

Date: Oct. 28, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force Sept. 23, 2008**
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Completed by: Chris Rustom

Date: Oct. 23, 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.

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE
DRAFT MINUTES**

Tuesday, September 23, 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	(Vacant)		
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: 4:00 P.M.

Roll Call **Present:** Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel (in at 5:38 p.m.), Chu, Chan, Goldman, Williams, Sklar

Agenda Changes: Item 7, 9 & 10 continued to October 28 meeting and 18 and 8 heard before 6.

Deputy City Attorney: Ernie Llorente

Administrator: Chris Rustom

1. Approval of minutes of August 26, 2008, meeting.

Public Comment: None

Motion to approve the minutes of August 26, 2008 (Goldman / Chan)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Chu, Chan, Goldman, Williams

Absent: Pilpel

2. Special recognition to Harrison Sheppard for his community service as a contributing ex-officio member of the Sunshine Ordinance Task Force.

Mr. Sheppard, who was presented with a Board of Supervisors recognition certificate signed by Board President Aaron Peskin, said it was a great pleasure to have served with the Task Force and was a great pleasure to meet its members. He said he was surprised by Administrator Frank Darby's

telephone call because he believed he was doing his duty to the Mayor, to the Task Force and to the residents of San Francisco. He said he had made some observations during his tenure on the Task Force. Among them was:

- More enforcement measures were needed for the Orders of Determinations to be effective.
- More prudence was needed in deliberations when agencies are trying their best to respond to requests.
- There needs to be a better understanding of the day-to-day administration at government agencies.

Public Comment: Kimo Crossman said he agreed with Mr. Sheppard on enforcement but does not on being reasonable with departments. Complainants come to the Task Force only after unsuccessfully working with the departments for several months. Some do not come at all. All inferences should be provided to those who come. The Ordinance says and any breach of duty is willful misconduct, that it is above any local law and it is every employee' duty to provide information to the public. He also said a part of Mr. Sheppard's service that needs to be remembered is his inability to provide records related to a memo he sent to the Task Force.

3 Report from the Complaint Committee meeting of September 9, 2008.

Committee Chair Nick Goldman made the report.

Public Comment: Kimo Crossman said he has asked for the Board of Supervisors to be added to complaint #08042. Mr. Goldman said the complaint did not include the Board of Supervisors.

4 08034 Continued public hearing, 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 was a volunteer in the supervisor's office. A vote was not taken because it was done during the Task Force's August 26, 2008, meeting.

DCA Llorente said he had requested the administrator distribute copies of the James Chaffee v. Library court document among members.

Complainant Thomas Picarello said Supervisor Jake McGoldrick, as chairman of the Budget and Finance Committee, arbitrarily, capriciously limited public comment until June 19. Subsequent to June 19 there were three public hearings regarding the budget. Numerous discussions were made, millions and millions of dollars were addressed by multiple city agencies. There was substantial discussion of the budget without the opportunity for the public to participate and comment, he said. On June 21, 2008, certain departments' budgets were discussed. That was a week after the supervisor arbitrarily cut off public comment. On June 26, there was another meeting, again no opportunity for the public to participate. The issue is very clear, he said, whether or not the public was allowed to comment.

Pooja Jhunjhunwala, an aide to Supervisor McGoldrick explained the budget process and added that the public comment session on June 19 lasted eight hours.

Vice Chair Craven said given the complexity of the subject to have public hearings at every continued hearing would come at an enormous time and cost.

Motion to find no violation. (Goldman / Washburn)

Respondent and complainant did not rebut.

Member Cauthen said one of the Task Force's duties is to point out to people that real public participation means that the public has the right to make a meaningful comment and that requires some time.

Member Williams said the public needs to speak no matter how long it took.

Public Comment: Kimo Crossman said the process has to be visible. One public comment session was not enough when the budget, the most important document the supervisors vote on each year, was being revised over a span of a few days. The public should be involved throughout the process, he said. Ray Hartz said if citizens have a right to consider in a thoughtful way and comment in a thoughtful way on something as important as the city budget then they should be given that opportunity. Board members should cut off their comment before they cut off the public's comment, he said.

