



# 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

April 3, 2019 - 4:00 PM

## Regular Meeting

|        |                            |         |                                  |
|--------|----------------------------|---------|----------------------------------|
| Seat 1 | Matthew Cate               | Seat 7  | Rodman Martin                    |
| Seat 2 | Lila LaHood                | Seat 8  | Frank Cannata                    |
| Seat 3 | Josh Wolf                  | Seat 9  | Chris Hyland - <b>Vice Chair</b> |
| Seat 4 | Rishi Chopra               | Seat 10 | Matthew Yankee                   |
| Seat 5 | Leuwam Tesfai              | 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 Wolfe called the meeting to order at 4:00 PM. On the call of the roll Chair Wolfe and Members LaHood, Tesfai, Cannata, Yankee and Hinze were noted present. Vice-Chair Hyland and Members J. Wolf, Cate, Martin and Chopra were noted not present.

A quorum was present.

Item No. 6 (File No. 18069) was continued to the call of the chair. (see below).

### 2. Approval of minutes from the Sunshine Ordinance Task Force March 6, 2019, meeting.

The SOTF discussed the draft meeting minutes.

**Action: Moved by Member Cannata, seconded by Member Hinze, to approve the March 6, 2019, meeting minutes.**

Public Comment:

None.

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

Ayes:6 - Cannata, Hinze, Yankee, LaHood, Tesfai, B. Wolfe

Noes: 0 - None

Absent: 5 - Cate, J. Wolf, Chopra, Martin, Hyland

Member J. Wolf was noted present at 4:03 PM.

Vice-Chair Hyland was noted present at 4:10 PM.

3. **File No. 18072:** Complaint filed by Joshua Klipp against the Recreation and Parks Department 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. (00:04:34-00:55:02)

*(On September 25, 2018 the Complaint Committee referred the matter to the SOTF for hearing and for an appearance by Kelley Cornell and that the Respondent provide documentation for the previous ten years.)*

Joshua Klipp (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Klipp stated that every year the Urban Forestry Council creates a report based on a questionnaire that is sent out to public entities, such as Recreation and Park, and is made publicly available. Mr. Klipp stated that the information provided by Recreation and Park was inadequate in that there was no supporting documentation.

Dennis Kern, Director of Operations (Recreation and Parks), (Respondent), provided a summary of the department's position. Mr. Kern stated that the Complainant requested documents from the previous ten years that do not exist. Mr. Kern stated that the Complainant had been provided all the documents maintain by Recreation and Parks. Mr. Kern stated that the Parks had been in a tree reactive routine (removing more trees than planting). Mr. Kern stated that he supervises 12 arborists, 10 gardeners, 4 laborers but does not have any clerical staff in his urban forestry unit. Mr. Kern stated that Mr. Klipp had been provided the Strategic Plan.

A question and answer period occurred. The Respondent and the Complainant provided rebuttals.

The SOTF opined that records including but not limited to arborist tree plantings, removals, location, source of tree, personal injuries, storm damage should be tracked and provided.

**Action: Moved by Chair Wolfe, seconded by Vice-Chair Hyland, to find that the Department of Recreation and Parks violated Administrative Code (Sunshine Ordinance), Sections 67.21(b) and 67.21(e), by failing to make documents available in a timely and complete manner and referred the matter to the Compliance and Amendments Committee to ensure that Recreation and Parks Department provides the requested documents other than those already provided to Joshua Klipp (Urban Forestry Council).**

Public Comment:  
None.

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

Ayes: 8 - Hyland, Yankee, B. Wolfe, Hinze, LaHood, Cannata, Tesfai, J. Wolf  
Noes: - 0  
Absent: 3 - Martin, Chopra, Cate

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. (00:57:42-01:01:29)*

Speakers:

Kevin Guy, Office, Short-Term Rentals, spoke about scheduling *Sandra Weese v. Office of Short Terms Rentals*.  
Mark Sullivan spoke about City policy with regard to Green Benefits District (GBD) and Dolores Park GBD.

Rodman Martin was noted present at 5:25 PM.

5. **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 to make meeting minutes available in a timely manner. (June 5, 2018 - Advisory Committee of Street Artists and Crafts Examiners). *(01:01:54-01:49:17)*  
*(On August 28, 2018, the Complaint Committee determined that the SOTF has jurisdiction and that the requested records are public and referred the matter to the SOTF for hearing. The Complaint Committee requested that the Arts Commission and SOTF counsel provide documentation as to whether or not the Advisory Committee is a Charter Committee subject to the rules related to policy bodies.)*

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.

