



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO

Minutes

September 2, 2020 - 4:00 PM

Regular Remote Meeting

Seat 1	Vacant	Seat 7	Vacant
Seat 2	Lila LaHood	Seat 8	Vacant
Seat 3	Josh Wolf - Vice Chair	Seat 9	Chris Hyland
Seat 4	Vacant	Seat 10	Matthew Yankee
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 B. Wolfe called the meeting to order at 4:09 PM. On the call of the roll Chair B. Wolfe and Members LaHood, Yankee, J. Wolf, Hyland and Hinze were noted present. Member Tesfai was noted not present. A quorum was present.

The SOTF Administrator noted the Petitioner and Respondent informed them that they wish to postpone the hearing on Item 5, File No. 19080; until the October 7, 2020, Sunshine Ordinance Task Force hearing.

Public Comment:

Peter Warfield wanted SOTF to know that he appreciates the announcement regarding the changes to today's Agenda.

No action taken.

2. **Approval of minutes from the Sunshine Ordinance Task Force August 12, 2020, meetings.**

Action: Moved by Member Yankee, seconded by Member Hinze, to review and approve August 12, 2020, meeting minutes after they have been updated.

Public Comment:

Peter Warfield stated that he was glad to see an update on the Minutes because understandings are brought to the surface in the Minutes. Mr. Warfield stated that he would appreciate it if the SOTF could state what error was cited and which portion of the Ordinance was quoted.

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Hinze, J. Wolf, LaHood, B. Wolfe, Hyland

Noes: 0 - None

Absent: 1 - Tesfai

3. **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.*

Peter Warfield stated that there is confusion when on the phone and in the que to speak. Mr. Warfield stated that this is an example of unclarity on when to speak happens as opposed to a live hearing.

Michael Petrelis wanted to thank the SOTF for volunteerism for democracy. Mr. Petrelis stated that he wants SOTF hearings to be aired on SFgovTV.

Anonymous thinks that a Bill of Rights would be a good thing for the SOTF to prepare. Anonymous thanked the SOTF for returning to hearing complaints. Anonymous restated that there should be a no violation motion for file no. 19111.

Commenter No. 1 opined the difficulties during meetings for queueing up during public comment which includes often closing before the public can speak. Commenter stated that this happens during Board of Supervisor meetings on SFgovTV and often times the opportunity to speak has passed.

Denta Tadesse stated that he doesn't understand Malloy's presentation. Mr. Tadesse stated that he has had the same reactions and experiences as Mr. Malloy. Mr. Tadesse stated that the City Attorney's Office has been unfair to African Americans.

4. **File No. 20072:** Per Board of Supervisors File No. 200552 – Authorizing Sunshine Ordinance Task Force to meet in July 2020 and inclusive of Administrative Code, Chapter 67 et al. but not limited to Administrative Code 67.30(c) - SF Sunshine Ordinance hearing to consider the impact of emergency orders, due to COVID 19, which resulted in the temporary suspension of various provisions of the California Public Records Act, Ralph M. Brown Open Meetings Act, San Francisco Sunshine Ordinance and other related laws and statutes that may apply within the jurisdiction of Sunshine Ordinance Task Force. *(Discussion and Action) (attachments)*

- Public records request delayed during the emergency
- Issues related to lack of meeting postings
- Lack of access to the meetings during the emergency
- Planning and standards for future emergencies

Chair B. Wolfe noted that he received word from Member Tesfai, who worked in conjunction with the San Francisco League of Women Voters (sflwv), to create a one stop shop to post agendas and meeting announcements. Chair B. Wolfe stated that the Board of Supervisors needs something that will be easily understood and will not generate too many questions. Chair B. Wolfe opined that the City will be in a shelter in place state for some time.

Public Comment:

Anonymous stated his reminder from an earlier meeting of a recommendation to the Board of Supervisors regarding the Mayor's Fifth Supplemental Proclamation.

Peter Warfield spoke about serious problems for open government and lack of meetings. Mr. Warfield stated his concern for how well those meetings proceed. Mr. Warfield noted his concern for those members of the public without internet access. Mr. Warfield also expressed concern about the four vacancies on the SOTF.

Commenter No. 1 spoke about the state of emergency and when it will end. Commenter No. 1 also expressed the same concerns as Mr. Warfield and Anonymous.

Chair Wolfe opined that there is no end in sight to the state of emergency and that he is following the same news reports as everyone else.

5. **File No. 19080:** Complaint filed by Paul A. Vander Waerd against the Dept. of Homelessness and Supportive Housing for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, for failing to respond to an Immediate Disclosure Request in a timely manner.

SOTF Administrator stated that both the Complainant and Respondent are working together to exchange records and wish to continue the matter until the October 7, 2020 SOTF hearing.

Action: Moved by Member LaHood, seconded by Member Yankee to continue the matter to the Call of the Chair.