Ayes: Craven, Knee, Cauthen, Washburn, Goldman, Chan

Noes: Knoebber, Williams

Recused: Chu

Absent: Pilpel

5. 08033 Determination of jurisdiction of complaint filed by Charles Pitts against the Human Services Department for not providing information in a timely manner, and withholding documents.

Motion to find jurisdiction (Knee / Goldman)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel, Chu, Chan
Goldman, Williams

- a. Public Hearing, complaint filed by Charles Pitts against the Human Services Department for not providing information in a timely manner, and withholding documents.

Complainant Charles Pitts said he requested the two contracts and all information regarding the closing of Ella Hill Hutch. He said he was given two contracts and two flyers announcing the closure of the shelters over a period of two weeks. He also did not like having to make a deposit for copies of

documents he needed.

Respondent Pamela Tebo said Mr. Pitts sent his request to a different person at a different building, but it was rerouted to her and responded the same day. The department, she said, does not request deposits. She said she wrote to Mr. Pitts to come in to review the documents and see what he wanted because the documents were boilerplate contracts. He did not respond, but filed a Sunshine complaint. In response, she called Mr. Pitts and was able to get him to set up a date to review the documents. He came in and further set up a conference call with another official because he started asking questions about housing and homeless.

Member Cauthen suggested a continuation because Mr. Pitts needed to be more specific and the department given more time to see if the documents exist.

Member Washburn said she was leaning toward finding a violation because Mr. Pitts was given documentation but that it was not responsive.

In rebuttal, Ms Tebo said she would have her staff go through their records and pull what they have in response to Mr. Pitts' request.

Mr. Pitts said whenever he makes a request for documents he always wanted it copied and never sits down to review the records before making a decision.

Motion to find no violation and for the parties to work together and appear before the committee on October 28, 2008. (Cauthen / Chan)

Public Comment: Ray Hartz said he was familiar with contracts having worked with different government departments in Hawaii. This contract could have a clause that said there was no need for either party to do anything if it was terminated or not renewed. There certainly would have been meetings and the minutes would reflect what was said and done, he said. Both parties need to read the contract to see what the requirements were, he added. Kimo Crossman said the department should direct Mr. Pitts to other departments that could have the documents.

On the motion:

Ayes: Craven, Knee, Cauthen, Knoebber, Pilpel, Chu, Chan Goldman
Noes: Washburn, Williams

Member Craven requested the respondent to note what was produced and have the list sent to the administrator for placement in the case file.

6. 08037 Determination of jurisdiction of complaint filed by Kimo Crossman against Supervisor Aaron Peskin for alleged violation of §67.24(a)(2) of the Ordinance for the Board of Supervisors adoption of a contract agreement without providing 10 days of public review..

Member Knoebber disclosed that he had worked with Supervisor Peskin's

office on issues regarding District 3 but could hear the matted unbiased.

Motion to accept jurisdiction (Goldman / Knoebber)

Public Comment: None

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman, Williams

- a. Public Hearing, complaint filed by Kimo Crossman against Supervisor Aaron Peskin for alleged violation of § 67.24(a)(2) of the Ordinance for the Board of Supervisors adoption of a contract agreement without providing 10 days of public review..

Complainant Kimo Crossman said a coin-counting machine contract that came before the Board of Supervisors' Government and Audits Oversight Committee was reduced by \$500,000 and a section regarding an RFP was dropped. The supervisor then instructed staff to change the language and have it ready for adoption at the coming Tuesday's full board meeting. That, he said, broke the 10-day rule under Section 67.24 (a) (ii).

The respondent was not present.

Member Pilpel said the board could not vote on an agreement or negotiate one. It only authorizes a department head to enter into an agreement. He also said that the final version is a working document of the original draft posted more than 10 days ago.

Mr. Crossman, in response to Member Pilpel's question said, the issue was that the document was not available at the board level for 10 days because of the changes made at the committee level..

Motion to find violation (Knee / Goldman)

Member Washburn found the opportunity to use the issue to educate officials on Sunshine requirements.

