



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

REMOTE REGULAR MEETING

February 3, 2021 - 4:00 PM

Regular Remote Meeting

Seat 1	Dean Schmidt	Seat 7	Matthew Yankee - Vice-Chair
Seat 2	Lila LaHood	Seat 8	Chris Hyland
Seat 3	Kevin Frazier	Seat 9	Laurie Jones Neighbors
Seat 4	Jaya Padmanabhan	Seat 10	Kai Forsley
Seat 5	Jennifer Wong	Seat 11	Bruce Wolfe - Chair
Seat 6	Laura Stein		

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 PM. On the call of the roll Chair Wolfe and Members, Schmidt, LaHood, Frazier, Padmanabhan, Wong, Stein, Yankee, Hyland, Neighbors and Forsley were noted present. A quorum was present.

2. **Approval of minutes from the Sunshine Ordinance Task Force December 21, 2020, Orientation, January 6, 2021, regular meeting and January 12, 2020, Special Meeting.**

The SOTF discussed the draft meeting minutes of December 21, 2020.

Action: Moved by Member Yankee, seconded by Member LaHood, to approve the December 21, 2020, meeting minutes with the requested changes.

Public Comment:

Peter Warfield provided the first-class and email addresses for Library Users Association.

Anonymous commented that Hank Heckel and David Steinberg disclosed to him that there may be an appointment to the Mayor's non-voting seat.

The motion PASSED by the following vote:

Ayes: 11 - Yankee, LaHood, Frazier, Padmanabhan, Neighbors, Stein, Forsley,
Schmidt, Wong, Hyland, Wolfe
Noes: 0 - None

The SOTF discussed the draft meeting minutes of January 6, 2021.

Action: Moved by Member LaHood, seconded by Member Yankee, to continue the approval of the January 6, 2021, meeting minutes to the Call of the Chair pending the inclusion of changes suggested by an Anonymous.

Public Comment:

Anonymous commented that he has submitted various suggested changes to the Clerk. Because these minutes turn into Orders, which then become the administrative record for any litigation that follows, it is critical that the minutes accurately reflect the hearings. Please consider my changes.

The motion PASSED by the following vote:

Ayes: 11 - LaHood, Yankee, Frazier, Padmanabhan, Neighbors, Stein, Forsley,
Schmidt, Wong, Hyland, Wolfe
Noes: 0 - None

The SOTF discussed the draft meeting minutes of the January 12, 2021 Special meeting.

Action: Moved by Member Yankee, seconded by Member Frazier, to approve the January 12, 2021, Special meeting minutes as amended.

Public Comment:

Peter Warfield noted that minutes are important and appreciates that they are made available to the public. Mr. Warfield also noted that with regards to identifying speakers on the phones it would be helpful for public to follow and who is being recognized.

Anonymous commented that he emphasized that SOTF should not consider the public interest balancing test and urged the SOTF to disclose and release the communication.

The motion PASSED by the following vote:

Ayes: 11 - Yankee, Frazier, LaHood, Padmanabhan, Neighbors, Stein, Forsley,
Schmidt, Wong, Hyland, Wolfe
Noes: 0 - None

The Chair called File Nos. 19115 and 19126 to be heard together.

3. **File No. 19115:** Complaint filed by Ann Treboux against Margaret Baumgartner for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.25 by failing to respond to an Immediate Disclosure Request for public records in a timely and/or complete manner.

Ann Treboux (Complainant) stated that she had many conversations with the SOTF Administrator and there was no mention that these complaints were to be tabled. Ms. Treboux stated that she has not communicated with SOTF Administrator regarding the subject of today's hearing.

Chair Wolfe stated that he is not sure what the status of these files are or what was communicated. Chair Wolfe stated that the SOTF Administrator made several attempts to contact both parties to see if they are available when scheduling.

Action: Moved by Member Stein, second by Member Frazier, to schedule File Nos. 19115 and 19126 to be heard before the next Complaint Committee meeting.

Public Comment:

Peter Warfield stated that he has a strong interest in Sunshine working well. Mr. Warfield stated that he participated in many discussions about rules and procedures.

Anonymous stated that because the compliant procedure requires the SOTF to take all inferences or evidence in the light most favorable to the petitioner, the Complainant should be allowed to be heard at Committee as long as the specific date is set.

Anonymous #2 stated that on January 28, 2021, he faxed a complaint to the SOTF Administrator. Anonymous was so concerned about this he filed a complaint with Clerk of the Board.

