

Date: Oct. 28, 2008

Item No. 2

File No. 08046

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Karl Beal v. Rec and Park Dept. & Public Library
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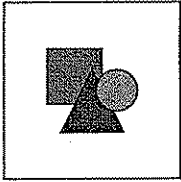
Completed by: Chris Rustom

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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

October 21, 2008

**KARL BEALE v. RECREATION AND PARKS DEPARTMENT AND THE
SAN FRANCISCO PUBLIC LIBRARY (08046)**

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

Rec/Park and the Library scheduled a joint master planning workshop for the Joe DiMaggio North Beach Playground and the North Beach Branch Library for August 18, 2008 at 7:00 p.m. The meeting included a joint presentation from Rec/Park and the Library and was noticed by posting on the Library's website and by mailing and posting information flyers.

COMPLAINANT FILES COMPLAINT:

On August 26, 2008, Karle Beale filed a complaint against Rec/Park and the Library. Karle Beale alleged that Rec/Park failed to notify the public of the August 18, 2008 meeting on Rec/Park's website. Karle Beale also alleged that Rec/Park and the Library failed to provide adequate disclosure of the agenda/purpose of the meeting in the public notification.

THE RESPONDENT DEPARTMENTS STATE THE FOLLOWING:

On September 9, 2008, Rec/Park and the Library issued a joint letter stating that their workshop notice did not violate the Sunshine Ordinance or the State Brown Act.

**DURING THE COMPLAINT COMMITTEE HEARING, COMPLAINANT
STATED THE FOLLOWING:**

Complainant Karl Beal said he was a resident of the North Beach area and had filed a two-part complaint. The first was against the Library and the Rec & Park Department for failure to provide adequate information on the North Beach Master Plan, which included the closure of Mason Street. If the closure was properly disclosed, he said, the meetings would have taken a different tone because the closure would create problems in the neighborhood. His second complaint was against the Rec & Park Department for not posting additional information on the website. He said he was withdrawing the second complaint because the jurisdictional letter from the City Attorney's Office mentioned that the department was not obligated to post additional information because it was not a policy body.

Memorandum**DURING THE COMPLAINT COMMITTEE HEARING, RESPONDING DEPARTMENTS STATED THE FOLLOWING:**

Respondents Karen Mauney-Brodek of the Rec & Park Department and Sue Blackman of the Library Commission appeared before the committee. Ms. Mauney-Brodek said the Task Force does not have jurisdiction over the complaint as stated in a letter sent to the committee. But, she added, the meetings were well attended and that was proof that area residents knew what was happening in their neighborhood. The Library as well as the Rec & Park Department followed all Brown Act and Sunshine laws when posting the notices, she said. Sue Blackman said the meetings were not about the closure of Mason Street but a discussion on options available in making full use of the property in building the branch library. Ms Blackman also said all laws were followed.

APPLICABLE STATUTORY SECTIONS:

1. Article I section 3 of the California Constitution.
2. Sunshine Ordinance, Administrative Code Section 67.1 which addresses findings and purpose.
3. Sunshine Ordinance, Administrative Code Section 67.7-1 that addresses Public Notice Requirements.

APPLICABLE CASE LAW:

None for this case.

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

Rec/Park and the Library scheduled a joint master planning workshop for the Joe DiMaggio North Beach Playground and the North Beach Branch Library for August 18, 2008 at 7:00 p.m. The meeting included a joint presentation from Rec/Park and the Library and was noticed by posting on the Library's website and by mailing and posting information flyers.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

Memorandum

i. Relevant facts in dispute:

Whether the notice provided by the Library and Rec/Park complied with the Notice requirements of the Sunshine Ordinance?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

How did the proposed closure of Mason Street fit into the overall plan for the new library on Rec/Park property?

LEGAL ISSUES/LEGAL DETERMINATIONS;

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum
ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

Section 67.7-1 addresses Public Notice Requirements and provides as follows:

a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

c) If the notice informs the public of a public meeting or hearing, the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceedings begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.



