Date: March 22, 2011

Item No. 10
File No. 10074

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom **Date:** March 17, 2011

***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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ORDER OF DETERMINATION
February 28, 2011

DATE THE DECISION ISSUED
February 22, 2011

WILLIAM AND ROBERT CLARK V ARTS COMMISSION (CASE NO. 10074)

FACTS OF THE CASE

Complainants William and Robert Clark allege that the San Francisco Arts Commission (the "Commission" or "respondent") violated the Ordinance by failing to adequately respond to their November 8, 2010, public records request for copies of all the documents and/or records used to determine that the "Director of Programs", Jill Manton, spent 5% of her time to manage and/or supervise the Street Artist Program "during the 2009-2010 fiscal year and copies of all the documents and/or records which were used to determine that the "Director of Cultural Affairs", Luis R. Cancel, spent 5% of his time to manage and/or supervise the Street Artist Program during the 2009-2010 fiscal year.

COMPLAINT FILED

On December 22, 2010, Complainants filed a complaint with the Task Force alleging a violation of section 67.21(b).

HEARING ON THE COMPLAINT

On February 22, William Clark presented their claim to the Sunshine Ordinance Task Force. The respondent agency was represented by Julio Mattos.

Mr. Clark said he asked the Controller's Office for an accounting of the Street Artists Program's expenses and charges for the 2009-2010 fiscal year and was provided with a document that showed the charges and another that showed the expenses. He said the first document had a line item that said "supervision charges" of 5%. On further investigation, he said, he found out that the item, which had never existed in the history of the Street Artists Program, was added to the budget one month after the close of the fiscal year by a management team of the Commission. He said he asked Howard Lazar of the Commission for an explanation on how that figure was determined. He said Mr. Lazar replied that the figure was an estimate and there were no documents and records that would help explain the management team's decision. Mr. Lazar's letter also said the figure was based on a reasonable assessment of the directors' involvement in all the activities of the Arts Commission. That, said Mr. Clark, was a vague response. Mr. Clark also said that at a recent Commission meeting attendees were told that no response on the budget would be provided by commissioners during the meeting to questions raised by the public during public comment session.

Mr. Mattos told the Task Force that the Arts Commission had responded within the law and asked that the complaint be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After testimony and evidence were presented, the Task Force asked Mr. Mattos if he knew how the 5% figure was reached. Mr. Mattos, who earlier said that he was a part-time employee, informed the Task Force that he did not know the answer. The Task Force noted that street artists should know how the Commission is spending their income.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission, based on the supposition that a document explaining the 5% figure exists, violated 1) Sunshine Ordinance Section 67.27(a) by not justifying the withholding, 2) Section 67.21(e) by not sending a knowledgeable person to the hearing, 3) Section 67.21(c) by not assisting the requestor in identifying the existence, form and nature of the information or record, and 4) Section 67.22 for not providing oral information on how the 5% figure was determined.

The Commission shall release all relevant, requested information within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on March 8, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 22, 2011, by the following vote: (Knoebber / Wolfe)
Ayes: Cauthen, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee
Excused: Snyder, Manneh

Richard A. Knee, Chair
Sunshine Ordinance Task Force

David Snyder, Member, Seat #1*
Sunshine Ordinance Task Force

c: William and Robert Clark, Complainant
Howard Lazar, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.