



**SUNSHINE ORDINANCE TASK FORCE
CITY AND COUNTY OF SAN FRANCISCO
MINUTES
REMOTE MEETING**

**Listen/Public Call-In Phone Number
1-415-906-4659
Meeting ID: 247 210 064#**

October 7, 2020 - 4:00 PM

Regular Meeting

Seat 1	Dean Schmidt	Seat 7	Vacant
Seat 2	Lila LaHood	Seat 8	Vacant
Seat 3	Vacant	Seat 9	Chris Hyland
Seat 4	Vacant	Seat 10	Matthew Yankee
Seat 5	Jennifer Wong	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, COMMUNICATIONS AND
AGENDA CHANGES.**

Chair B. Wolfe called the meeting to order at 4:06 PM. On the call of the roll Chair B. Wolfe and Members LaHood, Yankee, Hyland, Wong, Schmidt and Hinze were noted present. A quorum was present.

No action taken.

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

Public Comment:

Anonymous provided a correction to item 8 in the September 2, 2020 Minutes.

Action: Moved by Member Yankee, seconded by Member LaHood, to approve September 2, 2020, meeting minutes with the requested correction.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Schmidt, Wong, LaHood, Hinze, Hyland, Wolfe
Noes: 0 - None

3. Chair's Report. Commemoration to those members who have served this past term of office and make appointments to Chair SOTF Committees.

Chair Wolfe announced a formal thank you and appreciation for former Members Tesfai, Cate, Martin and J. Wolf who provided a great service to the City of San Francisco and the Sunshine Ordinance Task Force.

Newly sworn Member LaHood was happy to be reinstated and welcomed new members Jennifer Wong and Dean Schmidt to the SOTF.

Chair Wolfe assigned members LaHood, J. Wong and himself to continue work on the Compliance and Amendments Committee. Chair Wolfe also noted that Member Hinze will continue chairing the Complaints Committee and Members Yankee and Schmidt will participate. Member Hinze will also chair the Rules Committee. Member Hyland will chair Education, Outreach and Training Committee and J. Wong will participate. Member Yankee will continue to chair It Ad Hoc and Chair Wolfe will participate.

Public Comment:

Anonymous provided comment on the membership of the various committees.

4. Public Comment: Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. *(No Action). Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.*

Anonymous #2 stated that with regard to File No. 19145, this is a problem not limited to the Police Commission or other committees. The Committee is supposed to say that closed session is over and to support that claim you need to review the minutes.

Denta Tadesse addressed the issue of reasonable accommodation at City Hall. Mr. Tadesse stated that the Mayor's Office on Disability shall assist City departments make accessibility to all people with disabilities.

Anonymous #3 listened to File No. 19145 and stated that there were difficulties

trying to make a public comment during that hearing.

5. **File No. 19145:** Complaint filed by Chris Kohrs against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.5 and 67.21, by failing to respond to a public records request in a timely and/or complete manner.

Chris Kohrs (Petitioner) provided a summary of the complaint and requested the Committee find a violation. Mr. Kohrs stated that on March 6, 2019, he had a hearing before the Police Commission. Mr. Kohrs requested a copy of the original recording and transcript of the hearing. Mr. Kohrs stated that he was provided that recording and transcript of his hearing through a public records request. Mr. Kohrs noted that after reviewing the recording and transcript he noticed that his attorney was cut off and that deliberations during the hearing were not recorded. Mr. Kohrs had the recording analyzed and the forensic results remain inconclusive.

Sgt. Stacy Youngblood (Police Commission) (Respondent), provided a summary of the department's position. Sgt. Youngblood stated that on September 13, 2020, he provided both a copy of the original Police Commission recording and transcript to Mr. Kohrs.

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

Member Yankee noted that the transcript and portions of the audio recording seem to be incomplete. Member Yankee stated that the Petitioner said that part of the recording was deleted not that records were not turned over.

Sgt. Youngblood stated that the entire proceeding was recorded except for deliberations and during that time the court reporter was asked to leave the room.

