

Date: April 22, 2008

Item No. 10

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Compliance and Amendments for April 9, 2008**
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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.



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

Wednesday, April 9, 2008  
4:00 p.m., City Hall, Room 406

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

**Call to Order** 4:05 P.M.  
**Roll Call** **Present:** Knee, Comstock, Craven, Pilpel, Wolfe (in at 4:42)  
**Absent:** Sheppard

**Agenda Changes:** Item #9 was heard after item #2 and item #6 was heard after item #9

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

Agenda change:

The Administrator asked to hear item #6 after item #2, because Mr. Rustom will need to leave at 5:00 PM. Without objection.

1. Continued: Approval of minutes of March 12, 2008.

Public Comment: None

Motion to approve the minutes of March 12, 2008. (Comstock / Craven)  
Ayes: Knee, Comstock, Craven, Pilpel  
Absent: Wolfe

2. 07088 Hearing on the status of the January 8, 2008, Order of Determination (OD) of Kimo Crossman against the Assessor's Office (AO).

Speakers: Kimo Crossman, Complainant, referred to page 23 of the packet and said that only the Prop. G calendar was provided; that he asked for all detailed calendars but they were not provided. He also said the names of employees were not provided. Zoon Nguyen, for Respondent, referred to her letter on page 17 and said she was here to answer questions.

Mr. Crossman, in rebuttal, said the AO still refuses to provide the names of employees, to provide a revised calendar, or to address how they will revise the

process. He said he is uncertain that disclosing personal information is an invasion of privacy.

Public Comment: None

Member Craven asked if Assessor Phil Ting has a separate calendar from the Prop. G calendar? Ms. Nguyen said she has no knowledge of a separate calendar. She also said employees have asked not to be identified and that the calendar shows the employees' title and may also include the employees' initials.

Member Craven said there is no justification for non-disclosure of employees' names unless for whistleblower or anti-harassment protection. She said she doesn't believe the time and date of meetings or the time spent are attorney-client-privileged, that only what is discussed with the attorney is privileged.

Member Pilpel said he doesn't believe any additional information is required on the Prop. G calendar. He asked if other deputies were included in the 15 meetings with the City Attorneys. Ms. Nguyen said yes, that the meetings were mostly with the deputies of various teams, and that information was discussed pertaining to potential litigation.

Member Pilpel said he isn't certain if there is any further action needed.

Member Comstock said Ordinance §67.29-5 nor the California Public Records Act does exclude the disclosure of an employee's name; that the redactions were not justified.

Chair Knee said the spirit of the Ordinance, CPRA, and Prop. 59 is that there be a broad interpretation regarding disclosure and a narrow definition regarding withholding.

Motion to refer the item to the Task Force for a finding of a violation of Ordinance §67.21(b) against the AO. The Committee further recommends that the AO be referred to the appropriate enforcement agency for failure to keep withholding to a minimum, by redacting the date and time of the meeting and redacting and/or replacing City employees initials/names from the calendar with job titles. (Craven / Knee)

DCA Llorente said the City Attorney's Office (CAO), in interpreting §67.29-5, looked at the narrow view and the Task Force is looking at the whole of the Ordinance including §67.21 and the CPRA, which will be a recurring issue; that he's not certain whether this matter can be settled at this level. He said he's not certain whether the actions are willful but that the AO is following an interpretation.

Member Pilpel asked Ms. Nguyen if the department responded to the OD by the 5-day response deadline stipulated in the Ordinance. Ms. Nguyen said yes. Member Pilpel said that since the department has responded as per the OD he does not support a referral.

Member Craven said that at the time of the hearing Ms. Nguyen could not tell nor disclose to the Task Force what was redacted, so it is not reflected in the OD.

Amended motion, in light of the information provided at the Compliance and

Amendments Committee about information that has been redacted, including the redaction of the date and time of the meeting with the CAO and redacting and/or replacing employees' names with job titles, the Compliance and Amendments Committee refer this matter back to the Task Force with a finding of a violation of §67.21(b) and if adopted that the matter be referred to the appropriate enforcement agency for failure to comply with the Ordinance. (Craven / Knee)

Member Pilpel argued that the proposed motion is a new format that requires a new hearing on the merits of an additional violation allegation. He questioned the appropriateness of the motion and whether the department would be denied due process.

DCA Llorente urged the Members to be guided by their OD. He said the AO has responded as requested and although the response is not acceptable, it isn't a violation of the OD. He said that since the Committee has new information and does not agree that redactions are justified, the department may be instructed to release the information and that the matter may be referred to an appropriate agency if the department does not comply.

