



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

October 5 - 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**
2. **Approval of minutes from the Sunshine Ordinance Task Force September 7, 2016 meeting.** (*Discussion and Action*)(attachment)
3. **Sunshine Ordinance Task Force - Chair's Report.** (*Discussion and Action*)

Recommendation from the Compliance and Amendments Committee.

(The Compliance and Amendments Committee held a hearing to review File No. 16062 and issued a report and/or recommendation for the Sunshine Ordinance Task Force's (SOTF) review. Upon review of the Committee's recommendations the SOTF shall: 1) accept the recommendation of the Committee; or 2) schedule the complaint for a hearing before the SOTF at a future date.)

4. **File No. 16062:** Complaint filed by Magick Altman against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.9, by failing to make supporting documents available 72 hours prior to the Police Commission's June 22, 2016, meeting (Use of Force Policy). (*Discussion and Action*) (attachment)
(On September 12, 2016, the Compliance and Amendments Committee heard and referred the matter to the Task Force with the recommendation to find jurisdiction and find that a violation of Administrative Coded (Sunshine Ordinance), Section 67.9 (a) occurred for failing to post supporting documents as soon as they became available.)

5. **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 pm or as soon thereafter as possible.*
6. **File No. 16063:** Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors, 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 and inappropriately invoking an extension of time to respond. *(attachment)*
 - a) Determination of jurisdiction on complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors. *(Discussion and Action)*
 - b) Hearing on complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors. *(Discussion and Action)*
7. **File No. 16067:** Complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors, 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. *(attachment)*
 - a) Determination of jurisdiction on complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors. *(Discussion and Action)*
 - b) Hearing on complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors. *(Discussion and Action)*
8. **File No. 16076:** Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.34, by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act, as evidenced in the failure to respond to a Sunshine Ordinance Task Force (SOTF) complaint, failure to attend SOTF hearings and failure to comply with SOTF's Order of Determination in regards to SOTF File No. 15071. *(attachment)*
 - a) Determination of jurisdiction on complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors. *(Discussion and Action)*
 - b) Hearing on complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors. *(Discussion and Action)*

SPECIAL ORDER – The hearings on File No. 16071 will not begin earlier than 6:00 p.m.

9. **File No. 16071:** Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information. *(attachment)*
 - a) Determination of jurisdiction on complaint filed by Tom Borden against John Rahaim and the Planning Department. *(Discussion and Action)*
 - b) Hearing on complaint filed by Tom Borden against John Rahaim and the Planning Department. *(Discussion and Action)*
10. **File No. 16080: Hearing -** Review of potential impact of Assemble Bill 2853 (Public Agency’s referral of persons to public records maintained on an Internet site) on the City and County of San Francisco and draft advice letter to city departments. *(Discussion and Action)(attachment)*
11. **Review of Sunshine Ordinance Task Force meeting scheduled – 2017.** *(Discussion and Action)(attachment)*
12. **Administrator’s Report, Complaints and Communications.** *(Discussion and Action)(attachment)*
 - **Task Force and Committee Hearing Schedule**
 - **Complaints Submitted and Hearing Files Created**
 - **Communications to the Task Force**
 - **Summary of Pending Complaints and Other Issues**
13. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.** *(Discussion and Action)*
14. **ADJOURNMENT**

The Sunshine Ordinance Task Force was established by the San Francisco Administrative Code, Chapter 67. The purpose of the Task Force is to protect the public's interest in open government and to carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code. For additional information concerning Sunshine Ordinance Task Force please contact the Task Force by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Agenda Item Information

Each item on the agenda may include the following documents:

- 1) Department or Agency cover letter and/or report;
- 2) Public correspondence;
- 3) Other explanatory documents.

These items will be available for review at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, Reception Desk.

Meeting Procedures

- | | | |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |
| | <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations, except that public speakers using interpretation assistance will be allowed to testify for twice the amount of the public testimony time limit. If simultaneous interpretation services are used, speakers will be governed by the public testimony time limit applied to speakers not requesting interpretation assistance.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the agenda items. These comments will be made a part of the official public record. Written communications should be submitted to the SOTF at: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102.

AGENDA PACKET: Available for review in the Office of the Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, or on the internet at: <http://www.sfbos.org/sunshine>.

AUDIO RECORDINGS: Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at: <http://www.sfbos.org/sunshine>.

LANGUAGE INTERPRETERS: Requests must be received at least 48 hours in advance of the meeting to help ensure availability. Contact Peggy Nevin at (415) 554-5184.

AVISO EN ESPAÑOL: La solicitud para un traductor debe recibirse antes de mediodía de el viernes anterior a la reunion. Llame a Derek Evans (415) 554-7702.

Paunawa: Ang mga kahilingan ay kailangang matanggap sa loob ng 48 oras bago mag miting upang matiyak na matutugunan ang mga hiling. Mangyaring tumawag ka sa (415) 554-5184.

翻譯 必須在會議前最少四十八小時提出要求
請電 (415) 554-7719

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 5R, 6, 7, 7R, 7X, 9, 9R, 19, 21, 47, and 49. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing the San Francisco Administrative Code, Chapter 67 on the Internet at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code, Section 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. N/A

Item No. 2

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
- No Attachments

OTHER

- Administrator's Report _____
- Report _____
- _____
- Public Correspondence _____
- _____

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES - DRAFT

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

September 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

Vice-Chair Hyland called the meeting to order at 4:12 p.m. Member Chopra was noted absent. Member Tesfai was noted excused. There was a quorum.

It was noted that Item No. 9 was withdrawn by the Complainant.

Member Victoria Baranetsky introduced herself to the Task Force and the public.

2. Approval of minutes from the Sunshine Ordinance Task Force August 3, 2016 meeting. (00:02:30 – 00:04:30)

The Task Force discussed the meeting minutes. Member Maass provided a correction to the spelling of his name on page 15.

There being no further corrections the minutes were approved by the following vote as amended.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused 1 - Tesfai

3. **Sunshine Ordinance Task Force - Chair's Report.** (00:04:30 – 00:11:00)

Chair Wolfe provided a summary of the Office of the City Attorney's opinion regarding the appointment allocated to New California Media (NCM) and the possibility of the Society of Professional Journalist (SPJ) providing nominees to NCM.

Public Comment:

Richard Knee disagreed with the opinion of the City Attorney and stated that the SPJ will work to find an appropriate person for the open NCM seat.
Peter Warfield express his desire that the Task Force have full membership and provided a summary of the process for the SPJ to provide a recommendation.
Ray Hartz stated that the SPJ can vet out potential members for the Task Force and send it to NCM who can make the nominee an honorary member.

4. **File No. 16060: Report** - Board of Supervisors (File No. 160478) proposed amendment to the Campaign and Governmental Conduct Code requiring Commissioners to file Behested Payment Reports regarding the solicitation of charitable contribution over \$5,000. (00:11:00 – 00:39:00)

Lee Hepner, aide to Supervisor Aaron Peskin, Board of Supervisors, provided a summary of the proposed amendment regarding Behested Payment Reports and responded to questions from the Task Force.

Vice Chair Hyland, seconded by Member Maass, moved to continue the matter to the call of the chair.

Public Comment:

Ann Treboux expressed support for the motion and stated that commissioners need to be sworn into office.
Ray Hartz provided information of the Library's solicitation of donation and commented on their practices.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused 1 - Tesfai

5. **File No. 14095:** Complaint filed by Bob Planthold against Supervisor Malia Cohen and Supervisor Scott Wiener, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7 and 67.15 (a) and California Government Code, Sections 54954.2 and 54954.3 for failing to provide adequate opportunity for public comments at the Land Use and Economic Development Committee meetings of September 15, 2014, and September 29, 2014, and the Government Audit and Oversight Committee meeting of September 11, 2014. (00:39:00 – 01:31:00)

(On June 1, 2016, the Task Force heard the matter and requested that the Respondent provide information as to whether or not a determination was made regarding amendments to legislation being 'substantive' or not and how the public is informed of the determination.)

Bob Planthold (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Representatives for the Respondents were not in attendance but provided written comments prior the meeting.

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

Public Comment:

Ray Hartz stated that the timeframe of the violation should not be a concern to the Task Force and that the reason for the complaint should not be a consideration. Mr. Hartz also stated that silence or non-action by the Board of Supervisors' committee does not constitute consent.

Peter Warfield expressed support for Mr. Hartz's statements and stated that the Board of Supervisors' procedures does not override the Sunshine Ordinance.

Due to the lack of a motion, the Task Force found no violations and concluded the matter.

6. **File No. 16034:** Complaint filed by Bob Planthold against Supervisor Katy Tang and Supervisor Norman Yee, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.15, and California Government Code, Section 54954.3, by failing to provide adequate opportunity for public comments at the March 23, 2016, Budget and Finance Sub-Committee meeting. (01:41:00 – 02:01:00)

(On June 1, 2016, the Task Force heard the matter and requested that the Respondent provide information as to whether or not a determination was made regarding amendments to legislation being 'substantive' or not, how is it determined that an amendment to legislation is 'substantive', and how is the public informed of the determination.)

Bob Planthold (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Representatives for the Respondents were not in attendance but provided written comments prior to the meeting.

Public Comment:

Peter Warfield referenced Administrative Code 67.15 and questioned if any determination was made in regards to the amendments being non-substantive.

Ray Hartz stated that making changes to legislation after public comment is taken is unfair to the public.

Due to the lack of a motion, the Task Force found no violations and concluded the matter.

7. **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 pm or as soon thereafter as possible. (01:31:00 – 01:41:00)*

Speakers:

Ray Hartz stated that boards and commission must insure due process to the public and combining his four past complaints before the Task Force into one hearing at the last minute was a violation of due process.

Peter Warfield expressed support for Mr. Hartz and stated that there were no procedures in place. Mr. Warfield stated that the Task Force should be educated on basic law.

Ann Treboux stated that the withdrawal of complaints at the last minute was a waste of time and a new procedure should be created to address the issue.

8. **File No. 15072: Hearing on the Status of the Order of Determination** - Complaint filed by Ray Hartz against Supervisor Eric Mar, Board of Supervisors, for violating Administrative Code (Sunshine Ordinance), Section 67.25 (a), for failure to respond to an Immediate Disclosure Request in a timely and/or complete manner. (02:01:00 – 02:29:00)

(On July 26, 2016, the Education, Outreach and Training Committee heard and referred the matter to the Task Force with a recommendation to find additional violations of Administrative Code (Sunshine Ordinance), Sections 67.21 (e) and 67.34, for failing to comply or not fully complying with a request for public records and for willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act. The Committee requested that the Respondent provide a written response to the Immediate Disclosure Request; provide a written policy for responding to public records request, and provide a record/log of Sunshine public records requests received in the last 12 months (Date of receipt, response, and other actions).

Ray Hartz (Complaint) provided an overview of the complaint and requested the Task Force to find violations. Mr. Hartz stated that there were multiple opportunities for the Respondent to provide a response but it was never provided. Victor Lim and Angelina Yu, aides to Supervisor Eric Mar, Board of Supervisors, (Respondent), provided a summary of the departments position and stated that actions have been taken to insure the proper handling of future public records requests.

The Task Force reviewed the recommendation of the Compliance and Amendments Committee.

Member Cannata, seconded by Member Maass, moved to adopt the recommendation of the Education, Outreach and Training Committee to find that Supervisor Eric Mar, Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Sections 67.21 (e) and 67.34, by failing to comply or not fully complying with a request for public records and by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act.

Public Comment:

Peter Warfield expressed his disappointment with Supervisor Mar as there were multiple opportunities for response.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused 1 - Tesfai

The Task Force referred the matter to the Ethics Commissions for review.

9. **File No. 16026:** Complaint filed by Michael Petrelis against President London Breed, and Supervisors Malia Cohen, Mark Farrell, Aaron Peskin, Katy Tang, and Eric Mar, Board of Supervisors, 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 (January 2016 Text Messages).

The matter was withdrawn by the Complainant via email on September 6, 2016.

The meeting was recessed at 6:40 p.m. and reconvened at 6:55 p.m.

Recommendation from the Education, Outreach and Training Committee.

(The Education, Outreach and Training Committee held a hearing to review File Nos. 16048 and 16049 and issued a report and/or recommendation for the Sunshine Ordinance Task Force's (SOTF) review. Upon review of the Committee's recommendations the SOTF shall: 1) accept the recommendation of the Committee; or 2) schedule the complaint for a hearing before the SOTF at a future date.

10. **File No. 16048:** Complaint filed by Ann Treboux against the Fine Arts Museum for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to post meeting minutes online in a timely manner. (02:29:00 – 02:37:00)
(On July 26, 2016, the Education, Outreach and Training Committee referred the matter to the Task Force with the recommendation to find jurisdiction and to find that the Fine Arts Museum violated Administrative Code (Sunshine Ordinance), Section 67.16, by failing to post various draft meeting minutes online within 10 days of the meeting.)

Ann Treboux (Complaint) provided an overview of the complaint and requested the Task Force to find violations. Megan Bourne, Fine Arts Museum (Respondent), acknowledged the violation and provided information regarding how the minutes posting process has been improved.

The Task Force reviewed the recommendation of the Education, Outreach and Training Committee.

Vice Chair Hyland, seconded by Member Hinze, moved to adopt the recommendation of the Education, Outreach and Training Committee to find jurisdiction and to find that the Fine Arts Museum violated Administrative Code (Sunshine Ordinance), Section 67.16, by failing to post various draft meeting minutes online within 10 days of the meeting.

Public Comment:

Ray Hartz expressed support for the motion to find violations.

The motion PASSED by the following vote:

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

Noes: 0 - None

Absent: 1 - Chopra

Excused 1 - Tesfai

11. **File No. 16049:** Complaint filed by Ann Treboux against the Fine Arts Museum for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-6, by failing to disclose sources of outside funding over \$100 on the department's website. (02:37:00 – 02:48:00)

(On July 26, 2016, the Education, Outreach and Training Committee referred the matter to the Task Force with the recommendation to find jurisdiction and to find that the Fine Arts Museum violated Administrative Code (Sunshine Ordinance), Section 67.29-6, by failing to disclose donations of funds over \$100 on their website.)

Ann Treboux (Complaint) provided an overview of the complaint and requested the Task Force to find violations. Megan Bourne, Fine Arts Museum (Respondent), presented the departments position and stated that an inquiry was sent to the City Attorney requesting an opinion as to the requirement to post donations for certain individuals who may be exempt from disclosure.

The Task Force reviewed the recommendation of the Education, Outreach and Training Committee.

Member Hinze, seconded by Vice Chair Hyland, moved to adopt the recommendation of the Education, Outreach and Training Committee to find jurisdiction and to find that the Fine Arts Museum violated Administrative Code (Sunshine Ordinance), Section 67.29-6, by failing to disclose donations of funds over \$100 on their website.

Public Comment:

Ray Hartz expressed support for the motion to find violations and stated that even if the City Attorney states that certain donors do not need to be listed online the Fine Arts Museum has not posted other donations on their website.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland
B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused: 1 - Tesfai

Recommendation from the Compliance and Amendments Committee.

(The Compliance and Amendments Committee held a hearing to review File Nos. 15161, 15162, and 16050 and issued a report and/or recommendation for the Sunshine Ordinance Task Force's (SOTF) review. Upon review of the Committee's recommendations the SOTF shall: 1) accept the recommendation of the Committee; or 2) schedule the complaint for a hearing before the SOTF at a future date.

12. **File No. 15161:** Complaint filed by the Library Users Association against Laura Lent and the San Francisco Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, for failure to respond to public records requests, submitted orally, in a timely and/or adequate manner in regards to BiblioCommons Webinar. ((02:48:00 – 02:57:00))

(On August 16, 2016, the Compliance and Amendments Committee referred the matter to the Task Force with the recommendation to find jurisdiction and to find that Laura Lent and the San Francisco Public Library violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to the February 20, 2015, oral request for public records in a timely manner.)

Peter Warfield (Complainant) provided an overview of the complaint and requested the Task Force to find violations.

The Task Force reviewed the recommendation of the Compliance and Amendments Committee.

Member Cannata, seconded by Member Hinze, moved to adopt the recommendation of the Compliance and Amendments Committee to find jurisdiction and to find that Laura Lent and the San Francisco Public Library violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to the February 20, 2015, oral request for public records in a timely manner.

Public Comment:

Ann Treboux asked questions regarding her complaint (File No. 16049).

Ray Hartz expressed support for the motion and commented on the Library's past actions.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland,

B. Wolfe

Noes: 0 - None

Absent: 1 - Chopra

Excused 1 - Tesfai

13. **File No. 15162:** Complaint filed by the Library Users Association against Deputy City Librarian Michael Lambert, City Librarian Luis Herrera, and the San Francisco Public Library for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.22, for failure to respond to public records requests, submitted orally, and by discouraging staff from providing information orally, in a timely and/or adequate manner in regards to BiblioCommons. (02:57:00 – 03:29:00)

(On August 16, 2016, the Compliance and Amendments Committee referred the matter to the Task Force with the recommendation to find jurisdiction and to find that Deputy City Librarian Michael Lambert, City Librarian Luis Herrera and the San Francisco Public Library did not violate Administrative Code (Sunshine Ordinance), Chapter 67, as related to File No. 15162.)

Peter Warfield (Complainant) provided an overview of the complaint and requested the Task Force to find violations.

The Task Force reviewed the recommendation of the Compliance and Amendments Committee.

Member J. Wolf, seconded by Member Maass, moved to not accept the recommendation of the Compliance and Amendments Committee.

Public Comment:

Ray Hartz stated that the Task Force should conduct a full hearing on the matter.

Ann Treboux asked questions regard her complaint (File No. 16049).

Ray Hartz expressed support for the motion and commented on the Library's past actions.

The motion FAILED by the following vote:

Ayes: 4 - Baranetsky, Eldon, J. Wolf, Maass

Noes: 5 - , Cannata, Fischer, Hinze, Hyland, B. Wolfe

Absent: 1 - Chopra

Excused 1 – Tesfai

Due to an error in process, requests for additional motions were not accepted by the Task Force. In an effort to correct the error the matter will be rescheduled for the November 2, 2016, meeting of the Task Force for a de novo hearing.

14. **File No. 16050:** Complaint filed by Anonymous against Director John Rahaim and the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25 and 67.32, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (03:29:00 – 03:32:00)

(On August 16, 2016, the Compliance and Amendments Committee referred the matter to the Task Force with the recommendation to find jurisdiction and to find that Director John Rahaim and the Planning Department violated Administrative Code (Sunshine Ordinance), Sections 67.25 (a) and (b), by failing to respond to an Immediate Disclosure Request in a timely manner and by failing to request an extension of time to respond in an appropriate manner.)

The Task Force reviewed the recommendation of the Compliance and Amendments Committee.

Member Hinze, seconded by Member Maass, moved to adopt the recommendation of the Compliance and Amendments Committee to find jurisdiction and to find that Director John Rahaim and the Planning Department violated Administrative Code (Sunshine Ordinance), Sections 67.25 (a) and (b), by failing to respond to an Immediate Disclosure Request in a timely manner and by failing to request an extension of time to respond in an appropriate manner.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused 1 - Tesfai

SPECIAL ORDER – The hearings on File No. 16058 will not begin earlier than 6:00 p.m.

15. **File No. 16058:** Complaint filed by Mirka Morales against Gregory Slocum and the Department of Elections 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. (03:32:00 –)

Member J. Wolfe disclosed his past association with Bill Simpich and stated that he is able to perform his duties as a member of the Task Force without bias.

Vice Chair Hyland, seconded by Member Hinze, moved to find jurisdiction.

Public Comment:

None.

The motion PASSED by the following vote:

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

Noes: 0 - None

Absent: 1 - Chopra

Excused 1 - Tesfai

Mirka Morales (Complainant) provided an overview of the complaint and requested the Task Force to find violations. Ms. Morales stated that the information regarding the number of provisional ballots received on election night and copies of the “Posted Ballot Statements” have not yet been provided. Bill Simpich spoke in support of the Complainant. Director John Arntz, Department of Elections (Respondent), provided a summary of the department’s position and described the election night count procedure. Mr. Arntz stated that he was unaware that the “Posted Ballot Statements” were requested until it was stated during the meeting and that the remainder of the requested information was posted online and provided to Ms. Morales. 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.

The Task Force opined that the Department of Elections responded to the request for records in a timely manner. However, specific documents were not provided most likely due to misunderstanding or a difference in terminology for certain records.

Vice Chair Hyland, seconded by Member J. Wolf, moved to find that Gregory Slocum and the Department of Elections DID NOT violate Administrative Code (Sunshine Ordinance), Sections 67.21 by failing to respond to a public records request. However, the Task Force requested that the Department of Elections provide the number of provisional ballots received on election night and provide copies of the "Posted Ballot Statements" to the Complainant. The matter will be referred to the Compliance and Amendments Committee to insure that the Department of Elections complies with the request of the Task Force.

Public Comment:

None.

The motion PASSED by the following vote:

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

Noes: 0 - None

Absent: 1 - Chopra

Excused: 1 - Tesfai

16. **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.

Public Comment:

None.

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

Member Maass requested a hearing regarding potential impact of Assemble Bill 2853 (Public Agency's referral of persons to public records maintained on an Internet site), pending approval by the Governor, on the City and County of San Francisco.

Member Maass requested a hearing regarding Senate Bill 272 (Amendment to the California Public Records Act) and development of plan for implementation.

Chair Wolfe referred the requested hearings to the Compliance and Amendment Committee.

Chair Wolfe requested that the voting order on Task Force motions be varied in the future so that the same person does not always vote first.

Public Comment:

Peter Warfield commented on the Task Force's announcement and complaints heard earlier in the meeting.

18. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:50 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: DRAFT

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
-
- DRAFT SFPD General 5.01 Use of Force (
- Public Correspondence
-

*Various Versions**

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TTD/TTY No. (415) 554-5227

**COMPLIANCE AND AMENDMENTS COMMITTEE
REPORT/RECOMMENDATION
September 19, 2016**

DATE ISSUED
September 12, 2016

CASE TITLE – Magick Altman v. Police Commission (File No. 16062)

The Sunshine Ordinance Task Force (Task Force) will consider the recommendation of the Compliance and Amendments Committee (Committee) on **October 5, 2016**, at 4:00 p.m. and will either 1) accept the recommendation of the Committee or 2) schedule a hearing before the SOTF for a future date to reconsider the merits of the complaint.

The Complainant and Respondent are invited but **not required** to attend the October 5, 2016, 4:00 p.m. meeting of the Task Force. Please provide any written responses regarding this recommendation to the SOTF's Administrator by 5:00 p.m. on September 28, 2016.

FACTS OF THE CASE

On July 12, 2016, Magick Altman (Complainant) filed the following complaint:

File No. 16062: Complaint filed by Magick Altman against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.9 and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commission's June 22, 2016, meeting (Use of Force Policy).

HEARING ON THE COMPLAINT

On September 12, 2016, the Compliance and Amendments Committee heard the matter.

Magick Altman (Complainant) provided a summary of the complaint and requested the Committee to find violations. Ms. Altman stated that the amendments to the draft Use of Force Policy were significant that the public should have been provided adequate time to review the document prior to commenting on it. David Oliver spoke in support of the Complainant. Sgt. Rachael Kilshaw, Police Commission (Respondent), provided a summary of the department's position. Sgt. Kilshaw stated that the Police Commission staff received the draft Use of Force Policy one and one half hours prior to the meeting and brought printed copies to the Police Commission Meeting for distribution to the

commissioners and members of the public. In addition, Sgt. Kilshaw stated that the amendments to the Draft Use of Force Policy were technical in nature and no new concepts or policies were introduced. Sgt. Kilshaw clarified that the document in question is still pending further review by various bodies. There were no speakers in support of the Respondent. A question and answer period followed. The Complaint and the Respondent were provided the opportunity for rebuttals.

Upon review of the testimony and the documents the Committee believes that the Police Commission staff received the draft Use of Force Policy document in question on June 22, 2016, sometime between 3:00 p.m. and 4:00 p.m., approximately 1 ½ to 2 ½ hours prior to the meeting and should have attempted to post the document online as soon as it became available. *(Note: Sgt. Kilshaw stated that the draft Use of Force Policy was not finalized and ready for distribution until 3:48 p.m.)*

FINDINGS OF FACT AND CONCLUSION OF LAW

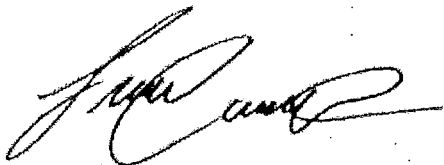
Based on the testimony and evidence presented, the Committee believes that a violation of Administrative Code (Sunshine Ordinance), Section 67.9 (a), occurred.

REPORT/RECOMMENDATION

The Compliance and Amendments Committee referred the matter to the Sunshine Ordinance Task Force with the recommendation to find jurisdiction and to find that the Police Commission violated Administrative Code (Sunshine Ordinance), Section 67.9 (a), by failing to post supporting documents on their internet site as soon as they became available.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None



Frank Cannata, Chair
Compliance and Amendments Committee

- c. Nicholas Colla, Deputy City Attorney
- Magick Altman (Complainant)
- Sgt. Rachel Kilshaw, Police Commission (Respondent)



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: September 7, 2016
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

COMPLAINT

Complainant Magick Altman (“Complainant”) alleges that the San Francisco Police Commission (“the Commission”) violated provisions of the Sunshine Ordinance by failing to adhere to public meeting agenda requirements.

COMPLAINANT FILES THIS COMPLAINT

On July 13, 2016, Complainant filed this complaint with the Task Force alleging that the Commission violated provisions of the Sunshine Ordinance relating to protocol of public meetings.

JURISDICTION

The San Francisco Police Commission (“the Commission”) is a policy body under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the Commission. The Commission has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.5 states that policy body meetings shall be open and public.
- Section 67.7 governs the notice requirements for public meetings.
- Section 67.9 governs agendas and related materials.

Section 54950 et seq. of the Gov’t Code (“the Brown Act”)

- Section 54954.3 governs public comment and actions to be taken on agenda items.

APPLICABLE CASE LAW

- none

BACKGROUND

On July 13, 2016, Complainant filed this complaint against the Commission in which she stated the following:

MEMORANDUM

TO: Sunshine Ordinance Task Force.
DATE: September 7, 2016
PAGE: 2
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

I am asking the Sunshine Task Force to investigate the actions of the Police Commission on Jun 22, 2016. Members of the Commission met with The POA, ACLU and other "stakeholders" privately and without public notice and submitted a last minute version of the Use of Force Policy that was only available the day of the meeting to the public as well as the Commission.

According th Ca code 54954.3 a policy body must post an agenda 72 hours prior to the meeting and "It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda"

I am only addressing the process not the content of the Use of Force policy.

The public has the right to be informed and be given time to consider all policies that will be voted on by a policy body.

This was not done.

One of the reasons that policy makers cannot act on proposals from the public during public comment on items not on the agenda, is because there has not been proper notification to the public and the policy body, therefore this would not be in full view of the public so they, and the policy makers, know in advance what will be acted on in said meeting. It is the work of the Sunshine Task Force to make sure the public is fully aware in due time of what its representatives will be discussing and acting upon during public meetings.

Therefore, it is my contention that the vote was invalid and not according to state law and needs to be brought forward again to the public with all the correct and timely public notices.

On July 25, 2016, in response to this complaint, the Commission sent a letter to the Task Force which stated in part as follows:

This complaint is without merit and must be outright denied without hearing. Based on the plain reading of Administrative Code 67.9 and Govt. Code 54954.3, there is no explicit requirement to provide supporting documentation of an agenda item 72 hours prior to the public meeting. The only expressed requirement is to make the materials available at the start of the meeting...

Prior to the start of the Commission meeting on June 22, 2016, the Commission's office made available for members of the public copies of the draft Use of Force policy labeled version 3. There were more than enough copies made available for the public at the start of the meeting. In addition, SFPD created a binder that was designated the reference copy and placed on display for the public's review in the Commission's meeting room. SFPD had previously made available versions 1,2 and 2a on the Commission's website and provided to members of the public along with

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 7, 2016
PAGE: 3
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

the June 22, 2016 agenda. The changes made in version 3 were not substantive in comparison to version 2a. The changes reflected word choice, syntax, and organization but did not introduce new concepts or ideas.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Can the Commission tell the Task Force if the related agenda materials at issue were available early enough to be attached to the agenda at least 72 hours before the scheduled meeting?
- Does Complainant have any substantive evidence suggesting that the Commission had a seriatim meeting prior to the scheduled meeting at issue?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did the Commission violate Section 67.5 of the Sunshine Ordinance and Section 54954.3 of the Brown Act by conducting an unnoticed, seriatim meeting during which it made policy body decisions?
- Did the Commission violate Section 67.7(a) of the Sunshine Ordinance by failing to post a current agenda for the meeting at issue at least 72 hours before the meeting?
- Did the Commission fail to comply with Administrative Code Section 67.9 by failing to post available agenda material at least 72 hours prior to the meeting at issue?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 7, 2016
PAGE: 4
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 7, 2016
PAGE: 5
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) *At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.*

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: September 7, 2016
 PAGE: 6
 RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER
 THE SUNSHINE ORDINANCE
 (Chapter 67 of the
 San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION
 ON YOUR RIGHTS UNDER THE SUNSHINE
 ORDINANCE OR TO REPORT A VIOLATION
 OF THE ORDINANCE, CONTACT THE
 SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) *Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site.* However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 7, 2016
PAGE: 7
RE: Complaint No. 16062 – Altman v. San Francisco Police Commission

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

GOV'T CODE SECTIONS 54950 ET SEQ.

SEC. 54954.3.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 16062

Magick Altman V Police Commission

Date filed with SOTF: 7/13/16

Contacts information:

magick@sonic.net (Complainant)

Lt. Rachel Kilshaw; Briseida Banuelos; Lt. Kattlyn Waaland; (Respondent)

File No. 16062: Complaint filed by Magick Altman against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.9, and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commission's June 22, 2016, meeting (Use of Force Policy).

Date public record was requested by Complainant:

Or

Date of alleged violation/incident:

Administrative Summary if applicable:

Complaint attached

California Government Code - 54954.3.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

VIA EMAIL

SUZY LOFTUS
President

L. JULIUS M. TURMAN
Vice President

DR. JOE MARSHALL
Commissioner

PETRA DeJESUS
Commissioner

THOMAS MAZZUCCO
Commissioner

VICTOR HWANG
Commissioner

SONIA MELARA
Commissioner

September 28, 2016

Dear Sunshine Ordinance Task Force:

Sergeant Rachael Kilshaw
Secretary

Ms. Magick Altman filed Sunshine Ordinance Task Force (SOTF) Complaint Number 16062 against the San Francisco Police Commission for “violating the [San Francisco] Administrative Code (Sunshine Ordinance), Sections 67.9, and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commission’s June 22, 2016 meeting (Use of Force).” The Police Commission thanks the Compliance and Amendments Committee of the SOTF for agreeing with the Police Commission’s position that there is no legal requirement to post on the Police Commission’s website the supporting documents related to an agenda item 72 hours prior to the start of a meeting and for not finding the Police Commission in violation of Ms. Altman’s complaint.

However, on September 12, 2016, the “Compliance and Amendments Committee of the SOTF referred this case to the full SOTF with the recommendation to find jurisdiction and to find that the Police Commission violated Administrative Code (Sunshine Ordinance) section 67.9(a) by “failing to post supporting documents on the internet site as soon as they became available.” The Police Commission respectfully disagrees with the Compliance and Amendments Committee’s recommendation. A plain reading of Administrative Code, section 67.9 (a) does not state that the Commission must post supporting documents on the internet site *as soon as they become available*. Rather, 67.9 (a) reads “Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. *To the extent possible*, such documents shall also be made available through the policy body’s Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.” (emphasis added).

There is no language in the statute that requires supporting documents be posted on the agency’s internet site *prior to the start of the meeting* or *as soon as they become available*; rather the statute requires the Commission to post supporting documents *to the extent possible*. The only section of Administrative Code 67.9 that makes reference to materials being available to the public prior to the start of the meeting is 67.9 (c) which states, “Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.” The Police Commission in fact complied with 67.9 (c) by having approximately 50 copies of the use of force draft policy available for the public and maintained a binder that was designated the reference copy and placed on display for the public’s review in the Commission’s meeting room. The Police Commission asserts it complied with both Administrative Code section 67.9 (c) and Administrative Code section 67.9 (a) by providing sufficient copies of the use of force draft policy for the public prior to the start of the meeting

and by posting the supporting documents to the Police Commission's website to the extent possible. More specifically given the time constraints under which we were working to put all the materials together for the meeting and the late hour at which the Commission received the document in question it was not possible for Commission staff to both prepare for the meeting and post the material received shortly before the meeting.

While the Compliance and Amendments Committee of the SOTF believes that the Police Commission received the use of force document "sometime between 3:00 pm and 4:00 pm" on June 22, 2016 and therefore had "approximately 1 ½ to 2 ½ hours prior to the meeting" to post the documents, this is simply not the case, nor would it be reasonable to expect the Commission staff to be able to do so given the burden of work just before the meeting. As I testified in my capacity as the Police Commission Secretary on September 12, 2016. The Commission has previously submitted documents which were reviewed by the Compliance and Amendments Committee that prove that the Commission received the final draft of the use of force policy via email June 22, 2016 at 3:48 pm and received the final OCC document for inclusion with the package from the OCC at 4:00 pm. Contrary to the belief that the Commission had between 1 ½ to 2 ½ hours to post the documents, the Commission staff had approximately 15 minutes before the Commission staff had to leave the Public Safety Building at 1245 3rd Street in order to arrive in time for the Police Commission meeting at City Hall that started at 5:30 pm. We regularly must leave the Public Safety Building by 4:00 pm in order to get to City Hall in time to set up for the 5:30 pm meeting. That time of the day presents significant traffic challenges, and we leave at 4:00 pm to ensure that the materials and technology are all set up so that the meeting starts on time.

During that 12 minutes between 3:48 and 4:00 pm, the Commission staff had to make approximately 25 colored copies of the 33 page use of force draft policy (i.e. 825 pages) and 40 copies of the 1 page document from OCC – in compliance with the City Attorney's Office general advice to give priority to making copies of supporting documents for the public so they are available prior to the start of each meeting. It is not reasonable to expect that the Commission staff of two people could, in 12 minutes, make 25 colored copies of a 33 page document (825 pages), make 40 copies of a 1 page document, take various phone calls from the use of force stakeholders, send emails to the Command Staff and Commissioners regarding the meeting, pack up documents needed for the meeting, and post the use of force final draft policy and the document from the OCC. The Commission staff deferred to the general advice of the City Attorney's Office and prioritized the making of physical copies of the document so they would be available for the public at the start of the meeting. The Police Commission did in fact post on the internet the use of force final draft as soon as it was possible the following day, June 23, 2016 at 9:00 am.

Based on the foregoing applied with applicable law and asks the Sunshine Ordinance Task Force Complaint be dismissed.

Sincerely,



SGT. RACHAEL KILSHAW
Police Commission Secretary

Cc: via email
Commission President Suzy Lotus



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

VIA EMAIL

SUZY LOFTUS
President

L. JULIUS M. TURMAN
Vice President

DR. JOE MARSHALL
Commissioner

PETRA DeJESUS
Commissioner

THOMAS MAZZUCCO
Commissioner

VICTOR HWANG
Commissioner

SONIA MELARA
Commissioner

July 25, 2016

Dear Sunshine Ordinance Task Force:

Sergeant Rachael Kilshaw
Secretary

Ms. Magick Altman filed Sunshine Ordinance Task Force (SOTF) Complaint Number 16062 against the San Francisco Police Commission for "allegedly violating [the San Francisco] Administrative Code (Sunshine Ordinance), Sections 67.9, and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commissioner's June 22, 2016 meeting (Use of Force)." This complaint is without merit and must be outright denied without hearing. Based on the plain reading of Administrative Code 67.9 and Govt. Code 54954.3, there is no explicit requirement to provide supporting documentation of an agenda item 72 hours prior to the public meeting.

The only expressed requirement is to make the materials available at the start of the meeting. The Police Commission Office complied with Administrative Code Sections 67.9, which states:

- (a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
- (b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- (c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

Prior to the start of the Commission meeting on June 22, 2016, the Commission's office made available for members of the public copies of the draft Use of Force policy labeled version 3. There were more than enough copies made available for the public at the start of the meeting. In

addition, SFPD created a binder that was designated the reference copy and placed on display for the public's review in the Commission's meeting room. SFPD had previously made available versions 1, 2 and 2a on the Commission's website and provided to members of the public along with the June 22, 2016 agenda. The changes made in version 3 were not substantive in comparison to version 2a. The changes reflected word choice, syntax, and organization but did not introduce new concepts or ideas.

Based on the foregoing, SFPD complied with applicable law and asks the Sunshine Ordinance Task Force Complaint be dismissed.

Sincerely,



SGT. RACHAEL KILSHAW
Police Commission Secretary

cc: ... via email

L. Julius M. Turman, Vice President San Francisco Police Commission

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

San Francisco Administrative Code

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.



The Police Commission
CITY AND COUNTY OF SAN FRANCISCO

VIA EMAIL

SUZY LOFTUS
President

L. JULIUS M. TURMAN
Vice President

DR. JOE MARSHALL
Commissioner

PETRA DeJESUS
Commissioner

THOMAS MAZZUCCO
Commissioner

VICTOR HWANG
Commissioner

SONIA MELARA
Commissioner

Sergeant Rachael Kilshaw
Secretary

July 25, 2016

Dear Sunshine Ordinance Task Force:

Ms. Magick Altman filed Sunshine Ordinance Task Force (SOTF) Complaint Number 16062 against the San Francisco Police Commission for "allegedly violating [the San Francisco] Administrative Code (Sunshine Ordinance), Sections 67.9, and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commissioner's June 22, 2016 meeting (Use of Force)." This complaint is without merit and must be outright denied without hearing. Based on the plain reading of Administrative Code 67.9 and Govt. Code 54954.3, there is no explicit requirement to provide supporting documentation of an agenda item 72 hours prior to the public meeting.

* The only expressed requirement is to make the materials available at the start of the meeting. The Police Commission Office complied with Administrative Code Sections 67.9, which states:

- (a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
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*
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Based on the foregoing, SFPD complied with applicable law and asks the Sunshine Ordinance Task Force Complaint be dismissed.

Sincerely,



SGT. RACHAEL KILSHAW
Police Commission Secretary

cc: ... via email

L. Julius M. Turman, Vice President San Francisco Police Commission

Kilshaw, Rachael (POL)

From: Marion, Samara (OCC)
Sent: Wednesday, June 22, 2016 4:00 PM *
To: Kilshaw, Rachael (POL); Michael Nevin; bloebs@meyersnave.com; Julie Traun
Cc: SFPD, Commission (POL)
Subject: Re: Use of Force version 3; cover letter for Commission
Attachments: CoverLtrPoliceComm_VersionThree.PDF

*

Please find our agency's cover letter for filing. I will bring 25 color copies. Thank you for everyone's collective efforts!

Samara

Samara Marion
Policy Attorney
Office of Citizen Complaints
25 Van Ness Avenue, Suite 700
San Francisco, CA 94102
Tel: (415) 241-7726
Fax: (415) 241-7733
(TTY) 415.241.7770
www.sfgov.org/occ
<https://www.facebook.com/occsf>

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From: Kilshaw, Rachael (POL)
Sent: Wednesday, June 22, 2016 3:48 PM
To: Michael Nevin; bloebs@meyersnave.com; Marion, Samara (OCC); Julie Traun
Cc: SFPD, Commission (POL)
Subject: Use of Force version 3

Here is the corrected version.

Samara. We are making 25 color copies for the public. If possible, can someone at the OCC make about the same number?

Thanks,
Rachael

Sergeant Rachael Kilshaw
San Francisco Police Department
Police Commission Office

1245 – 3rd Street, 6th Floor
San Francisco, California 94158
415.837.7071 phone
rachael.kilshaw@sfgov.org

THE POLICE COMMISSION

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Joyce M. Hicks
Executive Director

June 22, 2016



Hon. Suzy Loftus, President
Members, San Francisco Police Commission

Re: Use of Force (Version Three)

Dear President Loftus and Commissioners:

Attached is a proposed Use of Force policy (Version Three) that was developed by the Office of Citizen Complaints, the San Francisco Bar Association and other stakeholders.

Thank you for your continued support of our agency's policy work.

Sincerely,

A handwritten signature in black ink, appearing to read "JMH", enclosed in a large, loopy oval.

Joyce M. Hicks
OCC Executive Director

Attorney assigned: Samara Marion
Policy Analyst

Kilshaw, Rachael (POL)

From: Kilshaw, Rachael (POL) *
Sent: Wednesday, June 22, 2016 3:48 PM *
To: 'Michael Nevin'; 'bloeb@meversonave.com'; Marion, Samara (OCC); 'Julie Traun'
Cc: SFPD, Commission (POL)
Subject: Use of Force version 3
Attachments: DGO5 01_VersionThree.docx

Here is the corrected version.

Samara. We are making 25 color copies for the public. If possible, can someone at the OCC make about the same number? *

Thanks,
Rachael

Sergeant Rachael Kilshaw
San Francisco Police Department
Police Commission Office
1245 – 3rd Street, 6th Floor
San Francisco, California 94158
415.837.7071 phone
rachael.kilshaw@sfgov.org

Kilshaw, Rachael (POL)

From: Kilshaw, Rachael (POL)
Sent: Wednesday, June 22, 2016 3:51 PM *
To: Chaplin, Toney (POL); Sainez, Hector (POL); 'Alicia.Cabrera@sfgov.org'
Cc: SFPD, Commission (POL); Hicks, Joyce (OCC)
Subject: Use of Force - version 3
Attachments: DGO5 01_VersionThree.docx

* Here is the stakeholder version of the Use of Force policy. The highlighted language is the areas where there is no consensus.

* We will have color copies for you and the public.

Rachael

Sergeant Rachael Kilshaw
San Francisco Police Department
Police Commission Office
1245 – 3rd Street, 6th Floor
San Francisco, California 94158
415.837.7071 phone
rachael.kilshaw@sfgov.org

**SUMMARY DOCUMENT REGARDING DIFFERENCES BETWEEN VERSION 1 AND
VERSION 2 OF DEPARTMENT GENERAL ORDER 5.01, USE OF FORCE
06/03/16**

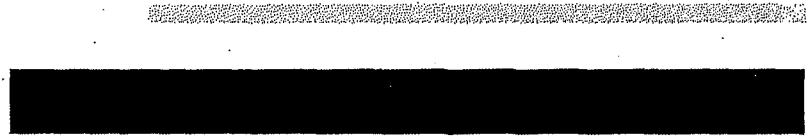
1. At various places throughout the documents, version 1 uses the terms “should” or “should, when feasible,” and version 2 used the terms “shall” or “shall, when feasible.”

Per Department General Order 3.02, Terms and Definitions, “should” means “permissive, but recommended,” and “shall” means “mandatory.”
2. Throughout the documents, version 1 uses the term “imminent,” and version 2 used the term “immediate.”
3. At various places throughout the documents, version 1 uses the term “reasonable,” and version two uses the term “minimal.”
4. The opening paragraph in version 1 differs from the opening paragraph in version 2.
5. Section I, D. Proportionality:
The definition of proportionality in version 1 is different than the definition of proportionality in version 2.
6. Section II, B:
Version 1 defines the term “imminent threat,” and version 2 defines the term “immediate threat.”
7. Section III, B. 3:
This list of other factors that may determine reasonableness in version 1 differs from the list of other factors that may determine reasonableness in version 2.
8. Section IV, C:
In version 1, there are 2 explanatory items that delineate when an officer may use lethal force. In version 2, there are 3 explanatory items that delineate when an officer may use lethal force.
9. Section V, A.:
In version 2, the Carotid Restraint is prohibited. In version 1, the Carotid Restraint is an allowable force option and is described in Section V, G.

San Francisco Police Department

DGO 5.01 USE OF FORCE

P39

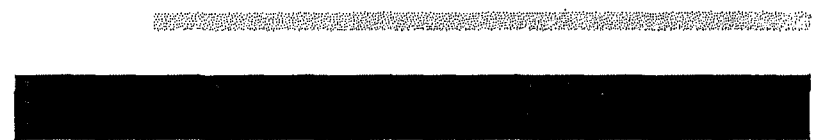


DGO 5.01

USE OF FORCE

- December 9, 2016 Commission Meeting
 - Commission President Suzy Loftus directed the Department to draft an updated use of force policy to present to the Commission in February 2016.
- January 6, 2016 Commission Meeting
 - Commission President Loftus directed the Department to attend a series of community meetings at Third Baptist Church, Bayview YMCA, Saint Ignatius High School, and Boedekker Park, organized by the Commission and youth from the Community Safety Initiative, to obtain recommendations for the draft use of force policy.

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DGO 5.01

USE OF FORCE

- **February 10, 2016 Commission Meeting**
 - SFPD presented three separate draft policies:
 - Draft DGO 5.01, Use of Force
 - Draft DGO 5.01.1, Use of Force Reporting
 - Draft DGO 5.02, Use of Firearms and Lethal Force
- **February 23, 2016**
 - Stakeholder group created and met three times to provide written and verbal recommendations to the Department on the three use of force draft policies.



DGO 5.01

USE OF FORCE

The Stakeholder working group included representatives from:

- SFPD
- Office of Citizen Complaints
- Public Defender's Office
- District Attorney's Office/Blue Ribbon Panel
- SF Bar Association
- ACLU
- Department of Human Resources
- Community Representative
- Crisis Intervention Team working group member
- Coalition on Homelessness
- Human Rights Commission
- Community Safety Initiative
- SF Police Officers Association
- Officers for Justice
- SF Pride Alliance
- National Latino Peace Officers Association
- Asian Peace Officers Association
- Women Police Officers Association



DGO 5.01

USE OF FORCE

May 4, 2016 Commission Meeting (cont'd)

- The Commission agreed to draft a second version of the Use of Force policies that included:
 - Incorporating the language proposed by community stakeholders for the opening paragraph.
 - Using the term “minimal use of force” instead of “reasonable force.”
 - Using the term “shall, when feasible” instead of “should, when feasible.”
 - Using the community stakeholder’s version of the paragraph regarding “Proportionality.”
 - Incorporating language proposed by the community stakeholders in the section regarding the pointing of a firearm.
 - Adding four additional factors to the list of factors that determine whether force was reasonable.
 - Adding a section on Crisis Intervention Team in the policy.
 - Including language to resolve issues about supervisory responsibilities when dealing with weapons other than firearms.
 - Adding the community stakeholder suggested language about data collection requirements.



DGO 5.01 USE OF FORCE

May 6, 2016

- The DOJ provided a memorandum and Subject Matter Expert (SME) comments on the three Use of Force policies.
- The memorandum contained “overall comments” on the Use of Force policies and suggested:
 - Combining the DGO 5.01, DGO 5.01.1 and DGO 5.02 into one policy
 - Including a “Definition” section in the policy
 - Including a description of the levels of force
 - Including a list of authorized impact weapons
 - Adding information and guidance related to the role of the supervisor
 - Including language about use of physical controls against vulnerable populations
 - Including cross-references in DGO 5.01 to other policies to provide adequate information
 - Recommending that the Department review certain sections of the *Final Report of the President’s Task Force on 21st Century Policing*

P44



DGO 5.01

USE OF FORCE

May 6, 2016 (cont'd)

- The DOJ memorandum also included a comment that individual SMEs made suggestions on the three separate policies. The SME recommendations came from various members in law enforcement and were summarized for the Commission by a member of the DOJ – COPs Office. The memorandum and SME's comments were posted to the Commission's webpage for the public to review.



DGO 5.01

USE OF FORCE

May 11, 2016 Commission Meeting

- Commission discussed the DOJ memorandum and SME's suggestions.
- Commission President Loftus announced a Use of Force subcommittee.

P46



DGO 5.01

USE OF FORCE

May 30, 2016

- The Commission drafted two versions of DGO 5.01 for consideration based on the discussions at the May 4, 2016 Commission Meeting and the DOJ memorandum and SME suggestions. The two draft versions consolidated the draft versions of DGO 5.01, Use of Force; DGO 5.01.1, Use of Force Reporting; and DGO 5.02, Use of Firearms and Lethal Force.

P47



DGO 5.01

Use of Force

Draft DGO 5.01 version 1:

- At various places throughout the document, the terms “should” or “should, when feasible,” are used. The term “should” means “permissive, but recommended,” and allows officers more discretion when taking action.
- At various places throughout the document, the terms “imminent,” and “imminent threat” are used. “Imminent” means “impending” and implies that something is about to occur.
- At various places throughout the documents, the term “reasonable force” is used. Reasonable force is an objective standard of force from the perspective of a reasonable officer. This definition comes from a Supreme Court decision and is the “lawful standard.”

P48



DGO 5.01

USE OF FORCE

Draft DGO 5.01 version 1:

- Opening paragraph:

“The San Francisco Police Department’s highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using communication and de-escalation principles before resorting to the use of force, whenever feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unreasonable force. These are key factors in maintaining legitimacy with the community and safeguarding the public’s trust.”

P49



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Proportionality:

“The Department requires that officers use only the degree of force that is reasonable for the purpose of accomplishing their duties. The degree and kind of force used should be proportional to the severity of the offense committed or the threat posed to human life; however, the principle of proportionality does not require officers to refrain from using reasonable force to overcome a threat to the safety of the public or officers or to overcome resistance.”

This definition is consistent with the definition of reasonable force.



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- In section III, B. 3, the list of “other factors” that may determine reasonableness includes additional factors not included in version 2:
 - number of officers/subjects
 - Age, size and relative strength of the officers/subjects
 - specialized knowledge, skills or abilities of the subjects
 - prior contact
 - injury or exhaustion of the officers
 - proximity, access to and type of weapons available to the subject
 - time available to an officer to make a decision

PS1



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Section IV, C includes two circumstances when it is objectively reasonable to use lethal force:
 1. Protect him/herself or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
 2. Prevent the escape of a fleeing felon when:
 - a. The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;
 - b. The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;
 - c. The use of lethal force is reasonably necessary to prevent escape;
 - d. When feasible, some warning should be given before the lethal force is used under these circumstances.

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DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Section V, G allows the Carotid Restraint as force option.

P53



DGO 5.01

Use of Force

Draft DGO 5.01 version 2:

- At various places throughout the document, the terms “shall” or “shall, when feasible,” are used. The term “shall” means “mandatory.” This language requires officers to take the action as directed in the policy, with no discretion.
- At various places throughout the document, the terms “immediate,” and “immediate threat” are used. “Immediate” means “happening or existing now” and implies that something is occurring at that moment.
- At various places throughout the documents, the term “minimal force” is used. Minimum force is the least amount of force needed to bring a situation or subject under control and is the standard that many in the community and community stakeholders want to use as the “community standard.”

PS4



DGO 5.01

USE OF FORCE

Draft DGO 5.01 version 2:

- Opening paragraph:

“The San Francisco Police Department’s highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of force by using rapport-building, communication, crisis intervention and de-escalation principles before resorting to force, whenever feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public’s trust.”

P55



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Proportionality:

“It is important that an officer’s level of force be proportional to the severity of the offense committed or the threat posed to human life for which the officer is taking action. It is critical officers apply the principles of proportionality when encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object. Officers may only use the degree of force that is reasonable and necessary to accomplish their lawful duties.”

P56



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- **In section III, B. 3, the list of “other factors” that may determine reasonableness does not include the below additional factors that are included in version 1:**
 - number of officers/subjects
 - Age, size and relative strength of the officers/subjects
 - specialized knowledge, skills or abilities of the subjects
 - prior contact
 - injury or exhaustion of the officers
 - proximity, access to and type of weapons available to the subject
 - time available to an officer to make a decision



P57



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Section IV, C adds an additional requirement to determine if it is objectively reasonable to use lethal force:
 1. Protect him/herself or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
 2. Prevent the escape of a fleeing felon when:
 - a. The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;
 - b. The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;
 - c. The use of lethal force is reasonably necessary to prevent escape;
 - d. When feasible, some warning should be given before the lethal force is used under these circumstances.
 3. **Lethal force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.**

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DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Section V, A prohibits the Carotid Restraint as force option.

P59



DGO 5.01

USE OF FORCE

Items still open for discussion by the Commission

- Whether California Penal Code Section 835a should be included in the policy; it is currently in both versions. Some of the DOJ SMEs commented they did not see an issue with leaving it in; no comments from DOJ SMEs about taking it out.
- Whether the list of sergeant's requirements for subjects armed with a weapon should be listed in the policy or handled in training; currently the list of requirements is in both versions. Some DOJ SMEs felt this list is better addressed in training while others made recommendations to clarify the language in this section.
- Whether to use the term "un/reasonable" or "un/necessary." The POA and Employee groups recommend using "un/reasonable," and the community stakeholders recommend using "un/necessary."
- Some DOJ SMEs recommend reporting all physical control over individual as a use of force, (or alternatively reporting all uses of force that exceed un-resisted handcuffing) whether or not there is an injury or complaint of pain; currently neither of those recommendations are included in version 1 or version 2.
- Department Use of Force SME recommends taking out the restriction against an officer raising an impact weapon over the officer's head; the current training technically teaches officers to hold the impact weapon at an angle that is raised over the officer's head. This restriction is outdated based on current training. This restriction is currently in both versions 1 and 2.