Public Comment:

Peter Warfield provided comment on how scheduling a SOTF hearing can push people and agencies to come to some level of agreement and compels agencies to work with Petitioners. Mr. Warfield also stated that this process lets the Petitioner know that the violation still stands if there is an issue of timeliness.

The motion PASSED by the following vote:

Ayes: 6 - LaHood, Yankee, Hinze, J. Wolf, B. Wolfe, Hyland

Noes: 0 - None

Absent: 1 - Tesfai

6. **File No. 19111:** Complaint filed by Michael Petrelis against Supervisor Rafael Mandelman for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

Michael Petrelis (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Petrelis stated that he was surprised that his matter was heard in November before Covid-19. Mr. Petrelis stated that he received his requested records but that they were not provided in a timely manner.

Tom Temprano (Supervisor Rafael Mandelman, Board of Supervisors) (Respondent), provided a summary of the department's position. Mr. Temprano stated thanks to members and staff and apologized for the late submission of documents to the SOTF Administrator. Mr. Temprano stated Mr. Petrelis's records request was voluminous and burdensome. Mr. Temprano stated that in October 2019 his office provided the Petitioner with hundreds of pages of requested records which required many hours of staff time and continued to provide on a rolling basis. Mr. Temprano stated on January 28, 2020, the Petitioner acknowledged receipt of requested records. Mr. Temprano opined that his office has complied with the Ordinance.

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

Action: Moved by Member Hinze, seconded by Member LaHood to find no violation Administrative Code, Sunshine Ordinance Section 67.25.

Public Comment:

Anonymous urged the SOTF to not find a ruling of no violation of 67.25.

Anonymous further stated that the importance of disclosure of Prop G calendars.

The motion PASSED by the following vote:

Ayes: 6 - LaHood, Yankee, Hinze, J. Wolf, B. Wolfe, Hyland

Noes: 0 - None

Absent: 1 - Tesfai

7. **File No. 19109:** Complaint filed by Stephen Malloy against Dept. of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.24, 67.25, 67.26 and 67.27 by failing to respond to a public records request in a timely and/or complete manner.

Member LaHood stated that the SOTF found no violation, there has been no progress and that there have been delays and issues beyond Covid-19.

Veronica Vien (Department of Public Health) (Respondent), provided a summary of the department's position. Ms. Vien stated that her department received Mr. Malloy's records request in May 2019 and was able to provide records in October 2019. Ms. Vien opined that some of those challenges are due to Covid-19 and that her department has had limited resources in reviewing records. Ms. Vien has not provided subsequent requested records to Mr. Malloy.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy referred back to the audio of the Compliance and Amendments Committee hearing in July. Mr. Malloy stated that the City Attorney provided specific instruction to Ms. Vien to stop working on his case which is the reason he does not have his records. Mr. Malloy stated that he is calling for an investigation.

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

Member Yankee stated that relying on Covid-19 is unacceptable.

Chair B. Wolfe stated that respondent had five months to comply with the records request. Chair B. Wolfe noted there have been additional information and interruptions that the Compliance and Amendments Committee found excessive. Chair B. Wolfe opined that the department head, Mr. Grant Colfax, should have made some contact with the Petitioner and that Mr. Colfax is responsible for not providing the requested records to Mr. Malloy.

Action: Moved by Chair B. Wolfe, second by Member Tesfai to find a violation of 67.34 for official misconduct by Grant Colfax and the Department of Public Health and to refer the matter to the Ethics Commission.

Public Comment:

Denta Tadesse stated that he supports the motion made on the behalf of Mr. Malloy. Mr. Tadesse believes that Mr. Malloy will never get the records he is seeking.

Anonymous stated that he supports the motion. Anonymous noted that he has experienced SOTF issuing decisions of matters on the record and that the City continues to violate Sunshine.

The motion PASSED by the following vote:

Ayes: 7 - B. Wolfe, Tesfai, LaHood, Yankee, Hinze, J. Wolf, Hyland

Noes: 0 - None

Absent: 0 - None

8. **File No. 19112:** Complaint filed by Anonymous against Chief William Scott and Lt. R. Andrew Cox and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25, 67.26, 67.27, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, failing to respond to a public records request in a timely and/or complete manner; failing to justify withholding of records and failing to maintain a Proposition G calendar.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that on October 8 he sent an Immediate Disclosure Request to the Police Department for Prop G and non-Prop G past and future calendars. Anonymous stated that on October 23, 2019, he was told that he would not be provided future Prop G calendars, however they were provided long after the calendars were no longer in the future. Anonymous stated that he received only two weeks of calendar entries after his complaint was filed and that the response was not timely.

