

Date: January 3, 2012

Item No. 23 & 24
File No. 11088

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Ray Hartz v Ethics Commission**
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Completed by: Chris Rustom

Date: Dec. 22, 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.



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SAN FRANCISCO

2011 OCT 19 PM 4:01

BY RC

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO ETHICS COMMISSION

Name of individual contacted at Department or Commission JOHN ST. CROIX

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting 1/10/2011

Sunshine Ordinance Section 67.16 MINUTES
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

THE ETHICS COMMISSION HAS VIOLATED THE ABOVE SECTION BY FAILING TO INCLUDE A 150 WORD SUMMARY PROVIDED, RELATING TO PUBLIC COMMENT, IN THE BODY OF THE MINUTES IAW PREVIOUS SOTF DERRIDATIONS #10054 (AS REVISED) AND #11054.

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional) Name RAY WHARTZ, JR Address 839 LEAVENWORTH ST, #304 SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date 10/19/2011 Signature Ray Whartz

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

January 10, 2011

In accordance with the San Francisco Sunshine Ordinance of 1999, section 67.16 MINUTES, I ask the following statement be entered in the minutes of this meeting. From the above listed section: *"Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes."*

The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?

Minutes - January 11, 2011
 TEXT FONT SIZE

**Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 10, 2011
Room 408, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102**

I. Call to order and roll call.

Chairperson Studley called the meeting to order at 5:34 PM and welcomed the new Commissioner, Beverly Hayon.

COMMISSION MEMBERS PRESENT: Jamiene Studley, Chairperson; Eileen Hansen, Commissioner; Beverly Hayon, Commissioner; Benedict Y. Hur, Commissioner. Commissioner Ward was excused from the meeting.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Peter Warfield; Ray Hartz; David Pilpel; Charles Marsteller; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff memorandum re: Complaint Disposition (No. 01-100115), dated October 14, 2010.
- Staff memorandum re: Proposed Amendments to the Campaign Consultant Ordinance, dated January 6, 2011.
- Draft Campaign Consultant Ordinance amendments, dated January 4, 2011.
- Memorandum from the Office of the City Attorney re: Retention of Outside Counsel for Advice Regarding the 2011 Mayoral Election
- Minutes of the Regular Meeting of the San Francisco Ethics Commission on December 13, 2010.
- Executive Director's Report to the Ethics Commission for the Meeting of January 10, 2011.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

Ray Hartz stated that section 67.16 of the Sunshine Ordinance states that "any person speaking during the public comment period may supply a brief written summary... which shall, if no more than 150 words, be included in the minutes." He objected to the placement of a written summary as an attachment to the minutes. He asked what the compelling state interest was in refusing to follow the Sunshine Ordinance and refusing to place a summary in the minutes. He stated that the Ethics Commission is enumerated in the Charter and is required to follow Sunshine. He stated that the *Good Government Guide* gives an opinion that attaching the minutes is sufficient, but the law states "in the minutes." [Mr. Hartz also submitted a written statement which has been included at the end of these minutes.]

Peter Warfield then asked whether he would be permitted to make comments about agenda item 3 now and later. Chairperson Studley stated that the Commission would not address item 3 during the meeting. Executive Director St. Croix stated that the item was to be heard, but staff was unable to reach one of the parties. He stated that the party contacted the office earlier that day and asked for a continuance. He granted the continuance, as the party was unable to come to the meeting.

Chairperson Studley apologized for any inconvenience and for the short notice and asked for public comment.

Peter Warfield stated that he serves on a committee with Ms. Cauthen, but he was not speaking as a member of that committee. He stated that he agreed generally with Mr. Hartz. He stated that the inclusion of the summaries in the minutes is appropriate and intended to permit someone to read along what the person has said.

Mr. Warfield stated that he was extremely disappointed regarding the cancellation of item 3. He stated that his plans have been affected and he would have appreciated some notice. He made several comments regarding staff's memorandum of item 3. He stated that staff stated Ms. Gomez violated section 67.15 of the Sunshine Ordinance, but then later recommended the dismissal of the violation. He informed the Commission of another incident in March where he experienced similar treatment from Ms. Gomez. He stated that staff's memorandum downplayed the incident dramatically. He stated that Ms. Gomez yelled at Ms. Cauthen and asked the Commission to listen to the meeting tape or view the meeting DVD.

