

Date: August 26, 2008

Item No. _____

File No. _____

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SUNSHINE ORDINANCE TASK FORCE

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Completed by: Frank Darby

Date: August 20, 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, August 13, 2008
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee, chair, Erica Craven, David Pilpel, Kristin Chu

Call to Order 4:01 P.M.

Roll Call Present: Knee, Pilpel, Chu
Excused: Craven

Deputy City Attorney: Ernie Llorente
Clerk: Chris Rustom

Agenda changes: Items were heard in the following order: 1, 3, 5, 4, 9, 6, 2, 7, 8, 10

Chair Knee announced that the absence of Member Craven was because "she is a brand-new mummy." She gave birth to nine pound ten ounce Oscar Craven-Green, last week.

1. Approval of minutes of July 9, 2008.

Public Comment: None

Motion to approve the minutes of July 9, 2008. (Pilpel / Chu)

Ayes: Knee, Pilpel, Chu

Absent: Craven

2. Continued discussion re: developing recommendations of the document retention policy of the Board of Supervisors.

Public Comment: Kimo Crossman said he has submitted documents to help the committee with its discussions on the subject and had also held meetings with certain records managers who suggested minor tweaks to the policy he had created and would forward the document to the committee before its next meeting. It would basically say keep any record that is created, scan any paper documents and send all electronic documents to the Google groups.

Continued to September 10, 2008. Without objection.

Chair Knee thanked Mr Crossman for providing the committee with "a wealth of

information" relevant to the topic. He also welcomed any member of the public or committee to participate in the research.

Chair Knee submitted a document titled Electronic Records Practices Research Status Report.

- a Discussion re: developing recommendations of the document retention policy for City departments.

Continued to September 10, 2008. Without objection.

- 3 08023 Hearing of the status of the July 22, 2008, Order of Determination of Anonymous Tenants against the Planning Department.

Anonymous Tenants, the complainant, said he had received hundreds of electronic documents from the Planning Department, but the file was incomplete. He also said the department refused to provide the file in pdf format. A review of the file also revealed that certain emails were removed without explanation, he said.

In addition:

- attachments in emails were not provided.
- emails prove there was correspondence between expeditor and planner.
- information not provided incrementally
- assistance not provided in document identification
- no information on meetings.

Respondent Scott Sanchez of the Planning Department said he and Sara Velleve made themselves available when the complainant came to review the file but were not called. He said he does not know how to address the issue of providing documents that do not exist. He also requested that the complainant send their requests to Linda Avery who could coordinate the department's response. The complainant also submitted a list of documents that he wanted.

Linda Avery said she is the custodian of records for the Planning Department and would be willing to answer any question the committee had. She also added that the department receives an inordinate amount of requests and believed staff responds in good faith. With regards to the current complaint, she said she was going to treat it like a litigation issue. She would ask for all documents related to this issue, compile it, ask the City Attorney to see if there are documents that need to be withheld or redacted, create a table of contents and then match it with the complainant's list and note what exists and what does not.

Public Comment: Kimo Crossman suggested the committee continues the matter for a month and asks the parties to report back next month. He also suggested records to be produced daily on an incremental basis. Allen Grossman said the department, from his experience, has a record-keeping problem. A request he made was sent to several people and was finally told it would take weeks because they did not have a database. He also said he was concerned by Ms Avery's process because the city attorney would be unnecessarily redacting documents.

Motion to continue to next meeting (Pilpel / Knee)

Chair Knee said he seconded the motion only for discussion purposes.

The matter was continued to September 10, 2008. Without objection.

- 4 08029 Hearing of the status of the July 22, 2008, Order of Determination of Barry Taranto against the Taxi Commission.

Respondent Jordanna Thigpen of the Taxi Commission said Commission Chair Paul Gillespie is back to the practice of taking speaker cards and likes to hold several meetings on the same topic. She said she is working toward having the full commission not revisit issues worked on the sub-commission level. That would result in more speaking time for the public at the full commission level, she said. Time management was an issue and asked for guidance.

Member Pilpel suggested notifying members of the public before the meeting that the commission is very interested in hearing matters on policy and not personal issues.

Chair Knee read Section 67.15 (c) and said if there was enormous interest on a subject the chair could ask opposing sides to select a representative and give them a number of minutes to present their case.

In summation, Thigpen said she was looking at what other committees and boards were doing and would discuss the issue with Mr Gillespie.

Member Chu suggested discussing the issue with the attorney assigned to the Taxi Commission.

Public Comment: Kimo Crossman said DCA Paul Zarefsky has said that he would be highly suspicious of one-minute public comment periods because it was not sufficient to express one's views in one minute. Supervisor Daly, he said, was criticized in a local newspaper for holding a one-minute public comment session recently. He said the commission should hold more sub-committee meetings at different venues, ask for written comment, ask the public not to use their full allocated time, not to restate what others have said and collate responses.

