

Date: September 23, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force for August 26, 2008**
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Completed by: Frank Darby

Date: September 17, 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, August 26, 2008
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven (Vice Chair)	Seat 8	Kristin Chu (Chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Allyson Washburn	Seat 11	Marjorie Ann Williams
Seat 5	Ketaki Gokhale		
Seat 6	James Knoebber	Ex-officio	Angela Calvillo
Seat 7	David Pilpel	Ex-officio	Richard Sklar

Call to Order The meeting was called to order at: 4:01 P.M.
Roll Call **Present:** Knee, Cauthen, Gokhale, Washburn (in at 4:13), Knoebber, Pilpel, Chu, Chan(in at 4:15), Goldman, Sklar (in at 4:05)
Excused: Craven, Williams

Agenda Changes: Item 4 withdrawn. 3 moved to September 9 heard before 8

Deputy City Attorney: Ernie Llorente
Administrators: Chris Rustom

1. Approval of minutes of July 22, 2008, meeting.

Public Comment: None

Motion to approve the minutes of June 24, 2008 (Pilpel / Chu).
Ayes: Knee, Cauthen, Gokhale, Knoebber, Pilpel, Chu, Goldman
Absent: Washburn, Chan
Excused: Craven, Williams
2. Report from the Complaint Committee meeting of August 12, 2008.

Committee Chair Nick Goldman made the report.
 - a Appeal of the August 12, 2008, motion by the Complaint Committee to not find jurisdiction of complaint #08036 filed by Juan De Anza against the Department of Public Health for alleged ethics violation while using county money, refusal to invite the public to meeting and cherry picking who gets invited and who doesn't, and denial of financial records.

Complainant not in attendance.
Respondent not in attendance

Public Comment: Kimo Crossman said the TF should find jurisdiction because it has been the TF policy to accept complaints even if they were vaguely written. The TF, he added, had always found jurisdiction if the complaint was about public records and public comment.

Knee said the component about not receiving records makes it a Sunshine case. He wanted to set a hearing date and give the complainant a chance to present his case and if Mr De Anda did not come the TF could find no violation.

Motion to accept jurisdiction (Knee)

Motion to deny appeal. (Pilpel / Knobber)

Ayes: Cauthen, Gokhale, Knoebber, Pilpel, Chu, Goldman

Noes: Knee

Absent: Chan

Excused: Washburn, Craven, Williams

3. 08036 Public Hearing, complaint filed by Juan De Anda against the Department of Public Health for an alleged ethics violation while using county money, refusal to invite the public to meetings and cherry picking who gets invited and who doesn't, and denial of financial records.

Appeal of motion finding no jurisdiction was previously denied under item 2.a.

4. 08027 Determination of jurisdiction of complaint filed by Kimo Crossman against the Mayor's Office of Criminal Justice for alleged failure to respond to a public records request.

Withdrawn prior to the meeting.

- a. Public Hearing, complaint filed by Kimo Crossman against the Mayor's Office of Criminal Justice for alleged failure to respond to a public records request.(action item).

Withdrawn prior to the meeting.

5. 08034 Determination of jurisdiction of complaint filed by Tomas Picarello against Supervisor Jake McGoldrick for allegedly excluding public comment regarding the 2008-2009 budget process.

Chair Chu recused herself because she is a volunteer in Supervisor McGoldrick's office.

Member Knee was named acting chair by Chair Chu. Without objection.

Member Pilpel announced that he took part in the budget hearing process but could be impartial in this case.

Speakers: Complainant Tomas Picarello said he wanted the respondent to be present because the issue was too important to be decided ex parte and agreed to a continuance. He also said he wanted a copy of the 200 pages submitted by the respondent to better prepare his case.

The administrator was told to provide the documents.

Public Comment: None.

Motion to find jurisdiction (Knee / Washburn)

Ayes: Kee, Cauthen, Gokhale, Washburn, Knoebber, Pilpel, Chan, Goldman

Recused: Chu

Excused: Craven, Williams

Public Comment on continuance: Kimo Crossman said he agrees with the continuance because the budget process with limited public comment periods are inappropriate and needs to be addressed.

Motion to continue to September 23, 2008. (Goldman / Cauthen)

Ayes: Kee, Cauthen, Gokhale, Washburn, Knoebber, Pilpel, Chan, Goldman

Recused: Chu

Excused: Craven, Williams

- a. Public Hearing, complaint filed by Tomas Picarello against Supervisor Jake McGoldrick for allegedly excluding public comment regarding the 2008-2009 budget process.

Previously continued.

6. 08038 Determination of jurisdiction of complaint filed by Kin Tso against Animal Control and Welfare Commission (AWC) for allegedly censoring speech made by members of the public.