Chairperson Studley stated that she allowed Mr. Warfield to speak as though he spoke for two items, as there was a possibility that Mr. Warfield would not be able to return for a future meeting.

Commissioner Hansen asked Mr. Warfield a question about his first point regarding staff's recommendation about Ms. Gomez. She stated that staff's recommendation was not to dismiss the violation against Ms. Gomez, but against Ms. Blackman. Mr. Warfield stated that he was unclear as to why it would be dismissed against either of them, when the violation had occurred. He stated that he raised the question for the Commission to discuss the issue. Chairperson Studley stated that the Commission could not discuss the merits of the item, until it is placed on the agenda.

Mr. Hartz asked whether he would have additional time since Mr. Warfield was given additional time. He stated that he had been at last month's Ethics Commission meeting. He stated that he too had been disrupted by Ms. Gomez and that he had to justify his right to speak. He stated that Ms. Gomez would not come to the Ethics Commission to explain her behavior. He mentioned a Police Commissioner who had also committed a Sunshine and Brown Act violation and failed to explain his behavior.

III. Consideration of Ethics Complaint No. 01-100115, alleging that the Library Commission, through its representative Secretary Sue Blackman, violated Sunshine Ordinance sections 67.15(a) and 67.34 by failing to allow public comment at a Library Commission meeting, and section 67.21(e) by failing to send a knowledgeable representative to Task Force hearings.

Item continued.

Public Comment:

None.

IV. Consideration of possible amendments to the Campaign Consultant Ordinance ("Ordinance"), San Francisco Campaign and Governmental Conduct code section 1.500 et seq.

Decision Point 2

Commissioner Hansen stated that she had concerns regarding this decision point, as the voters should have full participation. Executive Director St. Croix stated that before going to the voters, this matter must go before the Board and they have to agree to this point as well. He stated that whenever changes are made, sometimes there are unintended consequences and allowing super-majorities would permit the Commission to make the necessary changes without going to the voters.

Chairperson Studley asked the deadline for submitting this item for the November ballot. Mr. St. Croix estimated that the deadline was in June 2011.

Commissioner Hur stated that he saw the benefit of this authority. Chairperson Studley stated that the voters should decide what should come to them. Mr. St. Croix stated that the process of submitting items for the ballot is difficult and once the Commission sends an item for the ballot, the Commission must remain silent on the item. When there are proposed amendments with super-majorities, the Commission is permitted to comment and provide advice. Commissioner Hayon stated that many voters may feel overwhelmed with the number of ballot measures on the ballot, especially measures regarding technical changes with legalese.

Motion 11-01-10-1 (Hur/Hayon): Moved, seconded and passed (3-1; Hansen dissent) that the Commission adopt decision point 2.

Public Comment:

Mr. Pilpel welcomed the new Commissioners. He stated that the changes would be more streamlined and are consistent with other local laws.

Decision Point 3b

Deputy Director Ng stated that Commissioner Hansen expressed interest in returning to the original definition of "candidate" and staff agreed to leave the definition basically unchanged.

Motion 11-01-10-2 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 3b.

Public Comment:

Mr. Pilpel asked about the definition of "economic consideration" at the top of page 4 in the draft amendments, but then realized the question was for the next decision point.

Decision Point 3c

Commissioner Hansen expressed concerns regarding the last line of additional language on page 4, "reimburse vendors." Ms. Ng stated that staff recommended the language to match language from a 2001 Ethics Commission advice letter regarding economic consideration. She stated that consultants should not be deemed to have earned that money. Commissioner Hansen stated that the Commission would be assuming the reimbursement occurs and that the vendor pays.

Chairperson Studley asked the purpose of this definition. Ms. Ng stated that this definition would be used in defining the minimum thresholds for a consultant, as well as calculating what the consultant earns. Commissioner Hansen stated that she had concerns regarding hidden costs and the timing of reporting. Ms. Ng stated that the client (campaign committee/candidate) would report payments made on its campaign statements.

