

Date: April 22, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force for February 26, 2008**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Frank Darby

Date: April 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.



<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The Administrator announced that complaint #08003 (item #3d and 8) have been withdrawn.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 Minutes of 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 disputes the report's conclusion in the Earthlink-DTIS matter that the documents exchanged between the City and Earthlink are not public documents, even after negotiations have concluded; denies access to the District Attorney's (DA) investigative records. He said that the Supervisor of Record'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, even when they deal with Sunshine matters. He also disputes the Supervisor of Records' assertion that she does not have to respond to a request within 10 days. He also questions the annual provision of reports, rather than the rolling reports to the SOTF as they occur.

Chair Comstock asked DCA Llorente if the SOTF's acceptance of the report indicated agreement with the conclusions or analysis of the Supervisor of Records?

DCA Llorente responded that the report is merely a report of the activities of the SOR for the previous year, and the SOTF may comment, but the SOR has fulfilled her obligation by filing the report. The fact that you have received it does not mean that you agree in whole, or in part.

Member Sheppard, commented that as long as the submission of the report is in compliance with the requirements, our acceptance does not mean approval or disapproval of the report.

Peter Warfield, said that the matter of the Library and a 2004 case failed in its grasp of the issues involved, that requested to know if the records he requested were medical records, not whether the Library could withhold medical records and that the SOR routinely exceeds their time limit to respond to request for assistance. It was a disappointment that the requests in the past have taken far longer than 10 days.

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 are a number of matters that are not resolved. He feels the SOR should be a neutral and objective observer of the laws, and that he is disappointed with her apparent one-sided analysis which seems to reflect the opinions of her colleagues at the City Attorney's Office.

Chair Comstock said that some of the conclusions of the report are at odds with rulings of the Task Force. He said that he is troubled by the fact that only the Task Force is authorized to interpret the Ordinance, yet the City Attorney appears to assert the opinion that they have the authority to interpret the law differently. Interpretations that the SOTF has made, that have become standards for findings of violation, are obviously set aside and contradicted by the rulings of the Supervisor of Records. He said that the disparity of opinion in these situations make compliance very difficult for departments. 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, that there is nothing in the ordinance that deals with the issue. It allows a complainant to go to one or both authority to resolve problems. She did suggest that she could take the question to her office to see if there might be a suggestion as to what could be done to reconcile the different views.

Chair Comstock asked Ms. Jesson to come back to the next meeting with any suggestions that might come from the City Attorney's Office, and asked for a meeting with someone, perhaps Ms. Jesson and others who may be instrumental in Sunshine matters with a few of members of the SOTF because departments are bearing the brunt of our disagreements, and that is really not fair.

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.

Supervisor of Records Jesson said that she would take both those issues to her office and would come back next month better prepared to provide answers.

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 and her responses to the petitions. She responded that a copy of the petitions was provided to the SOTF administrator.

Member Sheppard said he shares the concern expressed by the Chair for better reconciliation with the CA on Sunshine matters. He asked Ms. Jesson if she refers matters to the CA Dennis Herrera for consideration, and if there are procedures instructing them to coordinate with 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 that she reports to her boss within the CA Office, who reviews her work. She said the CA's office is generally aware of the rulings of the Task Force. Mr. Sheppard asked if there was any procedure available to seek consensus with the SOTF or if the only option available was to ask someone within the CAO? She replied that the question is settled within the office through legal research. Member Sheppard said that he wholly supports the Chairs observation that matters of interpretation need to be better coordinated between the CAO and the SOTF.

Member Wolfe asked Ms. Jesson specifically in the Google/Earthlink/DTIS matter, how the CA concluded that e-mail communications did not need to be provided? Ms. Jesson responded that documents were made available on the internet. She said that summaries prepared to comply with the Ordinance were posted on the internet and were made public.

