Date: January 22, 2008

Item No. 2
File No.

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Draft Minutes: Complaint for November 13, and December 11, 2007**
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Completed by: Chris Rustom **Date:** January 16, 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
MINUTES
Tuesday, November 13, 2007
4:00 p.m., City Hall, Room 406

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

Call to Order: 4:02 p.m.
Roll Call: Present: Cauthen, Chu, Goldman

Agenda Changes: Item #4 was heard after item #1

Deputy City Attorney: Rosa Sanchez
Administrator: Frank Darby

Chair Cauthen announced that item #8 was continued by agreement of both parties prior to the meeting, and that the complaint for item #10 was withdrawn.

1. Approval of minutes of October 9, 2007.

Speakers: None

Motion approving minutes of October 9, 2007. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

2. 07075 Determination of jurisdiction of complaint filed by Laura Carroll against the Mayor's Office of Housing (MOH) for violation of Section 67.26 of the Sunshine Ordinance for alleged failure to provide documents, and failure to keep withholding to a minimum.

Speakers: Laura Carroll, Complainant, asked the committee to add a violation of Section 67.21 because she did not receive all documents requested. She said that the department is withholding records related to research that is considered attorney-client privileged. Dee Modglin, in support of the complainant, said that Ms. Carroll did not receive a massive amount of e-mail that is in her file, and was not provided key information. She urged the committee to find jurisdiction. Douglas Shoemaker, MOH, said that he does not contest jurisdiction; that the only records that were not provided are privileged communications between the Department and the City Attorney. He said that he'd gladly give Ms. Carroll everything that he gave to Ms. Modglin.

Chair Cauthen asked the Administrator to add Section 67.21 as a possible violation.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

3. 07076 Determination of jurisdiction of complaint filed by Charles Bolton against the Department of Public Works for violation of Sections 67.24, 67.25, 67.7-1 and 67.5 of the Sunshine Ordinance for alleged failure to provide records, untimely response, improper notice of the July 25, 2007, meeting, and failure to allow public comment at the September 5, 2007, meeting.

Speakers: Charles Bolton, Complainant, said that he was not provided records pertaining to the Mechanical Street Cleaning legislation. He said that the public was not allowed to speak again on a continued item at the September meeting.

DCA Sanchez, in response to Chair Cauthen, said that public comment is allowed once on an item, even if the item has been continued.

Chair Cauthen asked Mr. Bolton if the department provided justification for withholding. Mr. Bolton responded, no.

Chair Cauthen asked the administrator to add a violation of section 67.15, and 67.27 to the complaint.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen asked the Administrator to write a letter to the department requesting that they attend the full Task Force hearing on November 27, 2007, and to inform them that attendance by the custodian of records or the most knowledgeable representative of the department, who can speak to the matter, is required at the meeting.

4. 07077 Determination of jurisdiction of complaint filed by Allen Grossman against the Office of the District Attorney for violation of Sections 67.21 (b), 67.25 (a) of the Sunshine Ordinance, and CPRA Section 6253 (b) for alleged failure to respond to an immediate disclosure requested submitted on September 20, 2007.

Speakers: Allen Grossman, Complainant, said that he hasn't received anything from the respondents and urged jurisdiction.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Sandip Patel, respondent arrived after item #2 and was informed by Chair Cauthen that the "balancing act" for disclosure referred to in the DA's response is not a valid reason for non disclosure. Mr. Patel said the DA was responding to the alleged violation of the CPRA.

5. 07078 & 07079 Determination of jurisdiction of complaint filed by John Chapman against the Controllers Office and the Public Utilities Commission for alleged failure to provide records requested and failure to respond in a timely manner.

Speakers: John Chapman, Complainant, said that since filing the complaint he has received the audit that he requested, but not in a timely manner. John Darmanin, in support, said that the Task Force should determine that the audit was not received in a timely manner.
Michele Modena, Respondent (PUC), apologized for not responding in a timely manner. She said that the audit didn't exist at the time it was requested, and that they received it from the Controllers Office.
Christian Devoldo, Respondent (Controller) said that the Controllers Office has provided the complainant with all responsive documents.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen urged the parties to converse and attempt to resolve the matter prior to the full Task Force meeting.

6. 07080 Determination of jurisdiction of complaint filed by Dan Boreen against the Fire Department for violation of Sections 67.24-67.27; 67.29-5 of the Sunshine Ordinance, and CPRA Section 6254 for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

Speakers: Dan Boreen, Complainant, said that his complaint is about the departments redactions from the signed time rolls, not providing the Department Head Calendar, or entries for 2006. John Darmanin, in support, said that the request is reasonable and that the information deleted from the time rolls is not private.

Sue Cauthen asked DCA Sanchez to ask DCA Llorente to provide information regarding a recent court order requiring disclosure of public official's pay.

Rhab Boughn, Respondent, said that the department has complied with the request and that certain information on the time rolls is confidential.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen urged the parties to converse and attempt to resolve the matter, prior to the full Task Force meeting.

7. 07081 Determination of jurisdiction of complaint filed by Hanley Chan against the Police Department for violation of Section 67.21 and 67.22 of the Sunshine Ordinance for alleged failure to provide records and oral information.

Speakers: Hanley Chan, Complainant, said that he requested information explaining why an applicant was denied employment; that he also requested a detailed written hiring process, a written definition of good and moral character,

and any documents on himself that he didn't receive.
Jack Hart, Counsel for Respondent, said that he is not aware of any request for documents, whether oral or written, but that the department was responsive to Mr. Chan's request for information. He said that information about the hiring process has already been provided.

Motion to recommend jurisdiction. (Goldman / Chu)
Ayes: Cauthen, Chu, Goldman

Chair Cauthen urged the parties to converse and attempt to resolve the matter, prior to the full Task Force meeting.

8. 07082 Determination of jurisdiction of complaint filed by Wayne Lanier against the Department of Telecommunications and Information Services 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.

Continued by agreement of both parties prior to the meeting.

9. 07083 Determination of jurisdiction of complaint filed by John Darmanin against the Fire Commission for alleged violation of Sections 67.15 (a) and (b) and 67.7 (a) for alleged failure to allow public comment on an action item at the October 11, 2007, Commission meeting.

Speakers: John Darmanin, Complainant, said that he was not allowed to provide additional public comment on an item after it was amended by a motion. He said that although this may be the letter of the law it is not the intent of the Sunshine Ordinance. Dan Boreen, in support, said that the commission has a practice of repackaging motions after public comment, but not allowing additional public comment.
Tania Bauer, Respondent, said that although there was continued discussion regarding the Annual Statement of Purpose for FY 07-08, no changes were made to it.

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

Chair Cauthen urged the parties to converse and attempt to resolve the matter, prior to the full Task Force meeting.

10. 07084 Determination of jurisdiction of complaint filed by Marcus Santiago against the City Attorney for violation of Section 67.22 of the Sunshine Ordinance for alleged failure to provide oral information.

Complaint withdrawn prior to the meeting.

11. Administrator/s Report

The Administrator submitted his report.

Speakers: None

12. Public Comment for items not listed on the agenda

Speakers: None

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

Speakers: None

Adjournment **The meeting was adjourned at 5:45 p.m.**

This meeting has been audio recorded and is on file in the office of the 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 Cauthens 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 agendize 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