Chair Wolfe stated that the SOTF has the transcript and heard the recording and there seem to be missing parts and that under Sunshine there must be a recording of the session. Chair Wolfe also cited 67.8-1 which states that all closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and shall be retained for 10 years.

Action: Moved by Member Yankee, seconded by Member Schmidt, to continue the matter to the call of the Chair, requested that that Sgt. Youngblood provide a recording of the closed session of the Police Commission hearing and request that DCA Price-Wolf provide an analysis of the issue.

Public Comment:

Anonymous agrees with DCA Price-Wolf's analysis and that this is a public record. Anonymous also agreed with the Chair because Petitioner did file a complaint for a public meeting violation, not just public records."

Denta Tadesse stated that this case is similar to his complaints. Mr. Tadesse noted that George Cothran provided information to his housing coordinator and then released it to the press. Mr. Tadesse feels that this complaint echoes his.

Anonymous #2 stated that Petitioner filed a public records request and the respondent provided the records. Anonymous also stated that the Police Commission has problems with how they conduct closed sessions; they are required to notify the public and give a summary and they don't do that.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Schmidt, Wong, LaHood, Hinze, Hyland, Wolfe Noes:
0 - None

6. **Closed session. Meeting with legal counsel and review of documents for file 19114.**

DCA Price-Wolf stated that a closed session was not properly noticed on the Agenda and that he will not participate.

Chair Wolfe stated that he wants a motion for closed session to be about legal advice provided to the SOTF.

There being no motion, no action was taken.

7. **File No. 19114:** Complaint filed by Shane Anderies against Tyler Vu and the Public Defender's Office for violating Administrative Code (Sunshine Ordinance), Section 67.24, 67.25, 67.26, 67.27 and 67.29 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Member LaHood stated that this matter was referred to the Compliance and Amendment Committee from the SOTF and that legal guidance was requested from Deputy City Attorney (DCA) Price-Wolf. Member LaHood asked Mr. Vu if he had a privilege log.

Mr. Vu stated he had a spread sheet which he prepared in anticipation of the closed session. Mr. Vu stated that he agreed to share the spread sheet with SOTF DCA in closed session and is not available for public disclosure. Mr. Vu stated that the document was to provide the SOTF an idea of the types of records that exist not to give the Respondent specific examples of what he is looking for. Mr. Vu stated that at this time, he was not prepared to address the issues of what he can share with Mr. Anderies.

Chair Wolfe stated that he is on the fence with regards to *Coronado Police Officers Association v. Carroll* (2003) 106 Cal.App.4th 1001. Chair Wolfe noted that the discussion in that case was whether the materials in the database are publicly disclosable and is the material protected information used by the Public Defender's Office in representing members of the public.

Member LaHood noted that the SOTF needs to make a determination on whether the records are public. Member LaHood pointed out that at the Compliance and Amendments Committee hearing the question was if the documents gathered in the

course of defending the public are public documents or work product?

Mr. Anderies stated that Coronado has nothing to do with this matter. Mr. Anderies stated that this case is about Mr. Ostly who is a former District Attorney who was accused of misconduct. Mr. Anderies noted that he asked for specific documents which should have been provided. Mr. Anderies specifically addressed that the Ordinance says that Mr. Vu is supposed to redact or claim what is public.

Member Schmidt stated that a privilege log is a tool used to identify if a document is private and to get a sense of what the other party has. Member Schmidt agreed that it would be helpful if generated.

Chair Wolfe stated that he doesn't feel comfortable enough to know what is privileged. Chair Wolfe opined that a court should review this matter because a SOTF decision is administrative. Chair Wolfe also noted that SOTF can compel the Custodian to produce the records but there is no legal enforcement. Chair Wolfe stated that he was trying to ascertain what authority the Public Defender's Office has for any records which are not part of their defense. Chair Wolfe stated that he believes records are collected by attorneys for the purposes of use in their cases and can be held as work product. Chair Wolfe stated that he was unable to tell which records are protected under doctrine and which are public. Chair Wolfe opined that Mr. Vu should provide a list of items they are not willing to disclose and cite a statute as the Ordinance requires, but if they don't produce anything the SOTF cannot make a decision.

