

Date: Jan. 4, 2011

Item No. 11 & 12

File No. 10061

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- William & Robert Clark against the City Attorney's Office**
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Completed by: Chris Rustom

Date: Dec. 23, 2010

***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

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

JURISDICTION MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: December 13, 2010
RE: 10061 *William and Robert Clark v. City Attorney's Office ("CAO")*

Background

Complainants William and Robert Clark allege that the City Attorney's Office ("CAO") violated sections 67.26 and 67.28(a) of the Ordinance by charging the Street Artists program the cost of City Attorney staff time spent in connection with public records requests to that program. This complaint is very similar to Complaint 10041 against the Board of Supervisors and the Mayor's Office, which the Task Force found did not violate the above sections of the Ordinance.

Complaint

On November 8, 2010, Complainants filed a complaint with the Task Force alleging a violation of sections 67.26 and 67.28(a).

Discussion and Analysis

The CAO is a charter department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against the CAO, if properly alleged. However, Complainants do not properly allege a complaint under the Ordinance, and therefore the Task Force lacks jurisdiction to hear the complaint.

Complainants allege that the CAO has violated sections 67.26 and 67.28(a) of the Ordinance. Section 67.26 provides, in relevant part:

The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and **no fee shall be charged to the requester** to cover the personnel costs of responding to a records request.

Section 67.28(a) provides: "No fee shall be charged for making public records available for review."

Complainants provide no evidence that the CAO has charged a fee to any person related to responding to a public records request or for making public records available for review. Rather, the evidence presented reflects only the legal costs billed by the CAO to the Arts Commission related to legal services provided to the Street Artist Program. The Ordinance does not in any way regulate the propriety of the CAO billing any other department for the legal services it provides to them. Thus, the allegations, even if true, do not bring the complaint within the ambit of the Ordinance. The Task Force therefore lacks jurisdiction to hear the complaint.



<complaints@sfgov.org>
11/08/2010 04:15 PM

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

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco City Attorney
CONTACTED:none

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.26 and Section 67.28(a)

DESCRIPTION:The City Attorney charged the Street Artist Program \$2516.75 in the Fiscal Year 2009/10 to pay for the cost of City Attorney staff time to disclose Sunshine Ordinance public document requests. The result of this is that every street artist was charged a fee to pay for the City Attorney staff's time to process and disclose public documents requested by street artists pursuant to the provisions of the Sunshine Ordinance. Section 67.26 states specifically that :
"...The work of responding to public records requests and preparing documents for disclosure shall be part of the regular work duty of any employee and no fee shall be charged to the requester to cover the personnel cost of responding to a records." Section 67.28(a) specifically states that: "No fee shall be charged for making public records available for review."

HEARING:Yes

PRE-HEARING:No

DATE:November 8, 2010

NAME:William J. Clark and Robert J. Clark

ADDRESS:P.O. Box 882252

CITY:San Francisco

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

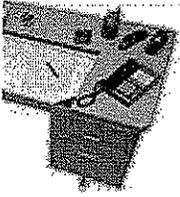
FROM BILL AND BOB CLARK
 SUPPLIED TO THEM FROM HOWARD LAZAR I RECTOR OF
 THE STREET ARTIST PROGRAM

COMPLAINT # 10061

Street Artist Program			
Expenses incurred after 6/25/10 to Year End Close for FY09-10			
Date	Particulars	\$	Cummulative \$
6/25/2010	Telephone Charges	123.05	123.05
6/28/2010	Overhead Exp	38,348.00	38,471.05
6/28/2010	Advisory Honorariums	460.00	38,931.05
6/28/2010	DTIS Services	50.14	38,981.19
6/29/2010	Advisory Honorariums	335.00	39,316.19
6/30/2010	Office Supplies	27.77	39,343.96
7/1/2010	XIAO Y Zhang Honor.	200.00	39,543.96
7/6/2010	Staff Payroll	4,058.35	43,602.31
7/7/2010	Telephone Charges	94.75	43,697.06
7/12/2010	Staff Payroll	1,034.46	44,731.52
7/14/2010	Advisory Honorariums	130.00	44,861.52
7/20/2010	Advertising Charge	456.00	45,317.52
7/20/2010	Advisory Honorariums	67.25	45,384.77
7/22/2010	Payroll expenses	2,138.96	47,523.73
7/23/2010	David Honor	200.00	47,723.73
7/27/2010	City Attorney Fees	2,516.75	50,240.48
7/28/2010	Telephone Charges	52.17	50,292.65
7/29/2010	Supervision Charges	18,875.18	69,167.83
8/6/2010	DTIS Services	351.86	69,519.69
8/6/2010	Data Supplies - C/F	185.07	69,704.76

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Jack
Song/CTYATT@CTYATT
12/07/2010 01:44 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject RE: Complaint #10061 _William & Robert Clark v. City Attorney's Office

Honorable Members
Sunshine Ordinance Task Force
Office of the Clerk, Board of Supervisors
Attention,: Chris Rustom
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Complaint #10061 _William & Robert Clark v. City Attorney's Office

Note: Jurisdictional Hearing Requested

Dear Task Force Members:

Complainants claim that the City Attorney's Office "charged the Street Artist Program \$2516.75 in Fiscal Year 2009/10 to pay for the cost of City Attorney staff time to disclose Sunshine Ordinance public document requests." They further claim this action resulted in every street artist being charged a fee to pay for the City Attorney staff's time to process and disclose public documents requested by street artists under the Sunshine Ordinance.

Complainants allege that these actions constitute violations of the following provisions of the San Francisco Sunshine Ordinance:

The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. S.F. Admin. Code §67.26.

No fee shall be charged for making public records available for review. S.F. Admin. Code §67.28(a).