City and County of San Francisco
Recreation and Park Department

McLaren Lodge in Golden Gate Park

501 Stanyan Street, San Francisco, CA 94117

TEL: 415.831.2700 FAX: 415.831.2096 WEB: www.parks.sfgov.org

Honorable Members
Sunshine Ordinance Task Force
c/o Frank Darby, Administrator
Office of the Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

October 21, 2008

Re: Complaint #08046 Filed By Karl Beale Against The San Francisco Recreation and Park Department and the San Francisco Public Library

Dear Task Force Members:

This letter is in response to Complaint #08046 filed by Mr. Karl Beale on August 26, 2008 against the San Francisco Recreation and Park ("Rec/Park") Department and the San Francisco Public Library (collectively, "the Departments"). For the reasons explained below, the Complaint is without merit and should be dismissed.

1. The August 18th Community Workshop

The Complaint concerns an August 18, 2008 community workshop at the Sts. Peter and Paul Church Auditorium entitled "Master Planning Workshop for the Joe DiMaggio North Beach Playground and North Beach Branch Library." The workshop was sponsored by the Departments and Sts. Peter and Paul Church. The workshop included a joint presentation by Departmental staff about the Master Plan for the North Beach playground and library and a "Q & A" period for members of the public. It was not a public meeting or hearing of either the Library Commission or Rec/Park Commission or any other City policy body. No formal action was taken at the workshop.

Although not legally required to do so, the Departments publicized the workshop by posting, mailing and emailing the flyer attached hereto as Exhibit A. The flyer was: (1) posted on the Library's website, (2) posted at the North Beach Branch Library, (3) posted at the Clubhouse of the Joe DiMaggio North Beach Playground, and (4) mailed and/or emailed to a list of community organizations, persons who had attended previous meetings, and persons who had expressed interest in the subject of the workshop - approximately 425 individuals/organizations. The flyer was printed in three different languages.

The August 18th workshop was the final of a series of three community workshops about the North Beach Master Planning process (the previous two workshops occurred on May 28 and July 25, 2008). There was no legal requirement to hold these workshops; they were simply part of the Departments' community engagement process.

The Library Commission and the Rec/Park Commission each separately discussed the North Beach master planning process at their regularly scheduled and agendaized meetings on September 4th (Library Commission) and September 18th (Rec/Park Commission). These Commission meetings complied with the agenda and notice requirements of Section 67.7 of the Sunshine Ordinance. At those public meetings, both Commissions requested an environmental review of the options in the Master Plan. The environmental review will, following legal notification procedures, investigate potential impacts from the elements explored in the Master Plan, including possible alteration of Mason Street, a new location of the library, and renovated and reorganized park facilities. Any decision to change or modify a street would have to be reviewed in the future by the Department of Public Works' Bureau of Streets Use Management, the Board of Supervisors, and the MTA following applicable Sunshine Ordinance-procedures - neither the Library Commission nor the Rec/Park Commission has decision-making authority regarding street closures. It is anticipated that during and after the environmental review process is completed, these decision making bodies would consider any changes or alterations to streets.



Mayor Gavin Newsom
Interim General Manager Jared Blumenfeld

2. The Complaint

The Complaint states that the Rec/Park Department failed to notice the workshop on its website and that both Departments failed "to provide adequate disclosure of the agenda/purpose" of the workshop. The Complaint does not contain any allegation that the Departments violated *any* City or State law. The part of the Complaint form that is designated "Section(s) Violated:" was left blank. The failure to cite any violation in the Complaint form reflects the fact that there is no law that could be cited. Indeed, as explained below, there is no provision of either the Sunshine Ordinance or the Brown Act that applies to the August 18th community workshop.

3. Section 67.7 of the Sunshine Ordinance Does Not Apply

The August 18th community workshop was not a meeting of a "policy body" as defined by the Sunshine Ordinance or of a "legislative body" as defined by the Brown Act. Accordingly, there are no notice or agenda requirements under City law (Section 67.7 of the Sunshine Ordinance) or under State law that are applicable to that workshop.

