

Date: May 27, 2008

Item No. 12

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

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Draft Minutes: Compliance Amendments for May 14, 2008**
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Completed by: Frank Darby

Date: May 21, 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  
COMPLIANCE AND AMENDMENTS COMMITTEE  
DRAFT MINUTES**

Wednesday, May 14, 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** 4:04 P.M.  
**Roll Call** **Present:** Knee, Comstock, Craven, Pilpel (in at 4:10)  
**Absent:** Sheppard  
**Excused:** Wolfe

**Agenda Changes:** Item #6 was heard after item #4a

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

1. Approval of minutes of April 9, 2008.

Public Comment: None

Motion to approve the minutes of April 9, 2008. (Comstock / Craven)

Ayes: Knee, Comstock, Craven

Absent: Pilpel

Excused: Wolfe

2. 08018 Hearing on the status of the April 22, 2008, Order of Determination (OD) of Kimo Crossman against the Sunshine Ordinance Task Force Administrator.

Speakers: Kimo Crossman, Complainant, said he received scanned documents 105 days after he had requested them. He said he appreciates the new scanning policy and that most e-mail systems can't handle 15 MB, however there should be no limitation. He said the Clerk's Office should use other free services/methods such as *yousendit.com* to distribute files over 15 MB rather than saving to CD. Frank Darby, Respondent, said the documents were provided pursuant to the OD issued by the Task Force. He referred to the new Scanning Policy issued by the Clerk's Office and said the file limitation is based on the limits of the departments e-mail system and that the resolutions of the scanners are set at 200 DPI.

Kimo Crossman, in rebuttal, said he wants to see greater flexibility in the distribution

of the files rather than CD.

Member Craven said the Clerk's policy is a good start and that most e-mail data bases can handle only about 6 MB. She said the administrator should have responded within 5 days after issuance of the OD.

Member Pilpel said he did not agree with the language in the OD regarding the SOTF policy. He asked if the documents had been distributed to the parties. Both parties confirmed the documents had been distributed.

Chair Knee said he does not see a need for any further action.

No action taken.

3. Discussion re developing recommendations of the document retention policy of the Board of Supervisors.

Member Pilpel asked what the item was about.

Member Knee said it was about the Board's need to have a retention policy.

Administrator Darby responded that SOTF Chair Comstock had asked at the April 22, 2008, Task Force meeting to agendize the matter with the CAC, however, he didn't know why.

Member Craven said the issue was whether the Board's policy was in compliance with the law regarding retention of e-mails. She said the Committee needs to see the Board's e-mail policy, retention schedule and other applicable retention requirements.

Member Pilpel asked that §8.1 to 8.3 of the San Francisco Administrative Code also be provided.

Public Comment: Kimo Crossman said he recalls that the matter is due to concerns re deletions of e-mails by the SOTF Administrator. He said e-mails should not be deleted, but be retained for two years at a minimum; that printed e-mail is not the original.

Member Pilpel said he is not certain that all e-mails need to be retained for 2 years.

Chair Knee said the law is clear in the Sunshine Ordinance, CPRA and Prop. 59 that e-mail correspondence is a public record.

Continued without objection.

4. Possible amendments to Sections 67.33 to 67.37 of the Sunshine Ordinance, additional proposed new sections and subsequent sections as time permits.

- a. Sec 67.33 Department Head Declaration.
- b. Sec 67.34 Willful Failure Shall Be Official Misconduct.
- c. Sec 67.35 Enforcement Provisions.
- d. Sec 67.36 Sunshine Ordinance Supersedes Other Local Laws.

e. Sec 67.37 Severability.

Member Pilpel submitted and discussed proposed language for §67.33

Public Comment (PC) re §67.33: Kimo Crossman said there is too much information to adopt the proposed language on such short notice. He said he does not like that the Task Force can't approve the annual Sunshine Training, and urged the Committee to take no action on the proposed language.

Continued without objection.

Chair Knee asked the Administrator to agendaize §67.33 for next month's meeting.

The Committee recessed from approximately 5:05 PM to 6:07 PM after it was learned the City Hall entrances were closed due to a bomb threat, which prevented access to the meeting by members of the public.

Proposed new Section 67.38 to 67.40 submitted by Member Craven were discussed and the Administrator recorded recommended amendments.

Public Comment re proposed new §67.38 to 67.40: Kimo Crossman commented:

- §67.38 = no comment
- §67.39 (a) = add language that prohibits the City Attorney's Office from providing advice regarding the Sunshine Ordinance.
- §67.39 (b) = add a requirement that oral communication with the City Attorney regarding sunshine or ethics matters be documented.
- §67.40 = 1) Limit departments' response time to Orders of Determination to only 5 calendar days, 2) require departments to post violations for 5 years on their website, and 3) add language to identify the entity to whom violations by the Ethics Commission may be referred, and empower the Task Force to agendaize a referred matter with the Board of Supervisors.

The Committee, by consensus, agreed to move subsection 67.38 (f) to 67.39 (d) and 67.38 (e) to the section titled "Response for Administration."

Motion accepting proposed new §67.38 submitted by Member Craven. (Comstock / Knee)

Ayes: Knee, Comstock, Craven, Pilpel

Excused: Wolfe

Proposed new §§67.39 and 67.40 submitted by Member Craven were discussed and the Administrator recorded recommended amendments.

The committee, by consensus, agreed to move §67.39 before §67.38 and to renumber the sections.

DCA Llorente to reword the language in §67.40 (d) (2)

Chair Knee, by consensus of the Committee, asked the Administrator to agendaize all of Article IV and proposed new sections for the June 11, 2008, meeting.

5. Administrator's report.

- The Administrator made the report.
- He informed members that there are four complaints to be heard at the May 27, 2008, Task Force meeting.
- That the BOS Rules Committee will screen applicants on Thursday, May 15, 2008, for seats 6 and 7.
- The Board approved the new appointments yesterday. Members will need to be sworn in on May 27, 2008, prior to the meeting.

6. 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 said the Mayor's veto of the audio-video recording was overridden by the Board and that the matter is now about obtaining the funds. He urged the Task Force to implement the policy now by requiring the Administrator to post the digital recordings on the SOTF website. He said there is no dispute that e-mails are public records that should be retained, but that voice messages are not being retained.

Member Knee asked Mr. Crossman about the cost for audio-video recordings. Mr. Crossman said the cost is \$76K/year for 1 FTE and \$50K one time cost for equipment.

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

Member Knee informed members that on October 17 and 18 the California First Amendment Coalition will have its annual Open Government Assembly at UC Berkeley.

Adjournment: The meeting was adjourned at 7:37 p.m.

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

