

Date: Feb. 8, 2011

Item No. 3

File No. 10052

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Kai Wilson v North of Market/Tenderloin CBD
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-
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-
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-
-
-
-
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Completed by: Chris Rustom

Date: Feb 1, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
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San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
January 11, 2011

DATE THE DECISION ISSUED
November 30, 2010

*KAI WILSON V NORTH OF MARKET/TENDERLOIN COMMUNITY BENEFIT DISTRICT
(CASE NO. 10052)*

FACTS OF THE CASE

Complainant Kai Wilson ("Complainant") alleges that on August 4, 2010, she made an Immediate Disclosure Request ("IDR") to board members and staff of the North of Market/Tenderloin Community Benefit District ("Respondent" or "NMT-CBD") requesting "all correspondences between staff and current as well as immediate-past board members regarding [her] removal from the CBD Board of Directors ("Board") and any conversations regarding [her] term of service with the [NMT-CBD]." Ms. Wilson further alleges that she has not been provided with the records requested.

Complainant also appears to allege that the NMT-CBD held a closed session during one or more of its meetings, in violation of the Brown Act.

COMPLAINT FILED

On October 5, 2010, Complainant filed a Sunshine Complaint against NMT-CBD, its staff and its board of directors, alleging violations of public meeting and public records laws.

HEARING ON THE COMPLAINT

On November 30, Ms. Wilson presented her claim to the Sunshine Ordinance Task Force. The Respondent agency was represented by District Manager Elaine Zamora and Assistant District Manager Dina Hilliard.

Ms. Wilson said she made the IDR after she resigned from the Board. She said nobody responded or acknowledged receipt of her request and that she still had not received the documents she requested. Ms. Wilson said her performance was discussed at two closed sessions, including one with the Board's Executive Committee, and that she was asked to resign during closed session. She also said the Brown Act forbids a policy body from meeting in closed session to discuss a member's performance or to dismiss a member from that body.

Ms. Zamora said she brought Ms. Wilson onto the Board but the working relationship did not work out and the fallout was starting to hurt the Board. She said the reason for the closed

ORDER OF DETERMINATION

session was to discuss her work performance as well as Ms Hilliard's. She said the Board did not willfully or with malice fail to respond to Ms. Wilson. She said the Board was trying to defuse a volatile situation. She also said Ms. Wilson made the IDR under the California Public Records Act ("CPRA") and that the Sunshine Ordinance was not mentioned. She also said that the State Streets and Highway Code, under which the CBD was formed, makes the CBD subject to the CPRA but forbids application of the Sunshine Ordinance to it. She said the CBD had also been informed by the City Attorney's Office in a training that the Sunshine Ordinance did not apply to CBDs.

Ms. Hilliard said she did not respond to Ms. Wilson's request because the Board was told by the City Attorney's Office that as a private-sector entity, the NMT-CBD was not under Sunshine Ordinance jurisdiction. Since the SOTF Complaint Committee found jurisdiction, the Board had collected relevant documents and offered them to Ms. Wilson if she would indicate how she wanted to receive them, Ms. Hilliard said. She said the closed session was held because Ms. Wilson had indicated that she would take the issue into litigation and because Ms. Hilliard wanted her own job performance to be discussed in private. Ms. Wilson resigned after she was asked to do so, and if she had not, the Board would have had a discussion and voted on it, Ms. Hilliard said. She also said no written response to the IDR was provided to Ms. Wilson prior to the communication to her after the Complaint Committee meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that it has jurisdiction to hear the complaint under the Sunshine Ordinance, based in part on 67.30(c) of the Ordinance, which provides that the Task Force shall have authority to make referrals for a violation of the CPRA.

Further, the Task Force finds that the NMT-CBD violated Sunshine Ordinance Sections 67.21 for denying access to public records, 67.21(k) for failure to release public records in compliance with the California Public Records Act, 67.25 for not responding to an Immediate Disclosure Request, 67.26 for not keeping withholding to a minimum, and 67.27 for not providing a justification for withholding.

The Task Force further finds that respondent violated CPRA Sections 6253(a) for denying access to a public record, Section 6253(b) for not making the records available promptly, Section 6253(c) for not responding within the 10-day allowable time limit, and Section 6253(d) for not justifying the withholding of the records.

DECISION AND ORDER OF DETERMINATION

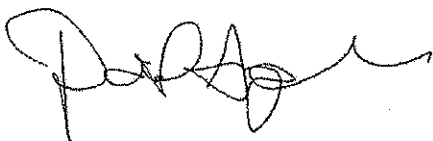
The NMT-CBD is instructed to release the requested records within 5 business days of the issuance of this Order and to appear at a Compliance and Amendments Committee hearing on February 8, 2011.