Public Comment: None

Motion to find jurisdiction. (Goldman / Cauthen)

Ayes: Cauthen, Gokhale, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman

Noes: Knee

Excused: Craven, Williams

- a. Public Hearing, complaint filed by Kin Tso against Animal Control and Welfare Commission for allegedly censoring speech made by members of the public..

Speakers: Complainant Kin Tso said he was a member of fixsf.org, a group formed by volunteers and former SPCA staff who attended a AWC meeting in September to present his views on a recent closure of a hearing dog program.

His group, he said, was told before the meeting that any recommendations by private groups were not within the jurisdiction of the AWC even though the AWC website says the opposite. Not allowing SPCA to speak and telling them to change their topic on the spot amounts to censorship of speech and abuse of power, he said. Kathleen Mathar, for the complainant, supported Mr Tso's version of events. She said a commissioner urged her fellow commissioners to hear out the group but was repeatedly overruled.

AWC Chairperson Sally Stephens, respondent, said the AWC is an advisory commission to the BOS and city agencies. The commission, she said, does not have a budget and staff. Expenses for agendas and minutes come out of her pocket. She is not a lawyer but as chair she strides to do what is required of her. She said she would definitely have said and done things differently at the meeting but has learned from the experience and was deeply sorry people felt prevented from speaking because of her comments. Her reaction, she said, was based on previous experience where the commission overstepped its bounds. There was no attempt, intent or conspiracy to prevent the SPCA from voicing their views. She personally agreed with many of their complaints made at the meetings but had to set them aside when chairing meetings. She said public comment was allowed after she realized that people in the audience wanted to talk about "No Kill." Andrea Brooks, in support of the respondent said she was the vice chair of the commission and that there was a lot of confusion surrounding the issue when it happened. The commissioners, she said, took a recess to clarify the issues and mistakes were made out of misunderstanding among animal people. The goal, she said, was not to stifle concerns but to cautiously approach the subject and not overstep their bounds.

Member Pilpel said his assessment of the situation was that Ms Stephens was doing the best job she could and was too cautious. However he said there was a violation.

Member Cauthen wondered why the commission would go against Section 41.2 of the Health Code and not hear an animal welfare issue in public comment.

In rebuttal, Mr Tso said the ACC-SPCA pact was established in 1994 and was one-sided. His group attended the meeting to talk about animal issues in general based on a newspaper article published the previous day.

Ms Stephens declined to rebut.

Motion finding a violation of §67.15 of the Ordinance. (Pilpel / Cauthen)

Public Comment: Kimo Crossman said there is no harm in letting people speak and recalled that Sylvia Johnston, who used to attend every Board of Supervisors' meetings, was always given the opportunity to speak on any topic. All inferences have to be given to the public, he said.

Ayes: Knee, Cauthen, Gokhale, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman

Excused: Craven, Williams

7. Report: Compliance and Amendments Committee: meeting of August 13, 2008.

Committee Chairman Knee made the report. He said the committee has four members and it needs three members to attend for a majority vote. He said that at their August 13, 2008, meeting the committee did not have enough votes to refer a matter (#08032 Kimo Crossman v City Attorney) to the Task Force for enforcement. That vote failed because the majority was two-to-one. The TF found the City Attorney in violation and the CAC, in his opinion, found that the CA did not meet the requirements of the Order of Determination.

DCA Ernie Llorente suggested putting the matter on the TF's next agenda for discussion and possible action based on the report.

Member Pilpel noted that the minutes reflect that Chair Knee had asked TF Chair Chu to put it on today's agenda. Chair Chu said she took responsibility because she expected the matter to be resolved.

Public Comment: Allen Grossman said he would like to relieve the chair of the full responsibility regarding the issue not being agendized. He said it was the duty of staff who took the meeting minutes and it could have been a reminder for the chair. This matter, he said, was the kind of mischief that goes on at meetings. One is having a member like Member Pilpel who is not objective and two, a deputy city attorney who is not willing to engage in the intellectual process of whether the vote was correct. The absolute majority rule does not apply to committees, he said. DCA Paul Zarefsky's non-attendance and his position on the matter meant the referral should have gone forward. Member Pilpel's vote against referral meant he has no interest in moving forward, a disrespect to the committee and TF.

Kimo Crossman said he agrees with Mr Grossman and said that committees do not have to have majorities. Later, asked DCA Llorente to write an opinion if he disagreed. He then gave the TF a synopsis of his case against the CA's Office and suggested the matter to be agendized at its next meeting.

Chair Chu requested the case be agendized for the next TF meeting.

8. Administrator's Report.

The assistant administrator made the report. Chair Chu asked the administrator to adgendize the digital recording item monthly and to call the departments monthly to get a progress report.. She also wanted a follow up on Craven's request on server space and the size of audio video files. DCA Llorente then explained, at Chair Chu's request, the process involved after a complaint was found to be valid. The Task Force then discussed the roles of the Ethics Commission in the enforcement process.