In rebuttal, Mr. Crossman noted that two members of the Task Force had left the meeting room. He said most likely the document would be amended by Friday and that further lessens the number of days available for public review. He also recalled that the Public Utilities Commission had to wait an extra number of days in the WiFi agreement because of the 10-day rule.

Chair Chu and Member Craven agreed that it was more of an education issue because of the response provided by Mr. Peskin's aide David Nayola who said the contract was not subject to a new 10-day hold.

Member Craven made a friendly motion.

Motion to find violation of 67.24 (a) (ii) and referred to the Education, Training and Outreach Committee for discussion about appropriate training to avoid future violations.

The amendment was accepted by Members Knee and Goldman.

Public Comment: Ray Hartz said the public needs the 10 days to research and prepare their comments and the final document presented to the supervisors for their vote should be made available for 10 days.

Member Knee said he wanted to add 67.21 (e) because the department was not present. Member Goldman agreed.

On the motion:

Ayes: Craven, Knee, Washburn, Knoebber, Chu, Goldman, Williams

Noes: Pilpel

Excused: Chan

Absent: Cauthen

7. 08039 Determination of jurisdiction of complaint filed by Allen Grossman against the City Attorney's Office for alleged failure to provide requested records.

Continued to October 28, 2008.

- a. Public Hearing, complaint filed by Allen Grossman against the City Attorney's Office for alleged failure to provide requested records.

Continued to October 28, 2008.

8. 08040 Determination of jurisdiction of complaint filed by Eula Walters against the Recreation and Parks Commission for withholding documents

Motion to find jurisdiction (Goldman / Knee)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman, Williams

- A Public Hearing, complaint filed by Eula Walters against the Recreation and Parks Commission for withholding documents.

Complainant Eula Walters said this was about a case that began in May when she saw in the Rec & Park agenda that Ms Ernestine Weiss was requesting a plaque honoring her to be placed in Ferry Park. Ms. Walters said she has spent a major part of her life saving and taking care of the park. She said she received the May agenda late. After she and Ms Weiss made public comment at the meeting a vote was taken and the majority sided with Ms Walters. The issue was again mentioned in the June 5 agenda because Ms Weiss had found a donor for her plaque but the issue was tabled. The July 17 agenda also carried the item but very little explanation was provided. When the item was called the committee voted unanimously for the plaque and she was

asked to speak first. Ms Weiss spoke later and was photographed while she gave her acceptance speech that included apologies that her son and grandson could not attend. That struck her as odd because it looked as if it was pre-planned and if it was mentioned in the agenda she would have stayed home.

Respondent Margaret McArthur said the issue was not discussed in the May meeting and the agendas met all requirements. Documents related to the June and July agendas were placed in the public information binder and posted online. She also said Ms Walters was provided with all the documents she had requested. She then explained how the meetings were run. Ms Walters was called first because her speaker's card was the first one for public comment, she said. The final vote was about the language on the plaque.

Member Pilpel said if Ms Walters' disagreement over the commission's decision it was not within the Task Force's purview.

In rebuttal, Ms Walters said the July 17 event was staged and the agenda was missing facts such as Ms Weiss' speech.

Motion finding no violation (Pilpel / Cauthen)

Public Comment: Ray Hartz said it wouldn't be an issue if the decision was made in June and the July meeting was for language only. It becomes a done-deal scenario if the decision was made in July and the recipient was present with the acceptance speech and a photographer to accept the plaque.

On the motion:

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Pilpel, Chu, Chan, Goldman, Williams

9. 08042 Determination of jurisdiction of complaint filed by Kimo Crossman against SFGTV, Media Services, Clerk of the Board of Supervisors and the SOTF Administrator for alleged failure to post the digital recordings of the June 10, 2008, and the July 22, 2008 Task Force meetings on the City's website.

Continued to October 28, 2008.

- A Public Hearing, complaint filed by Kimo Crossman against SFGTV, Media Services, Clerk of the Board of Supervisors and the SOTF Administrator for alleged failure to post the June 10, 2008, and the July 22, 2008 audio records of the Task Force on the City's website.

