

Date: June 24, 2008

Item No. 8

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Compliance and Amendments for June 4 & 11, 2008**
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Completed by: Frank Darby

Date: June 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.



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

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

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

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

Call to Order 4:10 P.M.
Roll Call **Present:** Knee, Comstock, Craven, Pilpel
Excused:: Sheppard

Agenda Changes: None

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

1. Possible revisions to the Sunshine Ordinance Article 4

Sec. 67.34 The Sunshine Commission

Public Comment: Kimo Crossman said he hopes the committee would remove the physically disabled member requirement because the clause is problematic.

Motion to strike out sentence regarding the disability requirement (Page 88/line 9 thru 12 . (Pilpel / no second)

Motion to designate one of the four general public seats for a member of the public with a disability that meets the definition of disabled under the American Disabilities Act. and who has demonstrated interest in citizen access and participation in local government. (Pilpel / Knee)

(Amending lines 3 – 5 on 88 to incorporate lines 9 – 12)

Ayes: Pilpel
Noes: Knee, Comstock, Craven

Motion to add “when possible” in line 9 after “shall include.” (Comstock/Pilpel)

Ayes: Knee, Comstock, Pilpel
Noes: Craven

Motion to move sentence starting with "The City Attorney" on line 14 to the end of the section on line 24 to new 67.38 (a) which is on the role of the City Attorney's Office. (Craven/ Comstock)

Ayes: Knee, Comstock, Craven, Pipel
The motion passes

Motion to end sentence on line 20 to end at "pertinent" and to strike out the rest of the sentence. (Pipel/ Comstock)

Ayes: Knee, Comstock, Pipel
Noes: Craven

Public Comment: Grossman said he wants sentence regarding city Attorney's advisory role with the commission removed because the advisor is the assigned deputy city attorney. He also presented a handout.

Motion to change "it" to "the Commission" in line 20. (Pipel/Comstock)
Without objection.

Motion to strike out "at its request" on line 16. (Knee/Comstock)

Ayes: Knee, Pipel
Noes: Comstock, Craven

Motion fails

Motion to change line 9 on page 88 to read "The commission shall include when possible at least one member with a disability as defined by the Federal Americans with Disabilities Act." (Knee/Comstock)
Without objection

Motion to replace "appointive" with "voting" on page 89, line 6. (Knee/Comstock)
Without objection

Changing "District Attorney or the State Attorney General" to "District Attorney and the State Attorney General" on line 20 on page 89. . (Knee/Comstock)
Without objection

Motion to replace "is empowered to" with "may" on page 89 line 19. (Pipel/Comstock)
Without objection

2. 67.31 Sec.67.35 Responsibility of Commission

Public Comment: No Comment:

Line 23 the Board

The Board of Supervisors shall provide sufficient staff, facilities, equipment and any

other resources to enable the Sunshine Commission to fulfill its duties under this ordinance. The Clerk of the Board of Supervisors shall provide at least one full time staff person, who shall be the Administrator of the commission, to perform administrative duties for the commission including assisting any person in gaining access to public meetings and public information. (Pilpel/Comstock)
Without objection

67.32 Sec. 67.36 (a) Provision of services to Other Agencies

Public Comment:: None

Member Comstock suggests public comment to be unrestricted, as he believes the privilege will not be abused.

Motion to remove sentence starting on page 92 line 23. (Pilpel/Comstock)

Mr. Grossman said the Task Force needs to consider the private public partnerships where meetings are not open to the public.

Mr. Crossman suggested leaving it the way it is because the City Attorney has already signed off on it.

Ayes: Comstock, Pilpel

Noes: Knee, Craven

The motion fails

67.32 Sec. 67.36 (b)

Motion to start sentence on page 93 line 1 to start as paragraph b. (Pilpel/Comstock)

Subsection (a) on line 11 page 92 is restored.

67.33 Sec. 67.37 Department Head Declaration

Public Comment: Mr. Crossman said the paragraph need not be changed because it is concise.

Continued to June 10, 2008, and include Member Pilpel's letter in packet.

Sec. 67.38 (a) Role of City Attorney's Office, Advice Shall Be Public Information

No change

Sec. 67.38 (b) through Sec. 67.38 (e)

Public Comment: Mr. Grossman said the paragraph is repetitive because most of it is in of 67.21 (k). He wanted "act as legal counsel to" and substitutes it with "assist" (b). He also wanted paragraph (c) to read that the City Attorney's Office should not provide oral advice. Mr. Crossman said this paragraph needs to include the Ethics law as well as confront Sheriff's and DA's assertions that they don't have to release their communications on open government matters.

Motion to replace "act as legal counsel" with "directly or indirectly" in paragraph (b). (Comstock)

Motion withdrawn

Sec. 67.38 (b) Continued to June 11, 2008.

Mr. Grossman said the playing field has to be leveled by keeping the City Attorney out of the process. Mr. Crossman said the section needs to be rewritten and members of the public requesting documents be directed to the administrator to review past Task Force decisions. by way of an annotated ordinance.