Member Schmidt opined that the SOTF needs to order the Public Defender's Office to provide a privilege log which would provide more information.

Member Yankee stated that at the prior Compliance and Amendments Committee meeting the Committee asked for a log and still haven't gotten it. Member Yankee noted that the SOTF needs Anderies and Vu to make a determination because the SOTF cannot see the documents and can't make a decision.

Action: Moved by Member Yankee, second by Member LaHood to close the file without prejudice.

Public Comment:

Anonymous stated empathy with the Petitioner and does believe that they have a ruling. Anonymous stated that under Sunshine the withholding of any information must be held with a citation. Anonymous stated that the SOTF should find a violation of 67.27.

Denta Tadesse stated that he is alarmed that the SOTF would consider a closed session. Mr. Tadesse stated that Chair Wolfe told him that the SOTF is the only body that waives privilege in all cases. Mr. Tadesse asked how can SOTF hold closed sessions.

Stephen Malloy stated that he agrees with Mr. Anderies and supports him. Mr. Malloy stated that the SOTF should not close this file and that the Committee is

moving outside their realm. Mr. Malloy noted that under 67.24 public information needs to be disclosed under the ordinary course of business.

Anonymous #2 stated that they are concerned about the implications of the Public Defender's Office not providing records due to attorney client privilege.

Anonymous #2 asked is the Public Defender's Office immune to attorney client privilege with regards to specific cases?

Member Yankee rescinded the motion.

Action: Moved by Chair Wolfe, seconded by Member Hyland to table this item to the end of the cases and to be heard before item 12.

Public Comment:

Anonymous stated that he urged the Committee to not table this case and that there is a clear violation of 67.26 and to refer the matter back to the Compliance and Amendments Committee.

Stephen Malloy stated that he agreed Anonymous and supports Mr. Anderies. Mr. Malloy stated that the Public Defender's Office, the District Attorney's Office and the City Attorney should be in compliance with the Ordinance. Mr. Malloy stated that if there are other items regarding 67.24 that they should identify those too.

The motion was rescinded.

Action: Moved by Member Yankee, second by Member Hyland to find the Public Defenders' Office in violation of Administrative Code, Sunshine Ordinance Section 67.26 for not footnoting or giving a clear reference to justification for not providing the records and referred the matter to the Compliance and Amendments Committee.

Public Comment:

Wynship Hillier stated that the motion would die if not handled this evening.

Anonymous urged to vote in favor of the motion.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Hyland, Schmidt, Wong, LaHood, Hinze, Wolfe

Noes: 0 - None

8. **File No. 19098:** Complaint filed by Anonymous against Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the Police Department did not comply with his request. Anonymous said SFPD told their employees that they would not have any responsive records if they did not use their personal emails for work purposes, which Anonymous said does not comply with the *City of San Jose v. Superior Court* (2017) case. Anonymous stated that the records they did provide were not copies of originals. Anonymous stated that SFPD did not provide email header metadata and that the new practice of the Police Department is to include references and footnotes. Anonymous noted that the SOTF has held metadata is a public record. Anonymous stated that they did not provide the to and from of the text messages.

Lt. Andrew Cox (Police Department) spoke on behalf of the Respondent and stated that the Respondent was on scene dealing with the untimely death of a Fire Fighter.

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

Action: Moved by Member Hyland, second by Member LaHood, to find the Police Department in violation of Administrative Code (Sunshine Ordinance), Sections 67.21(b), by failing to provide copies of electronic records by printing and scanning them instead; 67.21(k) by failing to search for all personally held public records within the scope of *City of San Jose v. Superior Court* (2017); Section 67.26 by withholding partial text message records namely the To and From of each message and also by withholding all email metadata namely email headers, and Section 67.26 by failing to key each redaction with a footnote or other clear reference to a justification.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - Hyland, LaHood, Schmidt, Wong, Yankee, Hinze, Wolfe

Noes: 0 - None

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

Member LaHood reported that the Compliance and Amendments Committee heard the matter and found a violation and that the Respondent has agreed to provide information. Member LaHood also stated that the Police Department will not be providing Prop G

calendars. Member LaHood also stated that the Committee was not satisfied with the response of the Police Department.

