SUNSHINE ORDINANCE TASK FORCE

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ORDER OF DETERMINATION
December 27, 2017

DATE ISSUED
November 1, 2017

CASE TITLE – Patrick Monette-Shaw v. Jay Huish, Norm Nickens and the Board of Trustees, San Francisco Employee's Retirement System (SFPERS) (File No. 17078)

FACTS OF THE CASE

On July 7, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

> File No. 17078: Complaint filed by Patrick Monette-Shaw against Jay Huish, Norm Nickens and the Board of Trustees, San Francisco Employees' Retirement System, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(a), 67.14(b), 67.15 and 67.34, by willfully failing to post an agenda listing proposed actions or a statement that the item is for discussion only, failing to provide complete audio recording of the meeting and failing to provide an opportunity for public comment (May 22, 2017, SFPER Board of Trustee's Special Meeting).

HEARING ON THE COMPLAINT

On October 17, 2017, The Education, Outreach and Training Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

> Patrick Monette-Shaw (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Monette-Shaw summarized the missing section of the audio recording in question. Mr. Monette-Shaw stated that there were multiple agenda issues, which caused confusion, and stated that the printed agenda did not provide for an opportunity for public comment. Mr. Monette-Shaw stated that a willful violation of the Sunshine Ordinance occurred as the department did not discharge their duties pursuant to the Sunshine Ordinance. Norm Nickens, San Francisco Employee Retirement System (SFPERS) (Respondent), provided a summary of the department's position and stated that the meeting in question was an all-day retreat. Mr. Nickens stated that the new audio equipment used to record the meeting was untested and that it is his belief that somebody may have accidently paused the audio recording, which was not noticed until after the lunch break. Mr. Nickens states that the

entire afternoon session was recorded (*Mr. Monette-Shaw stated that the recording for the afternoon was not long enough and must therefore be incomplete*.) Mr. Nickens stated that an initial agenda was distributed to the SFPERS members. Mr. Nickens stated that it was his belief that since the initial agenda was not yet distributed to members of the public it was only a draft agenda and subsequently issue a new agenda without indications of corrections. Mr. Nickens stated if he knew there would be confusion he would have issued the agenda as a revised or corrected version. Mr. Nickens stated that general public comment was accepted at the beginning of the meeting even though general public comment was not listed on the agenda. Mr. Nickens stated that the error made by the SFPER was not intentional or willful. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee opined that there appears to be a violation of the following:

- Sunshine Ordinance, Section 67.14(b), for failing to audio record the entire meeting
- Sunshine Ordinance, Section 67.15 for failing to list an opportunity for public comment in the agenda

The Committee could not reach consensus regarding the following issues and requests that the full Task Force conduct additional review of the following:

- Sunshine Ordinance, Section 67.7(a), agenda posting requirements
    - If an agenda was only provided to members is it considered publish agenda? Was a documented "revised" agenda required?

On November 1, 2017, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Patrick Monette-Shaw (Petitioner), provided a summary of the complaint and requested the SOTF to find violations. Mr. Monette-Shaw provided a description of the missing portion of the audio recording and an explanation as to why the violations were willful. There were no speakers in support of the Petitioner. Norm Nickens, Commission Secretary (SF Employees' Retirement System (SFPERS)) (Respondent), provided a summary of the department's position. Mr. Nickens provided a description of the audio equipment and acknowledged that the entire meeting was not recorded. Mr. Nickens provided an overview of the agenda posting procedures for the meeting in question. Mr. Nickens stated that the initial agenda was not distributed to members of the public and did not need to be revised as it was not yet published. 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.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found violations of Administrative Code (Sunshine Ordinance), Sections 67.14(b) and 67.15.

ORDER OF DETERMINATION

Member Maass, seconded by Member Fischer, moved to find that Jay Huish, Norm Nickens and the Board of Trustees, San Francisco Employees' Retirement System, violated Administrative Code (Sunshine Ordinance), Sections 67.14(b) and 67.15, by failing to audio record the entire meeting and failing to list an opportunity for public comment on the agenda.

The motion PASSED by the following vote:

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

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

c. Patrick Monette-Shaw (Petitioner/Complainant)
Norm Nickens (SFPERS) (Respondent)