acting as legal counsel for city employees or any person having custody of public records for the purpose of denying access to the public.  
(00:42:38 – 2:25:50)

Ray Hartz (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hartz stated that the City Attorney is always taking the side of the agency advising to withhold public records. Mr. Hartz stated that the Library Commission has been advised by the City Attorney to not put the Friends of the Public Library at risk of disclosure. Mr. Hartz stated that at Library Commission hearings he has asked them to report donations made to the Library. Mr. Hartz stated that the Friends of the Public Library is required to provide fund raising information to the public.

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote referred the SOTF to the written responses included in the packet. Mr. Cote stated that the issue before the SOTF is not about funding but an allegation of a violation of Sunshine Ordinance, Section 67.21(i). Mr. Cote stated that the City Attorney did not provide advice to deny access to the public record and that there is no violation. Mr. Cote referred to the *Grossman v. St. Croix* case.

Vice-Chair J. Wolf opined that this case is about a violation of 67.21(i). Vice-Chair Wolf stated that this matter is about a violation of the Sunshine Ordinance by the City Attorney. Vice-Chair J. Wolf opined that the role of the City Attorney is to provide advice on legal matters. Member Cate stated that under the City Charter the City Attorney's Office is to provide legal advice or written opinion to a department head or officer. Member Cannata opined that the Deputy City Attorney memo provides for a subjective call and questioned whether or not it was written to not produce records.

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

**Action: Moved by Vice-Chair J. Wolf, seconded by Member Cannata, to find that the Office of the City Attorney violated Administrative Code (Sunshine Ordinance), Section 67.21(i).**

Public Comment:

Robert M. Smith stated that this is an ethics issue and that an application of ethical standard should be applied to the City Attorney.

**The motion FAILED by the following vote:**

Ayes: 3 - J. Wolf, Cannata, B. Wolfe

Noes: 6 - Yankee, Martin, Tesfai, LaHood, Cate, Hinze

Absent: 1 - Chopra

Excused: 1 - Hyland

Chair B. Wolfe requested that the SOTF leave the complaint open and refer it to the Education, Outreach and Training to answer the question of whether proceedings under the SOTF are a legal proceeding and whether the requirement that the City Attorney under the Charter supersedes.

**Action: Moved by Chair B. Wolfe, seconded by Member Hinze, to refer the matter to the Education, Outreach and Training Committee and requested that the question of whether the SOTF proceedings are a legal proceeding, whether the requirement of the City Attorney under the Charter supersedes Administrative Code (Sunshine Ordinance), Section 67.21(i), and report their findings to the SOTF.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 6 - B. Wolfe, Hinze, Martin, J. Wolf, Tesfai, LaHood,

Noes: 3 - Yankee, Cannata, Cate

Absent: 1 - Chopra

Excused: 1 - Hyland

10. **File No. 18081:** Complaint filed by David Tucker against the Office of Labor Standards Enforcement for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24(b)(2), by failing to respond to a request for litigation documents in a timely and/or complete manner. (02:26:00 - 03:27:15)

David Tucker (Petitioner) provided a summary of the request for reconsideration of the complaint and requested the Committee to find a violation. Mr. Tucker stated that in April 2019, he was before the SOTF asking for a copy of a settlement agreement between the Office of Labor Standards Enforcement (OLSE) and the Arch Dioceses of San Francisco which was denied by the SOTF. Mr. Tucker stated that the statement regarding the class action by Mr. Mulligan is false. Mr. Tucker stated that the OLSE and the Arch Dioceses are not negotiating a settlement agreement between them. Mr. Tucker stated that the Settlement Agreement was signed in September 2018, and when they asked for the document it was not being negotiated. Mr. Tucker stated that the settlement agreement is not being reviewed by the Judge in the class action. Mr. Tucker stated that the Judge suggested to the class action attorney that the settlement agreement be made available. Mr. Tucker stated that the settlement agreement had been signed for months and should be available for public disclosure.

Pat Mulligan (Office of Labor Standards Enforcement, OLSE) (Respondent), provided a summary of the department's position on the Complainant's reconsideration. Mr. Mulligan stated that this matter was before the SOTF months ago and provided a timeline of events with regards to the class action. Mr. Mulligan stated that when he was first before the SOTF, the reason for not providing the information was due to California Evidence Code Sections 1040 and 1041 and California Government Code Sections 6254 and 6256 which provided for investigative privilege. Mr. Mulligan stated that with regards to Mr. Tucker's accusations and in terms of negotiating, there was a settlement

agreement that was contingent on the settlement of the class action case that was consistent with when the documents that were made available. Mr. Mulligan stated that on April 26, 2019, the Judge had made a preliminary approval of the settlement and based on that the OLSE made those documents available to the Complainant. Mr. Mulligan stated that there are approximately 1,700 beneficiaries in the settlement agreement and not a single member has objected, except for the Complainant.

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

Member Cate stated that the rules and timeliness for reconsideration of the matter be waived and to allow the matter to go forward.