Member Wolfe rephrased his question to make it clear that he was concerned with e-mail communications between the City and Earthlink, not just the documents that were part of the project. Ms. Jesson stated that this item was the one that she did not personally handle, so, regrettably she could not be more specific on some of the issues. She asked if the issue was that there were documents that were not posted on the internet or that the requester wanted the same documents via e-mail. Member Wolfe said that there were, for example, e-mails between the Director of DTIS and Google that were exchanged that were not included in response to the request for all records. Member Wolfe said that the determination as to whether e-mails exchanged among the three factions in the negotiation seems to be omitted from the report, and the question remains as to whether those are public records. Ms. Jesson answered that the SOR dealt with the eight categories of record that were enumerated on the request, but there might be another category of request that was not dealt with. Member Wolfe asked who was the SOR at the time the petition on this matter was dealt with at the CA and she responded that it was Dorji Roberts. 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, and that he would like Member Craven to be available to respond to some of these issues. He asked that members might be able to submit some questions in writing.

Member Sheppard asked that if, in the absence of an adjudication concerning the issue of the discoverability of a document, do you have any basis on which to base your opinion other than the opinions of other members of the CA's office to decide an issue? In the absence of an adjudication, where there is a division of opinion between what the CA has said in the past and a Determination of the Task Force, is there any basis other than following the opinions of staff?

SOR Jesson stated that she is responsible for researching the law and providing a legal opinion within the constraints of the law, not for following advice. All the opinions, the petitioner's as well as the Task Force's opinions are taken into consideration before a determination is made.

Member Sheppard asked that if there was a court ruling on an issue, if that would be followed rather than the opinions of members of the staff at the CAO. She responded that if the ruling were on point, it would be followed.

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 Cauthen 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.

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 review 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 portion of the 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 & 08007 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 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 (withdrawn*) 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.

*The complaint against the Department of Human Resources was amended (striking HRD) the complaint is, therefore, against the Clerk of the Board.

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 (67.10) to hold closed sessions to discuss matters within the scope of collective bargaining, discussing a Charter Amendment or retiree health care is not part of it. He said the Board can hold a closed session (67.10 (e) 1) with the union but 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 (67.8 (a) 5). California Govt. Code §54957.6 (a) allows closed sessions prior to or during consultation and discussions with unions and that they may consider the City's available funding only insofar as it relates to providing instructions to local agencies' representatives (HRD), but the City was not in contract negotiations or collective bargaining when this meeting was held. He said that the meeting was illegally noticed and that a discussion of a Charter Amendment was improper, therefore it was a public meeting from which the public was illegally excluded, and that the audio recording of the session must be 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 stated that, 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 are covered by the meet and confer allowances of 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.

Member Pilpel said he is OK with the agenda item form and description, his concern is whether it was proper to go into closed session. Questioned Ms. Johnston.

Ms. Johnston: I was in that session, and without disclosing anything substantive, there was no discussion of the item in the closed session, only a go forward plan was discussed, so they could go into Meet and confer.

Member Pilpel: Ms. Johnston can you give us more information about the application of the Meyers-Milias-Brown Act in this situation? Are both employee and retiree medical costs and the offset and the financial issues are considered within the scope of representation and does that allow the Board to go into closed session? He said that his understanding of Meet and confer was that, when there was a charter amendment that required Meet and confer, the Board would either not take action, or delay action until the Meet and confer obligations have been met between the City through the Employee Relations Director under the City's Employee Relations Ordinance that implements the MMBA requirements. Once that occurs, and the City has reached agreement or a point of impasse where they could take action based on that impasse. This seems different to Member Pilpel, in that the Board convened in closed session to discuss with its labor negotiator, the go forward plan in relation to a potential charter amendment which may well have included discussion of costs, benefits, risks, etc. These seem to him, on its face, to be matters that

should have been discussed in open session.

Ms. Johnston said the MMBA does require them to Meet and confer with regard to employee benefits. The State Supreme Court decision in the packet clarifies that before a public body can put a charter amendment on the ballot, it must Meet and confer with their labor unions over benefits which health and retiree benefits are. We always seek instruction on how to proceed during negotiations.

Member Pilpel: during active negotiations?

Ms. Johnston: absolutely.

Member Pilpel: at the time of this closed session, were negotiations active between the City and the relevant unions over the matters that are at issue here?

Ms. Johnston: absolutely. Different versions were put to the Board. The Human Resources Director, as negotiation representative of the Board and the Mayor went forward with Meet and confer as obligated with the unions to attempt mutual ground. The unions agreed and the BOS agreed, 10 to 1 to one of the charter amendments.

