

Date: January 8, 2008

Item No. 10

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Complaint Committee for December 11, 2007**
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Completed by: Frank Darby

Date: January 2, 2008

***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



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**SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
DRAFT MINUTES
Tuesday, December 11, 2007
3:00 p.m., City Hall, Room 406**

Committee Members: Sue Cauthen, Chair; Kristin Chu, Nicholas Goldman

Call to Order: 4:00 p.m.
Roll Call: **Present:** Cauthen, Chu
Excused: Goldman

Agenda Changes: None

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby

1. Approval of minutes of November 13, 2007. (action item) (attachment)

Speakers: None

Motion approving minutes of November 13, 2007. (Chu / Cauthen)
Ayes: Cauthen, Chu,
Excused: Goldman

2. 07082 Determination of jurisdiction of complaint filed by Wayne Lanier against the Department of Telecommunications and Information Services (DTIS) for violation of Sections 67.21 (b), (c), 67.25 (b), and 67.29-7 (a) of the Sunshine Ordinance for alleged failure to provide records, failure to justify withholding, untimely response, and failure to maintain and preserve records.

Speakers: Wayne Lanier, Complainant, said that there is no objection to jurisdiction. Barry Fraser, DTIS representative, said that he does not object to jurisdiction.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu
Excused: Goldman

Mr. Lanier waived the 45-day requirement.

3. 07085 Determination of jurisdiction of complaint filed by Mr. Alvin against the Grants for

the Arts for alleged failure to provided requested records and information.

Speakers: Khan Wong, GA representative, said that he does not contest jurisdiction. He said that he did not receive a request for records indicated by Mr. Alvin.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

4. 07087 Determination of jurisdiction of complaint filed by Allen Grossman against the Mayor's Office for alleged failure to respond to a Immediate Disclosure Request submitted on October 2, 2007, and repeated on October 19, 2007.

Speakers: Allen Grossman, Complainant, said that he had nothing to add on jurisdiction, and that he received no response from the Mayor's Office. Kimo Crossman, in support, suggested that a letter be sent to the Mayor's Office regarding attending the meeting.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Grossman waived the 45-day requirement.

5. 07088 Determination of jurisdiction of complaint filed by Kimo Crossman against the Assessor's Office for alleged violation of Sections 67.1, 67.4 (a), 67.21 (a) and (b), 67.25 (a) and (d), 67.26, 67.27, and 67.34 of the Sunshine Ordinance, Government Code Sections 6253 (a) and (c), 6255 (a), and Constitution Article I, Section 3, for failure to provide requested records, untimely response, failure to provide passive meeting notice, invalid invocation of voluminous documents extension, failure to incrementally deliver records, willful failure and official misconduct.

Speakers: Kimo Crossman, Complainant, said that he did not receive passive meeting notices or emails and that the calendar was late.

Zoon Nguyen, Assessor's Ofc. Representative, said that she agrees to jurisdiction. She asked for clarification of the complaint so that the department can properly respond.

Kimo Crossman, in rebuttal, said that he did not receive a passive meeting notice of the November 1, 2007, WiFi meeting; that the calendars received were not submitted timely.

Motion recommending jurisdiction. (Chu / Cauthen)

Ayes: Cauthen, Chu

Excused: Goldman

Mr. Crossman waived the 45-day requirement.

6. 07089 Determination of jurisdiction of complaint filed by Kimo Crossman against the District Attorney's Office for alleged violation of Sections 67.1, 67.4 (a), 67.21

(a), (b), (i), (k) and (l), 67.21-1, 67.25 (d), 67.26, 67.27, 67.29-7 (a) and 67.34 of the Sunshine Ordinance, Government Code Sections 6253 (a) and (c), 6255 (a), and Constitution Article I, Section 3, for failure to provide requested records, untimely response, invalid redactions, and invalid exemption for Attorney Client communications.

Speakers: Kimo Crossman, said that he did not receive all email, and that some email provided was heavy redacted. He urged the committee to accept jurisdiction.

