



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES - DRAFT

## REMOTE REGULAR MEETING

December 2, 2020 - 4:00 PM

### Regular Meeting

Seat 1	Dean Schmidt	Seat 7	Vacant
Seat 2	Lila LaHood	Seat 8	Vacant
Seat 3	Vacant	Seat 9	Chris Hyland
Seat 4	Vacant	Seat 10	Matthew Yankee - <b>Vice Chair</b>
Seat 5	Jennifer Wong	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**

Chair B. Wolfe called the meeting to order at 4:34 PM. On the call of the roll Chair B. Wolfe and Members LaHood, Schmidt, Wong, Hyland, Yankee and Hinze were noted present. A quorum was present.

#### 2. **Approval of minutes from the Sunshine Ordinance Task Force November 4, 2020 and November 10, 2020, meetings.**

The SOTF discussed the draft meeting minutes.

**Action: Moved by Member Yankee, seconded by Member LaHood, to approve the November 4, 2020 and November 10, 2019, meeting minutes.**

Public Comment:

Anonymous stated that the Annual Supervisor of Records report is false.

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

Ayes: 7 - Yankee, LaHood, Wong, Schmidt, Hinze, Hyland, B. Wolfe

Noes: 0 - None

Absent: 0 - None

3. **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. *(No Action). Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.*

Peter Warfield that access to public meetings is a mess under Covid. Mr. Warfield stated that when City Hall was open, a person could go to the department of their choice. Mr. Warfield noted that a person could call 40 hours a week and someone would respond immediately. Mr. Warfield stated that unless a person owned a computer, they are unable to get information.

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

Deputy City Attorney Marc Price Wolf stated that he is working on a presentation for the SOTF detailing the branches and functions of the Museum of Fine Arts at the January 2021 SOTF meeting.

5. **File No. 19103:** Complaint filed by Anonymous against Mayor London Breed, Hank Heckel and the Mayor's Offices for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25 and 67.26, by failing to respond to an Immediate Disclosure 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 On October 4, 2019 he submitted an Immediate Disclosure Request for the Mayor's future calendar. Anonymous said the Mayor's future meeting information is not entirely exempt due to security issues and should be provided with redactions for those security procedures under Gov Code 6254(f). Anonymous noted that the Mayor has Secret Service-like police protection. Anonymous stated that the Times Mirror v. Superior Court 1991 53 Cal.3d 1546 case is now bad law due to Prop 59. Anonymous stated in a later case Governor Schwarzenegger was sued and did eventually turn over his past calendars. Anonymous noted that the Mayor's future calendars were not originally provided, that the Petitioner had to make a second request and then it was provided after the dates were no longer in the future.

Hank Heckel (Mayor's Office) (Respondent), provided a summary of the department's position. Mr. Heckel stated that the Mayor's Office's original position was that the Mayor's future calendars could not be disclosed. Mr. Heckel stated that disclosure of any information of Mayor's office jeopardizes the security of the Mayor. Mr. Heckel cited California Public Records Act 6254(f) and Times Mirror v. Superior Court 1991 53 Cal.3d 1546 regarding his argument that calendar and scheduling information for future calendars of the Mayor should be withheld for security reasons. Mr. Heckel noted that this provision does not obligate the police department who provides security to the Mayor. Mr. Heckel opined that this information could create a security risk if disclosed.

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

Chair Wolfe asked what part of a calendar entry is protected?

Mr. Heckel stated that the purpose is to protect the Mayor and so there is a limit to producing future calendar meetings. Mr. Heckel again cited 6254(f) noting that future meetings should not be disclosed. Mr. Heckel stated that once a meeting has occurred, that would become a Prop G calendar, however the Mayor's Office will not disclose future meetings due to security concerns.

**Action: Moved by Member LaHood, seconded by Member Hinze to find that Mayor London Breed, Hank Heckel, and the Mayor's Office violated Administrative Code, Sections 67.26 for failing to keep withholding to a minimum, 67.27 for justification of withholding and to refer the matter to the Compliance and Amendments Committee to ensure that properly redacted records are provided to the Petitioner.**

Public Comment:

Stephen Malloy stated support for Anonymous. Mr. Malloy stated that the Mayor's Office clearly indicated wrongdoing.

