

Date: January 8, 2008

Item No. 20

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Compliance Amendments for December 12, 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.



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**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
DRAFT MINUTES**

Wednesday, December 12, 2007
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee, Chair; Doug Comstock, Vice-Chair; Erica Craven, David Pilpel, Bruce Wolfe, Harrison Sheppard (ex-officio, non-voting)

Call to Order 4:00 P.M.
Roll Call **Present:** Knee, Comstock, Craven, Pilpel, Wolfe (in at 4:47 out at 6:32), Sheppard

Agenda Changes: Item #7 was heard after item #3

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby

1. Approval of minutes of November 14, 2007.

Speakers: Kimo Crossman said that the meeting packet was not available until after 12 PM yesterday.

Motion to approve minutes of November 14, 2007, as amended. (Comstock / Craven)
Ayes: Knee, Comstock, Craven, Pilpel
Absent: Wolfe
2. 07057 Continued hearing on the status of the August 28, 2007, Order of Determination of Jeff Ente vs. Supervisor Aaron Peskin.

Member Comstock recused himself.

Chair Knee noted that no representative of Supervisor Peskin's Office was present.

Speakers: Jeff Ente, Complainant, said that he is concerned about the lack of progress; that the matter would be resolved if he was informed that the search had been done and no e-mails existed.

Public Comment: Kimo Crossman commended the Task Force on the Order of Determination. He said the Administrator could answer questions regarding retrieval of e-mail.

Members Sheppard and Pilpel expressed concerned about the lack of attendance by Supervisor Peskin or one of his representatives.

Member Sheppard asked if there was an informal way to obtain a response from Supervisor Peskin without a formal process. DCA Llorente, expressed concern about having ex-parté communications.

Motion to refer the item to the Task Force with a recommendation that Supervisor Peskin be found in official misconduct for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the full Task Force on August 28, 2007; that referral, based on that finding, to the Ethics Commission, District Attorney, Board of Supervisor, and/or the state Attorney General be considered. (Craven/Knee)

Ayes: Knee, Craven, Pilpel

Recused: Comstock

Absent: Wolfe

3. 07077 Hearing on the status of the November 27, 2007, Order of Determination of Allen Grossman vs. the Office of the District Attorney.

Speakers: Allen Grossman, Complainant, said he is looking for logs that show the backup of electronic data, but he did not receive anything.

Sandip Patel, DA Representative, said he has nothing to add to what was provided at the full Task Force meeting.

Mr. Grossman, in rebuttal, said the DA's office has provided no indication as to whether it has the logs.

Public Comment: Kimo Crossman said Mr. Grossman is looking for logs that show what e-records are being stored. He recommended that the DA be found in willful failure.

Member Sheppard confirmed with Mr. Patel that the DA does not have a log, but rather a database, and that providing the information requested would be a breach of security.

Member Craven confirmed with Mr. Grossman that he is seeking logs showing when e-data was shipped to storage.

Mr. Patel in response to Member Craven said the DA has no documents showing tapes that were sent to storage, because the task is routine.

Member Pilpel confirmed with Mr. Patel that no one is signing for the container.

Member Craven said Mr. Grossman is not looking for the database.

Member Sheppard said the DA has no responsive documents.

Member Wolfe confirmed with Mr. Patel that the information technology staff prepares the tapes for shipment to storage.

Member Comstock asked Mr. Grossman if he would be satisfied with a totally

redacted document. Mr. Grossman said, no.

Motion to refer the item to the Task Force with a recommendation that the Office of the District Attorney be found in official misconduct for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the full Task Force on November 27, 2007; that referral, based on that finding, to the Ethics Commission, Board of Supervisors, and/or the state Attorney General be considered. (Pilpel / Wolfe)

Ayes: Knee, Comstock, Pilpel, Wolfe

Noes: Craven

4. 07080a Hearing on the status of the November 27, 2007, Order of Determination of Dan Boreen vs. the Fire Department (SFFD).

