



SUNSHINE ORDINANCE TASK FORCE
Complaint Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES

REMOTE MEETING

August 17, 2021
5:30 PM

Remote Regular Meeting

Members: Dean Schmidt (Chair), Laura Stein and Kai Forsley

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Chair Schmidt called the meeting to order at 5:32 p.m. On the call of the roll Chair Schmidt and Members Stein and Forsley were noted present. A quorum was present.

There were no agenda changes.

Public Comment:

Patrick Monette-Shaw provided comment on File No. 20011 noting that there are more than 650 pages in the packet, several of which are difficult to read and comprehend.

2. Approval of the July 20, 2021, Complaint Committee meeting minutes.

Public Comment:

Anonymous #3 provided comments on the Minutes.

David Pilpel reviewed the Minutes and had no substantive corrections but suggested caution with autocorrect.

Member Stein suggested amendments to the Minutes.

Action: Moved by Member Forsley, seconded by Member Stein to approve the July 20, 2021, meeting minutes as amendments.

The motion PASSED by the following vote:

Ayes: 3 - Forsley, Stein, Schmidt

Noes: 0 - None

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Speakers:

Patrick Monette-Shaw stated that he submitted written testimony for inclusion in the minutes and hopes the Committee members read about what he thinks is a good idea.

David Pilpel provided comments on item 6 and agrees with Member Stein and intends to comment on that item.

Anonymous #3 stated they understood that there were several files that were originally on the agenda that were removed, which is great for the Petitioner.

Mark Sullivan provided following written summary of their public comment: "By-Laws, Section 7. "... affirmative vote 6 ... of SOTF ...required ...all substantive matters." Brown Act "..., "action taken" means majority of the members ... legislative body...make a positive...negative decision ... vote... when sitting as a body...upon ...motion ..." No comma between positive or negative. "all" not used, "majority of members" "when sitting as a body". complaint should not be at arbitrary number SOTF members seated hearing. When SOTF has failed get 6 votes affirmative, taken the minority vote win issued orders for that position. Violates Brown Act. California Constitution, SFOS Sec. 67.36. Supersedes other Local Laws. By-law based one sentence Municipal Code Sec. 4.104 3(b) Spaghetti fest code. The next "All appointive ... units of government shall act by a majority... or other vote of all..." SOTF is an appointive unit of government and can act "by majority, or other vote". SOTF duty comply Brown Act, change by-laws."

4. **File No. 20143:** Complaint filed by Wynship Hillier against the Behavioral Health Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(a) by failing to post the Agenda 72 hours in advance of the meeting and failure to provide a description of each item of business; 67.7(b) failing to post documents on the website or make available to the public; 67.7(g) failing to allow public comment; 67.7(h) failing to include notices rights under the Sunshine Ordinance on the agenda; 67.7(h) failing to include contact information and the Administrator's name on the agenda; 67.9(a) failure to post relevant documents on the internet; 67.15(c) failing to allow public comment; and 67.21(b) failing to make files available to the public

Wynship Hillier (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Hillier stated that he withdrew several claims because they are related to ad hoc committees created by the Behavioral Health Commission and the Sunshine Ordinance has no jurisdiction of those committees. Mr. Hillier also noted that the August 8, 2020, minutes were not posted on the website.

Geoffrey Grier, Executive Director (Behavioral Health Commission) (Respondent), provided a summary of the department's position. Mr. Grier stated that progress has been made because the complaint began at 103 pages and has been narrowed to 70 pages. Mr. Grier agreed with the Petitioner on several issues including that the posting of Agendas. Mr. Grier also acknowledged that the Behavioral Health Commission is also in violation of open meeting laws.

A question and answer period occurred.

Action: Moved by Member Stein, seconded by Member Forsley, to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing.

Public Comment:

Patrick Monette-Shaw stated that remote meetings are difficult. Mr. Monette-Shaw expressed concern regarding the Petitioner's wild allegations and wants to know the motive for these complaints.

Anonymous #3 agreed with Mr. Monette-Shaw noting that it is completely irrelevant on why someone violates the Sunshine Ordinance. Anonymous #3 stated that it is the Commission as a whole that is responsible for its committees and it is irrelevant as to why a member of the public says that this is a Brown Act violation.

