



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

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

December 6, 2017 - 4:00 PM

Regular Meeting

Seat 1	vacant	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

Chair Bruce Wolfe called the meeting to order at 5:14 p.m. Members Chopra, Eldon and Tesfai were noted absent. There was a quorum.

There were no agenda changes.

2. Approval of minutes from the Sunshine Ordinance Task Force November 1, 2017, meeting. (00:02:00 – 01:12:00)

The SOTF discussed the November 1, 2017, meeting minutes.

Member Cannata, seconded by Member Hinze, moved to approve the November 1, 2017, meeting minutes.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 – J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 3 – Chopra, Eldon, Tesfai

Member Tesfai was noted present at 5:33 p.m.

3. **File No. 17121:** Hearing – Ethics Commissions Draft Enforcement Regulations and Enforcement of Orders of Determinations by the Sunshine Ordinance Task Force.
(0:02:00 – 01:12:00)

Jeff Pierce, Ethics Commissions provided information regarding the Ethics Commissions Draft Enforcement Regulations and responded to questions from the SOTF.

Chair Wolfe provided an overview of the Ethics Commissions proposed Enforcement Regulations and the effect on the SOTF referrals for enforcement.

Public Comment:

Ray Hartz question the authority of Ethics Commission’s Staff to create procedures, provide a summary of past Ethics Commission actions and stated that SOTF Orders of Determination have never been enforced.

Richard Knee expressed concerns with portions of the Enforcement Regulations and the possibility of complaints bouncing between the SOTF and Ethics Commission.

The SOTF discussed the proposed regulations and made the following suggestions to be present to the Ethics Commissions for the December 18, 2017, meeting:

- The Ethic Commission’s process should be consider a ‘Sentencing Hearing’ to determine what enforcement measures should be taken and not a re-adjudication of the fact or show cause hearing
- Section 10 B should be renamed ‘Enforcement Hearing’
- Section 10 B(1)(i) respondents should be allow to argue the level of enforcement imposed by the Ethics Commission and not argue validity of a violation
- Section 10 B(1)(ii) Standard of Review shall be based upon the SOTF findings of facts and Order of Determinations. Enforcement shall be based on upon these aspects.
- Section 10 B(1)(iii) Allow 3 minutes rebuttals for all parties
- Section 10 C – a copy of the Ethics Commission actions should be transmitted back to the SOTF.

Member Tesfai, seconded by Member Maass, moved to provide the SOTF suggested amendments to the Enforcement Procedures for the Ethics Commission’s review.

Public Comment:

Ray Hartz provided a history of the past SOTF findings in his favor that have not been enforced by the Ethics Commission and commented on the intent of the Ethics Commission.

Michael Petrelis expressed his problems with the long delay before his hearings, stated that the Ethics Commission doesn’t care about enforcement and requested that the meetings be televised.

Ann Treboux requested request that General Public Comment be taken.

Ellen Tsang expressed support for the motion.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Eldon

4. **File No. 17095:** Complaint filed by Ray Hartz against Commissioner Paul Renne, Ethics Commission, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.15(d) and 67.17, by abridging or prohibiting public criticism of the policy, procedures, programs or services of the City (Ethics Commission December 19, 2016, meeting).
(01:22:00 – 02:09:00)

(On October 24, 2017, the Complaint Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

Ray Hartz (Petitioner), provided a summary of the complaint and requested the SOTF to find violations. Mr. Hartz stated that he has additional facts to present to the SOTF that were not previously discussed under File No. 16116. Mr. Hartz stated that former chair Paul Renne was responsible for keeping order and did not prevent other members of the Ethics Commission from violating the Sunshine Ordinance. There were no speakers in support of the Petitioner. Jeff Pierce, Ethics Commission (Respondent), provided a summary of the department's position. Mr. Pierce stated that comments made by Commissioner Renne after the event are not relevant to the proposed violation. Mr. Pierce stated that the SOTF previously found the Ethics Commission, which included Commissioner Paul Renne, violated the Sunshine Ordinance and the same violation should not be re-litigated. There were no speakers in support of the Respondent. A question and answer period followed. The Petitioner and Respondent were provided an opportunity for rebuttals.

The SOTF clarified that they previously found Commissioner Kopp and the Ethics Commission in violation of Sunshine Ordinance, Section 67.15, via Complaint No. 16116. Chair Wolfe expressed concerns with the possibility of Double Jeopardy or having multiple hearings on the same facts and suggest the possibility that a reconsideration of the original complaint (File No. 16116) would have been the correct method to revise the Order of Determination to add Commissioner Paul Renne as a respondent. Administrator Victor Young noted that the deadline to request reconsideration of an Order of Determination has already elapsed.

Member Tesfai, seconded by Member Hinze, moved to take no additional actions and close the complaint file as a determination of violation has previously been made via Complaint No. 16116.

Chair B. Wolfe, seconded by Member J. Wolf, moved to amend the motion to waive the SOTF Complaint Procedures to allow a late request for reconsideration of SOTF Order of Determinations for Complaint No. 16116.