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

Ayes: 7 - LaHood, Hinze, Yankee, Wong, Schmidt, Hyland, Wolfe

Noes: 0 - None

Absent: 0 - None

6. **File No. 19061:** Complaint filed by John Hooper against the Office of Economic and Workforce Development for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner

John Hooper (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hooper stated that he submitted a written statement. Mr. Hooper believes that the response from OEWD (Office of Economic and Workforce Development) is misleading. Mr. Hooper's request for information was if OEWD does not fund GBDs (Green Benefit Districts) who does? Mr. Hooper pointed to the Appendix to the July 1 contract between OEWD and SF Parks Alliance pages 1003-1011 and noticed that those deliverables require invoices and records of payment. Mr. Hooper asked where the money is coming from and where is it going? Mr. Hooper pointed to an Appendix to the July 1, 2018, contract, pages 1005-1006 of the Agenda packet that pertains to the survey that was done. Mr. Hooper pointed to other items asking for the invoices. Mr. Hooper stressed that he was asking for Haight Ashbury GBD basic documents.

Marianne Thompson (Department of Economic and Workforce Development) (Respondent), provided a summary of the department's position. Ms. Thompson stated that OEWD has provided Mr. Hooper all records requested by him and that there are no other documents to provide. Ms. Thompson stated that she has provided Mr. Hooper the survey and the accompanying spreadsheet including all invoices and records. Ms. Thompson stated that OEWD did reach out to Parks Alliance to ask if they had records and they said no. OEWD closed the matter.

Member Yankee noted that Mr. Hooper is looking for information regarding contracts. Member Yankee also noted that parts may be with this respondent and/or Public Works. Member Yankee stated that both departments state they have provided Mr. Hooper everything they have. Member Yankee stated that Mr. Hooper needs to provide a list of records still outstanding and Ms. Thompson provide responses to put this case to an end.

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

**Action: Moved by Member Yankee, seconded by Member Wong that the Petitioner provide a bullet point list of missing documents to the Office of Economic and Workforce Development and that the matter be referred back to the Complaint Committee once the records have been identified and exchanged.**

Public Comment:

Rick Carrell stated that he lives on Cumberland Street and that this matter could raise property taxes. Mr. Carrell noted that through previous public records requests Mohammed Nuru developed GBDs. Mr. Carrell opined that a report from Controllers' Office was used to fund public money as part of a corrupt operation. Mr. Carrell stated that a summary of GBD services show that Mr. Thompson is involved in a coverup.

Anonymous stated that Ms. Thompson's frustration notwithstanding, it is the law that every city employee be subject to and comply with the CPRA and Sunshine Ordinance. If she is unable to perform her duties, her department head must sufficiently staff the Sunshine portions of her work; and it is the department head who is legally responsible for the implementation of the Sunshine Ordinance. Anonymous opined that Ms. Thompson's personal work hours do not limit the Sunshine obligations of OEWD.

Lillian Steilstrah stated thanks for holding these meetings. Ms. Steilstrah hears the frustration from Ms. Thompson however the parties would not be in this place if the original request had been provided completely and not in a puzzle.

Richard Harris stated that he lives on Masonic Avenue in the Haight. Mr. Harris asked if it is possible that Parks Alliance has records that are relevant to this and if so, are those records unavailable because they are under the control of the City? Mr. Harris asked is possible that whoever was running the program at Parks Alliance and could speak on this matter.

Hank Heckel stated that he understands the frustrations on all sides. Mr. Heckel noted that the Sunshine Ordinance does not require a narrative of all records. Mr. Heckel opined that the problem is if this goes to committee can Mr. Hooper specify what is missing. Mr. Heckel asked if OEWD responds we gave you these items, what will stop Mr. Hooper from saying that he does not believe it.