Stephen Banuelos, Member, Behavioral Health Commission, stated that the violations proposed by the Petitioner all took place during the Covid pandemic and that the Commission was running without administrative support. Mr. Banuelos noted that the Petitioner is looking to find violations and not support the good work the Commission does.

Gregor Ledbetter, Former Member, Behavioral Health Commission, expressed their disheartened and concerned that Mr. Hillier is obsessing and doesn't want the body to move forward.

Rachelle Slota noted that the Commission represents the Community and that most members are not professionals. Ms. Slota stated that they don't want someone to attend a meeting and not have their say.

Carlette Jackson Lane stated that as Co-Chair of the Commission that the basis of the issues is due to the Covid-19 pandemic and not having staff. Ms. Lane noted thanks to Mr. Hillier for his input and concern of the general public, but that at no time did the Behavioral Health Commission deny Public Comment to anyone. Ms. Lane also stated that the mission of the Commission is to address those with mental health challenges.

The motion PASSED by the following vote:

Ayes: 3 - Stein, Forsley, Schmidt

Noes: 0 - None

5. **File No. 20011:** Complaint filed by Ahimsa Porter Sumchai against Mayor London Breed and the Office of the Mayor for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.15, 67.5 and 67.6, by failing to have a meeting quorum, failing to conduct business in a proper manner, failing to notice the time and place of the meeting, failing to allow public comment (Insert date of the meeting in question).

Dr. Ahimsa Porter Sumchai (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Dr. Sumchai stated that they were addressing the January 27, 2020, hearing of the Hunters Point Community Advisory Committee (HPSCAC) and does not concur with the Committee's conclusion. Dr. Sumchai presented a copy of the email she sent to the HPSCAC asking for permission to show slides detailing her research which were relevant because of the Navy's biomonitoring presentation on fish and clams for that evening. Dr. Sumchai stated that her evidence demonstrates that she was not allowed to participate during public comment in the meeting.

Alise Vincent (Hunters Point Shipyard Community Advisory Committee (HPSCAC)) (Respondent), provided a summary of the department's position. Ms. Vincent stated that the Committee cannot prevent someone from making public comment. Ms. Vincent stated that on January 23, 2020, Dr. Sumchai submitted a request to show slides regarding biomonitoring. Ms. Vincent explained to Dr. Sumchai that she could not present information on biomonitoring because the slides were from the medical file of a private citizen but was welcome to present information on other matters.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Chair Schmidt, seconded by Member Forsley, to find that the SOTF has jurisdiction because this is either a passive meeting body or a policy body and that the Committee believes this is a public meeting. The Committee stated that the matter of the slides information that was offered by the Petitioner and rejection may have been a denial of rights under the Ordinance and the Brown Act and possible denial under the State or Federal Constitution on the meeting of January 27, 2020.

Public Comment:

Patrick Monette-Shaw stated support for Dr. Sumchai and the motion. Mr. Monette-Shaw noted that it is at the discretion of the passive meeting body to allow public comment because many passive meeting body Chairs take different positions.

Anonymous #3 provided the following written public comment. Anonymous #3 stated that while the Constitution is indeed not itself under your jurisdiction, the state and local public access laws must be interpreted in light of Constitutional mandates: If comment is allowed, then any restrictions on it must be content-neutral under the First Amendment as Member Schmidt discussed. Imposing any restrictions on speech that are not separately required by the Brown Act or Sunshine Ordinance would also be an *extra-statutory restriction on access* (see *Santa Clara Co v First Amendment Coalition* (2009)). It's possible that the Mayor's Hunters Point Shipyard Citizens Advisory Committee is a passive meeting body, a policy body, or *both*, due to SFAC 67.3(d)(7). Content neutrality is required for policy bodies under SFAC 67.15(d). And the discretion allowed for passive meetings is to allow "relevant" comments or none at all under SFAC 67.4(a)(3) as discussed by Member Forsley, but not to discriminate against some "relevant" comments.

David Pilpel provided the following written public comment. Mr. Pilpel stated Section 67.4 is the only section governing passive meetings; it is a local creation and not Brown Act. MYR Fifth Supplement dated 3-23-20, Section 6 (e), suspended all passive meeting requirements. If the Mayor (or a previous Mayor) created it then I think it is a passive meeting body. Period. If the Redevelopment Agency or OCII Commission created it then it is more likely a policy body. I would encourage the parties to focus their arguments and research in that direction, it's a threshold issue.