Public Comment:

Ann Treboux commented on the named complainant and the intent of Ray Hartz.

The motion to amend Member Tesfai's motion FAILED by the following vote:

Ayes: 3 – J. Wolf, B. Wolfe, Hyland

Noes: 5 – Tesfai, Maass, Cannata, Fischer, Hinze

Absent: 2 – Chopra, Eldon

Public Comment:

None.

The motion to adoption Member Tesfai's motion to take no additional actions and conclude the matter PASSED by the following vote:

Ayes: 6 – Tesfai, Maass, Cannata, Fischer, Hinze, Hyland

Noes: 2 – J. Wolf, B. Wolfe

Absent: 2 – Chopra, Eldon

Public Comment:

None.

Chair B. Wolfe, seconded by Member J. Wolf, moved to waive the SOTF Complaint Procedures to allow a late request for reconsideration of SOTF Order of Determinations.

Public Comment:

None

The motion FAILED by the following vote:

Ayes: 3 – J. Wolf, B. Wolfe, Cannata

Noes: 5 – Tesfai, Maass, Fischer, Hinze, Hyland

Absent: 2 – Chopra, Eldon

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 p.m. or as soon thereafter as possible.*

Speakers:

Ann Treboux provided the following summary of her public Comment:

“I attended the November 7, 2017 Advisory Meeting of the SFAC. At the Call for Public Comment and after the 3rd sentence of a 150 word summary Ann Trickey screamed, you can't say that you have to go. I said 5 times that she needed to reset her cell phone clock and she was abridging my public comment. She ran out of the room while she was gone I read the 150 word summary in full and handed it to an advisory

member. I have the audio and video of the event. Trickey returned twice with security guards who tried to remove me. I called bill graham, the director of security.”

Ray Hartz stated that public comment is a constitutional right that is not being honored.

Michael Petrelis thanks the SOTF and requested that meetings be televised.

Ellen Tsang suggested that time be allocated for members of the public to ask questions of the SOTF.

6. **File No. 17094:** Complaint filed by Michael Petrelis against President London Breed, 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. (02:09:00 – 02:40:00)

(On September 26, 2017, the Complaint Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

Member Maass, seconded by Chair B. Wolfe, move to recused Member Josh Wolf from hearing File No. 17094 due to a conflict of interest.

Upon discussion it was noted that recused members must leave the hearing room to prevent undue influence over the hearing matter. Member Josh Wolf stated that he would like to testify on the matter as a member of the public. Due to a conflict of the requirements for recused members and the right of members to provide public comment advice from the City Attorney is needed.

Michael Petrelis did not object to a possible continuance and comment on the absence of the City Attorney representative and their dereliction of duty.

Member Maass withdrew the motion to recuse Member Josh Wolf.

Member Maass, seconded by Member Tesfai, moved to continue the matter to the call of the chair.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Eldon

7. **File No. 17056:** Complaint filed by Denta Tadesse against Candace Carpenter and the Office of Citizen Complaints for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely manner. (02:40:00 – 03:18:00)

(On July 25, 2017, the Complaint Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

It was noted that the Petitioner was not present for the hearing. SOTF Administrator Victor Young confirmed that notice of hearing was provided to the Petitioner. There were no speakers in support of the Petitioner. Ines Vargas Fraenkel, Department of Police Accountability (Respondent), provided a summary of the department's position and described their complaint process. Ms. Fraenkel stated that investigative files are protection from disclosure pursuant to California Penal Code, Sections 832.5 and 8.32.7, regarding citizens' complaints against peace officer and that peace officers personnel records are confidential. Ms. Fraenkel noted that a response to Mr. Tadesse's inquiries were timely as they were provided verbally immediately after receipt. Ms. Fraenkel stated that the video record in question was acquired from a third party as part of an investigation and could not be provided the Mr. Tadesse as it is part of the investigative file. Ms. Fraenkel stated that the department did gain insight into the public records process and have made policy changes to improve their process and provide written response to public records requests. There were no speakers in support of the Respondent. A question and answer period followed. The Petitioner and Respondent were provided an opportunity for rebuttals.

Member Tesfai, seconded by Member Hinze, moved to find that no violation occurred and to conclude the matter.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 – None
Absent: 2 – Chopra, Eldon

8. **File No. 17075:** Complaint filed by Anonymous against Director John Rahaim and the Planning Department, 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.
(On November 13, 2017, the Compliance and Amendments Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

The Petitioner withdraw the complaint via fax. No action taken.

9. **File No. 17092:** Complaint filed by Ellen Tsang against John Rahaim, Anne Brask and the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to an Immediate Disclosure Request in a timely and complete manner. (03:18:00 – 03:36:00)
(On November 13, 2017, the Compliance and Amendments Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

Ellen Tsang (Petitioner), provided a summary of the complaint and requested the SOTF to find violations. Ms. Tsang provided a timeline of her request and stated that she did

not receive a response until after she filed a complaint. Ms. Tsang requested that it be clarified that the complaint is only regarding her August 16, 2017, request that her right to file complaints on her other requests for records be protected. Ms. Tsang stated that the Planning Department did not respond to the SOTF request for information in a timely manner. There were no speakers on behalf of the Petitioner. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that due to the multiple requests from Ms. Tsang the August 16, 2017, was confused with other public records requests and not responded to until it was brought to their attention by the SOTF. Ms. Silva acknowledged that the response was late but all documents were provided once the error was noted. There were no speakers in support of the Respondent. A question and answer period followed. The Petitioner and Respondent were provided an opportunity for rebuttals.