Chair Wolfe stated that the matter was heard by the Complaints Committee and found that the SOTF has jurisdiction; on September 2, 2020, the SOTF heard the matter and found violations of 67.25 for not providing records; 67.26 for minimal redactions and 67.29 for withholding Prop G calendars and referred the matter to the Compliance and Amendments Committee. The Committee referred the matter back to the SOTF.

Lt. Andrew Cox (Police Department, Respondent) stated that the Department still refuses to release the future calendars of Chief Scott.

A question and answer period occurred.

Action: Moved by Member LaHood, seconded by Member Wong to find that Chief William Scott violated Administrative Code, Sunshine Ordinance Section 67.34, by willfully failing to comply with the Order of Determination, the California Public Records Act, the Brown Act and to refer the matter to the Ethics Commission.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - LaHood, Wong, Schmidt, Yankee, Hinze, Hyland, Wolfe

Noes: 0 - None

10. **File No. 19138:** Complaint filed by Stephen Malloy against the University of California, Regents of the University of California, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to respond to a public records request in a timely and/or complete manner.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that in 2018 he asked the University for emails from specific employees and they have not complied. Mr. Malloy stated that in his job he communicated with City agencies daily and he wants those records. Mr. Malloy said that both the Mayor's Office and the City Attorney have given instruction to the University to not provide the requested records. Mr. Malloy stated that every agency that has released records did so because he was a contractor referring to his work with the City and those communications are his records and he should be allowed access. Mr. Malloy stated that in his contract there is a provision that Sunshine should be complied with. Mr. Malloy stated that the Regents violated the SOTF Ordinance. Mr. Malloy stated he was employed as an independent contractor to work exclusively with City employees for the homeless and that the Sobering Center is a Department of Health organization.

Respondent (The Regents of the University of California) (Respondent), provided a written summary of the department's position but was not present for the hearing.

Chair Wolfe stated that the University is an official contractor with the City and that Mr. Malloy pointed out in the contract that Sunshine is applicable. Chair Wolfe noted the letter dated September 4, 2019, from the City Attorney that it is the University's responsibility to hold the City harmless. Chair Wolfe stated that the City admits that a contract exists and affirms that the City provides a sobering center. Chair Wolfe stated that Mr. Malloy noted that in section 40 of the contract Sunshine is part of the contract. Chair Wolfe also noted that section 40 is not necessarily applicable to the release of public records.

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

Action: Moved by Member Yankee, seconded by Member Wong to find that the SOTF has no jurisdiction.

Public Comment:

Anonymous urged the SOTF to read 67.29. Anonymous noted that the Petitioner cannot enforce a contract unless they are a beneficiary.

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Wong, Schmidt, LaHood, Hinze, Hyland Noes: 1 - Wolfe

11. **Continued discussion regarding changes to administrative process and legal memoranda.**

Chair Wolfe stated that he had a meeting with the Clerk of the Board and has contacted a couple of Supervisors' aides to discuss legal memos provided by the City Attorney's Office to the SOTF. Chair Wolfe decided to go to the Supervisors to see if anything can be done administratively. Chair Wolfe stated that there is not enough staff to do the memos and he is looking into what the cost savings might be for the City Attorney.

Public Comment:

None.

No action taken.

12. **Inquiry regarding quorum under Charter Section 4.104.**

Chair Wolfe stated that the concerns and questions focus on quorum. Chair Wolfe stated that there are committees that don't know how they were created and that they are required to operate under the Charter. Chair Wolfe stated that those committees need to determine how they have been appointed to those boards and commissions and that they

come under the provisions of the Charter. Chair Wolfe referred the matter to the Compliance and Amendments Committee.