No motion was made.

- 5 08031 Hearing of the status of the July 22, 2008, Order of Determination of Kimo Crossman against the Ethics Commission.

Continued to September 10, 2008, meeting because Chair Knee would have to recuse himself and with Member Craven excused, there would be a lack of quorum.

- 6 08032 Hearing of the status of the July 22, 2008, Order of Determination of Kimo Crossman against the City Attorney's Office.

Complainant Kimo Crossman said Mr Zarefsky's letter is about rearguing the case and adding more legislative history. The letter also says he's not coming to the hearing, which is a violation, he said. Departments need to come and see their

mistakes, he added. He requested a finding of willful failure and official misconduct. Allen Grossman said Mr Zarefsky's absence is a violation of the Public Records Act and the Ordinance and a finding of official misconduct and the case referred to the Ethics Commission and the State Attorney General. Mr Zarefsky's decision of not to be present also was a display of disrespect to the committee, he said. Mr Grossman also said the City Attorney's guidelines for issuing opinions that is posted on the website was a breach of legal ethics because it was foisting an opinion on the city and its citizens and suggested there be some comment in the recommendation that goes back to the Task Force.

Respondent not present.

Member Pilpel wanted to explore the fact that the opinion of the City Attorney and the findings of the Task Force were always at odds but Chair Knee reminded him that the hearing was only on whether the Order of Determination had been met.

In rebuttal, Mr Crossman said the Task Force was created to interpret the Ordinance, advise departments on how to follow it, and make referrals for any violation. And, he said, if Mr Zarefsky does not want to follow it, he pays for the consequences of official misconduct.

Motion finding that the department failed to provide the requested documents in Word format as ordered by the Task Force's August 4, 2008, Order of Determination and that no reasonable explanation was provided. The matter is referred back to the full Task Force for further action. (Chu / Knee)

Member Pilpel was against the motion because he did not believe the Order of Determination was correct and agreed in part with the City Attorney's position that it was a legal matter and not a question of interpretation.

Chair Knee reminded Member Pilpel that the only question before the committee was whether the department met the Order of Determination.

Motion to continue (Pilpel /)
No second

Roll call on original motion
Ayes: Knee, Chu
Noes: Pilpel
Excused: Craven

Motion fails.

Chair Knee requested Task Force Chair Chu to calendar this item for August 26, 2008.

Member Pilpel noted that there was no recommendation from the committee.

7 Discussion and possible action on the status of the amendments and next steps the Task Force will take with respect to the amendments.

Chair Knee wanted to continue the item until Member Craven rejoined the committee.

Public Comment: Kimo Crossman said the Task Force should ask the Board of Supervisors to adopt the non-controversial elements in the amendments. The Task Force should take advantage of the number of progressive supervisors on the board, he said. He suggested asking Member Craven, Allen Grossman or any other interested attorney to scan through the amendments for inconsistencies. Departments need to be involved in the process, he added.

Member Chu said the 2009 ballot might not occur because of Supervisor Jake McGoldrick's current proposition that mandates elections be held only in even-numbered years. She said a plan needs to be formulated

DCA Llorente said the issue that needs to be looked at is does it go to the voters or to the board. If the Task Force is changing the Ordinance substantively, it needs to go to the voters and the supervisors can only pass a measure if it expands on an existing provision. He noted that even if the Task Force sent the amendments to the City Attorney's Office, the government team would look at it As To Form only when requested by the supervisors.

Member Chu reminded the committee that the McGoldrick proposition could still fail.

Further discussion included having Doug Comstock and Bruce Brugman appear before the Task Force.

Chair Knee continued the matter to the September 10, 2008, meeting. Without objection.

8 Administrator's Report.

Asst. Administrator Chris Rustom said the Complaint Log needed to be updated because two complainants, Kimo Crossman and Charles Pitts, had withdrawn their complaints after the document was created.

Member Pilpel continued requesting an additional entry on the Complaint Log, which stated the nature of the complaint.

9: Public comment on items not listed on the agenda.

Kimo Crossman said he had two issues. The first was that he hoped the meeting was being digitally recorded and the file be posted on the city website. The second was the role of the committee whereas it had used the Orders of Determination to get the records complainants wanted or have it sent it back to the Task Force for referral. And if the Orders of Determination have to be comprehensive, the document has to be longer than it currently is because a simple phrase could have a lot of different meanings.

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

Chair Knee reminded those present that the California First Amendment Coalition

was having its annual First Amendment and Open Government Assembly on October 17 & 18, 2008, at the UC Berkeley Graduate School of Journalism.

Kimo Crossman said the Task Force needs to contact Mr Comstock immediately and aim for the 2009 election to be ahead of the game.

Adjournment: The meeting was adjourned at 6:07 p.m.
This meeting has been audio-recorded and is on file in the office of the Sunshine Ordinance Task Force