P 60



DGO 5.01 USE OF FORCE

June 1, 2016 Commission Meeting

- Presented and discussed two draft versions of DGO 5.01, Use of Force.
- Announced community meetings to hear public comment on Use of Force policy – scheduled for June 8th and June 15th

P61



DGO 5.01 USE OF FORCE

The Commission is taking public comment tonight on the Use of Force policies.

Alternatively, members of the public can submit written comments to the Commission office via email:



sfpd.commission@sfgov.org




Police Department

Use of Force Documents



Draft version DGO 5.01 dated 06/22/16 for meet and confer

-  Draft version with no markups.pdf
-  Draft version with redline edits.pdf



DGO 5.01 Use of Force version 3 dated 06/22/16

-  Version 3 Dated 06/22/16.pdf



DGO 5.01, Use of Force, versions 2a and 2b

-  DGO 5.01 version 2a Dated 06/15/16.pdf
-  DGO 5.01 version 2b Dated 06/17/16.pdf





Use of Force Presentations to the Commission

-  June 8th and June 15th 2016.pptx
-  April 6th 2016.pptx

Summary of differences between versions 1 and 2 – DGO 5.01 and Special Operations Bureau Order – Conducted Energy Devices


-  Summary of Differences Between Version 1 and 2- DGO 5.01.pdf
-  Summary of Differences between versions 1 and 2-Special Operations Bureau Order on Conducted Energy Devices.pdf

05/30/16 Use of Force draft policies





-  DGO 5.01, Use of Force - version 1.pdf
-  DGO 5.01, Use of Force - version 2.pdf
-  Special Operations Bureau Order on Conducted Energy Devices - version 1.pdf
-  Special Operations Bureau Order on Conducted Energy Devices - version 2.pdf

-  DOJ Memorandum.pdf
-  DOJ Subject Matter Experts Comments of Use of Force Policies.pdf





Use of Force Stakeholders' written submissions

-  February 2016 through May 2, 2016.pdf





05/02/16 Stakeholder Comments on Use of Force Draft Policies

-  DGO 5.01 Use of Force.pdf
-  DGO 5.01.1 Use of Force Reporting.pdf
-  DGO 5.02 Use of Firearms and Lethal Force.pdf
-  Special Operations Bureau Order - Conducted Energy Devices.pdf





3/21/16 Use of Force draft policies

-  DGO 5.01 - Use of Force.pdf
-  DGO 5.01.1 - Use of Force Reporting.pdf
-  DGO 5.02 - Use of Firearms and Lethal Force.pdf
-  Special Operations Bureau Order - Conducted Energy Devices.pdf

3/17/16 Use of Force draft policies

-  DGO 5.01 Use of Force.pdf
-  DGO 5.01.1 Use of Force Reporting.pdf
-  DGO 5.02 Use of Force and Lethal Force.pdf
-  Special Operations Bureau Order, Conducted Energy Devices.pdf

3/9/16 Use of Force draft policies

-  DGO 5.01 Use of Force.pdf
-  DGO 5.01.1 Use of Force Reporting.pdf
-  DGO 5.02 Use of Firearms and Lethal Force.pdf
-  Special Operations Bureau Order - Conducted Energy Devices.pdf

2/10/16 Use of Force Policies:


- DGO 5.01 - Use of Force
- DGO 5.01.1 Use of Force Reporting
- DGO 5.02 Use of Firearms and Lethal Force
- Special Operations Bureau Order - Conducted Energy Devices

Community Input Session: SFPD Use of Force Policy Event:

- January 21st
- January 26th
- January 27th part 1

- January 27th part 2

Department General Order for Use Of Force

-  DGO 5.01.pdf
- DGO 5.02.pdf

Department Bulletins on Use Of Force

- DB 14-014
- DB 14-015
- DB 14-111
- DB 15-051
- DB 15-106
- DB 15-155
- DB 15-128

SFPD Use of Force Training

- Changes to SFPD Use of Force Training

PERF Report on Use of Force Training

- Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force

The Department will P.O.S.T. on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

PROPOSED CHANGE:

References

- DGO 1.06, Duties of Superior Officers
- DGO 2.04 Citizen Complaints Against Officers
- DGO 5.05, Response and Pursuit Driving
- DGO 5.18, Prisoner Handling and Transportation
- DGO 8.11, Investigation of Officer Involved Shootings And Discharges
- DGO 8.12, In Custody Deaths

Kilshaw, Rachael (POL)

From: Julie Traun <jtraun@sfbair.org>
Sent: Wednesday, June 22, 2016 3:00 PM *
To: Marion, Samara (OCC); Loebs, Blake; Michael Nevin; Kilshaw, Rachael (POL)
Subject: RE: Final Version? Please read ASAP

Looks great to me. This needs to get to the commission and we need to get copies out.... *

From: Marion, Samara (OCC) [samara.marion@sfgov.org]
Sent: Wednesday, June 22, 2016 2:42 PM
To: Loebs, Blake; Michael Nevin; Julie Traun; Kilshaw, Rachael (POL)
Subject: Final Version? Please read ASAP

Samara Marion
Policy Attorney
Office of Citizen Complaints
25 Van Ness Avenue, Suite 700
San Francisco, CA 94102
Tel: (415) 241-7726
Fax: (415) 241-7733
(TTY) 415.241.7770
www.sfgov.org/occ
<https://www.facebook.com/occsf>

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From: Loebs, Blake <bloeb@meversonave.com>
Sent: Wednesday, June 22, 2016 12:53 PM
To: Marion, Samara (OCC); Michael Nevin
Subject: 2672007_2.DOC

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2. PURPOSE. The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to; edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an actively resisting,, unarmed subject who poses an immediate threat of serious injury to another person or the officer.

Kilshaw, Rachael (POL)

From: Loebbs, Blake <bloebbs@meyersnave.com>
Sent: Wednesday, June 22, 2016 3:04 PM *
To: Marion, Samara (OCC); Michael Nevin; Julie Traun; Kilshaw, Rachael (POL)
Subject: RE: Final Version? Please read ASAP

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I think this works better from POST.

Intermediate Force. This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others.

Case law decisions have specifically identified and established that certain force options such as OC spray, probe deployment with a conducted energy device, impact projectiles, K-9 bites, carotid restraint control hold and baton strikes are classified as intermediate force likely to result in significant injury.

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Sent: Wednesday, June 22, 2016 2:42 PM *
To: Loebbs, Blake; Michael Nevin; Julie Traun; Kilshaw, Rachael (POL)
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To: Marion, Samara (OCC); Michael Nevin
Subject: 2672007_2.DOC

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¹ See SFPOA's remarks concerning carotid restraint (Section)

Kilshaw, Rachael (POL)

From: Michael Nevin <MNevin@sfpoa.org> *
Sent: Wednesday, June 22, 2016 3:35 PM
To: Kilshaw, Rachael (POL)
Subject: Can you print in black and white
Attachments: Document2.docx; ATT00001.txt

The following chart illustrates how a suspect's resistance / actions can correlate to the force applied by the officer:

Subject's Actions	Description	Possible Force Option
Compliance	Subject offers no resistance	<ul style="list-style-type: none"> • Mere professional appearance • Nonverbal actions • Verbal requests and commands • Handcuffing and control holds
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	<ul style="list-style-type: none"> • Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	<ul style="list-style-type: none"> • Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject
Assaultive	Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person	<ul style="list-style-type: none"> • Use of devices and/or techniques to ultimately gain control of the situation • Use of personal body weapons to gain advantage over the subject • Cortaid restraint
Life-threatening	Any action likely to result in serious bodily injury or	<ul style="list-style-type: none"> • Utilizing firearms or any other available weapon or

Subject's Actions	Description	Possible Force Option
	death of the officer or another person	action in defense of self and others to stop the threat <ul style="list-style-type: none"> • Vehicle intervention (Deflection)

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Sent: Wednesday, June 22, 2016 2:42 PM
To: Loeb, Blake; Michael Nevin; Julie Traun; Kilshaw, Rachael (POL)
Subject: Final Version? Please read ASAP

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Subject: Final Version? Please read ASAP *
Attachments: DGO5.01_VersionThree.docx

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Police Department

Police Commission - June 22, 2016 - Minutes

Meeting Date:

June 22, 2016 - 5:30pm

Location:

City Hall, Room 408
 #1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94103
 United States

The Police Commission of the City and County of San Francisco met in Room 408, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:35 p.m.

PRESENT: Commissioners Loftus, Turman, Marshall, DeJesus, Mazzucco, Hwang, Melara

Commissioner Loftus addressed the audience and announced that the South Light Court is available as an overflow room. Commissioner Loftus also announced that closed session items will be taken off calendar. Commissioner Loftus also acknowledged Supervisor Avalos who is present tonight.

Sgt. Kilshaw read the Commission's Rules of Order.

REPORTS AND ANNOUNCEMENTS

a. Chief's Report

(This item is to allow the Chief of Police to report on recent Police Department activities and make announcements.)

- Strategies to address the impact of recent gun-related incidents
- Public Safety during Pride Week Events
- Update regarding the Crisis Intervention Team "CIT" Department General Order
- Update on the DOJ Collaborative Review Initiative Process
- Update on Additional Resources for Major Crimes Unit for Investigation of Unsolved Homicides

Deputy Chief Sainez for Acting Chief Chaplin. Chief Sainez gave a brief update on homicides and strategies used to prevent gun violence. Chief Sainez spoke of firearms recovered. The Chief also spoke of working with youth during the summer as well as the Community Safety Initiative. The Chief also spoke of recent homicide and arrests.

Chief Sainez then spoke of public safety initiative for the upcoming Pride Week Events and increased patrol and security following the Orlando incident.

Lieutenant Molina presented the update regarding the CIT Department General Order. He stated that the DGO is a work in order and stated that the draft has been provided to Chief Chaplin and is waiting for the Chief's input and revision upon his

return.

Commissioner DeJesus recommended that the Lieutenant look at the letter from Ms. Friedenbach, Homeless Coalition, to gather input.

Commissioner Mazzucco spoke of meeting with the working group and stated that the draft looks really good and the Commission might be able to move pretty quickly with this DGO.

Deputy Chief Tom presented the update on the DOJ Collaborative Review Initiative process. Chief Tom estimated that the recommendations and final report may come by August.

Commander McEachern presented the update on additional resources for Major Crimes Unit for investigation of unsolved homicides. The Commander spoke of staffing for the Cold Case Unit, cold case review which includes homicides and sexual assaults. Process is to review rewards going back to year 2000 including the case of Aubrey Abrakasa. The Commander also spoke of new legislation that passed in 2016. The Commander also spoke of technological and community based outreach to get the word out about rewards offered.

Commissioner Loftus asked for cold case going back 10 years of unsolved homicides by zip codes so that she can coordinate with Chief Chaplin to allocate resources to more impacted neighborhoods.

Commissioner DeJesus asked about why Mission and Bayview has no CPAB. Chief Sainez will confirm.

b. OCC Director's Report

(This item is to allow the Director to report on recent OCC activities and make announcements.)

- Presentation of the OCC's Fy2016/2017 Budget

Director Hicks introduced new hire Attorney John Alden. Director Hicks then spoke of outreach and stated that she was interviewed by KALW and KQED Radio on the impact of Measure D on the OCC. Director Hicks stated that as a result of the passage of Measure D, the OCC will now investigate all officer-involved shootings instead of just those cases where a complaint is filed. She stated that based on past practices, the OCC anticipates the number of officer-involved shootings they investigate would triple to an average of two a year to an average of six a year but is hopeful that with the passage of the new Use of Force policy that the number of shootings will drop.

Director Hicks then presented the OCC's proposed FY 2016/2017 budget.

c. Commission Reports

- Commission President's Report

- Commissioners' Reports

Commissioner DeJesus spoke of attending the CPAB meetings, with Commissioner Melara, in the Ingleside and Taraval and spoke of how CPAB is interested in the Use of Force policy and their interest with CEDs. They also discussed police response for mentally ill individuals.

Commissioner Melara would like to announce that members of the public not able to attend the regular commission meetings can email the Commission with their concerns.

Commissioner Mazzucco spoke of meeting with the CPAB members in the Central and Northern districts. He also spoke of attending the CIT meeting and discussion whether police should be first responders for calls of people in crisis. Commissioner Mazzucco also spoke of attending recent recruit graduation of 43 diverse recruits.

Deputy Chief Sainez also announced that Mission and Bayview have CPABs.

Commissioner Melara spoke a program called "Safe Place" in Seattle where they engage the community specifically the business community to display decals that allows people to know that if they are in a dangerous situation, the business would be a safe place for them. Commissioner Melara stated that a meeting was put together with a department representative along with

stakeholders to see if a similar program can be put in place in San Francisco. Sergeant Shield is working on gathering more information.

Commissioner Hwang spoke of marching with the Command Staff for the Juneteenth Parade and participating in a press conference with Captain Lazar at the Ping Yuen Housing Development to call for increased safety improvement following a sexual assault of a 70-year old woman.

d. Commission Announcements and scheduling of items identified for consideration at future Commission meetings

Commissioner Loftus went through some of the items for future meetings:

- CIT July 20th, DGO & Program
- Charter Initiatives Presentation
- Program Safe Place
- Social Media DGO update in August
- Budget Reform resolution by Supervisor Avalos to force time table

Sgt. Kilshaw announced that there is no meeting on July 29th. Next meeting will be on July 6th in Room 400, at 5:30 p.m.

PUBLIC COMMENT

Supervisor Avalos spoke of his measure where \$200 million is on reserve with certain conditions for the money to be release and spoke of CIT team model and not just training; use of force DGO; discipline for racial profiling; how they are attained and how measures can be made.

Ace Washington commended the Commission for the process and progress that is going on. He then spoke of not knowing the captain at Northern and spoke of the out-migration of blacks in the Fillmore.

Unidentified spoke of mental illness and the Orlando incident.

Clyde spoke of the term Acting Chief and the acting should not be happening. He went on to say that the OCCs budget should not be controlled by the Department.

David Carlos Salaveri spoke of not having militaristic police at Pride and spoke of Supervisor Avalos initiative and spoke of how the public supports the initiative.

Jeremy Miller spoke of Idriss Stelly's Foundation support for Supervisor Avalos' measure. He went on to discuss Version 3 of the Use of Force DGO and concerns about feasibility and minimum use of force.

David Elliot Lewis, Mental Health Board SF, spoke of how to make CIT more than just training and stated that one of the things they asked for is the assignment of liaisons from all stations with the CIT working group to bring working group critical incidents, to do roll call training at stations, help build CIT teams per station to help implement CIT in all ten stations.

Tom Gilbert spoke of 40 percent police business is with mentally challenged individuals and officers need to be on the streets and part of the team and spoke of place to take people whether be at hospitals or safe rooms. He also spoke of police not to wear gun belts.

Jean Franco spoke of level of incompetence because they don't need another life loss to police brutality. He spoke of incident involving walking his dog without a leash and how the action of the officer lacks restraint. He spoke of better training for officers in addressing the people.

Linda spoke on behalf of the police chief and how much part do they have in hiring the police chief. She asked how much do the community can be part in hiring the police chief. She spoke of the Acting Chief already knows the community and knows what's going on.

Ms. Bryant spoke of article in the Examiner in regards to a Deputy Chief being Facebook friends with an underage individual. She spoke of this being an inappropriate conduct for a Deputy Chief.

Unidentified spoke of POA article and the challenged by the President of the POA. He spoke of concerns about the union culture.

Daryl Rodgers, 70 year old, spoke of training not a problem and spoke of an incident involving the arrest of a suspect who used to a knife to kill an individual and spoke of using \$200 million to solve the homeless problem in the city.

DEPARTMENT OF HUMAN RESOURCES "DHR" TO DISCUSS THE MEET-AND-CONFER PROCESS FOR REVISIONS TO THE PROPOSED USE OF FORCE POLICY PURSUANT TO CHARTER, MEYERS-MILIAS-BROWN ACT, AND MOU WITH THE POLICE OFFICERS ASSOCIATION

Director Micki Callaghan reported on the process for revisions to the proposed Use of Force policy pursuant to the Charter, Meyers-Milias-Brown Act, and MOU with the POA. She explained the Meyers-Milias-Brown Act. She spoke of the scope of bargaining including officers safety. Negotiations need happen, proposals are proposed, if agreement is not reached, then in moves into impasse which will go into arbitration for decision. She stated that process cannot be rushed and depends on how many areas are in dispute and ultimately it is the Commission's decision. She explained that the MMB law is a State Law and SF Charter goes further than a state law.

PUBLIC COMMENT

Alan Schlossher, ACLU, spoke of the bargaining process and what should be on or off the bargaining table. He went to say that the Commission is the client and that this is your policy and you should fight for it.

David Carlos Salaveri spoke of how the process is really bad and spoke of Version 3 that's negotiated this afternoon and how the community has had no input and recommends that vote be postponed.

Daryl Rodgers spoke of how the Commission is the focus and spoke of how the POA are not in to protect the public and recommends that the Commission should follow the demands of the public.

Unidentified spoke of how the POA is not sanction by the FAA CIO and asked if the POA is stepping over the authority that they don't have. He stated that POA should not have anything to say on how officers are going to serve the community.

Unidentified spoke of carotid restraints and should not be an option at all as a use of force.

Charles Pitts spoke of how the POA has done nothing about countless shooting of people.

Director Callaghan spoke of the POAs status spoke of the law does not make any distinction based on name of organization and that the POA is recognized by the Civil Service Commission as a main bargaining body.

DISCUSSION AND ACTION TO APPROVE DEPARTMENT GENERAL ORDER 5.01, "USE OF FORCE," DRAFT POLICY FOR THE DEPARTMENT TO USE IN MEETING AND CONFERRING WITH THE SAN FRANCISCO POLICE OFFICERS ASSOCIATION AND DEPARTMENT OF HUMAN RESOURCES

Commissioner Loftus spoke of the process and history of how this item is brought before the Commission.

Ms. Samara Marion spoke of the process and how the POA and the stakeholders come to arrive with Version 3. She explained yellow is what do we agree to disagree on example carotid, shooting at cars; Crossed out is language in previous versions and has been reworked; Blue or black are text that everyone agreed on i.e. imminent and immediate; key part is to strive to minimal force.

(The Commission took a brief recess at 8:30 p.m. and reconvened at 9:00 p.m.)



Commissioner Loftus reconvened the meeting and invited Lt. Nevin to address the Commission.

Lieutenant Nevin spoke of how the POA has been an active participant in this process and spoke of meeting with all the stakeholders. He stated that the POA efforts has been cooperative. He stated that the stakeholders came up with something that the Commission can consider.

PUBLIC COMMENT

David Elliott Lewis thanked the Commission for going through the whole DGO and stated that he is in agreement with the Commission's changes.

Lindo discussed concerns regarding definition of feasible and suggest adding language to include everybody; page 6 2m should have added language.

David discussed concerns about the process and discussed concerns about meet and confer and that community groups are not the same as stakeholders and that the commission should not vote on it tonight.

Unidentified spoke of a letter from President Halloran and spoke of an article about when things are reasonable. (document submitted)

John Jones discussed concerns about POA comments and that the process breeds distrust.

Kevin Benedicto, Blue Ribbon Panel, believes that version 3 does represent substantial improvements and concerns regarding reportable use of force and that the Commission should vote for version 3.

Unidentified spoke of meet and confer process and stated that the POA has already, at length, affected policy through this ongoing process rather than just safety concerns and stated that a lot of the community's concern is the degree to which the POA gets to affect the policy in the first place.

Motion by Commissioner Melara to approve DGO as revised and agreed upon, second by Commissioner Marshall. Approved 7-0.

AYES: Loftus, Turman, Marshall, DeJesus, Mazzucco, Hwang, Melara

RESOLUTION 16-42**APPROVAL OF DEPARTMENT GENERAL ORDER 5.01, "USE OF FORCE," DRAFT POLICY FOR THE DEPARTMENT TO USE IN MEETING AND CONFERRING WITH SAN FRANCISCO POLICE OFFICERS ASSOCIATION AND DEPARTMENT OF HUMAN RESOURCES**

RESOLVED, that the Police Commission hereby approves Version 3, as amended, of Department General Order 5.01, "Use of Force," Draft Policy for the Department to use in meeting and conferring with the San Francisco Police Officers Association and the Department of Human Resources. Department General Order 5.01, "Use of Force," Draft Policy, Version 3, as amended, states as follows:

USE OF FORCE

The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. This Department General Order builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This order establishes policies and reporting procedures regarding the use of force. The purpose of the policy is to guide an officer's decisions regarding the use and application of force to ensure such applications are used only to effect arrest or lawful detentions or to bring a situation under legitimate control and assist the Department in achieving its highest priority. No policy can predict every situation. Officers are expected to exercise sound judgment and critical decision making when using force options.

I. POLICY

A. SAFEGUARDING HUMAN LIFE AND DIGNITY. The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity and life.

B. ESTABLISH COMMUNICATION. Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

C. DE-ESCALATION. Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to de-escalate an incident, which can delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

D. PROPORTIONALITY. When determining the appropriate level of force, officers shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm.

E. CRISIS INTERVENTION. When feasible, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in mental or behavioral health crisis pursuant to Department General Order XX:XX.

F. DUTY TO INTERVENE. When in a position to do so, officers shall intervene when they know or have reason to know, that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

G. FAIR AND UNBIASED POLICING. Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased pursuant to Department General Order 5.17.

II. DEFINITIONS:

1. **<EASIBLE.** Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

IMMEDIATE THREAT. An immediate threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat if not apprehended without delay. A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has been initiated.

3. **MINIMAL AMOUNT OF FORCE NECESSARY.** The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.
4. **PERSONAL BODY WEAPONS.** An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.
5. **REASONABLE FORCE.** An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time.
6. **REPORTABLE FORCE.** Any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of an officer, or complaint of pain that persists beyond the use of a physical control hold. Any use of force involving the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, and firearms. Any intentional pointing of a firearm at a subject.
7. **SERIOUS BODILY INJURY.** A serious impairment of physical condition, including but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.
8. **VITAL AREAS OF THE BODY.** The head, neck, face, throat, spine, groin and kidney.

III. CONSIDERATIONS GOVERNING ALL USES OF FORCE

A. USE OF FORCE MUST BE FOR A LAWFUL PURPOSE. Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. To effect a lawful arrest, detention, or search.
2. To overcome resistance or to prevent escape.
3. To prevent the commission of a public offense.
4. In defense of others or in self-defense.
5. To gain compliance with a lawful order.
6. To prevent a person from injuring himself/herself. **However, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.**

7. B. USE OF FORCE EVALUATION

The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in *Graham* by adding additional factors upon which an officer's use of force shall be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must strive to use the minimal amount of force necessary.

8. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.
9. Factors for evaluating the use of force include but are not limited to:
 - a. The severity of the crime at issue;
 - b. Whether the suspect posed an immediate threat to the safety of the officers or others;
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;
 - d. Whether the use of force is proportional to the threat;
 - e. The availability of other feasible, less intrusive force options;
 - f. The officer's tactical conduct and decisions preceding the use of force;
 - g. Whether the officer has reason to believe that the subject is mentally ill, has a physical, developmental or cognitive disability, is emotionally disturbed or is under the influence of alcohol or drugs;
 - h. Whether there was an opportunity to warn about the use of force prior to force being used, and if so, was such a warning given;
 - i. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;
 - j. Specialized knowledge, skills, or abilities of subjects;
 - k. Prior contact;
 - l. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and
 - m. Whether the subject's escape could pose a future safety risk.

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

C. DE-ESCALATION. When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, officers shall when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force:

1. Attempt to isolate and contain the subject;
2. Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force;
3. Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, or Extended Range Impact Weapon;
4. Designate an officer to establish rapport and engage in communication with the subject;
5. Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety; and
6. Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.

Other options, not listed above, may be available to assist in de-escalating the situation.

Supervisors who become aware of a situation where an officer is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene.

D. CRITICAL DECISION-MAKING MODEL. Using a critical decision-making model, officers shall collect information, assess the threats and risk, consider police powers and the Department's policies, identify options and determine the best course of action, and review and re-assess the situation.

E. UNLAWFUL PURPOSES. Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." An assault and battery committed by officers constitute gross and unlawful misconduct and will be criminally investigated.

F. SUBJECT ARMED WITH A WEAPON – NOTIFICATION AND COMMAND. In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

10. **OFFICER'S RESPONSIBILITY.** Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.
11. **SUPERVISORS' RESPONSIBILITIES.** When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible:
 - a. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");
 - b. Notify responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;
 - c. Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.

IV. LEVELS OF RESISTANCE.

1. **Compliant.** Subject offers no resistance.
2. **Passive Non-Compliance.** Does not respond to verbal commands but also offers no physical form of resistance.
3. **Active Resistance.** Physically evasive movements to defeat an officer's attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody.

4. **Assaultive.** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.
5. **Life-threatening.** Any action likely to result in serious bodily injury or death of the officer or another person.

V. LEVELS OF FORCE.

Officers shall strive to use the minimum amount of force necessary to accomplish their lawful purpose.

6. **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive or active resistance. This level of force is not intended to and has a low probability of causing injury.
7. **Intermediate Force.** This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others. Case law decisions have specifically identified and established that certain force options such as OC spray, impact projectiles, K-9 bites, and baton strikes are classified as intermediate force likely to result in significant injury.
8. **Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving.)

VI. FORCE OPTIONS.

The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, K-9 bites and firearms. These are the force options available to officers, but officers are not required to use these force options based on a continuum. While deploying a particular force option and when feasible, officers shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objective.

A. Tools and Techniques for Force Options

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Chemical Agents (Pepper Spray, OC, etc.)
- K-9 Bite
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile

2. **PHYSICAL CONTROLS/PERSONAL BODY WEAPONS.** Physical controls, such as control holds, takedowns, strikes with personal body weapons, and other weaponless techniques are designed to gain compliance of and/or control over uncooperative or resistant subjects. The use of physical control techniques and equipment against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, people with limited English proficiency, and other – can undermine public trust and should be used as a last resort

3. **PURPOSE.** When a subject offers some degree of passive or active resistance to a lawful order, in addition to de-escalation techniques and appropriate communication skills, officers may use physical controls consistent with

Department training to gain compliance. A subject's level of resistance and the threat posed by the subject are important factors in determining what type of physical controls or personal body weapons should be used.

2. **USE.** Officers shall consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers shall consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.

3. **PROHIBITED USE OF CONTROL HOLDS.** Officers are prohibited from using the following control holds:

a. carotid restraint

b. choke hold—choking by means of pressure to the subject's trachea or other means that prevent breathing.

4. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel.

5. **REPORTING.** Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon is a reportable use of force.

3. **CHEMICAL AGENTS.** Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.

4. **PURPOSE.** Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.

5. **WARNING.** Officers shall provide a warning prior to deploying a chemical agent, if feasible:

6. Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and

7. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.

8. **MANDATORY FIRST AID.** At the scene or as soon as possible, officers shall administer first aid by:

1. Seating the subject or other person(s) exposed to a chemical agent in an upright position, and

2. Flushing his/her eyes out with clean water and ventilate with fresh air.

9. **MANDATORY MEDICAL ASSESSMENT.** Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, an officer shall immediately request for emergency medical personnel, render first aid and monitor the subject until relieved by emergency medical personnel. Officers shall notify dispatch to expedite emergency medical personnel if the person loses consciousness or has difficulty breathing.

10. **TRANSPORTATION.** Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands or to a fixed object.

11. **BOOKING FORM.** Officers shall note on the booking form that the subject has been exposed to a chemical agent.

12. **REPORTING.** If an officer deploys a chemical agent on or near someone, it is a reportable use of force.
4. **IMPACT WEAPON.** Department issued and authorized impact weapons include the 26" straight wooden baton, the 36" straight wooden baton, the wooden or polymer Yawara stick, the 21' to 29" telescopic metal baton and the wooden bokken, and are designed to temporarily incapacitate a subject.
5. **PURPOSE.** An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an assaultive subject who is actively resisting and poses a threat to the safety of officers or others. Only Department issued or authorized impact weapons shall be used. Officers may resort to the use of other objects as impact weapons, such as a flashlight or police radio, if exigent circumstances exist, and officers shall articulate in writing the reason for doing so.
6. **WARNING.** When using an impact weapon, an officer shall, if feasible:
1. Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands; and
 2. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer or permit the subject to undermine the use of the impact weapon.
7. **RESTRICTED USES.** Unless exigent circumstances exist, officers shall not intentionally strike vital areas, including the head, neck, face, throat, spine, groin or kidney. The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.
8. **PROHIBITED USES.** Officers shall not:
9. Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon where neither the use of an impact weapon or impact weapon warning is appropriate.
10. Striking a handcuffed prisoner who poses no threat is an inappropriate action and may result in disciplinary action and/or criminal prosecution.
11. **MANDATORY MEDICAL ASSESSMENT.** Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed.
12. **REPORTING.** If an officer strikes a subject with an impact weapon, it is a reportable use of force.
- E. EXTENDED RANGE IMPACT WEAPON (ERIW).** An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.
1. **PURPOSE.** The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an aggressive, unarmed subject who poses an immediate threat of serious injury to another person or the officer.
 2. **USE.** The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers shall observe the following guidelines:
 - a. An officer deploying an ERIW shall always have a lethal cover officer. When more than one officer is deploying an ERIW, tactical judgment and scene management in accordance with Department training will dictate the appropriate number of ERIW and lethal cover officers.
 - b. The ERIW officer's point of aim shall be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:
 13. Zone 2 is unavailable; or
 14. The ERIW officer is delivering the round from 60 feet; or

15. Shots to Zone 2 have been ineffective or in the officers judgment a shot to zone 2 would be ineffective.

Officer shall articulate in writing the reason for intentionally aiming the ERIW at Zone 1

16. The use of an ERIW to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an ERIW to these areas shall only be used in situations where deadly force is justified.

17. The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer shall aim at a different target area.

18. **LIMITED USES.** The ERIW should not be used in the following circumstances (unless the use of deadly force is appropriate)::

1. The subject is at the extremes of age (elderly and children) or physically frail.

2. The subject is in an elevated position where a fall is likely to cause serious injury or death.

3. The subject is known to be or appears pregnant.

4. At ranges of less than 15 feet.

e. Concerned raised by a community member about restricting women's breasts as a target area; this requires input from Subject Matter Expert).

19. **WARNING.** When using the ERIW, an officer shall, if feasible:

20. Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"

21. All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"

22. Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;

23. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.

5. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel.

6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.

7. **REPORTING.** Discharge of an ERIW is a reportable use of force.

F. VEHICLE INTERVENTIONS. An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be objectively reasonable under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit/Driving.

G. FIREARMS AND OTHER DEADLY FORCE. It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers. The use of firearms and other deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before discharging a firearm or using other deadly force.

24. **HANDLING, DRAWING AND POINTING FIREARMS.**

a. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.

2. **AUTHORIZED USES.** An officer may draw, exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department approved firearms training.
3. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department issued firearm.
4. **POINTING A FIREARM AT A PERSON.** The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to justify deadly force. If an officer points a firearm at a person, the officer shall, if feasible, safe and when appropriate, advise the subject the reason why the officer(s) pointed the firearm.
5. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

6. DISCHARGE OF FIREARMS OR OTHER USE OF DEADLY FORCE.

1. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections G.2.d. and e., an officer may discharge a firearm or use other deadly force in any of the following circumstances:

1. In self-defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or

ii In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use deadly force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person; or

iii. To apprehend a person when both of the following circumstances exist:

2. The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND

3. The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or

7. To kill an animal posing an immediate threat.

The above circumstances (2.a, i-iv) apply to each discharge of a firearm or application of deadly force. Officers shall reassess the situation, when feasible and safe, to determine whether the subject continues to pose an active threat.

b. **VERBAL WARNING.** If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other deadly force.

c. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.

d. **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:

1. As a warning; or

ii. At a person who presents a danger only to him or herself.

8. **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle.

9. **RENDERING OR REQUESTING MEDICAL AID**

Following the use of deadly force, officers shall render or request medical aid if needed or requested by anyone as soon as reasonably possible.

10. REPORTING.

1. **DISCHARGE OF FIREARMS.** Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11, Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.
2. **OTHER DEADLY FORCE.** An officer who applies other force that results in death shall report the force to the officer's supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other deadly force that results in serious bodily injury shall report the force to the officer's supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other deadly force that does not result in serious bodily injury shall report the force.

Subject's Actions	
Description	
Possible Force Option	
Compliance	
Subject offers no resistance	
<ul style="list-style-type: none"> • Mere professional appearance • Nonverbal actions • Verbal requests and commands • Handcuffing and control holds 	
Passive non-compliance	
Does not respond to verbal commands but also offers no physical form of resistance	
<ul style="list-style-type: none"> • Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize 	
Active resistance	
Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	
<ul style="list-style-type: none"> • Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject 	

Assaultive

Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person

- Use of devices and/or techniques to ultimately gain control of the situation
- Use of personal body weapons to gain advantage over the subject
- Carotid restraint

Life-threatening

Any action likely to result in serious bodily injury or death of the officer or another person

- Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat
- Vehicle intervention (Deflection)

VII. USE OF FORCE REPORTING

A. REPORTABLE USES OF FORCE. Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ERIWs, vehicle interventions, K-9 bites, and firearms. Additionally, officers shall report the intentional pointing of firearms at a subject.

1. **NOTIFICATION OF USE OF FORCE.** An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an allegation of excessive force.
2. **EVALUATION OF USE OF FORCE.** A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.
3. **EXCESSIVE USE OF FORCE.** Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

B. PROCEDURES

4. **OFFICER'S RESPONSIBILITY.** Any reportable use of force shall be documented in detail in an incident report, supplemental incident report, or statement form. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.

1. When the officer using force is preparing the incident report, the officer shall include the following information:

5. The subject's action necessitating the use of force, including the threat presented by the subject;
 - ii. Efforts to de-escalate prior to the use of force; and if not, why not;
 - iii. Any warning given and if not, why not;
 - iv. The type of force used;
 - v. Injury sustained by the subject;
 - vi. Injury sustained by the officer or another person;
 - vii. Information regarding medical assessment or evaluation, including whether the subject refused;
 - viii. The supervisor's name, rank, star number and phone number notified.

1. In the event that an officer cannot document his/her use of force due to exceptional circumstances, another officer shall document this use of force in an incident report, supplemental incident report or statement form at the direction of a supervisor.

6. SUPERVISOR'S RESPONSIBILITY. When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

- a. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
- b. Ensure the scene is secure and observe injured subjects or officers;
- c. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
- d. Ensure photographs of injuries are taken and all other evidence is booked;
- e. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in VI.B.1.a. above;
- f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- g. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
- h. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch.

If a supervisor determines that a member's use of force is unnecessary or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

7. SUPERIOR OFFICER'S RESPONSIBILITY. When a superior officer is notified of unnecessary force or force that results in serious bodily injury or death, the superior officer shall:

- a. Respond to the scene and assume command, as practical;
- b. Notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
- c. If unnecessary force, initiate a civilian complaint and notify the Office of Citizen Complaints (SFPOA has technical question regarding DGO 2.04)
- d. Determine which unit(s) will be responsible for the on-going investigation(s);
- e. Prepare a report containing preliminary findings, conclusions and/or recommendations, if appropriate.

C. OTHER REQUIREMENTS.

1. USE OF FORCE LOG. The following units shall maintain a Use of Force Log:

- a. District Stations
- b. Airport Bureau
- c. Department Operations Center

2. RECORDING PROCEDURES. Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:

- a. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.
- b. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.

3. DOCUMENT ROUTING.

- a. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief no later than the end of the watch. This information shall be entered into the Use of Force database at Risk Management to generate monthly reports as described in section C (5) below.
- b. On the Monday of each week, unless a holiday, and then on Tuesday, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officers of the Training Division and Risk Management.

8. TRAINING DIVISION RESPONSIBILITIES. The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs and Supervisor Evaluations are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs.

9. RISK MANAGEMENT RESPONSIBILITIES. The Commanding Officer of the Risk Management shall general report bi-weekly (1st and 15th) to the Chief of Police on the use of force by Department members that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.

6. DATA COLLECTION AND ANALYSIS. The Department will collect and analyze its use of force data in the Risk Management Use of Force database. The Use of Force statistics and analysis will include at a minimum:

- a. The type of force
- b. The types and degree of injury to suspect and officer
- c. Date and time
- d. Location of the incident
- e. Officer's unit
- f. District station where the use of force occurred
- g. Officer's assignment
- h. Number of officers using force in the incident
- i. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
- j. Subject's activity requiring the officer to use force
- k. Officer's demographics (age, gender, race/ethnicity, rank, number of years with SFPD, number of years as a police officer)
- l. Suspect demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.

The Department will post on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

VIII. OFFICER'S RESPONSIBILITY AND COMPLIANCE.

All officers are responsible for knowing and complying with this policy. As with all General Orders, any violation of this policy may subject the member to disciplinary action. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it. Any member who becomes aware of any violation to this policy shall promptly report it in accordance with established procedure.

References

DGO 1.06, Duties of Superior Officers

DGO 2.04 Citizen Complaints Against Officers

DGO 5.05, Response and Pursuit Driving

DGO 5.17 Policy Prohibiting Biased Policing

DGO 5.18, Prisoner Handling and Transportation

DGO 8.11, Investigation of Officer Involved Shootings And Discharges

DGO 8.12, In Custody Deaths

DGO XX Responding to Behavioral Crisis Calls and The Role of the Crisis Intervention Team

AYES: Commissioners Loftus, Turman, Marshall, DeJesus, Mazzucco, Hwang, Melara

SAN FRANCISCO POLICE CHIEF RECRUITMENT: DHR WILL PRESENT OPTIONS FOR THE NATIONWIDE SEARCH OF THE SFPD CHIEF, INCLUDING WHETHER TO HIRE A RECRUITMENT FIRM TO MANAGE THE RECRUITMENT PROCESS AND OUTREACH EFFORTS. DHR SENT A SOLICITATION TO THEIR POOL OF PRE-QUALIFIED FIRMS THAT ARE QUALIFIED TO CONDUCT THIS TYPE OF WORK FOR THE CITY AND RECEIVED ONE PROPOSAL

Director Micki Callahan, DHR, discussed the process of recruitment and spoke of options for the Commission.

PUBLIC COMMENT

None

RESOLUTION 16-43

APPROVAL TO HAVE DHR PRESENT OPTIONS FOR THE NATIONWIDE SEARCH OF THE SFPD CHIEF AND TO HIRE A RECRUITMENT FIRM, RALPH ANDERSEN & ASSOCIATES, TO MANAGE THE RECRUITMENT PROCESS AND OUTREACH EFFORTS

RESOLVED, that the Police Commission hereby approves to have the Department of Human Resources "DHR" present options for the nationwide search of the SFPD Chief and to hire the recruitment firm of Ralph Andersen & Associates to manage the recruitment process and outreach efforts.

AYES: Commissioners Loftus, Marshall, DeJesus, Mazzucco, Hwang, Melara

NAYS: Commissioner Turman

PUBLIC COMMENT

Tom Gilberti spoke on reaffirming and that guns should be taken off belts of police officers and picking police should be 10-year veterans should be involved with picking officers.

David Elliott Lewis thanked the Commission for work done with the Use of Force.

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

No closed session.

CLOSED SESSION

Pursuant to Government Code Section 54957(b)(1) and San Francisco

Administrative Code Section 67.10(b) and Penal Code Section 832.7:

PERSONNEL EXCEPTION: Assignment of non-disciplinary charges filed in Case No. ALW IAD 2016-0109 to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner

Item is put over to a later date.

Pursuant to Government Code Section 54957(b)(1) and San Francisco

Administrative Code Section 67.10(b) and Penal Code Section 832.7:

PERSONNEL EXCEPTION: Status and calendaring of pending disciplinary cases.

Item is put over to a later date.

ADJOURNMENT

Motion by commissioner Melara, second by Commissioner Mazzucco. Approved 7-0.

Thereafter, the meeting was adjourned at 10:50 p.m.

10. _____

11. Sergeant Rachael Kilshaw

Secretary

San Francisco Police Commission

Young, Victor

From: Magick Altman <magick@sonic.net>
Sent: Thursday, August 25, 2016 3:30 PM
To: SOTF, (BOS)
Subject: Re: SOTF - Notice of Hearing - Compliance and Amendments Committee: September 12, 2016, 4:00 p.m.

Follow Up Flag: Follow up
Flag Status: Flagged

Greetings, I have included links to version 2b which is the last document the public was able to see.

<http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/AgendaDocuments/SFPD-dgo-5.01-version-2b.pdf>

The second link is to version 3 which was not available to the public until July 22nd, the day of the meeting of the Commission in which there was an unanimous vote to approve version 3.

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These documents are extensive, version 2b, 68 pages, version 3, 33 pages. To allow sufficient time for the public to review and be prepared to comment on changes it is clear that the discussion and adoption should've been delayed until the following meeting to allow for the law's requirement of 72 hours for issuance of docs to be voted on at a public meeting.

Yours in truth,

Magick

On Aug 19, 2016, at 10:16 AM, SOTF, (BOS) <sotf@sfgov.org> wrote:

Good Morning:

Notice is hereby given that the Compliance and Amendments Committee of the Sunshine Ordinance Task Force has scheduled hearings on the following titled complaints 1) to issue a determination of jurisdiction; 2) to review the merits of the complaint to focus the complaint or otherwise assist the parties to the complaint; 3) to issue a report and/or recommendation to the Sunshine Ordinance Task Force and/or 4) to review the status of and ascertain compliance with the Task Force's Order of Determination.

Date: September 12, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complaints:

File No. 15139: Hearing on the Status of the Order of Determination: Complaint filed by Shawn Mooney against the Assessor/Recorder's Office for violating Administrative Code (Sunshine Ordinance), Section 67.21 (b), by failing to respond to a public records request in a timely manner. (00:04:00 – 01:01:00)

(On August 16, 2016, the Compliance and Amendments Committee continued the matter and request that the Assessor/Recorder to provide verification as to whether or not the Tax Roll Account Numbers were provided to the Complainant.)

File No. 16059: Complaint filed by Sabrina Butler against Sheriff Vicki Hennessy and the Sheriff's 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.

File No. 16062: Complaint filed by Magick Altman against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.9, and California Government Code 54954.3, by failing to make supporting documents available 72 hours prior to the Police Commission's June 22, 2016, meeting (Use of Force Policy).

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complainants: Your attendance is required for this meeting/hearing.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Complaint Procedure).

For inclusion into the agenda packet, supplemental/supporting documents must be received by 5:00 pm, **September 7, 2016.**

**Victor Young
Administrator**

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, City Hall., Room 244

San Francisco CA 94102

phone 415-554-7724 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org

<image001.png> Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

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<SOTF - Complaint Procedure 2014-11-05.pdf>

Young, Victor

From: Magick Altman <magick@sonic.net>
Sent: Wednesday, July 13, 2016 4:52 PM
To: SOTF, (BOS)
Subject: 72 hour public notice

Victor, I am asking the Sunshine Task Force to investigate the actions of the Police Commission on Jun 22, 2016. Members of the Commission met with The POA, ACLU and other "stakeholders" privately and without public notice and submitted a last minute version of the Use of Force Policy that was only available the day of the meeting to the public as well as the Commission.

According th Ca code 54954.3 a policy body must post an agenda 72 hours prior to the meeting and "It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda"

I am only addressing the process not the content of the Use of Force policy.

The public has the right to be informed and be given time to consider all policies that will be voted on by a policy body.

This was not done.

One of the reasons that policy makers cannot act on proposals from the public during public comment on items not on the agenda, is because there has not been proper notification to the public and the policy body, therefore this would not be in full view of the public so they, and the policy makers, know in advance what will be acted on in said meeting.

It is the work of the Sunshine Task Force to make sure the public is fully aware in due time of what its representatives will be discussing and acting upon during public meetings.

Therefore, it is my contention that the vote was invalid and not according to state law and needs to be brought forward again to the public with all the correct and timely public notices.

Thank you for your prompt attention to this matter,

Magick Altman

707 327 7940

Young, Victor

From: Magick Altman <magick@sonic.net>
Sent: Thursday, August 25, 2016 3:30 PM
To: SOTF, (BOS)
Subject: Re: SOTF - Notice of Hearing - Compliance and Amendments Committee: September 12, 2016, 4:00 p.m.

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USE OF FORCE

The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons~~sanctity of all human life. is safeguarding the sanctity of all human life.~~ Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing ~~this police mission~~ with respect and minimal reliance on the use of force by using rapport-building, communication, crisis intervention, and de-escalation ~~tactics principles~~ before resorting to force, whenever feasible. ~~This Department General Order adopts a higher standard of police conduct than and reflects community values of seeking alternative options to force and minimizing its use, whenever feasible.~~ builds upon the Supreme Court's broad principles in Graham v. Connor (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. ~~feasible.~~ The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This order establishes policies and reporting procedures regarding the use of force, including firearms and lethal force~~use of firearms and use of lethal force~~. The purpose of the policy is to guide an officer's decisions regarding the use and application of force to ensure such applications are used only to effect arrest or lawful detentions or to bring a situation under legitimate control and provide guidelines that may assist the Department in achieving its highest priority. No policy can predict every situation. Officers are expected to exercise sound judgment and critical decision making when using force options, and shall adhere to the Department's highest priority of safeguarding the sanctity of all human life.

I. POLICY

- A. **SAFEGUARDING SANCTITY OF HUMAN LIFE AND DIGNITY.** ~~SANCTITY OF HUMAN LIFE.~~ The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity and life. The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity.

- B. **ESTABLISH COMMUNICATION.** Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

C. DE-ESCALATION. Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public safety and officer safety. Officers who act to de-escalate an incident, which can delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

D. PROPORTIONALITY. It is important that an officer's level of force be proportional to the severity of the offense committed or the threat posed to human life for which the officer is taking action. When determining the appropriate level of force, officer shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that critical officers apply the principles of proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object.

Officers may only use the degree of force that is reasonable and necessary to accomplish their lawful duties.

E. CRISIS INTERVENTION. When feasible, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in mental or behavioral health crisis pursuant to General Order XX.)

F. DUTY TO INTERVENE. When in a position to do so, officers shall intervene when they know or have reason to know, reasonably that believe another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

G. FAIR AND UNBIASED POLICING. Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased pursuant to Department General Order 5.17.

II. DEFINITIONS:

A. FEASIBLE. Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

B. IMMEDIATE THREAT. An immediate threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat if not apprehended without delay person is an immediate threat if the officer

reasonably believes the person has the present intent, means, opportunity and ability to complete the threat. A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has been initiated.

¹ (Graham v. Connor — “whether the suspect posed an immediate threat to the safety of the officers or others,” (Graham, 490 U.S. at 396.) The “most important” factor under Graham is whether the suspect objectively posed an “immediate threat to the safety of the officers or others.” Smith v. City of Hemet, 394 F.3d 689, 702 (9th Cir.2005).

LETHAL FORCE. Any use of force designed to and likely to cause death or serious physical injury, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject’s vehicle (see DGO 5.05, Response and Pursuit Driving).

A. LEVELS OF RESISTANCE.

- B. Compliant.** A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance
- C. Passive Resistance.** The subject is not complying with an officer’s commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, holding onto a fixed object, falling limply and refusing to use their own power to move, or locking arms to another during a protest or demonstration.
- D. Active Resistance.** The subject’s physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer’s grip.
- E. Aggressive Resistance.** The subject displays the intent to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer.

¹ Notably, the United States Supreme Court in Graham v. Connor (1989) 490 U.S. 386, 396 uses the term “immediate threat” when evaluating whether an officer’s use of force is reasonable under the Fourth Amendment. The Graham Court states, “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, [citations omitted], however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat of safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Emphasis added.) The most important factor under Graham is whether the suspect objectively posed an “immediate threat to the safety of the officers or others.” Smith v. City of Hemet (9th Cir.2005) 394 F.3d 689, 702. Oakland Police Department’s Use of Force policy uses the term “immediate” throughout. (See Oakland Police Department K-3 Use of Force Policy, pages 2-3. <http://www2.oaklandnet.com/oakea1/groups/police/documents/webeontent/oak053209.pdf>.

The Los Angeles Police Commission’s Inspector General noted that LAPD’s subtle shift in 2009 from authorizing deadly force to defend against an immediate threat to the authority to use deadly force to defend against an imminent threat “equates to a slight broadening of an officer’s authority to use deadly force.” (Office of the Inspector General’s Ten Year Overview of Categorical Use of Force Investigations, Police, and Training, March 10, 2016, page 11). http://www.lapdpolicecom.lacity.org/031516/BPC_16-0077.pdf

~~F. **Aggravated Aggressive Resistance.** The subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, brandishing of an edged or other weapon, or extreme physical force.~~

C. **MINIMAL AMOUNT OF FORCE NECESSARY.** The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

~~G.D. **PERSONAL BODY WEAPONS.** An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.~~

E. **REASONABLE FORCE.** An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time

presented at the time of the incident.

F. **REPORTABLE FORCE.** Any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of an officer, or complaint of pain that persists beyond the use of a physical control hold. Any use of force involving the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, ~~conducted energy devices,~~ and firearms. Any intentional pointing of a ~~conducted energy device or a firearm~~ at a subject.

G. **SERIOUS BODILY INJURY.** A serious impairment of physical condition, including but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement. ~~bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in a prolonged loss or impairment of the functioning of any bodily member or organ.~~

H. **VITAL AREAS OF THE BODY.** The head, neck, face, throat, spine, groin and kidney.:

III. CONSIDERATIONS GOVERNING ALL USES OF FORCE

A. **USE OF FORCE MUST BE FOR A LAWFUL PURPOSE.** Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. To effect a lawful arrest, detention, or search.
2. To overcome resistance or to prevent escape.
3. To prevent the commission of a public offense.
4. In defense of others or in self-defense.
5. To gain compliance with a lawful order.

6. To prevent a person from injuring himself/herself. **However, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an imminent-immediate threat of death or serious bodily injury to another person or officer.**

B. USE OF FORCE EVALUATION OFFICERS SHALL USE MINIMAL FORCE THAT IS OBJECTIVELY REASONABLE AND NECESSARY. USE OF FORCE MUST BE REASONABLE.

The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in *Graham* by adding additional factors upon which an officer's use of force shall will be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must strive to use the minimal amount of force necessary.

Graham v. Connor (1989) 490 U.S. 386 provides a minimum standard for civil courts to evaluate an officer's use of force. The United States Supreme Court in Graham v. Connor ruled that in civil lawsuits involving an excessive force claim, an officer's force used during an arrest, investigatory stop or seizure of an individual should be analyzed under the Fourth Amendment and its reasonableness standard.

1. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.
2. Factors for evaluating the use of force include but are not limited to:
 - a. The severity of the crime at issue;
 - b. Whether the suspect posed an immediate threat to the safety of the officers or others;
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;
 - d. Whether the use of force is proportional to the threat;
 - e. The availability of other feasible, less intrusive force options;
 - f. The officer's tactical conduct and decisions preceding the use of force;
 - f. the availability of other feasible, less intrusive force options
 - g. Whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, has a physical, developmental or cognitive development or cognitive disabilities, is emotionally disturbed or is under the influence of alcohol or drugs;

- h. Whether there was an opportunity to warn about the use of force prior to force being used, and if so, was such a warning given;
- i. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;
- j. Specialized knowledge, skills, or abilities of subjects;
- k. Prior contact;
- l. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and
- m. Whether the subject's escape could pose a future safety risk.