4. Section 67.7-1 of the Sunshine Ordinance Does Not Apply

Nor do Mr. Beale's allegations give rise to a violation of Section 67.7-1 of the Sunshine Ordinance.

Section 67.7-1 concerns "[a]ny public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area." § 67.7-1(a). Section 67.7-1 does not itself impose any requirement that a department post a notice of a meeting or hearing. Rather, it presumes that there is a separate, pre-existing legal requirement for notice of a meeting or hearing that may be found elsewhere in City or State law. Absent such a legal requirement, the specific requirements of § 67.7-1 are not triggered. It would be nonsensical to impose the requirements of Section 67.7-1 every time a department voluntarily chooses to publicize a community event – that is, when the department has no legal obligation to have the event or notify the public of the event.

As explained above, the Departments were not required to notice the workshop under Section 67.7 because it was not a meeting of a policy body. And there is no other law that required public notice of the workshop. Hence, for this reason alone, Section 67.7-1 does not apply in this case.

But even if there were a pre-existing legal requirement of a public notice for the August 18th workshop (which there is not), Section 67.7-1 applies only to notices sent to "residents residing within a specific area." § 67.7-1(a). This wording encompasses situations such as when the Department of Public Works mails a notice to "the residents of the 2000 block of Mason Street" about upcoming street repairs. By contrast, here, the flyer was not addressed to "residents residing within a specific area." Indeed, it was not addressed to anyone in particular, and there was no legal requirement that it be directed to anyone in particular. It broadly publicized the "Master Planning Workshop" to anyone who wished to attend. Thus, by its express terms, Section 67.7-1 does not apply here.

5. Even if Section 67.7-1 Applies, It Was Not Violated

Even if Section 67.7-1 did apply to the August 18th workshop, none of its three subsections was violated.

The third subsection of Section 67.7-1 – subsection (c) – clearly does not apply. That subsection requires that "[i]f the notice informs the public of a *public meeting or hearing*," then the notice must explain how persons can submit "written comments" that "will be made a part of the official public record." § 67.7-1(c) (emphasis added). The subsection's references to a "public meeting," "written comments," and "the official public record," all make clear why this subsection does not apply to an informal departmental presentation such as the August 18th community workshop. The Sunshine Ordinance defines a "meeting" as a gathering of a majority of a policy body. § 67.3(b). As already explained above, the community workshop was not a meeting of a "policy body." Nor was it a formal hearing of any sort. As such, the workshop contained no formal public comment or "official public record" of the kind that would accompany a public meeting of a policy body such as the Library Commission or Rec/Park Commission, or a formal public hearing conducted by a hearing officer. Section 67.7-1(c) is simply inapplicable to the community workshop at issue here.

With regards to subsections (a) and (b) of Section 67.7-1, the flyer in Exhibit A meets those requirements:

- (a) Subsection (a) states that the notice shall be "brief, concise, and written in plain, easily understood English." § 67.7-1(a). The flyer in Exhibit A clearly meets these requirements.

(b) Subsection (b) states that the notice "should" inform residents of (1) the proposal or planned activity, (2) the length of time planned for the activity, (3) the effect of the proposal or activity, and (4) a telephone contact for residents who have questions. § 67.7-1(b). Unlike subsection (a) which uses the word "shall," subsection (b) uses the term "should," suggesting that it does not impose any mandate. But even if subsection (b) imposed requirements, the flyer meets these criteria as well. The flyer provides a telephone contact number and describes the proposal and effects of the planned activity as follows:

Join us in a presentation and discussion of potential locations and layouts for the new library, long range park improvements and updates on possible uses of the triangle property and potential changes to Mason Street.

It is true that the flyer's content does not precisely track all the information specified in subsection (b), but that is because the subject matter of the workshop does not fit that format. Subsection (b) envisions a specific activity or project with a defined time period and effect, and that model does not conform to the substance of the workshop.

