

Date: March 25, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force for February 26, 2008**
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Completed by: Frank Darby

Date: March 19, 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



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7724
Fax No. 554-7854
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
DRAFT MINUTES**

Tuesday, February 26, 2008
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven (Vice Chair)	Seat 8	Bruce Wolfe
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Vacant	Seat 11	Marjorie Ann Williams
Seat 5	Kristin Chu		
Seat 6	Doug Comstock (Chair)	Ex-officio	Angela Calvillo
Seat 7	David Pilpel	Ex-officio	Harrison Sheppard

Call to Order

The meeting was called to order at: 4:05 P.M.

Roll Call

Present: Knee, Cauthen (left at 8:30 p.m.), Chu (left at 9:10 p.m.), Comstock, Pilpel, Wolfe, Chan (in at 4:18, left at 9 p.m.), Goldman, Williams, Sheppard (left at 9:10 p.m.)
Excused: Craven

Agenda Changes: Items were heard in the following order: 1, 2, 3, 19, 3c, 3e, 5, 6, 7, 3b, 4, 3e, 9, 3f, 10, 11, 12, 12a, 14, 15, 16, 17, 18 and 20.

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby
Chris Rustom

Agenda Changes:

The Administrator announced that complaint #08003 (item #3d and 8) has been withdrawn.

The Administrator informed members that COB Angela Calvillo is requesting that complaint #07092 (item #3b, and #4) be postponed until later in the meeting due to her attendance at the concurrent BOS meeting. The Task Force moved to postpone the matter. Without objection.

Member Knee asked to combine items 3 (e) and (f). Member Cauthen explained that the items are different because item 3 (f) also request phone records, and therefore should not be combined.

1. Approval of minutes of January 22, 2008, meeting.

Public Comment: None

Motion to approve the January 22, 2008 meeting, as amended. (Wolfe / Pilpel).

Ayes: Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Goldman, Williams

Absent: Chan

Excused: Craven

2. Supervisor of Records (SOR) Report (Paula Jesson)

Paula Jesson made the report.

Public Comment: Kimo Crossman, said he has problems with the report because it denies access to the District Attorney's (DA) investigative records. He said that the SOR's recommendation that non Prop G calendars are not subject to disclosure is not in agreement with the Ordinance, and that the City Attorney's Office (CA) does not provide records that are considered work product. He also disagrees with their comments regarding DTIS's e-mails.

Peter Warfield, said that the SOR routinely exceeds their time limit to respond to request for assistance.

Allen Grossman, said that the length of the report is too long because it buries a lot of important information. He said that there still is number of matters that are not resolved.

Chair Comstock said that some of the conclusions of the report is at odds with rulings of the Task Force. He asked Ms. Jesson if she has a suggestion to resolve the matter when there is a conflict between the City Attorney's opinion and the Task Force's ruling. Ms. Jesson said that she did not have a suggestion.

Member Knee asked that future reports note complaints that were heard before the TF, and also note where there are differences between the CA and SOTF findings.

Member Pilpel said that both the CA and SOTF has roles to play and isn't sure how the matter can be resolved. He asked Ms. Jesson if she could provide copies of the petitions. She responded that a copy of the petitions was provided to the SOTF administrator.

Member Sheppard asked Ms. Jesson if she refers matters to the CA for consideration, if there are procedures instructing them to get a determination from the TF as to whether the record is producible. Ms. Jesson answered "no" to both questions and said that the SOR researches the law and base their response on their findings.

Member Sheppard said that he supports the Chairs request that such matters be coordinated between the CAO and the SOTF.

Member Wolfe asked Ms. Jesson how the CA concluded that e-mail communications did not need to be provided. Ms. Jesson responded that e-mail records were made available on the internet.

Member Wolfe asked that the matter be continued and that DCA Dorji Roberts be asked to attend.

Chair Comstock said that the matter should be continued.

Member Wolfe said that the subject of the CA's advice to respondents should be included with the continuance.

Member Pilpel objected to expanding the scope of the report.

Chair Comstock moved to continue the item, and to request attendance by DCA Dorji Roberts. Without objection.

Chair Comstock asked the Administrator to invite Mr. Roberts to the next meeting.

3. Report from the Complaint Committee meeting of December 11, 2007, and February 12, 2008.

Member Comment made the report.

- a. Complaint Committee recommendation for the Task Force.