Member Cannata, seconded by Member Hinze, moved to find that John Rahaim, Anne Brask and the Planning Department, violated Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to the August 16, 2017, Immediate Disclosure Request in a timely manner.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Eldon

SPECIAL ORDER

The hearings on File Nos. 17079, 17080, 17081 will not begin earlier than 6:00 p.m.

File Nos. 17079, 17080 and 17081 were called and heard together.

10. **File No. 17079:** Complaint filed by Mary Miles against Mike Sallaberry, San Francisco Municipal Transportation Agency (SFMTA), 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. (03:36:00 –)
(On October 17, 2017, the Education, Outreach and Training Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

Mary Miles (Petition), objection to the distribution of additional material submitted at the meeting.

THE SOTF disregarding the late submission of additional documents from the SFMTA at the hearing.

Mary Miles (Petitioner), provided a summary of the complaint and requested the SOTF to find violations. Ms. Miles stated she has not received a response from the SFMTA

staff members indicated and provided information as to why each staff member must provide individual responses directly to the requester. There were no speakers in support of the Petitioner. Caroline Celaya, SFMTA (Respondent), provided a summary of the department's position. Ms. Celaya stated she represents SFMTA employees and responds on their behalf. Ms. Celaya indicated that the SFMTA staff members in question were polled and indicated that they did not have any response records. Ms. Celaya stated that the City Attorney has advised that the practice of herself, as the custodian of records, responding on behalf of SFMTA staff members is an acceptable and legal practice. There were no speakers in support of the Respondent. A question and answer period followed. The Petitioner and Respondent were provided an opportunity for rebuttals.

The SOTF discussed the matter and determine that an opinion from the Office of the City Attorney is needed to clarify the issue. Are individual city employees required to respond to public records requests personally or are they allowed to have a representative respond on their behalf? The SOTF would like advice and citations of relevant law/policy as to whether or not it is acceptable for a departmental representative to respond to a public records request on behalf of individual staff members.

Member Cannata, seconded by Member Hinze, moved to continue the File Nos. 17079, 17080 and 17081 to the call of the chair. The SOTF noted that the parties are invite but not required to attend future meeting on the matter.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Eldon

11. **File No. 17080:** Complaint filed by Mary Miles against Will Tabajonda, San Francisco Municipal Transportation Agency, 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.

(On October 17, 2017, the Education, Outreach and Training Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

See File No. 17079 for a summary of actions.

12. **File No. 17081:** Complaint filed by Mary Miles against Luis Montoya, San Francisco Municipal Transportation Agency, 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.

(On October 17, 2017, the Education, Outreach and Training Committee determined that the Task Force has jurisdiction and referred the matter to the Task Force.)

See File No. 17079 for a summary of actions.

13. **File No. 17103:** Review and possible amendments to the Sunshine Ordinance Task Force By-Laws and Complaint Procedures to review and revised the following:
- Sunshine Ordinance Task Force Hearing Procedure
 - Reconsideration of Order of Determination
 - Rule of Reason

Member J. Wolf, seconded by Member Cannata, moved to amend the SOTF By-Law, Section 10. Hearing Procedures for Complaints, to delete “and its committees” to indicate the procedure only applies to the Full Task Force.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 8 – J. Wolf, Tesfai, Maass, Cannata, Fischer, Hinze, Hyland, B. Wolfe
Noes: 0 – None
Absent: 2 – Chopra, Eldon

The remainder of the items were continued to the December 19, 2017, SOTF meeting without objections.

14. **Sunshine Ordinance Task Force - Chair’s Report.**
- Ethics Commission’s Opinion regarding Ordinance No. 001-17 Requirement to File Behest Payment Reports)
 - District Attorney’s opinion regarding Ethics Commission violation of the Brown Act (SOTF Complaint No. 17044).

Member Maass provided an update of the behest payment requirements for the members of the Sunshine Ordinance Task Force.

Member Maass provided an update on the District Attorney opinion related to SOTF Complaint No. 17044 and requested that the matter be schedule for a hearing to determine if the matter should be reconsidered.

Public Comment:
None.

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

SOTF Administrator Victor Young provided an update on the meeting scheduled.
December 19, 2017, Special meeting of the SOTF
December 26, 2017, Cancelled Complaint Committee Meeting
January 3, 2018, Cancelled SOTF meeting
Additional SOTF Special Meeting date in January to be determined.

SOTF Administrator Victor Young stated that Harassment Training requirements for STOF members is due by December 31, 2017.

16. **ADJOURNMENT**

By a rise in vote the meeting was adjourned without objection at 10:15 p.m.

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

APPROVED by the Sunshine Ordinance SOTF: December 19, 2017