Public comment: Allen Grossman said that it is fair that complainants are showing up for meetings but not departmental representatives.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu
Excused: Goldman

Mr. Crossman waived the 45-day requirement.

Note: Sandip Patel, DA representative, arrived at approximately 4:00 PM and was informed that the Committee had moved to accept jurisdiction; that the merits will be heard at the January 8, 2008 special Task Force meeting.

7. 07090 Determination of jurisdiction of complaint filed by Kimo Crossman against the Municipal Transportation Agency and Commission for alleged violation of Sections 67.1, 67.24 (a)(2) and (e)(3)(iii), and 67.21 (b) of the Sunshine Ordinance for failure to provide records for review in a timely manner, invalid invocation of an extension for records access, and failure to provide a summary of verbal positions.

Speakers: Kimo Crossman, Complainant, said that the public was not allowed to see the final contract before adoption.

Chair Cauthen asked the Administrator to cite Section 67.21 (e) of the Ordinance when notifying the departments of the meeting.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu
Excused: Goldman

Mr. Crossman waived the 45-day requirement.

Note: Murray Bond, MTA representative, arrived at approximately 4:29 PM and was informed that the Committee moved to accept jurisdiction; that the merits will be heard at the January 8, 2008 special Task Force meeting.

8. 07091 Determination of jurisdiction of complaint filed by Dr. Ahimsa Porter Sumchai against Supervisor Sophie Maxwell for allegedly delaying public comment on an item at the October 29, 2007, Land Use and Economic Development Committee.

Speakers: Patrick Monk, in support of the Complainant, said that Supervisor Maxwell changed the order of the meeting without making an announcement, and that he has filed an identical complaint. He asked if it could be combined with Dr. Sumchai's.

DCA Llorente, in response to Chair Cauthen, said that generally speaking a body can change the order of the agenda, as is done by the Board of Supervisors, the Task Force, etc.; that there is some discretion. He said that Mr. Monk can ask to have his complaint combined at the January 8, special meeting.

Public Comment: Kimo Crossman asked if the complaints will be resolved in 45 days pursuant to Section 67.21 (e) of the Ordinance.

Allen Grossman, asked if complainants were notified of the January 8, 2007, meeting.

Chair Cauthen informed all parties present that the merits of the complaints will be heard at the January 8, 2007, special Task Force meeting. In response to Chair Cauthen's question, all parties present agreed to waive the 45-day requirement.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu
Excused: Goldman

Note: Dr. Ahimsa Sumchai, Complainant, arrived at approximately 4:10 PM and was informed that the Committee had moved to accept jurisdiction. She agreed to waive the 45-day requirement.

9. 07092 Determination of jurisdiction of complaint filed by Patrick Monette-Shaw against the Board of Supervisors (BOS) and Human Resources Department (DHR) for alleged violation of Sections 67.10, 67.8 (a)(5) of the Sunshine Ordinance and Government Code Section 54957.6 (a) for improperly holding a closed session.

Speakers: Patrick Monette-Shaw, Complainant, said that the Board should not say that the complaint lacks merit. He said that DHR's response that they have no authority over the agenda of the legislative body is not valid; that they should have known that the closed session was in violation of section 67.10 of the Ordinance.

Frank Darby, BOS representative, said that the Board does not contest jurisdiction.

Jennifer Johnston, DHR representative, said that DHR does not contest jurisdiction, and that they do not have discretion over the Board Agenda.

Public Comment: Kimo Crossman, said that Mr. Shaw sent out a public notice to the parties indicating that they could not go into closed session prior to the meeting; that DHR should be held responsible since they attended after receiving the notice. He said that he is offended by the Clerk of the Board's response because merit is not a legal reason, but rather a conclusion.

Motion recommending jurisdiction. (Chu / Cauthen)
Ayes: Cauthen, Chu

Excused: Goldman

Mr. Monette-Shaw waived the 45-day requirement.

10. Administrator/s Report

The Administrator submitted his report.

Speakers: Kimo Crossman alleged that he has been unable to get a response from the Administrator regarding the complaints he filed. He said that tomorrow's CAC packet is not posted; that he received a digital recording of the November 27 Task Force meeting in a format that he could not play back.