ORDER OF DETERMINATION

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 30, 2010, by the following vote: (Washburn / Manneh)
Ayes: Snyder, Manneh, Washburn, Wolfe, Johnson, Knee
Excused: Cauthen, Knoebber, Chan, Williams



Richard A. Knee, Chair
Sunshine Ordinance Task Force



David Snyder, Member, Seat #1*
Sunshine Ordinance Task Force

- c: Kai Wilson, Complainant
- Elaine Zamora, Respondent
- Dina Hilliard, Respondent
- Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



"Dina"
<dinanomtlcbd@att.net>

01/26/2011 03:44 PM

Please respond to
<dinanomtlcbd@att.net>

To <sotf@sfgov.org>

cc ""Kai Wilson"" <wilson.kai@hotmail.com>,
<Lisa.Pagan@sfgov.org>,
<Katerina.Villanueva@sfgov.org>, "Clint Ladine"

bcc

Subject NOM/TL CBC Compliance with Order of Determination for
Case No. 10052

To Whom It May Concern:

Although the North of Market/Tenderloin Community Benefit Corporation continues to contest the jurisdiction of the Sunshine Ordinance Task Force in the matter of complaint #10052; we would like to notify the Task Force that we have received, and have made numerous good faith attempts to comply with the Order of Determination issued on January 12, 2011.

The North of Market/ Tenderloin Community Benefit Corporation made the following attempts for delivery of requested documents, as noted in the following and attached communications, to Kai Wilson:

November 17, 2010

November 30, 2010 (in person at SOTF Hearing)

December 01, 2010

December 14, 2010

January 12, 2011

The North of Market/Tenderloin Community Benefit Corporation feels confident that we have exhausted all options and attempts for delivery, and therefore have satisfied our responsibility to deliver Ms. Wilson's requested documents.

Thank You,
Dina Hilliard

Dina Hilliard
Associate District Manager
North of Market/Tenderloin Community Benefit District
134 Golden Gate Ave Suite A SF, CA 94102
P. 415.292.4812 | F.415.292.7520
www.nom-tlcbd.org

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delivery attempts.pdf

Dina

From: Dina [dinanomtlcbd@att.net]
Sent: Wednesday, November 17, 2010 10:11 AM
To: 'Wilson.kai@hotmail.com'
Cc: Clint Ladine (clint_ladine@yahoo.com); Elaine Zamora (nomtlcbd@att.net); Kevin Montreuil ; Pamela Coates (pamcoatestl@gmail.com); Ron Hicks (rhicks@tndc.org)
Subject: information

Kai,

We are preparing a packet of the information you requested regarding your resignation from the North of Market/Tenderloin Community Benefit District Board of Directors. You have previously received this information from us by way of being included in the list of receiving individuals on the emails.

We would like to send the packet to you by way of certified mail, please provide a mailing address. If you would prefer electronic submission of this packet, we request you give notice upon receipt of the information.

Thank You,
Dina Hilliard

Dina Hilliard
Associate District Manager
North of Market/Tenderloin Community Benefit District
134 Golden Gate Ave Suite A SF, CA 94102
P. 415.292.4812 | F.415.292.7520
www.nom-tlcbd.org

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Dina

From: Dina [dinanomtcbd@att.net]
Sent: Wednesday, December 01, 2010 5:02 PM
To: 'Kai Wilson'
Cc: Lisa Pagan (Lisa.Pagan@sfgov.org); 'Katerina.Villanueva@sfgov.org'; Clint Ladine (clint_ladine@yahoo.com); Elaine Zamora (nomtcbd@att.net); Kevin Montreuil ; Pamela Coates (pamcoatestl@gmail.com); Ron Hicks (rhicks@tndc.org)
Subject: FW: information

Kai,
We did not get a response from you, to our November 17th request, regarding delivery of your requested documents. We attempted to deliver them to you in person at the November 30, 2020 Sunshine Ordinance Task Force Hearing but you refused to accept them. We left your requested documents with the clerk of the Sunshine Ordinance Task Force.

We will have the documentation on file at our office, and we welcome you to make an appointment to visit our office, and pick up your requested information and/or provide us an address to mail them to you. We regret that we are unable to email the documentation electronically as it is too large of a file to send over our email server. However, if you prefer the documentation in an electronic format, we can create a CD with the documents you requested and provide it to you.