1. ~~When balanced against the type and amount of force used, the Graham factors used to determine whether an officer's use of force is objectively reasonable are:~~

- ~~— The severity of the crime at issue~~
- ~~— Whether the suspect posed an immediate threat to the safety of the public or the officers~~
- ~~— Whether the suspect was actively resisting arrest~~
- ~~— Whether the suspect was attempting to evade arrest by flight~~

1. ~~This Department General adopts a higher standard of police conduct than the minimum requirements of Graham v. Connor and reflects community values to minimize the use of force, use de-escalation tactics, and exhaust alternative options to force, when feasible. The reasonableness inquiry in addition to the n not limited to the consideration of the above mentioned Graham factors, ts alone. he following principles are also relevant to evaluating whether an officer's use of force is Other factors which may determine reasonable and necessary:ness in a use of force incident may include:~~

- ~~a. Whether the use of force is proportional to the threat~~
- ~~b. Whether other tactics are available to the officer~~
- ~~c. The availability of other less intrusive force options~~
- ~~d. The ability of the officer to provide a meaningful warning before using force~~
- ~~e. The officer's tactical conduct and decisions preceding the use of force~~
- ~~a.f. Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis or is a person with a mental illness~~
- ~~g. Availability of other reasonable force options~~
- ~~g. Availability of additional officers or resources to de-escalate the situation~~
- ~~b. Proximity, access to and type of weapons available to the subject~~
- ~~e.h. Time available to an officer to make a decision;~~
- ~~d. Availability of additional officers or resources to de-escalate the situation;~~
- ~~e.i. Environmental factors and/or other exigent circumstances;~~
- ~~f. Whether other tactics are available to the officer;~~
- ~~g. The ability of the officer to provide a meaningful warning before using force;~~
- ~~h. The officer's tactical conduct and decisions preceding the use of force;~~

- i. ~~Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis or is a person with a mental illness;~~
- j. ~~Whether the subject's escape could pose a future safety risk~~

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

- 3. California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

~~A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape of overcome resistance."~~¹

~~(Disagreement between SFPOA and Community Stakeholder Representatives)~~

- 1. ~~California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.~~

~~A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape of overcome resistance."~~

~~C. DE-ESCALATION. Officers will use de-escalate tactics, whenever feasible, and appropriate, to reduce the need or degree of force.~~

~~When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle or other object, officers shall when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force: ~~when safe and feasible under the totality of the circumstances known to the officer:~~~~

- 1.a. Attempt to isolate and contain the subject;
- 2. Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force;

3. Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, ~~Conducted Energy~~ Device or Extended Range Impact Weapon;
4. Designate an officer to establish rapport and engage in communication with the subject;
5. Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety; and
6. Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.
7. ~~When feasible, before deploying a particular force option, officers shall~~ evaluate ~~and the ray of objectively reasonable options to select an option that will likely anticipated to cause the least amount of~~ injury to the subject while achieving the arrest or lawful objectives.
8. ~~While deploying a particular force option, and when feasible, officer shall~~ continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objectives.
9. ~~Whether a particular use of force is the minimum amount of force necessary must be objectively judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The objective determination of "minimal" must account for the fact that officers are often forced to make split-second judgements, in circumstances that are tense, uncertain and rapidly evolving.~~

Other options, not listed above, may be available to assist in de-escalating the situation.

Supervisors who become aware of a situation where an officer is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene.

D. CRITICAL DECISION-MAKING MODEL. Using a critical decision-making model, officers shall collect information, assess the threats and risk, consider police powers and the Department's policies, identify options and determine the best course of action, and review and re-assess the situation.

Officers shall continually assess the effectiveness of their actions and consider the desired outcome for the level of force used, including, when feasible:

- 1) ~~What efforts can the officer use to de-escalate the situation or to minimize the need for use of force?~~
- 2) ~~Can the officer allow the subject time to submit to arrest before using force?~~
- 3) ~~Is the officer using the minimum amount of force necessary to carry out lawful objectives?~~
- 4) ~~Is the subject physically or mentally capable of complying with the officer's commands?~~

- 5) ~~Does the officer have an opportunity to utilize additional resources/officers to bring the situation to a peaceful resolution?~~
- 6) ~~What is the severity of the subject's actions and is the risk of injury to either the subject or officer worth achieving the officer's lawful objective?~~
- 7) ~~What is the proximity or access of weapons to the subject?~~
- 8) ~~What is the time available to an officer to make a decision and what efforts has the officer made to provide additional time?~~
- 9) ~~What are the physical considerations for the officer, e.g. officer exhaustion or injury during a physical confrontation?~~
- 10) ~~Are innocent bystanders present who could be harmed if force is or is not used?~~
- 11) ~~Are there hostile bystanders present who are sympathetic to the subject?~~

EC. UNLAWFUL PURPOSES. Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." An assault and battery committed by officers constitute gross and unlawful misconduct and will be criminally investigated.

ED. DUTY TO RENDER FIRST AID. Officers shall render first aid when a subject is injured or claims injury caused by an officer's use of force unless first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid. Officers shall continue to render first aid and monitor the subject until relieved by emergency medical personnel.

GE. DUTY TO PROVIDE MEDICAL ASSESSMENT. Officers shall arrange for a medical assessment by emergency medical personnel when a subject is injured or complains of injury caused by a use of force, or complains of pain that persists beyond the use of a physical control hold, and the scene is safe. If the subject requires a medical evaluation, the subject shall be transported to a medical facility. If the emergency medical response is excessively delayed under the circumstances, officers shall contact a supervisor to coordinate and expedite the medical assessment or evaluation of the subject, e.g., transport subject to nearest medical facility by SFPD. See DGO 5.18. Prisoner Handling and Transportation.

FF. SUBJECT ARMED WITH A WEAPON – NOTIFICATION AND COMMAND. In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

1. **OFFICER'S RESPONSIBILITY.** Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.
2. **SUPERVISORS' RESPONSIBILITIES.** When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible:
 - a. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");
 - b. Notify responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and

contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;ⁱⁱ (SFPOA disagree)

- c. Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.

IV. LEVELS OF RESISTANCE.

- A. Compliant. Subject offers no resistance. A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance
- B. Passive Non-Compliance. Does not respond to verbal commands but also offers no physical form of resistance. The subject is not complying with an officer's commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, holding onto a fixed object, falling limply and refusing to use their own power to move, or locking arms to another during a protest or demonstration.
- C. Active Resistance. Physically evasive movements to defeat an officer's attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody. The subject's physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip.
- D. Assaultive. Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person. The subject displays the intent and ability to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer.
- E. Life-threatening. Any action likely to result in serious bodily injury or death of the officer or another person. The subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, an edged or other weapon, or extreme physical force.

IV. LEVELS OF FORCE.

When force is needed, members shall assess each incident to determine which use of force option is believed to be the minimal amount of force necessary within the available range of objectively reasonable force options to bring the situation under control in a safe manner. The level of force must be proportional to the circumstances and the level of resistance encountered by the officer.

Officers shall strive to use the minimum amount of force necessary to accomplish their lawful purpose.

- A. **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive or active resistance. This level of force is not intended to and has a low probability of causing injury.
- B. **Intermediate Force.** This e level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. necessary to compel compliance by a subject displaying aggressive or combative aggressive behavior. Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others. This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. Case law decisions have specifically identified and established that certain force options such as OC spray, probe deployment with a conducted energy device, impact projectiles, K-9 bites, carotid restraint control holdⁱⁱⁱ and baton strikes are classified as intermediate force likely to result in significant injury.
- C. **Lethal/Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm; the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving.) Lethal force is the degree of force likely to cause death or serious bodily injury. An officer may use lethal force upon another person only when it is objectively reasonable and necessary to:
1. In self defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or
 2. In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use lethal force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person;
or
 3. To apprehend a person when both of the following circumstances exist:
 - a. The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of lethal force; AND
 - b. The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or
1. Protect him/herself or others from what is reasonably believed to be an immediate threat of death or serious bodily injury; or
 2. Prevent the escape of a fleeing felon when:

- ~~3. The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;~~
- ~~4. The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;~~
- ~~5. The use of lethal force is reasonably necessary to prevent escape;~~
- ~~6. When feasible, some warning should be given before the lethal force is used under these circumstances.~~
- ~~4. Lethal force shall only be exercised when all reasonable alternatives have been exhausted or are not feasible.~~

appear impractical

V. **FORCE OPTIONS.**

The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, K-9 bites conducted energy devices, and firearms. These are the force options available to officers, but officers are not required to use these force options based on a continuum. While deploying a particular force option and when feasible, officers shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objective.

A. **Tools and Techniques for Force Options**

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Chemical Agents (Pepper Spray, OC, etc.)
- K-9 Bite
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- Carotid Restraint Control Hold^{iv}

A.B. **PHYSICAL CONTROLS/PERSONAL BODY WEAPONS.** Physical controls, such as control holds, takedowns, strikes with personal body weapons, and other weaponless techniques are designed to gain compliance of and/or control over uncooperative or resistant subjects, incapacitate and subdue subjects. The use of physical control techniques and equipment against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, people with limited English proficiency, and other – can undermine public trust and should be used as a last resort.^v (SFPOA disagrees)

1. PURPOSE. When a subject offers some degree of passive or active resistance to a lawful order, in addition to de-escalation techniques and appropriate communication skills, officers may use physical controls consistent with Department training to gain compliance. A subject's level of resistance and the threat posed by the subject are important factors in determining what type of physical controls or personal body weapons should be used.

2. USE. Officers shall consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers shall consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.

3. PROHIBITED USE OF CONTROL HOLDS. Officers are prohibited from using the following control holds:

a. carotid restraint (Disagreement between SFPOA who supports carotid restraint and Community Stakeholders who want it prohibited, see Section H and End Note VI)²⁴

b. choke hold--choking by means of pressure to the subject's trachea or other means that prevent breathing

A. MANDATORY MEDICAL ASSESSMENT. Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel.

B. REPORTING. Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon is a reportable use of force.

B.C. CHEMICAL AGENTS. Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.

1. PURPOSE. Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.
2. WARNING. Officers shall provide a warning prior to deploying a chemical agent, if feasible:
 - a. Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and

- b. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.
3. MANDATORY FIRST AID. At the scene or as soon as possible, officers shall administer first aid by:
 - a. Seating the subject or other person(s) exposed to a chemical agent in an upright position, and
 - b. Flushing his/her eyes out with clean water and ventilate with fresh air.
4. MANDATORY MEDICAL ASSESSMENT. Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, an officer shall immediately request for emergency medical personnel, render first aid and monitor the subject until relieved by emergency medical personnel. Officers shall notify dispatch to expedite emergency medical personnel if the person loses consciousness or has difficulty breathing.
5. TRANSPORTATION. Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands or to a fixed object.
6. BOOKING FORM. Officers shall note on the booking form that the subject has been exposed to a chemical agent.
7. REPORTING. If an officer deploys a chemical agent on or near someone, it is a reportable use of force.

C.D. IMPACT WEAPON. Department issued and authorized impact weapons include the 26" straight wooden baton, the 36" straight wooden baton, the wooden or polymer Yawara stick, the 21" to 29" telescopic metal baton and the wooden bokken, and are designed to temporarily incapacitate a subject. ~~Impact weapons, such as a baton, are designed to temporarily incapacitate a subject.~~

1. PURPOSE. An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an assaultive aggressive subject who is actively resisting and poses a threat to the safety of officers or others. Only Department issued or authorized impact weapons shall be used. Officers may resort to the use of other objects as impact weapons, such as a flashlight or police radio, if exigent circumstances exist, and officers shall articulate in writing the reason for doing so.
2. WARNING. When using an impact weapon, an officer shall, if feasible:
 - a. Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands; and

- b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer or permit the subject to undermine the use of the impact weapon.
3. RESTRICTED USES. Unless exigent circumstances exist, officers shall not:
- a. Raise an impact weapon above the head to strike a subject, (SFPOA and SFPD Subject Matter Expert believes it should be deleted and is contrary to current training.)^{vii} or
 - b. Intentionally strike vital areas, including the head, neck, face, throat, spine, groin or kidney. The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.

5-4. PROHIBITED USES. Officers shall not:

- a. Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon where neither the use of an impact weapon or impact weapon warning is appropriate.
- b. Strike a handcuffed prisoner with an impact weapon. Striking a handcuffed prisoner who poses no threat is an inappropriate action and may result in disciplinary action and/or criminal prosecution. this provision here COPS Comment #50 ("these are more than prohibited uses, they are crimes"

6-5. MANDATORY MEDICAL ASSESSMENT. Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed.

7-6. REPORTING. If an officer strikes a subject with an impact weapon, it is a reportable use of force.

D.E. EXTENDED RANGE IMPACT WEAPON (ERIW). An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.

1. PURPOSE. The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an aggressive, unarmed subject who poses an immediate threat of serious injury to another person or the officer.
2. USE. The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers shall observe the following guidelines:
 - a. An officer deploying an ERIW shall all-always have a lethal cover officer. When more than one officer is deploying an ERIW, tactical judgment and scene management in accordance with Department training will dictate the appropriate number of ERIW and lethal cover officers. In

~~most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed.~~

~~b. In most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed.~~

The ERIW officer's point of aim shall be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:

- i. Zone 2 is unavailable; or
- ii. The ERIW officer is delivering the round from 60 feet; or
- iii. Shots to Zone 2 have been ineffective or in the officers judgment a shot to zone 2 would be ineffective.

Officer shall articulate in writing the reason for intentionally aiming the ERIW at Zone 1

c. The use of an ERIW to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an ERIW to these areas shall only be used in situations where deadly lethal force is justified.

d. The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer shall aim at a different target area.

3. **LIMITED USES.** The ERIW should not be used in the following circumstances (unless the use of deadly force is appropriate)::

- a. The subject is at the extremes of age (elderly and children) or physically frail
- b. The subject is in an elevated position where a fall is likely to cause serious injury or death.
- c. The subject is known to be or appears pregnant.
- d. At ranges of less than 15 feet.
- (e. Concerned raised by a community member about restricting women's breasts as a target area; this requires input from Subject Matter Expert).

4. **WARNING.** When using the ERIW, an officer shall, if feasible:

- a. Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"
- b. All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"
- c. Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;
- d. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.

5. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel.

6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.

7. **REPORTING.** Discharge of an ERIW is a reportable use of force.

E.F. VEHICLE INTERVENTIONS. An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be ~~minimal~~ objectively reasonable under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit Driving.

F.G. CONDUCTED ENERGY DEVICE (CED). See Special Operations Bureau Order on use of CED. (POA has not agreed to remove CEDs)

G.H. CAROTID RESTRAINT. The carotid restraint is a control technique in which the carotid arteries on the sides of the neck are compressed, restricting blood flow to the brain, causing the subject to lose consciousness.

1. USE. The Carotid Restraint is considered an intermediate force option. Based on the totality of circumstances, it may be an acceptable use of force in the following circumstances:

- a. When an officer is physically attacked.
- b. To stop a physical attack on another person.
- c. An officer has attempted a lesser level of force and found it to be inadequate.
- d. In the officer's best judgment having evaluated a particular circumstance, a lesser level of force would be inadequate.

2. WARNING BEFORE USE. When deploying the carotid restraint, an officer shall, if feasible:

- a. Announce a warning to the subject to stop resisting, and
- b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to safety or permit the subject to undermine the deployment of the carotid restraint.

3. MANDATORY MEDICAL ASSESSMENT.

In all cases where the carotid restraint is used, the subject shall be medically assessed and medically evaluated. Officers shall monitor the subject's vital signs closely. Additionally, if the subject has difficulty breathing or does not immediately regain consciousness, officers shall immediately seek medical care by trained personnel. (See Section II.E.)

4. BOOKING FORM. Persons who have been the subject of a carotid restraint shall have that noted on the booking form.

5. REPORTING. Use of carotid restraint, even if unsuccessful, is a reportable use of force. (See DGO 5.01.1)

H.I. FIREARMS AND OTHER LETHAL DEADLY FORCE. It is the policy of this Department to use ~~deadly~~ lethal force only ~~only~~ as a last resort ~~when~~ when reasonable alternatives have been exhausted or are not feasible ~~appear impracticable~~ to protect the

safety of the public and police officers. The use of firearms and other ~~deadly~~ lethal force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before ~~When safe and feasible under the totality of circumstances, officers shall consider other (minimal) force options before~~ discharging a firearm or using other ~~lethal~~ deadly force.

1. HANDLING, DRAWING AND POINTING FIREARMS.

a. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.

b. **AUTHORIZED USES.** An officer may draw, exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department approved firearms training. ~~If an officer points a firearm at a person, the officer shall, if feasible, advise the subject the reason why the officer(s) pointed the firearm.~~

c. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department issued firearm.

d. **POINTING A FIREARM AT A PERSON.** The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation will may escalate to justify ~~deadly~~ lethal force. If an officer points a firearm at a person, the officer shall, if feasible, safe and when appropriate, advise the subject the reason why the officer(s) pointed the firearm.

e. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

2. DISCHARGE OF FIREARMS OR OTHER USE OF LETHAL DEADLY FORCE.

a. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections H.2.ed. and H.2.fe., an officer may discharge a firearm or use other ~~deadly~~ lethal force in any of the following circumstances:

- i. In self-defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or
- ii. In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use deadly lethal force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person; or
- iii. To apprehend a person when both of the following circumstances exist:
 - The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly lethal force; AND
 - The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or
- iv. To kill an animal posing an immediate imminent threat.

The above circumstances (2.a. i-iv) apply to each discharge of a firearm or application of deadly lethal force. Officers shall constantly reassess the situation, when as feasible and safe, to determine whether the subject continues to pose an active threat. SFPOA's suggested addition: Officers, however, are not required to reassess the situation between each shot being fired or the repeated use of any force where the time and effort necessary to reassess may jeopardize the safety of any officer or other person. ^{viii}

~~b. Lethal force shall only be exercised when all reasonable alternatives have been exhausted or are not feasible.~~

~~b. b. —VERBAL WARNING.~~ If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other deadly lethal force.

ce. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.

dd. **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:

- i. As a warning; or
- ii. At a person who presents a danger only to him or herself.

ee. **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an imminent immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving

vehicle. (Community Stakeholders' suggested provision; below SFPOA's suggested provisions)

The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:

A. At a Moving Vehicle: An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.

B. From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an immediate danger of death or serious bodily injury to the officer or to others.

C. At the Operator or Occupant of a Moving Vehicle: Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an immediate danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection. An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:

(a) If the operator or occupant of a moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means other than the vehicle itself.

(b) If the operator of the moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.

(c) In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.

(d) To apprehend a person when both of the following circumstances exist:

(e) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND

(f) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

In reviewing incidents involving the discharge of firearms from a moving vehicle or at an operator or occupant of a moving vehicle, the Department will consider the totality of the circumstances, including but not limited to whether the officer or others were in immediate danger of death or serious bodily injury and whether the officers who were present employed tactics consistent with Department approved training. (POA suggestion)^{ix}

F. RENDERING OR REQUESTING MEDICAL AID

Following the use of force, officers shall render or request medical aid if needed or requested by anyone as soon as reasonably possible.

G. REPORTING.

1. **DISCHARGE OF FIREARMS.** Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11, Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.

2. **OTHER LETHAL DEADLY FORCE.** An officer who applies other force that results in death shall report the force to the officer's supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other lethal deadly force that results in serious bodily injury shall report the force to the officer's supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other lethal deadly force that does not result in serious bodily injury shall report the force.

(SFPOA Requests P.O.S.T.'s Use of Force Inserted Here)

VI. USE OF FORCE REPORTING

A. **REPORTABLE USES OF FORCE.** Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents,

impact weapons, ERIWs, vehicle interventions, K-9 bites, CEDs, and firearms. Additionally, officers shall report the intentional pointing of CEDs and firearms at a subject.

1. NOTIFICATION OF USE OF FORCE. An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an allegation of excessive force.
2. EVALUATION OF USE OF FORCE. A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.
3. EXCESSIVE USE OF FORCE. Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

B. PROCEDURES

1. OFFICER'S RESPONSIBILITY. Any reportable use of force shall be documented in detail in an incident report, supplemental incident report, or statement form. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.
 - a. When the officer using force is preparing the incident report, the officer shall include the following information:
 - i. The subject's action necessitating the use of force, including the threat presented by the subject;
 - ii. Efforts to de-escalate prior to the use of force; and if not, why not;
 - iii. Any warning given and if not, why not;
 - iv. The type of force used;
 - v. Injury sustained by the subject;
 - vi. Injury sustained by the officer or another person;
 - vii. Information regarding medical assessment or evaluation, including whether the subject refused;
 - viii. The supervisor's name, rank, star number and the time notified.
 - b. ~~In the event that the officer using force is not the officer preparing the incident report, all officer using the force shall:~~
 - i. ~~Ensure that he/she is clearly identified in the incident report; and~~
 - ii. ~~Prepare a supplemental report or a statement form with the above information.~~
- b. In the event that an officer cannot document his/her use of force due to exceptional circumstances, another officer shall document this use of force

in an incident report, supplemental incident report or statement form at the direction of a supervisor.

2. SUPERVISOR'S RESPONSIBILITY. When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

- a. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
- b. Ensure the scene is secure and observe injured subjects or officers;
- c. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
- d. Ensure photographs of injuries are taken and all other evidence is booked;
- e. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in VI.B.1.a.H.A.(fix) above;
- f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- g. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
- h. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch.

If a supervisor determines that a member's use of force is unnecessary or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

3. SUPERIOR OFFICER'S RESPONSIBILITY. When a superior officer is notified of unnecessary force or force that results in serious bodily injury or death, the superior officer shall:

- a. Respond to the scene and assume command, as practical;
- b. Notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
- c. If unnecessary force, initiate a civilian complaint and Make the required notification to the Office of Citizen Complaints (See DOJ comment 21, DGO 5.01.1 ("If force is perceived to be unreasonable a complaint should be initiated regardless of whether the citizen makes a complaint.")) (SFPOA has technical question regarding DGO 2:04) if a citizen complaint is made;
- d. Determine which unit(s) will be responsible for the on-going investigation(s);

- e. Prepare a report containing preliminary findings, conclusions and/or recommendations, if appropriate.

C. OTHER REQUIREMENTS.

1. **USE OF FORCE LOG.** The following units shall maintain a Use of Force Log:
 - a. District Stations
 - b. Airport Bureau
 - c. Department Operations Center
2. **RECORDING PROCEDURES.** Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:
 - a. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.
 - b. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.
3. **DOCUMENT ROUTING.**
 - a. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief no later than the end of the watch. This information shall be entered into the Use of Force database at Risk Management to generate monthly reports as described in section C (5) below.
 - b. On the Monday of each week, unless a holiday, and then on Tuesday, On the 1st and 15th of each month, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officers of the Training Division and Risk Management.
4. **TRAINING DIVISION RESPONSIBILITIES.** The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs Use of Force Logs and Supervisor Evaluations are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs.
5. **RISK MANAGEMENT RESPONSIBILITIES.** The Commanding Officer of the Risk Management shall general report bi-weekly (1st and 15th) to the Chief of Police on the use of force by Department members that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.

6. DATA COLLECTION AND ANALYSIS. The Department will collect and analyze its use of force data in the Risk Management Use of Force database. The Use of Force statistics and analysis will include at a minimum:
- a. The type of force
 - b. The types and degree of injury to suspect and officer
 - c. Date and time
 - d. Location of the incident
 - e. Officer's unit
 - f. District station where the use of force occurred
 - g. Officer's assignment
 - h. Number of officers using force in the incident
 - i. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
 - j. Subject's activity requiring the officer to use force
 - k. Officer's demographics (age, gender, race/ethnicity, rank, number of years with SFPD, number of years as a police officer)
 - l. Suspect demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.

The Department will post on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

VII. OFFICER'S RESPONSIBILITY AND COMPLIANCE.

All officers are responsible for knowing and complying with this policy. As with all General Orders, any violation of this policy may subject the member to disciplinary action. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it. Any member who becomes aware of any violation to this policy shall promptly report it in accordance with established procedure.² (SFPOA did not address this provision)

References

DGO 1.06, Duties of Superior Officers
DGO 2.04 Citizen Complaints Against Officers
DGO 5.05, Response and Pursuit Driving
DGO 5.17 Policy Prohibiting Biased Policing
DGO 5.18, Prisoner Handling and Transportation
DGO 8.11, Investigation of Officer Involved Shootings And Discharges
DGO 8.12, In Custody Deaths
DGO XX Responding to Behavioral Crisis Calls and The Role of the Crisis Intervention Team

² See DGO 5.17 (II)(C) for similar language.

i This SFPOA believes that the Department should include the language of Penal Code 835a, as it has done here. For reasons unclear to the SFPOA, it has been suggested that the Department remove the language of Penal Code Section 835a. Penal Code Section 835a is California law. All officers and citizens are bound by Section 835a whether it is included in the Department's general orders or not. Because Section 835a gives important guidance on the use of force by police officers, the SFPOA believes that it would be a mistake to exclude it from the Department's general orders.

ii SFPOA'S PROPOSED CHANGE: The requirement that supervisors read a *Miranda*-type admonition over the air each time there is a call or on-view of a suspect with a weapon is absurd, dangerous, and should be eliminated.

For many reasons, this requirement is dangerous, makes no sense, and will not in any way encourage de-escalation. First, although the proposal has an exception for Code 33 situations, this does not solve the safety problem. In many situations a call that an individual has a weapon is not immediately a Code 33 – but it can become a Code 33 in the 10-15 seconds that a supervisor would spend reading this admonition over the air. If this policy is in place, valuable time will be lost during the 10-15 second admonition which could cost civilians and officers their lives. As the DOJ noted, “this will tie up radio communications during a critical incident and could create risk.” (DOJ COPS comment 33.)

Second, this admonition will be ineffective at best, and dangerous at worst, even if it does not interfere with valuable air time. This proposal requires that, *regardless of the circumstances*, a supervisor who is not on the scene and may know nothing about the situation, must go over the air and give advice to the on-scene officer about how to handle the call. This is inefficient and impractical. Suppose, for example, that an on-scene officer arrives to a weapons call and finds a suspect about to shoot a child: Should that officer heed his supervisor's canned advice to “build rapport,” or should the officer make an appropriate decision based on what he or she observes, based on the totality of circumstances known to him or her? The obvious answer is that the on-scene officer should ignore any advice that does not apply to that particular situation. If the on-scene officer does not ignore the canned advice, however, but treats the admonition as a directive from a supervisor, this could endanger the public and officers. Officers might be taking cover when it is unsafe to do so, maintaining distance when they should be advancing, and trying to establish rapport when they should be quiet – all because they believe they are following a supervisor's orders.

Third, almost none of this advice would apply to the great majority of the routine calls officers receive about individuals armed with weapons. For any of these admonitions to be appropriate, the following circumstances must apply: (1) the call is for an armed suspect; (2) the suspect is sufficiently far away from any possible victims that the officer can maintain distance, build rapport, call for additional resources, take cover, and engage in communications without time restraints and without jeopardizing anyone's safety; and (3) the scene is sufficiently secure and controlled that command of the scene can be transferred from the on-scene officer to the later-arriving supervisor. The only scenario in which this

would be applicable in a very rare critical incident situation (such as a barricaded suspect situation), which is addressed by other general orders. Therefore, if this proposal is approved, the Department would be requiring that, regardless of the situation, supervisors must dispense advice that is almost never going to be applicable.

Moreover, the blanket application of these de-escalation principles would turn many routine weapons calls into dangerous critical incidents. Situations that might be resolved merely by the officer ordering a suspect to drop a weapon will now require the officer to retreat, call for backup and obtain cover. For example, in response to our survey, one officer recounted the following scenario: The officer responded to a weapons call and found a mentally unstable woman lying on her bed saying that she wanted to kill herself. The officer approached, the woman moved her leg and revealed a knife under her leg (which she was not holding – yet). Without saying another word, the officers grabbed the woman and moved her away from the knife. The woman struggled, spat, and was held for a 5150. If the officer had instead backed off to establish rapport, called a supervisor, took cover and created a "reaction gap," this situation could have turned disastrous. The quick action by the officer resolved the situation and probably saved the woman's life.

Fourth, if the Department believes that officers should be instructed about de-escalation and the "sanctity" of human life, the worst, most dangerous, and least effective means of achieving this is for supervisors to repeat those words over the air 20 times a day in situations where the admonitions do not apply and officers are responding to a potentially dangerous situation. Instead, the Department should provide additional training and draft appropriate general orders.

Fifth, the Department does not have the resources for a supervisor to be dispatched to every weapons call. For example, the Mission district receives dozens of similar calls a day, but only has a limited number of patrol sergeants at any given time. The SFPOA suggests that if the Department still believes that some variation of this policy is appropriate, it should study the practical effect of this policy before implementation to avoid the possible chaos that might follow.

No police department in the entire country has a policy like this. San Francisco should not be the first. As the DOJ suggests, this proposal is "better accomplished through training and something that should situationally be left up to the supervisor's discretion."

Alternatively, if the Department insists on keeping this requirement, the SFPOA suggests that the Department could have a pre-recorded message, perhaps from the Chief, that could play any time an officer responds to a weapons call. This could be done through DEM or the officer could have a device to play this recording in their vehicles which they could just depress when they respond to a weapons call. This would eliminate the risk of this message taking up valuable air-time. Having a pre-recorded message would also ensure that the message is delivered the same way each time regardless of whether it is appropriate for the circumstance confronting the officer (which appears to be the intent of this requirement), and it would avoid burdening supervisors with having to remember a script.

ⁱⁱⁱ See SFPOA's remarks concerning carotid restraint (Section _____)

^{iv} See SFPOA's remarks concerning carotid restraint, endnote vi

v SFPOA'S PROPOSED CHANGE: The Department should eliminate this entire paragraph because it is contrary to common sense, and inconsistent with the Department's other proposed orders, P.O.S.T., and the case law addressing the issue.

First, contrary to the statement in this proposed policy, use of physical controls should not be the "last resort," with respect to any population. In fact, as this policy appropriately provides, the use of deadly force is the "last resort." Of course, it is contradictory for a policy to have two "lasts." Moreover, not only shouldn't the use of physical controls be the "last resort," it is the least intrusive means of gaining control of a suspect not following verbal commands. (See P.O.S.T. Learning Domain 20 3-3.) The use of baton, K-9, OC spray, CED, and physical body weapons, all properly come before the use of a control hold in terms of the likelihood of causing injury. And, the Ninth Circuit has held that control holds can properly be used against non-compliant, passive suspects. Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) (reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena). As written, under this policy, if a pregnant woman was refusing to obey a lawful order (such as to get out of the street), the officer would be required to consider deploying a k-9, using a baton and discharging firearm before escorting the woman out of the street with a firm grip.

Second, the description of "control holds" as being "designed to incapacitate and subdue subjects," should be removed because that is not their actual purpose. In fact, physical control holds are a critical part of a police officer's tools to resolve a situation using minimal force. According to P.O.S.T., "control holds" constitute the least amount of force that an officer can use, and can even be used on suspects that are offering no physical resistance of any sort. (See P.O.S.T. Learning Domain 20: 2-6.) Physical controls are not designed to incapacitate or subdue subjects. Frequently, physical control holds are merely intended to help move a non-compliant subject from one location to another. (See Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) [reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena].)

If the Department defines all physical control holds to be the equivalent of intermediate force – which is the level of force designed to incapacitate and subdue suspects – then the Department will have left its officers with virtually no means of attempting to control non-compliant suspects. The result is that many suspects that are merely non-compliant will become actively resistant, requiring officers to exert an even greater level of force with which to gain control, which will unnecessarily endanger suspects, civilians, and officers.

Furthermore, this definition of physical control holds is inconsistent with the explanation of when such holds can be used. Below, the Department suggests that an officer may use "physical controls" on an individual who is passively resisting. But, if, as this paragraphs states, physical controls are "designed to incapacitate" suspects, then it would be inappropriate to use such technique on an individual who is merely passively resisting.

Third, this policy inappropriately lumps physical controls and personal body weapons into the same category even though they are significantly different. Under section II., G, this proposed general order defines “personal body weapons” as “[a]n officer’s use of his/her hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.” A physical control hold can be anything from a finger hold (Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990)) to an arm bar (Tatum v. City and County of San Francisco, 441 F.3d 1090, 1092-93 (9th Cir. 2006)).

Fourth, this proposed policy is internally inconsistent. In the title and the first sentence, it discusses physical controls and other “weaponless techniques.” In the next sentence it references “physical control techniques and equipment.” It is inconsistent for the Department to propose a policy that on one hand concerns only “weaponless techniques,” and in the very next sentence make reference to “techniques and equipment.” As a result, unless modified – or eliminated – officers will have no idea what this proposed policy means.

Fifth, the inclusion of “people with limited English proficiency,” as a category of individuals against whom physical control should be a “last resort” is ridiculous. Officers confront many violent criminals every day with limited English proficiency. To essentially prohibit officers from using the lowest level of force against a suspect merely because they have limited English proficiency makes no sense and will needlessly endanger officers.

Sixth, the phrase “and others,” stuck on the very end of the list of “vulnerable populations” makes the entire paragraph meaningless. If the Department is attempting to define a subset of citizens for whom none of the normal rules related to use of force applies, to add the phrase “and others” to the end of the list undoes any value to the list because “and others” can include everyone else. While the SFPOA believes that including a list of populations against whom physical controls should only be used as a “last resort,” is unnecessary, confusing, and dangerous, having an open ended list does not provide officers with any guidance as to which populations are included in the list.

Lastly, this policy, when read together with some of the other policies proposed by the Department, leads to absurd results. For example, if an officer sees a non-English speaking suspect strangling a civilian with handcuffs, the officer is precluded from using any impact weapon or any physical control technique (except as a last resort), or the carotid restraint, but the officer would be permitted to shoot the individual. But, if the individual could speak English and was strangling another individual with a rope instead of handcuffs, the officer would have the full range of force options available (except the carotid restraint).

vi SFPOA’s PROPOSED CHANGE: Consistent with P.O.S.T., the SFPOA believes that the carotid restraint should be authorized and considered intermediate force.

The carotid restraint is not a choke-hold and should not be treated as such. The carotid restraint is an intermediate level of force, which can be used to subdue an actively resisting suspect without any injury to the suspect or the officer. (See Exhibit B, P.O.S.T.

Learning Domain 20: 2-6, 2-9.)

The SFPD has successfully used the carotid restraint for years without incident. As with other non-lethal force options, the more such options are at an officer's disposal, the greater the chance the officer will not have to resort to lethal force. Limiting the use of the carotid restraint to only those situations in which lethal force can be used will effectively eliminate this valuable tool from an officer's arsenal, making the use of deadly force more likely. Limiting the use of the carotid restraint to lethal force situations helps no one, and endangers the public and officers. In response to our survey, one of our officers wrote the following:

"I am a 5'4" female that has rarely used force in my 28 years of law enforcement; however, in the moments where I have been attacked the Carotid Restraint has saved my life. It has saved my life 3 times because the person that attacked me was huge and extremely violent. The carotid restraint was applied correctly (due to training), was perfectly effective, and caused no injury to the suspect. It is a tool that can be effectively used by all officers - small/large/male/female -- to safely manage a violent suspect."

Regardless, if the Department wishes to ban this otherwise approved technique, it should not do so categorically. The Department should, at minimum, be allowed to use this technique in the same situations where using lethal force is justified. The SFPOA cannot conceive of a reason why an officer could be in a situation in which he or she was justified in using lethal force, but should be prohibited from using this non-lethal technique.

vii SFPOA'S PROPOSED CHANGE:

1 The policy should restrict strikes to inappropriate parts of the body, not overhead strikes.

Policies that reduce inappropriate baton strikes are commendable. But a severe restriction on overhead strikes does nothing to accomplish that goal. San Francisco policies, academy, and P.O.S.T. training already focus on the appropriate areas of the body to strike an individual with impact weapons, not whether the blow is delivered with a forehand or backhand swing, or an overhead strike. Because it is the location on the individual struck that matters (head versus thigh), the method of delivering the strike is not the appropriate focus. Specifically, an overhead strike may not be any more likely to result in an inappropriate strike than a sidearm strike. Nor is an overhead strike likely to deliver more force than a sidearm strike. In addition, current best practices and San Francisco training teach that the proper way to hold a baton is with some portion of the baton extending over the officer's head before striking the suspect. Moreover, what may constitute an overhead strike may not always be clear. If the officer is bent over, is a strike over the officer's head an overhead strike? If the officer is on the ground, would any strike be prohibited as "overhead"? If the suspect is above the officer, is an officer prohibited from reaching up to strike the individual on the thigh? The likely unintended consequence of this restriction on overhead strikes is that officers will be far less likely to use this non-lethal option even when it is appropriate to do so. Such an outcome will not increase safety. Additionally, if this provision is adopted, all SFPD officers will have to undergo extensive re-training on how to use batons because this general order

would be contrary to their training.

viii SFPOA'S PROPOSED CHANGE: Officers should not be required to reassess the danger before each individual shot is fired.

If this proposed policy is meant to require officers to reassess, after each individual shot, this would be contrary to all officer training, P.O.S.T., Supreme Court precedent, as well as inconsistent with every other police department in the country and exceedingly dangerous for officers and civilians. When officers are engaged in a potentially lethal situation, where the use of a firearm is appropriate, they are trained to shoot until the threat is over. Sometimes, depending on the situation, an officer may be able to fire one shot and reassess the situation. Often, however, that is impracticable. Including such a requirement will get officers killed. For example, suppose a suspect who just robbed a bank emerges from the bank with a shotgun and aims it at an officer. If after a shot is fired, the officer is required to determine if the suspect has been incapacitated before firing again, the officer will likely be killed. While this proposal states that the officer should only reassess when feasible, the Department should make it clear that it is not requiring that an officer reassess between every shot unless it is safe and appropriate to do so.

ix SFPOA'S PROPOSED CHANGE:

1. The blanket prohibition against officers shooting at occupants of vehicles who are using their vehicles as weapons should be removed.

It is beyond dispute that individuals can and do use their vehicle as a lethal weapon. It is also beyond dispute that officers can and have successfully saved lives by shooting at the operator of the vehicle to prevent them from killing officers or others.

In the past, there has been a concern that officers were unnecessarily shooting at drivers when the officer could have instead gotten out of the way. The previous general order, which was revised in 2011, directly addressed that concern, providing that officers could only shoot at the driver if there was an imminent threat of serious bodily injury or death and the officer had no reasonable or apparent means of retreat. This proposed order eliminates that language, and thus prevents an officer from shooting at the driver of a vehicle, even if there is no means of retreat, and where the officer or a bystander will likely be killed if the officer cannot shoot. In addition, this categorical ban prevents an officer from shooting at a driver of a vehicle to prevent their escape, even where there is a substantial risk that the driver will cause death or serious injury to others if allowed to escape.

Three examples illustrate the dangers of the proposed provision: First, if an individual were driving around San Francisco in an SUV, and running over pedestrians for fun, this policy would prevent an officer from shooting the driver to prevent that driver from killing a family of four in a cross-walk, even if the officer had a clear shot and there was little risk of injury to anyone else. Under the proposed policy, the officer would be required to hold his or her fire and watch the driver run over the family. This is not an abstract

hypothetical. On August 30, 2006, Omeed Aziz Popal, struck 18 pedestrians, killing one in San Francisco with his Honda Pilot SUV.

Second, under the proposed policy, where a suspect is driving his or her vehicle straight at an officer, who has no means of escape or retreat, the officer would have to choose between his or her life and violating the policy. Officers risking their lives for the citizens of San Francisco should never be forced to make that choice when it can be avoided by a carefully drafted, restrictive policy, such as the one that currently exists.

Third, under the proposed policy, if a terrorist was escaping after killing numerous civilians, an officer would be justified in using lethal force to stop the terrorist, but only as long as the terrorist was fleeing on foot. Once the terrorist got into a car, the officer would be precluded from stopping the terrorist, even if the car was barely moving at the time the officer had a clear shot. This proposal turns a vehicle into a safety zone for violent felons to facilitate their escape.

The United States Supreme Court and the Ninth Circuit have repeatedly found that it can be reasonable for an officer to shoot at a suspect who is using his or her vehicle as a weapon. The dangers of an overly permissive policy can be, and have been, addressed by the Department's current policy. There have been no incidents in which the current policy failed to achieve the goal of protecting civilians and officers alike to warrant any re-evaluation of the existing policy. Other cities, such as Oakland, Portland, New Orleans, and Milwaukee, which have been held up as examples for San Francisco, have policies very similar to San Francisco's current policy, which allows for a narrow exception to the prohibition against officers shooting at drivers who are using their vehicle as a weapon.

One may wish that threats caused by moving vehicles will end. But in the real world confronting police officers, there will be cases involving violent suspects seeking to harm innocent people using their vehicles. The only question remaining is if the Department and Police Commission will enable officers to make reasonable choices in dangerous, rapidly-evolving situations to save lives. This proposed policy change precludes that.

The DOJ also recommended that the Department "allow this [shooting at drivers of vehicles] under extremely limited circumstances when other options are unavailable and the life of the officer or member of the public is at risk." (DOJ COPS comment 27.)

2. The Department's proposed blanket prohibition against shooting from a moving vehicle should be removed.

Similar to the blanket prohibition on officers shooting *at* suspects using their vehicle as a weapon, the Department should allow some latitude for situations in which it might be appropriate for an officer to fire *from* a moving vehicle. For example, if the officer's vehicle is moving slowly to a stop, but has not quite stopped, it would be inappropriate to require the passenger officer who is being fired at by suspects to hold his or her fire until the vehicle has come to a complete halt, assuming that the officer can fire without unnecessarily endangering

other people. An effective policy can be crafted using very restrictive language that would allow for an officer to fire in that circumstance.

DRAFT

USE OF FORCE

The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons. ~~sanctity of all human life. is safeguarding the sanctity of all human life.~~ Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this police mission with respect and minimal reliance on the use of force by using rapport-building, communication, crisis intervention, and de-escalation ~~facets~~ principles before resorting to force, whenever feasible. ~~This Department General Order adopts a higher standard of police conduct than and reflects community values of seeking alternative options to force and minimizing its use, whenever feasible.~~ builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law, feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This order establishes policies and reporting procedures regarding the use of force, ~~including firearms and lethal force~~ use of firearms and use of lethal force. The purpose of the policy is to guide an officer's decisions regarding the use and application of force to ensure such applications are used only to effect arrest or lawful detentions or to bring a situation under legitimate control and provide guidelines that may assist the Department in achieving its highest priority. No policy can predict every situation. Officers are expected to exercise sound judgment and critical decision-making when using force options, and shall adhere to the Department's highest priority of safeguarding the sanctity of all human life.

I. POLICY

- A. SAFEGUARDING SANCTITY OF HUMAN LIFE AND DIGNITY. SANCTITY OF HUMAN LIFE.** The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity and life. ~~The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity.~~

- B. ESTABLISH COMMUNICATION.** Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

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C. DE-ESCALATION. Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public safety and officer safety. Officers who act to de-escalate an incident, which can delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

D. PROPORTIONALITY. ~~It is important that an officer's level of force be proportional to the severity of the offense committed or the threat posed to human life for which the officer is taking action. When determining the appropriate level of force, officer shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that critical officers apply the principles of proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object.~~

Officers may only use the degree of force that is reasonable and necessary to accomplish their lawful duties.

E. CRISIS INTERVENTION. When feasible, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in mental or behavioral health crisis pursuant to General Order XX.

F. DUTY TO INTERVENE. ~~When in a position to do so, officers shall intervene when they know or have reason to know, reasonably that believe another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.~~

G. FAIR AND UNBIASED POLICING. Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased pursuant to Department General Order 5.17.

II. DEFINITIONS:

A. FEASIBLE. Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

~~A-~~

B. IMMEDIATE THREAT. An immediate threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat if not apprehended without delay. ~~person is an immediate threat if the officer~~

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reasonably believes the person has the present intent, means, opportunity and ability to complete the threat. A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has been initiated.

B. ³ (Graham v. Connor – “whether the suspect posed an immediate threat to the safety of the officers or others,” (Graham, 490 U.S. at 396.) The “most important” factor under Graham is whether the suspect objectively posed an “immediate threat to the safety of the officers or others.” Smith v. City of Hemet, 394 F.3d 689, 702 (9th Cir.2005).

C. **LETHAL FORCE.** Any use of force designed to and likely to cause death or serious physical injury, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject’s vehicle (see DGO 5-05, Response and Pursuit Driving).

D. LEVELS OF RESISTANCE.

E. **Compliant.** A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated-aggressive resistance

F. **Passive Resistance.** The subject is not complying with an officer’s commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, holding onto a fixed object, falling limply and refusing to use their own power to move, or locking arms to another during a protest or demonstration.

G. **Active Resistance.** The subject’s physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer’s grip.

H. **Aggressive Resistance.** The subject displays the intent to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer.

³ Notably, the United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386, 396 uses the term “immediate threat” when evaluating whether an officer’s use of force is reasonable under the Fourth Amendment. The Graham Court states, “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.” [citations omitted], however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat of safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Emphasis added.) The most important factor under Graham is whether the suspect objectively posed an “immediate threat to the safety of the officers or others.” *Smith v. City of Hemet* (9th Cir.2005) 394 F.3d 689, 702. Oakland Police Department’s Use of Force policy uses the term “immediate” throughout. (See Oakland Police Department K-3 Use of Force Policy, pages 2-3; <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf>;

The Los Angeles Police Commission’s Inspector General noted that LAPD’s subtle shift in 2009 from authorizing deadly force to defend against an *immediate* threat to the authority to use deadly force to defend against an *imminent* threat “equates to a slight broadening of an officer’s authority to use deadly force.” (Office of the Inspector General’s Ten Year Overview of Categorical Use of Force Investigations, Police, and Training, March 10, 2016, page 11); http://www.lapdpolicecom.lacity.org/031516/BPC_16-0077.pdf

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~~a. **Aggravated Aggressive Resistance.** The subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, brandishing of an edged or other weapon, or extreme physical force.~~

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~~C. **MINIMAL AMOUNT OF FORCE NECESSARY.** The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.~~

~~I.D. **PERSONAL BODY WEAPONS.** An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.~~

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~~E. **REASONABLE FORCE.** An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time,~~

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~~I. presented at the time of the incident.~~

~~F. **REPORTABLE FORCE.** Any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of an officer, or complaint of pain that persists beyond the use of a physical control hold. Any use of force involving the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, conducted energy devices, and firearms. Any intentional pointing of a conducted energy device or a firearm at a subject,~~

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~~K.~~

~~G. **SERIOUS BODILY INJURY.** A serious impairment of physical condition, including but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement, bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in a prolonged loss or impairment of the functioning of any bodily member or organ.~~

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~~L.~~

~~M.H. **VITAL AREAS OF THE BODY.** The head, neck, face, throat, spine, groin and kidney.~~

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III. CONSIDERATIONS GOVERNING ALL USES OF FORCE

A. USE OF FORCE MUST BE FOR A LAWFUL PURPOSE. Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. To effect a lawful arrest, detention, or search.
2. To overcome resistance or to prevent escape.
3. To prevent the commission of a public offense.
4. In defense of others or in self-defense.
5. To gain compliance with a lawful order.

6. To prevent a person from injuring himself/herself. However, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an imminent-immediate threat of death or serious bodily injury to another person or officer.

B. USE OF FORCE EVALUATION OFFICERS SHALL USE MINIMAL FORCE THAT IS OBJECTIVELY REASONABLE AND NECESSARY. USE OF FORCE MUST BE REASONABLE.

4. The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in *Graham* by adding additional factors upon which an officer's use of force shall be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must strive to use the minimal amount of force necessary.

2. ~~Graham v. Connor (1989) 490 U.S. 386 provides a minimum standard for civil courts to evaluate an officer's use of force. The United States Supreme Court in Graham v. Connor ruled that in civil lawsuits involving an excessive force claim, an officer's force used during an arrest, investigatory stop or seizure of an individual should be analyzed under the Fourth Amendment and its reasonableness standard.~~

1. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.

2. Factors for evaluating the use of force include but are not limited to:

- a. ~~The severity of the crime at issue;~~
- b. ~~Whether the suspect posed an immediate threat to the safety of the officers or others;~~
3. c. ~~Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;~~
- d. ~~Whether the use of force is proportional to the threat;~~
- e. ~~The availability of other feasible, less intrusive force options;~~
- f. ~~The officer's tactical conduct and decisions preceding the use of force;~~
- f. ~~the availability of other feasible, less intrusive force options~~
- g. ~~Whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, has a physical, developmental or cognitive development or cognitive disabilities, is emotionally disturbed or is under the influence of alcohol or drugs;~~

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- h. Whether there was an opportunity to warn about the use of force prior to force being used, and if so, was such a warning given;
- i. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;
- j. Specialized knowledge, skills, or abilities of subjects;
- k. Prior contact;
- l. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and
- m. Whether the subject's escape could pose a future safety risk.

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4. When balanced against the type and amount of force used, the Graham factors used to determine whether an officer's use of force is objectively reasonable are:

- a. The severity of the crime at issue
 - Whether the suspect posed an immediate threat to the safety of the public or the officers
- b. Whether the suspect was actively resisting arrest
- b. Whether the suspect was attempting to evade arrest by flight

5.1. This Department General adopts a higher standard of police conduct than the minimum requirements of *Graham v. Connor* and reflects community values to minimize the use of force, use de-escalation tactics, and exhaust alternative options to force, when feasible. The reasonableness inquiry in addition to the n not limited to the consideration of the above mentioned Graham factors, is also the following principles are also relevant to evaluating whether an officer's use of force is. Other factors which may determine reasonableness and necessity in a use of force incident may include:

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- a. Whether the use of force is proportional to the threat
- b. Whether other tactics are available to the officer
- c. The availability of other less intrusive force options
- d. The ability of the officer to provide a meaningful warning before using force
- e. The officer's tactical conduct and decisions preceding the use of force
- a. f. Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis or is a person with a mental illness. Availability of other reasonable force options
- g. Availability of additional officers or resources to de-escalate the situation
- b. Proximity, access to and type of weapons available to the subject
- e. h. Time available to an officer to make a decision;
- d. Availability of additional officers or resources to de-escalate the situation;
- e. i. Environmental factors and/or other exigent circumstances;
- f. Whether other tactics are available to the officer;
- g. The ability of the officer to provide a meaningful warning before using force;
- h. The officer's tactical conduct and decisions preceding the use of force;

- i. Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis or is a person with a mental illness;
- j. Whether the subject's escape could pose a future safety risk

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

- 3. California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

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A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." i
(Disagreement between SFPOA and Community Stakeholder Representatives)

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- 6. California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

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A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape or overcome resistance."

C. DE-ESCALATION. Officers will use de-escalate tactics, whenever feasible, and appropriate, to reduce the need or degree of force.

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- 3. When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle or other object, officers shall when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force: when safe and feasible under the totality of the circumstances known to the officer:

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- 1.a. Attempt to isolate and contain the subject;
- 2. Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force;

3. Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, Conducted Energy Device or Extended Range Impact Weapon;
4. Designate an officer to establish rapport and engage in communication with the subject;
5. Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety; and
6. Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.
7. When feasible, before deploying a particular force option, officers shall evaluate and the ray of objectively reasonable options to select an option that will likely anticipated to cause the least amount of injury to the subject while achieving the arrest or lawful objectives.
8. While deploying a particular force option and when feasible, officer shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objectives.
9. Whether a particular use of force is the minimum amount of force necessary must be objectively judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The objective determination of "minimal" must account for the fact that officers are often forced to make split second judgements, in circumstances that are tense, uncertain and rapidly evolving.

Other options, not listed above, may be available to assist in de-escalating the situation.

Supervisors who become aware of a situation where an officer is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene.

D. CRITICAL DECISION-MAKING MODEL. Using a critical decision-making model, officers shall collect information, assess the threats and risk, consider police powers and the Department's policies, identify options and determine the best course of action, and review and re-assess the situation.

Officers shall continually assess the effectiveness of their actions and consider the desired outcome for the level of force used, including, when feasible:

- 1) What efforts can the officer use to de-escalate the situation or to minimize the need for use of force?
- 2) Can the officer allow the subject time to submit to arrest before using force?
- 3) Is the officer using the minimum amount of force necessary to carry out lawful objectives?
- 4) Is the subject physically or mentally capable of complying with the officer's commands?

- 5) Does the officer have an opportunity to utilize additional resources/officers to bring the situation to a peaceful resolution?
- 6) What is the severity of the subject's actions and is the risk of injury to either the subject or officer worth achieving the officer's lawful objective?
- 7) What is the proximity or access of weapons to the subject?
- 8) What is the time available to an officer to make a decision and what efforts has the officer made to provide additional time?
- 9) What are the physical considerations for the officer, e.g. officer exhaustion or injury during a physical confrontation?
- 10) Are innocent bystanders present who could be harmed if force is or is not used?
- 11) Are there hostile bystanders present who are sympathetic to the subject?

EC. UNLAWFUL PURPOSES. Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." An assault and battery committed by officers constitute gross and unlawful misconduct and will be criminally investigated.

ED. DUTY TO RENDER FIRST AID. Officers shall render first aid when a subject is injured or claims injury caused by an officer's use of force unless first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid. Officers shall continue to render first aid and monitor the subject until relieved by emergency medical personnel.

EE. DUTY TO PROVIDE MEDICAL ASSESSMENT. Officers shall arrange for a medical assessment by emergency medical personnel when a subject is injured or complains of injury caused by a use of force, or complains of pain that persists beyond the use of a physical control hold, and the scene is safe. If the subject requires a medical evaluation, the subject shall be transported to a medical facility. If the emergency medical response is excessively delayed under the circumstances, officers shall contact a supervisor to coordinate and expedite the medical assessment or evaluation of the subject, e.g., transport subject to nearest medical facility by SFPD. See DGO-5.18. Prisoner Handling and Transportation.

FF. SUBJECT ARMED WITH A WEAPON – NOTIFICATION AND COMMAND. In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

1. **OFFICER'S RESPONSIBILITY.** Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.
2. **SUPERVISORS' RESPONSIBILITIES.** When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible:
 - a. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");
 - b. Notify responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and

contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources," (SFPOA disagree)

- c. Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.

IV. LEVELS OF RESISTANCE.

- A. ~~Compliant. Subject offers no resistance. A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated-aggressive resistance~~
- B. ~~Passive Non-Compliance. Does not respond to verbal commands but also offers no physical form of resistance. The subject is not complying with an officer's commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, holding onto a fixed object, falling limply and refusing to use their own power to move, or locking arms to another during a protest or demonstration.~~
- C. ~~Active Resistance. Physically evasive movements to defeat an officer's attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody. The subject's physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip.~~
- D. ~~Assaultive. Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person. The subject displays the intent and ability to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer.~~
- E. ~~Life-threatening. Any action likely to result in serious bodily injury or death of the officer or another person. The subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, an edged or other weapon, or extreme physical force.~~

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IV. LEVELS OF FORCE.

