

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**  
June 22, 2020

**DATE DECISION ISSUED**  
July 7, 2019

**CASE TITLE** – Bill and Bob Clark v. The Arts Commission  
(File No. 18059)

**FACTS OF THE CASE**

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

**File No. 18059:** Complaint filed by William J. Clark against the Arts Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing make meeting minutes available in a timely manner. (June 5, 2018 - Advisory Committee of Street Artists and Crafts Examiners).

**HEARING ON THE COMPLAINT**

On August 28, 2018, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

William J. Clark (Petitioner) provided a summary of his complaint and requested the Committee find a violation. Mr. Clark stated that the Street Artists and Crafts Examiners Advisory Committee is a policy body and is required to make their minutes available in a timely manner.

Ann Treboux spoke on behalf of the Petitioner and outlined her argument listed on pages 176 to 178 the agenda. Ms. Treboux stated that the Advisory Committee of Street Artists and Crafts Examiners is a policy body. Ms. Treboux referenced page 23 of Mr. Clark's complaint where they refer to the Ballot Measure of Proposition L which states that it is a Charter Amendment.

Rebeka Krell, San Francisco Arts Commission (Respondent), provided a summary of the department's position. Ms. Krell stated that the Arts Commission has consulted with the Office of the City Attorney in determining that the Advisory Committee of the Street Artists and Crafts Examiners is not a policy body. Ms. Krell stated that this Advisory Committee is not enumerated in the City's Charter and that it was created by Ordinance in 1972. Ms. Krell stated that the Arts Commission maintains that the Advisory Committee was not created by the

Board of Supervisors, not created by the initiative of a policy body nor by a grant and is therefore not a policy body. Ms. Krell stated the Arts Commission posts the minutes of the Advisory Body as a courtesy to members of the public.

Member B. Wolfe requested Ms. Krell and the SOTF counsel to provide documentation as to whether or not the Advisory Committee created in 1975 via Proposition L is a Charter Committee subject to the rules related to policy bodies.

Issues to take into consideration are as follows:

- The 1975 Controller Statement refers to the matter as a charter amendment
- The Board of Supervisors, via Ordinance, submitted the proposal regarding the Advisory Committee to the voters of San Francisco
- Current regulation regarding the Advisory Committee is located in the Police Code and not the City Charter

Ms. Krell stated that she believes the question is with regard to draft minutes being posted and that she would obtain a written opinion from the City Attorney's Office.

The Committee determined jurisdiction and referred it to the SOTF for hearing.

On April 3, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

William Clark (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Clark stated that the Street Artists Advisory Committee was created in a ballot measure in 1974, that the ballot handbook referred to it as a charter amendment and that the voters passed this as legislation. Mr. Clark stated that the Arts Commission had been posting those minutes for several years.

Kate Patterson, Arts Commission (Respondent), provided a summary of the department's position. Ms. Patterson stated that the Street Artists Advisory Committee provides that artists make their wares and that this is their sole purpose. Ms. Patterson stated that she would like to postpone this hearing until a City Attorney's opinion is provided. Ms. Patterson stated that she was unaware that minutes are required to be posted within 10 days of the hearing.

Action: Moved by Vice-Chair Hyland, seconded by Member Tesfai, to continue the matter to the SOTF May 1, 2019, meeting pending a legal opinion from the City Attorney representatives to the SOTF and the Arts Commission.

The motion PASSED.

On June 5, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Chair B. Wolfe stated that all testimony was heard on April 3, 2019, that the matter can be taken up at the question and answer period and that the parties would be provided an opportunity for rebuttals.

The Petitioner notified the Administrator via telephone on June 3, 2019, he would not be able to attend the hearing and that the SOTF could proceed without their presence.

Chair Wolfe stated that the memo submitted by the Arts Commission stating that it addresses the Brown Act and not Sunshine. Chair Wolfe also stated that the San Francisco Charter 4.104(a)(3) addresses Boards and Commissions Rules and Regulations which states that the Board or Commission needs to be enumerated in the Charter not created by Ordinance.

Kate Patterson, Arts Commission, (Respondent), provided a summary of the department's position. Ms. Patterson stated that the meetings of the Street Artists and Craft Examiners are held in the Community Room at the Veterans Building which is where the Arts Commission's main offices are located. Ms. Patterson stated that the Street Artists meetings are not recorded but that they do keep a record of what transpired during the meetings (votes and who made the votes). Ms. Patterson stated that sub committees are not required to provide minutes within the 10-day window. Ms. Patterson stated that they were late in providing the record of the meeting and with responding to the complaint within 10 days and not late in posting of the record which they did within 48 hours of its completion.

Member Tesfai stated that the explanation given in the City Attorney memo was that the Committee was not enumerated in the Charter under the Sunshine Ordinance. Member Tesfai stated that the Arts Commission is a Charter body and that Committees that advise Charter bodies do not come within 67.16 and are not Charter bodies. Member Tesfai also stated that there is a distinction between minutes and the record. Member Tesfai stated that the names of those who make the decision, the votes of that decision and the date of the meeting in which a decision is made is the record and that is paired down from the Minutes. The Committee of Street Artists and Craft Examiners is a policy body not enumerated in the Charter.

Kate Patterson stated that the Arts Commission responded to the Immediate Disclosure Request within 24 hours and the issue of the complaint is that the minutes were not posted within 10 days.

Action: Moved by Member Yankee, seconded by Member Hinze to continue the item to the call of the Chair and to request that Mx. Trickey attend the next SOTF

meeting to explain the time stamp of when the minutes of the Street Artists and Craft Examiners were posted on the Arts Commission website.

The motion PASSED.

Vice-Chair Hyland stated that the SOTF agrees that the Committee of Street Artists and Craft Examiners is a policy body not enumerated in the Charter. Member Tesfai referred to the memo drafted by the City Attorney on behalf of the Arts Commission, "The record must include each substantive decision of the Committee, the vote of each member making the decision and the date of the meeting at which the decision was made." Vice-Chair Hyland stated that the timeliness of the Minutes being posted on the website is the meeting record.

Action: Moved by Vice-Chair Hyland, seconded by Member Cate, to find that the Committee of Street Artists and Craft Examiners is a policy body not enumerated in the Charter.

The motion PASSED.

On, June 30, 2019, the Petitioner requested the SOTF to rehear the matter due to new information.

On July 16, 2019, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Bill Clark (Petitioner) provided a summary of the complaint and requested the Committee find a violation. Mr. Clark stated that the basis for his complaint is that draft minutes were not made available ten days after the Advisory Committee of Street Artists and Craft Examiners meeting of June 5, 2018. Mr. Clark stated that the meetings are recorded and that he has a recording of the meeting. Mr. Clark stated that the Arts Commission stated that they were only required to keep a record. Mr. Clark stated that he believes the Arts Commission should keep minutes not just a record and that record should be timely.

Kate Patterson (Arts Commission) (Respondent), provided a summary of the department's position. Ms. Patterson stated that it is not the policy of the Arts Commission to post the minutes and audio recordings of the Committee in question on the Arts Commission's website and referred to the memo drafted by their City Attorney. Ms. Patterson stated the Arts Commission does provide a recording of the meeting upon request and within a reasonable period of time.

Chair B. Wolfe stated that the Arts Commission and its committees are policy bodies and are required to keep minutes and audio recordings.

Action: Moved by Member Cate, seconded by Member Martin, to find no violation of Administrative Code (Sunshine Ordinance) 67.16 and that the Minutes provided by the Arts Commission were timely.

The motion PASSED.

Member LaHood stated that the SOTF should consider Administrative Code (Sunshine Ordinance) 67.21(c), regarding satisfying the Complainant's needs and to amend the original motion to find no violation of 67.16 and find a violation of 67.21(c).

Action: Moved by Member LaHood, seconded by Member Yankee, to amend the original motion to find no violation of 67.16 and find a violation of Administrative Code (Sunshine Ordinance) 67.21(c) for not providing the requested record.

The motion PASSED.

#### FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Arts Commission violated Administrative Code (Sunshine Ordinance), Section(s) 67.21(c), and found that Committee of Street Artists and Craft Examiners is a policy body not enumerated in the Charter.

#### DECISION AND ORDER OF DETERMINATIONS

On June 5, 2019, Vice-Chair Hyland, seconded by Member Cate, to find that the Committee of Street Artists and Craft Examiners is a policy body not enumerated in the Charter.

The motion PASSED by the following vote:

Ayes: 10 – Hyland, Cate, Yankee, Hinze, LaHood, Martin, Tesfai, B. Wolfe, Cannata, J. Wolf

Noes: 0

Absent: 1 - Chopra

On July 16, 2019, Member Cate, seconded by Member Martin, to find no violation of Administrative Code (Sunshine Ordinance) 67.16 and that the Minutes provided by the Arts Commission were timely.

The motion PASSED by the following vote:

Ayes: 7 - Cannata, Yankee, Cate, Martin, LaHood, Hinze, B. Wolfe

Noes: 0

Absent: 4 - Chopra, Hyland, Tesfai, and J. Wolf

On July 16, 2019, Moved by Member LaHood, seconded by Member Yankee, to amend the original motion to find no violation of 67.16 and find a violation of Administrative Code (Sunshine Ordinance) 67.21(c) for not providing the requested record.

The motion PASSED by the following vote:

Ayes: 7 - LaHood, Yankee, Cate, Martin, Cannata, Hinze, B. Wolfe

Noes: 0

Absent: 4 - Chopra, Hyland, Tesfai, and J. Wolf

A handwritten signature in blue ink, appearing to be 'B. Wolfe', enclosed within a circular scribble.

Bruce Wolfe, Chair  
Sunshine Ordinance Task Force

cc. William and Robert Clark (Petitioners/Complainants)  
Rebekah Krell, The Arts Commission (Respondent)