Commissioner Hur asked about lines 16-19 on page 4, which were proposed to be removed. Ms. Ng stated that the ordinance was too broad and that staff did not see why these exceptions should still exist. The Commissioners discussed possible scenarios of the proposed stricken language.

Motion 11-01-10-3 (Hansen): Moved and not seconded that the Commission approve only the proposed changes to the definition of "vendor" in section 1.510(i).

Commissioner Hur stated that he was not comfortable changing the definition of "vendor," as there could be unintended consequences.

Public Comment:

Mr. Pilpel stated that regarding "vendor," the relationship between candidates, committees, consultants, and vendors was a complex arrangement. He stated that the definition may exclude someone who would not otherwise qualify as a consultant. He stated that just because there is a vendor and economic consideration does not make the vendor subject to the Ordinance. He stated that "services" are defined elsewhere (in 1.510(b)-(d)) and it all goes together.

Mr. St. Croix stated that the intent was not to have reimbursements considered as income to the consultant. He suggested taking "reimbursements" from line 2, page 4, as well as the last sentence of the definition of "economic consideration." Commissioner Hayon asked why attorneys, accountants, and pollsters were originally excluded from the Ordinance. Mr. St. Croix stated that he did not know why.

Mr. Pilpel stated that some vendors, such as printers, are reluctant to work with campaigns because the campaign may not pay or take a while to pay. He stated that these vendors also do not want the cost becoming a contribution, if the campaign does not pay. He stated that the vendors work with consultants because they know they will be paid. He stated that vendors seek business and are eager to be paid for their work.

Charles Marsteller stated that Mike Housch or Larry Bush may be able to explain the reasons behind the inclusion or exclusion of certain groups in the Ordinance.

Mr. Pilpel stated that if someone is a professional campaign manager and that person is also an attorney, then that person would qualify under the Ordinance because that person is not providing "only legal services." He suggested deleting lines 16-19 from "vendor."

Mr. St. Croix suggested changing the language of the second sentence in "economic consideration" to the following: "Economic consideration does not include reimbursements made to consultants for payments made to vendors." Commissioner Hur suggested deleting the second sentence, if there were other ways to limit the payments, such as a time limit. Mr. St. Croix agreed with removing the second sentence. Ms. Ng suggested adopting regulations to clarify "reimbursements." Commissioner Hansen suggested adding a time frame for the reimbursements. Mr. St. Croix suggested adding "made on a timely basis."

Mr. Marsteller stated that a common issue is where a mail house will advance postage to a committee and not bill the consultant and/or campaign committee. He stated that would be an accrued debt, but the Commission now has an accrued debt limit.

DCA Shen reminded the Commissioners that the definition of "economic consideration" is important in order to determine whether a consultant qualifies under the Ordinance. He expressed concerns including words like "timely" or "reasonable."

Motion 11-01-10-4 (Hur/Hansen): Moved and seconded that the Commission adopt decision point 3c, except that the phrase "reimbursements for expenses" be stricken from the first sentence and the second sentence be stricken in its entirety, and that the Commission adopt regulations after further research to clarify this issue.

Public Comment:

Mr. Pilpel approved of the changes, but stated that the language is duplicative and unnecessary. Mr. Marsteller stated that staff may have a difficult task regarding the timeliness question.

The Commissioners discussed the possibility of kickbacks or commissions from vendors to consultants.

Motion 11-01-10-5 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission adopt decision point 3c, except to strike the phrase "reimbursement for expenses" from line 2, page 4, and strike the additional proposed language and the second sentence of the definition of "economic consideration"; in addition, the Commission proposes that staff research the issue of providing anything else of value for the potential for reimbursements that are not made in a long period of time and draft regulations.

Public Comment:

None.

Mr. Marsteller suggested adding examples into the campaign consultant manual in order to clarify this issue.

Decision Point 7

Commissioner Hur stated that section 1.525(b) – evasion of obligations – seemed vague and was too broad. Ms. Ng stated that the language mirrored that which is in the Lobbyist Ordinance. Commissioner Hansen noted that the decision point incorrectly referenced lines 12-18 on page 11 of the draft amendments, when it actually referenced lines 3-9 on page 12 of the draft amendments.

Motion 11-01-10-6 (Hansen/Hayon): Moved, seconded and passed (3-1; Hur dissent) that the Commission adopt decision point 7.