Action: Moved by Member Hyland, second by Member Hinze to continue the item to another SOTF hearing.

Public Comment.

Wynship Hillier submitted the email and he was disappointed that this matter would not be heard.

The motion FAILED by the following vote:

Ayes: 4 - Hyland, Hinze, Yankee, Schmidt Noes: 3 - Wolfe, LaHood, Wong

Chair Wolfe stated that the reason he brought this item to the Task Force is there has to be a list or definitive public statement of the description of different kinds of bodies. Chair Wolfe stated that some bodies because of the way they are appointed are not necessarily applicable to this section of the Charter. Chair Wolfe stated that there are other bodies that don't know that because of the way they were created they are required to operate under this section of the Charter and have been operating in violation. Chair Wolfe stated that it is incumbent of the Task Force to determine how they have been appointed. Chair Wolfe stated that this is important especially if a complaint has been raised about a board or commission, to advise them and determine its status.

Yankee stated that a review of Attorney General opinion 10-091 speaks to quorum.

Public Comment:

Wynship Hillier stated he was too tired to address this item.

Anonymous suggested that this matter be referred to the Education, Outreach and Training Committee and that Chair Wolfe can make the referral. Anonymous also suggested that the SOTF request a legal opinion from our DCA.

Chair Wolfe stated this this matter will be referred to the Compliance and Amendments Committee.

No further action taken.

13. **File No. 20072:** Per Board of Supervisors File No. 200552 – Authorizing Sunshine Ordinance Task Force to meet in July 2020 and inclusive of Administrative Code, Chapter 67 et al. but not limited to Administrative Code 67.30(c) - SF Sunshine Ordinance hearing to consider the impact of emergency orders, due to COVID 19, which resulted in the temporary suspension of various provisions of the California Public Records Act, Ralph M. Brown Open Meetings Act, San Francisco Sunshine Ordinance and other related laws and statutes that may apply within the jurisdiction of Sunshine Ordinance Task Force.
- Public records request delayed during the emergency
 - Issues related to lack of meeting postings
 - Lack of access to the meetings during the emergency
 - Planning and standards for future emergencies

Member Yankee stated that he reviewed meeting postings and noted that the Elections Commission has not posted meeting minutes on their website.

Chair Wolfe noted that SOTF has noticed that they are in violation and need to correct the problem in seven days.

Action: Moved by Member Yankee, second by Member Hinze to find that the Elections Commission violated Administrative Code, Sunshine Ordinance Section 67.29-2 for failing to post their Agendas and Minutes on line in a timely manner and that a letter be drafted by the SOTF to the Elections Commission stating that they are on notice of violations.

Public Comment:

Anonymous stated his support for the motion and that the SOTF can also cite 67.30(c).

Anonymous #2 stated she is guessing that the Elections Commission is probably not the only offender. Anonymous #2 noted that Building Inspection Commission has not posted Minutes since June. Anonymous #2 also expressed concern that the Small Business Commission sometimes posts their Agenda after the meeting has taken place.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Hinze, Wong, Schmidt, LaHood, Hyland, Wolfe
Noes: 0 - None

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

- Task Force and Committee hearing schedule
- Complaints submitted and hearing files created
- Summary of pending complaints and other issues
- Correspondence from Anonymous September 3 & 28, 2020
- Minutes from September 15, 2020 Complaint Committee
- Minutes from September 22, 2020 Compliance and Amendments Committee

The Administrator presented the Report. The Administrator asked the SOTF to review the complaint form submitted by Anonymous.

Public Comment:

Anonymous asked that the SOTF give serious consideration to the submitted form.

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

Chair Wolfe stated that all Orders of Determination on the website are in pdf format and that a database using search terms needs to be developed in order to determine precedence.

16. **ADJOURNMENT.**

There being no further business the meeting was adjourned at 11:29 pm.

APPROVED: 11/4/2020
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.