



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

REMOTE SPECIAL MEETING

December 7, 2022 - 4:00 PM

Seat 1	Dean Schmidt	Seat 7	Matthew Yankee - Chair
Seat 2	Lila LaHood	Seat 8	Chris Hyland
Seat 3	Vacant	Seat 9	Vacant
Seat 4	Jaya Padmanabhan	Seat 10	Thuan Thao Hill
Seat 5	Jennifer Wong - Vice-Chair	Seat 11	Bruce Wolfe
Seat 6	Laura Stein		

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 Yankee called the meeting to order at 4:03 PM. On the call of the roll Chair Yankee and Members Schmidt, LaHood, Padmanabhan, Wong, Stein, Hyland and Wolfe were noted present. Member Hill was noted absent. A quorum was present.

There were no agenda changes.

1A. FINDINGS TO ALLOW TELECONFERENCED MEETINGS UNDER CALIFORNIA GOVERNMENT CODE SECTION 54953(e).

The Task Force is expected to consider a motion setting forth findings required under Assembly Bill 361 (AB 361) that would allow the committee to hold the meeting remotely according to the modified Brown Act teleconferencing set forth in AB 361.

Action: Moved by Member LaHood, seconded by Member Wolfe, to approve the motion 1A.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - LaHood, Wolfe, Stein, Schmidt, Padmanabhan, Hyland, Wong, Yankee
Noes: 0 - None
Absent: 1 - Hill

2. **Approval of the minutes from the Sunshine Ordinance Task Force Regular Meeting of November 2, 2022.**

The Task Force discussed the minutes.

Action: Moved by Member Stein, seconded by Member Padmanabhan, to approve the November 2, 2022, minutes with incorporated changes.

Public Comment:

David Pilpel expressed approval of the minutes for Hillier in the absence of the written statement.

The motion PASSED by the following vote:

Ayes: 8 - Stein, Padmanabhan, Wolfe, LaHood, Schmidt, Hyland, Wong, Yankee
Noes: 0 - None
Absent: 1 - Hill

3. **Approval of the Order of Determinations: November 2, 2022, Actions – File Nos. 22030, 21148, and 21086.**

The SOTF discussed the Orders of Determination.

Action: Moved by Vice-Chair Wong, seconded by Member LaHood, to approve the Orders of Determination.

Public Comment:

David Pilpel suggested including the date the complaint was filed and because it is relevant in case someone wants to engage the time before the Order issued.

The motion PASSED by the following vote:

Ayes: 8 - Wong, LaHood, Padmanabhan, Wolfe, Stein, Schmidt, Hyland, Yankee
Noes: 0 - None
Absent: 1 - Hill

4. **File No. 22143: Annual Supervisor of Records Report from City Attorney:** Review and potential acceptance of the annual report.

The SOTF discussed the Supervisor of Records Report. The SOTF noted that no one from the City Attorney's Office was present to provide narrative and describe the Report.

Action: Moved by Member Wolfe, seconded by Member Schmidt, that the SOTF received the Supervisor of Records Report from the City Attorney's Office and requested that an audience from someone knowledgeable about the report for the January 2023 SOTF hearing.

Public Comment:

David Pilpel suggested that the SOTF not receive the report and continue the matter and/or have Brad Russi present as the supervisor of records.

Wynship Hillier provided the following written public comment.

Mr. Hillier said that the Task Force should not move to receive this report. In support, he quoted RONR (12th ed.) 51:15 in relevant part.

Member Wolfe rescinded their motion and moved as the following motion.

Action: Moved by Member Wolfe, seconded by Member Padmanabhan, to continue the item to the January SOTF meeting and include a request for an audience from someone knowledgeable about the report.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Wolfe, Padmanabhan, LaHood, Wolfe, Stein, Schmidt, Hyland, Yankee

Noes: 0 - None

Absent: 1 - Hill

5. **Administrator's Report, Complaints and Communications.**

Public Comment:

David Pilpel stated that the Administrator's Report is not a proposed action and usually has already approved the meeting dates.

Peter Warfield, Executive Director Library Users Association, libraryusers2004@yahoo.com, P.O. Box 170544, San Francisco, California, 94117-0544 stated that he has difficulties trying to understand the different communications.

Wynship Hillier provided the following written public comment.

Mr. Hillier said that the item violated *S.F. Admin. Code* § 67.7(a), said that it was not clear that a schedule of meetings would be adopted at this meeting.

No actions taken.

6. **A. Complaints Involving the SOTF:** Development of procedures for handling a pending complaint naming a committee of the Sunshine Ordinance Task Force as the respondent, and potential consideration of standing procedures when an SOTF committee is named as a party to a complaint.