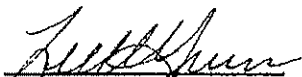
For all these reasons, the Departments did not violate Sections 67.7 or 67.7-1 or any other City or State law in connection with the August 18th community workshop. The complaint is without merit and should be dismissed.

We hope this letter will be of assistance to the Task Force in resolving this matter. If we can be of further assistance to the Task Force with respect to Mr. Beale's complaint, please do not hesitate to contact either of us.

Very truly yours,



Dawn Kamalaniathan
Planning Director, SFRPD



Luis Herrera
City Librarian

Attachments: Exhibit A (Flyer Publicizing August 18th Workshop)

Sts. Peter and Paul Church invites you to a

Master Planning Workshop

for the

Joe DiMaggio North Beach Playground
and North Beach Branch Library

**NEW
DATE!**

Monday, August 18, 2008

7 p.m.

**Sts. Peter and Paul Auditorium
660 Filbert St.**

Join us in a presentation and discussion of potential locations and layouts for the new library, long range park improvements and updates on possible uses of the triangle property and potential changes to Mason Street. We've gathered lots of comments from the two previous community meetings and are studying and developing schemes in more detail.

Presented by the San Francisco Public Library
and the San Francisco Recreation and Park Department

For more information, contact the Branch Library Improvement Program
at (415) 557-4354 or Recreation & Park Department at (415) 581-2546 or www.sfpl.org.



San Francisco Public Library



City and County of San Francisco
Recreation and Park Department

Please contact Muni's accessible service program for lines serving this area at (415) 923-6142. Oral and sign language interpreters are available by contacting Keith Kawamura at (415) 581-2546. The TDD phone number for the Recreation and Park Department is (415) 831-2700. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call Keith Kawamura at (415) 581-2546 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at (415) 554-6083.

0623-25

聖彼得和保羅教堂邀請您參加

重要的計劃研討會

討論

Joe DiMaggio北岸遊樂場
和北岸圖書分館

新日期！

二零零八年八月十八日，星期一

下午七時

聖彼得和保羅教堂禮堂
660 Filbert 街

請加入我們一起提呈和討論具有潛力的新圖書館地點和其計劃圖，公園的持久使用改善計畫和三角地的使用以及改進 Mason 街的可能性。我們已在前兩次的社區會議收集很多的建議，而且正進行研讀和發展更詳細的設計。

由舊金山市立圖書館和舊金山遊樂和公園管理部門提供。

欲知詳細情形，請與圖書分館改善計劃聯絡(415)557-4354或致電遊樂和公園管理部門(415)581-2546 或上網www.sfpl.org

請聯絡 muni 公車局的<便利殘障人士計劃>查詢該地區的路線服務，電話：(415)923-6142。請向 Keith Kawamura 查詢口語及手語翻譯，電話：(415)581-2546。康樂及公園局為聽障者提供的 TDD 電話號碼為(415)831-2700。患嚴重過敏、環境疾病者，對多種化學物敏感者以及患有相關疾病者，應致電 Keith Kawamura(415)581-2546 討論參加會議的可能性。為協助市府滿足所有大眾的需要，在此提醒公眾會議的與會者，某些人可能對各種不同的化學製品敏感，懇請與會者予以配合。

根據陽光法令 Sunshine Ordinance，任何人有知情權。政府的職責是服務大眾，充分了解公眾的意見之後才做決定。委員會、理事會、行政機構及其他的市縣部門是為市民而設立的。該法令保證決策經過深思熟慮，而且市府的運作開放予公眾檢視。要進一步瞭解陽光法令(三藩市行政法典第 67 章)賦予的權利，或舉報違反該法例，請致電 (415)554-6083，聯絡陽光法令工作組。

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Master Planning Workshop

for the

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and North Beach Branch Library

**NEW
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and the San Francisco Recreation and Park Department

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San Francisco Public Library