Chair Cauthen, said a full time Administrator will start in January.

11. Public Comment for items not listed on the agenda

Speakers: Kimo Crossman alleged that he can never get a response to e-mails from the Administrator and urged the Task Force to take action.

Chair Cauthen, responded that the Administrator works for the Board of Supervisors, and that they are the appropriate body to approach.

Allen Grossman, said that the 6 vote requirement is a problem when only 6 members are present. He urged the Task Force to establish their own voting rules, since they are not a chartered body.

Chair Cauthen said that her understanding is that a quorum is required regardless of the number of members present.

DCA Llorente in response said that this matter was reviewed in the past and that the City's position is that the passage of any substantive issue or motion has to be by a majority of the total number of the body, rather than a majority of the members present. He said that a vote of 6 is needed by the Task Force to pass a matter.

Chair Cauthen said that meetings should not be allowed to drag on till late at night when some members have to leave.

DCA Llorente said that one of the reasons for the long meetings is that the Task Force does not have strict limitations on its own members' speaking time. He said that if strict speaking times among the members is equitably enforced by cutting to the chase and getting to the vote, up or down, then the Task Force could do a better service to those who appear. He said that neither complainants nor respondents like to sit for six or seven hours then lose a quorum. He said that meetings could be limited to 4 hours if members are disciplined and focused.

Member Chu asked DCA Llorente to provide a list of what the Task Force can do to change how meetings are conducted.

Chair Cauthen suggested a formal motion to urge that in the interest of efficient

meetings the Task Force strictly and equitably enforce its rule regarding members debate.

Member Chu said that there should be no member discussion on jurisdiction.

Chair Cauthen said that when a member(s) monopolizes the meeting it discourages participation by other members.

DCA Llorente said that the times specified for items are not being complied with. He said that there has to be uniformity in terms of application; that it all resides with the Chair who must control the meeting and be fair about how rules are applied so that everyone has the opportunity to be heard and the discussion is limited to relevant issues.

DCA Llorente, in response to Member Chu, said that an agenda item can be requested of the Chair that says, "We need to streamline these meetings and I am requesting an agenda item dedicated to a discussion of how the Task Force can reduce the seven-hour meetings to a three-hour meeting, and the approach to receiving evidence and deliberating.

Chair Cauthen suggested a rule that no person could speak twice until others have had an opportunity to speak once, and that speaking time be limited to ten minutes on an item. She said that the Task Force would be more productive, and fully staffed, if the rule on member comments were strictly enforced, and there was a limit on how long and how often one member can speak.

Chair Cauthen said that she will urge the Chair to agendaize a discussion on this matter for the January meeting.

12. Announcements, questions, and future agenda items from Committee members.

The Administrator, in response to Chair Cauthen, said that an agenda item to discuss whether to discontinue the Complaint Committee will be scheduled for the January 8, 2008, meeting.

DCA Llorente, said that in the short run Chair Comstock may set out a rule for the January 8, meeting to try to limit the discussion time and question time that members use, and if that doesn't work, to calendar a formal agenda item for the second meeting in January.

Member Chu asked if there is a reason why the Complaint Committee can't hear only those complaints that have an issue regarding jurisdiction.

DCA Llorente responded that the Task Force still has to accept jurisdiction on all complaints.

Chair Cauthen said that work tends to expand to fill the time available for it and she does not want to go to two long meetings per month.

The Administrator, in response to Chair Cauthen, said that he is not agreeable to having two long meetings. He said that discontinuing the Complaint Committee would require revising the Complaint Procedures, changing filing and support

document deadlines for complaints, and might pose problems for staff meeting agenda and packet deadlines.

Speakers: Murray Bond from the MTA's External Affairs division said that he was here for item #7 and apologized for arriving late. He said that he thought that the meeting started at 4 PM.

Chair Cauthen informed Mr. Bond that jurisdiction was recommended and the date of the special meeting in January.

Adjournment

The meeting was adjourned at 4:39 p.m.

This meeting has been audio recorded and is on file in the office of the Sunshine Ordinance Task Force