1. That Complaint Committee meetings take place only (a) when jurisdiction is contested; (b) there is a request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint; or (c) to perform other duties as needed.
2. That the work of the Complaint Committee be done by the full Sunshine Task Force with the assistance of the Administrator and Task Force counsel.
3. That the five-minute limit on individual member debate time be observed and equitably enforced at Task Force meetings.

Member Cauthen made the report

Public Comment: Patrick Monette-Shaw said that extending to one or two weeks response time is better. That he agrees with eliminating the need to attend a hearing twice.

Allen Grossman said that the Administrator should make certain that when a complaint is filed that all parties are notified. He said that departments don't respond in 5 days as required.

Kimo Crossman said that he is grateful for the effort to reduce the hearing time and last minute submissions by departments.

Dan Boreen said that the reason for the long meetings is because of the efforts by departments to keep from complying with the Ordinance. He said often jurisdiction is not contested and that he supports the recommendation on a trial basis.

Motion to amend the recommendation to add in (a) "by the respondent "(b)" by either party" and add that this is a three-month trial, and request that the Complaint Committee reviews the proceedings. (Pilpel / Chan)

Ayes: Pilpel, Wolfe , Williams

Noes: Knee, Cauthen, Chu, Comstock, Chan, Goldman,

Excused: Craven

Motion accepting the recommendation (Cauthen / Knee)

Ayes: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Pilpel

Excused: Craven

- b. 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.

Complainant withdraws Human Resources Department complaint.

Speakers: None

Motion accepting jurisdiction (Cauthen / Goldman)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Excused: Craven

- c. 08001 Determination of jurisdiction of complaint filed by Kimo Crossman against the District Attorney's Office for alleged failure to provide the calendar of District Attorney Kamala Harris in electronic format and without charging a fee.

Speakers: None

Motion accepting jurisdiction (Cauthen / Goldman)

Ayes: Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Excused: Craven

- d. 08003 Determination of jurisdiction of complaints filed by Christian Holmer against the Mayor's Office for alleged failure to provide records in response to Immediate Disclosure Requests for press releases the Mayor issued the previous day.

Speakers: None

Previously withdrawn.

- e. 08004, 08005 & Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide communications between the City Attorney and District Attorney, Harrison Sheppard, and Clerk of the

08007 Board of Supervisors on Sunshine matters, detailed billing records for this advice, and calendars of City Attorneys who provided advice.

Speakers: None

Motion accepting jurisdiction (Cauthen / Goldman)

Ayes: Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Excused: Craven

- f. 08006 Determination of jurisdiction of complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide all materials related to the Buck Delventhal meeting of October 9, 2007, regarding Sunshine Task Force hearings against Supervisors Peskin and Maxwell, and failure to provide any materials or communications before or after the meeting relating to the matters discussed.

Speakers: None

Motion accepting jurisdiction (Cauthen / Goldman)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Excused: Craven

- g. 08008 Determination of jurisdiction of complaint filed by Stephen Worsley against the Recreation and Park Department for alleged failure to provide requested records, namely: Procedures used to select COIT Partner and areas of background investigation, findings on the partners, and complete review and acceptance signatures.

Speakers: None

Motion accepting jurisdiction (Cauthen / Goldman)

Ayes: Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Excused: Craven

4. 07092 Public Hearing, complaint filed by Patrick Monette-Shaw against the Board of Supervisors and Human Resources Department 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, Complaint, said the item #24 on the Board of Supervisor's November 20, 2007, agenda was about a closed session on a potential Charter Amendment covering retiree medical costs. He said while the city is allowed to hold closed sessions to discuss matters within the scope of collective bargaining, retiree health care is not part of it. He said the Board can hold a closed session with the union and not with the Human Resources Director. Mr. Monette-Shaw said that language on notification provided in the Ordinance was not used to announce the item. He said that he wanted the audio recording of the session released and written summaries of the meeting if it existed.

Angela Calvillo, Clerk of the Board, said the City Attorney's Office drafted the language for the agenda item, and although it did not closely follow the wording required under the Brown Act or Sunshine Ordinance it was within the boundaries of the law. Jennifer Johnston, Human Resources Department, said the decision of the Board of Supervisors to go into closed session was justified under the California Government Code and Sunshine Ordinance Section 67.10 (e). She said that retiree medical benefits are terms and conditions of employment that is covered by the Meyers-Milias-Brown Act, which governs labor-management relationships.