The motion PASSED by the following vote:

Ayes: 10 - Stein, Frazier, Yankee, Padmanabhan, Neighbors, Forsley, Schmidt,
Wong, Hyland, Wolfe

Noes: 0 - None

Absent: 1 - LaHood

File No. 19126: Complaint filed by Ann Treboux against the San Francisco 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.

See File No. 19115 for additional information and actions.

4. **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.*

John Hooper noted File Nos. 19161 and 19162 have been placed on the calendar for the Complaint Committee. Mr. Hooper stated that the two departments in question have not responded to requests for the missing items list he has been asking for since February 2020.

Peter Warfield stated that in a SOTF meeting before Covid-19 he could give a hello to and welcome the new Committee members. Mr. Warfield expressed thanks to the SOTF work on the huge backlog of complaints.

Ann Treboux expressed interested in the impeachment of Donald Trump.

Denta Tadesse stated that he is still on the quest of seeking justice and fairness in his cases. Mr. Tadesse stated that he had two files heard before the SOTF, No. 18010 was against the City Attorney's Office and 18028 the Sheriff's Department after being unable to attend a SOTF hearing.

Wynship Hillier stated that he has heard it said that Charter § 4.104(b) applies to this Task Force and even that some members had been recently "kicked off" the Task Force for insisting that it did not. Mr. Hillier stated that he thought it applied to the Behavioral Health Commission. Mr. Hillier stated that both contentions are, in his belief, wrong.

Anonymous provided the following public comment. Your Compliance Committee incorrectly determined that Public Defender emails about staff meetings are not public records and closed 19114. I can prove this because I requested and received with far fewer redactions the same three emails that were overly redacted to Mr. Anderies. You should correct this error.

Anonymous provided the following additional public comment. CIO Linda Gerull indicates the full metadata production system should be released to departments on April 1 (see orders 19044, 19047, 19097, 19098, 19119).

Anonymous provided the following additional public comment. City Attorney Herrera has voluntarily changed his mind and released his future calendars (per your order against the Mayor, 19103 and Chief of Police, 19112). The Mayor claims she will comply but has not done so in months.

Member LaHood was noted absent at 5:01 pm.

5. **File No. 20010:** Complaint filed by Patrick Monette-Shaw against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b) and 67.25(d), by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. *(attachments)*

Patrick Monette-Shaw (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Monette-Shaw noted that Cal. Government Code 6253.9(a)(2) provides that any agency must make the requested information available. Mr. Monette-Shaw stated that Mr. Cote's defense during the Complaint Committee asserted that his Immediate Disclosure Request was converted to a standard records request because "the City Attorney's Office is not required to produce new records." Mr. Monette-Shaw stated that the City Attorney staff invoked a 14-day extension even though no attorney/client information was requested. Mr. Monette-Shaw requested the SOTF find violations of 67.25(d) for failure to respond to an Immediate Disclosure Request and for not providing records on a rolling basis and 67.21 for failure to respond to a records request in a timely and/or complete manner.

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

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

Action: Moved by Member Hyland, second by Member Forsley motion for to find that the Office of the City Attorney violated Administrative Code (Sunshine Ordinance), Section 67.25(b), by failing to provide requested records in a timely and complete manner.

Public Comment:

Anonymous stated that Member Schmidt's citation to Sander v. State Bar of California may be applicable outside of San Francisco, but because local Admin Code 67.21(L) enhances the CPRA, and requires production of electronic records in "any form requested which is available ... or easily generated," **so Excel files should be provided.**

Peter Warfield noted his agreement with the passage of the motion. Mr. Warfield noted that 67.21(e) would require that the Custodian of Records send a representative from the department to appear for any hearing.

The motion PASSED by the following vote:

Ayes: 11 – Hyland, Forsley, Stein, Frazier, Yankee, LaHood, Padmanabhan,
Neighbors, Schmidt, Wong, Wolfe
Noes: 0 - None

Action: Moved by Chair Wolfe, second by Member Yankee, to find that the Office of the City Attorney violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to send a representative to the SOTF hearing.

Public Comment:

Anonymous stated that while COVID and other emergencies may require someone to last minute not show up, the appropriate response by the City is to send someone else or at least to tell Ms. Leger that they cannot attend and why.

Peter Warfield noted thanks to the Chair and Vice-Chair for making this motion. Mr. Warfield noted that this could be a Covid-19 issue, but the City Attorney's Office has 250 attorney's and a management structure that should have a back-up person and let the SOTF Administrator know.

