

Date February 28, 2012

Item No. 2

File No. \_\_\_\_\_

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

**ITEMS**

Minutes - October 25, 2011

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Completed by: Andrea Ausberry Date February 22, 2012

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The complete document is in the file.



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO Draft MINUTES

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

October 25, 2011 – 4:00 PM

## Regular Meeting

**Members:** Hope Johnson (Chair), Bruce Wolfe (Vice-Chair)  
David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh  
Allyson Washburn, James Knoebber, Jay Costa, Hanley Chan, Jackson West

### Call to Order, Roll Call and Agenda Changes (4:00 p.m. - 4:36 p.m.)

The meeting was called to order at 4:00 p.m. On the call of the roll, Member Cauthen, Member Knoebber, Member Wolfe, Member Chan, and Member West were noted absent. Member Wolfe was noted present at 4:17 p.m. Member Chan was noted present at 4:53 p.m. Member Manneh was noted absent at 6:58 p.m. Member Chan was noted absent at 9:00 p.m.

Member Knee, seconded by Member Washburn, motioned to excuse Member Cauthen.

The motion was approved without objection.

Chair Johnson said the respondent for Items 8 and 9 was present and the case would be heard as soon as the complainant arrived.

Member Washburn, seconded by Member Costa, motioned to hear the item when the complainant arrives.

The motion was approved without objection.

Chair Johnson moved the annual report to after Item 21.

Member Washburn, seconded by Member Costa, motioned to hear the annual report after Item 21.

The motion was approved without objection.

- 1. Possible adjustment of Sunshine Ordinance Task Force meeting schedule for the 2011 winter holidays (4:03 p.m. - 4:11 a.m.)**

Member Knee, seconded by Member Washburn, moved to cancel the November 22, 2011, meeting and call for a special meeting on November 29, 2011.

The motion was approved without objection.

Member Knee, seconded by Member Costa, moved to cancel the December 27, 2011, meeting and call for a special meeting on January 3, 2012.

The motion was approved without objection.

Public Comment: Peter Warfield, Executive Director of the Library Users Association, said the Task Force and the Board of Supervisors meet on the same day and it poses a conflict for those who would like to participate in both meetings. He urged the Task Force to move its meeting to another day.

## 2. Approval of the Annual Report

Chair Johnson moved the item to be heard after Item 21. The item was not heard because quorum was lost at 9:42 p.m.

## 3. Approval of Minutes from the August 23, 2011 SOTF Regular Meeting (4:11 p.m. - 4:32 p.m.)

Member Costa, seconded by Member Washburn, moved to amend and approve the Minutes from the August 23, 2011 SOTF Regular Meeting:

Public Comment: Peter Warfield, , Executive Director of the Library Users Association, said the Task Force's decision to inform the City Attorney that the 150-word statement had to be in the body of the minutes and should be memorialized somewhere. Ray Hartz, Director of San Francisco Open Government, said detailed record-keeping is important because future Task Force members can look at the record to see how the Task Force reached a decision instead of having the topic revisited. Allen Grossman said members need to do more to clear the backlog of meeting minutes.

The motion carried by the following vote:

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, Wolfe, Johnson

Excused: 1 – Cauthen

Absent: 3 – Knoebber, Chan, West

## 4. File No. 11021: Hearing on the status of the May 24, 2011, Order of Determination regarding Debra Benedict against the Tides Center (4:32 p.m. - 4:37 p.m.)

The Complainant was not present. No one presented facts and evidence on behalf of the Complainant. Respondent Olaitan Callender-Scott had earlier informed the Task Force that she could not attend because she was out of state.

The Task Force discussed following up with respondent to confirm residents of San Francisco will be able to remotely attend public Board meetings of the Tide Center held out of state.

Chair Johnson moved the item to the December 13, 2011, Compliance and Amendments Committee meeting for follow up.

Public Comment: None.