City and County of San Francisco
Recreation and Park Department

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0623-25

La Iglesia de San Pedro y San Pablo le invita al

Taller de Trabajo para los Planes Generales

Del Patio de Recreo Joe DiMaggio en North Beach y
La Biblioteca de North Beach

**¡NUEVA
FECHA!**

Lunes 18 de agosto del 2008

A las 7 de la tarde

**Auditorio de San Pedro y San Pablo
660 Filbert St.**

Únase a nosotros en la presentación y discusión de posibles emplazamientos y diseños de la nueva biblioteca, mejoras y actualizaciones de largo alcance sobre posibles usos de la propiedad triangular del parque y posibles cambios en la calle Mason. Hemos reunidos muchos comentarios de las dos reuniones comunitarias anteriores y estamos estudiando y desarrollando un proyecto más detallado.

Presentado por San Francisco Public Library y
San Francisco Recreation and Park Department

Para más información visite la página web de la biblioteca: www.sfpl.org
Llame al "Programa de Mejoras de las Sucursales Bibliotecarias" al (415) 557-4354 ó
Llame al "Recreation & Park Department" al (415) 581-2546



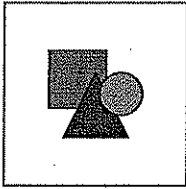
San Francisco Public Library



City and County of San Francisco
Recreation and Park Department

Por favor llame al (415) 923-6142, para saber qué líneas de Muni tienen servicios en la zona. Llame al (415) 831-2700, el número de teléfono de texto (TDD) del "Recreation and Park Department." Llame a Keith Kawamura al (415) 581-2546 para servicio de interpretación oral o de señas. Llame a Keith Kawamura al (415) 581-2546 si tiene alergias graves, enfermedades medioambientales, sensibilidad a múltiples productos químicos u otras discapacidades relacionadas y examinar la accesibilidad a la reunión. La ciudad de San Francisco agradece a los asistentes a las reuniones públicas que no usen productos químicos que pueden afectar a otros asistentes con mayor sensibilidad. Por favor ayude a la ciudad para poder incorporar a esas personas.

CONOZCA SUS DERECHOS SEGÚN LA ORDENANZA "SUNSHINE". El deber del gobierno es servir al público, y las decisiones deben tomarse a la vista de todos. Las comisiones, consejos y otros departamentos de la Ciudad y el Condado de San Francisco existen para dirigir los asuntos del público. Esta ordenanza garantiza que las deliberaciones se llevan a cabo delante del público y que el público puede revisar las actividades. Llame al Grupo de Expertos de la Ordenanza "Sunshine" al (415) 554-6083 para más información sobre sus derechos según la Ordenanza "Sunshine", capítulo 67 del Código Administrativo de San Francisco (Chapter 67 of the San Francisco Administrative Code) o para denunciar una transgresión de dicha ordenanza.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

October 8, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: Karle Beale v. the San Francisco Recreation & Park Department and the San Francisco Public Library (08046)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Karl Beale against the San Francisco Recreation & Park Department ("Rec/Park") and the San Francisco Public Library ("Library").

BACKGROUND

Rec/Park and the Library scheduled a joint master planning workshop for the Joe DiMaggio North Beach Playground and the North Beach Branch Library for August 18, 2008 at 7:00 p.m. The meeting included a joint presentation from Rec/Park and the Library and was noticed by posting on the Library's website and by mailing and posting information flyers.

COMPLAINT

On August 26, 2008, Karle Beale filed a complaint against Rec/Park and the Library. Karle Beale alleged that Rec/Park failed to notify the public of the August 18, 2008 meeting on Rec/Park's website. Karle Beale also alleged that Rec/Park and the Library failed to provide adequate disclosure of the agenda/purpose of the meeting in the public notification.

THE REC/PARK DEPARTMENT AND THE LIBRARY RESPOND

On September 9, 2008, Rec/Park and the Library issued a joint letter stating that their workshop notice did not violate the Sunshine Ordinance or the State Brown Act.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. Although the allegations do not give rise to violations by Rec/Park or the Library under 67.7 since these departments are not policy bodies and are not required to give public meeting notices that are required by policy bodies -the allegations may be covered under section 67.7-1 of the Ordinance.