B. Complaints Involving the SOTF: Development of procedures for handling a pending complaint naming the entire Sunshine Ordinance Task Force as the respondent, and potential consideration of standing procedures when the entire SOTF is named as a party to a complaint.

Chair Yankee requested the Rules Committee add the matter to their agenda and create a formal procedure regarding the issue.

Member Wolfe agreed with Chair Yankee but noted it is still not clear what is the best direction for the SOTF to take.

Action: Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructed the SOTF Administrator to refer the complainants to Administrative Code 67.35(d) for information on how they may institute proceedings for enforcement with other entities and to further inform the complainants that they may submit their complaint for an informal discussion and potential action for corrections and that could be made but that no formal order of determination will be issued by the Sunshine Task Force.

Action: Moved by Chair Yankee, seconded by Member Wolfe, to rescind their original motion and combine subsections 6A and 6B under item 6 for consideration under one motion.

Public Comment on motion combining items 6A and 6B.

Peter Warfield stated he wanted to draw attention to and without saying yes or no to combining the two items. Mr. Warfield stated that eight people could decide about a complaint against a committee.

Mark Sullivan provided the following written comment:

Mr. Sullivan asked for a mention in 12-7-2022 SOFT minutes on agenda 6 A and B that the petitioners of the complaints can pursue their complaints with the Ethics Commission 40 days after a complaint is filed under Sunshine Ordinance Sec. 67.35 (d).

The motion PASSED by the following vote:

Ayes: 8 - Yankee, Wolfe, Padmanabhan, LaHood, Wolfe, Stein, Schmidt, Hyland,
Noes: 0 - None
Absent: 1 - Hill

Chair Yankee rescinded their motion and instituted the previous motion again.

Action: Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructed the SOTF Administrator to refer the complainants to Administrative Code 67.35(d) for information on how they may institute proceedings for enforcement with other entities and to further inform the complainants that they may submit their complaint for an informal discussion and potential action for corrections and that could be made but that no formal order of determination will be issued by the Sunshine Task Force.

Public Comment:

Peter Warfield stated the disadvantage of this hearing when an in-person meeting people could communicate with each other.

David Pilpel stated that this is an elegant solution to the instant problem and makes sense to codify this and suggested that in the communication to the SOTF Administrator as to these matters it might help to have a sentence regarding a specific violation of the law.

Wynship Hillier provided the following written public comment.

Mr. Hillier said that he believed that an informal discussion of his complaint no. 22140 against the Task Force would be adequate, that the Task Force would agree with his position during such discussion, and that no official action by the Task Force would be necessary in order to change their behavior to comply with the second sentence of *S.F. Admin. Code* § 67.7(a). He also said that the Ethics Commission would have no jurisdiction over the Task Force under *S.F. Charter* § 15.105(a) and (b), regardless of anything to the contrary in *S.F. Admin. Code* § 67.35(b). He also said that the motion itself violated the second sentence of *S.F. Admin. Code* § 67.7(a).

Mark Sullivan provided the following written public comment:

Before the Task Force, the only path that the public has to have an open discussion on issues is the complaint process. A complaint is not punitive as the task force has no punitive ability itself beyond referring. One of its primary purposes to inform the city on an appropriate way in which to implement public access laws. Looking through the lens of to inform, implement and nonpunitive, the task force should be able to self-access an important point is if the task force refuses to access itself, there is no resolution of what is agreed upon, relatively easily be fixed and taken off

the table and where there is dispute. No self-assessment leaves everything on the table as in dispute, keeps the waters muddy and will just draw out any resolution. The more administrative clarity and resolution from the beginning, the better.

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Wolfe, LaHood, Stein, Hyland, Wong
Noes: 2 - Schmidt, Padmanabhan
Absent: 1 - Hill

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

Mark Sullivan provided the following written public comment.

Courts cite previous court decisions so that legal doctrine to be equally applied to like cases. Epstein can include conclusions from Longshoremen's case that has nothing to do with benefit districts. The Longshoremen's case has a private for profit entity, Los Angeles Export Terminal, Inc , claiming that it has no obligation to transparency, but the court found that the government had some role in why it existed and serving a purpose for government. This private entity claim was similar with Epstein benefit district formation entity. The BID formation entity in Epstein is like the MDGBD formation committee than it is to an Export Terminal, Inc. These court opinions are jurisdiction opinion. They all come to the same conclusion on the Brown Act definition. It is this similar reasoning by which the rationality of legal doctrine is maintained regardless of the names of the entity or underlying violations.

Wynship Hillier provided the following written public comment.

Mr. Hillier said that the Behavioral Health Commission had committed nine violations of *S.F. Admin. Code* § 67.7(a) since the Oct. 25 meeting of the Compliance and Amendments Committee. He also said that they had persistently violated *Cal. Gov't Code* § 54954(a) at every one of the meetings they noticed, that Mr. Hillier had notified them of the violation at each item on each agenda, and that the Commission and its committees had proceeded regardless. Mr. Hillier asked if it would be necessary to extract promises from the staff of the Commission for every sentence of the Brown Act that they were violating, and what would allow the Commission to sit as a super legislature to decide with which sections if the Brown Act they would comply and which not.