Background Information

You are familiar with the background regarding this complaint because it is a variation on one that the Task Force has already considered by the same complainants. Complainants argued in the previous complaint that an ordinance setting the fee for street artist certificates under the Street Artists Ordinance violated the Sunshine Ordinance. See SOTF Complaint No. 10041. They argued that a fee that was calculated to pay the costs of processing public records requests conflicts with the Sunshine Ordinance, citing the two provisions that they relied on in the complaint now before you.

The fee-setting ordinance giving rise to the complaint is Ordinance No. 189-10 (copy attached). Ordinance No. 189-10 was adopted pursuant to San Francisco Police Code Section 2404.2,

which requires that the fee for a street artist certificate "be equal to, but not greater than, the fees necessary to support the costs of administering and enforcing the provisions of the Street Artists Ordinance."

Administration and enforcement of the Street Artists Ordinance includes many operational activities, including – to name just a few – reviewing and processing Street Artist Certificate applications, managing budget issues, coordinating Police Department enforcement of the program rules, and conducting hearings for program violations. Also included are costs for legal services provided by the City Attorney's Office, including legal advice relating to State and local laws governing access to public records.

The Task Force Lacks Jurisdiction To Adjudicate The Complaint

The City Attorney's Office contests jurisdiction in this matter for the reasons discussed below and requests a hearing on jurisdiction with the Complaint Committee on December 14, 2010.

The complainants do not allege that the City Attorney's Office has improperly charged a fee to a person requesting a public record. Rather, they argue that the City Attorney's Office "charged the Street Artist Program" to pay for its costs in providing Sunshine-related legal services. The Task Force has no jurisdiction to adjudicate questions concerning legal costs associated with administration of the Street Artists Program. Nothing in the Sunshine Ordinance purports to regulate such matters.

The word "charged," used by complainants, suggests a more simple process by which the Board of Supervisors funds the City Attorney's Office than in fact exists. It is accurate to say, however, that the Arts Commission asked the City Attorney's Office to provide the total number of hours that the City Attorney's Office provided to the Arts Commission regarding the Street Artists Program on matters relating to State and local laws governing public records, as well as the dollar-cost to the City Attorney's Office to provide those services, and that the City Attorney's Office provided the Arts Commission with this information. The Arts Commission then included this information when reporting to the Board of Supervisors the total costs of the street artist program so that the Board could set the street artist certificate fee consistent with Police Code Section 2404.2.

Thus the conduct complained of in this matter is part of the process for setting street artist certificate fees that is required by City ordinance. Nothing in the Sunshine Ordinance gives the Task Force jurisdiction to determine the legality of fees charged to street artists or to any other individuals or entities for the issuance of certificates or permits. Challenges to the legality of such fees are properly brought in a court of law, not before the Task Force. Therefore, the Task Force should dismiss the complaint because it lacks jurisdiction to adjudicate the validity of Ordinance No. 189-10 or the actions taken by City departments in compliance with San Francisco Police Code Section 2402.4.

The Complaint is Without Merit

In the event that the Task Force decides to address the merits of the complaint, it should find that the City Attorney's Office has not violated the Sunshine Ordinance.

Section 67.26 of the Sunshine Ordinance prohibits City departments from charging a fee to requesters to cover the personnel costs of responding to public records requests. But

complainants allege that this office "charged" the Arts Commission, not public records requesters.

Section 67.28(a) of the Sunshine Ordinance provides that no fee may be charged for making public records available for review. This provision simply says that a person requesting to inspect records cannot be charged for the inspection. Again, the complainants complain of "charges" made to the Arts Commission, not to requesters.

Moreover, as already noted, the cost information that this office provided to the Arts Commission was made part of the fee charged to certificated street artists, not to public records requester. The Sunshine Ordinance does not regulate fees charged to participants in City programs.

Conclusion

The Task Force should dismiss the complaint because it lacks jurisdiction over the complaint. If the Task Force addresses the merits, it should dismiss the complaint because it presents no violation of the Sunshine Ordinance.



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Best regards,

JACK SONG
Deputy Press Secretary

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1 [Increasing Street Artist Certificate Fee]

2
3 Ordinance amending the San Francisco Police code, Article 24, by amending Section
4 2404.1 to increase the fee for a Street Artist Certificate and making environmental
5 findings.

6 NOTE: Additions are single-underline italics Times New Roman,
7 deletions are ~~strike through italics Times New Roman~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings.

11 The Planning Department has determined that the actions contemplated in this
12 Ordinance are in compliance with the California Environmental Quality Act (California Public
13 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
14 Board of Supervisors in File No. 100710 and is incorporated herein by reference.

15 Section 2. The San Francisco Police Code is hereby amended by amending Section
16 2404.1, to read as follows:

17 **SEC. 2404.1. STREET ARTIST CERTIFICATE: FEE.**

18 Pursuant to the provisions of Proposition K, adopted by the voters at an election held
19 on November 8, 1983, the Board of Supervisors hereby establishes the fee for a Street Artist
20 Certificate to be as follows: Beginning ~~July 1, 2009~~ July 1, 2010, the fee for a quarterly Street
21 Artist Certificate shall be ~~\$154.16~~ \$166.02 and said certificate shall be valid for a period of three
22 months from the date of issuance; except that any person certified as a street artist pursuant
23 to the provisions of this Article shall have the option of purchasing for ~~\$616.64~~ \$664.08 an
24 annual certificate valid for a period of one year from the date of issuance.

25
Mayor Newsom
BOARD OF SUPERVISORS

Page 1
6/17/2010

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
ADINE VARAH
Deputy City Attorney

Mayor Newsom
BOARD OF SUPERVISORS

Page 2
4/28/2010

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