Letter to the Complaint Committee

Page 2

October 8, 2008

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. The definition of Policy Body is in 67.3(d) of the Ordinance. The agenda and notice requirements for policy bodies are covered by 67.7. The Public Notice Requirement for City department, board, agency or commission is covered under 67.7-1.

In this case, the requirements of notice under 67.7 is not applicable because Rec/Park and the Library are not policy bodies and do not have to comply with the notice requirements of Policy Bodies.

However Section 67.7-1 may be applicable since the business of the workshop may be a matter that would impact residents of a particular area as to their individual property or that neighborhood area. The Task Force will determine whether the notice provided for the August 18, 2008 meeting violated the Ordinance.



<complaints@sfgov.org>

08/26/2008 12:29 PM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

Submitted on: 8/26/2008 12:29:59 PM

Department: SF Recreation and Parks Department & SF Public Library

Contacted: Mr. Yomi Agunbiade, General Manger SFRPD, & Mr. Luis Herrera, City Librarian

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: 8/18/08

Section(s)_Violated:

Description: Failure by SF Recreation and Parks Department to notify the public of the August 18th, 2008 meeting on the department's website. This was the third of three North Beach Master Plan meetings, none of which were properly notified on the website. (Other meeting dates 4-30-08 and 5-28-08).

Failure of Recreation Department and Library to provide adequate disclosure of the agenda/purpose of the 8-18-08 North Beach Master Plan Meeting in the public notification.

Copy of public notice:

<http://sfpl.org/news/blip/pdfs/northbeachwrkshopbc.pdf>

An critical aspect of the 8-18-08 meeting was the public disclosure of the decision by SFRPD & SFPL to request the permanent closure of Mason Street. Residents and merchants should have been given the opportunity to weigh in at earlier meetings (but this topic was not disclosed on earlier notices) and should have again been given the opportunity to comment on the decision at the 8-18-08.

Hearing: Yes

Pre-Hearing: No

Date: 8-25-08

Name: Karl Beale

Address: [REDACTED]

City: San Francisco

Zip: 94133

Phone: 415- [REDACTED]

Email: [REDACTED]

Anonymous:

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 172.31.2.103
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



<complaints@sfgov.org>
08/25/2008 10:37 AM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 8/25/2008 10:37:05 AM

Department: SF Recreation and Parks Department

Contacted: Mr. Yomi Agunbiade, General Manger SFRPD

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: 8/18/08

Section(s)_Violated:

Description: Failure by SF Recreation and Parks Department to notify the public of the August 18th, 2008 meeting on the department's website.

This was the third of three North Beach Master Plan meetings, none of which were properly notified on the website. (Other meeting dates 4-30-08 and 5-28-08)

Hearing: Yes

Pre-Hearing: No

Date: 8-25-08

Name: Karl Beale

Address: [REDACTED]

City: San Francisco

Zip: 94133

Phone: 415-[REDACTED]

Email: [REDACTED]

Anonymous:

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 67.127.54.90
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



<complaints@sfgov.org>
08/25/2008 10:55 AM

To <sof@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 8/25/2008 10:55:19 AM

Department: SF Recreation and Parks Department

Contacted: Mr. Yomi Agunbiade, General Manger SFRPD

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: 8/18/08

Section(s)_Violated:

Description: Failure to provide adequate disclosure of the agenda/purpose of the 8-18-08 North Beach Master Plan Meeting in the public notification.