Member Comstock said the AO set a bad precedent by not disclosing information earlier, and that referral is the best course of action.

Member Craven proposed a procedure suggesting that, since there was a lack of information at the initial hearing, the matter be returned to the full Task Force for a subsequent hearing recommending that the Task Force find a violation of the Ordinance for failure to produce the requested information under §67.21 (b). She said that if the AO stands behind its original arguments and will not produce the two categories of information, the Task Force could find a violation and immediately refer it because there would be no use in forwarding the matter back to the Compliance and Amendments Committee. She said that this is one way of returning the issue to the Task Force for a determination and resolving any due process issue.

DCA Llorente said he would totally agree with the proposed procedure.

Member Pilpel said he doesn't agree that a violation on a new OD or different OD could be made and referred at the same meeting without a waiver from the respondent without sufficient notice

Motion to refer to the full Task Force a finding that, based on subsequent information provided as required by the OD of January 8, 2008, the AO has impermissibly redacted and/or withheld information from the Assessor's calendar, specifically the date and time of the meeting with the CAO and redacting and/or replacing City employees' names from the calendar with job titles. The Compliance and Amendments Committee recommends that there be a hearing and a finding of a violation of §67.21(b), and that at the discretion of the full Task Force the issue be returned for further proceedings to the Compliance and Amendments Committee or if it appears from the department that their position has not changed that it be referred to the appropriate agency for enforcement. (Craven / Knee)

Ayes: Knee, Comstock, Craven, Wolfe

Noes: Pilpel

Chair Knee informed Ms. Nguyen that at the next Task Force meeting that the AO send a knowledgeable person regarding the calendar to discuss the redactions that were made. Along with a detailed explanation of the two outstanding items.

3. 07096 Hearing on the status of the February 26, 2008, Order of Determination (OD) of Kimo Crossman against the Mayor's Office (CAO).

Speakers: Kimo Crossman, Complainant, said that he did not get any information in response to the OD and urged a referral to the appropriate bodies.

Public Comment: Allen Grossman said that failure to attend and to respond by the Mayor's office is clearly a willful failure.

Motion to continue. (Pilpel/Craven)

Ayes: Pilpel

Noes: Knee, Comstock, Craven, Wolfe

Motion to refer the item to the Task Force with a recommendation that the Mayor's Office be found in willful failure to comply with the Sunshine Ordinance for failure to keep withholding to a minimum, failure to provide the requested daily calendar, and failure to appear in compliance with the Order of Determination issued by the full Task Force on February 26, 2008; that referral, based on that finding, to the Ethics Commission and the Board of Supervisors for enforcement be considered.

(Comstock / Wolfe)

Ayes: Knee, Comstock, Craven, Wolfe

Noes: Pilpel

4. 08004, 08005  
&  
08007 Hearing on the status of the March 25, 2008, Order of Determination of Kimo Crossman against the City Attorney's Office (CAO).

Speakers: Kimo Crossman, Complainant, said he did not receive any records per the OD, and urged a referral for willful failure.

Chair Knee read an e-mail from the CAO that said that its position has not changed and that a representative would not be attending the meeting.

Public Comment: Allen Grossman said failure to appear is serious and should have some sanctions. He said Alexis Thompson, the CAO's deputy press secretary, was not qualified to respond to the complaint. He urged Member Pilpel to recuse himself for lack of objectivity for any matters pertaining to Mr. Grossman.

Member Pilpel said he holds no bias against Mr. Grossman, and that the communications from the CAO is not timely he would support referral.

Motion to refer the item to the Task Force with a recommendation that the CAO be found in willful failure to comply with the Ordinance, for failure to produce records regarding communications between the CAO and the District Attorney in compliance with the OD of March 25, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered. (Comstock / Craven)

Ayes: Knee, Comstock, Craven, Pilpel, Wolfe

5. 08006 Hearing on the status of the March 25, 2008 Order of Determination of Kimo Crossman against the City Attorney's Office.

Speakers: Kimo Crossman, Complainant, said the Supervisor of Records has not released any rulings on this matter and urged the Committee to refer the matter to the appropriate body and to name Buck Delventhal and the Supervisor of Records in the referral.

Public Comment: None.

Motion to refer the item to the Task Force with a recommendation that the CAO be found in willful failure to comply with the Ordinance for improperly redacting [non-] attorney-client privilege and work-product from the e-mails produced in compliance with the OD of March 25, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered. ( Comstock / Wolfe)

Ayes: Knee, Comstock, Craven, Pilpel, Wolfe

6. 08013 Hearing on the status of the March 25, 2008 Order of Determination of Kimo Crossman against the Sunshine Ordinance Task Force Administrator.