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

Ayes: 7 – Yankee, Wong, Schmidt, LaHood, Hinze, Hyland, Wolfe

Noes: 0 - None

Absent: 0 – None

7. **File No. 19062:** Complaint filed by John Hooper against Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

John Hooper (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hooper stated that in this case against Public Works, their position is that they have provided the requested records. Mr. Hooper noted that Public Works pays an employee as the full time GBD Manager who used to be Jonathan Goldberg. Mr. Hooper stated that former Public Works Manager, Mohammed Nuru, promoted GBDs and believes that some of the funding was provided by Public Works. Mr. Hooper noted that Mr. Nuru stated that OEWD took over the program. Mr. Hooper stated that according to Public Works OEWD doesn't fund GBDs. Mr. Hooper stated that David Steinberg has provided all records and contends that Mr. Hooper needs to go to Parks Alliance and to get the contracts. Mr. Hooper is seeking a violation because Public Works stated that they do not have those records.

David Steinberg (Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg congratulated Member Hinze on her nomination to the MTA Board. Mr. Steinberg stated that Mr. Hooper's complaint is identical to that filed by Mark Sullivan (19032). Mr. Steinberg stated that in Mr. Sullivan's case the SOTF found no violation. Mr. Steinberg stated that he released all responsive records to Mr. Hooper in a timely manner. Mr. Steinberg also stated that at January 21, 2020 SOTF hearing he stated again that he had provided all records and now is asking the committee to find no violation.

Member Yankee stated that there is no list of documents Mr. Hooper is looking for from Public Works. Member Yankee stated that because OEWD has the contract with Parks Alliance he does not see who Public Works should respond to.

Chair Wolfe stated that the SOTF heard from OEWD in the previous case noted that this matter involves the same subject. Ms. Thompson stated that while they hired Parks Alliance Mr. Hooper was not sure how they got paid. Chair Wolfe asked if the GBD process program is that initiated by Public Works?

Mr. Steinberg stated that GBD is a program at Public Works and they provide support to neighborhood groups interested in forming a GBD. Public Works has a GBD Manager

who works with neighborhood groups and provides guidance through the bureaucracy. Mt. Steinberg said that this Manager does other things as well.

Mr. Hooper stated that the dilemma relies in the fact that two city agencies are involved in the GBD program and he does not believe that Public Works does not have records.

Member Yankee noted that the Petitioner has an excellent point that they need to point to the department, that OEWD needs to help to Mr. Hooper and refer him to the appropriate party. Member Yankee is inclined to resolve with Public works.

**Action: Moved by Member Yankee, seconded by Member Hyland to find no violation by the Department of Public Works.**

Public Comment:

Lillian Steilstrah stated that she is hearing similar frustration from Mr. Steinberg. Ms. Steilstrah stated that the public wants to know where the money is coming from. Ms. Steilstrah noted there is a very clear trail of funds and the Mohammed Nuru was involved. Ms. Steilstrah stated that the Inner Sunset spent \$156,000 for their GBD and the information and resides in finance department. The money trail will tell everything.

Anonymous noted that he understands the frustration of Mr. Steinberg and the previous respondent. Anonymous stated that possibly what actually happened may have been because of a Director Nuru who is no longer there.

Richard Harris stated that he is making a similar point to one made earlier. Mr. Harris believes that either or both OEWD or Public Works are in a position of control of records at Parks Alliance and they are under the control then that department is responsible to get the records. Mr. Harris stated that OEWD or Public Works should get the records from Parks Alliance.

Member Yankee rescinded his motion.

**Action: Moved by Member Hinze, seconded by Member LaHood to request that Mr. Hooper produce the same records list as in file no. 19061 to the Respondent and the Complaint Committee for review and to ensure that the Petitioner receives his records.**

Public Comment:

Anonymous stated that this is the right thing to do, but that under Ordinance hold both or either of them responsible. Anonymous asked if the SOTF is holding Public Works or OEWD responsible? Anonymous opined both respondents should have the same direction, otherwise this matter will keep on going on and the petitioner never get relief.

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

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

Ayes: 7 - Hinze, LaHood, Yankee, Wong, Schmidt, Hyland, Wolfe

Noes: 0 - None

Absent: 0 - None

8. **File No. 19140:** Complaint filed by Stephen Malloy against the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records in a timely and/or complete manner.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy originally filed his original complaint in November 2019 and allowed an extension of time to respond on January 14, 2020. Mr. Malloy asked the SOTF go to page 2273 to see Human Resources' failure to cite the appropriate redaction laws. Mr. Malloy also noted pages 2287 – 2289 where there are other examples of improper redactions. Mr. Malloy also noted Sunshine and Brown Act violations because he was not provided records other than blacked out pages. Mr. Malloy specifically requested records showing meeting notices, texts and other things that should have been provided by the law. Mr. Malloy stated that as an independent contractor with the City of San Francisco an investigation of discrimination should have been conducted against the Department of Public Health. Mr. Malloy asked for 67.34 violation of willful misconduct on Micki Callahan and the Department of Human Resources.