Denta Tadesse noted his support of the motion.

The motion PASSED by the following vote:

Ayes: 10 - Wolfe, Yankee, Hyland, Forsley, Stein, Frazier, Padmanabhan,
Neighbors, Schmidt, Wong
Noes: 0 - None
Absent: 1 - LaHood

6. **File No. 20062:** Complaint filed by Patrick Monette-Shaw against the City Attorney's Office for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21 by failing to respond to a records request in a timely and complete manner.

Chair Wolfe provided a summary of the complaint.

Patrick Monette-Shaw (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Monette-Shaw stated that his records request involved the case of the State of California fining the City and County of San Francisco Dept. of Public Health \$100,000.00 and that the entire issue is a public record. Mr. Monette-Shaw stated that on October 29, 2019, the Board of Supervisors passed approval of the settlement and on November 5, 2019, he submitted a request to the City Attorney for calculations of time spent on the case. Mr. Monette-Shaw noted that on November 13, 2019, the City Attorney replied that the suit was still active and could not provide the requested records. Mr. Monette-Shaw stated that on November 15, 2019, the Mayor signed off on the settlement. Mr. Monette-Shaw stated that on December 5, 2019, the City Attorney's Office claimed that the suit was not closed. Mr. Monette-Shaw noted that the Dept. of Public Health, the Board of Supervisors and the Mayor signed off on paying the fine and at the time of his request and there was no ongoing litigation. Mr. Monette-Shaw stated that the settlement agreement was signed on November 20, 2019.

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

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

Action: Moved by Member Hyland, second by Member Yankee, to find jurisdiction and records are public.

Public Comment:

Anonymous stated that while it may be debatable whether or not the timeliness requirement was violated here, the City did violate 67.21(e) by not attending today and 67.27 by giving an incorrect written justification to the Complainant at the time of the response. They claimed that the info was exempt under attorney work-product privilege. But the billing records of active or pending cases was considered by the *L.A. Bd. of Supervisors v. Superior Court (2017)* case to be attorney client-privileged instead. They changed their justification.

Peter Warfield stated that anonymous makes a very good point and it is important to recognize the distinction if public and disclosable or not.

The motion PASSED by the following vote:

Ayes: 10 - Hyland, Yankee, Wolfe, Forsley, Stein, Frazier, Padmanabhan,
Neighbors, Schmidt, Wong

Noes: 0 - None

Absent: 1 - LaHood

In response to Member Stein's question as to the date the records were received, Mr. Monette-Shaw stated that he received the records the date case was dismissed. Mr. Monette-Shaw noted that when he received the accounting of time and expenses the figure came close to the \$100,000. Mr. Monette-Shaw noted that litigation had ended, there was no litigation involved after he made his request.

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

Action: Moved by Member Yankee, second by Member Wong, to find that the Office of the City Attorney, did not violate Administrative Code (Sunshine Ordinance), Section 67.21(b).

Public Comment

Anonymous opined that this is a close question that has nothing to do with timeliness and to suggest a 67.27 violation. Anonymous stated that work product privilege and has no bearing on the matter. Anonymous asked if billing information could have been attorney/client privilege? Anonymous noted that attorney/client privilege is not limited to law.

Denta Tadesse noted his trouble calling in and that he was unable to mute himself. Mr. Tadesse noted public comment and timeliness as the issues.

Peter Warfield agreed with most of what the previous members of the public statements.

The motion PASSED by the following vote:

Ayes: 9 - Yankee, Wong, Forsley, Stein, Frazier, Padmanabhan, Neighbors,
Schmidt, Hyland

Noes: 1 - Wolfe

Absent: 1 - LaHood

Member LaHood was noted present at 7:55 PM.

Action: Moved by Chair Wolfe, second by Member Wong, to find that the Office of the City Attorney violated Administrative Code (Sunshine Ordinance), Section 67.21(e), by not providing a representative at the SOTF hearing.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 11 - Wolfe, Wong, Forsley, Stein, Frazier, LaHood, Padmanabhan,
Neighbors, Schmidt, Hyland, Yankee

Noes: 0 - None

The meeting was recessed from 8:01 p.m. to 8:11 p.m.