Speakers: Kimo Crossman, Complainant, said he did not receive the e-mails per the OD, and urged referral and that an example be made of the Administrator. Frank Darby, Administrator, said that while the Department respects the right of the Task Force to set policy, after consulting the City Attorney's Office and absent clear legal basis, the office will not provide the third-party e-mail addresses.

Mr. Crossman, in rebuttal, said he wants the refusal in writing. He said he met with the Clerk of the Board (COB) last week and she said the CAO is researching the issue; that the Administrator is operating on his own. He urged referral to the Ethics Commission, Board of Supervisors, the District Attorney and the state Attorney General.

Public Comment: Allen Grossman said the Administrator is subject to the management of the Task Force. He said the Administrator works for the Task Force, not the CAO or the COB, and should follow the Task Force's instructions.

Member Pilpel asked Mr. Darby if the COB redacts e-mail addresses from its "C" Pages. Mr. Darby said he was not certain.

Mr. Crossman responded that the COB said during their meeting that the office does not redact anything from the "C" Pages.

Member Pilpel asked DCA Llorente if the SOTF Administrator is required to take policy direction from the COB. Mr. Llorente said the Ordinance is not clear on that matter. He said the Administrator is not hired or evaluated by the Task Force, but reports to the COB.

Member Wolfe asked Mr. Darby the name(s) of the City Attorney(s) that he consulted and if he is the staff for the SOTF or the COB. Mr. Darby responded that he had verbal conversations with Paul Zarefsky and Cathy Barnes, and that he is on the staff of the COB, who provides administrative support to the SOTF.

Member Pilpel suggested the Task Force develop it's own policy for the

Administrator regarding non-redaction of e-mails.

Motion to refer the item to the Task Force with a recommendation that the Administrator be found in willful failure to comply with the Ordinance, and failure to keep withholding to a minimum, and be ordered to provide the requested unredacted personal e-mail addresses in compliance with the OD of March 25, 2008; that referral, based on that finding, to the Board of Supervisors for enforcement be considered. (Comstock / Wolfe)

Ayes: Knee, Comstock, Craven, Wolfe  
Noes: Pilpel

Member Craven said that although she supports the referral, she doesn't think that it rises to the level of willful failure, because the matter is not specifically addressed in the Ordinance.

7. Possible amendments to Sections 67.30, 67.33, and 67.35 of the Sunshine Ordinance and subsequent sections as time permits.
  - a. Sec 67.30 The Sunshine Ordinance Task Force.
  - b. Sec 67.33 Department Head Declaration.
  - c. Sec 67.35 Enforcement Provisions.

Public Comment (PC) re Section 67.30: Kimo Crossman said Member Wolfe asked that this section be agendized because he wanted to amend it to give the Task Force some perquisites and other benefits. Allen Grossman referred to his proposed amendments (packet pages 108-125) and asked that the definition regarding disability be changed (packet page 111). He also asked that the Committee accept new subdivision (d) regarding what the SOTF should embrace in its own by-laws.

The Committee discussed Member Cravens proposed changes to Article IV

Section 67.30 was discussed and the Administrator recorded recommended amendments.

Chair Knee, by consensus of the Committee, asked the Administrator to agendize Sections 67.33 to 67.37 for the May 14, 2008, meeting, and new proposed sections.

8. Administrator's report.

The Administrator made the report. He informed members that the deadline for submitting applications for a seat on the Task Force is Monday, April 21, 2008, and that the BOS Rules Committee plans to screen applicants on Thursday, May 1, 2008.

Public Comment: None.

9. Public comment on items not listed on the agenda. Public comment will be held at 5:00 p.m. or as soon thereafter as possible.

Public Speakers: Kimo Crossman urged Member Pilpel to look at CPRA Section 6253 (e), which allows greater disclosure. He said the chair should run the meeting and not non-chairs, and urged the Committee to ask the new COB to provide a flat-screen video monitor so the public can follow along when proposed amendments to the Ordinance are discussed.

Allen Grossman said the Ordinance does not exempt or limit disclosure of calendars, and that the City Attorney's advise consistently conflicts with the direction of the Task Force.

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

Speakers: DCA Llorente said he will be late for the April 22, 2008, Task Force meeting, arriving at approximately 6:00 or 6:30 PM. He said no other person from his office will be available to attend, because Rosa Sanchez will be out of the country.

Adjournment: The meeting was adjourned at 7:46 p.m.

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