Motion to reinsert "or any person having custody" in paragraph (b). (Erica/Comstock)

Public Comment: None

Ayes: Knee, Comstock, Craven
Noes: Pilpel

Sec. 67.39 (a) Hearing and Orders of Determination

Public Comment: Mr. Crossman wanted to know if undisclosed records could be subpoenaed. He also said the language should be changed to cover any violation of the ordinance.

Motion to reorganize the section. (Pilpel/Comstock)

Comstock withdraws motion.

Motion to call question. (Comstock/Knee)

Ayes: Comstock
Noes: Knee, Craven, Pilpel

Discussion continues.

Motion to replace "the public meetings or public records provisions of the" with "this" in paragraph (a). (Craven/Comstock)

Ayes: Knee, Comstock, Craven
Noes: Pilpel

Sec. 67.39 (b)

Motion to strike out "other" in first line of paragraph (b) (Erica)
Without objection

Public Comment: Mr. Grossman said the City Charter can be amended in a lot of ways including prohibiting the commission from doing something it wants to do. Mr. Crossman said to allow for in camera review otherwise it does not solve anything.

Motion to strike out the City Charter in paragraph (b). (Comstock/Knee)

Public Comment: Mr. Crossman recommended the motion.

Ayes: Knee, Comstock, Craven

Noes: Pilpel

Sec. 67.39 (c)

No changes

Sec. 67.39 (d)

Motion to replace paragraph with "The Order of Determination shall be issued to the complainant and the respondent and shall be posted on the Commission's website."
(Pilpel/Comstock)

Public Comment: Mr. Crossman was against removing the timing mentioned in the section.

Ayes: Comstock, Craven, Pilpel

Noes: Knee

Motion to move first 2 sentences of (a) to (d). (Pilpel)

Motion failed because of lack of second

Motion to move last section in (d) and insert it at the end of (a). (Craven/Comstock)

Public Comment: None

Without objection.

Sec. 67.40 Administrative Enforcement Provisions

Public Comment: Mr. Crossman suggested including timing in paragraph (a) and expressed concern that the section allows for enforcement of other provisions of the Sunshine Ordinance that are not related to public records. He also said the Ordinance should provide for change in anti-Sunshine department policies. Mr. Grossman said paragraph (g) is not clear and needs to be rewritten.

Motion to start paragraphs (b) and (c) with "Upon issuing an Order of Determination."
(Knee)

Without objection.

Motion to adopt the section. (Erica/

Public Comment: None

Ayes: Knee, Comstock, Craven

Excused: Pilpel

Sec. 67.41 Willful Failure Shall Be Official Misconduct

Public Comment: Mr. Grossman said it is difficult to find an office or entity guilty of official misconduct. Mr. Grossman said he wanted the Task Force to be aware that the City Attorney's Good Government Guide says the Ethics Commission can hear complaints against elected officials and department heads and not against other City employees.

Motion to adopt. (Comstock/Knee)

Without objection

Sec. 67.42 (a) Referrals and Enforcement by Ethics Commission

Public Comment: Mr. Crossman said he hopes this section will be effective and related an event in Florida where an entire governing body was found to be in violation of their open government laws and fined. Mr. Crossman said this section allows the Ethics Commission to question the Commission's referrals because the Charter overrules the Ordinance.

Motion to add a new paragraph (v) to read as "The Sunshine Commission may, in a referral of a finding of official misconduct, recommend the amount of fine that may be imposed" and renumber the following paragraphs.

Public Comment: Mr. Crossman said the Task Force already has the authority to recommend a fine.

Ayes: Knee, Comstock, Craven

Excused: Pilpel

67.42 (b)

Motion to approve section. (Comstock/Knee)

Ayes: Knee, Comstock, Craven

Excused: Pilpel

Sec. 67.43 Public Enforcement Provisions

Public Comment: None

Motion to approve section. (Comstock/Knee)

Ayes: Knee, Comstock, Craven

Excused: Pilpel

Member Craven said the committee needs to address three significant parts.

- Look at the entire proposals and check for consistency and see if any section or paragraph has been overlooked.
- Review prior amendments that were submitted in conjunction with Supervisor Chris Daly's July 12, 2004, memorandum that included suggestions.

- Start work on the annotations.

The administrator, she said, also has to look at provisions that were adopted or considered by the full Task Force, accept the changes to get a clean document, and redline it against the existing ordinance.

The same also has to be done, she added, to what was passed by the Compliance and Amendments Committee but have yet to be adopted by the Task Force.

Article 3, §67.20 based on Member Craven's suggestion was discussed and the Administrator recorded recommended amendments.

Motion to accept changes and adjustments. (Craven/Comstock)

Public Comment: Mr. Crossman said he was pleased with the changes.

Adjournment: The meeting was adjourned at 7:30 p.m.

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



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

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

Wednesday, June 11, 2008
4:00 p.m., City Hall, Room 406

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

Call to Order 4:10 P.M.