7. SUNSHINE ORDINANCE TASK FORCE ORIENTATION.

Chair Wolfe welcomed everyone to the SOTF. Chair Wolfe stated that Public Comment be taken after Item 7(g). Chair Wolfe stated that the SOTF meets on the first Wednesday of the month for regular meetings and there are four subcommittees and one ad hoc committee.

a) Quick debrief of just previous Orientation items

Chair Wolfe stated that the first part of the Orientation took place in December 2020 and was continued until this day because he wasn't sure when the new appointments were going to take place.

b) Introductions of SOTF Members - Icebreaker

Dean Schmidt loves First Amendments issues and is currently a practicing attorney.

Kevin Frazier looks forward to addressing First Amendments issues, is a 2nd year at Boalt Hall and originally from Oregon.

Jaya Padmanabhan was nominated by the Society of Professional Journalists and thinks the process is great. Member Padmanabhan also writes a column.

Jennifer Wong is a software engineering and sits in seat 5. Ms. Wong and was nominated by the San Francisco League of Women Voters and has a general interest in helping the public.

Laura Stein is a former professor of communication and specializes in communication and public law. Dr. Stein wrote a book on the First Amendment.

Matthew Yankee is currently chair of the Information Technology Committee and is serving as the Vice Chair with the SOTF. Member Yankee works at the Alameda County Recorder's Office.

Chris Hyland stated that this is his 5th term on the SOTF and has served as the Vice Chair and Acting Chair.

Laurie Jones Neighbors is a researcher, evaluator and is currently self-employed. Ms. Neighbors works for an organization called Urban Habitat which supports low income people.

Kai Forsley was interested in the SOTF 10 years ago and has had an interest in the public records. Ms. Forsley is a librarian and information scientist, works in the nonprofit sector.

Bruce Wolfe is a New York transplant. Chair Wolfe became interested in San Francisco government transparency while a student at City College before the Sunshine Ordinance was voted in by the voters. Chair Wolfe is a social worker by trade and works for a non-profit.

Kevin Frazier was noted absent at 9:15 PM.

c) Introductions - Administrator & Legal Advisor

Administrator Leger discussed her duties in processing complaints and preparing for hearings.

Deputy City Attorneys Mark Price Wolf and Hellen Castillo provided a summary of their duties and responsibilities.

d) Review of other officials and entities interaction

Chair Wolfe acknowledged the role of Ex-Officio for Clerk of the Board and Mayor's Office. Chair Wolfe recognized other official departments including the Ethics Commission where cases are sometimes referred. Chair Wolfe also stated that cases are also referred to the District Attorney for enforcement, however a crime has to have taken place for them to accept the referral.

e) Review of By-laws, Complaint Procedure, Committees and Roberts Rules of Order and Statement of Incompatible Activities.

Chair Wolfe provided a quick review of the SOTF By-laws and Complaint Procedures and urged everyone to become familiar with these records. Chair Wolfe noted that these are documents that can be changed at any time based on what is happening. Chair Wolfe advised Committee members to maintain a good attendance record. Chair Wolfe also noted that the SOTF is not considered a policy body but should set an example to the rest of the City.

Chair Wolfe addressed various committees and encouraged new members to participate in them.

Chair Wolfe provided a review of the Statement of Incompatible Activities and reminded the Committee that the SOTF is made up of public officials.

- f) Overview of Sunshine Ordinance, California Public Records Act and Ralph M. Brown Act.

Chair Wolfe opined the importance of having discourse on the Sunshine Ordinance, California Public Records Act (CPRA) and Brown Act. Chair Wolfe noted that the Sunshine Ordinance is an enhancement of the CPRA and Brown Act and allows more transparency than any other group. Chair Wolfe stated that six votes are required for passing a motion.

Public Comment on items a-f above.

Peter Warfield expressed thanks for having this section and could have a lengthy discussion about any aspect. Mr. Warfield stated that he cares about books and libraries and has brought several complaints on his own.

- g) Special Projects - items may be discussed out of order based on priority. (*Public Comment allowed on each item*)
 - 1) Comparative analysis of California Public Records Act and the Ralph M. Brown Act to the Sunshine Ordinance.

Chair Wolfe mentioned a comparative analysis to the CPRA and Sunshine Ordinance and asked who was interested in doing this work? Chair Wolfe expressed concern that the work does need to be done and we do not have a budget or a contractor to do this work. Chair Wolfe noted that Deputy City Attorneys Hellen Castillo and Marc Price Wolf review everything.

Public Comment:

Peter Warfield mentioned that Supervisor Peskin addressed the SOTF need for staffing. Mr. Warfield disagreed with the Chair on Administrative Code 67.31. Mr. Warfield opined that the SOTF is required to have an attorney and thinks they have a requirement for legal advice.