Speakers: Dan Boreen, Complainant, said there has been no disclosure. Rhab Boughn, SFFD Representative, said there is no clear procedure used regarding redactions; that the department is seeking advice from the City Attorney (CA) before complying with the Order of Determination.

Mr. Boreen, in rebuttal, said he supports privacy rights of individuals, but this is about City-paid benefits.

Public Comment: Kimo Crossman said a balancing test has to be preformed; that a specific exemption is required, pursuant to 67.27, but was not provided.

Allen Grossman said that since the public is allowed gross-salary information then the City- paid benefits data also should be available.

Member Craven said that HIPAA, FMLA, or ADA does not apply to the SFFD in this matter. She said paid-leave information is not exempt from disclosure.

Member Sheppard said it seems valid that the SFFD is waiting for advice from the CA before disclosure.

Member Pilpel confirmed with Mr. Boreen that he is requesting a redacted time log.

Motion to continue. The Fire Department is instructed to obtain the legal advice that they are seeking and submit a written response to the CAC by Monday, December 31, 2007. (Craven / Pilpel)

Ayes: Knee, Comstock, Craven, Pilpel

Excused: Wolfe

- 07080b Speaker: Dan Boreen, Complainant, asked the Members to not be misled by the presence of the officials.

Rob Boughn, SFFD representative, said the records were provided to Mr. Boreen, and that some information was redacted as per Section 67.29-5 of the Ordinance. Fire Chief Joanne Hayes-White said she keeps a daily calendar and that she redacted non-City business from the calendar before making it available to Mr. Boreen.

Mr. Boreen, in rebuttal, said citing Section 67.29-5 of the Ordinance is a general statement.

Public Comment: Kimo Crossman said there is no expressed legal provision for

private meetings with City officials.

Member Sheppard asked Mr. Boreen to explain the basis for his statement that redactions before and after a public meeting is inappropriate. Mr. Boreen responded that the redactions are of individuals who attended the meeting. Chief Hayes-White, responded that information redacted was of a personal nature and to protect the identity of persons with whom she met to discuss their medical issues. She said she also redacted the names of persons who took vacation.

Member Craven said there must be a specific, expressed exemption to redact the calendar; that the issue is that there was no explanation of what was redacted. She said the names of staff who took vacation are not redactable. She suggested that Chief Hayes-White review the calendar for information that can be disclosed.

Chief Hayes-White, in response to Member Pilpel, explained the type of information that was redacted. In response to Member Wolfe, she said she received verbal advice from the City Attorney regarding the redactions.

Member Comstock asked Mr. Boreen if it would satisfy him if future redactions were explained. Mr. Boreen said, yes.

Motion to take no action. (Comstock)

Motion to table to allow the SFFD to finish reviewing its policies and procedures and to address concerns expressed by the Committee. When policies and procedures are committed to writing, the Department is asked to submit a copy to the Task Force for review. (Craven / Wolfe) Without objection.

Chief Hays-White said the Department is in full compliance with the Ordinance and asked the Members to convey, in writing, what their concerns are so that the department can better respond.

07080c Speaker: Dan Boreen, Complainant, said the blank calendar speaks for itself. He said the Deputy Chief is responsible for maintaining a calendar, and that the City Attorney is advising the Department not to comply. Rob Boughn, SFFD representative, said documents were provided as requested, and that the Deputy Chief is not required to maintain a calendar in the same fashion as the Department Head. Gary Massetani, Deputy Chief, apologized for the information previously provided to Mr. Boreen. He said he used a non-City calendar to maintain his appointments, to which his secretary did not have access. He provided a copy of his personal calendar to Mr. Boreen and said he redacted personal information including staff vacations.

Chair Knee, declared a 5-minute recess to allow Mr. Boreen to review the document.

Mr. Boreen, in rebuttal, said he stands on his complaint; that providing the calendar now proves information was withheld.

Public Comment: Kimo Crossman said he is glad the calendar was provided, but that private information is not redactable. He said justification for withholding is required.

Member Pilpel confirmed with Mr. Massetani that the calendar information was on his personal PDA, which was not accessible to the secretary.