5. **File No. 11034:** Reconsideration of a complaint filed by Frank McDowell against the San Francisco Municipal Transportation Agency for allegedly not providing documents associated with a drive cam. (5:51 p.m. - 6:37 p.m.)

Complainant presented a graph produced by respondent in a separate matter.

Member Wolfe, seconded by Member Washburn, moved to reconsider the complaint.

Public Comment: Ray Hartz, Director San Francisco Open Government, said the MTA should have helped Mr. McDowell identify the documents he needed. Jason Grant Garza said the Task Force needs to help the complainant and reopen the matter.

The motion carried by the following vote:

Ayes: 5 – Washburn, Costa, Wolfe, Chan, Manneh

Noes: 3 – Snyder, Knee, Johnson

Excused: 1 – Cauthen

Absent: 2 – Knoebber, West

Chair Johnson said the item will be placed on the November 8, 2011, agenda.

6. **File No. 11042:** The Compliance and Amendments Committee has referred Cynthia Carter v the San Francisco Municipal Transportation Agency back to the Task Force with a recommendation that the matter be forwarded to the Ethics Commission for failure to comply with the Order of Determination. (6:50 p.m. - 7:28 p.m.)

Complainant was not present. Respondent stated some document had been provided following the Compliance and Amendment Committee hearing.

Member Knee, seconded by Member Washburn, motioned to continue the matter to the November 29, 2011 full Task Force meeting.

Public Comment: Ray Hartz, Director San Francisco Open Government, said City officials should know and understand the implications of the Order of Determination. Patrick Monette-Shaw said several departments have not made good-faith efforts to comply with an Order of Determination., Jason Grant Garza said if the issue is referred to the Ethics Commission it will respond by saying that the Task Force was wrong in its determination.. Peter Warfield, Executive Director Library Users Association, said promptness is important and it is specified in the Ordinance. David Hill of the MTA said the role a department plays in responding to a request has to be considered because a request for a document involves the

work of several employees. Allen Grossman said a public request should be handled at the same level an employee would to his or her daily duties, and Ethics play an important roll in enforcement of the that duty.

The Task Force discussed the need for timely compliance with Orders of Determination.

Vice Chair Wolfe, seconded by Member Washburn, made a substitute motion to refer Caroline Celaya of the SFMTA to the Ethics Commission for failure to comply with the Order of Determination and for violating Sections 67.21(b) by not providing the documents in a timely manner, 67.21(c) for failure to direct the requestor to the appropriate person, and 67.21(e) for failure to send a knowledgeable representative.

Public Comment: Patrick Monette-Shaw said the Task Force has every reason to support Member Wolfe's motion. Jason Grant Garza wanted to know what would happen after it is referred to the Ethics Commission. Ray Hartz said a referral to the Ethics Commission is a must if respondents do not abide by the dates the Task Force has stipulated in its Order of Determinations. Peter Warfield said he supported the motion.

The motion carried by the following vote:

Ayes: 6 – Knee, Washburn, Costa, Wolfe, Chan, Johnson

Noes: 1 – Snyder

Excused: 1 – Cauthen

Absent: 3 – Knoebber, West, Manneh

- 7. File No. 11049:** The Compliance and Amendments Committee has referred George Wooding v Recreation and Parks Department back to the Task Force with a recommendation that the matter be forwarded to the Ethics Commission for official misconduct by reason of willful failure to comply with the Order of Determination. (7:28 p.m. - 8:24 p.m.)

Several days before the hearing, respondent Olive Gong produced responsive emails recovered from backup tapes as requested by the Compliance and Amendments Committee.

Member Washburn, seconded by Vice-Chair Wolfe, moved to accept the recommendation of the Compliance and Amendments Committee.