- 2) Technology

- OD searchable database.

Chair Wolfe noted the importance of technology to refer back to decisions that have been made. Chair Wolfe stated that the heart of how those decisions got made are in the Orders of Determination. Chair Wolfe explained the focus of the Orders which is that the public often reminds the Committee what cases have set precedence. Some of those interpretations may not be correct anymore or are not correct and needs to be revised. Chair Wolfe stated that he is working to build a searchable database online.

- Automated metadata system (new) – Email.

Chair Wolfe stated that the automated metadata system needs review and to be monitored. Chair Wolfe noted that the IT Committee meets ad hoc.

- NextRequest.

Chair Wolfe stated that technology like NextRequest has provided many government agencies a way to make public records requests assessable and allows a person to open a request and see who also has opened the matter. Chair Wolfe stated that he receives many questions regarding people who do not have access to the internet and that first-class mail provides an avenue to receive complaints.

- Pandemic-related.

Chair Wolfe addressed the SOTF and the pandemic. Chair Wolfe stated that the Mayor's and Governor's executive orders that are in place are misunderstood. Chair Wolfe stated that the City has produced some information which is confusing to the public as they try to figure out what is applicable and needs to be reviewed by the SOTF.

Public Comment:

Denta Tadesse addressed the new SOTF members and referred to his closed matters from 2017 and 2018. Mr. Tadesse stated that his experience has been mixed to disappointing. Mr. Tadesse noted that the rules are not equally enforced for everyone.

Peter Warfield provided a summary of his experiences with the SOTF and the need to hear more with regard to these issues. Mr. Warfield stated that the public is begging the SOTF to deal with technology because people are having trouble getting to a virtual meeting.

3) Multiple complaint file consolidation.

Chair Wolfe addressed the backlog due to multiple complaints and to the pandemic for the loss of six months of committee hearings. Chair Wolfe stated that one complainant is prolific who is anonymous and has been making a dragnet on how the

Ordinance is being implemented. Chair Wolfe noted that this complainant has filed 10 requests and then completes an evaluation. Chair Wolfe also noted that the SOTF is comprised of volunteers, have one staffer and no budget.

Public Comment:

Peter Warfield stated that this is severely problematic and there seems to be a bias to find faults with complainants.

Denta Tadesse stated that he doesn't think members of the public are filing complaints to make trouble with departments.

Mark Sullivan suggested that the SOTF track violations of the Ordinance for people who bring up issues.

- 4) Analysis of Governor's & Mayor's Executive Orders on the California Public Records Act and the Ralph M. Brown Act and the Sunshine Ordinance under emergencies, catastrophes & disasters using current pandemic as case study.

Chair Wolfe stated that the records request process was not made clear during a pandemic. Chair Wolfe asked the SOTF to create a recommendation to be added to the Ordinance specifying procedures in a disaster. Chair Wolfe asked SOTF members to contact the SOTF Administrator if interested in this work.

Public Comment:

Mark Sullivan stated that the Brown Act cannot be suspended. Mr. Sullivan stated that the Mayor's Executive Order addressing suspension was illegal. Brown Act emergency procedures should be followed.

Peter Warfield wanted to know what Mr. Sullivan has provided regarding his comments. Mr. Warfield asked for work done on behalf of ordinary public regarding the Mayor and Newsom's executive order. Mr. Warfield agrees with a lot of what the Chair said, and asked why does this have to be done behind closed doors?

Denta Tadesse asked a question regarding item 4 and stated that it seems like government takes advantage of these types of emergencies. Mr. Tadesse discovered this past year was that the City Attorney memos will no longer be provided in complaints.

8. Recommendations from the Complaint Committee regarding existing New Compliant Form and a revised Complaint Form submitted by the SOTF Administrator and another by a Petitioner.

Chair Wolfe noted the late hour and asked the Committee to review the Complaint Forms included in the packet for discussion at the next SOTF hearing.

Public Comment:

Denta Tadesse addressed the structure of Orders of Determination listed online.

Peter Warfield noted that at 10:30 p.m. at night it is not unreasonable to put over a few matters. Mr. Warfield added with respect to complaint procedures it is essential to how the SOTF operates and how they operate with the public.

No Actions taken.

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

Chair Wolfe asked the Committee to review the Administrator’s Report on their own time.

Public Comment.

None.

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

Public Comment.

None.

11. **ADJOURNMENT.**

The Committee adjourned at 10:32 PM.

APPROVED: 3/3/21
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.