



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

December 7, 2016 - 4:00 PM

Regular Meeting

Seat 1	Victoria Baranetsky	Seat 7	Dave Maass
Seat 2	Eric Eldon	Seat 8	Frank Cannata
Seat 3	Josh Wolf	Seat 9	Chris Hyland - Vice Chair
Seat 4	Rishi Chopra	Seat 10	Louise Fischer
Seat 5	Leuwam Tesfai	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - Chair		

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 Wolfe called the meeting to order at 4:05 p.m. Members Chopra and Baranetsky were noted absent. Vice-Chair Hyland was noted excused. There was a quorum.

Chair Wolfe changed the order of the agenda by moving Item No. 9 to be heard before Item No. 7.

Member Hinze, seconded by Member Tesfai, moved to call and hear Item Nos. 3, 4, and 5 together.

Ray Hartz (Complainant), and Wilson Ng, Office of the Clerk of the Board (Respondent), agreed to call Item Nos. 3, 4, and 5 together.

Public Comment:

Peter Warfield (Library Users Association) stated that he did not object to taking Item No. 9 out of order and objected to the combining of Item Nos. 3, 4, and 5.

The motion PASSED by the following vote:

Ayes: 8 - Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, B. Wolfe

Noes: 0 - None

Absent: 2 - Chopra, Baranetsky

Excused: 1 - Hyland

Member Baranetsky was noted present at 4:16 p.m.

2. **Approval of minutes from the Sunshine Ordinance Task Force November 2, 2016, meeting.**

The Task Force discussed the meeting minutes.

Member Maass, seconded by Member Hinze, moved to approve the November 2, 2016, meeting minutes as amended.

Public Comment:

Peter Warfield (Library Users Association) suggested corrections to the November 2, 2016, minutes and requested that additional information be added to the minutes for clarity.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, B. Wolfe

Noes: 0 - None

Absent: 1 - Chopra

Excused: 1 - Hyland

Item Nos. 3, 4, and 5 (File Nos. 16088, 16089, and 16111) were called and heard together.

3. **File No. 16088:** Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 6, 2016). (*attachment*)

(On November 14, 2016, the Compliance and Amendments Committee heard the matter and referred it to the Task Force for hearing.)

See Item No. 5 (File No. 16111 for actions)

4. **File No. 16089:** Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34, by willfully failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 20, 2016). (*attachment*)

(On November 14, 2016, the Compliance and Amendments Committee heard the matter and referred it to the Task Force for hearing.)

See Item No. 5 (File No. 16111 for actions)

5. **File No. 16111:** Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 13, 2016).

Member Hinze, seconded by Member Cannata, moved to find jurisdiction for File Nos. 16088, 16089, and 16111.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, B. Wolfe

Noes: 0 - None

Absent: 1 - Chopra

Excused: 1 - Hyland

Ray Hartz (Complainant) provided an overview of the complaint and requested that the Task Force find violations. Mr. Hartz stated that the Task Force has previously ruled that the 150 word summary of public comment should be included into the body of minutes and not in an Addendum and provided samples of compliance by other city agencies. Mr. Hartz stated that the placement of the 150 word summary into an Addendum is a violation of his rights to free speech. There were no speakers in support of the Complainant. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated that the Addendum is part of the minutes and therefore complies with Administrative Code, Section 67.16, which states that the 150 word summary shall be in the minutes. Mr. Wilson stated that the Task Force has provide conflicting rulings regarding the 150 word summary and suggested that a third party review the legal text. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent and Complainant were provided the opportunity for rebuttals.

Deputy City Attorney Colla provided comments and responded to questions from the Task Force.

Member Eldon, seconded by Member Maass, moved to find that Angela Calvillo, Clerk of the Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Section 67.16, by failing to include the written 150 word public comment summary submitted by Ray Hartz for the September 6, 13, and 20, 2016, Board of Supervisors meetings minutes, into the body of the minutes and not into an Addendum at the end of the minutes (File Nos. 16088, 16089, and 16111).