Public Comment:

Mr. Marsteller stated that the FPPC may have experience with the evasion question.

Decision Point 10

Commissioner Hur stated that he did not see “preponderance of the evidence” in the draft amendments. Staff agreed to add the language “on the basis of a preponderance of the evidence” in line 15, page 14 where “on the basis of substantial evidence” used to be.

The Commissioners then discussed the proposal to delete language in section 1.540(c) allowing the Commission to cancel the registration of any campaign consultant who has violated the registration or reporting requirements of the Ordinance for up to one year. Ms. Ng stated that the administrative penalty mirrors that in CFRO and that the monetary penalty would be sufficient. She also stated that it had never been used. Commissioner Hur expressed concerns that there was no limitation on the Commission to cancel a consultant’s registration. Mr. St. Croix suggested adopting regulations to limit the Commission’s ability to do so.

Mr. Pilpel stated that the language in lines 11-14 on page 15 was strange.

Mr. Marsteller stated that the cancellation of someone’s registration was a severe sanction.

Motion 11-01-10-7 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 10, except for the fourth bullet point from staff’s memorandum.

Public Comment:

None.

Motion 11-01-10-8 (Hur/Hansen): Moved, seconded and passed (4-0) that Commission staff consider regulations that would provide guidance when that power would be used by the Commission.

Public Comment:

None.

Decision Point 17

Commissioner Hur clarified that the decision point would take everything discussed at this meeting and during December’s meeting into account.

Motion 11-01-10-9 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 17.

Public Comment:

Mr. Pilpel stated that line 12 on page 5 may need to be changed; he suggested “employee.” Chairperson Studley stated that line 14 on page 5 was being changed. Mr. St. Croix stated that

would be taken under consideration. Mr. Pilpel stated that subsections 7 and 8 of section 1.515(b) were unlikely. He also encouraged the Commission to add the requirement for a consultant to disclose whether s/he or any employee serves as an officer or director of a general purpose recipient committee and, if so, to require the consultant to list the name of the organization. He stated that he suggested that the Commission require disclosure and not prohibit it.

V. Possible retention of the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.

Executive Director St. Croix stated that staff would like the Commission's approval on this arrangement, so that staff would have someone if any questions are raised regarding the mayoral race. DCA Shen clarified the nature of the firewall within the Office of the City Attorney. He stated that the City Attorney's office would handle general questions regarding public financing and campaign finance, without the assistance of Dennis Herrera. He stated that the City Attorney's office would not be involved in specific questions regarding the mayoral race.

Motion 11-01-10-10 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission retain the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.

Public Comment:

Mr. Pilpel stated that Mr. Morodomi previously worked for the FPPC and asked whether the written agreement was a public document.

DCA Shen stated that there may not be a need for a written agreement.

VI. Closed session.

Motion 11-01-10-11 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission enter into closed session.

Public Comment:

Mr. Marsteller stated that he had a comment, but missed the earlier item for general public comment. He stated that there may be coordination for ranked-choice voting. He stated that there may be deployment of public financing resources to ranked-choice tickets and coordination between committees. He suggested that the Commission hold interested persons' meetings about it.

Mr. Pilpel stated that he had questions regarding the budget, but then stated that it was not on the agenda. He then asked about the item to be discussed during closed session. DCA Shen stated that there was a constitutional challenge to the public financing program.

[Entered CLOSED SESSION at 8:13 PM.]

[Returned FROM CLOSED SESSION at 8:27 PM.]

VII. Discussion and vote regarding closed session action and deliberations.

Motion 11-01-10-12 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: existing legislation.

Public Comment:

None.

VIII. Minutes of the Commission's regular meeting of December 13, 2010.

Motion 11-01-10-13 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of December 13, 2010, without discussion.

Public Comment:

None.

IX. Executive Director's Report.

Executive Director St. Croix stated that February's meeting will be on Valentine's Day. He stated that there had been a probable cause hearing scheduled, but that has been continued. He stated that another probable cause hearing is scheduled for February and is expected to take the majority of the meeting time. He stated that the Commission will need to consider the annual budget at the February meeting. He stated that the Commission was required to submit \$53,000 in savings from this year's budget and that was approved. He stated that there have already been many questions regarding public financing for the Mayoral race and there is a training scheduled for the end of January 2011.