Lt. Andrew Cox (Chief William Scott, Lt. R. Andrew Cox and the Police Department) (Respondents), provided a summary of the department's position. Lt. Cox stated that the Police Department takes full responsibility for not providing the records in a timely manner. Lt. Cox stated that Anonymous refused to use the portal. Lt. Cox stated that when the request came in it was auto sorted into a file that became an archivable request. Lt. Cox stated that this IDR was not simple and got in touch with the Petitioner to request an additional 10 days to respond. On March 27, 2020, the Petitioner was sent an updated version of his requested records.

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

Member LaHood noted that the initial request was funneled to an email not regularly monitored and because this was an Immediate Disclosure Request there is a timeliness issue.

Lt Cox stated that his department did develop a different email account and will closely monitor emails so that they do not go through auto sort. Lt Cox also noted that there was no request for future calendars, however his department provided the requested records.

Anonymous stated that on October 23, 2019, he was told that he would not be provided future calendars, however they were provided long after the calendars were no longer in the future.

Action: Moved by Member Yankee, seconded by Chair B. Wolfe, to find that Chief William Scott, Lt. R. Andrew Cox and the Police Department violated Administrative Code, Sunshine Ordinance Sections 67.25 for failing to provide the requested records in a complete and timely manner, 67.26 for withholding all future calendars instead of providing them with minimal redactions and 67.27 for incorrectly citing 67.29-5 for withholding non Prop G calendars.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, B. Wolfe, J. Wolf, Tesfai, LaHood, Hinze, Hyland

Noes: 0 - None

Absent: 0 - None

9. Discussion regarding changes to administrative process and legal memoranda.

Chair B. Wolfe stated that legal memos for all SOTF cases from our Deputy City Attorneys will cease. Chair B. Wolfe continued that memos which seem to be administrative and trivial do not really require extensive analysis. Chair B. Wolfe noted that going forward if there are more in-depth legal issues that are confusing, conflicts with law or other challenges for SOTF, those items will be accepted by legal counsel under attorney/client privilege

Price-Wolf stated that many of the memos prepared are a recitation and back and forth between petitioner and respondent and the violation. Price-Wolf noted that it doesn't make sense for an attorney to write those memos however where legal interpretation is necessary, memos will be provided. Price-Wolf stated that recently he had a conversation with Member LaHood where she asked for legal advice and it was provided without issue.

Member Yankee opined that legal counsel should attend committee hearings before matters are referred to the SOTF because there is no way to predict a need for legal advice.

Chair B. Wolfe expressed concern about adding extra steps in the complaint process and thinks Member Yankee's suggestion is valid. Chair B. Wolfe reiterated the value of legal counsel and stated that if the SOTF Administrator is required to provide those memos, their working hours would exceed the limit. Chair B. Wolfe stated that those memos provide the SOTF and the parties with a clear understanding of the issues presented in each case. Chair B. Wolfe expressed concern that the SOTF is not made entirely of attorneys and that they do their best to understand the law. Chair B. Wolfe emphasized the importance of having legal counsel review a case and flag certain parts of the Ordinance or Brown Act before it goes to Committee or the SOTF.

Public Comment:

Peter Warfield stated that the lack of city attorney memos is alarming and crucial to the SOTF. Mr. Warfield noted that under 67.30 the SOTF is required to be assigned a deputy city attorney. Mr. Warfield also expressed concern about things that might not be public.

Anonymous stated that he appreciates the deputy city attorney analysis, but also agrees that much of it is not legal advice.

Denta Tadesse opined that the summaries provided by the deputy city attorney is useful and supports having the attorneys present at committee hearings. Mr. Tadesse also noted that not having a city attorney present reduces public access to information and meetings. Mr. Tadesse expressed concern that there are conflicts and no ethical walls at the City Attorney's Office.

Member Hyland stated that this matter should be continued to the next meeting.

No actions taken.

10. Administrator's Report, Complaints and Communications.

SOTF Administrator presented the report.

Chair B. Wolfe opened a discussion on who will participate in the Complaint Committee and Compliance and Amendments Committee now that we have several vacancies on the SOTF.

Public Comment:

Mr. Warfield spoke about the Administrator's Report and noted that the Library Users Association has a complaint pending. Mr. Warfield stated that the Library Commission is not allowing public comment which is a basic and relevant right to the process. Mr. Warfield opined that Covid-19 has posed a whole new set of issues.

Denta Tadesse stated that he did not realize that the discussion regarding legal memos had concluded. Mr. Tadesse suggested making a template for complainants as is outlined in the summaries and legal memos.

Anonymous agreed with Mr. Tadesse in that a template might solve the memo issue and provide them to complainants as optional.

No actions taken.

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

Public Comment:

Mr. Warfield opined that it would be useful to have a future agenda item at a SOTF meeting for members of the public to speak about how Sunshine is working for them, issues, problems or amendments or attention of some kind. Mr. Warfield believes that soliciting the public to speak about Sunshine in this new environment of Covid-19 would be useful.

12. **ADJOURNMENT.**

There being no further business the meeting was adjourned at 8:10 pm.

APPROVED: 10/7/2020
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.