Public Comment: Ray Hartz, Director San Francisco Open Government, said Olive Gong, the Custodian of Records for the Recreation and Parks Department, should have told her staff that there was a deadline that she needs to meet in producing the documents. Jason Grant Garza said the Task Force should tell Mr. Wooding that the referral to the Ethics Commission would not get him anywhere. Greg Miller said the matter should be forwarded to the Ethics Commission even if no action is anticipated. Peter Warfield said the Recreation and Parks Department has been given ample time to respond and because they have not the referral to the Ethics Commission is automatic. Allen Grossman said official misconduct only applies to elected official and department heads.

Member Washburn, seconded by Vice-Chair Wolfe, amended the motion to refer Recreation and Parks Department General Manager Phil Ginsburg and Director of Policy and Public Affairs Sarah Ballard to the Ethics Commission for official misconduct by reason of willful

failure, and Recreation and Parks Commission President Mark Buell and Olive Gong for not complying with the Order of Determination.

The motion carried by the following vote:

Ayes: 7 – Snyder, Knee, Washburn, Costa, Wolfe, Chan, Johnson

Excused: 1 – Cauthen

Absent: 3 – Knoebber, West, Manneh

8. **File No. 11046:** Determination of jurisdiction on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress. (4:38 p.m. - 5:31 p.m.)

Vice Chair Wolfe, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

9. **File No. 11046:** Hearing on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress.

Compliant presented a video of the recess. Respondent stated microphones were on during the recess, but meetings are not recorded. The City's technology department is working with the committee to record meetings.

Member Knee, seconded by Member Chan, moved to find the Shelter Monitoring Committee in violation of Section 67.14(c) for not audio recording its meetings.

Public Comment: Ray Hartz, Director San Francisco Open Government, said the public should have been given a chance to participate in the discussion Shelter Monitoring Committee analyst Bernice Casey had with a committee member. Peter Warfield, Executive Director of Library Users Association, cited the Brown Act and said the edits done to the document should have been done in front of the public. Jason Grant Garza said the Task Force needs to monitor the situation and not forward it to the Ethics Commission.

The motion carried by the following vote:

Ayes: 8 – Snyder, Knee, Manneh, Washburn, Costa, Wolfe, Chan, Johnson

Excused: 1 – Cauthen

Absent: 2 – Knoebber, West

The matter is forwarded to the Education, Outreach and Training Committee.

10. **File No. 11056:** Determination of jurisdiction on complaint filed by Allen Grossman against City Attorney Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information. (8:24 p.m. - 9:41 p.m.)

Member Knee, seconded by Member Washburn, motioned to find jurisdiction.

Public Comment: None.

The motion passed without objection.

- 11. File No. 11056:** Hearing on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Mr. Song stated the City Attorney's Office retains records for two years. He did not know if records are available for the past two years or if they might be attorney privileged.

Chair Johnson, seconded by Member Costa, moved to find Jack Song in violation of Sections 67.25(a) for failure to respond to the two IDR requests in a timely manner and 67.21 (c) for not directing the requester to the appropriate office; and to find City Attorney Dennis Herrera in violation of Section 67.26 for not keeping withholding to a minimum and ordered him to produce the documents that explain how the budget is calculated, explain how a baseline is set and used, and how it relates to the Task Force for the last two years.

Public Comment: Ray Hartz, Director San Francisco Open Government, said if any calculation is based on the prior year the previous year's numbers should be available. Peter Warfield, Executive Director Library Users Association, said the person appearing before the Task Force is not knowledgeable on the issue and the City Attorney's Office is not maintaining its records as the Ordinance states. Jason Grant Garza said baselines for financial situations are the same as baselines for medical purposes. Nick Pasquariello wanted to know how Mr. Song knew that the budget is based on an eight-year baseline.

The motion carried by the following vote:

Ayes: 6 – Snyder, Knee, Washburn, Costa, Wolfe, Johnson

Excused: 1 – Cauthen

Absent: 4 – Knoebber, West, Manneh, Chan

The matter is referred to the Compliance and Amendments Committee.

- 12. File No. 11058:** Determination of jurisdiction on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records.

The item was not heard because quorum was lost at 9:42 p.m.