Mr. St. Croix then stated that this meeting may be the last meeting that Commissioner Hansen would attend as a Commissioner, but that she may remain on the Commission in February and March. He stated that he wanted to thank her for her tenure. Chairperson Studley stated that she appreciated Commissioner Hansen's tenacity and candor and her work on the Commission. Commissioner Hur stated that he appreciates hearing her comments and views and agrees with Chairperson Studley and the Executive Director.

Commissioner Hansen stated that at times it was a struggle, but that she has had a phenomenal six years. She stated that she was appreciative to have been able to serve the City in this way. She stated that she hopes her replacement would work well with the other Commissioners and that s/he would continue in the same vein. She stated that she hopes that the Commission sets the bar high enough so that other cities would follow and thanked the Commissioners for their service.

X. Items for future meetings.Public Comment:

None.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XII. Adjournment.

Motion 11-01-10-14 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission adjourn.

Public Comment:

None.

Meeting adjourned at 8:35 PM.

Respectfully submitted,

Catherine Argumedo



This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.

The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via Electronic Mail

November 22, 2011

Hope Johnson, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton G. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Chairperson Johnson:

On November 29, 2011, the Sunshine Ordinance Task Force ("Task Force") is scheduled to hear case number 11088, *Ray Hartz v. Ethics Commission*. Mr. Hartz filed a complaint on October 19, 2011 alleging that the minutes of the January 10, 2011 Ethics Commission meeting violated section 67.16 of the Sunshine Ordinance. Specifically, he claimed that the "Ethics Commission has violated the above section by failing to include a 150 word summary provided, relating to public comment, in the body of the minutes [in accordance with] previous SOTF determinations #10054 (as revised) and #11054."

For the reasons stated below, no representative from the Ethics Commission will attend the Task Force meeting on November 29, 2011. First and foremost, the Ethics Commission contests Task Force's jurisdiction to hear this matter. Second, the complainant alleges that the Commission failed to include a summary "in accordance with previous SOTF determinations"; however, the Commission was not notified of either of these Orders prior to its February 14, 2011 meeting during which it approved the Commission's January 2011 minutes. Third, the revision of the Order in case #10054 was improper. Fourth, the Commission had previously made a determination regarding the issue presented in Mr. Hartz's present complaint and concluded that attaching a 150-word written statement to the minutes is proper. Finally, the Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding alleged public meeting violations.

a. The Task Force is not authorized to hold hearings or make findings in reference to alleged public meeting violations.

Article II of the Sunshine Ordinance refers to "Public Access to Meetings," but there are no references to the Task Force within Article II. There is no language within Article II that authorizes the Task Force to hear or decide complaints alleging violations of the Ordinance.

Section 67.21(e) is the only section that provides the Task Force with the authority to make a determination on violations of the Sunshine Ordinance; that section refers entirely to determinations regarding public records. First, section 67.21(e) outlines the process the Task Force follows in response to a petition for a determination whether a record requested is public. Second, section 67.21(e) allows the Task Force to conduct a public hearing concerning the records request denial, if requested by a petition for a determination of whether a record is public. Section 67.21(e) specifically provides that the Task Force do either of the following: 1)

make a determination of whether a record requested is public, or 2) conduct a public hearing concerning the records request denial. Nothing in this section permits the Task Force to hear complaints alleging public meeting violations. There is also nothing in this section that authorizes the Task Force to issue an Order of Determination regarding an alleged public meeting violation.

b. The Ethics Commission was not provided with any notice of the Task Force's Orders re: case numbers 10054 and 11054.

In his complaint, Mr. Hartz claimed that the "Ethics Commission has violated [section 67.16] by failing to include a 150 word summary provided, relating to public comment, in the body of the minutes IAW [in accordance with] SOTF determinations #10054 (as revised) and #11054."

The Ethics Commission was not notified of either Order prior to the Commission's approval of the minutes at its February 14, 2011 meeting.