A question and answer period occurred. The parties will be provided an opportunity for rebuttals at the next 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.**

Public Comment:

Robert Clark spoke about the ballot measure and that it was a Charter Amendment.

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

Ayes: 8 - Hyland, Tesfai, Yankee, Martin, J. Wolf, LaHood, Hinze, B. Wolfe  
Noes: 1 - Cannata  
Absent: 2 - Cate, Chopra

6. **File No. 18069:** Complaint filed by Mike Black against City Administrator Naomi Kelly, and the Office of the City Administrator 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. (01:49:27-01:53:15)  
*(On September 25, 2018, the Complaint Committee moved that the records are public and referred the matter to the SOTF for hearing.)*

Mike Black (Petitioner) was not present for the hearing and on April 3, 2019, provided a letter addressed to the SOTF in lieu of a personal appearance.

Bill Barnes, (City Administrators Office) (Respondent), was not present for the hearing and provided an email to the SOTF on April 2, 2019, stating his unavailability and requesting a continuance.

**Action: Moved by Member J. Wolf, seconded by Member Cannata, to continue the matter to the call of the chair.**

Public Comment:

None.

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

Ayes: 9 - J. Wolf, Cannata, Yankee, Martin, Tesfai, LaHood, Hinze, Hyland, B. Wolfe  
Noes: 0 - None  
Absent: 2 - Cate, Chopra

Vice-Chair Hyland was noted absent at 6:30 PM and for the remainder of the meeting.

7. **File No. 18081:** Complaint filed by David Tucker against Bianca Polovina and the Office of Labor Standards Enforcement for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24(b)(2), by failing to respond to a request for litigation documents in a timely and/or complete manner. (01:55:22-03:15:02)  
(On November 27, 2018, the Complaint Committee moved to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing without recommendation.)

David Tucker (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Tucker provided the history of the Peggy O'Donnell's complaint against the Arch Diocese of San Francisco, an administrative action in San Francisco Superior Court against the Office of Labor Standards Enforcement (OLSE). Mr. Tucker stated that up until eight months ago, he was receiving documents from Bianca Polovino, of the OLSE on a rolling basis. Mr. Tucker stated as of eight month again he stop received any documents from the OLSE and that there is a settlement agreement before a judge that should be provided.

Pat Mulligan (OLSE) (Respondent), provided a summary of the department's position. Mr. Mulligan stated that this is an administrative complaint and cited California Evidence Code 1040 and 1041 and California Government Codes Sections 6254 and 6276 which speak to investigations and process for civil enforcement. Mr. Mulligan stated that the requested settlement agreement between the Arch Dioses and the OLSE that they are negotiating is being reviewed by the judge in the class action and cannot be provided until the class action suit is settled and released by the judge.

Member Tesfai opined that the City wants to make certain that restitution is made around laws which have been violated and that the OLSE has an interest in seeing to it that San Francisco laws are followed, which is why payment in this matter is call restitution and not necessarily providing a settlement to the class.

A question and answer period occurred. The Respondent and the Complainant provided rebuttals.

**Action: Moved by Member J. Wolf, seconded by Member Hinze, to find that the Office of Labor Standards Enforcement violated, Administrative Code (Sunshine Ordinance), Section 67.24(b)(2) by failing to make documents available in a complete and/or timely manner.**

Public Comment:

Peggy O'Donnell provided comment on her participation in this matter.

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

Ayes: 0

Noes: 8 - Yankee, Martin, J. Wolf, Hinze, Tesfai, Cannata, LaHood, B. Wolfe

Absent: 3 - Cate, Chopra, Hyland

8. **File No. 19013:** Hearing to review the SF Police Commission's response and actions on February 20, 2019, to SOTF Order of Determination regarding File No. 17131 - Magick Altman against the Police Commission. (03:16:30-04:18:03)

