Date: July, 14, 2011

Item No. 2
File No. 11017

SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee

AGENDA PACKET CONTENTS LIST*

- ☒ **Tomas Picarello v Supervisor Carmen Chu**
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐

Completed by: Chris Rustom **Date:** July 11, 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
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

June 14, 2011

DATE THE DECISION ISSUED
May 18, 2011

TOMAS PICARELLO V SUPERVISOR CARMEN CHU (CASE NO. 11017)

FACTS OF THE CASE

Complainant Tomas Picarello alleges that Supervisor Carmen Chu ("the Supervisor" or "Supervisor Chu") failed to provide a legally adequate description of item 7 on the March 9, 2011, agenda of the Budget and Finance Subcommittee of the Board of Supervisors. He further alleges that she heard the item in closed session despite his complaint, and that a closed session was improper for hearing this item, which was a hearing on funding of two City departments.

COMPLAINT FILED

On March 9, 2011, Mr. Picarello filed a Complaint against the Supervisor for her alleged violations of Sections 67.7, 67.8 and 67.10 of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On May 18, 2011, Mr. Picarello presented his case to the Task Force. The Supervisor was represented by her legislative aide Katy Tang.

Mr. Picarello told the Task Force that the issue was whether the Fourth Street Bridge Project litigation expenses heard at the subcommittee and chaired by Supervisor Chu should have been held in closed session, and whether committee members complied with the agenda requirements mandated by the Sunshine Ordinance on closed or open sessions. He said the item was held in closed session and there wasn't any public discussion on the matter. The City, he said, is suing and being sued in this case. Mr. Picarello said arbitration talks failed recently and the venue was being moved to Santa Clara County. He said the matter to be discussed was whether the City Attorney's Office should be funded $3 million for litigation expenses out of the General Fund or from the $10 million litigation reserve fund. In addition to the alleged violations, Mr. Picarello said Supervisor Chu violated Sunshine Ordinance Sections 67.12(b) and 67.12(d), which mandate disclosures of what was discussed in closed session, and 67.11 by holding the closed session. He said the agenda initially said it was about proposed settlements but was actually about how the continued litigation costs were going to be met.

Ms. Tang told the Task Force that the City Attorney's Office and the Clerk of the Board Office draft the language that appeared on the agenda. She said that although Supervisor Chu's office did not come up with the language, it was important to note that the agenda did indicate that a motion would be taken to convene in closed session and the item being considered was connected to litigation. She said public comment was allowed on the motion to enter closed session and Mr. Picarello spoke about his objection to the motion. However, on the advice of the City Attorney, she said, the members voted unanimously to convene in closed session on the item. Ms. Tang also said the funding proposed was tied directly to pending litigation and on the advice of the City Attorney, members considered the appropriateness of it and voted to enter closed session.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the evidence presented, the Task Force finds find the office of Supervisor Carmen Chu violated public notice requirements, failed to provide accurate agenda information for closed sessions, and misstated the budget issue as a pending legislation issue.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Chu violated Sunshine Ordinance Sections 67.7, 67.8 and 67.10(d). The Supervisor's office is ordered to appear before the Education, Outreach and Training Committee on July 14, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 18, 2011, by the following vote: (Johnson/Washburn)
Ayes: Snyder, Manneh, Washburn, Costa, Wolfe, Johnson, Knee
Absent: Cauthen
Excused: Knoebber, Chan, West.

Richard A. Knee, Chair
Sunshine Ordinance Task Force

c:

Tomas Picarello, Complainant
Supervisor Carmen Chu, Respondent
Katy Tang, Respondent
Jerry Threet, Deputy City Attorney