Order #10054 was issued on January 25, 2011 and dated February 7, 2011. The Commission was not notified of this Order until August 15, 2011 – six months *after* the Commission had already approved the January 2011 meeting minutes. Order #11054 was issued on August 23, 2011 and dated September 3, 2011. As of the date of this letter, the Commission has not received notification of this Order.

Therefore, as the Commission had received no notice of these Orders by the time it held its February 2011 meeting, it is impossible for the Commission to have violated section 67.16 by failing to include a summary "in accordance with" the Task Force's Orders Mr. Hartz referenced in his complaint.

c. The revision of the Order in case #10054 was improper.

According to its September 13, 2011 meeting agenda, the Compliance and Amendments Committee ("CAC") reconsidered the Task Force's January 25, 2011 Order regarding this case. The Ethics Commission questions the propriety of this reconsideration. It appears that the Task Force failed to follow its own procedures, as outlined in its "Public Complaint Procedure." (See ATTACHMENT A.) The Task Force also failed to follow the advice of its City Attorney regarding the procedures for either reconsideration or a correction of an Order. In addition, the CAC violated both the Brown Act and the Sunshine Ordinance by taking action on an item that did not appear on the posted agenda. (See ATTACHMENT B.)

i. The CAC did not follow the Task Force's procedures and improperly reconsidered the Order.

Section E of the Task Force's "Public Complaint Procedure" outlines the approved procedures regarding reconsideration of Task Force findings. Section E states:

1. Within 10 days of receipt of the Order of Determination, either the Complainant or respondent may petition the SOTF for a reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting.

a. Neither the complainant nor the respondent petitioned the Task Force for reconsideration of the Order.

Mr. Hartz never petitioned the Task Force for reconsideration of its Order, and one cannot conclude that his February 17, 2011 e-mail was a "petition for reconsideration." The e-mail subject was "Fw: Disingenuous or Dishonest?" The e-mail consisted of four paragraphs and only one referenced this case, although it did not reference the case number. Mr. Hartz wrote:

"I believe that your actions in the case of the Library Commission are questionable at best! After I made the argument that the Sunshine Ordinance requires the 150 word statements be placed "in the minutes," won that argument by a unanimous vote, was promised a determination, and when all was said and done you simply negate the whole matter by stating that SOTF had decided that the statements DID NOT HAVE TO BE "in the minutes."

Nowhere in that paragraph does Mr. Hartz: a) request that the Task Force reconsider the Order or its findings, b) state that information exists that was not available at the time of the hearing, or c) present an offer of proof as to the new information.

In fact, on January 25, 2011, the Task Force found that the Library Commission violated section 67.16 for attaching the written statement Mr. Hartz submitted as an addendum to its minutes. The Order, as written, reflected that finding.

b. Neither the complainant nor the respondent presented information, within 10 days of receipt of the Order, that was not available at the time of the January 25, 2011 hearing.

According to the Task Force's "Public Complaint Procedure," a complainant or respondent may only petition the Task Force for reconsideration *only if* information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information "within 10 days of receipt of the Order." The "Public Complaint Procedure" does not outline procedures for the Task Force to reconsider an Order on its own initiative.

As stated above, Mr. Hartz did not petition the Task Force for reconsideration. In addition, he did not present any new information in his February 2011 e-mail that existed and was not available at the time of the Task Force hearing on January 25, 2011. During the September 13, 2011 CAC meeting, Mr. Hartz also did not present any new information that existed and was not available during the January 25, 2011 meeting.

During the discussion of this item at the September 13, 2011 CAC meeting, Chair Johnson stated that she had introduced the item. She also stated that "this is not the same as... We are not reconsidering the whole thing." Chair Johnson stated that Mr. Hartz had "objected" to the Order in his e-mail. The item for "reconsideration" was placed on the CAC meeting agenda seven months after the Order was issued, although no one from the Task Force ever acknowledged Mr. Hartz's e-mail as a "petition for reconsideration." Chair Johnson stated that "it is not really a reconsideration [and that it] would not change the outcome of our findings." She stated that she introduced the item because the Library Commission had referenced the Order and that it made "us look wishy washy." CAC members stated that Chair Knee's statements during the January 25, 2011 Task Force meeting were erroneous.

The agenda packet for the September 13, 2011 CAC included eight items:

1. Order of Determination, issued January 25, 2011
2. