REMOTE REGULAR MEETING

October 27, 2020
4:30 PM

Members: Lila LaHood (Chair), Jennifer Wong and Bruce Wolfe

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

Chair LaHood called the meeting to order at 4:43 p.m. On the call of the roll Chair LaHood and Members Wong and Wolfe were noted present. A quorum was present.

There were no agenda changes.

2. Approval of the September 22, 2020, Compliance and Amendments Committee meeting minutes.

Action: Moved by Member Wolfe, seconded by Member Wong, to approve the September 22, 2020, meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Wong, LaHood
Noes: 0 - None

3. Public Comment: Members of the public may address the Committee on matters that are within the Committee’s jurisdiction but not on today’s agenda.

Speakers:
None.

Chair LaHood opened with the following question, what constitutes quorum for a policy body where there are unfilled seats needed or where there are seats not filled but there are members?

Member Wolfe stated that in Sunshine there are two different bodies, policy body and passive meeting body and that within those there could be different types of bodies. Member Wolfe noted that Section 4 of the Charter speaks specifically of the Executive Branch. Member Wolfe stated that the Executive Branch does all work within the City. Member Wolfe stated that for this particular matter the question is the Mental Health Board compliant with 4.104 and if no, what are they supposed to be compliant with? Member Wolfe stated that the question for the purposes of the Mental Health Board is how the quorum standard is applicable to this body. Member Wolfe noted that Mr. Hillier stated that a majority is the maximum number of members allowed to be appointed rather than a majority of the members that are actually appointed.

Mr. Hillier stated that what is key for this matter is that “member” in Charter Section 4.104 means position, office, vacancy or seat the seat that has not been filled due to the delinquency in the appointing authority and not the incumbent then it means the same thing in the Sunshine Ordinance. Mr. Hillier stated that this is the subject of file no. 20100. Mr. Hillier stated that will not be subject to the provisions of the Sunshine Ordinance, because a majority of members with current appointments did not attend. Mr. Hillier stated that the SOTF can use the word member to mean position, office vacancy or seat for two reasons. First, Government Code Section 1770 deals with vacancies on public bodies. Mr. Hillier states that the word member is also in the Charter. Mr. Hillier believes that the SOTF must come up with evidence of why the word member in Charter 4.104 and the Sunshine Ordinance means other than language in Government Code 1770. Second, due to Proposition B, the SOTF would need to provide evidence of a member being physically incapable of attending meetings in person.

Member Wolfe stated that Mr. Hillier brought up some great points. Member Wolfe opined that unless challenged people do not operate correctly, he suggested that Compliance and Amendments Committee create their own ad hoc committee so that the Committee can make an informed recommendation to the SOTF. Member Wolfe noted that the Deputy City Attorney may need to provide research.

5. File No. 19114: Complaint filed by Shane Anderies against Tyler Vu and the Public Defender’s Office for violating Administrative Code (Sunshine Ordinance), Section 67.24, 67.25, 67.26, 67.27 and 67.29 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Tyler Vu Name of Respondent (Public Defenders’ Office) (Respondent), provided a summary of the department’s position. Mr. Vu stated that he submitted five documents to Mr. Anderies and of those, three were redacted. Mr. Vu stated that those items begin on page 119 of the Agenda packet. Mr. Vu noted that as per the header if the emails, they
were topics to discuss at a meeting and not responsive to Mr. Anderies request. Mr. Vu stated that one of the records was a cycle meeting between the public defender and the office management. Mr. Vu stated that if it is their duty to disclose the records, they will unredact and provide all documents that were requested.

Member Wolfe noted that this is not a policy body because it is not the Board of Supervisors nor was it enumerated by the Charter. This meeting is not an advisory board or commission and is also not a standing committee of a policy body. Member Wolfe opined that if it is a staff meeting then no records are public with regard to staff meetings. Member Wolfe also noted that it may be an advisory committee that was created by a department head. However, if it is a committee that is solely of employees, then it is not a policy body.