**Action: Moved by Member Cate seconded by Member J. Wolf, waive the SOTF Complaint Procedure rule regarding the requirement to request reconsideration within 30 days of the issuance of the Order of Determination and accept the request for reconsideration.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 9 – Cate, J. Wolf, Yankee, Martin, Tesfai, Cannata, LaHood, Hinze,  
B. Wolfe

Noes: 0 - None

Absent: 1 - Chopra

Excused: 1 - Hyland

Member B. Wolfe stated that if there is new information for a reconsideration, it must be substantive and if the SOTF feels that the new information is not substantive, they can deny the complaint.

Member Cate stated that there are two things to consider: 1) whether the Settlement Agreement is contingent on class action a settlement approval and 2) was there a consideration and if not was there a justification for withholding the document?

A question and answer period occurred.

**Action: Moved by Member Cannata, seconded by Vice-Chair J. Wolf, that the SOTF upholds their previous decision and finds that the Office of Labor Standards Enforcement DID NOT violate Administrative Code (Sunshine Ordinance), Section 67.24(b)(2) by not providing the requested records in a timely manner.**

Public Comment:

Peggy O'Donnell stated that the requested documents were not received in a timely manner.



**The motion PASSED by the following vote:**

Ayes: 9 - Cannata, J. Wolf, Yankee, Martin, Tesfai, LaHood, Cate, Hinze,  
B. Wolfe  
Noes: 0 - None  
Absent: 1 - Chopra  
Excused: 1 - Hyland

11. **File No. 19058:** Complaint filed by Robert M. Smith against the Fine Arts Museum of San Francisco for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (03:27:23 – 04:37:22)

Robert M. Smith (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Smith stated that the Fine Arts Museum (Museum) acted unlawfully because no documentation has been turned over regarding the reason behind Ms. Wilsey's resignation. Mr. Smith stated that after one month had passed, the Museum stated that they would turn over documents as soon as reasonably possible. Mr. Smith stated that no legal citations were provided regarding the redactions. Ms. Smith stated that the Museum is withholding records and wants the matter referred to the District Attorney.

Melissa Powers (Fine Arts Museum) (Respondent), provided a summary of the department's position. Ms. Powers stated that the Museum went beyond the scope of the law and provided responsive documents to Mr. Smith. Ms. Powers acknowledged that their response was not timely. Ms. Powers stated that she redacted private emails as guided by the City Attorney's Office and has provided Mr. Smith all responsive records.

Megan Bourne (Fine Arts Museum) (Respondent) stated there are no other records responsive to Mr. Smith's Immediate Disclosure Request, however the Museum did provide Minutes from the March meeting in which Ms. Wilsey announced her resignation from the Board at the Museum due to her term expiring. Ms. Bourne stated that redactions were made on the advice of their City Attorney.

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

**Action: Moved by Member Martin, seconded by Member Cannata that the Fine Arts Museums violated Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. The SOTF continued the matter and requested that the SOTF City Attorney provide advice regarding the relationship between the Corporation and Foundation of the Fine Arts Museum.**

(The SOTF requested that the City Attorney provide advice regarding:

- The relationship of the Corporation and the Foundation of the Fine Arts Museum as being separate entities pursuant to the Sunshine Ordinance and Administrative Code, Section 12L (Non-Profits)
- Are two entities local agencies under Government Code Sections 6252 and 54952?)

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 9 - Martin, Cannata, J. Wolf, Yankee, Tesfai, LaHood, Cate, Hinze,  
B. Wolfe

Noes: 0 - None

Absent: 1 - Chopra

Excused: 1 - Hyland

12. **Reports from Sunshine Ordinance Task Force Committees. (04:37:30 - 04:40:14)**

- Complaints Committee
  - Member Martin provided commentary on the August 20, 2019, Complaint Committee hearing. Member Martin stated that File No. 19060 was heard and that the Complainant did not make an appearance or notify the Administrator that they would not appear.
- Compliance and Amendments Committee
  - Member Cannata provided commentary on the August 27, 2019, Compliance and Amendments Committee hearing and stated that Mr. Smith's complaints and Denta Tadesse's complaints were heard.
- Education, Outreach and Training Committee
  - The Education, Outreach and Training Committee did not meet in August 2019, and no commentary was provided
- Rules Committee
  - Member Hinze provided commentary on the Agenda of the upcoming September 24, 2019, Rules Committee hearing
- Information Technology Ad Hoc Committee
  - No commentary was provided

Public Comment:

None.

No actions taken.

13. **Sunshine Ordinance Task Force - Chair's Report.** (04:40:17 – 04:43:57)

Chair B. Wolfe stated that he continues to work on the SOTF Annual Report.

Public Comment:  
None.

No actions taken.

14. **Administrator's Report, Complaints and Communications.** (04:43:59 – 04:54:02)

The SOTF Administrator presented the Staff Report and responded to questions from the SOTF. The Administrator reviewed the hearing schedule for the remainder of 2019, and the number of new and pending matters before the SOTF. The SOTF discussed Rick Knee's correction to the Minutes of August 7, 2019, hearing.

Public Comment:  
None.

No actions taken.

15. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.** (04:54:07 – 05:02:36)

Member Tesfai stated that she and Member LaHood will consult with their organizations regarding Prop B and proposed changes to SOTF seats description and appointing authority.

Public Comment.  
None.

No action taken.

16. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:21 p.m.

**APPROVED: 10/2/19**  
**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.