When force is needed, members shall assess each incident to determine which use of force option is believed to be the minimum amount of force necessary within the available range of objectively reasonable force options to bring the situation under control in a safe manner. The level of force must be proportional to the circumstances and the level of resistance encountered by the officer.

Officers shall strive to use the minimum amount of force necessary to accomplish their lawful purpose.

A. **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive or active resistance. This level of force is not intended to and has a low probability of causing injury.

B. **Intermediate Force.** The level of force necessary to compel compliance by a subject displaying aggressive or combative aggressive behavior. This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. Case law decisions have specifically identified and established that certain force options such as OC spray, probe deployment with a conducted energy device, impact projectiles, K-9 bites, carotid restraint control hold and baton strikes are classified as intermediate force likely to result in significant injury.

C. **Lethal/Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving.) Lethal force is the degree of force likely to cause death or serious bodily injury. An officer may use lethal force upon another person only when it is objectively reasonable and necessary to:

1. In self defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or

2. In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use lethal force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person;

or

3. To apprehend a person when both of the following circumstances exist:
a. The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of lethal force; AND

b. The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or

3. Protect him/herself or others from what is reasonably believed to be an immediate threat of death or serious bodily injury; or

0. Prevent the escape of a fleeing felon when:

— The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;

— The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;

— The use of lethal force is reasonably necessary to prevent escape;

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- When feasible, some warning should be given before the lethal force is used under these circumstances.
- 4. Lethal force shall only be exercised when all reasonable alternatives have been exhausted or are not feasible.

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V. **FORCE OPTIONS.**

The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, K-9 bites conducted energy devices, and firearms. These are the force options available to officers, but officers are not required to use these force options based on a continuum. While deploying a particular force option and when feasible, officers shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objective.

A. **Tools and Techniques for Force Options**

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Chemical Agents (Pepper Spray, OC, etc.)
- K-9 Bite
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- Carotid Restraint Control Hold

B. **PHYSICAL CONTROLS/PERSONAL BODY WEAPONS.** Physical controls, such as control holds, takedowns, strikes with personal body weapons, and other weaponless techniques are designed to gain compliance of and/or control over uncooperative or resistant subjects, incapacitate and subdue subjects. The use of physical control techniques and equipment against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, people with limited English proficiency, and other – can undermine public trust and should be used as a last resort. (SFPOA disagrees)

- 1. **PURPOSE.** When a subject offers some degree of passive or active resistance to a lawful order, in addition to de-escalation techniques and appropriate communication skills, officers may use physical controls consistent with Department training to gain compliance. A subject's level of resistance and the threat posed by the subject are important factors in

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determining what type of physical controls or personal body weapons should be used.

2. **2. USE.** Officers shall consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers shall consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.

3. **3. PROHIBITED USE OF CONTROL HOLDS.** Officers are prohibited from using the following control holds:

a. carotid restraint (Disagreement between SFPOA who supports carotid restraint and Community Stakeholders who want it prohibited, see Section H and End Note VI)²⁴

b. choke hold--choking by means of pressure to the subject's trachea or other means that prevent breathing.

4. **4.A. MANDATORY MEDICAL ASSESSMENT.** Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel.

5. **5.B. REPORTING.** Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon is a reportable use of force.

B.C. CHEMICAL AGENTS. Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.

1. **PURPOSE.** Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.

2. **WARNING.** Officers shall provide a warning prior to deploying a chemical agent, if feasible:

a. Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and

b. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.

3. **MANDATORY FIRST AID.** At the scene or as soon as possible, officers shall administer first aid by:

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- a. Seating the subject or other person(s) exposed to a chemical agent in an upright position, and
 - b. Flushing his/her eyes out with clean water and ventilate with fresh air.
4. **MANDATORY MEDICAL ASSESSMENT.** Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, an officer shall immediately request for emergency medical personnel, render first aid and monitor the subject until relieved by emergency medical personnel. Officers shall notify dispatch to expedite emergency medical personnel if the person loses consciousness or has difficulty breathing.
 5. **TRANSPORTATION.** Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands or to a fixed object.
 6. **BOOKING FORM.** Officers shall note on the booking form that the subject has been exposed to a chemical agent.
 7. **REPORTING.** If an officer deploys a chemical agent on or near someone, it is a reportable use of force.

C.D. IMPACT WEAPON. Department issued and authorized impact weapons include the 26" straight wooden baton, the 36" straight wooden baton, the wooden or polymer Yawara stick, the 21" to 29" telescopic metal baton and the wooden bokken, and are designed to temporarily incapacitate a subject. Impact weapons, such as a baton, are designed to temporarily incapacitate a subject.

1. **PURPOSE.** An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an aggressive subject. Only Department issued or authorized impact weapons shall be used. Officers may resort to the use of other objects as impact weapons, such as a flashlight or police radio, if exigent circumstances exist, and officers shall articulate in writing the reason for doing so.
2. **WARNING.** When using an impact weapon, an officer shall, if feasible:
 - a. Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands; and
 - b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer or permit the subject to undermine the use of the impact weapon.
3. **RESTRICTED USES.** Unless exigent circumstances exist, officers shall not:
 - a. Raise an impact weapon above the head to strike a subject, (SFPOA and SFPD Subject Matter Expert believes it should be deleted and is contrary to current training.)ⁱⁱⁱ or

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- b. Intentionally strike vital areas, including the head, neck, face, throat, spine, groin or kidney. The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.

5.4. PROHIBITED USES. Officers shall not:

- a. Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon where neither the use of an impact weapon or impact weapon warning is appropriate.
- b. ~~Strike a handcuffed prisoner with an impact weapon. Striking a handcuffed prisoner who poses no threat is an inappropriate action and may result in disciplinary action and/or criminal prosecution, this provision here COPS Comment #50 ("these are more than prohibited uses, they are crimes"~~

6.5. MANDATORY MEDICAL ASSESSMENT. Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed.

7.6. REPORTING. If an officer strikes a subject with an impact weapon, it is a reportable use of force.

D.E. EXTENDED RANGE IMPACT WEAPON (ERIW). An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.

1. PURPOSE. The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an aggressive, unarmed subject who poses an immediate threat of serious injury to another person or the officer.

2. USE. The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers shall observe the following guidelines:

- a. An officer deploying an ERIW shall always have a lethal cover officer. When more than one officer is deploying an ERIW, tactical judgment and scene management in accordance with Department training will dictate the appropriate number of ERIW and lethal cover officers. ~~In most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed.~~

- a. — b. In most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed. The ERIW officer's point of aim shall be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:
 - i. Zone 2 is unavailable; or
 - ii. The ERIW officer is delivering the round from 60 feet; or

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iii. Shots to Zone 2 have been ineffective or in the officers judgment a shot to zone 2 would be ineffective. Officer shall articulate in writing the reason for intentionally aiming the ERIW at Zone 1

c. The use of an ERIW to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an ERIW to these areas shall only be used in situations where ~~deadly~~ lethal force is justified.

d. The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer shall aim at a different target area.

9.3. LIMITED USES. The ERIW should not be used in the following circumstances (unless the use of deadly force is appropriate):

- a. The subject is at the extremes of age (elderly and children) or physically frail.
- b. The subject is in an elevated position where a fall is likely to cause serious injury or death.
- c. The subject is known to be or appears pregnant.
- d. At ranges of less than 15 feet.
- ~~d. (e. Concerned raised by a community member about restricting women's breasts as a target area, this requires input from Subject Matter Expert).~~

10.4. WARNING. When using the ERIW, an officer shall, if feasible:

- a. Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"
 - b. All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"
 - c. Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;
 - d. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.
5. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel.
 6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.
 7. **REPORTING.** Discharge of an ERIW is a reportable use of force.

E.F. VEHICLE INTERVENTIONS. An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be ~~minimal~~ objectively reasonable under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit Driving.

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F.G. CONDUCTED ENERGY DEVICE (CED). See Special Operations Bureau Order on use of CED. (POA has not agreed to remove CEDs)

G.H. CAROTID RESTRAINT. The carotid restraint is a control technique in which the carotid arteries on the sides of the neck are compressed, restricting blood flow to the brain, causing the subject to lose consciousness.

1. USE. The Carotid Restraint is considered an intermediate force option. Based on the totality of circumstances, it may be an acceptable use of force in the following circumstances:

- a. When an officer is physically attacked.
- b. To stop a physical attack on another person.
- c. An officer has attempted a lesser level of force and found it to be inadequate.
- d. In the officer's best judgment having evaluated a particular circumstance, a lesser level of force would be inadequate.

2. WARNING BEFORE USE. When deploying the carotid restraint, an officer shall, if feasible:

- a. Announce a warning to the subject to stop resisting, and
- b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to safety or permit the subject to undermine the deployment of the carotid restraint.

3. MANDATORY MEDICAL ASSESSMENT.

In all cases where the carotid restraint is used, the subject shall be medically assessed and medically evaluated. Officers shall monitor the subject's vital signs closely.

Additionally, if the subject has difficulty breathing or does not immediately regain consciousness, officers shall immediately seek medical care by trained personnel. (See Section II.E.)

4. BOOKING FORM. Persons who have been the subject of a carotid restraint shall have that noted on the booking form.

5. REPORTING. Use of carotid restraint, even if unsuccessful, is a reportable use of force. (See DGO 5:01.1)

H.I. FIREARMS AND OTHER LETHAL DEADLY FORCE. It is the policy of this Department to use deadly lethal force only as a last resort when reasonable alternatives have been exhausted or are not feasible appear impracticable to protect the safety of the public and police officers. The use of firearms and other deadly lethal force is the most serious decision an officer may ever make. Officers shall consider other objectively reasonable force options before. When safe and feasible under the totality of circumstances, officers shall consider other (minimal) force options before discharging a firearm or using other lethal deadly force.

1. HANDLING, DRAWING AND POINTING FIREARMS.

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a. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.

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a.b. **AUTHORIZED USES.** An officer may draw, exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department approved firearms training. If an officer points a firearm at a person, the officer shall, if feasible, advise the subject the reason why the officer(s) pointed the firearm.

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c. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department issued firearm.

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d. **POINTING A FIREARM AT A PERSON.** The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation will may escalate to justify deadly lethal force. If an officer points a firearm at a person, the officer shall, if feasible, safe and when appropriate, advise the subject the reason why the officer(s) pointed the firearm.

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e. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

2. **DISCHARGE OF FIREARMS OR OTHER USE OF LETHAL DEADLY FORCE.**

a. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections H.2.ed. and H.2.fe., an officer may discharge a firearm or use other deadly lethal force in any of the following circumstances:

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- i. In self-defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or
- ii. In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use deadly lethal force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person; or
- iii. To apprehend a person when both of the following circumstances exist:

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- The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of ~~deadly lethal force~~; AND
 - The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or
- iv. To kill an animal posing an ~~immediate imminent~~ threat.

The above circumstances (2.a, i-iv) apply to each discharge of a firearm or application of ~~deadly lethal~~ force. Officers shall ~~constantly~~ reassess the situation, ~~when as feasible and safe~~, to determine whether the subject continues to pose an active threat. ~~SFPOA's suggested addition: Officers, however, are not required to reassess the situation between each shot being fired or the repeated use of any force where the time and effort necessary to reassess may jeopardize the safety of any officer or other person.~~

- b. ~~Lethal force shall only be exercised when all reasonable alternatives have been exhausted or are not feasible.~~
- b. b. — **VERBAL WARNING.** If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other ~~deadly lethal~~ force.
- ce. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.
- dd. **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:
- As a warning; or
 - ii. At a person who presents a danger only to him or herself.
- ee. **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an ~~imminent immediate~~ threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle. ~~(Community Stakeholders' suggested provision; below SFPOA's suggested provisions)~~

~~The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:~~

- A. ~~At a Moving Vehicle. An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.~~
- B. ~~From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an immediate danger of death or serious bodily injury to the officer or to others.~~

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C. At the Operator or Occupant of a Moving Vehicle:
Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an immediate danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection. An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:

- (a) If the operator or occupant of a moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means other than the vehicle itself.
- (b) If the operator of the moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.
- (c) In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.
- (d) To apprehend a person when both of the following circumstances exist:
 - (e) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND
 - (f) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

In reviewing incidents involving the discharge of firearms from a moving vehicle or at an operator or occupant of a moving vehicle, the Department will consider the totality of the circumstances, including but not limited to whether the officer or others were in immediate danger of death or serious bodily injury and whether the officers who were present employed

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tactics consistent with Department approved training. (POA suggestion)*

F. RENDERING OR REQUESTING MEDICAL AID

Following the use of force, officers shall render or request medical aid if needed or requested by anyone as soon as reasonably possible.

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G. REPORTING.

1. DISCHARGE OF FIREARMS. Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11, Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.

2. OTHER LETHAL DEADLY FORCE. An officer who applies other force that results in death shall report the force to the officer's supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other lethal deadly force that results in serious bodily injury shall report the force to the officer's supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other lethal deadly force that does not result in serious bodily injury shall report the force.

(SFPOA Requests P.O.S.T.'s Use of Force Inserted Here)

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VI. USE OF FORCE REPORTING

A. REPORTABLE USES OF FORCE. Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ERIWs, vehicle interventions, K-9 bites, CEDs, and firearms. Additionally, officers shall report the intentional pointing of CEDs and firearms at a subject.

1. NOTIFICATION OF USE OF FORCE. An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an allegation of excessive force.

2. EVALUATION OF USE OF FORCE. A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.

3. **EXCESSIVE USE OF FORCE.** Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

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B. PROCEDURES

1. **OFFICER'S RESPONSIBILITY.** Any reportable use of force shall be documented in detail in an incident report, supplemental incident report, or statement form. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.
- a. When the officer using force is preparing the incident report, the officer shall include the following information:
 - i. The subject's action necessitating the use of force, including the threat presented by the subject;
 - ii. Efforts to de-escalate prior to the use of force; and if not, why not;
 - iii. Any warning given and if not, why not;
 - iv. The type of force used;
 - v. Injury sustained by the subject;
 - vi. Injury sustained by the officer or another person;
 - vii. Information regarding medical assessment or evaluation, including whether the subject refused;
 - viii. The supervisor's name, rank, star number and the time notified.
 - ~~b. In the event that the officer using force is not the officer preparing the incident report, all officer using the force shall:
 - i. ~~Ensure that he/she is clearly identified in the incident report; and~~
 - ii. ~~Prepare a supplemental report or a statement form with the above information.~~~~
 - b. In the event that an officer cannot document his/her use of force due to exceptional circumstances, another officer shall document this use of force in an incident report, supplemental incident report or statement form at the direction of a supervisor.
2. **SUPERVISOR'S RESPONSIBILITY.** When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:
- a. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
 - b. Ensure the scene is secure and observe injured subjects or officers;
 - c. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude

identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;

- d. Ensure photographs of injuries are taken and all other evidence is booked;
- e. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in II.A.(fix) above;
- f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- g. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
- h. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch.

If a supervisor determines that a member's use of force is unnecessary or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

3. SUPERIOR OFFICER'S RESPONSIBILITY. When a superior officer is notified of unnecessary force or force that results in serious bodily injury or death, the superior officer shall:

- a. Respond to the scene and assume command, as practical;
- b. Notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
- c. If unnecessary force, initiate a civilian complaint and Make the required notification to the Office of Citizen Complaints (See DOJ comment 21: DGO 5.01.1 ("If force is perceived to be unreasonable a complaint should be initiated regardless of whether the citizen makes a complaint.")) (SFPOA has technical question regarding DGO 2.04) if a citizen complaint is made;
- d. Determine which unit(s) will be responsible for the on-going investigation(s);
- e. Prepare a report containing preliminary findings, conclusions and/or recommendations, if appropriate.

C. OTHER REQUIREMENTS.

1. USE OF FORCE LOG. The following units shall maintain a Use of Force Log:
 - a. District Stations
 - b. Airport Bureau
 - c. Department Operations Center
2. RECORDING PROCEDURES. Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:

- a. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.
 - b. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.
3. DOCUMENT ROUTING.
- a. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief no later than the end of the watch. This information shall be entered into the Use of Force database at Risk Management to generate monthly reports as described in section C (5) below.
 - b. ~~On the Monday of each week, unless a holiday, and then on Tuesday. On the 1st and 15th of each month, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officers of the Training Division and Risk Management.~~
4. TRAINING DIVISION RESPONSIBILITIES. The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs ~~Use of Force Logs and Supervisor Evaluations~~ are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs.
5. RISK MANAGEMENT RESPONSIBILITIES. The Commanding Officer of the Risk Management shall general report bi-weekly (1st and 15th) to the Chief of Police on the use of force by Department members that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.
6. DATA COLLECTION AND ANALYSIS. The Department will collect and analyze its use of force data in the Risk Management Use of Force database. The Use of Force statistics and analysis will include at a minimum:
- a. The type of force
 - b. The types and degree of injury to suspect and officer
 - c. Date and time
 - d. Location of the incident
 - e. Officer's unit
 - f. District station where the use of force occurred
 - g. Officer's assignment
 - h. Number of officers using force in the incident
 - i. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
 - j. Subject's activity requiring the officer to use force

- k. Officer's demographics (age, gender, race/ethnicity, rank, number of years with SFPD, number of years as a police officer)
- l. Suspect demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.

The Department will post on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

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VII. OFFICER'S RESPONSIBILITY AND COMPLIANCE

~~All officers are responsible for knowing and complying with this policy. As with all General Orders, any violation of this policy may subject the member to disciplinary action. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it. Any member who becomes aware of any violation to this policy shall promptly report it in accordance with established procedure.² (SFPOA did not address this provision)~~

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References

- DGO 1.06, Duties of Superior Officers
- DGO 2.04 Citizen Complaints Against Officers
- DGO 5.05, Response and Pursuit Driving
- DGO 5.17 Policy Prohibiting Biased Policing
- DGO 5.18, Prisoner Handling and Transportation
- DGO 8.11, Investigation of Officer Involved Shootings And Discharges
- DGO 8.12, In Custody Deaths
- ~~DGO XX, Responding to Behavioral Crisis Calls and The Role of the Crisis Intervention Team~~

¹ This SFPOA believes that the Department should include the language of Penal Code 835a, as it has done here. For reasons unclear to the SFPOA, it has been suggested that the Department remove the language of Penal Code Section 835a. Penal Code Section 835a is California law. All officers and citizens are bound by Section 835a whether it is included in the Department's general orders or not. Because Section 835a gives important guidance on the use of force by police officers, the SFPOA believes that it would be a mistake to exclude it from the Department's general

² See DGO 5.17 (II)(C) for similar language.

orders.

ii SFPOA'S PROPOSED CHANGE: The requirement that supervisors read a *Miranda*-type admonition over the air each time there is a call or on-view of a suspect with a weapon is absurd, dangerous, and should be eliminated.

For many reasons, this requirement is dangerous, makes no sense, and will not in any way encourage de-escalation. First, although the proposal has an exception for Code 33 situations, this does not solve the safety problem. In many situations a call that an individual has a weapon is not immediately a Code 33 – but it can become a Code 33 in the 10-15 seconds that a supervisor would spend reading this admonition over the air. If this policy is in place, valuable time will be lost during the 10-15 second admonition which could cost civilians and officers their lives. As the DOJ noted: “this will tie up radio communications during a critical incident and could create risk.” (DOJ COPS comment 33.)

Second, this admonition will be ineffective at best, and dangerous at worst, even if it does not interfere with valuable air-time. This proposal requires that, *regardless of the circumstances*, a supervisor who is not on the scene and may know nothing about the situation, must go over the air and give advice to the on-scene officer about how to handle the call. This is inefficient and impractical. Suppose, for example, that an on-scene officer arrives to a weapons call and finds a suspect about to shoot a child: Should that officer heed his supervisor's canned advice to “build rapport,” or should the officer make an appropriate decision based on what he or she observes based on the totality of circumstances known to him or her? The obvious answer is that the on-scene officer should ignore any advice that does not apply to that particular situation. If the on-scene officer does not ignore the canned advice, however, but treats the admonition as a directive from a supervisor, this could endanger the public and officers. Officers might be taking cover when it is unsafe to do so, maintaining distance when they should be advancing, and trying to establish rapport when they should be quiet – all because they believe they are following a supervisor's orders.

Third, almost none of this advice would apply to the great majority of the routine calls officers receive about individuals armed with weapons. For any of these admonitions to be appropriate, the following circumstances must apply: (1) the call is for an armed suspect; (2) the suspect is sufficiently far away from any possible victims that the officer can maintain distance, build rapport, call for additional resources, take cover, and engage in communications without time restraints and without jeopardizing anyone's safety; and (3) the scene is sufficiently secure and controlled that command of the scene can be transferred from the on-scene officer to the later-arriving supervisor. The only scenario in which this would be applicable is a very rare critical incident situation (such as a barricaded suspect situation), which is addressed by other general orders. Therefore, if this proposal is approved, the Department would be requiring that, regardless of the situation, supervisors must dispense advice that is almost never going to be applicable.

Moreover, the blanket application of these de-escalation principles would turn many routine weapons calls into dangerous critical incidents. Situations that might be resolved merely by the officer ordering a suspect to drop a weapon will now require the officer to retreat, call for backup and obtain cover. For example, in response to our survey, one officer

recounted the following scenario: The officer responded to a weapons call and found a mentally unstable woman lying on her bed saying that she wanted to kill herself. The officer approached, the woman moved her leg and revealed a knife under her leg (which she was not holding – yet). Without saying another word, the officers grabbed the woman and moved her away from the knife. The woman struggled, spat, and was held for a 5150. If the officer had instead backed off to establish rapport, called a supervisor, took cover and created a "reaction gap," this situation could have turned disastrous. The quick action by the officer resolved the situation and probably saved the woman's life.

Fourth, if the Department believes that officers should be instructed about de-escalation and the "sanctity" of human life, the worst, most dangerous, and least effective means of achieving this is for supervisors to repeat those words over the air 20 times a day in situations where the admonitions do not apply and officers are responding to a potentially dangerous situation. Instead, the Department should provide additional training and draft appropriate general orders.

Fifth, the Department does not have the resources for a supervisor to be dispatched to every weapons call. For example, the Mission district receives dozens of similar calls a day, but only has a limited number of patrol sergeants at any given time. The SFPOA suggests that if the Department still believes that some variation of this policy is appropriate, it should study the practical effect of this policy before implementation to avoid the possible chaos that might follow.

No police department in the entire country has a policy like this. San Francisco should not be the first. As the DOJ suggests, this proposal is "better accomplished through training and something that should situationally be left up to the supervisor's discretion."

Alternatively, if the Department insists on keeping this requirement, the SFPOA suggests that the Department could have a pre-recorded message, perhaps from the Chief, that could play any time an officer responds to a weapons call. This could be done through DEM or the officer could have a device to play this recording in their vehicles which they could just depress when they respond to a weapons call. This would eliminate the risk of this message taking up valuable air-time. Having a pre-recorded message would also ensure that the message is delivered the same way each time regardless of whether it is appropriate for the circumstance confronting the officer (which appears to be the intent of this requirement), and it would avoid burdening supervisors with having to remember a script.

ⁱⁱⁱ See SFPOA's remarks concerning carotid restraint (Section _____)

^{iv} See SFPOA's remarks concerning carotid restraint, endnote vi

^v **SFPOA'S PROPOSED CHANGE: The Department should eliminate this entire paragraph because it is contrary to common sense, and inconsistent with the Department's other proposed orders, P.O.S.T., and the case law addressing the issue.**

First, contrary to the statement in this proposed policy, use of physical controls should not be the "last resort," with respect to any population. In fact, as this policy appropriately provides, the use of deadly force is the "last resort." Of course, it is contradictory for a policy to have two "lasts." Moreover, not only shouldn't the use of physical controls be the "last resort," it is the least intrusive means of gaining control of a suspect not following verbal commands. (See P.O.S.T. Learning Domain 20 3-3.) The use of baton, K-9, OC

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spray, CED, and physical body weapons, all properly come before the use of a control hold in terms of the likelihood of causing injury. And, the Ninth Circuit has held that control holds can properly be used against non-compliant, passive suspects. Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) (reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena). As written, under this policy, if a pregnant woman was refusing to obey a lawful order (such as to get out of the street), the officer would be required to consider deploying a k-9, using a baton and discharging firearm before escorting the woman out of the street with a firm grip.

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Second, the description of "control holds" as being "designed to incapacitate and subdue subjects," should be removed because that is not their actual purpose. In fact, physical control holds are a critical part of a police officer's tools to resolve a situation using minimal force. According to P.O.S.T., "control holds" constitute the least amount of force that an officer can use, and can even be used on suspects that are offering no physical resistance of any sort. (See P.O.S.T. Learning Domain 20:2-6.) Physical controls are not designed to incapacitate or subdue subjects. Frequently, physical control holds are merely intended to help move a non-compliant subject from one location to another. (See Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) [reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena].)

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If the Department defines all physical control holds to be the equivalent of intermediate force – which is the level of force designed to incapacitate and subdue suspects – then the Department will have left its officers with virtually no means of attempting to control non-compliant suspects. The result is that many suspects that are merely non-compliant will become actively resistant, requiring officers to exert an even greater level of force with which to gain control, which will unnecessarily endanger suspects, civilians, and officers.

Furthermore, this definition of physical control holds is inconsistent with the explanation of when such holds can be used. Below, the Department suggests that an officer may use "physical controls" on an individual who is passively resisting. But, if, as this paragraph states, physical controls are "designed to incapacitate" suspects, then it would be inappropriate to use such technique on an individual who is merely passively resisting.

Third, this policy inappropriately lumps physical controls and personal body weapons into the same category even though they are significantly different. Under section II, G, this proposed general order defines "personal body weapons" as "[a]n officer's use of his/her hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject." A physical control hold can be anything from a finger hold (Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990)) to an arm bar (Tatum v. City and County of San Francisco, 441 F.3d 1090, 1092-93 (9th Cir. 2006)).

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Fourth, this proposed policy is internally inconsistent. In the title and the first sentence, it discusses physical controls and other "weaponless techniques." In the next sentence it references "physical control techniques and equipment." It is inconsistent for the Department to propose a policy that on one hand concerns only "weaponless techniques," and in the very next sentence make reference to "techniques and equipment." As a result, unless modified – or eliminated – officers will have no idea what this proposed policy means.

Fifth, the inclusion of "people with limited English proficiency," as a category of individuals against whom physical control should be a "last resort" is ridiculous. Officers confront many violent criminals every day with limited English proficiency. To essentially prohibit officers from using the lowest level of force against a suspect merely because they have limited English proficiency makes no sense and will needlessly endanger officers.

Sixth, the phrase "and others," stuck on the very end of the list of "vulnerable populations" makes the entire paragraph meaningless. If the Department is attempting to define a subset of citizens for whom none of the normal rules related to use of force applies, to add the phrase "and others" to the end of the list undoes any value to the list because "and others" can include everyone else. While the SFPOA believes that including a list of populations against whom physical controls should only be used as a "last resort," is unnecessary, confusing, and dangerous, having an open ended list does not provide officers with any guidance as to which populations are included in the list.

Lastly, this policy, when read together with some of the other policies proposed by the Department, leads to absurd results. For example, if an officer sees a non-English speaking suspect strangling a civilian with handcuffs, the officer is precluded from using any impact weapon or any physical control technique (except as a last resort), or the carotid restraint, but the officer would be permitted to shoot the individual. But, if the individual could speak English and was strangling another individual with a rope instead of handcuffs, the officer would have the full range of force options available (except the carotid restraint).

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^{vi} SFPOA's PROPOSED CHANGE: Consistent with P.O.S.T., the SFPOA believes that the carotid restraint should be authorized and considered intermediate force.

The carotid restraint is not a choke-hold and should not be treated as such. The carotid restraint is an intermediate level of force, which can be used to subdue an actively resisting suspect without any injury to the suspect or the officer. (See Exhibit B, P.O.S.T. Learning Domain 20: 2-6, 2-9.)

The SFPD has successfully used the carotid restraint for years without incident. As with other non-lethal force options, the more such options are at an officer's disposal, the greater the chance the officer will not have to resort to lethal force. Limiting the use of the carotid restraint to only those situations in which lethal force can be used will effectively eliminate this valuable tool from an officer's arsenal, making the use of deadly force more likely. Limiting the use of the carotid restraint to lethal force situations helps no one, and endangers the public and officers. In response to our survey, one of our officers wrote the following:

"I am a 5'4" female that has rarely used force in my 28 years of law enforcement; however, in the moments where I have been attacked the Carotid Restraint has saved my life. It has saved my life 3 times because the person that attacked me was huge and extremely violent. The carotid restraint was applied correctly (due to training), was perfectly effective, and caused no injury to the suspect. It is a tool that call he effectively used by all officers -small/large/male/female -- to safely manage a violent suspect."

Regardless, if the Department wishes to ban this otherwise approved technique, it should not do so categorically. The Department should, at minimum, be allow to use this technique in the same situations where using lethal force is justified. The SFPOA cannot conceive of a reason why an officer could be in a situation in which he or she was justified in using lethal force, but should be prohibited from using this non-lethal technique.

vii **SFPOA'S PROPOSED CHANGE:**

1 The policy should restrict strikes to inappropriate parts of the body, not overhead strikes.

— Policies that reduce inappropriate baton strikes are commendable. But a severe restriction on overhead strikes does nothing to accomplish that goal. San Francisco policies, academy, and P.O.S.T. training already focus on the appropriate areas of the body to strike an individual with impact weapons, not whether the blow is delivered with a forehand or backhand swing, or an overhead strike. Because it is the location on the individual struck that matters (head versus thigh), the method of delivering the strike is not the appropriate focus. Specifically, an overhead strike may not be any more likely to result in an inappropriate strike than a sidearm strike. Nor is an overhead strike likely to deliver more force than a sidearm strike. In addition, current best practices and San Francisco training teach that the proper way to hold a baton is with some portion of the baton extending over the officer's head before striking the suspect. Moreover, what may constitute an overhead strike may not always be clear. If the officer is bent over, is a strike over the officer's head an overhead strike? If the officer is on the ground, would any strike be prohibited as "overhead"? If the suspect is above the officer, is an officer prohibited from reaching up to strike the individual on the thigh? The likely unintended consequence of this restriction on overhead strikes is that officers will be far less likely to use this non-lethal option even when it is appropriate to do so. Such an outcome will not increase safety. Additionally, if this provision is adopted, all SFPD officers will have to undergo extensive re-training on how to use batons because this general order would be contrary to their training.

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viii **SFPOA'S PROPOSED CHANGE: Officers should not be required to reassess the danger before each individual shot is fired.**

If this proposed policy is meant to require officers to reassess, after each individual shot, this would be contrary to all officer training, P.O.S.T., Supreme Court precedent, as well as inconsistent with every other police department in the country and exceedingly dangerous for officers and civilians. When officers are engaged in a potentially lethal situation, where the use of a firearm is appropriate, they are trained to shoot until the threat is

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over. Sometimes, depending on the situation, an officer may be able to fire one shot and reassess the situation. Often, however, that is impracticable. Including such a requirement will get officers killed. For example, suppose a suspect who just robbed a bank emerges from the bank with a shotgun and aims it at an officer. If after a shot is fired, the officer is required to determine if the suspect has been incapacitated before firing again, the officer will likely be killed. While this proposal states that the officer should only reassess when feasible, the Department should make it clear that it is not requiring that an officer reassess between every shot unless it is safe and appropriate to do so.

ix SFPOA'S PROPOSED CHANGE:

1. The blanket prohibition against officers shooting at occupants of vehicles who are using their vehicles as weapons should be removed.

It is beyond dispute that individuals can and do use their vehicle as a lethal weapon. It is also beyond dispute that officers can and have successfully saved lives by shooting at the operator of the vehicle to prevent them from killing officers or others.

In the past, there has been a concern that officers were unnecessarily shooting at drivers when the officer could have instead gotten out of the way. The previous general order, which was revised in 2011, directly addressed that concern, providing that officers could only shoot at the driver if there was an imminent threat of serious bodily injury or death and the officer had no reasonable or apparent means of retreat. This proposed order eliminates that language, and thus prevents an officer from shooting at the driver of a vehicle, even if there is no means of retreat, and where the officer or a bystander will likely be killed if the officer cannot shoot. In addition, this categorical ban prevents an officer from shooting at a driver of a vehicle to prevent their escape, even where there is a substantial risk that the driver will cause death or serious injury to others if allowed to escape.

Three examples illustrate the dangers of the proposed provision: First, if an individual were driving around San Francisco in an SUV, and running over pedestrians for fun, this policy would prevent an officer from shooting the driver to prevent that driver from killing a family of four in a cross-walk, even if the officer had a clear shot and there was little risk of injury to anyone else. Under the proposed policy, the officer would be required to hold his or her fire and watch the driver run over the family. This is not an abstract hypothetical. On August 30, 2006, Omeed Aziz Popal, struck 18 pedestrians, killing one in San Francisco with his Honda Pilot SUV.

Second, under the proposed policy, where a suspect is driving his or her vehicle straight at an officer, who has no means of escape or retreat, the officer would have to choose between his or her life and violating the policy. Officers risking their lives for the citizens of San Francisco should never be forced to make that choice when it can be avoided by a carefully drafted, restrictive policy, such as the one that currently exists.

Third, under the proposed policy, if a terrorist was escaping after killing numerous civilians, an officer would be justified in using lethal force to stop the terrorist, but only as long as the terrorist was fleeing on foot. Once the terrorist got into a car, the officer would be precluded from stopping the terrorist, even if the car was barely moving at the time the officer had a clear shot. This proposal turns a vehicle into a safety zone for violent felons to facilitate their escape.

The United States Supreme Court and the Ninth Circuit have repeatedly found that it can be reasonable for an officer to shoot at a suspect who is using his or her vehicle as a weapon. The dangers of an overly permissive policy can be, and have been, addressed by the Department's current policy. There have been no incidents in which the current policy failed to achieve the goal of protecting civilians and officers alike to warrant any re-evaluation of the existing policy. Other cities, such as Oakland, Portland, New Orleans, and Milwaukee, which have been held up as examples for San Francisco, have policies very similar to San Francisco's current policy, which allows for a narrow exception to the prohibition against officers shooting at drivers who are using their vehicle as a weapon.

One may wish that threats caused by moving vehicles will end. But in the real world confronting police officers, there will be cases involving violent suspects seeking to harm innocent people using their vehicles. The only question remaining is if the Department and Police Commission will enable officers to make reasonable choices in dangerous, rapidly-evolving situations to save lives. This proposed policy change precludes that.

The DOJ also recommended that the Department "allow this [shooting at drivers of vehicles] under extremely limited circumstances when other options are unavailable and the life of the officer or member of the public is at risk." (DOJ COPS comment 27.)

2. The Department's proposed blanket prohibition against shooting from a moving vehicle should be removed.

Similar to the blanket prohibition on officers shooting at suspects using their vehicle as a weapon, the Department should allow some latitude for situations in which it might be appropriate for an officer to fire from a moving vehicle. For example, if the officer's vehicle is moving slowly to a stop, but has not quite stopped, it would be inappropriate to require the passenger officer who is being fired at by suspects to hold his or her fire until the vehicle has come to a complete halt, assuming that the officer can fire without unnecessarily endangering other people. An effective policy can be crafted using very restrictive language that would allow for an officer to fire in that circumstance.

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- _____
- _____
- Public Correspondence
- _____

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: September 30, 2016
RE: Complaint No. 16063 – Petrelis v. Scott Wiener, San Francisco Board of Supervisors

COMPLAINT

Complainant Michael Petrelis ("Complainant") alleges that San Francisco Board of Supervisors ("BOS") Member Scott Wiener ("Supervisor Wiener") violated public records laws by failing to properly respond to numerous Immediate Disclosure Requests ("IDRs").

COMPLAINANT FILES COMPLAINT

On April 28, 2015, Complainant filed this complaint with the Task Force alleging that Supervisor Wiener failed to provide records he requested on dates ranging from June 22, 2016 to July 7, 2016.

JURISDICTION

Supervisor Wiener is a member of a policy body subject to the provisions of the Sunshine Ordinance governing public records. Supervisor Wiener has not contested jurisdiction to hear this complaint.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code ("Sunshine Ordinance"):

- Section 67.21 governs responses to a public records request.
- Section 67.25 governs responses to IDRs.
- Section 67.29-5 governs calendar keeping.

Section 6253 of the California Public Records Act

- Subsection (c) governs the invoking of extensions.

APPLICABLE CASE LAW

- *none*

BACKGROUND

On dates ranging from June 22, 2016 to July 7, 2016, Complainant sent the following IDRs to Supervisor Wiener:

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 2
RE: Complaint No. 16063 – Petrelis v. Scott Wiener, San Francisco Board of Supervisors

6/22 This is an immediate disclosure request for copies of all emails, texts, faxes, any written correspondence you or anyone on your staff received or sent regarding the tragedy at the queer bar in Orlando on June 12, your vigil and political rally on that date at Castro and Market Streets, the rainbow flag at Harvey Milk Plaza, and the Castro Merchants.

6/23 This is an immediate disclosure request for copies of all emails, texts, any written correspondence received or sent by you or anyone on your staff regarding a memorial at Harvey Milk Plaza for the LGBT and Latino victims of the Orlando gay bar Pulse massacre.

6/24 This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

6/27 This is an immediate disclosure request for copies of all public records requests received by your office from January 1 through June 26, 2016.

7/6 This is an immediate disclosure request for copies of any and all emails, texts and other written correspondence sent or received by you or anyone in your office with your main SF Chronicle mouthpiece Chuck Nevius.

7/7 This is an immediate disclosure request for a copy of your City Hall calendar from June 24 through July 6, 2016, in electronic format.

For each of the requests, Supervisor Wiener's office apparently responded in a timely manner. However, rather than providing responsive records, Supervisor Wiener's office invoked extensions to providing responsive records on the basis that Complainant's numerous requests warranted more time to locate the voluminous responsive records.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Did Complainant eventually receive the desired records?
- If so, how voluminous were the responsive records?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Supervisor Wiener violate Sunshine Ordinance Section 67.21(b) and/or 67.25(a) by failing to adequately respond to Complainant's request in a timely manner?
- Did Supervisor Wiener properly invoke an extension to respond to the records requests under CPRA Section 6253(c)?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 3
RE: Complaint No. 16063 – Petrelis v. Scott Wiener, San Francisco Board of Supervisors

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 4
RE: Complaint No. 16063 – Petrelis v. Scott Wiener, San Francisco Board of Supervisors

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS**

(b) *A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request.* Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

CALIFORNIA PUBLIC RECORDS ACT**SEC. 6253**

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 16063

Michael Petrelis V. Supervisor Scott Wiener, Board of Supervisors

Date filed with SOTF: 07/08/16

Contacts information (Complainant information listed first):

mpetrelis@aol.com (Complainant)

Supervisor Scott Wiener, Adam Taylor (Respondent)

File No. 16063: Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors, 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 and inappropriately invoking an extension of time to respond (Request for calendars for the period of January 1, 2016, through July 8, 2016).

Date public record was requested by Complainant: July 8, 2016

Or

Date of alleged violation/incident: N/A

Administrative Summary if applicable:

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:05 PM
To: SOTF, (BOS)
Subject: One - SOTF complaint: Fwd: Wiener's calendars: Immediate disclosure request.

Dear Victor Young,

This is a complaint with Sunshine Ordinance Task Force against Supervisor Scott Wiener for failure to comply with these sections of our open government statute:

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

It is my contention that Wiener is wrongfully invoked extensions on all of my recent immediate closure requests, which have been clearly identified as such in the subject line and the SOTF needs to consider finding him in violation of the cited sections.

I will send you five more emails, forwards of replies from Wiener's office, for a total of 6 emails to be combined into one SOTF complaint.

Please confirm receipt of all emails. Thanks.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Fri, Jun 24, 2016 4:56 pm
Subject: RE: Wiener's calendars: Immediate disclosure request.

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 18th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Friday, June 24, 2016 2:04 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: Wiener's calendars: Immediate disclosure request.

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 24, 2016 at 1:48:51 PM PDT
To: scott.wiener@sfgov.org
Cc: <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <john.avalos@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <jane.kim@sfgov.org>, <rgerharter@igc.org>
Subject: Wiener's calendars: Immediate disclosure request.

Dear Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

If you have any questions, send them to me and kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
[Facebook.com/PetrelisFiles](https://www.facebook.com/PetrelisFiles)
[Twitter.com/MichaelPetrelis](https://twitter.com/MichaelPetrelis)

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:05 PM
To: SOTF, (BOS)
Subject: Two - Fwd: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Thu, Jul 7, 2016 4:36 pm
Subject: RE: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Hello Mr. Petrelis,

Due to the number of sunshine requests our office is currently processing, we are invoking the 14-day extension to your below request. We will have all responsive documents to you no later than Thursday, July 21st.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Taylor, Adam (BOS)
Sent: Tuesday, June 28, 2016 11:55 AM
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>
Subject: RE: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Hello Mr. Petrelis,

The purpose of an immediate disclosure request is to expedite the City's response to a simple, routine, or otherwise readily answerable request (Admin. Code §67.25(a)). Given the need to search, compile/collect, and review records potentially responsive to your request that spans six months' worth of records, we will require more time and anticipate

an update or response to be provided to you by Friday, July 8th. We will keep you apprised if additional time is required.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Monday, June 27, 2016 4:41 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 27, 2016 at 4:27:35 PM PDT
To: scott.wiener@sfgov.org
Cc: <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <jane.kim@sfgov.org>, <rgerharter@igc.org>, <avimecca@yahoo.com>, <catherine.argumedo@sfgov.org>, <kimo@webnetic.net>, <sotf@brucewolfe.net>, <tim@48hills.org>, <amwashburn@comcast.net>, <grossman356@mac.com>, <ben.rosenfeld@comcast.net>, <dougcomz@mac.com>, <libraryusers2004@yahoo.com>, <rwhartzjr@sbcglobal.net>, <gswooding@gmail.com>, <han467@yahoo.com>, <hopeannette@earthlink.net>, <chaffeej@pacbell.net>, <jay.costa09@gmail.com>, <karenrolph@hotmail.com>, <DerekonVanNess@aol.com>, <editorcitireport@gmail.com>, <rita_august@msn.com>, <pmonette-shaw@earthlink.net>, <ethics.commission@sfgov.org>, <jarrod.flores@sfgov.org>, <johnny.hosey@sfgov.org>, <garrett.chatfield@sfgov.org>, <john.st.croix@sfgov.org>, <steven.massey@sfgov.org>, <leeann.pelham@sfgov.org>, <c.laird@ebar.com>.

<s.hemmelgarn@ebar.com>, <Matthewsbajko@aol.com>, <gilbertrainbow@yahoo.com>, <sovern@kcbs.com>, <danielbergerac@mac.com>, <INFO@CASTROMERCHANTS.Com>, <gzuehls@sfmediaco.com>, <mhowerton@sfxaminer.com>, <gandersen@sfxaminer.com>, <ldudnick@sfxaminer.com>, <joe@sfmediaco.com>, <eve@sfappeal.com>, <tips@sfist.com>, <brock@curbed.com>, <dsaunders@sfchronicle.com>, <cwnevius@sfchronicle.com>, <matierandross@sfchronicle.com>, <acooper@sfchronicle.com>, <bcn@pacbell.net>, <baycitynews@pacbell.net>, <info@milkclub.org>, <president@milkclub.org>, <pac@milkclub.org>, <treasurer@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <Hillary.Ronen@sfgov.org>, <frances.hsieh@sfgov.org>, <john.avalos@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Andrea.Bruss@sfgov.org>, <Julie.Christensen@sfgov.org>, <Catherine.Stefani@sfgov.org>, <Matthias.Mormino@sfgov.org>, <Norman.Yee@sfgov.org>, <info@storefrontpolitical.com>, <mayoredwinlee@sfgov.org>, <mayorsunshinerequests@sfgov.org>, <mayorspressooffice@sfgov.org>, <lisa.ang@sfgov.org>, <christine.falvey@sfgov.org>, <francis.tang@sfgov.org>, <steve.kawa@sfgov.org>, <Aaron.Peskin@sfgov.org>, <jane.kim@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <David.Campos@sfgov.org>, <deirdre.hussey@sfgov.org>

Subject: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Dear Scott Wiener,

This is an immediate disclosure request for copies of all public records requests received by your office from January 1 through June 26, 2016.

Also provide me with copies of any responsive records you released to requesters, and electronic copies are preferred.

I'm especially interested in files pertaining to all of simultaneous records requests your office is processing today.

A note acknowledging receipt of this IDR is requested.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>

Sent: Mon, Jun 27, 2016 2:25 pm

Subject: RE: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 21st (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott

Sent: Monday, June 27, 2016 2:11 PM

To: Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>; Taylor, Adam (BOS) <adam.taylor@sfgov.org>

Subject: Fwd: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com

Date: June 27, 2016 at 2:06:59 PM PDT

To: mpetrelis@aol.com, scott.wiener@sfgov.org

Cc: <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <jane.kim@sfgov.org>, <rgerharter@igc.org>, <avimecca@yahoo.com>

Subject: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Dear Scott Wiener,

This is an immediate disclosure request for copies of all emails sent or received by your scott.wiener@sfgov.org addy, and all texts sent or received by you regarding anything to do with City business and operations, for the week of June 19-25, 2016.

I wish to receive all responsive records in their native format or as PDFs.

If you have any questions, email them to me.

A note acknowledging receipt of this IDR is requested by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: mpetrelis <mpetrelis@aol.com>
To: scott.wiener <scott.wiener@sfgov.org>
Cc: clinton <clinton@clintonfein.com>; c.laird <c.laird@ebar.com>;
David.Campos <David.Campos@sfgov.org>; john.avalos
<john.avalos@sfgov.org>; pmonette-shaw <pmonette-shaw@earthlink.net>;
Matthewsbajko <Matthewsbajko@aol.com>; s.hemmelgarn
<s.hemmelgarn@ebar.com>; president <president@milkclub.org>; pac
<pac@milkclub.org>; sunny.angulo <sunny.angulo@sfgov.org>; Ivy.Lee
<Ivy.Lee@sfgov.org>; mark.farrell <mark.farrell@sfgov.org>; eric.l.mar
<eric.l.mar@sfgov.org>; Nickolas.Pagoulatos <Nickolas.Pagoulatos@sfgov.org>;
katy.tang <katy.tang@sfgov.org>; Wilson.L.Ng <Wilson.L.Ng@sfgov.org>;
frances.hsieh <frances.hsieh@sfgov.org>; john.avalos <john.avalos@sfgov.org>;
conor.johnston <conor.johnston@sfgov.org>; vallie.brown
<vallie.brown@sfgov.org>; london.breed <london.breed@sfgov.org>;
malia.cohen <malia.cohen@sfgov.org>; Aaron.Peskin
<Aaron.Peskin@sfgov.org>; lee.hepner
<lee.hepner@SFGOV1.onmicrosoft.com>; jane.kim <jane.kim@sfgov.org>;
rgerharter <rgerharter@igc.org>
Sent: Fri, Jun 24, 2016 1:48 pm
Subject: Wiener's calendars: Immediate disclosure request.

Dear Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

If you have any questions, send them to me and kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com

[Facebook.com/PetrelisFiles](https://www.facebook.com/PetrelisFiles)

[Twitter.com/MichaelPetrelis](https://twitter.com/MichaelPetrelis)

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:06 PM
To: SOTF, (BOS)
Subject: Three - Fwd: Immediate disclosure request: Wiener's emails on Orlando, vigil & flag

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Sent: Fri, Jun 24, 2016 5:06 pm
Subject: RE: Immediate disclosure request: Wiener's emails on Orlando, vigil & flag

Hello Mr. Petrelis,

Due to the number of simultaneous sunshine requests our office is in the process of completing, we are invoking an extension to the 10 day period and will respond by July 16th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Taylor, Adam (BOS)
Sent: Wednesday, June 22, 2016 5:42 PM
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>
Subject: RE: Immediate disclosure request: Wiener's emails on Orlando, vigil & flag

Hello Mr. Petrelis,

Confirming that we are in receipt of your records request. Due to the search required to respond to your request, we are invoking the 10-day response period. As a result, the deadline to respond to your request is Saturday, July 2nd – although we anticipate submitting all responsive documents to you before then.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Wednesday, June 22, 2016 12:22 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: Immediate disclosure request: Wiener's emails on Orlando, vigil & flag

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 22, 2016 at 12:13:50 PM PDT
To: scott.wiener@sfgov.org
Cc: <commissionermnathan@gmail.com>, <bevan.dufty@gmail.com>, <clinton@clintonfein.com>, <mayoredwinlee@sfgov.org>, <mayorsunshinerequests@sfgov.org>, <mayorspressoffice@sfgov.org>, <lisa.ang@sfgov.org>, <christine.falvey@sfgov.org>, <francis.tang@sfgov.org>, <steve.kawa@sfgov.org>, <Aaron.Peskin@sfgov.org>, <jane.kim@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <David.Campos@sfgov.org>, <hillary.ronen@sfgov.org>, <c.laird@ebar.com>, <s.hemmelgarn@ebar.com>, <Matthewsbajko@aol.com>, <gilbertrainbow@yahoo.com>, <sovern@kcbcs.com>, <danielbergerac@mac.com>, <INFO@CASTROMERCHANTS.Com>, <gzuehls@sfmediaco.com>, <mhowerton@sfexaminer.com>, <gandersen@sfexaminer.com>, <ldudnick@sfexaminer.com>, <joe@sfmediaco.com>, <eve@sfappeal.com>, <tips@sfist.com>, <brock@curbed.com>, <dsaunders@sfchronicle.com>, <cwnevius@sfchronicle.com>, <matierandross@sfchronicle.com>, <acooper@sfchronicle.com>, <bcn@pacbell.net>, <baycitynews@pacbell.net>, <info@milkclub.org>, <president@milkclub.org>, <pac@milkclub.org>, <treasurer@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <john.avalos@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Andrea.Bruss@sfgov.org>, <Julie.Christensen@sfgov.org>, <Catherine.Stefani@sfgov.org>, <Matthias.Mormino@sfgov.org>, <Norman.Yee@sfgov.org>, <info@storefrontpolitical.com>, <andrea@castrocbd.org>, <isaklindenauer@gmail.com>, <bill.f.wilson@gmail.com>

<vediva@gmail.com>

Subject: Immediate disclosure request: Wiener's emails on Orlando, vigil & flag

Dear Scott Wiener,

This is an immediate disclosure request for copies of all emails, texts, faxes, any written correspondence you or anyone on your staff received or sent regarding the tragedy at the queer bar in Orlando on June 12, your vigil and political rally on that date at Castro and Market Streets, the rainbow flag at Harvey Milk Plaza, and the Castro Merchants.

My request cover the period from June 12 through 12 noon today.

If you have any questions or need clarification, don't hesitate to contact me.

Kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com

Facebook.com/PetrelisFiles

Twitter.com/MichaelPetrelis

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:06 PM
To: SOTF, (BOS)
Subject: Four - Fwd: Immediate disclosure request: Emails abt Orlando memorial at Milk Plaza

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Fri, Jun 24, 2016 5:00 pm
Subject: RE: Immediate disclosure request: Emails abt Orlando memorial at Milk Plaza

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 17th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Thursday, June 23, 2016 1:15 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: Immediate disclosure request: Emails abt Orlando memorial at Milk Plaza

Scott Wiener

Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 23, 2016 at 1:11:12 PM PDT
To: David.Campos@sfgov.org, scott.wiener@sfgov.org, Hillary.Ronen@sfgov.org
Cc: <c.laird@ebar.com>, <vcdiva@gmail.com>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <BettyS@bettyslist.com>, <cwnevius@sfchronicle.com>
Subject: Immediate disclosure request: Emails abt Orlando memorial at Milk Plaza

Dear David Campos and Scott Wiener,

This is an immediate disclosure request for copies of all emails, texts, any written correspondence received or sent by you or anyone on your staff regarding a memorial at Harvey Milk Plaza for the LGBT and Latino victims of the Orlando gay bar Pulse massacre.

My IDR covers the period from June 12 through today, 12 noon.

Got questions? Email them to me.

Kindly confirm receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:06 PM
To: SOTF, (BOS)
Subject: Five - Fwd: 6/24 - 7/6/16: Wiener's calendar: Immediate disclosure request.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Sent: Thu, Jul 7, 2016 4:32 pm
Subject: RE: 6/24 - 7/6/16: Wiener's calendar: Immediate disclosure request.

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we are invoking the 10-day response period. As a result, the deadline to respond to your request is Saturday, July 17th and we will let you know if additional time is needed.

Additionally, we will process your requests in the order that they were received.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Thursday, July 07, 2016 4:26 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: 6/24 - 7/6/16: Wiener's calendar: Immediate disclosure request.