Mark Sullivan noted that Legislative/ policy body Brown 54952 (a) (b) and (c) (1) A board, commission, committee, or other multi member body that governs a private corporation, limited liability company, or other entity that either: (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity. Support for free speech / information Ordinance Sec 67.1 (g)...” 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.” Also see 67.1 (b)(d).

The motion PASSED by the following vote:

Ayes: 3 - Schmidt, Forsley, Stein

Noes: 0 - None

6. Make Recommendation to Full Task Force to Restructure Complaint Files for Meeting Packets.

Member Stein’s approach was to streamline the packet so that both parties are represented. Member Stein stated that both parties should have separate intake forms and should be located at the beginning of the record.

Administrator Young suggested that separate files be opened with new file numbers for a reconsideration and tell the Petitioner that only new documents will be included in this file. Administrator Young noted that this is an administrative decision that should be cleared with Chair Wolfe.

Chair Schmidt stated that a new software program may be needed to allow easy navigation of the packet.

Public Comment:

Patrick Monette-Shaw, former secretary at Laguna Honda Hospital, stated he is baffled with the number of pages that require review before a Committee hearing and the technology being discussed. Mr. Monette-Shaw noted that the Complaint intake form be kept short and simple.

Anonymous #3 provided the following written public comment. Anonymous #3 stated that first, the checklist idea for packets is a great idea, and Mr. Monette-Shaw's proposal should be considered seriously. Second, improving the questions Respondents must answer is urgently required. The current set of questions do not pointedly ask about if or how the City has actually complied with the Sunshine Ordinance; if better questions were asked it should make your job easier and prevent the City from waffling at hearings as they do. Third, digitizing the packets, will fully interactive PDF portfolios having exact copies of every email and attachment, will help SOTF easily find the pertinent information about each complaint, and accurately judge each complaint, and in the long run take less staff time per packet. Currently the packets are unwieldy and do not represent the actual complaint in full fidelity. SOTF's appointed Members, and not staff, must make the decision that optimizes their work.

David Pilpel provided the following written public comment. Mr. Pilpel stated that he would structure the recommendation to cover initial complaints, reconsideration requests, and recommended referrals. In all cases I would include

procedural communications from complainants, respondents, and SOTF staff, which may have bearing, and only one copy of each document (including email threads), unless circumstances require otherwise. For initial complaints I would include documents provided by the complainant, respondent, or others that may have bearing. For reconsideration requests and recommended referrals I would only include the SOTF order of determination and subsequent material (i.e. not the original complaint). In all cases I would include the complainant's material first (with any attachments), followed by the respondent's material second (with any attachments), and conclude with any other materials (including procedural communications). I would not link PDF documents.

Mark Sullivan stated that he noticed on some older complaints that communications are separate. Mr. Sullivan suggested that a separate working document in the file where members can note pages of relevant information in the file.

Action: Moved by Chair Schmidt, seconded by Member Stein, to continue the matter to the call of the Chair.

Public Comment:

Patrick Monette-Shaw thanked the Committee and SOTF Chair Wolfe and fully supports the motion to continue but should consider adding a motion to develop a procedural check list similar to the checklist he submitted.

Anonymous #3 stated that time is of the essence, and the Committee should make the motion to continue to the next month instead of call of the chair, as the earliest that the SOTF could then consider the proposal is October.

The motion PASSED by the following vote:

Ayes: 3 - Schmidt, Stein, Forsley
Noes: 0 - None

7. Announcements, Comments, Questions, and Future Agenda Items by Members of the Complaint Committee.

Chair Schmidt appreciates Member Stein's work and thinks that there are other additional processes to address.

Member Stein stated that they will work on this issue quickly to rethink the packet and provide information for the September SOTF hearing.

Public Comment:

Anonymous #3 provided the following written public comment. Anonymous #3 stated the Committee should urgently consider the two potential future agenda

items discussed: backlog reduction and considering the overall purpose of complaint committee. Anonymous #3 urged expansion of the stipulations and consent agendas pilot to anyone who wants to use it. Anonymous #3 also urged the initial committee to consider taking on broader responsibility, such as ensuring the checklist for each complaint is completed.

Patrick Monette-Shaw stated that over the last two years he has made valuable insights to the Committee. Mr. Monette-Shaw stated that the public are behind what fuels Sunshine complaints.

8. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:20 p.m.

APPROVED: 9/21/21
Complaint Committee
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.