Public Comment:

Former Task Force Chair Allyson Washburn provided a history of past Task Force decisions regarding the 150 word summary and stated that when the Sunshine Ordinance is unclear the Task Force erred on the side of caution in favor of the public.

Peter Warfield (Library Users Association) expressed support for the motion and expressed concern that the issue of willful violations was not discussed. Former Task Force Chair David Pilpel stated that Charter, Section 2.108 also speaks to Clerk of the Board mandates in regards to keeping a permanent record, stated that the section in question is open to interpretation, and that the audio recording of the meeting serves as a backup to the records.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, B. Wolfe

Noes: 0 - None

Absent: 1 - 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. *Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.*

Former Task Force Chair David Pilpel provided a summary of Supreme Court cases in regards to ACLU, attorney/client records, and emails as records. Mr. Pilpel also stated that Item No. 8 on the Task Force agenda is misusing the provisions for closed session meetings.

Ann Treboux stated that Mr. Pilpel represented himself as a member of the Task Force before the Ethics Commission and offered advices to the Ethics Commission.

Peter Warfield (Library Users Association) stated that the Task Force requested that Angela Calvillo attend the meeting without results and stated that the Task Force has not addressed the 45 day requirement.

Ray Hartz stated that city departments are discouraging members of the public from attending meeting with the inconsistent implementation of policy and stated that free speech is protected.

7. **File No. 16093:** Review and possible amendments to the Sunshine Ordinance Task Force By-Laws and Complaint Procedures.

- Minimum requirement to process complaint
- Absence policy (adding an excused provision)
- Procedure for combining similar complaint files
- Precedence and Log of Task Force decisions
- Duplicate filings and/or re-adjudication
- 5 day submission of documents in advance of hearing
- Tabling for being unresponsive or non-appearance
- Maximum number of hearings per person/meeting
- Statute of limitations for complaints
- Rules of Reason
- Vexatious Complainants/Respondents
- Ethics Commission rulings that disagree with the decision of the Task Force
- Other issues related to the Task Force By-Laws and Complaint Procedures

The Task Force discussed the proposed changes to the Task Force By-Laws and Complaint Procedures.

Deputy City Attorney Colla provided comments and responded to questions from the Task Force.

Upon discussion the Task Force amended the Complaint Procedures requirement that documentation must be received at least 5 working day before the hearing to add a provision which states that if documents are provided less than 5 working days prior to the hearing, the complaint hearing may be continued unless the opposing party agrees to allow the late acceptance of the new evidence. The Task Force reserves the right to determine if any late submission of documents will have an impact on the complaint hearings and take action as needed. The Task Force accepted the amendment to the Complaint Procedure without objections.

Upon discussion the Task Force created the following criteria and procedures regarding combining complaints for hearing without objections:

Criteria for Combining Complaint Hearings:

- Same nucleus of facts
- Same Complainant and Respondent
- Same Complaint and/or Administrative Codes Section in question
- Issues or violations must be within 90 days of submission of the initial complaint

Discussions and decisions to combine complaint is at the discretion of the Complaint Committee or any other Committee of the Task Force authorized to review/process complaints and shall occur prior to scheduling before the Task Force for hearing. However, at the Task Force hearing, members may request that certain items/complaints be severed and heard separately. If a complaint is severed at the time of hearing, the parties, with approval of the Task Force, may request a continuance of the severed item.

Combined items shall be combined into a single complaint file. However, it shall be noted on the agenda that complaints were combined into one complaint file.

Hearings for combined complaints shall proceed as a single complaint and the time allotment will be provided for one complaint. (Currently the time allotment is 5 minutes for Respondents and Complainants presentations, 3 minutes for rebuttals, and 3 minutes for public comment.)

Public Comment:

None.

POTENTIAL CLOSED SESSION - Conference with City Attorney

[Convene in Closed Session - Existing Litigation – Task Force as Plaintiff and/or Defendant]

Motion that the Sunshine Ordinance Task Force convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding the following existing litigation against the Sunshine Ordinance Task Force (File No. 16112). Administrative Code, Section 67.10(d)(1), permit this closed session. After a closed session, if one occurs, the Task Force shall adopt a motion either to disclose or not to disclose.