Geoffrey Grier provided information and stated that the BHC's postings are timely and clear and he would urge any SOTF member to attend one of their meetings.

Stiliyan Bezhanski noted that this is the sixth action this year with the same complaints against the same department. Mr. Bezhanski is not sure if this is a coincidence.

David Pilpel underscored his comments of last month and that he has become a fan of hybrid meetings, but that other citizens feel different.

Peter Warfield commented on meeting recordings and thinks that those recordings should be available to the public.

Member Wolfe was noted not present at 5:40 PM

NOTE: Hearings on complaints and other agenda items listed below will begin no earlier than 5:00 P.M.

Meeting Recessed from 5:55 PM until 6:03 PM

Roll Call at 6:03 PM: Members, LaHood, Padmanabhan, Stein, Hyland, Schmidt, Vice-Chair Wong, and Chair Yankee were present at 6:03 PM. Member Schmidt was noted present at 6:06 PM.

8. **File No. 22014:** Complaint filed by Sergei Severinov against Lt. Lynn Reilly and the Police Department for allegedly violating Administrator Code (Sunshine Ordinance), Section(s) 67.21(b), by failing to respond to a public records request in a timely and/or complete manner.

Mr. Severinov (Petitioner) provided a summary of the complaint and requested the Task Force find a violation. Mr. Severinov stated that his complaint is based on Administrative Code, Sunshine Ordinance, Sections 67.21(b) and (c). Mr. Severinov stated that the police department has continued to refuse to disclose records, refused to do a search of database and email systems and refused to provide the existence, form and nature of the requested records, refused to provide responsive video records.

Lt. William Toomey (Police Department) (Respondent) provided a summary of the department's position. Lt. Toomey stated that with regards to criminal history, arrests, and detentions only the party in question has the right to obtain their own personal criminal history, but you cannot request the criminal history of other individuals. Lt. Toomey also stated that the Department of Emergency Management (DEM) is the custodian of requested records in question.

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

Action: Moved by Member Schmidt, seconded by Member Stein, to notify the Attorney General of the failure of the Police Department to respond adequately to a Sunshine Ordinance Task Force prior order pursuant to Administrative Code, (Sunshine Ordinance), Section 67.21(e).

Public Comment:

Mark Sullivan stated he sees no problem with two tracks; one to the Attorney General's Office and the SOTF continuing, and the AG is more looking at it as prosecution.

The motion FAILED by the following vote:

Ayes: 5 - Schmidt, Stein, Yankee, Padmanabhan, LaHood
Noes: 1 - Hyland
Absent: 3 - Hill, Wolfe, Wong

Vice-Chair Wong was noted not present at 6:54 PM

Action: Moved by Chair Yankee, seconded by Member Hyland to refer the matter to the Compliance and Amendments Committee for future monitoring.

Vice-Chair Wong was noted present at 7:01 PM.

Public Comment:

Liza Murawski wanted to know why the SOTF is not revoting the last motion. This is a failure of service to the complainant.

Mark Sullivan pointed out that Vice-Chair Wong was the second to the motion and that she stepped.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Hyland, Schmidt, Stein, Wolfe, LaHood, Wong
Noes: 0 - None
Absent: 2 - Hill, Wolfe

- 9. File No. 22021: Hearing Regarding Request for Reconsideration of Complaint No. 21101:** Complaint filed by Liza Murawski against the Department of Public Health for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.15 and 67.21, by failing to provide meeting minutes upon request and failing to respond to a public records request in a timely and/or complete manner.

Liza Murawski (Petitioner) provided a summary of the complaint and requested the Task Force find a violation. Ms. Murawski stated that there is no new evidence because this request is four years old, and the records are over four years old. Ms. Murawski also noted that the SOTF ordered Conard House to post their agendas and minutes and provide those documents. Ms. Murawski stated that as of April 21, 2018, the case and request were filed correctly. Ms. Murawski stated that since 2018, Conard House no longer provided the requested agendas and minutes.

Natalie Pojman (Department of Public Health (DPH)) (Respondent) provided a summary of the department's position. Ms. Pojman stated that this matter was heard at the SOTF and no violations were found. Conard House is a private health organization and the DPH does not have the requested records in their department. Ms. Pojman stated that DPH does not refute that minutes were requested; however, they are not required to provide those records as Conard House is not a city agency. Conard House is a private nonprofit agency that provides housing and DPH does not have records to provide.

Member Wolfe was noted present at 7:18 PM.