- 13. File No. 11058:** Hearing on complaint filed by Nick Pasquariello against the Film Commission for allegedly failing to release public records.

The item was not heard because quorum was lost at 9:42 p.m.

- 14. File No. 11060:** Determination of jurisdiction on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents.

The item was not heard because quorum was lost at 9:42 p.m.

- 15. File No. 11060:** Hearing on complaint filed by Lars Nyman against the Department of Public Works for allegedly failing to produce requested documents.

The item was not heard because quorum was lost at 9:42 p.m.

- 16. File No. 11061:** Determination of jurisdiction on complaint filed by Micki Jones against the Fire Department for allegedly failing to give her a copy of a complaint letter that was placed in her personnel records.

Withdrawn.

- 17. File No. 11061:** Hearing on complaint filed by Micki Jones against the Fire Department for allegedly failing to give her a copy of a complaint letter that was placed in her personnel records.

Withdrawn.

- 18. File No. 11070:** Determination of jurisdiction on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request.

The item was not heard because quorum was lost at 9:42 p.m.

- 19. File No. 11070:** Hearing on complaint filed by Jason Grant Garza against the Department of Public Health for allegedly failing to respond to an Immediate Disclosure Request.

The item was not heard because quorum was lost at 9:42 p.m.

- 20. File No. 11071:** Determination of jurisdiction on complaint filed by Ray Hartz against Dennis Herrera of the City Attorney's Office for allegedly advising City Departments to violate the Sunshine Ordinance.

The item was not heard because quorum was lost at 9:42 p.m.

- 21. File No. 11071:** Hearing on complaint filed by Ray Hartz against Dennis Herrera of the City Attorney's Office for allegedly advising City Departments to violate the Sunshine Ordinance.

The item was not heard because quorum was lost at 9:42 p.m.

**22. Supervisor of Records Report**

The item was not heard because quorum was lost at 9:42 p.m.

**23. Approval of Minutes from the January 4, 2011, special meeting.**

The item was not heard because quorum was lost at 9:42 p.m.



**24. Approval of Minutes from the January 20, 2011, special meeting.**

The item was not heard because quorum was lost at 9:42 p.m.

**25. Approval of Minutes from the January 25, 2011, regular meeting.**

The item was not heard because quorum was lost at 9:42 p.m.

**26. Report: Education, Outreach and Training Committee meeting of October 13, 2011.**

The item was not heard because quorum was lost at 9:42 p.m.

**27. Report: Compliance and Amendments Committee meeting of October 11, 2011.**

The item was not heard because quorum was lost at 9:42 p.m.

**28. Administrator's Report.**

The item was not heard because quorum was lost at 9:42 p.m.

**29. Public Comment (5:31 p.m. - 5:50 p.m.)**

Jason Grant Garza inquired about the process in filing an Immediate Disclosure Request and several other Sunshine Ordinance Task Force procedures. Patrick Monette-Shaw wanted to know if the Task Force would contact the Mayor's Office and inquire what the outcome of the Ethics Commission's referral of Jewelle Gomez would be. Ray Hartz, Director San Francisco Open Government, said he has warned the Ethics Commission not to dismiss Sunshine referrals but to enforce the law and if they did not he would keep reminding them of their duties whenever he gets a chance at its meetings. Peter Warfield, Executive Director Library Users Association, said if members wanted to have their meeting date changed it could be planned well ahead of schedule to give members a chance to adjust. Allen Grossman said the Task Force needs to review the material that is in the Ethics Commissioners agenda packet for Nov. 14 and be prepared to discuss it extensively. Charles Pitts said the Task Force needs to make sure that all libraries and law offices have the latest edition of the Sunshine Ordinance.

**30. Administrator's Report**

The item was not heard because quorum was lost at 9:42 p.m.

**31. Future Agenda Items**

The item was not heard because quorum was lost at 9:42 p.m.

**32. Adjournment**

Having lost quorum at 9:42 p.m. the Task Force did not discuss the remaining agenda items.