Deputy City Attorney Colla advised that the Task Force is allowed to convene in closed session pursuant to Administrative Code, Section 67.10(d)(1).

Member Hinze moved to convene in closed session. The motion failed due to a lack of a second.

Member Tesfai, seconded by Member Hinze, moved to convene the meeting in closed session to receive advice regarding Ethics Commission complaints against the Task Force.

Public Comment regarding File No. 16112 and the motion to convene in closed session:
None.

The motion PASSED by the following vote:

Ayes: 7 - Baranetsky, Eldon, Tesfai, Maass, Fischer, Hinze, B. Wolfe
Noes: 2 - J. Wolf, Cannata
Absent: 1 - Chopra
Excused: 1 - Hyland

A closed session was convened to receive advice from the City Attorney in regards to File No. 16112. The following were in attendance:

Chair Bruce Wolfe, Members Victoria Baranetsky, Eric Eldon, Josh Wolf, Leuwam Tesfai, Dave Maass, Frank Cannata, Louise Fischer, Fiona Hinze; Deputy City Attorney Nicolas Colla; Task Force Administrator Victor Young.

8. **File No. 16112: Review of Ethics Commission Complaint Nos. 1516-23 and 1516-24 (Joel Warne V. Nancy Sarieh and the Sunshine Ordinance Task Force).**

The Task Force review File No. 16112 in closed session.

Chair Wolfe stated that he would send a response regarding the complaint to the Ethics Commission.

[Elect To Disclose]
Motion that the Task Force finds it is in the public interest to disclose information discussed in closed session, and directs the Chair immediately to disclose that information.

Member J. Wolfe, seconded by Member Cannata, moved to disclose the closed session audio recording.

Public Comment:
None.

The motion FAILED by the following vote:

Ayes: 2 - J. Wolf, Cannata
Noes: 7 - Baranetsky, Eldon, Tesfai, Maass, Fischer, Hinze, B. Wolfe
Absent: 1 - Chopra
Excused: 1 - Hyland

[Elect Not to Disclose]
Motion that the Task Force finds that it is in the best interest of the public that the Task Force elect at this time not to disclose its closed session deliberations listed above.

Member Hinze, seconded by Member Fischer, moved to not disclose the closed session discussion.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 6 - Baranetsky, Eldon, Tesfai, Fischer, Hinze, B. Wolfe
Noes: 3 - J. Wolf, Maass, Cannata
Absent: 1 - Chopra
Excused: 1 - Hyland

9. **Sunshine Ordinance Task Force - Chair's Report.**

- Presentation of proposed Sunshine Ordinance Amendments by former SOTF Chair Allyson Washburn & San Franciscans for Sunshine

Former Task Force Chair Allyson Washburn provided a summary of the San Franciscans for Sunshine's effort to prepare amendments to the Sunshine Ordinance for voter approval and answered questions from the Task Force.

Public Comment:
Doug Comstock provided a history of the Sunshine Ordinance initial adoption and answered questions from the Task Force regarding steps taken to prepare the Sunshine Ordinance Amendment.
Jen Wong answered questions from the Task Force regarding proposed updates to the Sunshine Ordinance.

Peter Warfield (Library Users Association) shared his experience regarding the approval of the Sunshine Ordinance.

The meeting was recessed from 7:12 P.M. to 7:55 P.M.

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

- Task Force and Committee hearing schedule
- Complaints submitted and hearing files created
- Communications to the Task Force
- Summary of pending complaints and other issues

Task Force Administrator Victor Young presented the Administrator’s Report and the Task Force discussed the report and meeting schedule.

Public Comment:

None.

11. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.**

Member Maass commented on various state and federal legislations and legal cases that may have an effect on the Sunshine Ordinance.

Public Comment:

None.

12. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:20 p.m.

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.

APPROVED by the Sunshine Ordinance Task Force: 01/04/2017