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: July 7, 2016 at 3:47:46 PM PDT
To: scott.wiener@sfgov.org
Cc: <mpetrelis@aol.com>, <scott.wiener@sfgov.org>, <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <jane.kim@sfgov.org>, <rgerharter@igc.org>, <avimecca@yahoo.com>, <catherine.argumedo@sfgov.org>, <kimo@webnetic.net>, <sotf@brucewolfe.net>, <tim@48hills.org>, <amwashburn@comcast.net>, <grossman356@mac.com>, <ben.rosenfeld@comcast.net>, <dougcomz@mac.com>, <libraryusers2004@yahoo.com>, <rwhartzjr@sbcglobal.net>, <gswooding@gmail.com>, <han467@yahoo.com>, <hopeannette@earthlink.net>, <chaffeej@pacbell.net>, <jay.costa09@gmail.com>, <karenrolph@hotmail.com>, <DerekonVanNess@aol.com>, <editorcitireport@gmail.com>, <rita_august@msn.com>, <ethics.commission@sfgov.org>, <jarrod.flores@sfgov.org>, <johnny.hosey@sfgov.org>, <garrett.chatfield@sfgov.org>, <john.st.croix@sfgov.org>, <steven.massey@sfgov.org>, <leeann.pelham@sfgov.org>, <gilbertrainbow@yahoo.com>, <sovern@kcbs.com>, <danielbergerac@mac.com>, <INFO@CASTROMERCHANTS.Com>, <gzuehls@sfmediaco.com>, <mhowerton@sfexaminer.com>, <gandersen@sfexaminer.com>, <ldudnick@sfexaminer.com>, <joe@sfmediaco.com>, <eve@sfappeal.com>, <tips@sfist.com>, <brock@curbed.com>, <dsaunders@sfchronicle.com>, <cwnevius@sfchronicle.com>, <matierandross@sfchronicle.com>, <acooper@sfchronicle.com>, <bcn@pacbell.net>, <baycitynews@pacbell.net>, <info@milkclub.org>, <treasurer@milkclub.org>, <Hillary.Ronen@sfgov.org>, <Andrea.Bruss@sfgov.org>, <Julie.Christensen@sfgov.org>, <Catherine.Stefani@sfgov.org>, <Matthias.Mormino@sfgov.org>, <Norman.Yee@sfgov.org>, <info@storefrontpolitical.com>
Subject: 6/24 - 7/6/16: Wiener's calendar: Immediate disclosure request.

Dear Ambitious Public Servant Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar from June 24 through July 6, 2016, in electronic format.

Can you believe what an a-hole Sup. London Breed was about releasing her calendar back in 2015 and the lengths she went to to deny public access to the records, leading to a complaint at the Sunshine Ordinance Task Force, which found her derelict in her transparency requirement?

It's amazing how some San Francisco electeds think they're above transparency laws.

Here's some background on what led her to be found non-compliant by the SOTF regarding open govt:

http://mpetrelis.blogspot.com/2015/03/sup_13.html

A note acknowledging receipt of this IDR is requested by the close of business today.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Fri, Jun 24, 2016 4:58 pm
Subject: RE: Wiener's calendars: Immediate disclosure request.

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 18th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Ng, Wilson (BOS)
Sent: Friday, June 24, 2016 1:51 PM
To: Fryman, Ann (BOS) <ann.fryman@sfgov.org>; Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>
Subject: FW: Wiener's calendars: Immediate disclosure request.

Wilson L. Ng
Records Manager
San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Phone: (415) 554-7725

Web: www.sfbos.org



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From: mpetrelis@aol.com [<mailto:mpetrelis@aol.com>]

Sent: Friday, June 24, 2016 1:49 PM

To: Wiener, Scott <scott.wiener@sfgov.org>

Cc: clinton@clintonfein.com; c.laird@ebar.com; Campos, David (BOS)

<david.campos@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; pmonette-shaw@earthlink.net; Matthewsbajko@aol.com; s.hemmelgarn@ebar.com;

president@milkclub.org; pac@milkclub.org; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>;

Lee, Ivy (BOS) <ivy.lee@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Mar, Eric

(BOS) <eric.mar@sfgov.org>; Pagoulatos, Nickolas (BOS) <nickolas.pagoulatos@sfgov.org>;

Tang, Katy (BOS) <katy.tang@sfgov.org>; Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>; Hsieh,

Frances (BOS) <frances.hsieh@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>;

Johnston, Conor (BOS) <conor.johnston@sfgov.org>; Brown, Vallie (ECN)

<vallie.brown@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Cohen, Malia

(BOS) <malia.cohen@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Hepner,

Lee (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>; Kim, Jane (BOS) <jane.kim@sfgov.org>;

rgerharter@igc.org

Subject: Wiener's calendars: Immediate disclosure request.

Dear Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

If you have any questions, send them to me and kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com

[Facebook.com/PetrelisFiles](https://www.facebook.com/PetrelisFiles)

[Twitter.com/MichaelPetrelis](https://twitter.com/MichaelPetrelis)

Young, Victor

From: mpetrelis@aol.com
Sent: Friday, July 08, 2016 2:07 PM
To: SOTF, (BOS)
Subject: Six - Fwd: Immediate public records request: Wiener's emails to/from Chron mouthpiece Nevius

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Sent: Wed, Jul 6, 2016 3:12 pm
Subject: RE: Immediate public records request: Wiener's emails to/from Chron mouthpiece Nevius

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 30th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Wednesday, July 06, 2016 2:59 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: FW: Immediate public records request: Wiener's emails to/from Chron mouthpiece Nevius

Scott Wiener

Member, Board of Supervisors
(415) 554-6968

From: mpetrelis@aol.com [<mailto:mpetrelis@aol.com>]

Sent: Wednesday, July 06, 2016 2:55 PM

To: mpetrelis@aol.com; Wiener, Scott <scott.wiener@sfgov.org>; clinton@clintonfein.com; c.laird@ebar.com; Campos, David (BOS) <david.campos@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; pmonette-shaw@earthlink.net; Matthewsbajko@aol.com; s.hemmelgarn@ebar.com; president@milkclub.org; pac@milkclub.org; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; Lee, Ivy (BOS) <ivy.lee@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Mar, Eric (BOS) <eric.mar@sfgov.org>; Pagoulatos, Nickolas (BOS) <nickolas.pagoulatos@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>; Hsieh, Frances (BOS) <frances.hsieh@sfgov.org>; Johnston, Conor (BOS) <conor.johnston@sfgov.org>; Brown, Vallie (ECN) <vallie.brown@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Hepner, Lee (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>; Kim, Jane (BOS) <jane.kim@sfgov.org>; rgerharter@igc.org; avimecca@yahoo.com; Argumedo, Catherine (ETH) <catherine.argumedo@sfgov.org>; kimo@webnetic.net; sotf@brucewolfe.net; tim@48hills.org; amwashburn@comcast.net; grossman356@mac.com; ben.rosenfeld@comcast.net; dougcomz@mac.com; libraryusers2004@yahoo.com; rwhartzjr@sbcglobal.net; gswooding@gmail.com; han467@yahoo.com; hopeannette@earthlink.net; chaffeej@pacbell.net; jay.costa09@gmail.com; karenrolph@hotmail.com; DerekonVanNess@aol.com; editorcitireport@gmail.com; rita_august@msn.com; Ethics Commission, (ETH) <ethics.commission@sfgov.org>; Flores, Jarrod (ETH) <jarrod.flores@sfgov.org>; Hosey, Johnny <johnny.hosey@sfgov.org>; Chatfield, Garrett (DPH) <garrett.chatfield@sfdph.org>; St.Croix, John <john.st.croix@sfgov.org>; Massey, Steven (ETH) <steven.massey@sfgov.org>; Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>; gilbertrainbow@yahoo.com; sovern@kcbs.com; danielbergerac@mac.com; INFO@CASTROMERCHANTS.Com; gzuehls@sfmediaco.com; mhowerton@sfexaminer.com; gandersen@sfexaminer.com; ldudnick@sfexaminer.com; joe@sfmediaco.com; eve@sfappeal.com; tips@sfist.com; brock@curbed.com; dsaunders@sfchronicle.com; cwnevius@sfchronicle.com; matierandross@sfchronicle.com; acooper@sfchronicle.com; bcn@pacbell.net; baycitynews@pacbell.net; info@milkclub.org; treasurer@milkclub.org; Ronen, Hillary <hillary.ronen@sfgov.org>; Bruss, Andrea (BOS) <andrea.bruss@sfgov.org>; Christensen, Julie (BOS) <julie.christensen@sfgov.org>; Stefani, Catherine (ADM) <catherine.stefani@sfgov.org>; Mormino, Matthias (BOS) <matthias.mormino@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; info@storefrontpolitical.com

Subject: Immediate public records request: Wiener's emails to/from Chron mouthpiece Nevius

Dear Ambitious Public Servant Scott Wiener,

This is an immediate disclosure request for copies of any and all emails, texts and other written correspondence sent or received by you or anyone in your office with your main SF Chronicle mouthpiece Chuck Nevius.

He sure does like putting you frequently and most glowingly, as if he were your PR agent, in his columns, doesn't he?

My IDR is for responsive records from January 1, 2011, through today's date.

If you have any questions, send them my way.

An acknowledgement that you've received and are processing this IDR is requested by the close of business today.

* * * *

MPetrelis.Blogspot.com

[Facebook.com/PetrelisFiles](https://www.facebook.com/PetrelisFiles)

[Twitter.com/MichaelPetrelis](https://twitter.com/MichaelPetrelis)

Young, Victor

From: mpetrelis@aol.com
Sent: Tuesday, July 19, 2016 12:43 PM
To: SOTF, (BOS); Ng, Wilson (POL); DerekonVanNess@aol.com; ben.rosenfeld@comcast.net; chaffeej@pacbell.net; dougcomz@mac.com; editorcitireport@gmail.com; grossman356@mac.com; gswooding@gmail.com; han467@yahoo.com; hopeannette@earthlink.net; jay.costa09@gmail.com; karenrolph@hotmail.com; libraryusers2004@yahoo.com; rita_august@msn.com; rwhartzjr@sbcglobal.net; sotf@brucewolfe.net; Pmonette-shaw@earthlink.net; kimo@webnetic.net
Subject: Wiener complaint: Part one - Fwd: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016
Attachments: 071816 Michael Petrelis Response.pdf

Dear Victor Young,

I recently lodged a multi-pronged complaint against Supervisor Scott Wiener for failure to comply with several immediate disclosure requests, including one for his calendar from January through June 2016.

By mistake, his office yesterday sent me the January calendar, see attached, in an email about my request for his public records request logs.

After pointing this out, Wiener's office replied with another email, which will be forwarded to you. In it, they ask me to disregard the error.

Well, no, I won't because it raised the question of how Wiener handles IDRs. I believe the SOTF members should make his protocols for requests as transparent as possible during the complaint process.

Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Mon, Jul 18, 2016 4:53 pm
Subject: RE: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Hello Mr. Petrelis,

Please see attached records responsive to your request that covers January 1st through January 31st.

Given the voluminous amount of information requested, we will require additional time to export and review the six months of records requested, and provide them to you within reason. Additional records responsive to your request will be provided on an incremental rolling basis as soon as reasonably possible, without delay (Administrative Code, Section 67.25(d)).

We anticipate providing you with the next incremental batch of responsive records covering February 1st through February 29th by Monday, July 25th and will keep you apprised if there are any updates.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Taylor, Adam (BOS)
Sent: Thursday, July 07, 2016 4:34 PM
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>
Subject: RE: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Hello Mr. Petrelis,

Due to the number of sunshine requests our office is currently processing, we are invoking the 14-day extension to your below request. We will have all responsive documents to you no later than Thursday, July 21st.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Taylor, Adam (BOS)
Sent: Tuesday, June 28, 2016 11:55 AM
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>
Subject: RE: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Hello Mr. Petrelis,

The purpose of an immediate disclosure request is to expedite the City's response to a simple, routine, or otherwise readily answerable request (Admin. Code §67.25(a)). Given the need to search, compile/collect, and review records potentially responsive to your request that spans six months' worth of records, we will require more time and anticipate an update or response to be provided to you by Friday, July 8th. We will keep you apprised if additional time is required.

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Monday, June 27, 2016 4:41 PM
To: Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>
Subject: Fwd: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 27, 2016 at 4:27:35 PM PDT
To: scott.wiener@sfgov.org
Cc: <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <jane.kim@sfgov.org>, <rgerharter@igc.org>, <avimecca@yahoo.com>, <catherine.argumedo@sfgov.org>, <kimo@webnetic.net>, <soff@brucewolfe.net>, <tim@48hills.org>, <amwashburn@comcast.net>, <grossman356@mac.com>, <ben.rosenfeld@comcast.net>, <dougcomz@mac.com>, <libraryusers2004@yahoo.com>, <rwhartzjr@sbcglobal.net>, <gswooding@gmail.com>, <han467@yahoo.com>, <hopeannette@earthlink.net>, <chaffeej@pacbell.net>, <jay.costa09@gmail.com>, <karenrolph@hotmail.com>, <DerekonVanNess@aol.com>, <editorcitireport@gmail.com>, <rita_august@msn.com>.

<pmonette-shaw@earthlink.net>, <ethics.commission@sfgov.org>, <jarrod.flores@sfgov.org>, <johnny.hosey@sfgov.org>, <garrett.chatfield@sfgov.org>, <john.st.croix@sfgov.org>, <steven.massey@sfgov.org>, <leeann.pelham@sfgov.org>, <c.laird@ebar.com>, <s.hemmelgarn@ebar.com>, <Matthewsbajko@aol.com>, <gilbertrainbow@yahoo.com>, <sovern@kcbs.com>, <danielbergerac@mac.com>, <INFO@CASTROMERCHANTS.Com>, <gzuehls@smediaco.com>, <mhowerton@sfoxaminer.com>, <gandersen@sfoxaminer.com>, <ldudnick@sfoxaminer.com>, <joe@smediaco.com>, <eve@sfoxappeal.com>, <tips@sfrist.com>, <brock@curbed.com>, <dsaunders@sfoxchronicle.com>, <cwnevius@sfoxchronicle.com>, <matierandross@sfoxchronicle.com>, <acooper@sfoxchronicle.com>, <bcn@pacbell.net>, <baycitynews@pacbell.net>, <info@milkclub.org>, <president@milkclub.org>, <pac@milkclub.org>, <treasurer@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <Hillary.Ronen@sfgov.org>, <frances.hsieh@sfgov.org>, <john.avalos@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>, <Andrea.Bruss@sfgov.org>, <Julie.Christensen@sfgov.org>, <Catherine.Stefani@sfgov.org>, <Matthias.Mormino@sfgov.org>, <Norman.Yee@sfgov.org>, <info@storefrontpolitical.com>, <mayoredwinlee@sfgov.org>, <mayorsunshinerequests@sfgov.org>, <mayorspressoffice@sfgov.org>, <lisa.ang@sfgov.org>, <christine.falvey@sfgov.org>, <francis.tang@sfgov.org>, <steve.kawa@sfgov.org>, <Aaron.Peskin@sfgov.org>, <jane.kim@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>, <David.Campos@sfgov.org>, <deirdre.hussey@sfgov.org>

Subject: Immediate disclosure request: Wiener's FOIA logs: Jan - June 2016

Dear Scott Wiener,

This is an immediate disclosure request for copies of all public records requests received by your office from January 1 through June 26, 2016.

Also provide me with copies of any responsive records you released to requesters, and electronic copies are preferred.

I'm especially interested in files pertaining to all of simultaneous records requests your office is processing today.

A note acknowledging receipt of this IDR is requested.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>

To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Mon, Jun 27, 2016 2:25 pm
Subject: RE: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 21st (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Wiener, Scott
Sent: Monday, June 27, 2016 2:11 PM
To: Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>; Fryman, Ann (BOS) <ann.fryman@sfgov.org>;
Taylor, Adam (BOS) <adam.taylor@sfgov.org>
Subject: Fwd: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Scott Wiener
Member, Board of Supervisors

Begin forwarded message:

From: mpetrelis@aol.com
Date: June 27, 2016 at 2:06:59 PM PDT
To: mpetrelis@aol.com, scott.wiener@sfgov.org
Cc: <clinton@clintonfein.com>, <c.laird@ebar.com>, <David.Campos@sfgov.org>, <john.avalos@sfgov.org>, <pmonette-shaw@earthlink.net>, <Matthewsbajko@aol.com>, <s.hemmelgarn@ebar.com>, <president@milkclub.org>, <pac@milkclub.org>, <sunny.angulo@sfgov.org>, <Ivy.Lee@sfgov.org>, <mark.farrell@sfgov.org>, <eric.l.mar@sfgov.org>, <Nickolas.Pagoulatos@sfgov.org>, <katy.tang@sfgov.org>, <Wilson.L.Ng@sfgov.org>, <frances.hsieh@sfgov.org>, <conor.johnston@sfgov.org>, <vallie.brown@sfgov.org>, <london.breed@sfgov.org>, <malia.cohen@sfgov.org>,

<Aaron.Peskin@sfgov.org>, <lee.hepner@SFGOV1.onmicrosoft.com>,
<jane.kim@sfgov.org>, <rgerharter@igc.org>, <avimecca@yahoo.com>
Subject: Immediate disclosure request: All Wiener emails, texts: 6/19-6/25, 2016

Dear Scott Wiener,

This is an immediate disclosure request for copies of all emails sent or received by your scott.wiener@sfgov.org addy, and all texts sent or received by you regarding anything to do with City business and operations, for the week of June 19-25, 2016.

I wish to receive all responsive records in their native format or as PDFs.

If you have any questions, email them to me.

A note acknowledging receipt of this IDR is requested by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: mpetrelis <mpetrelis@aol.com>
To: scott.wiener <scott.wiener@sfgov.org>
Cc: clinton <clinton@clintonfein.com>; c.laird <c.laird@ebar.com>;
David.Campos <David.Campos@sfgov.org>; john.avalos
<john.avalos@sfgov.org>; pmonette-shaw <pmonette-shaw@earthlink.net>;
Matthewsbajko <Matthewsbajko@aol.com>; s.hemmelgarn
<s.hemmelgarn@ebar.com>; president <president@milkclub.org>; pac
<pac@milkclub.org>; sunny.angulo <sunny.angulo@sfgov.org>; Ivy.Lee
<Ivy.Lee@sfgov.org>; mark.farrell <mark.farrell@sfgov.org>; eric.l.mar
<eric.l.mar@sfgov.org>; Nickolas.Pagoulatos <Nickolas.Pagoulatos@sfgov.org>;
katy.tang <katy.tang@sfgov.org>; Wilson.L.Ng <Wilson.L.Ng@sfgov.org>;
frances.hsieh <frances.hsieh@sfgov.org>; john.avalos <john.avalos@sfgov.org>;
conor.johnston <conor.johnston@sfgov.org>; vallie.brown
<vallie.brown@sfgov.org>; london.breed <london.breed@sfgov.org>;
malia.cohen <malia.cohen@sfgov.org>; Aaron.Peskin
<Aaron.Peskin@sfgov.org>; lee.hepner
<lee.hepner@SFGOV1.onmicrosoft.com>; jane.kim <jane.kim@sfgov.org>;
rgerharter <rgerharter@igc.org>

Sent: Fri, Jun 24, 2016 1:48 pm

Subject: Wiener's calendars: Immediate disclosure request.

Dear Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

If you have any questions, send them to me and kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com

[Facebook.com/PetrelisFiles](https://www.facebook.com/PetrelisFiles)

[Twitter.com/MichaelPetrelis](https://twitter.com/MichaelPetrelis)

Young, Victor

From: mpetrelis@aol.com
Sent: Tuesday, July 19, 2016 12:47 PM
To: SOTF, (BOS); Ng, Wilson (POL); DerekonVanNess@aol.com; ben.rosenfeld@comcast.net; chaffeej@pacbell.net; dougcomz@mac.com; editorcitireport@gmail.com; grossman356@mac.com; gswooding@gmail.com; han467@yahoo.com; hopeannette@earthlink.net; jay.costa09@gmail.com; karenrolph@hotmail.com; libraryusers2004@yahoo.com; rita_august@msn.com; rwhartzjr@sbcglobal.net; sotf@brucewolfe.net; Pmonette-shaw@earthlink.net; kimo@webnetic.net
Subject: Wiener complaint: Part TWO - Fwd: Wiener's calendars: Immediate disclosure request.
Attachments: 071816 Michael Petrelis Response.pdf

Dear Victor Young,

Here is part two of emails I wish for you to add to my complaint against Wiener. He was supposed to produce all of his requested calendars by yesterday, but instead won't produce the needed records for another week and then it will be for only February.

The SOTF needs to determine why he can't produced these records in a timely and compliant fashion and if he's violating the sunshine law, releasing regularly produced records in dribs and drabs.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Taylor, Adam (BOS) (BOS) <adam.taylor@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) (BOS) <wilson.l.ng@sfgov.org>
Sent: Mon, Jul 18, 2016 7:23 pm
Subject: RE: Wiener's calendars: Immediate disclosure request.

Hello Mr. Petrelis,

Please disregard my previous email, and see the attached PDF for all records responsive to your request that covers January 1st through January 31st.

Given the voluminous amount of information requested, we will require additional time to export and review the six months of records requested, and provide them to you within reason. Additional records responsive to your request will be provided on an incremental rolling basis as soon as reasonably possible, without delay (Administrative Code, Section 67.25(d)).

We anticipate providing you with the next incremental batch of responsive records covering February 1st though February 29th by Monday, July 25th and will keep you apprised if there are any updates.

Best,

Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Taylor, Adam (BOS)
Sent: Friday, June 24, 2016 4:57 PM
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>
Cc: Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>
Subject: RE: Wiener's calendars: Immediate disclosure request.

Hello Mr. Petrelis,

I'm confirming that we are in receipt of your records request. Due to the search required to respond to your request, as well as the number of simultaneous sunshine requests our office is in the process of completing, we will respond by July 18th (the initial 10 calendar days inclusive of a 14 calendar day extension).

Best,
Adam

Adam Taylor
Legislative Aide
Office of Supervisor Scott Wiener
1 Dr. Carlton B. Goodlett Place
City Hall, Room 274
San Francisco, CA 94102
(415) 554-6968

From: Ng, Wilson (BOS)
Sent: Friday, June 24, 2016 1:51 PM
To: Fryman, Ann (BOS) <ann.fryman@sfgov.org>; Taylor, Adam (BOS) <adam.taylor@sfgov.org>; Cretan, Jeff (BOS) <jeff.cretan@sfgov.org>
Subject: FW: Wiener's calendars: Immediate disclosure request.

Wilson L. Ng
Records Manager
San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Phone: (415) 554-7725
Web: www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

Disclosures: Personal information that is provided in communications to the Clerk of the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

From: mpetrelis@aol.com [<mailto:mpetrelis@aol.com>]

Sent: Friday, June 24, 2016 1:49 PM

To: Wiener, Scott <scott.wiener@sfgov.org>

Cc: clinton@clintonfein.com; c.laird@ebar.com; Campos, David (BOS) <david.campos@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; pmonette-shaw@earthlink.net; Matthewsbajko@aol.com; s.hemmelgarn@ebar.com; president@milkclub.org; pac@milkclub.org; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; Lee, Ivy (BOS) <ivy.lee@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Mar, Eric (BOS) <eric.mar@sfgov.org>; Pagoulatos, Nickolas (BOS) <nickolas.pagoulatos@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Ng, Wilson (BOS) <wilson.l.ng@sfgov.org>; Hsieh, Frances (BOS) <frances.hsieh@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; Johnston, Conor (BOS) <conor.johnston@sfgov.org>; Brown, Vallie (ECN) <vallie.brown@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Hepner, Lee (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>; Kim, Jane (BOS) <jane.kim@sfgov.org>; rgerharter@igc.org

Subject: Wiener's calendars: Immediate disclosure request.

Dear Scott Wiener,

This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs.

If you have any questions, send them to me and kindly acknowledge receipt of this IDR by the close of business today.

Regards,
Michael Petrelis

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

Scott-City Business

Mon Jan 4, 2016

11am - 12pm Nicole Elliott, Jason Elliott, Tony Winnicker

Calendar: Scott-City Business
Created by: Andres Power
Description: Subject: Vehicle License Fee

12:30pm - 1:30pm Adam Taylor, Andres Power, Jeff Cretan

Video call:
https://plus.google.com/hangouts/_/swadmin.org/staff-meeting?hceid=c3dhZG1pbi5vcmdfMjdsOX
Calendar: Scott-City Business
Created by: Jeff Cretan
Description: Subject: Standing staff meeting

1:30pm - 2pm Susannah Robbins

Calendar: Scott-City Business
Created by: Andres Power
Description: Subject: Prevailing wage

Tue Jan 5, 2016

10am - 11am NVTs Groundbreaking*

Calendar: Scott-City Business
Created by: Jeff Cretan
Description:
Subject: Noe Valley Town Square Groundbreaking *More than ten meeting attendees

1pm - 1:30pm Alan Dechert

Where: 274
Calendar: Scott-City Business
Created by: Jeff Cretan
Description: Subject: Open Source Voting

1:30pm - 2pm Carmen Chu

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: Check-in regarding Assessor's Office

3pm - 3:30pm John Rahaim, AnMarie Rodgers

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description:
Subject: Association of Bay Area Governments, Metropolitan Transportation Commission

4pm - 4:30pm Tilly Chang

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: San Francisco County Transportation Authority

4:30pm - 5pm Alyssa Wu, Raymond Kwan

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: Gentrification

Scott-City Business

Wed Jan 6, 2016

10am - 11am Ben Casselman

Where: The Grove Hayes Valley, 301 Hayes St, San Francisco, CA 94102, United States

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Affordable housing

Thu Jan 7, 2016

11am - 12pm Dolores Park Hard Hat Tour

Where: Mission Dolores Park, 19th & Dolores St, San Francisco, CA 94114, United States

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Dolores Park construction hard hat tour

2:30pm - 3pm David Noyola, Kellyn Blossom, Wayne Ting

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Uber

3pm - 3:15pm Debra Walker

Where: Board chambers

Calendar: Scott-City Business

Created by: Scott Wiener

Description: Subject: Swearing in to Building Inspection Commission

3:30pm - 4pm Edwin Lee

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Standing meeting

4pm - 4:30pm Angela Calvillo

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Budget

4:30pm - 5pm Karin Johnston, Jack Sylvan

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Water recycling

Fri Jan 8, 2016

10:30am - 11am SOTA Students*

Where: Chambers

Calendar: Scott-City Business

Created by: Andres Power

Description:

Subject: Meet & greet with School of the Arts students *More than ten meeting attendees

Scott-City Business

Mon Jan 11, 2016

10:30am - 11am Golden Gate Restaurant Association*

Where: City Hall, Room 201

Calendar: Scott-City Business

Created by: Adam Taylor

Description:

Subject: Supervisor Wiener's 2016 public policy agenda *More than ten meeting attendees

11am - 12pm Michael Bott

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Fire Trucks

12:30pm - 1pm Naomi Kelly

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Short Term Rentals

1:30pm - 5pm Land Use & Transportation Committee

Where: John L. Taylor Committee Room, Room 263

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Land Use and Transportation Committee

4pm - 5pm

Steve Kawa, Jason Elliott, Ben Rosenfeild, Kate Howard, Gillian Gillett

Calendar: Scott-City Business

Created by: Andres Power

Description: Subject: Transportation measures

5:30pm - 6:30pm Small Business Commision

Calendar: Scott-City Business

Created by: Andres Power

Description: Subjects: Tobacco 21, Subway Master Plan

Tue Jan 12, 2016

10:30am - 11am Heather Knight

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Paid parental leave

2pm - 5pm Board of Supervisors

Where: City Hall, Board Chamber

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Board of Supervisors

Scott-City Business

Wed Jan 13, 2016

9:30am - 12pm MTC - Committee Meetings

Where: Metropolitan Transportation Commission, 101 8th Street, Oakland CA

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Metropolitan Transportation Commission committees

10:15am - 10:30am Danielle Venton

Where: 707-738-3646

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Paid parental leave

1pm - 3pm SF Bay Restoration Authority

Where: 1330 Broadway, 11th Floor Conference Room, Oakland

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: San Francisco Bay Restoration Authority

4pm - 4:30pm Steve Kawa, Jason Elliott, Gillian Gillett, Melissa Howard

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Transportation

4:30pm - 5:30pm Los Angeles County Water Officials*

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description:

Subject: San Francisco's non-potable water program *More than ten meeting attendees

5:30pm - 5:45pm Mark Kelly

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Paid parental leave

Thu Jan 14, 2016

9:30am - 10am Taylor Jordan, Rebecca Lytle

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Federal Credit Union housing loan program

10am - 10:30am Greg Hulsizer, Steve Stamos

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description:

Subject: San Francisco County Transportation Authority organizational study and assessment interview

10:30am - 11am Roger Rudick

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Streetsblog interview

Scott-City Business

11am - 12:30pm Rules Committee

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: San Francisco Rules Committee

1:30pm - 2pm Assault Weapons Ban Press Conference*

Where: 455 Golden Gate Avenue, 14th Floor Conference Room

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Assault Weapons Ban *More than ten meeting attendees

6pm - 8pm District 8 Public Safety Meeting*

Where:

Saint Philip the Apostle Church, 725 Diamond St, San Francisco, CA 94114, United States

Calendar: Scott-City Business

Created by: Adam Taylor

Description:

Subject: District 8 public safety community meeting *More than ten meeting attendees

Fri Jan 15, 2016

12:30pm - 1:30pm Office Hours*

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Standing constituent office hours *More than ten meeting attendees

1:30pm - 2pm Jeremy Ambers

Where: 274

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Robot Dance Party short film

Tue Jan 19, 2016

10:30am - 11:30am Chinese Press Availability

Where: 671 Broadway, San Francisco, CA 94133, USA

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Public safety media availability

12pm - 12:30pm Rebecca Rolfe, Roberto Ordeñana

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Pink Party

2pm - 4pm Health Commission

Where: 101 Grove, 3rd Floor, room 300

Calendar: Scott-City Business

Created by: Andres Power

Description: Subject: San Francisco Health Commission

4pm - 4:30pm Tom Hui

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Department of Building Inspection & District 8

Scott-City Business

Wed Jan 20, 2016

10am - 11:30am Budget and Finance Committee

Where: City Hall, Board Chamber

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Budget and Finance Committee

1:30pm - 2pm Lamar Anderson

Where: 415-229-0607

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Affordable housing legislation

2pm - 2:15pm Harlan Kelly, Juliet Ellis

Calendar: Scott-City Business

Created by: Andres Power

Description:

Subject: Waiver of Certain Contract Requirements for Project Delivery Agreement for New Central Shops Facilities - Oryx Development I, LLC - \$55,000,000 Project Cost; Interdepartmental Property Transfers

2:30pm - 3pm Mark Ryle

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Project Open Hand

3:15pm - 3:45pm Joanne Hayes-White

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Check-in regarding fire department

4pm - 4:30pm Zach Goldfine

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Public financing system

Thu Jan 21, 2016

10:30am - 1pm Government Audit and Oversight Committee

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: San Francisco Government Audit and Oversight Committee

1pm - 2pm Adam Taylor, Andres Power, Jeff Cretan

Video call:

https://plus.google.com/hangouts/_/swadmin.org/staff-meeting?hceid=c3dhZG1pbi5vcmdfMjdsOX

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Standing staff meeting

3pm - 3:30pm Tilly Chang

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco County Transportation Authority

Scott-City Business

3:30pm - 4pm Elizabeth Ferber, Ron Groepper

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: Kaiser specialty drug pricing structure

4pm - 4:30pm Tom Radulovich, Nick Josefowitz

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: Late Night Transportation

4:30pm - 5pm Joanna Ruiz-Perez, Jay Nunez

Where: City Hall, Room 274
Calendar: Scott-City Business
Created by: Adam Taylor
Description:
Subject: Introduction to Joanna Ruiz-Perez, Boys & Girls Club Columbia Park Clubhouse Youth of the Year

Fri Jan 22, 2016

7am - 7:15am PH: Ted Goldberg

Where: He will call you
Calendar: Scott-City Business
Created by: Jeff Cretan
Description: KQED interview

9am - 10am GGBH&TD - GAPI Committee

Video call:
https://plus.google.com/hangouts/_/swadmin.org/ggbh-td-gapi?hceid=c3dhZG1pbi5vcmdfMjdsOXI
Where: Board Room, Administration Building, Golden Gate Bridge Toll Plaza
Calendar: Scott-City Business
Created by: Adam Taylor
Description:
Subject: Golden Gate Bridge Highway & Transportation District Governmental Affairs & Public Information Committee

10am - 11:30am GGBH&TD - Board of Directors

Video call:
https://plus.google.com/hangouts/_/swadmin.org/ggbh-td-board?hceid=c3dhZG1pbi5vcmdfMjdsO
Where: Board Room, Administration Building, Golden Gate Bridge Toll Plaza
Calendar: Scott-City Business
Created by: Adam Taylor
Description: Subject: Golden Gate Bridge Highway & Transportation Board

2pm - 3pm Parental Leave with Business Community*

Calendar: Scott-City Business
Created by: Andres Power
Description: Subject: Paid parental leave *More than ten meeting attendees

Scott-City Business

Mon Jan 25, 2016

9:30am - 10am Grace Crunican, Tamar Allen

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description:

Subjects: BART's Expenditure Plan for the proposed Bond Measure, Vehicle License Fee

1:30pm - 5pm Land Use & Transportation Committee

Where: John L. Taylor Committee Room, Room 263

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Land Use and Transportation Committee

4:30pm - 5:30pm

Kate Howard, Ben Rosenfeld, Steve Kawa, Jason Elliott, Nicole Elliott*

Calendar: Scott-City Business

Created by: Andres Power

Description: pending LU being done Transportation revenue measures

Tue Jan 26, 2016

10am - 10:30am Ben Ryan

Where: City Hall, Room 274

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco's strategies to combat HIV

10:30am - 11am TIMMA Board

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Treasure Island Mobility Management Board

11am - 1pm SFCTA Board

Where: City Hall, Board Chamber

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco County Transportation Authority Board

2pm - 5pm Board of Supervisors

Where: City Hall, Board Chamber

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: San Francisco Board of Supervisors

6:30pm - 7:30pm San Francisco Board of Education

Where: 555 Franklin Street, First Floor, Irving G. Breyer Board Meeting Room

Calendar: Scott-City Business

Created by: Andres Power

Description: Subject: San Francisco Board of Education

Scott-City Business

Wed Jan 27, 2016

8:30am - 9:30am

Edwin Lee, Chad Edison, Jeff Morales, Jim Hartnett, Bijan Sartipi, Steve Heminger, Maria Ayerdi-Kaplan

Where:

Bay Area Metro Center, 375 Beale Street, Claremont Conference Room, San Francisco, CA, United States

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Metropolitan Transportation Commission Executive Committee

9:30am - 12pm MTC - Full Commission

Where:

Lawrence D. Dahms Auditorium, Joseph P. Bort MetroCenter - 101 Eighth Street, Oakland, CA

Calendar: Scott-City Business

Created by: Adam Taylor

Description: Subject: Metropolitan Transportation Commission

12:45pm - 1pm Carolyn Tyler

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Press interview

Thu Jan 28, 2016

12pm - 3pm San Francisco Planning Commission

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: San Francisco Planning Commission

2pm - 3:30pm Executive Committee RAB*

Where: City Hall 201

Calendar: Scott-City Business

Created by: Andres Power

Description:

Subject: Railyard Alternatives and I-280 Boulevard Feasibility Study (RAB). *More than ten meeting attendees

Fri Jan 29, 2016

3:45pm - 4:45pm Thuy Vu

Where: 2601 Mariposa St.

Calendar: Scott-City Business

Created by: Jeff Cretan

Description: Subject: Shelters and tents

BOARD of SUPERVISORS



City Hall
Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 29, 2016

Sunshine Ordinance Task Force
Attn: Victor Young, Administrator
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Sunshine Ordinance Complaint No. 16063

Dear Task Force Members:

This letter responds to Michael Petrelis's Sunshine Ordinance Complaint No. 16063. The Complaint has no merit and should be dismissed, given that we are complying with the requests.

Complainant has submitted a series of extremely broad Sunshine Requests to my office, each of which requires extensive work to search for, identify, review, and compile responses. Each of the requests requires significant attention and time from my office staff. In each instance, my office has correctly invoked statutory extensions. Moreover, my office has indicated to Complainant that we will produce the documents on a rolling basis, given that immediate production would require my office to neglect other important public responsibilities. My office has already produced a large volume of material to Complainant and continues to produce the requested documents on a rolling basis in order to be able to fulfill our other public duties to our constituents and to the City.

Complainant abusively insists that no matter how many requests he submits and no matter how broad and labor-intensive they are, my office has a responsibility to drop everything and respond to his requests before we take up any other public business, such as responding to constituent needs, moving forward legislation, and so forth. Please note that the complainant's abusive behavior toward me and my office is not in isolation. Complainant has a history of harassing and stalking me. I currently have a restraining order against him. His current effort to issue a series of very broad requests, demand immediate responses, and insist that our office drop all other responsibilities to respond to his requests is consistent with his pattern of harassment.

More specifically, Complainant submitted to my office the following requests:

1. 6/22/16: "This is an immediate disclosure request for copies of all emails, texts, faxes, any written correspondence you or anyone on your staff received or sent regarding the tragedy at the queer bar in Orlando on June 12, your vigil and political rally on that date at Castro and Market Streets, the rainbow flag at Harvey Milk Plaza, and the Castro Merchants."
2. 6/23/16: "This is an immediate disclosure request for copies of all emails, texts, any written correspondence received or sent by you or anyone on your staff regarding a memorial at Harvey Milk Plaza for the LGBT and Latino victims of the Orlando gay bar Pulse massacre. My IDR covers the period from June 12 through today, 12 noon."
3. 6/24/16: "This is an immediate disclosure request for a copy of your City Hall calendar, in electronic format, from January 1, 2016, through 12 noon today. I would prefer to receive responsive records divided by month in separate PDFs."
4. 6/27/16: "This is an immediate disclosure request for copies of all public records requests received by your office from January 1 through June 26, 2016."
5. 6/27/16: "This is an immediate disclosure request for copies of all emails sent or received by your scott.wiener@sfgov.org addy, and all texts sent or received by you regarding anything to do with City business and operations, for the week of June 19-25, 2016."
6. 7/6/16: "This is an immediate disclosure request for copies of any and all emails, texts and other written correspondence sent or received by you or anyone in your office with your main SF Chronicle mouthpiece Chuck Nevius. My IDR is for responsive records from January 1, 2011, through today's date."

BOARD of SUPERVISORS



City Hall
Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

7. 7/7/16: "This is an immediate disclosure request for a copy of your City Hall calendar from June 24 through July 6, 2016, in electronic format."

For each of the above requests, our office properly invoked extensions in accordance to Administrative Code §67.25, and we have provided available records to the Complainant on a rolling basis. We will continue to do so in accordance with Administrative Code, Section 67.25(d), as additional responsive records are exported, compiled, and reviewed. We take our sunshine obligations seriously.

The purpose of an Immediate Disclosure Request is to expedite the City's response to a simple, routine, or otherwise readily answerable request, per Administrative Code §67.25(a). Thus, the Complainant's designation of a request as an Immediate Disclosure Request does not automatically make it so. The Complainant's multiple requests are not a simple, routine, nor immediately available request, as the information requested is voluminous and needs to be exported, compiled, and reviewed before disclosure. Our office has responded to the Complainant within 24 hours to confirm receipt of each request, and informed him that we require additional time to respond due to the amount of information requested.

Our office properly requested extensions in order to compile records responsive to his requests. The Sunshine Ordinance specifies that for extensive or demanding requests – as the Complainant's submitted – the maximum deadlines for responding to a request apply in accordance to Admin. Code § 67.25(a). Given that the extensive and demanding nature of these requests would impose an undue burden on our office to respond immediately, our office adhered to the deadlines governing standard public records requests – the initial 10 calendar-day period for response, and the extension period of up to 14 calendar-days in accordance to Government Code Section 6256 and Administrative Code §67.25. Note that the Sunshine Ordinance's extension period provision incorporates an expired provision of the Public Records Act framed in terms of 10 "business days," which is equivalent to 14 calendar days. Further, when the voters amended the Ordinance and created the immediate disclosure request process, the provision of the Public Records Act then in effect used 14 calendar days as the maximum time frame for extensions. That provision remains in effect. Cal. Govt. Code § 6253(c).

Our office has provided the Complainant with available records and will continue to produce additional records responsive to his request on an incremental rolling basis as soon as reasonably possible without delay in accordance to Admin. Code § 67.25(d). In general, the timing of a department's response to a request to inspect records must be reasonable in light of all the circumstances, including: the volume of records to be inspected; whether the records are readily available; the need, if any, to review the records to make appropriate redactions; the need, if any, to assign staff to oversee the inspection; whether the department is actively using the records; and the number of other public records requests to which the department is also responding.

We remain ready and willing to provide the Complainant with assistance, and invite him to work cooperatively with us to prioritize or narrow portions of his request that are voluminous and burdensome, so that we can provide the records he seeks in good faith while minimizing the disruption to our office's public duties. The Complaint is without merit and should be dismissed.

Sincerely yours,

A handwritten signature in black ink that reads "Scott Wiener".

Scott Wiener
Member, Board of Supervisors

Attachment: Immediate Disclosure Requests from Complainant

File No. 161045

Committee Item No. _____

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____

Date: _____

Board of Supervisors Meeting

Date: October 4, 2016

Cmte Board

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
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Prepared by: Brent Jalipa

Date: September 29, 2016

Prepared by: _____

Date: _____

Young, Victor

From: SOTF, (BOS)
Sent: Monday, September 19, 2016 9:43 AM
To: 'mpetrelis@aol.com'; Wiener, Scott; Peskin, Aaron (BOS); 'Ray'; Farrell, Mark (BOS); 'Tom Borden'; Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC)
Cc: Colla, Nicholas (CAT); Ng, Wilson (BOS); Taylor, Adam (BOS); Cretan, Jeff (BOS); Power, Andres; Hepner, Lee (BOS); Karunaratne, Kanishka (BOS); Kelly, Margaux (BOS); Montejano, Jess (BOS); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - October 5, 2016
Attachments: SOTF - Complaint Procedure 2014-11-05.pdf

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: October 5, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints -

File No. 16063: Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors; 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 and inappropriately invoking an extension of time to respond.

File No. 16067: Complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors, 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.

File No. 16076: Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.34, by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act, as evidenced in the failure to respond to a Sunshine Ordinance Task Force (SOTF) complaint, failure to attend SOTF hearings, and failure to comply with SOTF's Order of Determination in regards to SOTF File No. 15071.

SPECIAL ORDER – The hearings on File No. 16071 will not begin earlier than 6:00 p.m.

File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to

respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.


Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion in the agenda packet, supplemental/supporting documents must be received by **5:00 pm, September 28, 2016.**

**Victor Young
Administrator**

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- _____
- _____
- Public Correspondence
- _____

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: September 30, 2016
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

COMPLAINT

Complainant Michael Petrelis (“Complainant”) alleges that Supervisor Aaron Peskin (“Supe. Peskin”) of the San Francisco Board of Supervisors (“BOS”) violated provisions of Administrative Code Section 67 (“the Sunshine Ordinance”) by allegedly failing to adequately respond to his Immediate Disclosure Request (“IDR”).

COMPLAINANT FILES THIS COMPLAINT

On July 25, 2016, Complainant filed a complaint with the Task Force regarding the Supe. Peskin’s alleged failure to adequately respond to his IDR.

JURISDICTION

Supe. Peskin is a member of the BOS, which is a policy body subject to the provisions of the Sunshine Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Sunshine Ordinance against Supe. Peskin. Supe. Peskin has not contested jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request.
- Section 67.25 governs responses to IDRs.

Section 6250 et seq. of the Cal. Gov’t Code

- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW

- *California First Amendment Coal. v. Superior Court*, 67 Cal. App. 4th 159 (A clearly framed request which requires an agency to search an enormous volume of data for a “needle in the haystack” or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome. Records requests,

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 2
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

however, inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort).

BACKGROUND

On July 20, 2016, Complainant emailed an IDR to Supe. Peskin which stated in part as follows:

Dear Aaron "Napoleon-Complex-Politician-Who-Thinks-Nothing-of-Interrupting-Public-Comment" Peskin,

This is an immediate disclosure request for copies of or access to all of your emails, regardless of topic, sent or received, through aaron.peskin@sfgov.org, and all texts sent or received from June 1 through July 20, 2016.

Got questions? Send them to me via email.

Please have one of your staffers confirm receipt of this IDR by the close of business on July 21, 2016.

In a response to this complaint from Supe. Peskin's Legislative Aide, Lee Hepner ("Mr. Hepner"), it was alleged that Supe. Peskin was out of the office but that his away message instructed recipients to contact Mr. Hepner.

Allegedly, Complainant did not follow up with Mr. Hepner regarding his July 20, 2016 IDR. However, Mr. Hepner was forwarded the original IDR email on July 25, 2016 and responded in part as follows:

As for the request itself, we will not be responding to the below request, the scope of which clearly exceeds the boundaries of reasonableness. In *Bruce v. Gregory* (1967) 65 Cal.2d 666, the California Supreme Court articulated an elementary principle of public records law that the San Francisco Superior Court and our City Attorney have long held to apply to our City's Sunshine Ordinance. The Court articulated that principle as follows:

We ... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives. *Id.*, at 676.

For the foregoing reason, we will not be responding to your records request, as it will substantially interfere with the orderly function of the Supervisor's office and his staff.

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: September 30, 2016
 PAGE: 3
 RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

Legal Analysis

A clearly framed request which requires an agency to search an enormous volume of data for a “needle in the haystack” or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome. Records requests, however, inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort. *California First Amendment Coal. v. Superior Court*, 67 Cal. App. 4th 159, 166.

In *California First*, the court held that a public records request for documents regarding applications to a vacant seat on a board of supervisors was neither broad nor unduly burdensome, despite the voluminous review and redactions that would be necessary in order to service the request.

While there is no exact test to determine whether a public records request is unduly burdensome, the Task Force may want to consider the the amount of labor necessary to service the requests at hand and make a determination as to whether it is reasonable for Supe. Peskin to expend that amount of time doing so.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Could Supe. Peskin elaborate as to how his office would be burdened by responding to this IDR?
- Roughly how many emails would have been included in a response to the IDR at issue?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Supe. Peskin violate Administrative Code Section 67.21(b), 67.25(a) and/or Government Code Section 6253(c) by failing to respond to Complainant’s IDRs?
- Was the IDR so unduly burdensome that it reasonable for Supe. Peskin to decline to provide responsive records?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 4
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) *A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request.* Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) *A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so,* provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 5
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 6
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.25. IMMEDIACY OF RESPONSE

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, *a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted.* Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 7
RE: Complaint No. 16067 – Petrelis v. Aaron Peskin of the San Francisco Board of Supervisors

until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SEC. 6253**

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) *Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person* upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, *within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.* In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 16067

Michael Petrelis V. Supervisor Aaron Peskin, Board of Supervisors

Date filed with SOTF: 07/25/16

Contacts information (Complainant information listed first):

mpetrelis@aol.com (Complainant)

Supervisor Scott Wiener, Adam Taylor (Respondent)

File No. 16067: Complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors, 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.

Administrative Summary if applicable:

Complaint Attached.

Mon 7/25/2016 3:26 PM

Complaint against Peskin - Fwd: Immediate disclosure request: June/July 2016 emails, texts.

Dear Victor Young,

I wish to lodge a Sunshine Ordinance Task Force complaint against Supervisor Aaron Peskin for failure to comply with my request for public records.

I believe his staffer is incorrectly using legal opinions to withhold public records and that the SOTF members need to question Peskin and his aide regarding this denial of access to files.

Please confirm receipt of this complaint by the close of business today.
Thanks.

* * * *

MPetrelis.Blogspot.com

Facebook.com/PetrelisFiles

Twitter.com/MichaelPetrelis

-----Original Message-----

From: Hepner, Lee (BOS) (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>

To: mpetrelis <mpetrelis@aol.com>

Cc: Peskin, Aaron (BOS) (BOS) <aaron.peskin@sfgov.org>

Sent: Mon, Jul 25, 2016 2:55 pm

Subject: RE: Immediate disclosure request: June/July 2016 emails, texts.

Hi Michael – I received your public records request this morning. In the future, and per the instructions set forth in the auto-response on Supervisor Peskin's e-mail (did you get it?), please forward all requests pursuant to the Sunshine Ordinance or the California Public Records Act or Brown Act directly to me.

As for the request itself, we will not be responding to the below request, the scope of which clearly exceeds the boundaries of reasonableness. In *Bruce v. Gregory* (1967) 65 Cal.2d 666, the California Supreme Court articulated an elementary principle of public records law that the San Francisco Superior Court and our City Attorney have long held to apply to our City's Sunshine Ordinance. The Court articulated that principle as follows:

We ... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental

damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives. *Id.*, at 676.

For the foregoing reason, we will not be responding to your records request, as it will substantially interfere with the orderly function of the Supervisor's office and his staff.

Regards,

Lee Hepner
Legislative Aide
Supervisor Aaron Peskin
415.554.7450 office
415.554.7419 direct

From: Peskin, Aaron (BOS)
Sent: Monday, July 25, 2016 9:27 AM
To: Hepner, Lee (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>
Subject: Fwd: Immediate disclosure request: June/July 2016 emails, texts.

Aaron

Begin forwarded message:

From: mpetrelis@aol.com
Date: July 25, 2016 at 9:10:07 AM PDT
To: mpetrelis@aol.com, Aaron.Peskin@sfgov.org
Subject: Re: Immediate disclosure request: June/July 2016 emails, texts.
Dear Egotistical Public Servant Peskin,

Did you receive my immediate disclosure request?

Please confirm that your office is processing the IDR today.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: mpetrelis <mpetrelis@aol.com>

To: Aaron.Peskin <Aaron.Peskin@sfgov.org>

Sent: Wed, Jul 20, 2016 9:44 pm

Subject: Immediate disclosure request: June/July 2016 emails, texts.

Dear Aaron "Napoleon-Complex-Politician-Who-Thinks-Nothing-of-Interrupting-Public-Comment" Peskin,

This is an immediate disclosure request for copies of or access to all of your emails, regardless of topic, sent or received, through aaron.peskin@sfgov.org, and all texts sent or received from June 1 through July 20, 2016.

Got questions? Send them to me via email.

Please have one of your staffers confirm receipt of this IDR by the close of business on July 21, 2016.

* * * *

MPetrelis.Blogspot.com

Facebook.com/PetrelisFiles

Twitter.com/MichaelPetrelis

Member, Board of Supervisors
District 3



City and County of San Francisco

AARON PESKIN
佩斯金市參事

September 28, 2016

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Pl., Room 244
San Francisco, CA 94102-4689

Re: Complaint No. 16067 – *Michael Petrelis v. Supervisor Aaron Peskin*

Dear Chair Wolfe and Members:

This letter responds to the Complaint filed against my office by Michael Petrelis on July 25, 2016, alleging a violation of Section 67.25 of the San Francisco Administrative Code (the “Sunshine Ordinance”). The Complaint has no merit in existing law or the interpretation of that law by our City Attorney’s Office. Further, and separately, it is clear from the correspondence in the record that Mr. Petrelis was motivated by a desire to harass my office and inappropriately used our City’s Sunshine Ordinance as a sword to disable my office’s ability to perform its function in an orderly manner.

On Monday, July 25, 2016, I received a message from Mr. Petrelis asking whether I had received his immediate disclosure request, which he had allegedly sent to my work e-mail address on July 20, 2016. In the July 20, 2016 immediate disclosure request, Mr. Petrelis requested the following:

“This is an immediate disclosure request for copies of or access to all of your emails, regardless of topic, sent or received, through aaron.peskin@sfgov.org, and all texts sent or received from June 1 through July 20, 2016.”

See Exhibit 1 (E-mail correspondence, dated July 20 through July 25, 2016). At the time of Mr. Petrelis’ request, I had an auto-response message set on my Outlook e-mail client which acknowledged the large amount of correspondence that I receive on a daily basis and encouraged members of the public to direct all public records request to my staff, Lee Hepner. Regardless, Mr. Petrelis did not direct his request toward Mr. Hepner, and I personally forwarded Mr. Petrelis’ immediate disclosure request to my staff on Monday, July 25, 2016. *Id.*

Mr. Hepner responded to Mr. Petrelis' request on the same day that he received it and, with my approval and based on the advice of our City Attorney's Office, invoked the rule of reason. *Exh. 1*. My staff articulated the principle, which appears in the City's Good Government Guide and quoted the California Supreme Court's long-standing opinion in *Bruce v. Gregory*:

"We... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, **to prevent inspection from interfering with the orderly function of his office and its employees,** and generally to avoid chaos in the record archives." *Exh. 1*; see also *Bruce v. Gregory* (1967) 65 Cal.2d 666 [emphasis added.]

The City Attorney has argued, and courts have long upheld, that these reasonableness limitations apply both to the California Public Records Act as well as to the Sunshine Ordinance. See *Exhibit 2* (September 19, 2006 Memorandum); see also *Western Select Securities, Inc. v. Murphy, et al.*, S.F. Superior Court No. 312310 (holding, in pertinent part, that public records laws are subject to an implied or inherent rule of reason.)

Within 30 minutes of receiving the e-mail from my staff invoking the rule of reason, Mr. Petrelis lodged a complaint against my office with the Sunshine Ordinance Task Force, alleging a violation of San Francisco Administrative Code Section 67.25.

Based on the advice of our City Attorney and on the foregoing authority, I believe my office was more than justified in rejecting Mr. Petrelis' sweeping request for records. Responding to a request would constitute an enormous diversion of resources from my office's daily work of serving the public. For the sake of providing some additional context, I receive hundreds of e-mails per day on innumerable topics. The time that it would take for my office to compile nearly two months of these records, which would also include the necessary time it would take to scan each and every message for private redactable information, transcends the bounds of reason.

Separate and apart from the foregoing justification of my office's response to Mr. Petrelis' request, it is transparent from the record that Mr. Petrelis' sole intent was to interfere with the orderly function of my office and, in doing so, to bully and harass my District 3 office. Mere hours before he sent his original request for records on July 20, 2016, Mr. Petrelis provided public comment at a meeting of the Democratic County Central Committee, of which I am a member. At the outset of Mr. Petrelis' public comment at that tribunal, I momentarily interjected to suggest that Mr. Petrelis address his comments to the members of the body instead of at the

audience, if only because it is difficult for members of the body to hear when comments are being made in the opposite direction of a vast echoing chamber.¹ To be clear, I did not express disagreement with the content of Mr. Petrelis' speech nor was I attempting to curtail his speech in any way. Nevertheless, not more than three hours later on that same evening, Mr. Petrelis issued his broad records request, referring to me as "Dear Aaron 'Napoleon-Complex-Politician-Who-Thinks-Nothing-of-Interrupting-Public-Comment' Peskin." *Exh. 1*. In his follow-up e-mail, he addresses me as "Dear Egotistical Public Servant Peskin." *Id.* I challenge anyone to watch the video of this incident and similarly conclude that I was behaving in any manner to curtail or cut short Mr. Petrelis' public comment.

My office's response to Mr. Petrelis' request is justified and clearly founded in applicable case law and our City's interpretation of the Sunshine Ordinance. The additional information related to Mr. Petrelis' motivation underscores his clear and sole intent to "interfere with the orderly function" of my office and my staff. *Bruce v. Gregory, supra.*

For the foregoing reasons, I respectfully request that the Sunshine Ordinance Task Force reject Mr. Petrelis' Complaint.

Respectfully,


Aaron Peskin

Cc: Michael Petrelis, Complainant
Victor Young, Clerk

¹ A video of this incident is publicly available at Mr. Petrelis' blog at the following link:
<http://mpetrelis.blogspot.com/2016/07/open-govt-foe-sup.html>

Mon 7/25/2016 3:26 PM

Complaint against Peskin - Fwd: Immediate disclosure request: June/July 2016 emails, texts.

Dear Victor Young,

I wish to lodge a Sunshine Ordinance Task Force complaint against Supervisor Aaron Peskin for failure to comply with my request for public records.

I believe his staffer is incorrectly using legal opinions to withhold public records and that the SOTF members need to question Peskin and his aide regarding this denial of access to files.

Please confirm receipt of this complaint by the close of business today.
Thanks.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: Hepner, Lee (BOS) (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>

To: mpetrelis <mpetrelis@aol.com>

Cc: Peskin, Aaron (BOS) (BOS) <aaron.peskin@sfgov.org>

Sent: Mon, Jul 25, 2016 2:55 pm

Subject: RE: Immediate disclosure request: June/July 2016 emails, texts.

Hi Michael – I received your public records request this morning. In the future, and per the instructions set forth in the auto-response on Supervisor Peskin’s e-mail (did you get it?), please forward all requests pursuant to the Sunshine Ordinance or the California Public Records Act or Brown Act directly to me.

As for the request itself, we will not be responding to the below request, the scope of which clearly exceeds the boundaries of reasonableness. In *Bruce v. Gregory* (1967) 65 Cal.2d 666, the California Supreme Court articulated an elementary principle of public records law that the San Francisco Superior Court and our City Attorney have long held to apply to our City’s Sunshine Ordinance. The Court articulated that principle as follows:

We ... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental

damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives. *Id.*, at 676.

For the foregoing reason, we will not be responding to your records request, as it will substantially interfere with the orderly function of the Supervisor's office and his staff.

Regards,

Lee Hepner
Legislative Aide
Supervisor Aaron Peskin
415.554.7450 office
415.554.7419 direct

From: Peskin, Aaron (BOS)
Sent: Monday, July 25, 2016 9:27 AM
To: Hepner, Lee (BOS) <lee.hepner@SFGOV1.onmicrosoft.com>
Subject: Fwd: Immediate disclosure request: June/July 2016 emails, texts.

Aaron

Begin forwarded message:

From: mpetrelis@aol.com
Date: July 25, 2016 at 9:10:07 AM PDT
To: mpetrelis@aol.com, Aaron.Peskin@sfgov.org
Subject: Re: Immediate disclosure request: June/July 2016 emails, texts.
Dear Egotistical Public Servant Peskin,

Did you receive my immediate disclosure request?

Please confirm that your office is processing the IDR today.

* * * *

MPetrelis.Blogspot.com
Facebook.com/PetrelisFiles
Twitter.com/MichaelPetrelis

-----Original Message-----

From: mpetrelis <mpetrelis@aol.com>

To: Aaron.Peskin <Aaron.Peskin@sfgov.org>

Sent: Wed, Jul 20, 2016 9:44 pm

Subject: Immediate disclosure request: June/July 2016 emails, texts.

Dear Aaron "Napoleon-Complex-Politician-Who-Thinks-Nothing-of-Interrupting-Public-Comment" Peskin,

This is an immediate disclosure request for copies of or access to all of your emails, regardless of topic, sent or received, through aaron.peskin@sfgov.org, and all texts sent or received from June 1 through July 20, 2016.

Got questions? Send them to me via email.

Please have one of your staffers confirm receipt of this IDR by the close of business on July 21, 2016.

* * * *

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EXHIBIT 2



DENNIS J. HERRERA
City Attorney

PAUL ZAREFSKY
Deputy City Attorney

DIRECT DIAL: (415) 554-4652
E-MAIL: paul.zarefsky@sfgov.org

MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Paul Zarefsky
Deputy City Attorney

DATE: September 19, 2006

RE: Providing Electronic Records In PDF Rather Than Word Format When Responding
To A Public Records Request

This Office has orally advised City departments that, in response to a public records request for an electronic copy of a record, a City department may provide the record to the requester in PDF¹ rather than Word format. In this memorandum, we address the legal principles supporting this conclusion. The issue potentially affects all City departments, because all departments maintain electronic records. The volume of such records is huge, and we expect that the issue will arise in future public records requests for electronic records.

We address this issue from two perspectives – (1) protecting "metadata" hidden in the electronic record and (2) protecting the text of the electronic record. This memorandum does not address any complaint before the Task Force. Rather, we intend to provide general advice on this issue.

Protecting Metadata Hidden In The Electronic Record

A Word document – unlike an electronic record in PDF format – contains "metadata." This term generally refers to information about an electronic record that does not appear in the text but is automatically generated by the program when a text is created, viewed, copied, edited, printed, stored, or transmitted using a computer. The metadata are typically embedded in the record in a manner not readily viewed or understood by persons without specialized computer training, that enables one to locate information that is not shown in the text. We use the term "metadata" broadly to include any information embedded in the record that is not visible in the text.

The metadata may include a wide variety of information that the City has a right – and, in some cases, a legal duty – to withhold from public view. For example, earlier versions of an electronic record are present in metadata and often will include recommendations of the author of a draft, which the Sunshine Ordinance allows the City to withhold from disclosure. (S.F.

¹ The term "PDF" is an abbreviation for Portable Document Format. As the term suggests, a PDF record functions as a "portable" document in that it may be transmitted electronically as a whole document and viewed and read on a computer screen. A scanned PDF record essentially is a picture of a document that may be viewed and read on a computer screen. A searchable PDF record permits the viewer/reader to search the document for specific words or phrases and to cut and paste from the document. Neither type of PDF record contains metadata embedded in the record.

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TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 2, 2006

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Admin. Code §67.24(a)(1).) Such passages could include edits that are part of the author's thought process and were never intended to be communicated to another person. As a second example, earlier versions of an electronic record that are present in metadata may include information the disclosure of which would violate a third party's privacy – a right the law zealously safeguards. (Cal. Gov. Code §§ 6250, 6254(c); S.F. Admin. Code §67.1(g); Cal. Const., Art. I, sec. 1.) A wide range of types of information may be encompassed within the right of privacy; everything from residential phone numbers and Social Security numbers to sensitive medical, financial, and sexual data to information provided by, and the identity of, whistleblowers. As a third example, metadata may include communications between attorney and client that do not appear in the text of the record. The law protects confidential attorney-client communications from disclosure. (Cal. Evid. Code §954.) These examples are merely illustrative of the broader point that metadata may contain information specifically subject to redaction under the Public Records Act and the Sunshine Ordinance.

If a department were to give a requester a document in Word format, the department would be required to review the metadata embedded in the document. Failure to conduct this review would risk disclosure of privileged material. Yet reviewing the metadata would be a laborious, burdensome, and problematic task – different in nature and magnitude from the process of reviewing the text to determine information that should be redacted and information that is reasonably segregable from that which should be redacted. Electronic records may be adapted from any number of earlier texts – which would themselves contain metadata – and may have been subject to numerous edits. Information recorded in the process of creating and editing the text of such a document may be unknown to the author, the sender, and/or the recipient. The investigation necessary to determine whether redactions in metadata are legally warranted would in many cases be daunting. Merely identifying and interpreting certain of the metadata would require considerable expertise beyond the skill and capacity of all but a small number of City employees. And there is considerable risk that even those with the expertise would not locate all the metadata.

In addition, the metadata embedded in a Word document could reveal sensitive information about the operation of the City's computer and communications system that could be used by a third party to undermine the integrity and security of that system. For example, the disclosure of such information as unique identifiers for individual computer terminals and computer servers, and the location of information in a department's computer system, could compromise the integrity and security of the system. We do not understand that disclosure of metadata alone would in itself permit an unscrupulous individual to "hack" into the City's computer system. But should such an individual find his or her way into the City's system, knowledge about metadata gleaned from a Word document made available to the public could make it easier for that person to navigate his or her way through the system, locate sensitive files, alter or delete documents, and generally undermine the security of records within the system.

In making decisions about disclosure of public records, the City may not inquire as to a requester's purpose, or the use the requester may make of the information obtained. (Cal. Gov. Code §6257.5; S.F. Admin. Code §67.25(c).) Requests from prudent, civic-minded persons must be treated the same as requests from reckless or ill-motivated persons. Further, disclosure of a record to one member of the public generally precludes the City from withholding that record from another member of the public. (Cal. Gov. Code §6254.5.) Thus, even if the City is certain that a particular requester has a legitimate purpose and would not misuse – or even review –

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TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 2, 2006

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RE: Providing Electronic Records In PDF Rather Than Word Format When Responding
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information contained in the metadata of a requested record, the City does not have the luxury of indulging benign assumptions about requesters when determining its response to a public records request for an electronic record in Word format.

These problems must be understood not from the vantage point of one isolated electronic record that may be the subject of a Task Force hearing. City government is comprised of scores of departments and even more boards, commissions, and advisory bodies, and there are literally millions of electronic records within the City's files, that have been created, edited, transmitted, or received by a workforce of approximately 25,000 to 30,000 employees. The staff resources of the City – technical, professional, and clerical – that may be devoted to responding to public records requests are limited.

If the City is required to disclose documents in Word format in response to a public records request, there could be a significant adverse impact on the conduct of City business – both everyday public business, and the business of responding to public records requests. The City has no control over the number and scope of public records requests it receives, or the number and scope of requests filed by a single person or small group of persons. The added burden of having to review metadata in electronic records could be crippling if the City is required to provide electronic records to requesters in Word rather than PDF format.

The City's duty to respond to a public records request is limited by a rule of reason. It has long been understood that public records laws do not impose absolute requirements on public entities. Rather, the efforts required to respond to a public records request are inherently bounded by a standard of reasonableness. In *Bruce v. Gregory* (1967) 65 Cal.2d 666, the California Supreme Court articulated this elementary principle of public records law:

We ... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives.

Id. at 676. Both the California courts and the California Attorney General have extended *Bruce's* implied rule of reason to public records requests under the Public Records Act. (*Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 186, 189-91 (1981) [Op. No. 80-1106]; 64 Ops.Cal.Atty.Gen. 317, 321 (1981) [Op. No. 80-1006]; 76 Ops.Cal.Atty. Gen. 235, 241 (1993) [Op. No. 93-702].)

There is no indication that the Board of Supervisors, in adopting the Sunshine Ordinance in 1993, or the voters, in amending the Ordinance in 1999, intended to jettison this longstanding principle of public records law. Indeed, in the context of assessing under both the Public Records Act and the Sunshine Ordinance the reasonableness of a search for records, the San Francisco Superior Court has ruled that the same reasonableness limitations applicable to the Act apply as well to the Ordinance.²

² *Western Select Securities, Inc. v. Murphy, et al.*, S.F. Superior Court No. 312310, Slip Op. at 5-6 (copy attached; stamped August 24, 2000, issued December 1, 2000). This ruling was

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In addition, Section 67.21-1(a) of the Sunshine Ordinance states that "[I]t is the policy of the City and County of San Francisco to utilize computer technology *in order to reduce the costs of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section.*" (S.F. Admin. Code §67.21-1(a) [emphasis added].)³

A court would likely conclude that these principles of reasonableness and cost containment that govern disclosure of public records under the Public Records Act and the Sunshine Ordinance permit the City to decline to provide to a requester metadata that is embedded in an electronic record such as a Word document. To require departments to disclose electronic records in Word format would necessitate their exhaustively searching and reviewing metadata in those records before finalizing a response to the requester. This process would entail considerable cost to the City, given the technical expertise and staff resources that would have to be devoted to it. Imposing this process on the City would contradict the City's own policy of using computer technology to reduce the costs incurred in disclosing public records.

Protecting The Text Of The Electronic Record

The text of a Word document may be easily edited or otherwise altered by the requester or by persons to whom the requester makes the document available. The alteration would not be obvious or readily discernible to the average person or even in many cases to someone generally familiar with the document. As a result, providing a record in Word format to a requester jeopardizes the integrity of the record. That format makes it easy for the requester or others to change the record and then present the altered record as the original. Apart from any such questionable purpose, if the City provides a record in Word format and the requester or others edit or otherwise alter the record, there is the potential for creating confusion, even inadvertently, as to whether the original record or the altered version is the true public record.

The Public Records Act allows public entities to address these concerns in making records available to the public. Section 6253.9 of the Act addresses information in an electronic format. (Cal. Gov. Code §6253.9.) Subsection (f) states: "Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained." (Cal. Gov. Code §6253.9(f).) Disclosure of a record in Word format could jeopardize the integrity of

not disturbed on appeal. *See Western Select Securities, Inc. v. Superior Court*, Court of Appeal, First District, Case No. A093500, May 3, 2001 (order denying petition for writ of mandate). While a trial court opinion generally may not be cited as precedent in a judicial proceeding (*see* Cal. Rule of Court 977), this trial court opinion nonetheless may shed light on whether a court would be receptive to the point that the Sunshine Ordinance carries forward the principle, recognized both pre- and post-Public Records Act, that public records laws are subject to an implied or inherent rule of reason.

³ In addition, we note that the Sunshine Ordinance endorses "[I]mplementing a system that permits reproduction of electronic copies of records *in a format that is generally recognized as an industry standard format.*" (S.F. Admin. Code §67.21-1(b)(2) [emphasis added].) It is our understanding that PDF versions of electronic records are generally recognized as an "industry standard format" for providing copies of electronic records.

Memorandum

TO: Honorable Members
 Sunshine Ordinance Task Force

DATE: November 2, 2006

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RE: Providing Electronic Records In PDF Rather Than Word Format When Responding
 To A Public Records Request

the record because the text is so easily manipulated. Subsection (f) thus gives City departments discretion to choose to provide the record to a requester in other more secure formats, and nothing in the Sunshine Ordinance changes this result.

We recognize that computer-savvy experts using sophisticated technological aids are able to tamper with electronic records in some formats other than Word. But this possibility does not change the legal analysis. Subsection (f) permits a department to provide an electronic record to a member of the public in a format less susceptible to textual manipulation than the format requested. A Word document is much more susceptible to textual manipulation, as compared, for example, to a record in scanned PDF format. So long as the integrity of the record is jeopardized by making it available in Word format, Subsection (f) permits the City to provide it in another format.

Conclusion

A court would likely conclude that a City department has discretion under both the Public Records Act and the Sunshine Ordinance to provide an electronic record to a public records requester in PDF rather than Word format.⁴

* * * * *

We hope this memorandum proves useful to the Task Force in its analysis and discussion of an important issue. If there are any questions or concerns on the general issue, divorced from the particulars of any specific case, please feel free to contact this office.

P.Z.

⁴ This memorandum does not address the power of a court in a litigation context to order or limit access of a party to another party's electronic records.

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- _____
- _____
- Public Correspondence
- _____
- _____

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: September 30, 2016
RE: Complaint No. 16076 – Hartz v. Mark Farrell, San Francisco Board of Supervisors

COMPLAINT

Complainant Raymond Hartz, Jr. ("Complainant") alleges that San Francisco Board of Supervisors ("BOS") Member Mark Farrell ("Supervisor Farrell") violated an Order of Determination issued by the Task Force stemming from violations in Complaint No. 15071, regarding Complainant's March 19, 2015 Immediate Disclosure Request ("IDR").

COMPLAINANT FILES COMPLAINT

On August 16, 2016, Complainant filed this complaint with the Task Force alleging that Supervisor Farrell failed to comply with the terms of Order of Determination No. 15071.

JURISDICTION

Supervisor Farrell is a member of a policy body subject to the provisions of the Sunshine Ordinance governing public records. Supervisor Farrell has not contested jurisdiction to hear this complaint. However, Supervisor Farrell contends that this Complaint had already been adjudicated and that he fulfilled his obligations under Order of Determination No. 15071

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code ("Sunshine Ordinance"):

- Section 67.21 governs responses to a public records request.
- Section 67.25 governs responses to IDRs.

APPLICABLE ADMINISTRATIVE PROCEDURES

- Sunshine Ordinance Task Force Public Complaint Procedure: Section F(2) governs compliance with Orders of Determination.

BACKGROUND

On June 29, 2015, the Task Force issued an Order of Determination against Supervisor Farrell regarding Complaint No. 15071, which dealt with an unfulfilled IDR made by Complainant. The matter was referred to the Compliance and Amendments Committee ("CAC") and it was requested that Supervisor Farrell's office provide Complainant with the documents he

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 2
RE: Complaint No. 16076 – Hartz v. Mark Farrell, San Francisco Board of Supervisors

requested in his original IDR and that the Task Force be cc'd in any correspondence in which responsive documents are provided.

On October 20, 2015, the CAC determined that the Order of Determination at issue had been complied with and the matter was closed.

On August 16, 2016, Complainant filed this complaint with the Task Force.

On September 19, 2016, in response to the filing of this complaint, Supervisor Farrell's Legislative Aide, Jess Montejano ("Ms. Montejano"), sent the following email to the Task Force:

I am emailing records from the past SOTF hearings that shows that our office attended the hearing and sent the necessary documents over to close this particular issue. Can you please provide guidance on why we are being asked to appear on this same issue that SOTF closed last year?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Did Supervisor Farrell's office comply with the terms of the Order of Determination at issue?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Supervisor Farrell violate Sunshine Ordinance Section 67.21(b) and/or 67.25(a) by failing to comply with the terms of Order of Determination No. 15071?
- If so, is the filing of this Complaint the proper way to enforce the Order of Determination pursuant to Complaint Procedures Section F(2)?

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 3
RE: Complaint No. 16076 – Hartz v. Mark Farrell, San Francisco Board of Supervisors

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: September 30, 2016
PAGE: 4
RE: Complaint No. 16076 – Hartz v. Mark Farrell, San Francisco Board of Supervisors

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS**

(b) *A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request.* Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, *a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request.* This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

SUNSHINE ORDINANCE TASK FORCE PUBLIC COMPLAINT PROCEDURE**SECTION F.**

1. The Administrator shall send the Order of Determination to the complainant and the respondent and request a written response within business 5 days of the receipt of the Order and as necessary request a written response, which shall be monitored by the SOTF Compliance and Amendments Committee and/or any committee recommended by the Chair. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 business days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. *If there is a failure to comply, a Committee of the SOTF may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.*
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

**Sunshine Ordinance Task Force
Complaint Summary**

File Nos. 16076

Ray Hartz v. Supervisor Mark Farrell

Date filed with SOTF: 08/16/2016

Contacts information:

rwhartzjr@comcast.net (Complainant)

Supervisor Mark Farrell, Board of Supervisors (Respondent)

File No. 16076: Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.34, by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act, as evidenced in the failure to respond to a Sunshine Ordinance Task Force (SOTF) complaint, failure to attend SOTF hearings, and failure to comply with SOTF's Order of Determination in regards to SOTF File No. 15071.

Administrators Summary if applicable:

The Complainant alleges that the Respondent willfully failed to discharge the duties imposed by the Sunshine Ordinance, the Brown Act and the Public Records Act through their actions related to SOTF File No. 15071.

It is requested that detailed information as to how the Respondent willfully violated the Sunshine Ordinance be provided to the SOTF. (Dates and summaries)

Complaint attached.

History of File NO. 15071

06/03/15, The SOTF heard the matter and found a violation of 67.21e and 67.25a. The matter was referred to the Compliance and Amendments Committee.

10/20/15, The Compliance and Amendments Committee heard the matter and determined that the Order of Determinations was complied with. The matter is concluded.

11/5/15, The Office of Supervisor Farrell complied with the Committee's request to resend their response to the Complainant.



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
 http://www.sfgov.org/sunshine
SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission BOARD OF SUPERVISORS

Name of individual contacted at Department or Commission MARK FARRELL


- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting _____

Sunshine Ordinance Section 67.34 WILLFUL FAILURE
 (If known, please cite specific provision(s) being violated)

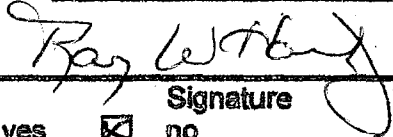
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

BASED ON OD #15071, ESTABLISHING FAILURE "TO DISCHARGE ANY DUTIES IMPOSED BY THE SUNSHINE ORDINANCE, THE BROWN ACT OR THE PUBLIC RECORDS ACT," INCLUDING BUT NOT LIMITED TO: FAILURE TO RESPOND TO SOTF COMPLAINT SOTF HEARING, AND SOTF ORDER OF DETERMINATION LISTED ABOVE

- Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
- Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹ Name  **Mr. Ray W. Hartz Jr.**
 839 Leavenworth St. #304
 San Francisco, CA 94109-6131 Address _____

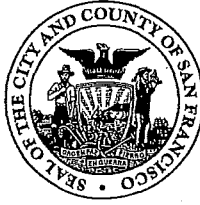
Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@COMCAST.NET

Date AUGUST 16, 2016 
 Signature

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TTD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION
June 29, 2015**

DATE DECISION ISSUED
June 3, 2015

CASE TITLE - Ray Hartz v. Supervisor Mark Farrell, Board of Supervisors
(File No. 15071)

FACTS OF THE CASE

Ray Hartz (Complainant) made a complaint alleging that Supervisor Mark Farrell, Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

COMPLAINT FILED

On March 24, 2015, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force (SOTF) regarding the alleged violation.

HEARING ON THE COMPLAINT

On June 3, 2015, the SOTF held a hearing on the matter. Ray Hartz (Complainant) provided an overview of the complaint and requested the SOTF find violations. There was no representative in attendance to present Supervisor's Farrell's position. However, the SOTF did receive a letter from Supervisor Farrell stating that he does not have any documents response to the request.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of the Complainant to be persuasive and finds Administrative Code (Sunshine Ordinance), Section 67.25(a), applicable in this case.

In addition, the SOTF finds Administrative Code (Sunshine Ordinance), Section 67.21(e), applicable as the Respondent failed to send a knowledgeable representative to the SOTF hearing.

DECISION AND ORDER OF DETERMINATION

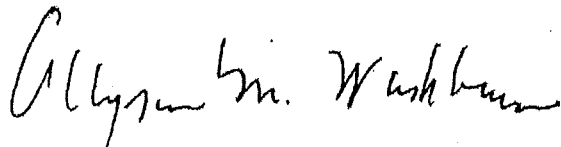
The SOTF finds Supervisor Mark Farrell, Board of Supervisors, in violation of Administrative Code (Sunshine Ordinance), Section 67.25(a), for failure to respond to an Immediate Disclosure Request in a timely and/or complete manner.

In addition, the SOTF finds Supervisor Mark Farrell, Board of Supervisors, in violation of Administrative Code (Sunshine Ordinance), Section 67.21(e), for failure to send a knowledgeable representative to the SOTF hearing.

The matter shall be referred to the Compliance and Amendments Committee (CAC) for additional review as the SOTF is not satisfied with the written response and the inability to ask questions. It is requested that Supervisor Farrell send a knowledgeable representative to the CAC hearing. In addition, it should be noted that all responses in regards to the Immediate Disclosure Request should be sent directly to Mr. Hartz and copied to the SOTF.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 3, 2015, by the following vote:

Ayes: 7 - Pilpel, Hepner, Haines, Fischer, Hinze, Hyland, Washburn
Noes: 0 - None
Absent: 2 - Chopra, Wolf



Allyson Washburn, Chair
Sunshine Ordinance Task Force

- c. Members, Sunshine Ordinance Task Force
Nicholas Colla, Deputy City Attorney
Ray Hartz, Complainant
Supervisor Mark Farrell, Board of Supervisors
Catherine Stefani, Office of Supervisor Mark Farrell

Young, Victor

From: Montejano, Jess (BOS)
Sent: Monday, September 19, 2016 11:14 AM
To: Young, Victor; SOTF, (BOS)
Subject: RE: SOTF - emails regarding File No. 15071

To whom it may concern:

I am emailing records from the past SOTF hearings that shows that our office attended the hearing and sent the necessary documents over to close this particular issue. Can you please provide guidance on why we are being asked to appear on this same issue that SOTF closed last year?

Thanks,

Jess

Jess Montejano
Legislative Aide
Office of Supervisor Mark Farrell
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7752
Fax: (415) 554-7843

From: Young, Victor
Sent: Monday, September 19, 2016 11:09 AM
To: Montejano, Jess (BOS) <jess.montejano@sfgov.org>
Cc: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Subject: SOTF - emails regarding File No. 15071

Jess:

Attached are the requested emails regarding File No. 15071.

Victor Young
Administrator

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org



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Young, Victor

From: Stefani, Catherine
Sent: Thursday, November 05, 2015 4:12 PM
To: Ray
Cc: SOTF, (BOS); Montejano, Jess (BOS)
Subject: Compliance with SOTF directions from October 20, 2015 Meeting (File Nos. 14105 and 15071)

Dear Mr. Hartz,

On October 20, 2015, my colleague Jess Montejano appeared at the Sunshine Ordinance Task Force with regard to your complaints outlined in File Nos. 14105 and 15071. The Task Force directed our office to perform another search for the records you previously requested. We have performed that search and have concluded that we do not have any documents responsive to the IDR requests you made on October 8th, 2014 (File No. 14105) and on March 19, 2015 (File No. 15071).

Sincerely,

Catherine Stefani
Legislative Aide
Office of Supervisor Mark E. Farrell
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7752
Fax: (415)554-7843

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<http://new-markfarrell.nationbuilder.com/join>

Young, Victor

From: Stefani, Catherine
Sent: Friday, July 10, 2015 3:32 PM
To: Ray; SOTF, (BOS)
Cc: Farrell, Mark (BOS)
Subject: RE: SOTF - Order of Determination - File No. 15071
Attachments: SOTF response 06.03.15.doc

Dear Mr. Hartz,

In response to your complaint below, please refer to our response to SOTF Complaint No. 15071, dated June 3, 2015, which we provided to SOTF in response to your most recent request/complaint. Our office is providing a copy attached for your review. We would like to reiterate to you that our office did not identify any records responsive to your original request for, "[...] any and all documents that each of you and/or your staff reviewed in the calendar years 2012, 2013, 2014 and 2015 in the process of deciding on whether or not to approve The Friends annual 'gifts' to the San Francisco Public Library." Please also reference our confirmation contained in the publicly-available SOTF agenda packet dated June 3, 2015.

Per our attached correspondence, we believe that we have been fully responsive to your request, and remain ready and willing to work with you in good faith if there is any additional information you need. Please note that we had not received any correspondence or contact from you, following our last appearance at the SOTF in February, that would lead us to believe that there was any information outstanding.

Please advise if we can be of further assistance.

Thanks!

Catherine Stefani
Legislative Aide
Office of Supervisor Mark E. Farrell
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7752
Fax: (415)554-7843

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<http://new-markfarrell.nationbuilder.com/join>

From: Ray [mailto:rwhartzjr@comcast.net]
Sent: Tuesday, June 30, 2015 9:30 AM
To: SOTF, (BOS)
Cc: Farrell, Mark (BOS); Colla, Nicholas (CAT); Stefani, Catherine; Calvillo, Angela (BOS); Avalos, John (BOS); Breed, London (BOS); Campos, David (BOS); Christensen, Julie (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Kim, Jane (BOS); Mar, Eric (BOS); Tang, Katy (BOS); Wiener, Scott; Yee, Norman (BOS)
Subject: Re: SOTF - Order of Determination - File No. 15071

Mr. Young,

I still have received nothing regarding this case from Supervisor Farrell's office, including the letter that was sent to the SOTF on the day of the hearing.

Now this new referral is to go before the CAC without any response to the original IDR?

Supervisor Farrell expects people to believe he voted to recommend approval by the full BOS of items that neither he nor anyone in his office reviewed in any form. Nothing from the SFPL, the Library Commission, The Friends, or anyone else? How did it even get on the agenda before Budget and Finance?

Supervisor Farrell still has not provided any response from OD #14105 dated March 30, 2015. This case has yet to be scheduled before EOT as indicated by the Order of Determination. This despite the fact that in case #14096 the Controller's Office produced documents which they had sent to the Supervisor related to the very matter at issue in the case #14105.

So now we have two hearings for the Supervisor, both for not replying to separate IDRs related to the basically the same issue: approval of donations by The Friends of the SFPL to the Library.

This is a request to the Chair, to reevaluate case #14096 and send it, along with #15071 for a joint hearing before CAC. This is clearly NOT an issue that has any EOT component. Ms. Stefani, who represented Supervisor Farrell in February, promised to "work with Mr. Hartz" as stated in the OD and has not done so in any way. In fact, at the more recent hearing, Supervisor Farrell did not even send a representative.

Neither Supervisor Farrell nor his aid Catherine Stefani has shown any level of "good faith" in dealing with these matters before the SOTF! "Fool me once shame on me, fool me twice..."

Ray W Hartz, Jr.
Director, San Francisco Open Government

From: "SOTF" <sotf@sfgov.org>
To: "Mark Farrell (BOS)" <mark.farrell@sfgov.org>, "Ray" <rwhartzjr@comcast.net>
Cc: "Nicholas Colla (CAT)" <nicholas.colla@sfgov.org>, "Catherine Stefani" <catherine.stefani@sfgov.org>, "Angela Calvillo (BOS)" <angela.calvillo@sfgov.org>
Sent: Monday, June 29, 2015 2:10:49 PM
Subject: SOTF - Order of Determination - File No. 15071

Good Morning:

Please find attached the Sunshine Ordinance Task Force Order of Determination for the above mentioned File.

If you have any questions please feel free to contact me. Thank you.

Victor Young
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Pl., Room 244
San Francisco CA 94102
phone 415-554-7724
fax 415-554-5163

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**Victor Young
Administrator**

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, City Hall., Room 244

San Francisco CA 94102

phone 415-554-7724 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org



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Young, Victor

From: SOTF, (BOS)
Sent: Thursday, October 29, 2015 10:25 AM
To: 'Ray'
Cc: Calvillo, Angela (BOS)
Subject: SOTF - Notice of Sunshine Ordinance Task Force Action - File Nos. 14096, 14105, and 15071

Dear Mr. Hartz:

The Sunshine Ordinance Task Force –Compliance and Amendments Committee scheduled your complaints, listed below, for a hearing on October 20, 2015, and in your absence took the following actions:

1. File No. 14096: Hearing on the Order of Determination -Complaint filed by Ray Hartz against Ben Rosenfield, Controller, and the Office of the Controller for violating Administrative Code (Sunshine Ordinance), Sections 67.21(c) and 67.25 (a), for failure to assist the requester in identifying the existence, form and nature of any record requested and failure to respond to an Immediate Disclosure Request in a timely and/or complete manner.

The Committee review your communications regarding the Controller's compliance with the Order of Determination and found that the Controller had complied with the Order of Determination and concluded the matter.

2. File No. 14105: Hearing on the Order of Determination - Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors, for violating Sunshine Ordinance Section 67.25(a) for failure to respond to Immediate Disclosure Requests in a timely and/or complete manner.

The Committee determined that the Respondent complied with the Order of Determination and concluded the matter.

3. File No. 15071: Hearing on the Order of Determination - Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors, for violating Administrative Code (Sunshine Ordinance), Sections 67.25(a) and 67.21(e), for failure a response to an Immediate Disclosure Request in a timely and/or complete manner and failure to send a knowledgeable representative to the Sunshine Ordinance Task Force meeting.

The Committee determined that the Respondent complied with the Order of Determination and concluded the matter.

A copy of the draft minutes from the meeting is available online at the following link:

<http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=54089>

Victor Young
Administrator

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163

Young, Victor

From: Ray <rwhartzjr@comcast.net>
Sent: Friday, July 10, 2015 3:50 PM
To: Stefani, Catherine
Cc: SOTF, (BOS); Farrell, Mark (BOS); Avalos, John (BOS); Breed; London (BOS); Campos, David (BOS); Christensen, Julie (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Kim, Jane (BOS); Mar, Eric (BOS); Tang, Katy (BOS); Wiener, Scott; Yee, Norman (BOS)
Subject: Re: SOTF - Order of Determination - File No. 15071

Ms. Stefani,

Until today I had no response at all to my IDR, which is the second finding of violation for Supervisor Farrell.

And, you seem to expect me to believe that Supervisor Farrell votes to recommend that the full BOS approve "gifts" to the SFPL without ANYONE in your office reviewing ANYTHING?

Also, at the hearing you attended, the Controllers Office produced a document which they said they sent to your office and you said you knew nothing about it.

I sent a similar request to Supervisor Christensen regarding the approval of these "gifts" from The Friends of the San Francisco Public Library and she sent me a number of documents. These included, but are not limited to: a letter from the friends to the SFPL proposing the "gift," and other documents communicating a request that the BOS approve the request. I guess you figure that I'll believe that Supervisor Farrell just shows up to Budget & Finance Committee meetings and recommends approval of items that neither he nor anyone on his staff have vetted in any way?

See you at the next hearing.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

P.S. Expecting that, after the Supervisor was found in violation two times, that it is somehow my responsibility to "correspond and/or contact you shows either an ignorance of the Sunshine Ordinance and/or the Brown Act. Or, is it simply an additional expression of hostility you demonstrated at the SOTF hearing?

From: "Catherine Stefani" <catherine.stefani@sfgov.org>
To: "Ray" <rwhartzjr@comcast.net>, "SOTF" <sotf@sfgov.org>
Cc: "Mark Farrell (BOS)" <mark.farrell@sfgov.org>
Sent: Friday, July 10, 2015 3:32:25 PM
Subject: RE: SOTF - Order of Determination - File No. 15071

Dear Mr. Hartz,

In response to your complaint below, please refer to our response to SOTF Complaint No. 15071, dated June 3, 2015, which we provided to SOTF in response to your most recent request/complaint. Our office is providing a copy attached for your review. We would like to reiterate to you that our office did not identify any records responsive to your original request for, "[...] any and all documents that each of you and/or your staff reviewed in the calendar years 2012, 2013, 2014 and 2015 in the process of deciding on whether or not to approve The Friends annual 'gifts' to the San Francisco Public Library." Please also reference our confirmation contained in the publicly-available SOTF agenda packet dated June 3, 2015.

Per our attached correspondence, we believe that we have been fully responsive to your request, and remain ready and willing to work with you in good faith if there is any additional information you need. Please note that we had not received any correspondence or contact from you, following our last appearance at the SOTF in February, that would lead us to believe that there was any information outstanding.

Please advise if we can be of further assistance.

Thanks!

Catherine Stefani
Legislative Aide
Office of Supervisor Mark E. Farrell
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7752
Fax: (415)554-7843

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<http://new-markfarrell.nationbuilder.com/join>

From: Ray [mailto:rwhartzjr@comcast.net]

Sent: Tuesday, June 30, 2015 9:30 AM

To: SOTF, (BOS)

Cc: Farrell, Mark (BOS); Colla, Nicholas (CAT); Stefani, Catherine; Calvillo, Angela (BOS); Avalos, John (BOS); Breed, London (BOS); Campos, David (BOS); Christensen, Julie (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Kim, Jane (BOS); Mar, Eric (BOS); Tang, Katy (BOS); Wiener, Scott; Yee, Norman (BOS)

Subject: Re: SOTF - Order of Determination - File No. 15071

Mr. Young,

I still have received nothing regarding this case from Supervisor Farrell's office, including the letter that was sent to the SOTF on the day of the hearing.

Now this new referral is to go before the CAC without any response to the original IDR?

Supervisor Farrell expects people to believe he voted to recommend approval by the full BOS of items that neither he nor anyone in his office reviewed in any form. Nothing from the SFPL, the Library Commission, The Friends, or anyone else? How did it even get on the agenda before Budget and Finance?

Supervisor Farrell still has not provided any response from OD #14105 dated March 30, 2015. This case has yet to be scheduled before EOT as indicated by the Order of Determination. This despite the fact that in case #14096 the Controller's Office produced documents which they had sent to the Supervisor related to the very matter at issue in the case #14105.

So now we have two hearings for the Supervisor, both for not replying to separate IDRs related to the basically the same issue: approval of donations by The Friends of the SFPL to the Library.

This is a request to the Chair, to reevaluate case #14096 and send it, along with #15071 for a joint hearing before CAC. This is clearly NOT an issue that has any EOT component. Ms. Stefani, who represented

Supervisor Farrell in February, promised to "work with Mr. Hartz" as stated in the OD and has not done so in any way. In fact, at the more recent hearing, Supervisor Farrell did not even send a representative.

Neither Supervisor Farrell nor his aid Catherine Stefani has shown any level of "good faith" in dealing with these matters before the SOTF! "Fool me once shame on me, fool me twice..."

Ray W Hartz, Jr.
Director, San Francisco Open Government

From: "SOTF" <sotf@sfgov.org>
To: "Mark Farrell (BOS)" <mark.farrell@sfgov.org>, "Ray" <rwhartzjr@comcast.net>
Cc: "Nicholas Colla (CAT)" <nicholas.colla@sfgov.org>, "Catherine Stefani" <catherine.stefani@sfgov.org>, "Angela Calvillo (BOS)" <angela.calvillo@sfgov.org>
Sent: Monday, June 29, 2015 2:10:49 PM
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Victor Young

Administrator
Sunshine Ordinance Task Force
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Victor Young
Administrator
Sunshine Ordinance Task Force

Young, Victor

From: Ray <rwhartzjr@comcast.net>
Sent: Tuesday, June 30, 2015 9:30 AM
To: SOTF, (BOS)
Cc: Farrell, Mark (BOS); Colla, Nicholas (CAT); Stefani, Catherine; Calvillo, Angela (BOS); Avalos, John (BOS); Breed, London (BOS); Campos, David (BOS); Christensen, Julie (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Kim, Jane (BOS); Mar, Eric (BOS); Tang, Katy (BOS); Wiener, Scott; Yee, Norman (BOS)
Subject: Re: SOTF - Order of Determination - File No. 15071

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Neither Supervisor Farrell nor his aid Catherine Stefani has shown any level of "good faith" in dealing with these matters before the SOTF! "Fool me once shame on me, fool me twice..."

Ray W Hartz, Jr.

Director, San Francisco Open Government

From: "SOTF"
To: "Mark Farrell (BOS)", "Ray"
Cc: "Nicholas Colla (CAT)", "Catherine Stefani", "Angela Calvillo (BOS)"
Sent: Monday, June 29, 2015 2:10:49 PM
Subject: SOTF - Order of Determination - File No. 15071

Good Morning:

Please find attached the Sunshine Ordinance Task Force Order of Determination for the above mentioned File.

If you have any questions please feel free to contact me. Thank you.

Victor Young

Administrator

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Pl., Room 244

San Francisco CA 94102

phone 415-554-7724

fax 415-554-5163

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.

<http://www.sfbos.org/index.aspx?page=104>

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- _____
- _____
- Public Correspondence
- _____
- _____

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



DENNIS J. HERRERA
City Attorney

NICHOLAS COLLA
Deputy City Attorney

Direct Dial: (415) 554-3819
Email: nicholas.colla@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Nicholas Colla
Deputy City Attorney
DATE: September 30, 2016
RE: Complaint No. 16071 – Borden v. John Rahaim of the San Francisco Planning Department

COMPLAINT

Complainant Tom Borden ("Complainant") alleges that John Rahaim ("Mr. Rahaim") of the San Francisco Planning Department ("Planning") violated public records laws by failing to adequately respond to his April 29, 2016 public records request and by failing to justify the withholding of information.

COMPLAINANT FILES COMPLAINT

On August 9, 2016, Complainant filed this complaint with the Task Force alleging that Planning failed to timely respond to his request for public records and failed to justify the withholding of information.

JURISDICTION

Planning is a City department subject to the provisions of the Sunshine Ordinance governing public records. Planning does not contest jurisdiction to hear this complaint.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs responses to a public records request.
- Section 67.24 governs what must be disclosed.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 governs the release of public records and the timing of responses.
- Section 6254 describes the types of documents not subject to public record request laws.

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APPLICABLE CASE LAW

- *Los Angeles Police Dep't v. Superior Court* (1977) 65 Cal. App. 3d 661, 668 [a person who may be the subject of the particular record sought does not, because he is personally affected, have any greater right than any person to examine the record].
- *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645 [By disclosing exempted records to one requestor, a government agency may not deny access to subsequent requests to disclose those same records.]

BACKGROUND

On April 29, 2016, Complainant sent an email to Christine Silva of Planning in which he requested the following:

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

According to Planning's August 25, 2016 response to this complaint, Planning informed Complainant via email on May 3, 2016 that records responsive to his request had been placed onto a CD and were available for pickup.

On several dates ranging from July 7, 2016 to August 5, 2016, Complainant allegedly emailed Planning to say that there were numerous redactions made to documents provided and that Planning failed to justify the withholding of information.

In an August 9, 2016 email from Planner Melinda Hue ("Ms. Hue") to Complainant, Ms. Hue provided the following explanation for the redactions to the documents:

The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is currently being reviewed by the Planning Department and the Recreation and Parks Department. Because it is a preliminary draft and it is not normally kept on file (since a final draft will ultimately be published) the recommendations of the author in the preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine Ordinance. The items in the preliminary draft SNRAMP RTC that were considered recommendations of the author were therefore redacted in accordance with Section 67.24. Please consider the above reasoning as the Planning Department's justification for withholding in accordance with Section 67.27 of the Sunshine Ordinance.

On the same date, Complainant filed this complaint with the Task Force.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS

- Did Complainant eventually obtain all of the desired documents?

MEMORANDUM

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- What provision of Sunshine Ordinance Section 67.24 does Planning contend justifies the withholding at issue?
- When did Complainant first notify Planning that it failed to provide him with a justification for withholding information and when did Planning actually provide a justification?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did Planning violate Administrative Code Section 67.21(b) by failing to provide Complainant with records responsive to his request in a timely manner?
- Did Planning withhold any responsive records and, if so, did they follow the protocol for doing so under Administrative Code Sections 67.26 and 67.27?

SUGGESTED ANALYSIS***Equal Access to Public Documents***

“[A] person who may be the subject of the particular record sought does not, because he is personally affected, have any greater right than any person to examine the record.” *Los Angeles Police Dep't v. Superior Court* (1977) 65 Cal. App. 3d 661, 668.

In *Los Angeles Police Dep't*, the Court held that the documents regarding a police investigation were exempt from the CPRA and that members of a church had no greater right to document disclosure than the general public solely because the church members were the subject of the requested documents. *Id.* Considering the holding in *Los Angeles Police Dep't*, did MTA act properly by requiring Complainant to sign a privacy waiver to access documents about her?

In addition, in *Black Panther Party v. Kehoe*, the court held that by disclosing records of complaints about licensed collection agencies to said collection agencies, the Department of Consumer Affairs could not subsequently deny access to Plaintiffs requesting the same documents by asserting that the documents were exempt from disclosure under CPRA Section 6254. *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 656-657. Considering the holding in *Black Panther Party*, the Task Force may wish to consider that disclosing the requested documents to Complainant may mandate subsequent disclosure of the same documents to subsequent requestors.

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

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CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. *If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.*

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided

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that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

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(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals.

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data

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submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all

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bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

SEC. 67.26. WITHHOLDING OF RECORDS

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) *A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.*

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

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(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SEC. 6253**

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) *Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.*

(c) Each agency, upon a request for a copy of records, shall, *within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.* In unusual circumstances, the *time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension* and the date on which a determination is expected to be dispatched. *No notice shall specify a date that would result in an extension for more than 14 days.* When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

SEC. 6254

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

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(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

**Sunshine Ordinance Task Force
Complaint Summary**

File No. 16071

Tom Borden V. John Rahaim and the Planning Department

Date filed with SOTF: 8/9/16

Contacts information (Complainant information listed first):

tom@intrinsicdevices.com (Complainant)

Director John Rahaim; Jonas Ionin, Christine Silva (Respondent)

File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

Complaint Attached.

Young, Victor

From: Tom Borden <tom@intrinsicdevices.com>
Sent: Tuesday, August 09, 2016 1:02 PM
To: SOTF, (BOS)
Subject: Violation of Sunshine Ordinance by Planning Department
Attachments: RTC redaction pages.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Task Force,

I would like to file a complaint against the Planning Department for multiple violations of the ordinance. I requested a copy of the Response to Comments (RTC) for the EIR of the Recreation and Parks Department SNRAMP. They provided the documents. However, I discovered they had made redactions to the document. They did not add notations to explain the basis for the redactions as required by section 67.27.

I submitted six requests for the redacted information and never received a reply from Planning until today, August 9. The dates of those requests and who they were sent to are:

April 29 Christine.L.Silva@sfgov.org original request for EIR RTC
July 7 Christine.L.Silva@sfgov.org request for redactions
July 19 CPC-RecordRequest@sfgov.org repeat request for redactions
August 1 CPC-RecordRequest@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions
August 3 sarah.b.jones@sfgov.org, melinda.hue@sfgov.org, jessica.range@sfgov.org request for redactions
August 5 melinda.hue@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions

They failed to respond within the time frame laid out by the ordinance.

In the email received today they justify all of the redactions per section 67.24, claiming the redactions are "recommendations of the author". Based on formatting there are 5 redactions that are clearly part of the body text of the document. They are not Recommendations by the author. That hidden information should be revealed. There are 13 other redactions where formatting does not give a clear indication.

The author of the RTC is not identified. As I understand it, it was drafted by a consulting company with input from RPD. This document is a contract deliverable we paid for. Why would anything be exempt from disclosure? How can we determine if the redactions are justified as "recommendations of the author"?

Below is the series of emails related to this Sunshine request. Attached are copies of the redacted pages of the RTC.

Thanks for you assistance on this.

Tom Borden
415 252 5902

Subject: Improper Redactions of SNRAMP EIR RTC
Date: Tue, 9 Aug 2016 11:22:54 -0700

From: Tom Borden <tom@intrinsicdevices.com>

To: Hue, Melinda (CPC) <melinda.hue@sfgov.org>, Silva, Christine (CPC) <christine.l.silva@sfgov.org>, Range, Jessica (CPC) <jessica.range@sfgov.org>

CC: Jones, Sarah (CPC) <sarah.b.jones@sfgov.org>

Melinda,

Your department made redactions to the Response to Comments for the SNRAMP EIR that was provided to me under San Francisco's Sunshine Ordinance. You failed to note the justification for withholding information as required by the ordinance.

Sec. 67.26. Withholding Kept To A Minimum. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. **Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article.**

I submitted six requests for the redacted information and never received a reply from Planning until your response this morning. The dates of those requests and who they were sent to are:

April 29 Christine.L.Silva@sfgov.org original request for EIR RTC

July 7 Christine.L.Silva@sfgov.org request for redactions

July 19 CPC-RecordRequest@sfgov.org repeat request for redactions

August 1 CPC-RecordRequest@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions

August 3 sarah.b.jones@sfgov.org, melinda.hue@sfgov.org, jessica.range@sfgov.org request for redactions

August 5 melinda.hue@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions

Given your response below, it is clear that Planning did not want to honor my information request and purposefully ignored one inquiry after another. You hoped I would give up.

You cite section 67.24 as justification for the redactions, claiming they are all "recommendations of the author". First of all, who is the "author"? I cannot find a name on the documents. I assume the recommendations of the author that would be held exempt from disclosure would be expressions of that person's personal opinions. If this document is the product of an outside consulting company we paid for, how would anything qualify as exempt? Aren't any explanatory comments part of the contract deliverables?

Some of the redactions are clearly made to the body text of the document. They are not "recommendations of the author". These obviously improper redactions are highlighted in the list below.

page 4-25 top

page 4-34 bottom

page 4-169 top

page 4-226 top clearly part of the document and not an author recommendation, cuts off end of sentence

page 4-263 bottom

page 4-306 bottom clearly part of the document and not an author recommendation, evidenced by formatting

page 4-343 top

page 4-346 top clearly part of the document and not an author recommendation, evidenced by formatting

page 4-357 bottom

page 4-358 top

Page 4-422 bottom clearly part of the document and not an author recommendation, evidenced by formatting
Page 4-438 bottom
page 4-439 top
page 4-443 mid.
page 4-487 clearly part of the document and not an author recommendation, evidenced by formatting
page 4-582 mid page
page 5-33 bottom
page 5-34 top

I hope your department will reconsider your position on this. It is hard to imagine withholding this information is in the public good, or that there is any legal requirement forcing you to withhold the information.

Tom

Tom Borden
tel: 415-252-5902

Subject:Sunshine Request for Redactions of SNRAMP EIR RTC
Date:Fri, 5 Aug 2016 12:24:10 -0700
From:Tom Borden <tom@intrinsicdevices.com>
To:Hue, Melinda (CPC) <melinda.hue@sfgov.org>
CC:Christine.L.Silva@sfgov.org

Melinda,

Thanks for stepping in. I don't know what happened with Christine. I've sent multiple emails to her and to the CPC-RecordRequest@sfgov.org address. No response.

The copy of the SNRAMP EIR RTC Christine provided to me has blacked out text in multiple locations. See me email below. It is not normal editing for a document of this type. I tried to send you a copy of what she provided, but the file is too large.

Thanks for any help.

Tom Borden
415 252 5902 W
415 297 6084 cell

Subject:Re: Violation of CEQA by SFRPD
Date:Wed, 3 Aug 2016 16:09:22 -0700
From:Tom Borden <tom@intrinsicdevices.com>
To:Jones, Sarah (CPC) <sarah.b.jones@sfgov.org>
CC:Hue, Melinda (CPC) <melinda.hue@sfgov.org>, Range, Jessica (CPC) <jessica.range@sfgov.org>, Sfforestleadership <sfforestleadership@googlegroups.com>

Sarah,

Thanks for the quick reply. The alleged violations I cite relate to things that are specifically planned in the SNRAMP. The most ironclad and easy to grasp are the trail closures. The trails appear as "existing" in the SNRAMP maps. In those maps they are color coded as "to be closed". That is exactly what they have done. It is black and white.

I have raised this issue with RPD and their commission. They have ignored it. Stacy knows about this as well.

If a land developer started demolishing a row of houses in preparation to build a Walmart, but the EIR was not certified, who would initiate action against the developer? Would the SF Planning department play any role in that process?

On another subject, I have been trying to get a public records request by the Planning Department for over a month. I have sent multiple emails to Christine Silva and to CPC-RecordRequest@sfgov.org. There has been no response. Do you happen to know who administers Sunshine requests for the Department? Thanks for any help on that.

Tom Borden
415 252 5902

On 8/3/2016 2:13 PM, Jones, Sarah (CPC) wrote:

Subject:Sunshine Request for Redactions of SNRAMP EIR RTC

Date:Mon, 1 Aug 2016 18:04:02 -0700

From:Tom Borden <tom@intrinsicdevices.com>

To:CPC-RecordRequest@sfgov.org

CC:Christine.L.Silva@sfgov.org

I submitted a Sunshine request for all of the documents that comprise the EIR for the Recreation and Parks Department SNRAMP, your case number 2005.0912E (or 2005.1912E). That was on April 29, 2016. I was provided with the draft RTC documents.

I later noticed what appear to be redactions to the document. I sent an email to Christine Silva on July 7 2016, requesting the redactions. (See below.) I did not hear back from her.

On July 19, 2016 I sent the request again to this email address, CPC-RecordRequest@sfgov.org. (See just below.) A response is long overdue, but I have not received a reply.

Perhaps this fell down a crack on your end, or maybe I missed your response. Could you please send me the redacted information? Please consider this an immediate Sunshine request.

Thank you,

Tom Borden
415 252 5902

tom@intrinsicdevices.com

Subject:Fwd: Sunshine Request for Redactions of SNRAMP EIR

Date: Tue, 19 Jul 2016 09:31:15 -0700
From: Tom Borden <tom@intrinsicdevices.com>
To: CPC-RecordRequest@sfgov.org

I sent the public records request below some time ago. The bold text was conveyed in a second email sent later on July 7. Please provide the information requested.

Thank-you,

Tom Borden

Subject: Sunshine Request for Redactions of SNRAMP EIR

Date: Thu, 7 Jul 2016 15:14:11 -0700

From: Tom Borden <tom@intrinsicdevices.com>

To: Christine.L.Silva@sfgov.org

CC: Dee Seligman <deesel91@gmail.com>

Christine,

I sent you the Sunshine request below some time ago. Thank you for producing the EIR RTC.

I am troubled by what appear to be redactions in the document. These appear as masked over text at the following locations in the document you provided titled, "3a. AdminDraftRTC-11-2015-for Tom Borden request".

page 4-25 top

page 4-34 bottom

page 4-169 top

page 4-226 top

page 4-263 bottom

page 4-306 bottom

page 4-343 top

page 4-346 top

page 4-357 bottom

page 4-358 top

Page 4-422 bottom

Page 4-438 bottom

page 4-439 top

page 4-443 mid.

page 4-487

page 4-582 mid page

page 5-33 bottom

page 5-34 top

Section 67.26 of the Sunshine ordinance requires that the justification for each redaction be noted on the document. In addition, Section 67.27 lays out additional requirements for documenting the justification.

Would you please provide copies of those pages showing the redacted text or document the nature of the redacted information and the justification for withholding it as required by the ordinance? Also, if there are redactions in the other documents that I have not found yet, please provide the same information for those.

In terms of the timing of your response, please treat this as an Immediate Sunshine Request.

Thank you,

Tom

Subject: Sunshine Request for SNRAMP EIR

Date: Fri, 29 Apr 2016 16:09:30 -0700

From: Tom Borden <tom@intrinsicdevices.com>

To: Christine.L.Silva@sfgov.org

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

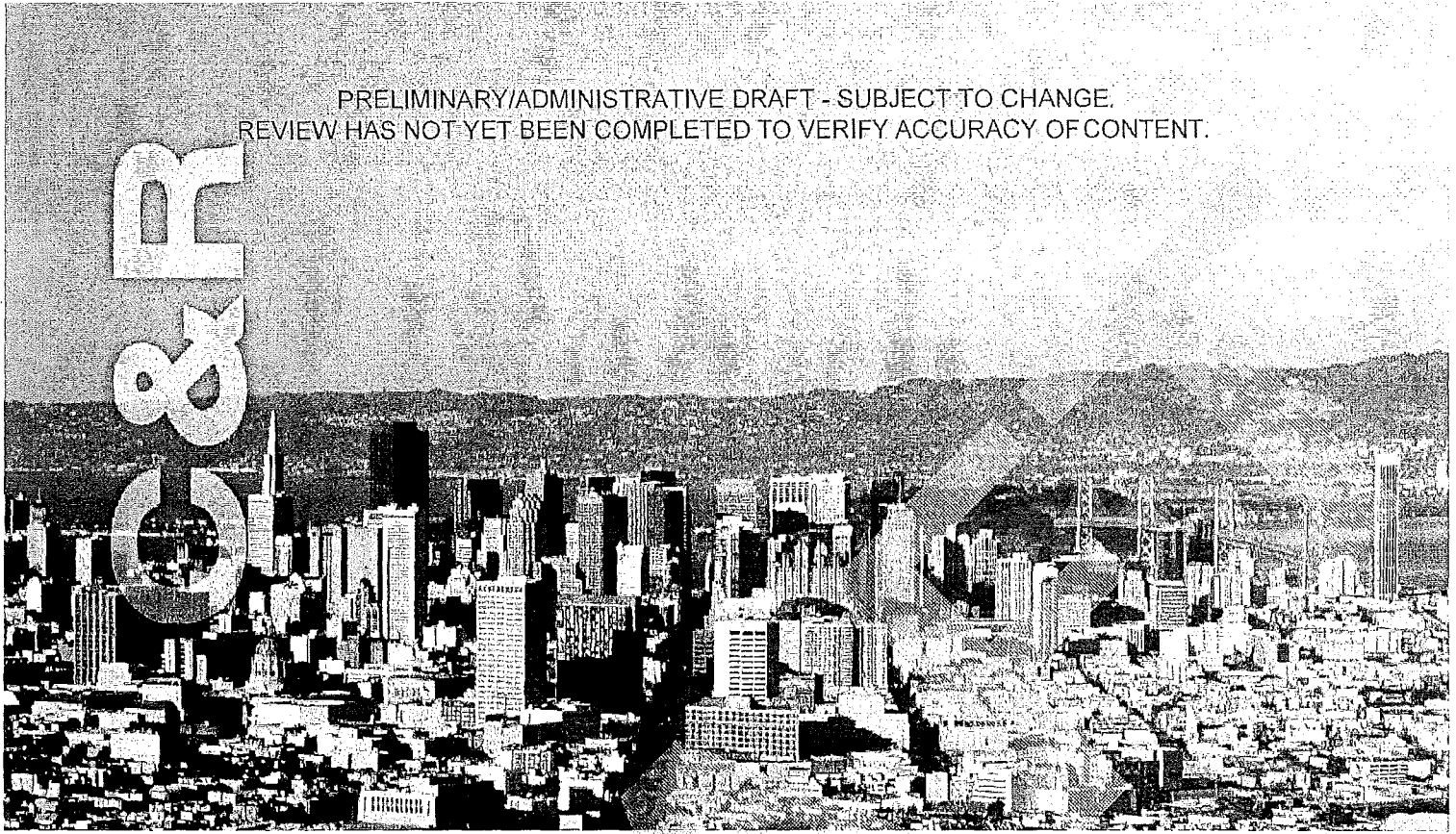
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Tom Borden
2353 3rd. Street
San Francisco, CA 94107
tel: 415-252-5902
fax: 415-252-1624



This email has been checked for viruses by Avast antivirus software.
www.avast.com

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RESPONSES TO COMMENTS

Significant Natural Resource Areas Management Plan

CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT

CASE NO. 2005.0912E

CASE NO. 2005.0912E

STATE CLEARINGHOUSE NO. 2009042102



Administrative Draft Number 03	Draft ER Publication Date:	AUGUST 31, 2011
	Draft ER Public Hearing Date:	OCTOBER 6, 2011
	Draft ER Public Comment Period:	AUGUST 31, 2011, to OCTOBER 17, 2011; and APRIL 27, 2012, TO JUNE 11, 2012

Final ER Certification Hearing Date: MONTH XX 2015

THIS DRAFT HAS BEEN PROVIDED IN RESPONSE TO A

SAN FRANCISCO PUBLIC RECORDS REQUEST (SUBMITTED 4/27/16 AND 4/29/16) FROM TOM BORDEN.

SAN FRANCISCO
PLANNING
DEPARTMENT

ENVIRONMENTAL PLANNING DIVISION | SAN FRANCISCO PLANNING DEPARTMENT

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format, and consistency. To the extent possible, these clarity and organizational comments, as well as her specific technical comments, were incorporated into the Final Draft.

The Natural Areas comprise 1,107 acres of SFRPD's 4,113 acres of total recreation and open space areas (approximately 27 percent); however, this only represents parkland under SFRPD's jurisdiction. Within the SFRPD's parkland, after implementation of the SNRAMP, almost 100,000 trees and 29 acres of trails would be provided. Considering parkland within the city that is under the control of other public entities, such as the Port of San Francisco, federal government (e.g., Presidio Trust or Golden Gate National Recreation Area), SFPUC, and University of California San Francisco (UCSF), there are many more thousands of acres available to the public within the immediate local area. Refer also to Response PD-6, RTC p. 4-443, Response G-5, RTC p. 4-31, and Response RE-8, RTC p. 4-315, for a further discussion of potential impacts associated with access restrictions.

With respect to the sustainability of native plants, refer to Response PD-11, RTC p. 4-156, for a discussion of the City's policy guidance that supports the protection and maintenance of biodiversity within the City's Natural Areas, including guidance provided in the City's *Sustainability Plan* regarding the protection of natural Natural Areas in San Francisco. Refer also to Response BI-36, RTC p. 4-454, for a discussion of the temporary intervention and maintenance activities that are required for native species to become established.

One of the commenters questions whether the NAP is harming the environment by removing established trees, habitats, and ecosystems and also questions whether the removal of grasses would cause harm to species that use grassland as its habitat. Refer to Response BI-13, RTC p. 4-385, and Response BI-31, RTC p. 4-425, for a discussion of the impacts of removing vegetation, including impacts to common species, and refer to Response BI-15, RTC p. 4-389, for a discussion of the impacts of retaining nonnative vegetation and the relative benefits of removing nonnative vegetation.

With respect to the commenters concerns about when activities proposed under the SNRAMP would occur relative to the breeding and nesting season, the section on *Invasive Vegetation Removal* provided under Impact BI-2 on Draft EIR pp. 304 and 305 notes that "vegetation management activities would be conducted outside the breeding season for bird species (February 1 through August 31, as designated by CDFW), unless these activities had already begun before the breeding season and had already removed nesting habitat, or if a breeding bird survey was conducted prior to vegetation removal activities and had determined that no nesting birds were present". Other impacts on sensitive species resulting from implementation of the programmatic projects, as well as the proposed maintenance activities and the Sharp Park Restoration Project, are comprehensively analyzed in Impacts BI-2 through BI-6 provided on Draft EIR pp. 306 through 330, concluding, in all cases, that impacts would be reduced to a less-than-significant level with the implementation of the identified mitigation measures.

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Comment G-4 Financial considerations for implementation of SNRAMP

The response to Comment G-4 addresses all or part of the following individual comments:

GGAS-1-11	MPIC-1-14	MPIC-2-06
WTPCC-1-14	Art-1-06	Bartley-1-04
Blum-1-03	Bowman-1-10	Cook-1-07
Delacroix-1-06	Fitzer-1-04	Fox-1-06
Freedman-1-02	Gomez-1-04	Hess-1-07
Johns-1-08	Jungreis-1-07	Lorenz-1-02
Ray-1-06	Rehling-1-03	Risk-1-06
Schlund-1-04	Shepard-A-1-03	Valente-1-10
Wade-1-03		

- Overall, Golden Gate Audubon endorses the Monitoring Program as written, but is concerned that the DEIR does not commit the City to fully executing or funding the Monitoring Program. (DEIR, at 94-95) Golden Gate Audubon strongly recommends that this section be improved to identify funding sources and state an affirmative commitment that monitoring will be conducted and that findings will be made available to the public (via reports or other means of sharing data) in a timely manner. This is of particular importance for the monitoring of special status species. [GGAS-1-11]
- Economic Factors. The DEIR lacks any cost estimate for implementing the SNRAMP and has no information about how it will be funded. It also does not address the potential impact of shifting resources such as park bond funds away from recreation and park maintenance/improvements to complete the SNRAMP. The substantial cost of removing the trees from Mt. Davidson will divert significant resources from providing what the MPIC considers a higher priority for resource use: basic maintenance of Mt. Davidson Park including litter and graffiti removal, forest and trail maintenance, and installation of benches and trail direction signage. [MPIC-1-14]
- The DEIR does not address the economic impact of the significant financial resources that would be diverted from SF Park and Recreation services to implement SNRAMP. There is no cost estimate for implementing the SNRAMP and no information about how it will be funded. It also does not address the potential impact of shifting resources, such as park bond funds, away from recreation and park maintenance and improvements in order to complete the SNRAMP. The substantial cost of removing the trees from Mt. Davidson will divert significant resources from providing what the MPIC considers a higher priority for resource use: basic maintenance of Mt. Davidson Park, including litter and graffiti removal, forest and trail upkeep, and installation of benches and trail direction signage. Ongoing costs for herbicide spraying, erosion control, replanting, and fencing are also not addressed. [MPIC-2-06]

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Response G-6

These comments express concern that the NAP program currently does not provide sufficient maintenance of the Natural Areas including the DPAs within those Natural Areas. Comment Carrington-1-03 suggests that rather than closing DPA's, NAP should increase maintenance activities. Other comments suggest that NAP should scale back their program to a fraction of the existing Natural Areas.

In terms of maintenance, as described on Draft EIR p. 89, the NAP staff is composed of biologists, ecologists, and natural resource managers that conduct routine maintenance within the Natural Areas on a daily basis. The NAP staff of approximately 10 gardeners conducts management actions within the Natural Areas, and the NAP also uses volunteer groups that range in size from 10 to 50 people. The current levels of funding do not allow the SFRPD to employ additional maintenance staff; however, with the collaboration of SFRPD employees and volunteers, the Natural Areas are maintained to allow positive recreational experiences while enhancing natural habitats.

With respect to comments regarding closure of DPAs, the SNRAMP proposes the closure of only one DPA, located at Lake Merced. As described in Draft EIR Chapter III, Project Description, p. 136, this DPA is proposed for closure not because of poor maintenance, but rather to avoid disturbance to breeding birds. Although the SNRAMP proposes reducing the size of two other DPAs, other than the Lake Merced DPA, no DPAs are proposed for closure at this time.

The SNRAMP does not propose to add new Natural Areas to its program, but rather outlines management activities within existing Natural Areas. The management actions of the SNRAMP are evaluated against the existing management actions as identified in the 1995 Management Plan and considering the existing physical conditions at the time of the Notice of Preparation of the EIR. Similar to the proposed project, the 1995 Management Plan outlines measures to maintain and enhance vegetation, wildlife, water quality, and control of erosion. The proposed SNRAMP, however, includes additional monitoring goals as well as design and aesthetic goals (Draft EIR pp. 86 to 87). The SNRAMP also includes a monitoring program to assess the success of restoration projects in achieving conservation and restoration goals, and proposes to employ an adaptive management approach in achieving those goals (Draft EIR pp. 90 and 94 to 96). It is reasonable to expect that with implementation of the identified monitoring plan, the survival and maintenance of newly planted vegetation would increase compared to existing conditions. According to SFRPD, some successful restoration efforts include those implemented at Glen Canyon and Islais Creek, the oak woodlands at Golden Gate Park, Beacon Street at Billy Goat Hills, and Grandview Park, but there are others, as well.

The Draft EIR analyzes the environmental impacts of the proposed SNRAMP on aesthetic resources on Draft EIR pp. pp. 189 to 199. With respect to scenic resources, the Draft EIR concludes that where nonnative vegetation is replaced with native vegetation that is more appropriate for the area's

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As described on Draft EIR pp. 97 through 104, the project description states that the activities planned for the Natural Areas can generally be divided between routine maintenance and programmatic projects. In the Draft EIR, as further described on pp. 96 to 104, routine maintenance and the Sharp Park restoration are addressed at a project level, while the programmatic projects (e.g., rerouting or constructing trails, stabilizing hillsides, and undertaking initial invasive weed or tree removal projects that typically exceed half an acre (or on average 20 trees) at any one time) are addressed programmatically; programmatic projects would undergo additional environmental review, as appropriate, at the time they are proposed. In the Draft EIR, both the programmatic- and project-level components were described in detail, substantially expanding upon what was provided in the NOP. Since publication of the Draft EIR, the restoration activities proposed at Sharp Park have not changed. As previously described, the Draft EIR includes both a program-level and project-level analysis. As described on Draft EIR pp. 79 to 80, there is sufficient detail to provide a project-level analysis of routine maintenance activities and the Sharp Park Restoration Project. However, because the specific details of programmatic activities, as identified in the Draft EIR, are unknown at this time, the Draft EIR analyzes the activities at a programmatic level. CEQA allows, and it is common practice, for an EIR to include both a programmatic analysis and project-level analysis for those portions of the project where sufficient details have been developed.

Further, an EIR is an "informational document" intended to inform public agency decision makers and the public of the significant environmental effects of a project proposal, identify possible ways to minimize the significant effects, and describe feasible alternatives to the project to reduce or eliminate those significant effects. Certification of an environmental document does not constitute a project approval of any kind. Certification of this EIR (with the Sharp Park Restoration project) included does not preclude decision makers from taking other actions in the future with respect to Sharp Park or the SNRAMP.

Pending Litigation

The comment notes that litigation is currently pending regarding Sharp Park. This is correct. Currently, there are two actions pending regarding Sharp Park. In one lawsuit, plaintiffs sued the City in federal court, alleging the City's ongoing maintenance and operation of Sharp Park Golf Course violated the federal Clean Water Act and the federal Endangered Species Act. This case was dismissed as moot by the federal trial court, and an appeal of that dismissal is currently pending. In the other lawsuit, petitioners have alleged that the City violated CEQA in its approval of the Sharp Park Safety, Infrastructure Improvement, and Habitat Modification Project. That case is awaiting a hearing in state trial court. But, the ultimate outcome of these cases has no bearing on the analysis or conclusions in the EIR. This is because—as required by CEQA—the Draft EIR analyzes the environmental impacts of the proposed project by comparing the existing physical environmental conditions against the potential physical effects of the proposed project. Regardless of whether the City or the plaintiffs prevail in the two lawsuits, the existing baseline conditions at Sharp Park remain the same, and this project—including both the SNRAMP and the Sharp Park Restoration

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Project—could proceed, if approved by decision makers. [REDACTED]

Transition of Sharp Park to the GGNRA

The proposed legislation at the Board of Supervisors to transition management of Sharp Park to the Golden Gate Natural Recreation Area has been set aside and is not a foreseeable action at this time. Regardless, even if such management transfer were to occur, it would not affect the analysis or conclusions contained in the EIR. Commenters are correct in stating that the description of proposed actions at Sharp Park has been modified from previously described actions. Draft EIR Section III.G, Changes Made to the SNRAMP Since Publication, pp. 105 to 107, identifies a number of changes that have been made to the SNRAMP because certain proposed actions were (1) found to be infeasible; (2) completed under a separate environmental review; (3) incorrectly described; (4) re-assessed as contrary to policy; or (5) further developed with additional details and specificity.

Scientific Basis of the Sharp Park Restoration Project

Some comments question the scientific basis of the restoration plan and whether the actions would protect the species or are realistic. The proposed restoration plan at Sharp Park was developed by biologists that are experts in wetland, California red-legged frog, and San Francisco garter snake ecology. In addition, scientific experts from local resource agencies, academic institutions and other organizations reviewed the restoration plan during its development and as part of a science round table. In terms of the scientific basis for the SNRAMP, refer also to Response G-3, RTC p. 4-20, which indicates that the Plan was independently and affirmatively reviewed by three scientists, as well as many other agencies, organizations, and individuals who participated in the preparation and/or review of the document. Whether implementation of proposed actions is realistic is unrelated to the analysis of impacts in the Draft EIR. Refer also to Response PD-13, RTC p. 4-172, for a discussion of the proposed actions for Sharp Park, including the City's scientific studies, deliberations, and decision-making processes that resulted in the decision to pursue the restoration activities at Sharp Park Salada, as well as a discussion of the alterations proposed for the golf course. In summary, and as further explained in Response PD-13, RTC p. 4-172, the golf course would replace one hole (Hole 12) and raise the elevation of four holes (Holes 10, 14, 15, and 18).

Comment PD-13 Proposed actions for Sharp Park

The response to Comment PD-13 addresses all or part of the following individual comments:

NPS-1-12
NPS-1-19
Sierra Club-1-08
Pfister-1-02

NPS-1-16
SFPGA-3-13
WEI-1-05
PH-Solomon-01

NPS-1-18
SFPGA-3-15
Keitelman-1-02

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Response AE-6

These comments suggest that SFRPD staff (along with volunteers) have not adequately maintained Natural Areas, which has led to the adverse impacts on aesthetics and recreation.

Consistent with standard CEQA practice, the Draft EIR assumes implementation of the proposed management actions, including maintenance actions, as presented in the project description. The proposed project consists of both programmatic and project activities to be implemented at each of the existing Natural Areas; it does not propose to convert additional portions of San Francisco parkland to Natural Areas [REDACTED]

[REDACTED] Generally, the level of daily routine maintenance under the proposed project would be similar to the activities currently conducted by the NAP because, as described in Draft EIR Chapter III, Project Description, p. 89, the NAP staff is composed of biologists, ecologists, and natural resource managers that conduct routine maintenance within the Natural Areas on a daily basis. The NAP staff of approximately ten gardeners would continue to conduct the management actions within the Natural Areas; therefore, existing staffing levels are anticipated to be similar to current levels, and maintenance activities are not expected to increase substantially. The NAP also utilizes volunteer groups that range in size from 10 to 50 people; therefore, it is not anticipated that routine maintenance activities, which are substantially similar to current activities, would result in a need for SFRPD to hire additional staff. As also discussed on Draft EIR p. 89, larger projects, identified as programmatic projects in the Draft EIR, would be implemented by the SFRPD's Capital Division.

The impacts from routine maintenance would be unlikely to change, as the proposed maintenance actions would not represent a substantial change from baseline conditions. However, the Draft EIR determined that routine maintenance would have less than significant aesthetic impacts (refer to Draft EIR pp. 190, 195, and 197). Additionally, consistent with the commenters suggestion, the No Project Alternative and the Maintenance Alternative identified in the Draft EIR both consider the effects of reduced management actions relative to the proposed project (refer to Draft EIR pp. 468 and 513). The Draft EIR concludes that neither of these alternatives would have a significant impact on aesthetic resources relative to existing conditions. Also refer to Response AE-1, RTC p. 4-215.

The SNRAMP does not propose any change in the total acreage of Natural Areas as compared to existing conditions. In fact, the acreage of Natural Areas would remain the same under all of the alternatives, whether No Project, Maximum Recreation, Maximum Restoration, or Maintenance; the only difference would be the activities that occur within the existing Natural Areas. Refer also to Response G-4, RTC p. 4-29 for a discussion of the financial considerations associated with the SNRAMP.

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"brought to light the fact that the mountain was not always covered with **stately trees** ... it was but a barren, rocky hill ... [when] "part of the property owned by Adolph Sutro, Joaquin Miller, the poet who was enthusiastically planting trees on 'The Heights' in the east bay, envisioned the beauty that might be created by trees on the San Miguel Hills and suggested the plan to Sutro ... [who] planted thousands of tiny trees: cedars, pines, and eucalyptus."

Richard Walker credits Joaquin Miller as being one of the first to promote preservation of the forests in the Sierra Nevada. The San Francisco Garden Club published vignettes of early San Francisco homes and gardens in December 1935. It quoted from the notes of Emma Sutro:

"There is an account in Joaquin Miller's Poetical Works of the first Arbor Day in San Francisco, celebrated on Nov. 27, 1886. The celebration was promoted by Joaquin Miller, Adolph Sutro, General Vallejo and General O. O. Howard ... Adolph Sutro, as his contribution to the first Arbor Day, gave 50,000 trees to be planted by the school children of Oakland and San Francisco. Climate has been modified and many a sandy bare monotone in San Francisco has been beautified by the massed dark accent of Mr. Sutro's trees."

Mount Davidson Park, among the last remnants in San Francisco of this historic forest that once extended from Ocean Avenue north to Mt. Sutro and was planted to celebrate CA's first Arbor Day and to beautify the City, has been preserved in a City park. The forest has significant historical associations and defines the character of the surrounding neighborhoods. The size and age of the trees are significant and they provide a prominent landscape feature in West of Twin Peaks, especially for Miraloma Park residents. The experience of the forest led to initiation of the historic Easter sunrise event and the residents' campaign to preserve it as public park. Without the forest, there would be no native plants left to protect and the land would be covered with housing. The forest in Mount Davidson Park meets most criteria for protection by the Landmark Tree Ordinance: visual, cultural, ecological, and locational characteristics. The Recreation and Parks Department should fulfill its stewardship responsibility and recommend to the Urban Forestry Council designation of the 30.1 acre forest in Mt. Davidson Park for Landmark status.

A structural engineer should evaluate the historic retaining walls before embarking on the 2008 Park Bond work planned for this area. The HRER notes that the mature vegetation growing on these walls and stairs is historic. The trees along these features should therefore be protected. The forest is also holding the steep slopes of Mt. Davidson intact. The DEIR on page 219 acknowledges that extensive erosion control structures would create an additional substantial adverse impact on this cultural resource. Whether these structures would be necessary if the concentrated tree clearing is implemented should be addressed in the EIR. [MPIC-2-15]

Response CP-9



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These comments question the adequacy of the HRER for Mount Davidson, citing concerns about the scope of the report (and the fact that it should be expanded to address cultural landscapes); whether additional data and analysis should be considered, such as the pre-existing rating and survey report dated 2/5/1997 and the analysis completed in 1991 by Marie Bolton for the City Attorney as part of the lawsuit regarding the cross at the summit of Mount Davidson; whether a structural engineer should evaluate the historic retaining walls before any work proceeds; and generally question the impact conclusions.

The SNRAMP (p. 6.2-9) indicates that trees will be removed (or thinned) in both MA-1 and MA-2, while MA-3 will not be thinned. Specifically, tree removals would occur in the central portion of the site and along the eastern edge of the mountain's forest, as follows:

- Remove approximately 1,000 small- and medium-sized eucalyptus trees, leaving large cypress and eucalyptus trees in MA-1c.
- Remove approximately 200 eucalyptus trees, leaving some large trees for structural diversity (MA-2c).
- Remove approximately 300 small to medium sized and 100 large eucalyptus trees, while some large trees will remain (MA-2e).
- Manage all MA-3 areas as urban forests (GR-14), with no removal of trees.
- In addition, approximately 2,867 feet of social trails (or 19 percent) that are subject to erosion or could be used for habitat restoration would be closed.

A Historic Resources Evaluation Response (HRER) (January 12, 2011) was completed by Shelley Caltagirone (Historic Preservation Planner, San Francisco Planning Department) to identify whether any historic resources are present at Mt. Davidson and to address potential impacts caused by implementation of the SNRAMP.

With respect to the urban forest at Mount Davidson, the HRER states that:

Tetra Tech also prepared a memorandum describing the history of the urban forest located at Mount Davidson and the establishment of the city park in this location. Based upon this information the Planning Department finds that the Mount Davidson natural area is potentially eligible for listing on the California Register under Criteria 1 (Event) and 2 (Persons) as an ethnographic landscape. Although further research is required to establish a full historic context for the site, Mount Davidson is a prominent topographical feature in San Francisco that has historically held special natural and cultural significance for the city. The site is associated with local philanthropist Adolph Sutro, with an annual Easter ceremony established in 1923, and with the early development of natural areas dedicated to recreational use within San Francisco. For these reasons, the natural area will be considered a historic resource for the purposes of this review.

Importantly, the historic resources evaluation of the urban forest at Mount Davidson was conducted for the whole of Mount Davidson and identifies the resources character-defining features. The HRER for the urban forest at Mount Davidson states that "The character-defining features of the

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consider new DPAs. In the four years since the DAC was sunset, however, RPD has done nothing on the citywide survey. And now this inaction by RPD is being used to prevent the EIR from considering whether or not creating new DPAs to replace ones closed by NAP could decrease the impacts of the closures. [SFDOG-2-10]

- The NAP EIR incorrectly summarizes RPD's so-called moratorium on creating new DPAs until a systemwide survey of DPAs is conducted. The NAP EIR says that this moratorium was a directive from the Rec and Park Commission that was announced at the October 10, 2006 meeting of the RPD Dog Advisory Committee (DAC). This is not true. The idea of a systemwide survey of where dogs and DPAs are in San Francisco came not from the Commission, but from RPD staff. It was not discussed at the October 2006 DAC meeting. It was not fully discussed in the DAC until 2007 when RPD made the decision to "sunset" the DAC and conduct the citywide survey. While the survey was being conducted, the DAC was told, there would be a hold on new DPAs. The DAC was told the survey would take maybe a year or a year and a half at the most. The idea of the citywide survey was not presented to the Rec and Park Commission until mid-2007. This was no "direction from the Commission." This hold was never meant to be permanent. Yet the NAP EIR implies it will last for decades (the length of time covered by the NAP EIR) and therefore the EIR does not have to consider new DPAs. In the four years since the DAC was sunset, however, RPD has done nothing on the citywide survey. And now this inaction by RPD is being used to prevent the EIR from considering whether or not creating new DPAs to replace ones closed by NAP could decrease the impacts of the closures. The NAP plan will last for decades, and for the NAP EIR not to consider a major mitigation like opening new DPAs to replace closed ones because of a temporary halt on new designations is absurd. Any analysis of alternatives that does not include this possible mitigation is incorrect and inadequate. [Bartolotta-1-09]

Response RE-2

These comments express the opinion that the Draft EIR incorrectly describes the SFRPD's moratorium on creating new DPAs.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Draft EIR conservatively characterizes the direction from the San Francisco Recreation & Park Commission concerning establishment of new DPAs as a moratorium for the purpose of analyzing of cumulative impacts on recreation in the Natural Areas. This direction was presented at October 10, 2006, meeting of the San Francisco Dog Advisory Committee and was also addressed in a July 19, 2007, SFRPD memorandum on the Status of the Dog Advisory Committee Work Plan and discussed during the August 16, 2007, meeting of the San Francisco Recreation & Park Commission. While some new or improved DPAs may be pursued in San Francisco by the SFRPD and/or through community-driven efforts, none are proposed or envisioned in the Natural Areas. This assumption provides for a conservative worst-case analysis of cumulative impacts in the Draft EIR, but does not preclude the future establishment of new DPAs.

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protected" species under the Fish and Game Code and DFG does not have the authority to authorize the incidental take of fully protected species; and (4) a state take permit for the western pond turtle is not required because this species is not listed as threatened or endangered under CESA. [SFPGA-3-14]

Response BI-2

This comment suggests revisions to the Draft EIR with respect to the permitting process for implementation of the Sharp Park restoration project.

As further described in Response AL-11, RTC p. 4-581, the Pumphouse Project, while separate and independent from the proposed restoration activities at Sharp Park under the SNRAMP, includes the removal of 435 cubic yards of sediment and emergent vegetation within Horse Stable Pond and the connecting channel that links Horse Stable Pond with Laguna Salada. The purpose of the sediment removal proposed under the Pumphouse Project is to improve breeding habitat for the California red-legged frog and reduce the potential malfunction of the pumps caused either by sediment entering the pump system and/or by preventing water from entering the pump intake.

The proposed activities under the SNRAMP are articulated on Draft EIR pp. 144 to 146. These activities also include dredging excess sediments and accumulated organic matter, including stands of encroaching tules, as well as other restoration activities. Under both projects, the SFRPD would continue to use the pumps to manage water levels in Horse Stable Pond to maintain California red-legged frog habitat. Neither the Pumphouse Project nor the SNRAMP project proposes to modify the operations of the existing pumps at Horse Stable Pond.

On January 16, 2014, the Planning Commission found the Pumphouse Preliminary IS/MND to be adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, and approved the Final Mitigated Negative Declaration (FMND) for the Project in compliance with CEQA, the CEQA Guidelines, and Chapter 31. Further, the Pumphouse Project has a Biological Opinion from the USFWS for the proposed activities.⁷⁶

The SNRAMP Project is in the process of environmental review. If the EIR is certified by the Planning Commission and the Project is approved, the City will begin the permitting process for the

⁷⁶U.S. Fish and Wildlife Service (USFWS), *In Reply Refer To: 08ESMF00-2012-F-0082-2, Formal Endangered Species Consultation on the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project in San Mateo County, California*, October 2, 2012 ("Biological Opinion"). This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

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enough to show that the plan provides the conditions of possibility for the survival of a subpopulation of 200 snakes. Rather, recent science shows that what is necessary is not only the provision of habitat but "ecological corridors" allowing connectivity between the isolated subpopulations. While the proposal to create an island of snake habitat in the middle of Laguna Salada may have merit, the approach may not be sufficient to satisfy the overall ecological requirements for a viable and self-sustaining snake population. [Sierra Club-1-11]

Response BI-4

[REDACTED]
[REDACTED]
[REDACTED] This comment focuses on the merits of the proposed San Francisco garter snake habitat improvements at Sharp Park. No specific environmental issues about the adequacy or accuracy of the Draft EIR's coverage of environmental impacts are presented in this comment.

The following is provided for informational purposes only. The USFWS and CDFW have identified the wetland complex at Sharp Park as important habitat for San Francisco garter snake and California red-legged frog. Both agencies have suggested a restoration plan that enhances conditions in and around the wetlands to reduce the possibility of harm to and ensure the viability of the San Francisco garter snake population that is found in and around the wetlands. As described in Response BI-6, RTC p. 4-348, the activities described in the Sharp Park Restoration Plan are voluntary. During planning for the recovery effort, several broad goals were identified by SFRPD and through agency input. These goals are as follows: maintain and restore habitat for listed species, particularly the San Francisco garter snake and California red-legged frog; restore functional wetland and upland habitat that is high-value and low maintenance; comply with the requirements of state and federal regulations, including FESA and the California ESA (CESA) and the Clean Water Act; and, preserve and enhance recreational opportunities that are compatible with the listed species goals. The San Francisco Garter Snake Recovery Plan was consulted when developing the Sharp Park restoration project and a local expert in San Francisco garter snake population biology and ecology guided the development of the plan. The goal of this recovery effort is to restore and enhance the San Francisco garter snake habitat in order to protect the population that currently exists there. While ecological connectivity may be an appropriate conservation strategy for some species, recent genetic data on the San Francisco garter snake may indicate that the next closest population to the one at Sharp Park/Mori Point is genetically different (Lim et al., in review); therefore, connecting the two populations may not be the best strategy to preserving the species beyond Sharp Park and Mori Point. The proposed actions at Sharp Park would not result in any increase in fragmentation of the San Francisco garter snake habitat and would serve to protect and enhance the current population of the species.

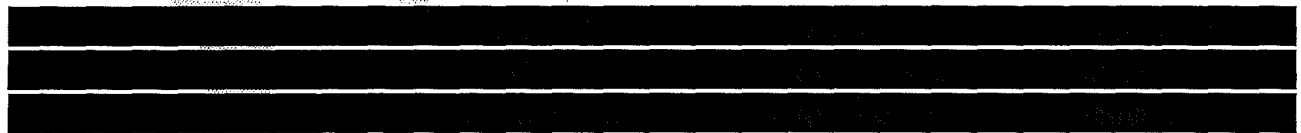
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and hypoxic conditions. Other than the case above, no specific case studies of instances where acid sulfate soils effects have occurred in Bay Area restoration sites have been identified.⁸²

Removal of sediment in the connecting channel between Horse Stable Pond and Laguna Salada was reported to have occurred more than 10 years ago. While it was smaller in scale than what is proposed as part of the SNRAMP project, at that time, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified. Also, at the time of the previous removal, it was reported that the bottom of Horse Stable Pond was lined with gravel. The previous sediment removal activity removed sediments that had accumulated after the seawall was constructed. Because the sediment to be removed as part of the proposed project is likely to have only accumulated since the last removal activity, it is unlikely that acid sulfate soils would exist in the sediments to be excavated. Sources of these sediments include input from the watershed during storms, as well as accumulated organic matter from dead and decaying vegetation in the watershed complex. This means that these sediments accumulated without the saline conditions that allow acid sulfate soils to form and can be eliminated as a contributor to acid sulfate soils conditions,⁸³ supporting the conclusion that the proposed sediment and vegetation removal would not likely result in the substantial disturbance of acid sulfate soils in the water column and would not, in turn, result in a significant impact to special-status species.

In summary, other reasons supporting the conclusion that it would be unlikely for hypoxic conditions to occur during the proposed sediment and emergent vegetation removal include the following: (1) when sediment was previously removed from the connecting channel approximately 10 years ago, no effects that would normally be associated with acid sulfate soils, including acidification of waters and sediment surfaces, were identified; (2) the sediment to be removed as part of the proposed project has only accumulated since the last removal activity, which would have removed all the sediment that accumulated before the current seawall was constructed, and, therefore, has accumulated without the saline conditions that allow acid sulfate soils to form; and (3) the Biological Opinion for the Pumphouse Project concluded that the project would not jeopardize the continued existence of California red-legged frog or San Francisco garter snake with the implementation of the Conservation Measures included in the Biological Opinion. These conservation measures would likely be included in the SNRAMP Biology Opinion as well, or have already been incorporated into the project mitigation measures identified in this EIR.

In order to ensure potential impacts are mitigated to a less-than-significant level, in the unlikely event that anoxic conditions materialize, pertinent aspects of Pumphouse FMND Mitigation Measure M-BIO-2b, Protection of Special-Status Species and Water Quality from Acid Sulfate Soils and Other Components, p. 124, are incorporated into Draft EIR Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326.



⁸² Harry Gibbons and Robert Plotnikoff, Tetra Tech, Inc. Acid Sulfate Soils Technical Memorandum. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

⁸³ Harry Gibbons and Robert Plotnikoff, Tetra Tech, Inc. Acid Sulfate Soils Technical Memorandum. This document is available for review as part of Case File No. 2012.1427E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

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As described in the Pumphouse Project FMND on p. 84, the toxic pathways analysis method for analyzing the potential for bioaccumulation of toxics in the environment is an approach recommended by the USEPA for determining risk to wildlife and plants. Pathways analysis is used to determine environmental conditions that would mobilize toxics and increase exposure that could have chronic or acute effects. If this analysis indicates that their presence could potentially result in substantial stress to special-status species, the mitigation measure requires SFRPD to implement remediation measures, as approved by the USFWS and CDFW, to ensure that impacts to special-status species are reduced to a less-than-significant level. Further, this mitigation measure also provides for post-construction monitoring of pH levels for a period of six weeks after the proposed sediment and vegetation removal is completed to ensure that conditions are within the established toxicity standards; if monitoring indicates that additional remediation is necessary, the mitigation measure requires such remediation to be completed.

Similar to the Pumphouse FMND Mitigation Measure M-BIO-2b, Protection of Special-Status Species and Water Quality from Acid Sulfate Soils and Other Components, p. 80, SNRMAP Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326, would also require soil sampling tests prior to commencement of the proposed sediment and vegetation removal, and review of the results of such soil sampling tests by resource agencies, including the USFWS, CDFW, and any other applicable responsible agencies. If soil sampling shows that acid sulfate soils could be present and/or there is the potential for anoxic conditions in the water column, the mitigation measure requires SFRPD to perform a toxic pathways analysis to determine potential risks and toxicities to species that may be affected by localized increases in acidity, hypoxia, or dissolved metals concentration and to determine the appropriate remediation measures.

While hypoxic conditions are unlikely to occur for all of the reasons provided in the above text change to the Draft EIR, in the event that they do materialize, the text on Draft EIR pp. 326 to 328 (Mitigation Measure M-BI-6a, Protection of Protected Species during Implementation of the Sharp Park Restoration Project, p. 326,) has been changed, as follows:

M-BI-6a: Protection of Protected Species during Implementation of the Sharp Park Restoration Project

The SFRPD shall implement the following, subject to modification during the required regulatory approval processes:

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While native nectar sources are also widespread, and SFRPD vegetation management policy includes treating invasive plants, the Recovery Plan does not recommend intensive treatments to remove the Italian thistle until native nectar sources are enhanced, with the caveat that the species should be watched to make sure it doesn't form dense monocultures.

Issue TP-2, provided on page 6.8-8 of the SNRAMP, states that "Priority shall be given to maintaining the habitat necessary for mission blue butterflies, especially the host plant (silver bush lupine)." Recommendations TP-2a and TP-2b (also provided on page 6.8-8 of the SNRAMP) state that the SFRPD shall continue to monitor the mission blue butterfly population at Twin Peaks in accordance with monitoring guidelines (as outlined in Section 7 of the SNRAMP), and augmentation of host plant populations shall occur whenever possible as part of any grassland revegetation work conducted on Twin Peaks.

The Mission blue butterfly is addressed on Draft EIR p. 285, which concludes that impacts from the proposed project would be reduced to a less-than-significant level with the implementation of Draft EIR Mitigation Measure M-BI-5, Protection of Special Status Species during Routine Maintenance, Draft EIR p. 315. The text on Draft EIR p. 319 (lines 5 to 8) has been changed for clarification, as follows:

- **Mission Blue Butterfly:** This species occurs at Twin Peaks and Sharp Park. The following measures shall apply to these Natural Areas:
 - > To avoid impacts to this species, SFRPD shall adhere to the long-term management and monitoring guidelines as described in the Recovery Action Plan for the Mission Blue Butterfly at Twin Peaks Natural Area and the corresponding Biological Opinion ~~and as that has been issued by~~ agreed to with the US Fish and Wildlife Service. These guidelines include conducting vegetation removal by manual, mechanical, and chemical treatments that would be applied consistent with the SFRPD Integrated Pest Management program, such as hand pulling, cutting and grubbing. To avoid impacts from trampling of host plants by recreational users, the SFRPD shall continue to conduct regular maintenance on the existing trail network including trimming trailside vegetation and replacing trail basematerials.

In summary, the SNRAMP would conduct management activities in accordance with the Recovery Action Plan for the Mission blue butterfly and corresponding Biological Opinion issued by the USFWS, which states the Recovery Plan would not jeopardize the continued existence of the Mission blue butterfly. [REDACTED]

[REDACTED] Further, the EIR concluded impacts to the Mission Blue would be reduced to a less-than-significant level with implementation of Mitigation Measure M-BI-5, Protection of Special Status Species During Routine Maintenance, which has been excerpted, in relevant part, in the preceding paragraph.

Further, refer to Response HZ-1, RTC p. 4-513, for a detailed discussion of the City's IPM program, Reduced Risk Pesticide List, use of the Precautionary Principle, the SFRPD's least-toxic decision-

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The natural history of trees in San Francisco

The primary reason why we know that it will not be possible to grow native trees in the natural areas in San Francisco is that there were few native trees in San Francisco before non-native trees were planted by European settlers in the late 19th century. San Francisco's "Urban Forest Plan" which was officially adopted by the Urban Forestry Council in 2006 and approved by the Board of Supervisors, describes the origins of San Francisco's urban forest as follows:

"No forest existed prior to the European settlement of the city and the photographs and written records from that time illustrate a lack of trees ... Towards the Pacific Ocean, one saw vast dunes of sand, moving under the constant wind. While there were oaks and willows along creeks, San Francisco's urban forest had little or nothing in the way of native tree resources. The City's urban forest arose from a brief but intense period of afforestation, which created forests on sand without tree cover."

The horticultural reality of trees native to San Francisco

More importantly, the reality is that even if we want to plant more native trees in San Francisco, they will not grow in most places in San Francisco because they do not tolerate San Francisco's climate and growing conditions: wind, fog, and sandy or rocky soil, etc. We know that for several reasons:

- > There are few native trees in San Francisco now. According to the US Forest Service survey of San Francisco's urban forest only two species of tree native to San Francisco were found in sufficient numbers to be counted in the 194 plots they surveyed: Coast live oak was reported as .1% (one-tenth of one percent) and California bay laurel 2.1% of the total tree population of 669,000 trees. (Nowak 2007)
- > The City of San Francisco maintains an official list of recommended species of trees for use by the Friends of the Urban Forest and the Department of Public Works. (CCSF Resolution No. 003-11-UFC)
 - o The most recent list (2011) categorizes 27 species of trees as "Species that perform well in many locations in San Francisco." There is not a single native tree in that category.
 - o Thirty-six tree species are categorized as "Species that perform well in certain locations with special considerations as noted." Only one of these 36 species is native to San Francisco, the Coast live oak and its "special considerations" are described as "uneven performer, prefers heat, wind protection, good drainage."
 - o The third category is "Species that need further evaluation." Only one (Holly leaf cherry) of the 22 species in that category is native to San Francisco.
- > Finally, where native trees have been planted by the Natural Areas Program (NAP) to placate neighbors who objected to the removal of the trees in their neighborhood parks, the trees did not survive. [REDACTED]

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SNRAMP documents that there is no intention to plant "replacement" trees

In fact, the SNRAMP documents that the Natural Areas Program (NAP) does not intend to plant replacement trees for the thousands of trees it proposes to destroy.

- > The majority of trees over 15 feet tall designated for removal by SNRAMP (15,000 trees) are in Sharp Park. The DEIR acknowledges that these trees will not be replaced because this area will be converted to native coastal scrub.
- > The DEIR makes no commitment to replace the trees less than 15 feet tall that will be removed but are not quantified by SNRAMP because they are not defined by SNRAMP as trees. There are probably thousands of trees less than 15 feet tall in the "natural areas" that will be removed and not replaced.
- > Because most of the natural areas are rock outcrops and sand hills that were treeless prior to the arrival of Europeans, there is little acreage within the "natural areas" that is capable of supporting trees that are native to San Francisco: "Two native forest series ... comprise approximately 17 acres, 2 percent of total vegetation [in the natural areas]" (SNRAMP, Setting, page 3-11). Obviously, it would not be physically possible to plant thousands of native trees in the small areas in which they would be able to survive.
- > SNRAMP documents the intention to convert all MA-1 and MA-2 areas, comprising 58% of the total acres of "natural areas" to grassland and scrub: "Within MA-1 and MA-2, these sites [of tree removals] would then be replanted with native shrub and grassland species." (SNRAMP, Forestry Statement, page F-3)
- > Only MA-3 areas, comprising 42% of total acreage will continue to support the urban forest: "Within MA-3, urban forest species would be planted or encouraged (see Section 5, GR-15)" (SNRAMP, Forestry Statement, page F-3). However, the Forestry Statement also documents the intention to thin the urban forest in MA-3 areas to a basal area of 60-200 trees per acre (our estimate based on the formula for basal area in SNRAMP). That represents a significant thinning of the urban forest when compared to the tree density of the eucalyptus forest on Mount Sutro documented by UCSF as 740 trees per acre.
- > The "Urban Forestry Statements" in Appendix F of the management plan contain the long-term plans for the natural areas in which trees will be destroyed. All but one of these specific plans is some variation of "conversion of some areas of forest to scrub and grasslands." The exception is Corona Heights for which the plans are "converted gradually to oak woodland." The Corona Heights natural area is 2.4 acres, making it physically impossible to plant thousands of oaks in that location.
- > "Oak woodland" is the only vegetation goal in SNRAMP which foresees the planting of native trees. Yet, the DEIR says nothing about the potential for Sudden Oak Death (SOD) to decimate the oak population in the San Francisco Bay Area. Ironically, the DEIR acknowledges that one of the comments on the Initial Study raised this question. Yet,

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Conclusion

The final EIR must correct the following errors of FACT in the DEIR:

- > The final EIR cannot claim that all non-native trees that will be destroyed are dead, dying, diseased, or hazardous because they are NOT and the claim contradicts the SNRAMP. [McAllister-3-02]
- In the Interior Greenbelt many healthy, young trees were destroyed to develop a trail under the auspices of the Natural Areas Program. So claims that only dead, dying, diseased trees would be destroyed for implementation of the management plan are totally untrue. [Rotter-E-1-02]
- And we know that the claim that every destroyed tree will be replaced by a native tree is not possible because we've seen what happened on Tank Hill. [Rotter-E-1-03]

Response BI-33

These comments question the amount of trees that would be replaced when nonnative trees are removed; issues related to sudden oak death; whether the restoration and replacement efforts are likely to be successful; the size and location of trees to be replaced; whether all of the trees proposed for removal are dead, dying, or diseased, insect-infested, storm-damaged, or hazardous, or whose growth is suppressed by overcrowding; and aesthetic impacts related to the removal of trees. A summary of urban forest acres to be converted to other habitats is also requested.



Removal of Trees (Including Aesthetic Impacts)

With respect to trees that would be removed, would remain, and/or would be replaced, Draft EIR Table 5 (provided on p. 114) indicates that of the 117,433 invasive trees located within the Natural Areas (including Sharp Park), 18,448 trees (or 16 percent) would be removed and 98,985 trees (or 84 percent) would remain. As stated on SNRAMP p. 1-3, one of the objectives of the Plan is to identify and prioritize restoration and management actions designed to promote the functioning of San Francisco's native ecosystem, including the maintenance of native biodiversity.

One of the commenters indicates that "the SNRAMP documents that the NAP does not intend to plant replacement trees for the thousands of trees it proposes to destroy." On the contrary, as stated

¹³⁰ Lisa Wayne, Open Space Manger, "Tree Removal and Replacement," memorandum to Jessica Range, Environmental Planner, San Francisco Planning Department, November 27, 2012.

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Integrated Pest Management and NAP staff shall work with the golf course operations staff to reduce the use of chemicals to the bare minimum, recognizing that alternative management methods may be more environmentally appropriate for this location (refer specifically to MA-1d to MA-1f of the SNRAMP), the Biological Opinion for the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project (on p. 8) states that "only organic fertilizers are used at Sharp Park and only on the greens, tees and surrounds." Consistent with the Biological Opinion, and as indicated in Response BI-10, RTC p. 4-373, nitrogen- and phosphorous-based fertilizers are not currently used at Sharp Park, and have not been used there for at least five years.

4.D.13 Hazards and Hazardous Materials [HZ]

The comments and corresponding responses in this section cover topics in Draft EIR Chapter V, Section V.I, Hazards and Hazardous Materials.

Comment HZ-1 Use of Herbicides/Pesticides by the Natural Areas Program

The response to Comment HZ-1 addresses all or part of the following individual comments:

CFDG-1-09	DogPACSF-1-02	DogPACSF-1-12
MPIC-2-23	MPIC-2-24	MPIC-2-25
MPIC-2-26	SFDOG-2-13	SFFA-3-07
SFFA-3-08	SFFA-3-09	SFFA-3-10
SFFA-3-11	WTPCC-1-04	WTPCC-1-05
WTPCC-1-06	Bartolotta-1-11	Bose-1-03
Bose-1-12	Bose-1-13	Bowman-1-03
Bowman-1-11	Bowman-2-10	Brown-1-09
Butler-1-03	Hess-1-06	Hull-1-02
Johns-1-03	Johns-1-07	Kessler-1-04
Kessler-1-05	Kessler-1-06	Kessler-1-07
Kessler-1-08	Kessler-2-04	Kessler-2-05
Kessler-2-06	Kessler-2-07	Kessler-2-08
Mattingly-1-02	McAllister-3-04	McAllister-3-05
McAllister-3-06	McAllister-3-07	Milstein-1-01
Otto-1-01	Otto-1-02	Otto-1-03
Pittin-1-02	Reichardt-1-03	Risk-1-05
Schlund-1-02	Thomas-1-01	Thomas-1-05
Valente-1-02	Valente-1-03	Vitulano-1-05
PH-Rotter-P-03		

- This EIR does not adequately consider the impacts of the use of herbicides, especially Garlon, on dogs who walk either within or adjacent to natural areas (this applies whether dogs are on- or off-leash). Dogs are particularly susceptible to problems from Garlon. This distinction

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encroaching vegetation would reverse the effects of a trend that would eventually result in the conversion of the remaining open water to vegetated wetland and ultimately conversion of those wetlands to upland. The project proposes to convert vegetated wetland habitat back to open water, resulting in a permanent loss of vegetated wetland. This conversion of wetland to open water habitat would not result in a loss of waters of the US and would be consistent with the historical conditions of Laguna Salada. Freshwater marsh habitat at Laguna Salada is currently dominated by dense stands of cattails (*Typha angustifolia*) and bulrush (*Scirpus* sp.). These species tend to form monostands and prevent the growth of other species. By converting these wetlands to open water, not only will a higher quality habitat be created for protected species, but the biodiversity of native wetland vegetation along the periphery of the open water will increase. This condition would be more consistent with historical conditions of the wetland complex...

The Pumphouse Project, while separate and independent from the proposed restoration activities at Sharp Park under the SNRAMP, includes the removal of 435 cubic yards of sediment and emergent vegetation within Horse Stable Pond and the connecting channel that links Horse Stable Pond with Laguna Salada. The purpose of the sediment removal proposed under the Pumphouse Project is to improve breeding habitat for the California red-legged frog and reduce the potential malfunction of the pumps caused either by sediment entering the pump system and/or by preventing water from entering the pump intake.

The proposed activities under the SNRAMP are articulated on Draft EIR pp. 144 to 146. These activities also include dredging excess sediments and accumulated organic matter, including stands of encroaching tules. Under both projects, the SFRPD would continue to use the pumps to manage water levels in Horse Stable Pond to maintain California red-legged frog habitat. Neither the Pumphouse Project nor the SNRAMP project proposes to modify the operations of the existing pumps at Horse Stable Pond. As stated on p. 7 of the Appeal Response for the Pumphouse Preliminary MND¹⁶¹ : [REDACTED]

The predominant factors that affect the rate, frequency and duration of pumping are: 1) pump infrastructure and protocols for pump operation; and 2) precipitation and water inflows.¹⁸ The pump infrastructure and protocols would not be adjusted, modified, or altered as part of the proposed project. SFRPD will continue to adjust pump levels throughout the breeding season to protect Frog egg masses and reduce flood potential. The maximum pumping rate (amount/time) is determined by the pumping capacity. Specifically, the small pump can remove water up to a rate of 1,500 gallons per minutes (gpm) and the larger pump up to 10,000 gpm.¹⁹ No changes to the pump infrastructure are proposed as part of the project, therefore the water removal rate would not change with project implementation. Precipitation and inflows are outside the control of SFRPD. The primary factor that drives precipitation and inflows is regional weather conditions. A secondary factor, which is subject to minimal short-term change, is local land use patterns, including the extent of impervious surfaces. The amount of water that is removed over a unit of time via operation of the pumps depends on the amount and timing of precipitation and inflows as

¹⁶¹ Appeal of Preliminary Mitigated Negative Declaration for the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project, Planning Department Case No. 2012.1427E, Prepared by Kei Zushi, San Francisco Planning Department, Prepared for the San Francisco Planning Commission, January 9, 2014.

PRELIMINARY/ADMINISTRATIVE DRAFT - SUBJECT TO CHANGE.

REVIEW HAS NOT YET BEEN COMPLETED TO VERIFY ACCURACY OF CONTENT.

As discussed in Response HZ-1, RTC p. 4-513, Draft EIR p. 392, lines 26 to 29, has been changed as follows:

Further, the Natural Areas Program would use pesticides that are the least toxic option that effectively controls the weeds. Because the application of herbicides are applied following IPM guidance, as well as the fact that staff remain onsite until the application has dried and it is safe to re-enter the area, dogs that are walked on leash as required by SFRPD rules would not risk an unsafe level of exposure to herbicides.

~~Therefore, For the reasons stated above,~~ impacts from applying herbicides as part of the IPM for programmatic projects under the SNRAMP would be *less than significant*.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 396, line 28, to p. 397, line 1, has been changed as follows:

Also, implementing recommendation GR-13a would reduce the presence of vegetation with high fire hazard ratings, such as dense and aging French broom and eucalyptus, adjacent to homes and other structures. Recommendation GR-13a further states that, when possible, minimum fire reduction zones of 30 feet should be maintained. Also, no brush piles shall be created within fire reduction zones. Trees determined to be hazardous to adjacent homes by the SFRPD Arborist should be removed. Tree and invasive weed removal ~~would~~ could reduce the amount of available fuel for fires. More important, timber thinning would increase the space between trees, reducing the ability of a fire to rapidly spread in some instances.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 397, line 7, has been changed as follows:

As Sharp Park and a few Natural Areas within San Francisco are classified as moderate to high fire hazard zones, tree and invasive weed removal as part of the programmatic projects would reduce the available fuel loads and ~~would~~ could reduce the potential of fire hazards within these areas.

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 397, lines 18 to 21, has been changed as follows:

Similar to the impacts described under the programmatic projects, routine maintenance activities that remove fuel loads ~~would~~ could reduce the presence of vegetation with high fire hazard ratings, such as dense and aging French broom and eucalyptus. Therefore, tree and invasive weed removal ~~would~~ could reduce the amount of available fuel for fires.

5.A.11 Section V.J: Agriculture and Forest Resources

As discussed in Response HZ-4, RTC p. 4-540, Draft EIR p. 410, line 15, has been changed as follows:

Among the objectives of the recommended actions at Mount Sutro are replacing highly flammable eucalyptus trees with more fire resistant species, increasing age diversity of trees, and improving the health and safety of the remaining trees.

As discussed in Response LU-4, RTC p. 4-213, Draft EIR p. 410, line 20, has been changed as follows:

Further, San Francisco landmark, significant, and street trees are protected by the San Francisco Urban Forestry Ordinance, which requires the replacement of removed trees on a one-to-one basis.

PRELIMINARY/ADMINISTRATIVE DRAFT - SUBJECT TO CHANGE.
REVIEW HAS NOT YET BEEN COMPLETED TO VERIFY ACCURACY OF CONTENT.

5.A.12 Chapter VI: Other CEQA Issues

As discussed in Response G-15, RTC p. 4-64, Draft EIR p. 444, line 6, has been changed as follows:

Fort Funston, located approximately 8,000 feet (about 1.5 miles) from the existing Lake Merced DPA has approximately 200-160 acres open for off-leash dog use. As discussed in Response NO-1, RTC p. 4-275, Draft EIR p. 445, line 14, has been changed as follows:

Tree removal at Mount Davidson would be to the west and south of Juanita Way and would not increase the noise exposure of the residences along Juanita Way from Portola Drive. The existing noise levels within the interior of the park, where most tree removal activities would be conducted, are generally below 55 L_{dn}. According to the San Francisco General Plan's Land Use Compatibility Chart, noise levels below 70 L_{dn} are acceptable for parks and playgrounds. Alterations to the forest canopy would not be sufficient to substantially increase permanent ambient noise levels within Mount Davidson, and would not result in unacceptable noise levels for park users. Therefore, removal of the trees at Mount Davidson would not expose the nearby residences noise sensitive receptors to new, long-term noise sources.

As discussed in Response GG-1, RTC p. 4-290, Draft EIR pp. 456 to 457, starting with the last paragraph, have been changed as follows:

As trees die and decay, they release much of the stored carbon to the atmosphere. Thus, carbon storage is an indication of the amount of carbon that can be lost if trees are allowed to die and decompose. Of all the species in San Francisco, eucalyptus trees store and sequester the most carbon (approximately 24.4 percent of the total carbon stored and 16.3 percent of all sequestered carbon). Trees removed in the Natural Areas in San Francisco would be replaced at a one-to-one ratio, although not necessarily in the same location. Eucalyptus trees would be replaced with native trees. Although the net effect on carbon sequestration capacity is unknown for the proposed replacement of mature eucalyptus with native saplings, replacing dying trees with healthy trees typically enhances the carbon sequestration process. In fact, one of the urban forest management strategies to help improve air quality is to increase the number of healthy trees. Further, among mitigation measures recommended by the Intergovernmental Panel on Climate Change is forest management, and particularly selection of tree species that sequester the most carbon (IPCC 2007). As such, tree replacement is expected to result in a net increase in the amount of carbon sequestered within the Natural Areas. The total number of trees would not change within the Natural Areas of San Francisco and the amount of carbon sequestered would increase in the long term from replacing dead, dying, or diseased trees. According to the California Registry, dead trees must be replaced within one year of removal. This timeframe allows for planting to occur at the appropriate time of the year. Therefore, the project would not conflict with San Francisco's Greenhouse Gas Ordinance. Further, the project would not conflict with California's goal of reducing GHG emissions set forth by the timetable established in AB32. Therefore, the proposed project would result in less than significant individual and cumulative impacts from GHG emissions and the associated carbon sequestration impacts. An analysis drawing from a number of

THIS DRAFT HAS BEEN PROVIDED IN RESPONSE TO A
PUBLIC RECORDS REQUEST (SUBMITTED 4/27/16 AND 4/29/16) FROM TOM BORDEN.



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: August 25, 2016
TO: SOTF – Victor Young, Administrator
FROM: Christine L. Silva, Manager of Commission Affairs
RE: File No. 16071

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

On Friday, April 29, 2016, the Planning Department received a request from Tom Borden requesting "a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents."

On Monday, May 2, 2016, staff invoked an extension to the request due to the compilation of electronic information and proceeded to collect responsive documents from project planners working on the subject project. Files were saved to a designated folder on the Department's internal shared drive.

On Tuesday, May 3, 2016, the responsive records were placed onto a CD and an email was sent to the requestor for payment and pickup.

Below is a list of all records/filenames that were produced to the requestor on the CD:

- 3a. AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3b. AttA_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3c. AttB_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- 3d. AttC_AdminDraftRTC-11-2015-for Tom Borden request.pdf
- Memo-for Tom Borden request.pdf
- Request.pdf

All relevant documents have been provided to the requestor.

At this time, the Department is aware that it erroneously failed to inform the requestor in the May 3rd email that portions of the produced records were partially exempt from disclosure pursuant to Administrative Code Section 67.24. This information was clarified in a later email from staff on Friday, August 12, 2016.

Attachments:

Email – April 29, 2016 email from Tom Borden
Email – May 2, 2016 email to Tom Borden
Email – May 3, 2016 email to Tom Borden
Email – August 12, 2016 email to Tom Borden

From: Tom Borden
To: Silva, Christine (CPC)
Subject: Sunshine Request for SNRAMP EIR
Date: Friday, April 29, 2016 4:09:40 PM

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

--

Tom Borden
2353 3rd. Street
San Francisco, CA 94107
tel: 415-252-5902
fax: 415-252-1624

From: [Silva, Christine \(CPC\)](#)
To: [Tom Borden](#)
Cc: [Hue, Melinda \(CPC\)](#)
Subject: RE: Sunshine Request for SNRAMP EIR
Date: Monday, May 02, 2016 2:17:34 PM

Mr. Borden -

We are searching for and preparing the responsive records. Due to the compilation of electronic information, we are invoking an extension of up to 14 days (CA Govt Code Section 6253), though we anticipate having the records ready within the next day or two. We will contact you as soon as they're ready.

Feel free to contact me directly with any questions regarding the coordination of this request.

Christine Lamorena Silva, AICP
Manager of Commission Affairs

-----Original Message-----

From: Tom Borden [mailto:tom@intrinsicdevices.com]
Sent: Friday, April 29, 2016 4:10 PM
To: Silva, Christine (CPC)
Subject: Sunshine Request for SNRAMP EIR

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section 67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

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Thank you,

Tom

--
Tom Borden
2353 3rd. Street
San Francisco, CA 94107
tel: 415-252-5902
fax: 415-252-1624

From: [Silva, Christine \(CPC\)](#)
To: tom@intrinsicdevices.com
Cc: [Hue, Melinda \(CPC\)](#)
Subject: RE: RE: Sunshine Request for SNRAMP EIR
Date: Tuesday, May 03, 2016 11:06:17 AM

Mr. Borden -

The responsive records were too large to send via email and instead placed on a CD, which is ready for payment (\$0.25) and pick-up. Because we require payment, we cannot mail this CD to you.

Please check in with our receptionist upon arrival. Our office is located at 1650 Mission Street, Suite 400 and we are open between 8 am – 5 pm.

Thank you,

Christine Lamorena Silva, AICP
Manager of Commission Affairs

From: Tom Borden [<mailto:intri9@intrinsicdevices.com>]
Sent: Monday, May 02, 2016 3:17 PM
To: Silva, Christine (CPC); tom@intrinsicdevices.com
Cc: Hue, Melinda (CPC)
Subject: RE: RE: Sunshine Request for SNRAMP EIR

Christine,

If it would be easier to just load it on a CD or DVD, that would be fine. My postal address is at the end of this email string.

Tom

----- Original Message ----- On 5/2/2016 2:17 PM Silva, Christine (CPC) wrote:

Mr. Borden -

We are searching for and preparing the responsive records. Due to the compilation of electronic information, we are invoking an extension of up to 14 days (CA Govt Code Section 6253), though we anticipate having the records ready within the next day or two. We will contact you as soon as they're ready.

Feel free to contact me directly with any questions regarding the coordination of this request.

Christine Lamorena Silva, AICP

Manager of Commission Affairs

-----Original Message-----

From: Tom Borden [<mailto:tom@intrinsicdevices.com>]

Sent: Friday, April 29, 2016 4:10 PM

To: Silva, Christine (CPC)

Subject: Sunshine Request for SNRAMP EIR

Christine,

I understand you handle public records requests for the Planning Department. Please let me know if I am mistaken.

I would like to file an information request in accordance with Section

67.21 of the San Francisco Sunshine Ordinance. Please provide a copy of the latest version of the SNRAMP draft EIR, SF Planning case number 2005.0912E along with all of its attachments and other ancillary documents. In particular, I would like to receive a copy of the Response to Comments section that was recently provided to the Recreation and Parks Department.

This is an "Immediate Disclosure Request" as given in the Sunshine Ordinance. Given that the document is in electronic form and is not "in off-site storage or several different offices have the records" the 24 hour turnaround should be easily accomplished. I have already started discussions with Melinda Hue over this request, but things seem to have gotten bogged down by RPD.

I would be happy to receive it via FTP or on a mailed CD or DVD. If mailed, please send to my work address below.

Thank you,

Tom

--

Tom Borden

2353 3rd. Street

San Francisco, CA 94107

tel: 415-252-5902

fax: 415-252-1624

From: [Hue, Melinda \(CPC\)](#)
To: [Tom Borden](#)
Cc: [Silva, Christine \(CPC\)](#); [Range, Jessica \(CPC\)](#)
Subject: RE: Improper Redactions of SNRAMP EIR RTC
Date: Friday, August 12, 2016 3:12:00 PM

Hi Tom,

We provided the justification of our redactions in my August 9 email below:

“The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is currently being reviewed by the Planning Department and the Recreation and Parks Department. Because it is a preliminary draft and it is not normally kept on file (since a final draft will ultimately be published) the recommendations of the author in the preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine Ordinance. The items in the preliminary draft SNRAMP RTC that were considered recommendations of the author were therefore redacted in accordance with Section 67.24. Please consider the above reasoning as the Planning Department’s justification for withholding in accordance with Section 67.27 of the Sunshine Ordinance.”

The author of the SNRAMP RTC is the consultant who prepared the document. The items that were redacted were opinions and suggestions from the consultant for consideration by Planning, RPD, and legal review by the City Attorney. These recommendations were embedded in the body text of the document using brackets, which makes review of the document easier as the recommended text is bigger, easier to identify and to read when printed.

In regards to the your requests, I am only aware of your August 3 and 5 emails. I did not see a question about the redactions in your August 3 emails, but saw the questions in the August 5 emails. We provided a response after the weekend on August 9.

Thanks,

Melinda

**Melinda Hue, AICP, LEED AP
Environmental Planner**

Planning Department | City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103
Direct: 415-575-9041 | Fax: 415-558-6409
Email: melinda.hue@sfgov.org
Web: www.sfplanning.org

From: Tom Borden [mailto:tom@intrinsicdevices.com]
Sent: Tuesday, August 09, 2016 11:23 AM
To: Hue, Melinda (CPC); Silva, Christine (CPC); Range, Jessica (CPC)
Cc: Jones, Sarah (CPC)
Subject: Improper Redactions of SNRAMP EIR RTC

Melinda,

Your department made redactions to the Response to Comments for the SNRAMP EIR that was provided to me under San Francisco's Sunshine Ordinance. You failed to note the justification for withholding information as required by the ordinance.

Sec. 67.26. Withholding Kept To A Minimum. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. **Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article.**

I submitted six requests for the redacted information and never received a reply from Planning until your response this morning. The dates of those requests and who they were sent to are:

April 29 Christine.L.Silva@sfgov.org original request for EIR RTC
July 7 Christine.L.Silva@sfgov.org request for redactions
July 19 CPC-RecordRequest@sfgov.org repeat request for redactions
August 1 CPC-RecordRequest@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions
August 3 sarah.b.jones@sfgov.org, melinda.hue@sfgov.org, jessica.range@sfgov.org request for redactions
August 5 melinda.hue@sfgov.org & Christine.L.Silva@sfgov.org repeat request for redactions

Given your response below, it is clear that Planning did not want to honor my information request and purposefully ignored one inquiry after another. You hoped I would give up.

You cite section 67.24 as justification for the redactions, claiming they are all "recommendations of the author". First of all, who is the "author"? I cannot find a name on the documents. I assume the recommendations of the author that would be held exempt from disclosure would be expressions of that person's personal opinions. If this document is the product of an outside consulting company we paid for, how would anything qualify as exempt? Aren't any explanatory comments part of the contract deliverables?

Some of the redactions are clearly made to the body text of the document. They are not "recommendations of the author". These obviously improper redactions are highlighted in the list below.

page 4-25 top

page 4-34 bottom

page 4-169 top

page 4-226 top clearly part of the document and not an author recommendation, cuts off end of sentence

page 4-263 bottom

page 4-306 bottom clearly part of the document and not an author recommendation, evidenced by formatting

page 4-343 top

page 4-346 top clearly part of the document and not an author recommendation, evidenced

by formatting
page 4-357 bottom
page 4-358 top
Page 4-422 bottom clearly part of the document and not an author recommendation,
evidenced by formatting
Page 4-438 bottom
page 4-439 top
page 4-443 mid.
page 4-487 clearly part of the document and not an author recommendation, evidenced by
formatting
page 4-582 mid page
page 5-33 bottom
page 5-34 top

I hope your department will reconsider your position on this. It is hard to imagine
withholding this information is in the public good, or that there is any legal requirement
forcing you to withhold the information.

Tom

Tom Borden
tel: 415-252-5902

On 8/9/2016 9:23 AM, Hue, Melinda (CPC) wrote:

Hi Tom,

The copy of the SNRAMP RTC that was provided to you was a preliminary draft that is
currently being reviewed by the Planning Department and the Recreation and Parks
Department. Because it is a preliminary draft and it is not normally kept on file (since a
final draft will ultimately be published) the recommendations of the author in the
preliminary draft is exempt from disclosure per Section 67.24 of the Sunshine
Ordinance. The items in the preliminary draft SNRAMP RTC that were considered
recommendations of the author were therefore redacted in accordance with Section
67.24. Please consider the above reasoning as the Planning Department's justification
for withholding in accordance with Section 67.27 of the Sunshine Ordinance.

Thanks,

Melinda

**Melinda Hue, AICP, LEED AP
Environmental Planner**

Planning Department | City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103
Direct: 415-575-9041 | Fax: 415-558-6409
Email: melinda.hue@sfgov.org
Web: www.sfplanning.org

From: Tom Borden [<mailto:tom@intrinsicdevices.com>]
Sent: Friday, August 05, 2016 12:24 PM

To: Hue, Melinda (CPC)
Cc: Silva, Christine (CPC)
Subject: Sunshine Request for Redactions of SNRAMP EIR RTC

Melinda,

Thanks for stepping in. I don't know what happened with Christine. I've sent multiple emails to her and to the CPC-RecordRequest@sfgov.org address. No response.

The copy of the SNRAMP EIR RTC Christine provided to me has blacked out text in multiple locations. See me email below. It is not normal editing for a document of this type. I tried to send you a copy of what she provided, but the file is too large.

Thanks for any help.

Tom Borden
415 252 5902 W
415 297 6084 cell

----- Forwarded Message -----

Subject: Sunshine Request for Redactions of SNRAMP EIR
Date: Thu, 7 Jul 2016 15:14:11 -0700
From: Tom Borden <tom@intrinsicdevices.com>
To: Christine.L.Silva@sfgov.org
CC: Dee Seligman <deese191@gmail.com>

Christine,

I sent you the Sunshine request below some time ago. Thank you for producing the EIR RTC.

I am troubled by what appear to be redactions in the document. These appear as masked over text at the following locations in the document you provided titled, "3a. AdminDraftRTC-11-2015-for Tom Borden request".

page 4-25 top

page 4-34 bottom

page 4-169 top

page 4-226 top clearly part of the document and not an author comment

page 4-263 bottom

page 4-306 bottom

page 4-343 top

page 4-346 top

page 4-357 bottom

page 4-358 top

Page 4-422 bottom

Page 4-438 bottom
page 4-439 top
page 4-443 mid.
page 4-487
page 4-582 mid page
page 5-33 bottom
page 5-34 top

Section 67.26 of the Sunshine ordinance requires that the justification for each redaction be noted on the document. In addition, Section 67.27 lays out additional requirements for documenting the justification.

Would you please provide copies of those pages showing the redacted text or document the nature of the redacted information and the justification for withholding it as required by the ordinance? Also, if there are redactions in the other documents that I have not found yet, please provide the same information for those.

In terms of the timing of your response, please treat this as an Immediate Sunshine Request.

Thank you,

Tom



This email has been checked for viruses by Avast antivirus software.

www.avast.com



This email has been checked for viruses by Avast antivirus software.

www.avast.com

Young, Victor

From: SOTF, (BOS)
Sent: Friday, August 19, 2016 3:08 PM
To: Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC)
Cc: Colla, Nicholas (CAT); 'Tom Borden'; Calvillo, Angela (BOS)
Subject: SOTF - Complaint Filed with the Sunshine Ordinance Task Force - Complaint Nos. 16071
Attachments: SOTF - Complaint Procedure 2014-11-05.pdf; SOTF Complaint 16071.pdf

Good Afternoon,

You have been named as a Respondent in the attached complaint filed with the Sunshine Ordinance Task Force. In an attempt to mediate and avoid a hearing before the Sunshine Ordinance Task Force, please respond to the following complaint/request within five business days.

The Respondent is required to submit a written response to the allegations including any and all supporting documents, recordings, electronic media, etc., to the Task Force within five (5) business days of receipt of this notice. This is your opportunity to provide a full explanation to allow the Task Force to be fully informed in considering your response prior its meeting.

Please include the following information in your response if applicable:

1. List all relevant records with descriptions that have been provided pursuant to the Complainant request.
2. Date the relevant records were provided to the Complainant.
3. Description of the method used, along with any relevant search terms used, to search for the relevant records.
4. Statement/declaration that all relevant documents have been provided, does not exist, or has been excluded.
5. Copy of the original request for records (if applicable).

Please refer to the File Number when submitting any new information and/or supporting documents pertaining to this complaint.

The Complainant alleges:

File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

Complaint Attached.

Both parties (Complainant and Respondent) will be contacted once a hearing date is determined.

Complainants: Your attendance is required at this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.

Pursuant to Section 67.21(b), If the custodian of public records believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of the Sunshine Ordinance.

Thank you.

Victor Young
Administrator

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, City Hall., Room 244

San Francisco CA 94102

phone 415-554-7724 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

Young, Victor

From: SOTF, (BOS)
Sent: Monday, September 19, 2016 9:43 AM
To: 'mpetrelis@aol.com'; Wiener, Scott; Peskin, Aaron (BOS); 'Ray'; Farrell, Mark (BOS); 'Tom Borden'; Rahaim, John (CPC); Ionin, Jonas (CPC); Silva, Christine (CPC)
Cc: Colla, Nicholas (CAT); Ng, Wilson (BOS); Taylor, Adam (BOS); Cretan, Jeff (BOS); Power, Andres; Hepner, Lee (BOS); Karunaratne, Kanishka (BOS); Kelly, Margaux (BOS); Montejano, Jess (BOS); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - October 5, 2016
Attachments: SOTF - Complaint Procedure 2014-11-05.pdf

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: October 5, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints -

File No. 16063: Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors, 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 and inappropriately invoking an extension of time to respond.

File No. 16067: Complaint filed by Michael Petrelis against Supervisor Aaron Peskin, Board of Supervisors, 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.

File No. 16076: Complaint filed by Ray Hartz against Supervisor Mark Farrell, Board of Supervisors for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.34, by willfully failing to discharge duties imposed by the Sunshine Ordinance, the Brown Act, and the Public Records Act, as evidenced in the failure to respond to a Sunshine Ordinance Task Force (SOTF) complaint, failure to attend SOTF hearings, and failure to comply with SOTF's Order of Determination in regards to SOTF File No. 15071.

SPECIAL ORDER – The hearings on File No. 16071 will not begin earlier than 6:00 p.m.

File No. 16071: Complaint filed by Tom Borden against John Rahaim and the Planning Department, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to


respond to a public records request in a timely and/or complete manner and failing to justify the withholding of information.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion in the agenda packet, supplemental/supporting documents must be received by **5:00 pm, September 28, 2016.**

Victor Young
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, City Hall., Room 244
San Francisco CA 94102
phone 415-554-7724 | fax 415-554-5163
victor.young@sfgov.org | www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- Draft Letter to Departments
- Assemble Bill 2853
- Public Correspondence
-

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

MEMORANDUM - DRAFT

TO: Department Heads

FROM: _____, Chair
Dave Maass, Member
Sunshine Ordinance Task Force

DATE: September __, 2016

RE: Assembly Bill 2853 and Departmental Obligations Under the San Francisco Sunshine Ordinance

On Sept. 9, Gov. Jerry Brown signed Assembly Bill 2853 ("A.B. 2853") into law adding a new section—6253(f)—to the California Public Records Act ("CPRA"). In short, the new law allows an agency to respond to requests for public records by "directing a member of the public to the location on the Internet Web site where the public record is posted." However, some agencies' interpretation of the new law may conflict with the San Francisco Sunshine Ordinance ("Sunshine Ordinance"). In this letter, the Sunshine Ordinance Task Force (Task Force) offers this advice for departments seeking to implement A.B. 2853.

Under the new section of CPRA, an agency may respond to a public records request with a website link to the records, even if the requester identifies a particular format for copies they seek. If, after receiving a link, the requester is unable to access or reproduce the record, the member must file a second request for the records in an alternative format. Unfortunately, this interpretation of A.B. 2853 creates a new burden for requesters and may result in a delay in providing records to the public, particularly requesters who, due to disability or economic disadvantage, find it difficult to review records online. This new step conflicts with procedures established by the Sunshine Ordinance.

The Task Force advises that city department give precedence to the Sunshine Ordinance:

- 1) Section 67.21 (l) of the Sunshine Ordinance states that public information shall be make available in any form requested that is available to or easily generated by the department. If a member specifies a format for copies in their requests, the department must honor that format request without delay.
- 2) The Sunshine Ordinance does not allow for any extension of time to respond to public records requests if a city department chooses to implement A.B. 2853.

The Task Force further emphasizes that A.B. 2853 does not impact the public's right to inspect records during an agency's office hours.

To summarize, city agencies may refer public records request to online postings of the records but if records are requested in other formats the city agencies must still comply with the records request within the allowed time frame based upon the original public records request date. A.B. 2853 does not does not allow a San Francisco Department extra time to respond to public records request.

We appreciate your anticipated attention to these requirements and hope that you will ensure that your timely responses to public records requests. Thank you.

c: Members, Sunshine Ordinance Task Force
Nicholas Colla, Deputy City Attorney

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

SOTF – Compliance and Amendments Committee Date: Sept. 12, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
- No Attachments

OTHER

- Administrator's Report
- Report
- Assemble Bill 2853
- _____
- _____

Completed by: V. Young Date 09/09/16

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The complete document is in the file.

CONCURRENCE IN SENATE AMENDMENTS

AB 2853 (Gatto)

As Amended June 16, 2016

Majority vote

ASSEMBLY: 78-0 (May 12, 2016) SENATE: 38-0 (August 15, 2016)

Original Committee Reference: **JUD.**

SUMMARY: Authorizes a public agency that posts a public record on its Internet Web site to refer a person that requests to inspect or obtain the record to the agency's Web site, as specified, and makes required findings. Specifically, **this bill:**

- 1) Allows a public agency to comply with certain disclosure requirements under the California Public Records Act (CPRA) by posting any public record on its Internet Web site and, in response to a request for a public record posted on the Internet Web site, directing a member of the public to the location on the Internet Web site where the public record is posted. However, if after the agency directs a member of the public to the Internet Web site, the member of the public requests the public record asks for a copy of any such public record, due to an inability to access or reproduce the public records from the Internet Web site, the agency shall promptly provide a copy of the public record, as specified.
- 2) Makes findings, as required by the California Constitution, that this change to the CPRA furthers the purpose of the CPRA by making public record disclosures more quickly and cost effectively.

The Senate amendments:

- 1) Clarify that they agency shall "direct" a requester to the appropriate location on the Web site where records are located, rather than merely "refer" the requester to the Web site.
- 2) Replace a requirement that the agency prepare a copy of the requested record "within 10 days" with a requirement that the agency "promptly provide" a copy of the public record.

EXISTING LAW:

- 1) Provides that all public records are open to public inspection, unless expressly exempted by a provision of the Public Records Act or another statute. (Government Code Section (GOV) 6250 *et seq.*)
- 2) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Requires, generally, that the agency make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. (GOV 6253 (a)-(b).)
- 3) Requires an agency, except under unusual circumstances, as defined, to respond to a public record request within ten days from receipt of the request, determine whether the request seeks copies of disclosable public records in the possession of the agency, and to promptly notify the person making the request of the agency's determination and the reasons justifying

that determination. If the agency withholds requested records, in whole or in part, it must justify this withholding by demonstrating that the record in question is subject to an express exemption or that the public interest in confidentiality outweighs the public interest in disclosure. (GOV 6253 (c); Section 6255.)

- 4) Permits, except as otherwise prohibited by law, a state or local agency to adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in the CPRA. (GOV 6253 (d).)
- 5) Requires an agency to provide reasonable assistance to the person making the request by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (GOV 6253.1.)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: This bill responds to what the author sees as an abuse of the CPRA by private companies. These companies make public record requests that require public agencies – especially educational agencies and local school districts – to retrieve, assemble, and provide that the private companies then sell to data brokers for targeted marketing purposes or to market their own products. For example, the author has submitted to the Committee a copy of a public record request submitted by a private, for-profit company, Schoolie, Inc., to several school districts and local educational agencies throughout the state. These requests seek detailed information, going back several years, on student demographic and academic achievement, college preparation and placement numbers, the type and quantity of technology used throughout the school district, extracurricular activities offered and levels of participation, special education offerings and enrollments, and many other pieces of information. According to the company's Web site, it appears that Schoolie, Inc. uses this information to rank and evaluate schools and then sells those rankings and evaluations to interested parents. While this is certainly a legitimate business activity, the author maintains that these private, for-profit businesses are exploiting the CPRA, effectively using school district personnel and resources to find, retrieve, and assemble information to profit the company. Because this information is often available in other places – online and sometimes even on the school district's Web site – the private company could, and should, the author believes, do this work itself instead of having school districts and other public agencies do it for them. Other companies, according to the author and supporters, do not simply use this information to market their own products, but are engaged in "corporate data mining," that is, selling information culled from the records to any number of data brokers who in turn use it to market an array of products to schools, faculty, parents, and even students.

This bill would authorize a public agency that posts any of its public records on its Internet Web site to direct a person requesting such records to the location on Web site where the requested record is located. According to the author, it would be much more efficient and cost-effective – both for the agency and most requesters – to post disclosable records online where a member of the public could access and download the documents without making a formal request and without requiring the agency to run through the required responses to a request. This bill would simply authorize a public agency to direct a requested to those online records, rather than physically retrieving the records and making disclosure determinations for each new request. This solution would also be easier for most requesters, though perhaps not satisfactory to private businesses seeking someone to assemble marketable information.

Because not all members of the public have access to the Internet – or, if they do, may not be able to print or otherwise reproduce the requested records – this bill would require an agency to provide copies of records if the requester does not have access to the Internet records or cannot reproduce them. Of course, most people today have a computer or other device that can access to the Internet, or, if they do not, Internet access and printing capacity is generally available in public libraries. Nonetheless, there may be any number of reasons why a person could not access and reproduce records from an agency's Web site. This bill, as recently amended, acknowledges this possibility. After posting records on its Internet Web site and directing the requester to that site, the agency will still be obligated under this bill to provide copies of the records to any person who cannot access or reproduce the records on the agency's Internet Web site.

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334

FN: 0003828

Assembly Bill No. 2853

Passed the Assembly August 22, 2016

Chief Clerk of the Assembly

Passed the Senate August 15, 2016

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2016, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6253 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2853, Gatto. Public records.

(1) The California Public Records Act requires a public agency, defined to mean any state or local agency, to make its public records available for public inspection and to make copies available upon request and payment of a fee, unless the public records are exempt from disclosure. The act prohibits limitations on access to a public record based upon the purpose for which the public record is being requested if the public record is otherwise subject to disclosure, authorizes public agencies to adopt requirements that allow for faster, more efficient, or greater access to public records, and requires local agencies, except school districts, that voluntarily post public records on an open data Internet Resource, as defined, to post those public records in an open format that meets specified criteria.

This bill would authorize a public agency that posts a public record on its Internet Web site to refer a member of the public that requests to inspect the public record to the public agency's Internet Web site where the public record is posted. This bill would require, if a member of the public requests a copy of the public record due to an inability to access or reproduce the public record from the Internet Web site where the public record is posted, the public agency to promptly provide a copy of the public record to the member of the public, as specified.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with

a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent

reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(f) In addition to maintaining public records for public inspection during the office hours of the public agency, a public agency may comply with subdivision (a) by posting any public record on its Internet Web site and, in response to a request for a public record posted on the Internet Web site, directing a member of the public to the location on the Internet Web site where the public record is posted. However, if after the public agency directs a member of the public to the Internet Web site, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public record from the Internet Web site, the public agency shall promptly provide a copy of the public record pursuant to subdivision (b).

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 6253 of the Government Code, imposes a limitation on the public's right of access to the meetings

of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The state has a very strong interest in ensuring both the transparency of, and efficient use of limited resources by, public agencies. In order to protect this interest, it is necessary to allow public agencies that have already increased the public's access to public records by posting public records on the public agencies' Internet Web sites to refer requests for posted public records to these Internet Web sites.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which amends Section 6253 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Since this act would authorize local agencies to make disclosures of public records by posting the public records on their Internet Web sites, thus making public record disclosures by local agencies more quickly and cost effectively, this act furthers the purpose of Section 3 of Article I of the California Constitution.

Approved _____, 2016

Governor

File No. N/A

Item No. 11

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: October 5, 2016

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
-
- No Attachments

OTHER

- Administrator's Report
- Draft SOTF 2017 Meeting Schedule
-
- Public Correspondence
-

Completed by: V. Young Date 09/30/16

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

Sunshine Ordinance Task Force

City Hall

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

Telephone 554-7724 Fax: 554-7854

SOTF@sfgov.org

<http://www.sfbos.org/sunshine>

2017 Task Force and Committee Schedule - DRAFT 08/16/16

Meeting Date

Sunshine Ordinance Task Force

1st Wednesday of the month at 4:00 pm

1/4; 2/1; 3/1; 4/5; 5/3; 6/7; 7/5; 8/2; 9/6; 10/4; 11/1; 12/6

Compliance and Amendments Committee

F. Cannata (Chair), C. Hyland, D. Maass

2nd Monday of the Month bi-monthly at 4:00 pm (odd)

~~1/16 holiday~~; 3/13; 5/8; 7/10; 9/11; 11/13

Education Outreach and Training Committee

J. Wolf (Chair), E. Eldon, L. Fischer

3rd Tuesday of the Month bi-monthly at 3:30 pm (even)

2/21; 4/18; 6/20; 8/15; 10/17; ~~12/19 holiday~~

Complaints Committee

L. Tesfai (Chair), F. Hinze, V. Baranetsky

4th Tuesday of the Month at 5:30 pm

1/24; 2/28; 3/28; 4/25; 5/23/ 6/27; 7/25; 8/22; 9/26; 10/24;
11/28; ~~12/26 holiday~~

Rules Committee

F. Hinze (Chair), L. Fischer, C. Hyland

Meets as needed.

~~Purim 3/12/17; Rosh Hashanah 9/21/17 to 9/22/17; Yom Kippur 9/30/17; Sukkot 10/5/17 to 10/6/17; Shemini Atzeret and Simchat Torah 10/12/17 to 10/13/17~~

Room 408 available on the 1st Wednesday, 2nd Monday, 3rd Tuesday, and 4th Tuesday.

File No. N/A

Item No. 12

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force _____ **Date: October 5, 2016**

- Memorandum - Deputy City Attorney
- Complaint and Supporting documents
- Respondent's Response
- Order of Determination
- Minutes
- Correspondence
- Committee Recommendation/Referral
-
-
-
- No Attachments

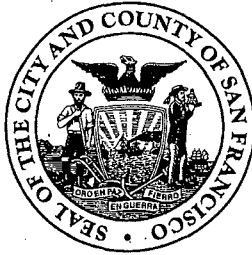
OTHER

- Administrator's Report** _____
- Draft SOTF 2017 Meeting Schedule** _____
- _____
- Public Correspondence** _____
- _____

Completed by: V. Young Date 09/30/16

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The complete document is in the file.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
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MEMORANDUM

TO: Sunshine Ordinance Task Force

DATE: September 28, 2016

SUBJECT: Administrator's Report, Complaints and Communications

1. Tentative Hearings Schedule:
 - October 18, 2016 – Education, Outreach and Training Committee – 3:30 PM
 - October 18 or 25, 2016 – Complaint Committee – 5:30 PM (TBD)
 - October 25, 2016 - Rules Committee – 4:00 PM
 - November 2, 2016 – Sunshine Ordinance Task Force – 4:00 PM

2. Complaints Submitted and Hearings Files Created *(6 Submitted 8/31/16 through 9/28/16)*
(The summaries provided are based on the Administrator's review of the complaint and does not express the opinion of the Task Force.)
 - 16082 John Shutts v. Mayor's Office (Public Records, Withdrawn/Resolved)
 - 16083 Ann Treboux v. Arts Commission (Public Records)
 - 16084 Ann Treboux v. Arts Commission (Public Records)
 - 16085 Ray Hartz v. Public Library (Public Records related to File No. 16075)
 - 16086 Peter Warfield v. Public Library (Agenda description and public comment)
 - 16087 Ray Hartz v. Public Library (Public Records related to File No. 16075 and 16085)
 - 16088 Ray Hartz v. Angela Calvillo (placement of 150 word summary)
 - 16089 Ray Hartz v. Angela Calvillo (placement of 150 word summary)
 - 16090 Shawn Mooney v. Assessor/Recorder (Public Records)

3. Pending Complaints before the Sunshine Ordinance Task Force (SOTF) and/or Committee –

2015 - 2

2016 – 25

Last Month's Total pending SOTF Complaints - 33

This Month's Total pending SOTF Complaints - 27

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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TDD/TTY No. (415) 554-5227

4. Pending Complaints referred from SOTF to Committee -

- | | |
|----------|---|
| 2014 - 3 | 14047 - Supervisor Tang - (Procedure and Policy) – EOTC
(Pending contact with complainant to determine if additional action is needed) |
| | 14092 – Assessor-Recorder (Index of Records) - EOTC |
| | 14101 - Building Inspection (Pending implementation of Computer System) - CAC |
| 2015 – 1 | 15143 – Pedestrian Safety Advisory Committee – EOTC |
| 2016 - 2 | 16036 – State Legislation Committee (Agenda Posting Policy)
EOTC |
| | 16053 – Police Department – CAC |

TOTAL Complaints Pending Committee Follow-up/Action – 6

5. Communications:

- Alex Aldrich, request for status of letter to Recreation and Parks regarding how they implement regulations.

6. Requests from community persons:

From August 31, 2016, through September 28, 2016, the Task Force's office responded to approximately 161 e-mails and numerous phone calls/office visits from persons requesting information regarding the Sunshine Ordinance, pending complaints, or to mediate request for records. (*E-mail log attached*)

7. SOTF Pending Issue -

- File No. 15012 – Jason Grant Garza - Order of Determination
- Misc. Orders of Determination – September 7, 2016, Task Force Meeting
- Letter requesting additional SOTF funding
- Letter regarding Recreation and Parks documentation of policy
- Letter regarding City Attorney's attendance at Task Force Hearings

Sunshine Ordinance Task Force E-Mail Log - August 30, 2016 through September 28, 2016

From	Subject	Received
Bell, Lauren (ADP)	RC: September 29, 2016: Meetings, Events, and Congratulations!	9/29/2016
Ellen Tsang	Re: Order September 27, 2016 meeting CD, Case #16066	9/29/2016
chris roberts	Re: Public records request	9/29/2016
Shawn Mooney	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/28/2016
Hepner, Lee (BOS)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/28/2016
Ng, Wilson (BOS)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/28/2016
Blackman, Sue (LIB)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/28/2016
Blackman, Sue (LIB)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/28/2016
Mccaffrey, Edward (ASR)	RE: Request from S. Mooney -- 2016 PI Supplemental Tax Roll & PI D	9/28/2016
mpetrelis@aol.com	SOTF complaint against Ethics, Sheriff & City Atty	9/28/2016
Elena Gladkova	Public Records Request	9/28/2016
Ellen Tsang	Re: Order September 27, 2016 meeting CD, Case #16066	9/28/2016
Patterson, Kate (ART)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/27/2016
treboux2@aol.com	Please schedule a hearing	9/27/2016
Patterson, Kate (ART)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/27/2016
Macaulay, Kirsten (MYR)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	9/27/2016
Ellen Tsang	Re: SOTF - Complaint Committee - Agenda and Packet for September	9/27/2016
Lazar, Michael	RE: Records Request	9/26/2016
treboux2@aol.com	Re: SOTF - Error in email address for the SFAC RE: Please open a file	9/26/2016
Patterson, Kate (ART)	RE: Please open a file	9/26/2016
treboux2@aol.com	Please open a file	9/26/2016
Ventre, Alyssa (ART)	Advisory Committee 9/29 Agenda Posted	9/26/2016
Ellen Tsang	Re: SOTF - Complaint Committee - Agenda and Packet for September	9/26/2016
Lazar, Michael	Records Request	9/25/2016
Shawn Mooney	No Documents Received- Ed - By 9-23-2016 please provide the 2016	9/23/2016
pmonette-shaw	RE: IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: SOTF	9/23/2016
JOEL WARNE	Ultimatum, Joel Jennings Warne v. City and County of San Francisco	9/23/2016
Celaya, Caroline	RE: Sunshine Ordinance Request	9/23/2016
Ellen Tsang	Re: SOTF - Complaint Committee - Agenda and Packet for September	9/23/2016
Ellen Tsang	Re: SOTF - Complaint Committee - Agenda and Packet for September	9/23/2016
Patrick Monette-Shaw	IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: SOTF Ref	9/23/2016
Patrick Monette-Shaw	IMMEDIATE DISCLOSURE REQUEST FOR PUBLIC RECORDS: SOTF Ref	9/23/2016
Page_Ritchie, Sharon (ART)	Automatic reply: SOTF - Complaint Committee - Agenda and Packet	9/23/2016
treboux2@aol.com	Re: SOTF - Response to Duplicate IDR Request RE: Immediate Disclo	9/22/2016
Alexis Davidson	FW: Sunshine Ordinance Request	9/22/2016
treboux2@aol.com	Re: SOTF - Response to Questions FW: Thank you for your hang up c	9/21/2016
Ellen Tsang	Re: SOTF - Complaint #16066, Complainant's SUPPLEMENTAL	9/21/2016
treboux2@aol.com	Immediate Disclosure Request	9/21/2016
treboux2@aol.com	Thank you for your hang up calls	9/21/2016
Patterson, Kate (ART)	Automatic reply: SOTF - Complaint Filed with the Sunshine Ordinance	9/21/2016
Page_Ritchie, Sharon (ART)	Arts Commisison minutes posted	9/21/2016
Magick Altman	Re: SOTF - Compliance and Amendments Committee Recommendation	9/21/2016

treboux2@aol.com	File #16037	9/20/2016
Page_Ritchie, Sharon (ART)	Full Arts Commission notice of cancellation posted	9/20/2016
Page_Ritchie, Sharon (ART)	Arts Commission Executive Committee notice of cancellation posted	9/20/2016
Magick Altman	Re: SOTF - Compliance and Amendments Committee Recommendation	9/20/2016
Calvillo, Angela (BOS)	Improve your behavior to receive services	9/20/2016
Kenneth Fukuda	318 30th Avenue, San Francisco	9/20/2016
Magick Altman	Re: SOTF - Compliance and Amendments Committee Recommendation	9/20/2016
Montejano, Jess (BOS)	RE: SOTF - emails regarding File No. 15071	9/19/2016
Montejano, Jess (BOS)	RE: SOTF - emails regarding File No. 15071	9/19/2016
Ventre, Alyssa (ART)	SAPC minutes posted	9/19/2016
Hepner, Lee (BOS)	RE: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - October	9/19/2016
Ann Treboux	Re: SOTF - Response to Request	9/19/2016
Ann Treboux	Re: SOTF - Response RE: Immediate Disclosure Request	9/19/2016
Ray	Missing Order of Determination	9/17/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/17/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/17/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/17/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/17/2016
Bruce Wolfe	Fwd: San Francisco Ethics Commission Interested Persons List for 09	9/17/2016
Rose Dennis	RE: Public records request	9/16/2016
vicechairhyland	RE: SOTF - CAC Recommendations for your review and approval - 16	9/15/2016
Kilshaw, Rachael (POL)	RE: SOTF - File No. 16062	9/15/2016
treboux2@aol.com	Re: SOTF - Withdrawal of all pending complaints - Confirmation	9/15/2016
mpetrelis@aol.com	Re: SOTF - scheduling of hearings	9/15/2016
Sarieh, Nancy (DPH)	RE: SOTF Sunshine Ordinance Task Force - Notice of Withdrawal - Fi	9/15/2016
treboux2@aol.com	Re: SOTF - Withdrawal of all pending complaints - Confirmation	9/15/2016
treboux2@aol.com	Re: SOTF - Response to request for records	9/15/2016
treboux2@aol.com	Re: SOTF - Response to request for records	9/15/2016
treboux2@aol.com	Re: SOTF - Response to request for records	9/15/2016
treboux2@aol.com	Re: SOTF - Response to request for records	9/15/2016
treboux2@aol.com	Re: COMPLAINT COMMITTEE-SEPT.27, 2016	9/15/2016
treboux2@aol.com	Immediate Disclosure Request	9/15/2016
Ann Treboux	COMPLAINT COMMITTEE-SEPT.27, 2016	9/14/2016
Ann Treboux	COMPLAINT COMMITTEE-SEPT.27, 2016	9/14/2016
Library Users Association	Request for Hearing - Library Adjournment complaint from June me	9/14/2016
chris roberts	Public records request	9/14/2016
Kilshaw, Rachael (POL)	RE: SOTF - Draft Motion for File No. 16062	9/14/2016
treboux2@aol.com	Fwd: File 16057 and #16056	9/14/2016
treboux2@aol.com	Fwd: File # 16037	9/14/2016
treboux2@aol.com	Fwd: file # 16044	9/14/2016
atreboux@aol.com	Re: SOTF - Notice of Hearing - Complaints Committee, September 27	9/14/2016
atreboux@aol.com	Fwd: SOTF - Notice of Hearing - Complaints Committee, September	9/14/2016
Shawn Mooney	Ed - By 9-23-2016 please provide the 2016 PI Data and 20 locations	9/13/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/13/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/13/2016

Dave Maass	SFPL talk	9/13/2016
Bruce Wolfe	Re: Complaint Committee and Procedure	9/13/2016
Bruce Wolfe	Complaint Committee and Procedure	9/13/2016
Ray	Re: IMMEDIATE DISCLOSURE REQUEST (MODIFIED)	9/12/2016
Shawn Mooney	Victor Young -- Please continue/reschedule today's hearing agenda	9/12/2016
Mccaffrey, Edward (ASR)	Request from S. Mooney -- 2016 PI Supplemental Tax Roll & PI Data	9/12/2016
Shawn Mooney	Victor Young SOTF hearing 9-12-2016	9/12/2016
Mccaffrey, Edward (ASR)	RE: Ed please call me or write your question or describe where clarit	9/12/2016
atreboux@aol.com	Re: SOTF - Notice of Hearing - Complaints Committee, September 27	9/12/2016
mpetrelis@aol.com	Re: SOTF - scheduling of hearings	9/10/2016
Mirka Morales	Re: SOTF - Notice of Hearing- Sunshine Ordinance Task Force -Septe	9/10/2016
Arntz, John (REG)	RE: SOTF - Notice of Hearing- Sunshine Ordinance Task Force -Septe	9/9/2016
Petersen, Patricia (ETH)	RE: SOTF - Notice of appointment to the Sunshine Ordinance Task Fo	9/9/2016
Petersen, Patricia (ETH)	RE: SOTF - Notice of appointment to the Sunshine Ordinance Task Fo	9/9/2016
John Shutt	Re: Sunshine Ordinance Violation Complaint	9/9/2016
John Shutt	Re: Sunshine Ordinance Violation Complaint	9/9/2016
John Shutt	Re: Sunshine Ordinance Violation Complaint	9/9/2016
Ray	IMMEDIATE DISCLOSURE REQUEST (MODIFIED)	9/9/2016
Ray	IMMEDIATE DISCLOSURE REQUEST	9/9/2016
Jessica Heck	Announcement: Sunshine Meeting	9/9/2016
Ray	Re: SOTF - Complaint Filed with the Sunshine Ordinance Task Force -	9/9/2016
Blackman, Sue (LIB)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force -	9/8/2016
Shawn Mooney	Ed please call me or write your question or describe where clarity is	9/8/2016
Blackman, Sue (LIB)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force -	9/8/2016
treboux2@aol.com	Please open a file and schedule a hearing	9/8/2016
Shawn Mooney	RE: Request from S. Mooney -- 2016 PI Supplemental Tax Roll & PI D	9/7/2016
Page_Ritchie, Sharon (ART)	Arts Commission agenda posted	9/7/2016
Mccaffrey, Edward (ASR)	Request from S. Mooney -- 2016 PI Supplemental Tax Roll & PI Data	9/7/2016
Library Users Association	Immediate Disclosure Request -- When forwarded? & all related co	9/7/2016
CityAttorney@sfgov.org	Re: Follow up to 9/01/16 Sunshine Request from Brian Browne	9/7/2016
Brian Browne	Follow up to 9/01/16 Sunshine Request from Brian Browne	9/7/2016
Library Users Association	Important Questions re "Recommendation" Procedure Tomorrow -	9/6/2016
Andrew Yip	Holy Great Divine for personal cultivation and worldly rescue.	9/5/2016
mpetrelis@aol.com	Withdrawing complaing - Re: SOTF - Agenda and Packet for Septemb	9/4/2016
Library Users Association	2nd Request - Fw: Request for Agenda Packet - may I pick up today?	9/2/2016
treboux2@aol.com	Please open a file and schedule a hearing	9/2/2016
treboux2@aol.com	Please open a file and schedule a hearing	9/2/2016
Library Users Association	Request for Agenda Packet - may I pick up today?... Re: SOTF - Age	9/2/2016
Arntz, John (REG)	RE: SOTF - Agenda and Packet for September 7, 2016 - online	9/2/2016
Ann Treboux	Fwd: Immediate Disclosure Request	9/2/2016
treboux2@aol.com	Please open a file and schedule a hearing	9/2/2016
Ann Treboux	Fwd: Immediate Disclosure Request	9/2/2016
Ventre, Alyssa (ART)	SAPC 9/7 Agenda posted	9/2/2016
Dee Seligman	Re: SOTF - Response Received - No. 16074	9/1/2016
Library Users Association	Immediate Disclosure Request #2 -- "Duplicative" Question Suppos	9/1/2016
Library Users Association	Immediate Disclosure Request #1 - "Discouragement" Precedent rel	9/1/2016

Library Users Association	Thanks and two questions... Re: SOTF - Requested Information	9/1/2016
Megan Bourne	RE: SOTF - Complaint Committee Recommendation - File Nos. 16048	9/1/2016
treboux2@aol.com	file # 16044	9/1/2016
treboux2@aol.com	File # 16037	9/1/2016
treboux2@aol.com	File 16057 and #16056	9/1/2016
Bruce Wolfe	Re: SOTF - FW: Request from New America Media - Appointment to	9/1/2016
Bruce Wolfe	Re: SOTF - Complainant Jury Duty on 9/7/16 - File Nos. 15161 and 15	9/1/2016
Kandel, Minouche (WOM)	FY 2015 Family Violence Council Report released	9/1/2016
treboux2@aol.com	Re: SOTF - Complaint Committee Recommendation - File Nos. 16048	8/31/2016
Megan Bourne	RE: SOTF - Complaint Committee Recommendation - File Nos. 16048	8/31/2016
treboux2@aol.com	Please open a file and schedule a hearing	8/31/2016
treboux2@aol.com	Please open a file and schedule a hearing	8/31/2016
Patterson, Kate (ART)	RE: Immediate Disclosure Request	8/31/2016
treboux2@aol.com	Immediate Disclosure Request	8/31/2016
Blackman, Sue (LIB)	RE: SOTF - Complaint Committee Recommendation - File Nos. 15161	8/31/2016
Patterson, Kate (ART)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	8/31/2016
Ng, Wilson (BOS)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	8/31/2016
Montejano, Jess (BOS)	RE: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	8/31/2016
treboux2@aol.com	Re: Immediate Disclosure Request	8/30/2016
Bill Simpich	Supplemental responses for Mirka Morales, File No. 16058	8/30/2016
Bill Simpich	Supplemental responses for Mirka Morales, File No. 16058	8/30/2016
Patterson, Kate (ART)	RE: Immediate Disclosure Request	8/30/2016
Kilshaw, Rachael (POL)	RE: SOTF - Notice of Hearing - Compliance and Amendments Commi	8/30/2016
treboux2@aol.com	Re: SOTF - Complaints for September 27, 2016	8/30/2016
treboux2@aol.com	Re: SOTF - Complaints for September 27, 2016	8/30/2016
treboux2@aol.com	Re: SOTF - Complaints for September 27, 2016	8/30/2016
treboux2@aol.com	Re: SOTF - Complaint Filed with the Sunshine Ordinance Task Force	8/30/2016
Erica Zweig	To Victor re Section 12	8/30/2016