Member Pilpel asked for clarification on the timeline: the closed meeting was on November 20, 2007 the two charter amendments were introduced on December 11th, so negotiations were already underway at the time of the closed session?

Ms. Johnston said that was her understanding, there were ongoing discussions regarding the actuarial or true costs and indebtedness issues.

Member Pilpel asked about the Actuarial Studies required under GASB 45 happened sometime back, there was some back-and-forth regarding the course of action, at what point does the City believe that negotiations on this issue begin?

Ms. Johnston: I would have to confer with the HR Director to get you an actual date.

Member Pilpel: I need to know if that period started prior to November 20th or not. If it were triggered by the introduction of the charter amendments on December 11th, then a November 20th closed meeting would precede that period and active negotiations relative to that issue would not be underway.

Ms. Johnston: we notice the union of the intent to file a charter amendment that affects benefits, then once we get a response from them saying they want to meet and confer, that is the process. I believe it preceded the closed session.

Member Pilpel: what would trigger that, would that be a letter from your boss?

Ms. Johnston: Yes, and their response saying they would like to engage in meet and confer negotiations.

Member Pilpel: was there such a letter, and it was not it provided to us?

Patrick Monet-Shaw said they may not discuss this topic in a closed session period. There a number of unions in this negotiable issue that must be notified, and that did not happen, for example the Doctor and Dentist's union, and I don't know that they were ever notified. The complaint before us was dated November 17, and I am aware of the activities of the bargaining reps at my worksite, and none of them knew that there was a meet and confer process going on or they didn't share it with union members whose benefits would be affected. They should have, if anything, held a closed session with union members reps, but to say that they had no other mechanism other than to go into closed session, is not true. There is an alternative, a caucus is allowed after meet and confer.

Member Pilpel: to be clear, there is a meet and confer requirement that the City has with employee organizations with respect to matters within their scope of representation, this closed session was not a meet and confer session, it was arguably, a session to instruct the negotiator regarding funding of issues that were in discussion in meet and confer negotiations, the question is whether or not that was permissible at the time. Were active negotiations taking place? If that is so, the board could hold a closed session to instruct its negotiator.

Patrick Monet-Shaw: those meet and confer sessions were not active, or I would have known about it.

Member Pilpel asked the Clerk of the Board if her sense of the meeting was that it was about instructing the labor negotiator with respect to costs, or was it really about labor negotiations strategy or was it about costs to the City or was it to deal with GASB 45 requirements—how much of this was about labor negotiations and how much was about general strategy?

COB Calvillo: the Director of HRD presented a go forward plan to members of the Board, there had been a charter amendment submitted, what I can share with you is that there was no discussion on the floor about any information, it was a presentation and that was all. It was this is what our strategy is, this what we intend to do FYI.

Member Pilpel: to qualify for the closed session, wouldn't the Board have had to instruct its labor negotiator to say "yes, that sounds good," or "no that sounds bad," or "why don't we do something else?" Absent that kind of direction, how would this item have been appropriate for a closed session?

COB Calvillo, It being my first closed session, I don't have a standard by which to gauge the situation, there was no discussion on the floor. The members heard the presentation, and essentially acquiesced to it. There was nothing in writing.

Member Knee: to Ms. Johnston - I have a problem with closed-door meetings that lead to the formulation of a measure that is to be put before the voters.

Ms. Johnston: the meet and confer sessions were not closed, they were open. She will have to research the issue as to whether meet and confer sessions are open to the public.

Member Wolfe: Was there an announcement after the closed session?

COB Calvillo: I believe they voted not to disclose, did not recall any report.

Patrick Monet-Shaw: (Responding to a question from the Chair) 67.10 (e) 1 says that a closed session "may take place *solely* prior to and during active discussions." There were no negotiations taking place. 67.10 (e) 2 says that a closed session is allowed regarding *mandatory* subjects, but retiree health care is not mandatory, it is optional. It is clear that this meeting was more about figuring out how they were going to pay for it than putting it on the ballot as the agenda suggests.

Member Pilpel: I want to go over 54957.6 (a) because he didn't agree that this was with respect to any particular MOU, this was with respect to salaries or other compensation paid. This wasn't for discussing a successor MOU with any body of employees.