Chair Wolfe provided a summary of the hearing matter and stated that there was defiance by the Police Commission of the SOTF Order of Determination presented by Magick Altman on February 20, 2019. Chair Wolfe stated that it was the Police Commission that took the action to recess their meeting, change its venue and failed to post the new location properly in violation of Administrative Code (Sunshine Ordinance), Section 67.15(b), (c) and (e), by failing to allow members of the public to directly address the Police Commission, failing to uniformly apply time limits for public comment and failure to announce changes to the agenda/change of meeting location as they became known. Chair Wolfe stated SOTF and Ethics Commission has an agreed process for referrals from SOTF for enforcement by Ethics Commission including an investigative arm that could determine Willful Failure under Administration Code Section 67.34 which equates to Official Misconduct. Chair Wolfe suggested that this process be used for only those Police Commissioners that voted in the negative and opposed the motion to accept the SOTF Order of Determination and rescind their vote on the item in question by the Police Commission. Chair Wolfe stated that if the SOTF looks towards enforcement of the Sunshine Ordinance they may *also* ask the District Attorney to take action to invalidate the Police Commission decision and force a “do over” of their vote of February 20, 2019, was active in the Police Commission's motion. Chair Wolfe stated that this matter should also be pursued by the Board of Supervisors because the Police Commission willfully defied an SOTF Order of Determination which relates to SOTF's responsibility under the Sunshine Ordinance to report non-compliance of the Sunshine Ordinance, Ralph M. Brown Open Meetings Act and CA Public Records Act.

Member Cannata stated that the SOTF should pursue Administrative Code (Sunshine Ordinance), Sections 67.34 and 67.36, and refer the matter to the Ethics Commission, Board of Supervisors and the District Attorney.

Chair B. Wolfe stated that one letter addressed to each body be drafted and include the same supporting documentation in each letter.

**Public Comment:**

Magick Altman; Gilbert Bernstein; Mildred Musni; Jeremy Miller; Victoria Ruiz; Harry Pariser; Melissa Hernandez; Mary Jo Musni; provided comments regarding the hearing matter.

**Action: Moved by Member Cannata, seconded by Member Yankee, to refer the matter to the following agencies due to the Police Commission's violations of Administrative Code (Sunshine Ordinance), Sections 67.15(b), (c) and (e) by willfully not complying with SOTF Order of Determination regarding file No. 17131, *Magick Altman v. Police Commission*:**

- ***Ethics Commission* - Seeking enforcement pursuant to Administrative Code (Sunshine Ordinance), Section 67.34 – *Willful Failure* to Commissioners Damali Taylor, Dion J. Brookter and Robert Hirsch.**
- ***Board of Supervisors* - Reporting as allowed under Sunshine Ordinance for non-compliance of the Sunshine Ordinance which may lead to sanctions against the Police Commission.**
- ***District Attorney* - Seeking action to rescind the Police commission's November 3, 2017, vote and including the intention for such rescinding in their February 20, 2019 motion that failed.**

Public Comment.

Magick Altman, Jeremy Miller, Victoria Ruiz, Harry Pariser, Mildred Musni, Melissa Hernandez and Mary Jo Musni provided comment on the motion.

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

Ayes: 8 - Cannata, Yankee, Martin, J. Wolf, Tesfai, LaHood, Hinze,  
Chair B. Wolfe

Noes: 0 – None

Absent: 3 - Chopra, Hyland and Cate.

9. **Reports from Sunshine Ordinance Task Force Committees. (04:19:02-04:24:13)**
- Complaints Committee
  - Compliance and Amendments Committee
  - Education, Outreach and Training Committee
  - Rules Committee
    - Language from March 26, 2019, meeting on SOTF Agenda May, 2019
  - Information Technology Ad Hoc Committee

The SOTF discussed the recent activities of the Committees.

Public Comment:

None.

No actions taken.

10. **Sunshine Ordinance Task Force - Chair's Report.** (04:25:03-04:32:01)

Chair Wolfe stated that he was waiting to submit his report because he wanted to include the SOTF outcome regarding the Police Commission hearing as part of the record.

Public Comment:  
None.

No actions taken.

11. **Administrator's Report, Complaints and Communications.** (04:32:56-04:40:05)

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

SOTF Administrator Leger presented the Staff Report and responded to questions from the SOTF.

Public Comment:  
None.

No actions taken.

12. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.** (04:40:56-04:42:57)

Administrator Leger stated that the Planning Association of the Richmond (PAR) extended an invitation for a SOTF member to give a presentation and is scheduled for April 17, 2019, at 7:00 pm at the Richmond Recreation Center.

13. **ADJOURNMENT**

There being no further business the meeting was adjourned at 8:43 PM.

**APPROVED**  
**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.