Roll Call
Present: Knee, Comstock, Chu, Pilpel
Absent: Sheppard
Excused: Craven

Deputy City Attorney: Rosa Sanchez
Administrator: Frank Darby
Clerk: Chris Rustom

1. Approval of minutes of May 14, 2008.

Public Comment: None

Motion to approve the minutes of May 14, 2008. (Comstock / Chu)
Ayes: Knee, Comstock, Chu
Excused: Craven, Pilpel

2. Approval of minutes of June 4, 2008.

Public Comment: None

Motion to approve the minutes of June 4, 2008. (Comstock / Chu)
Ayes: Knee, Comstock, Chu
Excused: Craven, Pilpel

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

Speakers: Kimo Crossman said the issue is not about the retention policy of the Board of Supervisors but of the Sunshine Ordinance Task Force. He cited cases in San Jose, Missouri, North Carolina and Washington, D.C., where the issue of retaining email records is gaining prominence. He urged the Task Force to adopt its

own two-year preservation policy for emails and other electronic documents.

Member Comstock said he had no comment on the BOS retention policy.

Member Pilpel said if the Task Force does not have the power to change the Board of Supervisors' policy, it could certainly urge the Clerk of the Board to make changes in a manner the Task Force deems appropriate. He also wanted to separate the Sunshine Ordinance Task Force destruction and retention policy from the original that covered all departments under the Clerk of the Board.

Chair Knee continued the discussion to the July 9, 2008, meeting and requested that the Board of Supervisors retention and destruction policy be rearranged and categorized by department.

Member Pilpel requested the presence of Records and Information Manager Frank Darby at the next Compliance and Amendments Committee meeting and added that he would welcome information from Board of Supervisors management on the possibility of extending the retention period beyond what is required by law.

Continued without objection

4. Possible amendments to Article IV of the Sunshine Ordinance.

Chair Knee said since the Task Force had forwarded the proposed ordinance there was no need to take any action on the item. However, he encouraged members of the Task Force and the public to forward their views to Supervisor Ross Mirkarimi.

Public Comment:: Kimo Crossman said he would be sending his comments to the supervisor and requested notice of passive meetings between the supervisor and the City Attorney on Sunshine matters because he would like to be in attendance. He also requested the discussions be recorded for the benefit of those who are unable to attend. On the proposed ordinance, he said, it was important to keep asking for funds that would allow the Task Force to hire outside counsel to enforce the ordinance rather than rely on the Ethics Commission.

Member Pilpel said the meeting should not be structured in such a way that it would turn into a seriatim meeting.

DCA Rosa Sanchez , responding to Member Comstock's request, said she would research if the meetings could be recorded.

Chair Knee said he would contact Task Force Chairwoman Kristin Chu to let her know that the committee discussed and was in favor of recording the meetings.

5. Review of proposed amendments to Articles I and II of the Sunshine Ordinance, as time permits.

Public Comment: Kimo Crossman said he was unhappy with a section of the draft ordinance that deals with elected officials and groups regarding passive meetings. He said he has filed a complaint against the Task Force and would pursue it if the Task Force did not strengthen the language. He also said, the meeting could be

recorded because the Task Force is the client in any discussion involving the City Attorney. Member Sue Cauthen, speaking at the podium, said many bodies advising the Board of Supervisors do not have a website. She wanted to add a subsection in the proposed ordinance to read: "The appointing authority shall create a domain for policy bodies on its website."

6. Administrator's report.

Mr. Rustom said Mr. Crossman had filed two more complaints that needed to be added to the Complaint Log. One complaint was against the Ethics Commission and the other was against the City Attorney's Office.

Public Comment: Mr. Crossman said he was concerned the Task Force was not digitally recording their meetings because it was now a mandate following its approval by the supervisors following Mayor Newsom's veto. He said it was technically possible because he had seen Records Manager Frank Darby record on a laptop.

Chair Knee asked Mr. Rustom to address the issue.

Mr. Rustom said Mr. Darby had addressed the issue during the special Compliance and Amendments Committee meeting held a few days ago, but basically the holdup was because of the budget process. Chair Knee suggested that the Task Force communicate their concern on the matter. Chair Knee also instructed Mr. Rustom to contact Chairwoman Chu and request that this item be placed on the agenda for the next regular Task Force meeting.

Member Pilpel reminded the committee that the item was continued during the last regular Task Force meeting. He also asked that the deputy city attorney advise the Task Force at its next regular meeting on the implementation process.

Mr. Pilpel also said adding the nature of the complaint to the Complaint and Referral Log would be helpful. A follow up letter to the Attorney General and District Attorney would also help, he said.

7. Public comment on items not listed on the agenda.

Public Speakers: Kimo Crossman said Chairwoman Chu should be attending the Compliance and Amendments Committee meetings as it was a very active panel. He also said the purging of emails after 90 days is shocking and should be changed.

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

Member Comstock commended the committee for its work on the proposed ordinance. Chair Knee added, among others, former member Bruce Wolfe to the congratulatory list.

Adjournment: The meeting was adjourned at 7:20 p.m.

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