Patrick Monet-Shaw: Where we get stuck is on the use of "fringe benefits" to describe employee health care, which it is not.

Pilpel: I'm coming to the conclusion that there could be a problem with the agenda description, which should have included direction to labor negotiators. It was a close call. There may be an insufficient notice.

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 Head's calendar on the website.

Speakers: Kimo Crossman, Complainant, said that he requested City Attorney Herrera's future calendar but it was not provided or posted on the website. He said that the DA refused to provide a description of the records withheld because they had provided one of the records. He said the ordinance requires that the department produce the records in the most easily accessible way, especially on the internet. 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 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. He requested future calendars for CA Herrera, a significant difference from what was provided. Future calendars are public records.

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)

Member Pilpel said that there could not be a violation, since there has not yet been a response. Once a response is provided, that could form the basis for a subsequent complaint.

Member Wolfe said the department testified that they do not intend to deliver the documents. That is an admission that there is a violation.

Chair Comstock said that he wanted to be clear that the SOTF has held on several occasions that the "prop G calendar" does not preclude the production of an official's calendar, which is a public document, but the language in prop G merely sets a floor for the minimum of information that must be produced when a calendar is requested.

Member Sheppard said that Ms. Thompson has not admitted to a violation, only that she has not provided documents, and until a court or this body finds a violation, she has not admitted to a violation.

Member Wolfe asked Ms. Thompson if she would provide a calendar other than the "prop G calendar?" She responded that she would not.

Member Knee asked if the question was whether Mr. Crossman was requesting future calendars and that those must be made available.

Mr. Crossman stated that CPRA places no restriction on future calendars, and that therefore his request was to make it very clear that, if a record has been created, it is a public record, whether future or not. He stated that CPRA, provides the most sunshine in this matter and therefore controls. He asked for whatever is available at the time.

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 Mayors' 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 Head's 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 Pilpel said he did not feel that §67.26 and §67.29 (5) were applicable because there was no response from the Mayor's Office on which to base a violation, though he agreed that there was a 67.25 timeliness violation, 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.

DCA Llorente said that it is up to the discretion of the Chair as to whether to divide the question, Robert's Rules notwithstanding.

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.

Member Pilpel asked to have the vote rescinded and carried forward to our next meeting.

Member Knee stated that he believed that such a motion must come from someone on the prevailing side.

Member Pilpel stated that an order to rescind is in order from any member, while an order to reconsider does require the motion come from someone from the prevailing side.

Chair Comstock asked DCA Llorente to explain the difference between a motion to rescind and reconsider.

DCA Llorente: In this case, a motion to rescind is tantamount to a motion to reconsider. You cannot merely rescind the vote without replacing it with another motion, and he would consider the proper motion was to reconsider.

Member Wolfe: rescinding an item is a motion to wipe it from the record, while a motion to reconsider would take the item back to the point where it was before the item was seconded, such a motion needs to be agendaized for the next meeting so the public has an opportunity.

Member Cauthen said the motion would need a supermajority.

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.

Member Wolfe asked that the Chair be called last in case there is a tie and the tiebreaking vote should come from the Chair.

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 for 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 availability 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

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

The motion failed for lack of member majority (6). 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, i.e., 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 all available documents to Mr. Worsley numerous times and has waived payment.

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

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 Commission's 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 agendaize 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 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, respectfully, 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 strengthen his position and that of other complainants if Mr. Grossman were 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. He said the problems of a complainant are not considered as much as they should be by the Task Force. He said the complainant is dependent on the good will, good faith of the departments who should honor the spirit and goals of the Ordinance, but often they do not wish to, at which time they call in the City Attorney to assist them in making the compliance more difficult or not

happen at all.

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 departments at the hearing is not fair to the complainant. He said that the questioning by the SOTF of both parties should be fair, and that complainants should have an opportunity to answer issues that are brought up during questioning of a department, but frequently that is not allowed and that attendance by complainants should be optional because the documentation that they submit should be sufficient. He thinks having to attend three, and sometimes more meetings is an unfair burden on the complainant.

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

Member Wolfe said he is sensitive to City staff's time and knows 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.