Mr. Anderies stated that he has not received any records. Mr. Anderies stated that he is referring to records of a meeting to discuss a response to Heather Knight’s article. Mr. Anderies stated that this meeting was to discuss public concern and the information discussed is responsive. Mr. Anderies stated that though this was not a typical staff meeting and it still fits the description of a public record. Mr. Anderies stated that no documents were produced for the request and no privilege log was presented which is why there was a finding by the SOTF of keeping withholding to a minimum. Mr. Anderies stated that he thought this was the end of this issue.

Member Wolfe stated that the SOTF did not make a determination that these records are public because the SOTF did not have a closed session meeting.

Mr. Vu stated that he will formally respond based on today’s hearing on whether this document is a public record and if so, he will unredact the document or if not public will cite on why it is not redacted.

Chair LaHood stated that the Public Defender’s Office asserts that meeting agenda is probably not a public record and that the other two documents need citations for redactions. Chair LaHood asked Mr. Vu to provide to the SOTF and Mr. Anderies either the March 29 email unredacted or citations on why it is to remain redacted by the end of the week.

Mr. Anderies stated that Mr. Vu acknowledged that he was working on a spread sheet which was not provided. Mr. Anderies stated that there was no production of records or index of what was withheld.

Chair LaHood noted that all the committee can do is compel an unredacted email. Chair LaHood stated that because of the limitation of what SOTF can compel, we cannot do a further investigation as to whether other records withheld are considered public. Chair LaHood further noted that the Public Defender’s Office is claiming that the records requested are not public and they are not releasing them.
Member Wolfe stated that this matter should be brought before a court which regularly requests that the local process be exercised. Mr. Vu was by the Order of Determination to provide citations and he did not. Member Wolfe stated that this particular document was overlooked by the SOTF and legal counsel and Mr. Anderies noticed it.

Public Comment:

Anonymous expressed concern by the notion that a government agency holding a record they say is not public and the SOTF takes their word for it and it is not released. Anonymous stated that there needs to be some sort of criteria why something is not a public record because it could lead to abuse.

Chair LaHood requested that Mr. Vu to present the email either unredacted or with citations for the redactions as per 67.26 by the end of the week. Chair LaHood will present the matter at the next SOTF hearing.

No actions taken.

6. **File No. 19092**: Complaint filed by Justin Barker against the San Francisco Zoo 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.

Justin Barker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Barker stated that the city owns the property and the Lease Agreement is with the Zoo. Mr. Barker stated that twenty-three months have passed and he has not received any requested records.

Joe Fitting (San Francisco Zoological Society) (Respondent), provided a summary of the department’s position. Mr. Fitting stated that the Zoo is not subject to the Sunshine Ordinance. Mr. Fitting stated that the Zoological Society provides certain records that are shared with members of the public. Mr. Fitting stated that all Zoological Society meetings are held open to the public.

Member Wolfe stated the Lease Agreement signed July 1, 1993, is with the city and city contractors, depending on what services are provided, are under Sunshine. Member Wolfe noted that no justification for withholding the records was provided.

Chair LaHood asked if the Lease Agreement was with Parks and Recreation?

Member Wolfe stated that a representative from the City Administrator’s Office should have been present. Member Wolfe stated that the animals are still owned by the City. Member Wolfe stated that the SOTF supports Mr. Barker’s assertions. Member Wolfe opined that the City Administrator’s Office needs to provide an interpretation of the Lease Agreement. Member Wolfe stated that Chair LaHood should have a conversation with Rob Reiter and report back to Compliance and Amendments.
Chair LaHood stated that she will reach out to the City Administrator’s Office in response to the Order of Determination and to include the matter on the November 10 agenda.

Public Comment:

None.

No Action taken.

7. **Announcements, Comments, Questions and Future Agenda Items by Member of the Compliance and Amendments Committee.**

Member Wong stated a member of the public told her that the Police Department twitter accounts are being blocked and suggested that Compliance and Amendments Committee address whether this is legal and does it fall under Sunshine. Member Wong was asked to provide a response on November 24, 2020.

Member Wolfe requested that File No. 19114 should be addressed at the annual retreat due to the complexities of the case.

8. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:34 p.m.

**APPROVED: DRAFT**

**Compliance and Amendments Committee**

**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.