Mr. Monett-Shaw, in rebuttal, said the Clerk of the Board and the Human Resources Department are in violation of the Sunshine Ordinance despite claims that they were in substantial compliance. The Ordinance specifically lists what can be discussed in closed session, but they decided to go ahead on a different matter.

Public Comment: Dan Boreen said the Board of Supervisors was in violation of the Brown Act because it did not meet requirements listed in Section 54954-5. Stephen Worsley said private meetings are often conducted because it does not alert the public to the issues involved. To meet and confer means involving the public.

Peter Warfield said meet and confer means meetings with union representatives over issues that affect City employees. He asked the Task Force for clarification. He said that whether the Board goes into closed session or not has nothing to do with whether a matter is or is not going to be discussed with the union.

Motion finding a technical violation of §67.10 (e)(1) of the Sunshine Ordinance for failing to clearly identify the agenda item. (Comstock / Knee)

Ayes: Knee, Comstock, Pilpel, Chan, Goldman, Williams,

Noes: Chu, Wolfe

Excused: Craven, Cauthen

5. 07094 Public Hearing, complaint filed by Kimo Crossman against the City Attorney's Office (CAO) for alleged violation of Sections 67.21 (b) and (l) and 67.21-1 of the Sunshine Ordinance for failure to respond to a request for records, failure to provide records, and failure to post the Department Heads calendar on the website.

Speakers: Kimo Crossman, Complainant, said that he requested City Attorney Hererra's future calendar but it was not provided or posted on the website.

Alexis Thompson, for Respondent, said that the department initially failed to respond to Mr. Crossman's request. She said that she has a copy of the prop G calendar to give to Mr. Crossman. She said that the CAO plans to post the Prop G calendar on the on the internet, but are not prepared to do so at this time.

Kimo Crossman, in rebuttal, said that the CAO has acknowledged untimely response, and said that he asked for all calendars and not just the Prop G calendar.

Public Comment: Dan Boreen urged the Task Force to find a violation for untimely response and non-disclosure of requested records. Peter Warfield said that the department did not respond timely and that they provided an invalid reason for not providing the calendar.

Motion finding a violation of 67.25 for failure to respond in a timely manner. (Pilpel / Williams)

Motion to amend the motion to add a violation of §§ 67.26 and 67.29-5. (Knee / Wolfe)

Ayes: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Pilpel

Excused: Craven

Motion finding a violation of §§ 67.25, 67.26 and 67.29-5 for failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to provide the requested daily calendar. (Pilpel / Williams)

Ayes: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Pilpel

Excused: Craven

6. 07096 Public Hearing, complaint filed by Kimo Crossman against the Mayor' Office for alleged violation of Sections 67.21 (b) and (l) and 67.21-1 of the Sunshine Ordinance for failure to respond to a request for records, failure to provide records, and failure to post the Department Heads calendar on the website.

Kimo Crossman, Complainant, said the law allows for members of the public to attend meetings held by department heads and elected officials. In order for the public to be made aware of the meetings future calendars need to be provided in a low cost method or posted on the internet. He said that his request was made in November 2007, but nothing has been done.

The Respondent was not present.

Public Comment: Allen Grossman said that the contempt that department heads hold for the complainant and the Task Force by not appearing is very disturbing. Patrick Monette-Shaw urged the Task Force to note in its Order of Determination the failure of the Mayor's Office to send a representative. Peter Warfield said that this is a blatant violation of Sunshine. He said three days after an entry is made in a future calendar that documents are required to be made available to the public. Dan Boreen said the departments' disregard to produce calendars goes beyond willful failure.

Motion finding a violation of §§ 67.25, 67.26, 67.29-5 and 67.21 (e) for failure to respond in a timely manner, failure to keep withholding to a minimum, failure to provide the requested daily calendar and failure to appear. (Comstock / Cauthen)

Member Pipel said he did not feel that §67.26 and §67.29 (5) were applicable

and moved to divide the motion because the department has not responded. The motion failed for lack of a second.

Chair Comstock informed Member Pilpel that his request was denied, because there was not second to his motion.

Member Pilpel appealed the ruling and requested DCA Llorente to further research the issue.

Motion appealing the ruling of the Chair (Pilpel / Comstock)

Ayes: Pilpel

No: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams

Excused: Craven

Motion finding a violation of §§ 67.25, 67.26, 67.29-5 and 67.21 (e) for failure to respond in a timely manner, failure to keep withholding to a minimum, failure to provide the requested daily calendar and failure to appear.