The Respondent was not present for the hearing and did not inform the Administrator of their absence.

Mr. Malloy stated he is aware that Department of Public Health employee Vien was advised by the City Attorney to not release any records. Mr. Malloy opined that the Department of Human Resources saw the order of the City Attorney. Mr. Malloy was never sent records that invoked attorney/client privilege. Mr. Malloy stated that Susan Gard and Micki Callahan were communicating about him and stated that they should meet and have that discussion. Mr. Malloy stated that the subject of the meeting was to conduct an investigation on Mr. Malloy.

Chair Wolfe noted that if UCSF was a contractor for hire would consider Mr. Malloy to be an employee. Chair Wolfe asked if they were meeting as a deliberative body or an advisory board or committee? Chair Wolfe believes that to be a Human Resources issue, however regarding the redactions, SOTF needs to determine if that record is public.

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

Mr. Malloy stated that the subject of himself in relationship to the City is that Ms. Callahan established a local rule that you can be called "a nigger," and her office did nothing. Mr. Malloy stated that it was City policy that Ms. Callahan was not going to

administer a claim. Mr. Malloy stated that City of San Francisco HR Director is more than capable to speaking to these issues which is indicative to the issue of wrongdoing. Mr. Malloy believes there is no excuse of not being able to articulate these issues and ask questions. Even if redaction must show legal citation and DHR is choosing not to do that.

Member Schmidt noted redaction does not look very good. Department of Human Resources may have attorney client communication that is not being produced but see a violation with those redactions.

**Action: Moved by Chair Wolfe, second by Member Hyland to find a violation of 67.21(e) for not sending an authorized representative to the hearing; 67.24(h) for deliberative process exemption; 67.26 for keeping withholding to a minimum and 67.27 not providing a footnote and key legal citations and immediately orders the Custodian of Records to comply with request and refer the matter to the Compliance and Amendments Committee for monitoring.**

Public Comment:

Anonymous stated that the SOTF should investigate a 67.27 violation for failing to specify in the original request response which privilege(s) applied under Gov Code 6254(k), and a 67.24(h) violation for the Gov Code 6254(p)(2) citation which contains a deliberative process, and a Prop G calendar violation if there was a dept head meeting about Mr. Malloy that has not been produced."

Public Comment closed.

Reopen public comment:

Anonymous agrees with this motion. Anonymous stated that if later one it is shown that the department head did have a relevant meeting that was not produced, you can add the Prop G violation at that time."

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

Ayes: 7 - Wolfe, Hyland, Hinze, LaHood, Yankee, Wong, Schmidt

Noes: 0 - None

Absent: 0 - None

9. **Recommendations from the Complaint Committee regarding existing New Compliant Form and Complaint Form submitted by a Petitioner.**

Member Hinze provided a synopsis of the Complaint Committee hearing and stated that there have been two submissions of Complaint Forms submitted by Anonymous and Administrator Young which will be reviewed at the next Complaint Committee hearing. No public comment, no action



10. **Chair’s Report – Public meeting review; Discussion of Task Force members reviewing public meetings.**

Chair Wolfe is working on the Planning Commission members turning off their videos. Member Yankee stated that a letter was submitted to the Elections Commission which has gone unanswered. Member Yankee also stated that letters to the Joint Zoo Committee, Zoological Society and the Recreation and Parks Commission have been drafted and will go out soon. Member Hinze stated that the Planning Commission Secretary is out on leave and that Jonas Ionin is the Acting Commission Secretary.

Public Comment:

None.

11. **Administrator’s Report, Complaints and Communications.**

The SOTF Administrator presented the Report.

No actions taken.

12. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force. (Discussion and Action)**

There was further discussion of the SOTF Orientation. No actions taken.

13. **ADJOURNMENT**

There being no further business the meeting was adjourned at 10:21 p.m.

**APPROVED: DRAFT  
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.