Continued to October 28, 2008.

- 10 08044 Determination of jurisdiction of complaint filed by Brian Browne against the Department of Building Inspection for alleged failure to provide requested records or to respond to an Immediate Disclosure Request.

Continued to October 28, 2008.

- a Public Hearing, complaint filed by Brian Browne against the Department of Building Inspection for alleged failure to provide requested records or to respond to an Immediate Disclosure Request.

Continued to October 28, 2008.

11. Report: Rules Committee: meetings of September 3 and 10, 2008.

Committee Chair Pilpel made the report.

Committee change to be placed on Oct 7, 2008, agenda.

Chair Chu asked the By-Laws be agendized at the next two Task Force meetings as an action item.

Public Comment: Kimo Crossman said Member Pilpel is against the 10-day rule when it comes to the public by is in favor of it when he amends the By-Laws. He suggested not to make any changes to the document until the new member joins the Task Force.

Member Williams said she was worried because members not staying to the end of the hearing. She suggested cutting the agenda.

12. Report: Compliance and Amendments Committee: meeting of September 10, 2008.

Committee Chair Knee made the report.

Committee change to be placed on Oct 8, 2008, agenda.

Public Comment: Ray Hartz said if there was no compliance, there was no need to go through the motions. The CAC chair should write to the department heads that do not send representatives because they might not be aware of what was going on. Kimo Crossman said CAC does a decent job because 50 percent of the time a resolution was reached. He was concerned that sending the matter to ETO would not be a good choice because members were not experienced.

13. 08031 The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the Ethics Commission be found for violation of the Sunshine Ordinance for failure to produce records in the format requested, and failure to comply with the Order of Determination issued by the full Task Force on July 22, 2008; that referral based on that finding to the appropriate entity for investigation and/or potential enforcement be considered.

Member Knee recused himself.

Member Craven said she preferred sending the matter to the Board of

Supervisors because the Ethics Commission was not an option and because of problems involved by sending it to an Ethics Commission in a neighboring city.

Motion to send the matter to the Board of Supervisors (Craven / Goldman)

Member Craven said the transmittal letter would include Order of Determination, the respondent's position and a request for the Board of Supervisors to take up this matter in a public forum.

Public Comment: Kimo Crossman wanted the matter continued because member ranks had further reduced and he wanted a unanimous vote. He said there was no expense if the case was sent to the Ethics Commission because it had been done before. He wanted the matter to be sent to the Board of Supervisors and Ethics Commission to set policy. Richard Knee said it should be directed at Ethics Commission commissioners. He reminded the Task Force that because violation had already been established and that the only question before the Task Force was if the Order of Determination had been met. Ray Hartz said the Order of Determination should also be sent to the Board of Supervisors and Ethics Commission. If departments do not show up at meetings it should be a default judgement for the complainant, he added.

Member Craven agreed with Mr. Knee on sending the letter to Ethics Commission commissioners as well.

Member Pilpel said he did not support the motion because he believed that there wasn't a proper basis for the original finding of the Task Force and that it was a dispute over interpretation.

On the motion:

Ayes: Craven, Washburn, Knoebber, Chu, Goldman, Williams

Noes: Pilpel

Recused: Knee

Excused: Chan

Absent: Cauthen

14. 08032 Hearing of the status of the July 22, 2008, Order of Determination of Kimo Crossman against the City Attorney's Office.

Member Knee briefed members on the matter.

Motion to forward the matter to the Board of Supervisors for possible action and interaction with City Attorney's Office with a copy sent to City Attorney Dennis Herrera. (Knee / Craven)

Public Comment: Kimo Crossman said the Ethics Commission should also be included because it increases the number of cases sent to them for enforcement and also if they start enforcement this case would be in the queue. He also wanted this case to be continued because of the number of Task Force members missing. Ray Hartz wondered why the City Attorney's

office was not upholding Section 67.21 (I) by helping citizens access public records.

Member Pilpel said he did not support the motion because he believed that there wasn't a proper basis for the original finding of the Task Force and that it was a dispute over interpretation.