Ayes:, Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Pilpel

Excused: Craven

Member Sheppard after contacting the Mayor's Office later in the evening said the mayor's deputy director of communications, Joe Arellano, was unaware that the matter was on the agenda because Mr. Christian Holmer had earlier withdrawn a complaint (#08003) and believed that the two were coupled. Member Sheppard said Mr Arellano would send a letter of apology to the Task Force and a response letter to the complainant.

Motion to reconsider previous motion following Mr. Sheppard's presentation. (Knee / Pilpel)

Ayes: Cauthen, Pilpel, Williams

Noes:, Knee, Chu, Comstock, Wolfe, Chan, Goldman

Excused: Craven

The matter fails.

7. 08001 Public Hearing, complaint filed by Kimo Crossman against the District Attorney's Office for alleged failure to provide the calendar of District Attorney Kamala Harris in electronic format and without charging a fee.

Kimo Crossman, Complainant said the calendars were not provided on a timely manner; that he was given a recreated calendar and was charged \$.10 a page.

Sandip Patel, for Respondent, said the Mr. Crossman sent an Immediate Disclosure Request on the calendar and he replied the next day saying he would respond within the next 10 days. The DA's Office, he said, had to print the calendar because it does not have the technology to convert documents into the format Mr. Crossman wanted.

Mr. Crossman, in rebuttal, said he took off from work and paid \$10.00 for a taxi

ride to the Hall of Justice; then after going through security he had to sit and wait for half-an-hour because the documents were not available at the front counter.

Public Comment: Patrick Monette-Shaw spoke about the availability of programs on the internet that could solve the issue. Future calendars, he said, are draft documents that have to be made available to the public. Peter Warfield said that requiring a document requestor to come into the office could be viewed as a burden that results in an unnecessary delay.

Mr. Patel, in response to Member Williams statement that all city employees must accommodate Sunshine, said departments would have a Sunshine request coordinator if San Francisco wanted public officials to respond in a timely manner.

Dan Boreen said Mr. Patel was disingenuous and misrepresenting documentation that was requested in late 2007. He said that there are means and manners to provide the documents in the format requested.

Motion finding the District Attorney's Office in violation of 67.21 (1), 67.26 and 67.29-5. (Comstock / Wolf)

Motion to divide 67.21 (1) from 67.26 and 67.29-5 (Cauthen / Chan).
Withdrawn

Motion finding no violation (Pilpel / Comstock)
Ayes:, Knee, Cauthen, Comstock, Wolfe, Goldman
Noes: Pilpel, Chu, Chan, Williams
Excused: Craven

No formal action taken.

8. 08003 Public Hearing, complaint filed by Christian Holmer against the Mayor's Office for alleged failure to provide records in response to an Immediate Disclosure Requests for press releases the Mayor issued the previous day.

Previously withdrawn

9. 08004, 08005 & 08007 Public Hearing, complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide communications between the City Attorney and District Attorney, Harrison Sheppard, and Clerk of the Board of Supervisors on Sunshine matters, detailed billing records for this advice, and calendars of City Attorneys who provided advice.

Continued to the March 25, 2008, meeting

10. 08006 Public Hearing, complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide all materials related to the Buck Delventhal meeting of October 9, 2007, regarding Sunshine Task Force hearings against Supervisors Peskin and Maxwell, and failure to provide any materials or

communications before or after the meeting relating to the matters discussed.

Continued to the March 25, 2008, meeting

11. 08008 Public Hearing, complaint filed by Stephen Worsley against the Recreation and Park Department (RPD) for alleged failure to provide requested records, namely: Procedures used to select COIT Partner and areas of background investigation, findings on the partners, and complete review and acceptance signatures.

Speakers: Stephen Worsley, Complainant, said he requested all records held by RPD on plans to lease out Coit Tower, including information on the private partnership involved in the process. Rose Dennis, for Respondent, said the department has turned over documents to Mr Worsley numerous times and has waived payment.

In rebuttal, Mr Worsley said the document he was given was outdated and incorrect.

Public Comment: Dan Boreen said the Task Force should help Mr. Worsley because he is inexperienced in requesting public documents.

Motion not to find violation (Pilpel / Goldman)
Ayes: Knee, Comstock, Pilpel, Wolfe, Goldman
Noes: Williams
Excused: Craven, Cauthen, Chu, Chan

No formal action taken.

12. Report: Ad hoc Budget Committee: meeting of February 11, 2008.

Member Wolfe made the report.