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

Action: Moved by Member Stein, seconded by Member Padmanabhan, to deny the request for reconsideration based on the lack of new evidence.

Public Comment:

Geoffrey Grier stated that as a consumer it seems simple and crazy to go through a bureaucratic company that is subcontracted by DPH and provide transparency when funding is coming from the city. Mr. Grier asked why you wouldn't fall under the same monitoring system receiving help from DPH. Mr. Grier noted that it does not make sense to require a contracted company to provide transparency.

Mark Sullivan stated that he doesn't know what the contract states but it seems like a boilerplate contract. Mr. Sullivan stated Conard House is obligated to provide records if requested and it sounds like Ms. Murawski is missing a record from a previous Order of Determination.

The motion PASSED by the following vote:

Ayes: 8 - Stein, Padmanabhan, LaHood, Wolfe, Stein, Schmidt, Hyland, Yankee
Noes: 0 - None
Absent: 1 - Hill

Meeting recessed from 7:49 PM until 7:55 PM

Roll Call at 7:55 PM. Members LaHood, Padmanabhan, Hyland, Stein, Wolfe, Vice-Chair Wong and Chair Yankee were noted present at 7:55 PM; Member Schmidt was noted present at 7:57 PM.

Member Hill was noted absent.

10. **File No. 21126:** Complaint filed by Stiliyan Bezhanski against Debra Lew and the Office of the Treasurer and Tax Collector (TTX) for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 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, failing to keep withholdings to a minimum, failing to provide justification for withholdings, and failing to provide an index of records.

Stiliyan Bezhanski (Petitioner) provided a summary of the complaint and requested the Task Force find a violation. Mr. Bezhanski stated that he received his records but it was not provided in a timely manner. Mr. Bezhanski suggested that the SOTF contact the City Attorney.

Debra Lew (Office of the Treasurer and Tax Collector) (Respondent) provided a summary of the department's position. Ms. Lew stated that her office received the request on September 29, 2020, during the Covid Emergency and responded on a rolling basis through October 18, 2020, a Sunday. Ms. Lew researched responsive due dates and learned that if the due date falls on a holiday, the response was due the next working day. Ms. Lew stated that this was not an Immediate Disclosure Request, her office followed the directive of the Mayor's Proclamation and produced over 950 pages of records and closed the request on October 5, 2020.

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

Action: Moved by Member Schmidt, seconded by Member Wolfe to find that the Office of the Treasurer and Tax Collector (TTX), violated California Public Records Act, Section 6253(c), by failing to provide public records in a timely manner (delay in production of records).

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Schmidt, Wolfe, Stein, Padmanabhan, LaHood, Stein, Hyland, Yankee
Noes: 0 - None
Absent: 1 - Hill

11. **File No. 22084:** Complaint filed by Stiliyan Bezhanski against Debra Lew and the Office of the Treasurer and Tax Collector for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.21 and 67.25, and California Government Code, Section(s) 6253(c), by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Stiliyan Bezhanski (Petitioner) provided a summary of the complaint and requested the Task Force find a violation. Mr. Bezhanski stated that this complaint has the same issues as File No. 21126, timeliness. Mr. Bezhanski stated that this request was sent out on June 24, 2022.

Debra Lew (Office of the Treasurer and Tax Collector) (Respondent) provided a summary of the department's position. Ms. Lew stated that this request was not an Immediate Disclosure Request and the deadline fell on July 4, 2022. Ms. Lew stated that the response was provided the following business day.

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

Action: Moved by Member Stein, seconded by Member Hyland, to find that the Office of the Treasurer and Tax Collector (TTX) DID NOT violate Administrative Code (Sunshine Ordinance), Section(s) 67.21 and 67.25, or California Government Code, Section(s) 6253(c), .

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 8 - Stein, Hyland, Schmidt, Wolfe, Padmanabhan, LaHood, Yankee, Wong
Noes: 0 - None
Absent: 1 - Hill

12. **2022 Annual Report:** Discussion and potential action on the process and scope of an annual report, and determination of the Annual Report Ad Hoc Committee membership and meeting process.

Member Stein provide a summary of the matter and provided suggestions. The following members volunteered for the committee: Laura Stein, Jaya Padmanabhan, Lila LaHood, and Dean Schmidt.

Public Comment:

Peter Warfield stated that he has long experience with Sunshine and an interest in the work the SOTF does and is pleased that an annual report is in the process of being prepared.

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

Vice-Chair Wong stated that she is not working on the annual report because she is working with San Francisco digital Services on a new website.

Public Comment:

Peter Warfield thanked Member Wolfe for his opinion on 67.25 which involves Immediate Disclosure Requests and needs a clear understanding on all sides so that everyone understands what the term immediacy means.

14. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:56 pm.

APPROVED: DRAFT
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.