Thank you,
Dina

From: Dina [mailto:dinanomtcbd@att.net]
Sent: Wednesday, November 17, 2010 10:11 AM
To: 'Wilson.kai@hotmail.com'
Cc: Clint Ladine (clint_ladine@yahoo.com); Elaine Zamora (nomtcbd@att.net); Kevin Montreuil ; Pamela Coates (pamcoatestl@gmail.com); Ron Hicks (rhicks@tndc.org)
Subject: information

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Thank You,
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www.nom-tlcbd.org

Dina

From: Dina [dinanomtcbd@att.net]
Sent: Tuesday, December 14, 2010 12:50 PM
To: 'Kai Wilson'; 'lisa.pagan@sfgov.org'; 'katerina.villanueva@sfgov.org'; Clint Ladine (clint_ladine@yahoo.com); Elaine Zamora (nomtcbd@att.net); Kevin Montreuil ; Pamela Coates (pamcoatestl@gmail.com); Ron Hicks (rhicks@tndc.org)
Cc: 'soft@sfgov.org'
Subject: RE: Information Still Not Received

Kai,

The information you are requesting in this and in previous Immediate Disclosure Requests is included in the packet we have attempted to deliver to you on several occasions. You did not accept the requested documents when we attempted to hand deliver them to you at the Sunshine Ordinance Task Force Hearing on November 30, 2010, therefore we left them in the possession of Mr. Chris Rustom, the administrator of the Sunshine Ordinance Task Force.

Since you will not provide us with a mailing address, and will not accept the documents from us in person, Mr. Chris Rustom will be contacting you to coordinate your preferred method for delivery of the documentation that was left with the Sunshine Ordinance Task Force.

This documentation includes information you requested on August 4, 2010 as well as the information most recently requested on December 11, 2010.

Regarding the other immediate disclosure requests:

1. **"I also I am making a IDR for a statement from the board regarding how d.hilliard received a raise when I have evidence, documents, emails, proof and other items to show she has lied repeatedly. I want to know how you can approve such a request when I have documents that show complete dishonesty."**

Under the Sunshine Ordinance, The Board is not obligated to provide you with the statement you are requesting, as it does not exist as part of our records.

2. **This idr is a request for all the grants the CBD has funded since July 2009. I want to see how many community grants you have funded that do not have CBD strings attached, lol.**

The requested information requires additional time to compile and therefore we request a 10 business day extension to provide you the information.

Thank You,
Dina

From: Kai Wilson [mailto:wilson.kai@hotmail.com]
Sent: Saturday, December 11, 2010 12:05 PM
To: dinanomtcbd@att.net; soft@sfgov.org; lisa.pagan@sfgov.org; katerina.villanueva@sfgov.org; clint_ladine@yahoo.com; nomtcbd@att.net; kmontreuil@gmail.com; pamcoatestl@gmail.com; rhicks@tndc.org; shansked@uchastings.edu; emilio.giraudbit@gmail.com; ebyrd@hospitalityhouse.org; paul@thclinic.org; phogarth@mac.com
Subject: Information Still Not Received

Greetings-

I have still not received the requested information.

Dina

From: Dina [dinanomtlcbd@att.net]
Sent: Wednesday, January 12, 2011 4:22 PM
To: 'Lisa.Pagan@sfgov.org'; 'Katerina.Villanueva@sfgov.org'; 'soft@sfgov.org'; Clint Ladine (clint_ladine@yahoo.com); Elaine Zamora (nomtlcbd@att.net); Pamela Coates (pamcoatestf@gmail.com); Ron Hicks (rhicks@tndc.org)
Subject: delivery of documents

Dear Ms. Wilson,

We have made many attempts to deliver the documents you requested, and thus far you have refused to accept them. On December 1, 2010 we advised you the documents were left with the administrator of the Sunshine Ordinance Task Force, Chris Rustom, and you could make arrangements regarding their pickup directly with Chris Rustom.

Mr. Rustom notified me today that you have not made arrangements to view or pick up your documents yet.

Although we continue to contest the jurisdiction of the Sunshine Ordinance Task Force in this matter, in light of the Order of Determination issued today, we are again attempting to deliver the requested documents to you.

Please let us know where we can mail you the requested documents in hard copy or on a CD. You can also make an appointment to pick up the documents from us, or from the Sunshine Ordinance Task Force administrator, in person.

With this attempt, we feel confident that we have exhausted all options for delivery, and therefore have satisfied our responsibility to make your requested documents available to you.

Thanks,
Dina

Dina Hilliard
Associate District Manager
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