On the motion:

Ayes: Craven, Knee, Washburn, Knoebber, Chu, Goldman, Williams

Noes: Pilpel

Excused: Chan

Absent: Cauthen

15. Report: Education Outreach and Training Committee: meeting of September 11, 2008.

Committee Chair Washburn made the report.

Public Comment: Kimo Crossman said he was shocked when he saw the draft minutes because the chair was advocating for the departments and not the public. Member Pilpel's comment on being reasonable with departments also was unacceptable because no progress had been made. Member Washburn's proposal to send matters to the EOT was disturbing because the CAC was more experienced in educating departments. Ray Hartz said while departments have the time and people to defend itself the people have only the Task Force. And no matter what the situation is, the TF has to defend and uphold the Ordinance. He added that he imagined a number of successful Sunshine related issues that occur in the city happen to those who have money and can afford attorneys. Those who are not wealthy come to the Task Force and end up with an Order of Determination and nothing else. That is not how it is supposed to work in the United States, he added.

16. Discussion regarding the role of the Ethics Commission in the enforcement process.

DCA Llorente said this case was about a letter sent by the Ethics Commission to the Task Force that said a referral was investigated and no violation was found. The Task Force had asked him to find out how the Ethics Commission operates and he was presenting the related sections of the Charter and Ethics rules as part of the packet.

Responding to Member Craven question, DCA Llorente said Ethics Commission staff receives the referral and investigates the matter. If no violation is found the commissioners are notified but it takes two commissioners' consent to agendaize the item.

Public Comment: Kimo Crossman said DCA Llorente should be following the Ordinance and only work on Sunshine issues. He said the attorney will come back to the Task Force and say he could not do the analysis because of staff cuts or he could come back with a badly written piece that the Task Force could not take to Ethics. He suggested the Task Force write to Ethics

Commission commissioners and ask them to agendaize the dismissals because the Task Force rejects their findings Ray Hartz questioned if the Task Force's reading of the law in error because of the Ethics Commission dismissals or was there an agreement between departments that realize that if the referrals are enforced, the mayor, the supervisors and the department heads have to appear before the Task Force. He said there were a lot of conflict of issues because the Task Force is budgeted by the Board of Supervisors and Task Force has to deal with issues related to the supervisors, the Task Force deals with issues related to the City Attorney's office which advises the Task Force. There is no ethical wall, he added.

Member Pilpel added that during the Sept 8, 2008, Ethics Commission meeting the commissioners discussed how to improve relations with the Task Force and they expressed interest in holding a joint working session.

~~Chair continued the matter for one month~~ after a short discussion.

17. Administrator's Report.

The assistant administrator made the report.

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

Public Comment: James Chaffee said Nickelson Baker was the name of the writer whom he had mentioned during last month's public comment session. The forces that privatize our society, the forces that abuse our democracy are very serious and it takes a lot to challenge them, he said. He hoped the Task Force took them seriously. Kimo Crossman said he did not like the chair's recent comment on reason, the status of the digital recording issue and wondered the fate of the amendments.

Member Pilpel said some complaints are redacted and some are not and wanted to know why it was inconsistent because the Task Force as decision-makers needs to see whatever material is presented. He wanted a redacted version for the public and an unredacted version for the Task Force members.

Public Comment: Kimo Crossman said if DCA Llorente does not have to get approval to do a Task Force review because funding did not accompany the ordinance in 1993 and Prop G in 1999. On redacting, he said the Task Force should meet with Clerk of the Board Angela Callivo because it is her policy. Besides, the Task Force should set up its own policy, he said.

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

The Complaint Committee meeting needs to be agendaized.

Member Knee said the California 1st Amendment Coalition will hold it open government assembly at the UC Berkeley School of Journalism October 17 & 18, 2008.

Member Craven urged Task Force members and members of the public to attend the event.

Member Pilpel said being reasonable is a good idea although the best results may not be achieved. He said the Task Force should be on the side of the complainants if the merits are present, but not blindly because the Task Force serves the city as a whole while searching for the truth.

Adjournment

The meeting was adjourned at 8 p.m.

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