Member Wolfe confirmed with Mr. Boughn that complaints/requests for records are routed to him.

Member Craven said the Calendar is a public record even when maintained on another office computer.

Motion to table. The Department is to respond to concerns expressed by the Committee regarding its policies and procedures; that a revision to the Department's policy be promulgated and be submitted to the Task Force for review. (Craven) Without objection.

07080d Speaker: Dan Boreen, Complainant, said the documents received were not provided in timely fashion, and that there is not explanation as to why the time rolls are not signed.

Rob Boughn, SFFD representative, said the Department did respond in timely fashion in providing unsigned time roles, but that they do not have signed time rolls.

Motion to take no further action. (Craven) Without objection.

5. Possible amendments to Sections 67.30 to 67A.1 of the Sunshine Ordinance and subsequent sections as time permits.

Sec 67.30 The Sunshine Ordinance Task Force.

Sec 67.31 Responsibility for Administration.

Sec 67.32 Provision of Services to other Agencies; Sunshine Required.

Sec 67.33 Department Head Declaration.

Sec 67.34 Willful Failure Shall Be Official Misconduct.

Sec 67.35 Enforcement Provisions.

Sec 67.36 Sunshine Ordinance Supercedes Other Local Laws.

Sec 67.37 Severability.

Sec 67A.1 Prohibiting the Use of Cell Phones, Pagers and Similar Sound-Producing Electrical Devices At and During Public Meetings.

Public Comment re Section 67.30: Kimo Crossman recommended that the criteria for serving in Seat 4 be broadened; that there be an alternating appointment schedule so all Task Force Members' appointments don't come up at the same time. Allen Grossman suggested that the word "violations" be removed from subsection (d); clarify reference to "its" in subsection (e); delete "or other existing local ordinances" in subsection (f); in subsection (g) changing the vote requirement of Members to 7; and expressed concern about allowing the Board to amend the law as indicated subsection (i).

Motion to remove the word "above" from Section 67.30 (i). (Craven / Comstock)
[from line 1, pg 46 of the packet.]

Ayes: Knee, Comstock, Craven

Noes: Pilpel

Excused: Wolfe

Re: Section 67.33: Kimo Crossman suggested that the annual training be in person and not via video or online.

Member Pilpel to provide language that addresses the annual training, including the format and content of the training. This section to be agendized for the next meeting.

Re: Section 67.34: Kimo Crossman suggested language that empowers the Task Force to have an item agendized on the Board of Supervisors calendar to explain why departments or persons are being referred.

Sections 67.30, 33, and 34 were discussed and the Administrator recorded recommended amendments.

Sections 67.33, 67.35, 67.36, 67.37 and 67A.1 to be agendized for the meeting on January 9, 2008.

6. Administrator's report.

The Administrator made the report

Public Speakers: Kimo Crossman said he has problems with the Administrator responding to his request for information regarding his complaints
Dan Boreen said the work of the Administrator can be overwhelming, but that an acknowledgement or receipt is sufficient.

Member Pilpel asked how complaints would be agendized for January 8, 2008.

Chair Knee said the Complaint Committee meeting has been canceled and the Task Force will meet as a committee of the whole to determine jurisdiction of new complaints. Then referrals and complaints from the November and December 2007 meetings will be heard.

7. Public comment on items not listed on the agenda.

Public Speakers:

- Kimo Crossman said there is precedent for vendors who are doing business with the City to provide records. He said the DA should bring its IT person for item #3, to provide the whole picture.
- Allen Grossman said the Deputy City Attorney said at the Board of Supervisors Rules Committee that the Task Force is not a chartered body, and therefore he asked the Task Force to reconsider its voting process.
- Dan Boreen said that it is important for the CAC to stand firm on the ODs.

8. Announcements, questions and future agenda items from CAC members.

Speakers: Kimo Crossman urged the Task Force to agendize a discussion regarding Sunshine Week.

Adjournment: The meeting was adjourned at 8:03 p.m.

An audio-recording of this meeting is on file in the office of the Sunshine Ordinance Task Force.