- a. Discussion re: The Sunshine Ordinance Task Force's proposed budget for the 2008-2009 Fiscal Year.

Chair Comstock said the budget letter was ready to be sent to the Clerk of the Board (COB).

Member Pilpel noted that the Board of Supervisors Budget Committee had approved the COB's budget and that it had been forwarded to the offices of the Mayor and Controller. He suggested replacing the committee's name with the Task Force and sending the letter to the COB, and a copy to the Controller, Board of Supervisors and the Mayor's Budget Director.

Public Comment: Dan Boreen said non-compliance by Departments are out of control and need to be reigned in.

Motion to send the amended letter to the COB. (Pilpel / Wolfe) Without objection.

14. Report: Compliance and Amendments Committee: meeting of February 13,

2008.

Member Knee made the report.

Public Comment: Dan Boreen said the long and ongoing process that a complainant has to undertake in order to get a document is an undue burden that needs to be addressed by the Task Force.

15. Report: Rules Committee: meeting of February 14, 2008.

Member Wolfe made the report.

Member Pilpel asked that a discussion regarding the Rules Committees proposed amendments to the hearing procedures of the Sunshine Ordinance Task Force be agendized for the March 25, 2008, meeting and noted as an action item. Without objection.

Public Comment: None

16. Discussion re: the Task Forces draft 2006/2007 Annual Report.

Continued to March 25, 2008 meeting. Without objection

Public comment: None

17. Discussion regarding the Ethics Commissions presentation to the Compliance and Amendments Committee, and to propose follow-up questions.

Chair Comstock provided a transcript for Task Force members' review.

Public comment: None

No action taken.

18. Administrator's Report.

The Assistant Administrator made the report.

Public Comment: None

19. Public comment for items not listed on the agenda. Public comment shall be held at 5:00 p.m., or as soon thereafter as possible.

Speakers: Patrick Monette-Shaw encouraged Members to reapply for their seats.

Steven Worsley asked the TF to agendize a discussion regarding transparency of meetings.

Kimo Crossman said that Sunshine week is coming up in March and urged the

Task Force to commemorate it. He said that the annual sunshine training is on March 3, but that the TF did not review the training material. He said that it was Member Pilpel's responsibility, and that he failed to hold an Education, Outreach and Training Committee meeting in over a year. He also said that he will mention this at Member Pilpel's reappointment hearing.

Dan Boreen urged the Task Force to invite the CA Dennis Herrera to a meeting to discuss activities, actions, and practices of the Supervisor of Records. He also urged members not to resign in April.

Allen Grossman said that it is difficult for complainants to get a fair relief from the City Attorney (CA), and because departments are not attending the hearings. He also said the Ethics Commission provides insufficient support. Mr. Grossman said that it is important to define the role of the CA, and that the Task Force should hold department heads responsible for not complying with the Order of Determinations and for not appearing.

Member Sheppard, in response to Mr. Grossman said that at times Mr. Grossman's inferences and assumptions are contrary to the realities in which some city agencies operate. He said that in order to be more effective in distinguishing between understandable, excusable delays and real potential serious violations of the Ordinance, that it would strength his position and that of other complainants if Mr. Grossman was more discriminating in his assumptions about what is easy and what can be assumed is easy, as opposed to what in reality the agencies have to deal with, with some of these requests.

Mr. Grossman said that in his experience departments are not responsive to requests.

Peter Warfield urged the Task Force to invite the public to assist with revising its procedures. He said that the public might have ideas that the Task Force has not heard and that knowing the public's experience would be helpful. He also urged the Task Force to review non-attendance by departments; that distribution of materials by department at the hearing is not fail to the complainant. He said that the questioning of parties should be fair, and that attendance by complainants should be optional because the documentation that they submit should be sufficient.

20. Announcements, questions, and future agenda items from the Task Force

Member Wolfe said he is sensitive to City staff's time and know that although there are respondents who are trying to comply with the Sunshine Ordinance, there are others who find it too onerous to appear before the Task Force.

DCA Llorente reminded the Task Force about next month's Sunshine training.

Public Comment: Dan Boreen urged the Task Force to agendize a discussion with City Attorney Dennis Herrera.

Member Pilpel said that he want to discuss the issue of Departments seeking City Attorney opinions be agendized for the March 25, 2008 meeting. Without objection.

Adjournment

The meeting was adjourned at 9:58 P.M.

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