Public Comment: Kimo Crossman said that the document the Task Force (TF) sends to the Ethics Commission (EC) are referrals and not complaints for them

to investigate. He said that he was not contacted although it was his complaints that were referred to the EC. He claimed that the EC twists the law and uses it to its advantage. He suggested contacting the EC commissioners directly and not staff.

Allen Grossman said he and Mr Crossman attended four successive EC meetings to tell them that they do not have a Sunshine Referrals category in the proceedings. He said the EC is obliged under the Charter to put the TF's finding on the same level as an EC finding. He said he has written to Executive Director John St Croix and his staff on the rules regarding referrals but have yet to receive a response. He added that the commissioners are appointed by the Mayor, the City Attorney, the District Attorney, the Board of Supervisors and the Assessor and the complaints they receive are usually against the Mayor, the City Attorney, the District Attorney, the Board of Supervisors and the Assessor. That reluctance allows Mr St Croix to sit on the referrals, he said.

Member Cauthen said the only person who made a stand on the Ethics issue was former member Bruce Wolfe who left because he was not getting answers. She suggested contacting the commissioners.

Chair Chu asked that the topic be agendized for the next meeting.

Member Pilpel said Task Force members, as decision-makers, need to see unredacted information.

Member Cauthen said a complainant's place of residence helps her in making decisions.

Chair Chu asked the Education, Outreach and Training Committee to discuss the redaction issue.

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

Speakers: James Chaffee said the TF sits atop an entrenched bureaucracy and members have to know how it works to be able to do their job. Member Cauthen, he said, came before the Library Commission two years ago to say she had requested some documents 30 days prior and had not received it as yet. He said a writer for the New Yorker magazine came to San Francisco to do an expose on book dumping. He wanted some records and the Public Access Project took on his case and he sued for access. He said the bureaucrats went after the writer and called him a pornographer and anti-Semitic. Later, he said, another person tried to do the same thing and was told that there were some sexual harassment issues. The bureaucracy came the next day and charged him with pedophilia, and sexual harassment of a child, he said. Nobody knows what really happened, he said, but it took him five years for those charges to be thrown out and to get his job back. You will be told, he said to the members, or may know me as a mass murder or a drug addict. The problem is, he said, if you allow these things to interfere with Sunshine, if you say there is no Sunshine for pedophiles and anti-Semites, there will be no Sunshine at all. The bureaucrats will turn around and say

'Didn't we protect you from the anti-Semites, drug addicts and pornographers.' What's happened is you've been manipulated by fears greater than open government to protect their infrastructure of aristocracy. As long as these things are allowed to exist, there will never be Sunshine. There has to be Sunshine for everyone or there will be Sunshine for none, he said.

Kimo Crossman said the Mayor's representative came and went and wonders if he is already fed up with the TF. He was concerned with departments issuing documents at the last minute. He urged the TF to respond to the practice and not accept documents during meetings because it was unfair to the complainants. He also said there was still no posting of the digital recording of the meetings and was disappointed that the item is not agendaized for the meeting. His impression was that there was to be a report at every meeting on the progress. Cost is not an excuse when it comes to a mandate, he said. If cost is an excuse open government will not exist. The administrator, he said reports to the TF, not to the Board of Supervisors or the Clerk of the Board or Department of Telecommunications and Information Services and if he does not do what Sunshine requires, he needs to be held accountable. He also recommended holding annual and bi-annual job performance reviews of the administrator. It is entirely appropriate to do this because the administrator is the most critical person.

Allen Grossman said he believes Mr Chaffee was a former member of this TF. in its early days. He said Mr Chafee knows what he speaks of. He suggested new members to attend the next CAC meeting where compliance issues would be trashed out pretty thoroughly and when that committee made a recommendation a lot of time has been spent to reach that conclusion. He also said if members haven't taken the training course on the ordinance and open government laws it could be done through the Ethics Commission. The comments he made earlier on Mr Llorente were pretty harsh, he admitted, but there was a reason. He said two incidents earlier in the day involving DCA Llorente were probably incorrect but nothing was said about it. The first involved DPH's presence at the meeting. Mr Llorente advised the chair that since jurisdiction had been denied it was not necessary for them to attend. He said the TF hears comments and positions at least from the complainants and so DPH under 67.21 (b) is required to attend the hearing. The second, he said, was DCA Llorente's statement that because the supervisors are on recess they don't have to attend.

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

Member Washburn said she was calling a Education, Outreach and Training Committee meeting next month.

Member Pilpel said the Rules Committee was also going to meet next month and was pleased that Richard Sklar had joined the TF as an ex-officio and brings years of experience to the TF from inside and outside of government.

Chair Chu asked the administrator to create a Certificate of Recognition for ex-officio member Harrison Sheppard and contact him to come to next month's meeting.

Public Comment: None

Adjournment

The meeting was adjourned at 5:56 p.m.

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