Copy of public notice:

<http://sfpl.org/news/blip/pdfs/northbeachwrkshopbc.pdf>

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Hearing: Yes

Pre-Hearing: No

Date: 8-25-08

Name: Karl Beale

Address: [REDACTED]

City: San Francisco

Zip: 94133

Phone: 415-[REDACTED]

Email: [REDACTED]

Anonymous:

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 67.127.54.90
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :



<complaints@sfgov.org>
08/25/2008 10:56 AM

To <soft@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 8/25/2008 10:56:03 AM

Department: SF Public Library

Contacted: Mr. Luis Herrera, City Librarian

Public_Records_Violation: No

Public_Meeting_Violation: Yes

Meeting_Date: 8/18/08

Section(s)_Violated:

Description: Failure to provide adequate disclosure of the agenda/purpose of the 8-18-08 North Beach Master Plan Meeting in the public notification.

Copy of public notice:

<http://sfpl.org/news/blip/pdfs/northbeachwrkshopbc.pdf>

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Hearing: Yes

Pre-Hearing: No

Date: 8-25-08

Name: Karl Beale

Address: [REDACTED]

City: San Francisco

Zip: 94133

Phone: 415-[REDACTED]

Email: [REDACTED]

Anonymous:

Confidentiality_Requested: Yes

User Data

Client IP (REMOTE_ADDR) : 67.127.54.90
Client IP via Proxy (HTTP_X_FORWARDED_FOR) :

Sts. Peter and Paul Church invites you to a

Master Planning Workshop

for the
Joe DiMaggio North Beach Playground
and North Beach Branch Library

**NEW
DATE!**

**Monday, August 18, 2008
7 p.m.**

**Sts. Peter and Paul Auditorium
660 Filbert St.**

Join us in a presentation and discussion of potential locations and layouts for the new library, long range park improvements and updates on possible uses of the triangle property and potential changes to Mason Street. We've gathered lots of comments from the two previous community meetings and are studying and developing schemes in more detail.

Presented by the San Francisco Public Library
and the San Francisco Recreation and Park Department

For more information, contact the Branch Library Improvement Program
at (415) 557-4354 or Recreation & Park Department at (415) 581-2546 or www.sfpl.org.



San Francisco Public Library



City and County of San Francisco
Recreation and Park Department

Please contact Muni's accessible service program for lines serving this area at (415) 923-6142. Oral and sign language interpreters are available by contacting Keith Kawamura at (415) 581-2546. The TDD phone number for the Recreation and Park Department is (415) 831-2700. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call Keith Kawamura at (415) 581-2546 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at (415) 554-6083.

聖彼得和保羅教堂邀請您參加

重要的計劃研討會

討論

Joe DiMaggio北岸遊樂場
和北岸圖書分館

新日期！

二零零八年八月十八日，星期一
下午七時

聖彼得和保羅教堂禮堂
660 Filbert 街

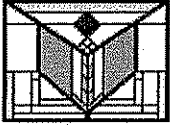
請加入我們一起提呈和討論具有潛力的新圖書館地點和其計劃圖，公園的持久使用改善計畫和三角地的使用以及改進 Mason 街的可能性。我們已在前兩次的社區會議收集很多的建議，而且正進行研讀和發展更詳細的設計。

由舊金山市立圖書館和舊金山遊樂和公園管理部門提供。

欲知詳細情形，請與圖書分館改善計劃聯絡(415)557-4354或致電遊樂和公園管理部門(415)581-2546 或上網www.sfpl.org

請聯絡 muni 公車局的<便利殘障人士計劃>查詢該地區的路線服務，電話：(415)923-6142。請向 Keith Kawamura 查詢口語及手語翻譯，電話：(415)581-2546。康樂及公園局為聽障者提供的 TDD 電話號碼為(415)831-2700。患嚴重過敏、環境疾病者，對多種化學物敏感者以及患有相關疾病者，應致電 Keith Kawamura(415)581-2546 討論參加會議的可能性。為協助市府滿足所有大眾的需要，在此提醒公眾會議的與會者，某些人可能對各種不同的化學製品敏感，籲請與會者予以配合。

根據陽光法令 Sunshine Ordinance，任何人有知情權。政府的職責是服務大眾，充分了解公眾的意見之後才做決定。委員會、理事會、行政機構及其他的市縣部門是為市民而設立的。該法令保證決策經過深思熟慮，而且市府的運作開放予公眾檢視。要進一步瞭解陽光法令(三藩市行政法典第 67 章)賦予的權利，或舉報違反該法例，請致電(415)554-6083，聯絡陽光法令工作組。



Olive Gong /RPD/SFGOV
09/09/2008 08:58 AM

To SOTF@sfgov.org
sblackman@sfpl.info@SFGOV, mlinetzky@sfpl.info, Virginia
cc Dario Elizondo/CTYATT@CTYATT, jbourne@sfpl.info,
Karen.Mauney-Brodek@sfgov.org, Elton
bcc
Subject Sunshine Complaint Received: #08046_Karl Beale vs Rec &
Park, Library

Frank Darby
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Mr. Darby,

Attached is our response to the Sunshine Complaint: #08046.



NorthBeachresponse.pdf

Sincerely,

Olive Gong

Olive Gong
Assistant, GM's Office
Recreation and Park Department
McLaren Lodge, GGP
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.com email



City and County of San Francisco
Recreation and Park Department

McLaren Lodge In Golden Gate Park

501 Stanyan Street, San Francisco, CA 94117

TEL: 415.831.2700 FAX: 415.831.2096 WEB: <http://parks.sfgov.org>

Honorable Members, Complaint Committee
Sunshine Ordinance Task Force
c/o Frank Darby, Administrator
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

September 9, 2008

Re: Complaint #08046 Filed By Karl Beale Against The San Francisco Recreation and Park Department and the San Francisco Public Library

Dear Complaint Committee Members:

This letter is in response to Complaint #08046 filed by Mr. Karl Beale on August 26, 2008 against the San Francisco Recreation and Park Department and the San Francisco Public Library (collectively, "the Departments"). The Departments received a copy of the Complaint on September 3, 2008. As explained below, the Sunshine Ordinance Task Force does not have jurisdiction over this matter.

The Complaint concerns an August 18, 2008 community meeting at the North Beach Branch Library entitled "Master Planning Workshop for the Joe DiMaggio North Beach Playground and North Beach Branch Library." The meeting included a joint presentation from the Recreation and Park Department and the Library, and was noticed by posting on the Library's website and by mailing and posting the flyer that is attached to Mr. Beale's complaint. The Complaint states that the Recreation and Park Department failed to notice the meeting on its website and that both Departments failed "to provide adequate disclosure of the agenda/purpose" of the meeting.

The Complaint does not contain any allegation that the Departments violated *any* City or State law. The part of the Complaint form that is designated "Section(s) Violated:" was left blank by Mr. Beale. The failure to cite any violation in the Complaint form is simply a result of the fact that there is no law that could be cited. Indeed, there is no provision of either the Sunshine Ordinance or the Brown Act that is applicable to the August 18th community meeting cited in the Complaint. The August 18th community meeting was not a meeting of a "policy body" as defined by the Sunshine Ordinance, or of a "legislative body" as defined by the Brown Act. Accordingly, there are no notice or agenda requirements under City or State law applicable to that meeting.

Because the Complaint does not allege a violation of City or State law, and because no Sunshine Ordinance or Brown Act provision applies to the August 18th meeting, the Task Force does not have jurisdiction over this matter. A complaint must concern an alleged violation of

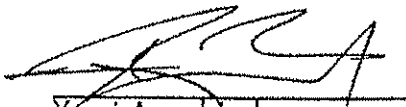


Mayor Gavin Newsom
General Manager Yoni Agunbiade

law; it cannot be based on the mere fact that the complainant does not like or agree with the City's conduct in a given instance.

We hope this letter will be of assistance to the Complaint Committee in determining its jurisdiction over this matter. If we can be of further assistance to the Committee with respect to Mr. Beale's complaint, please do not hesitate to contact either of us.

Very truly yours,



Yomi Agunblade
General Manager SFRPD



Luis Herrera
City Librarian

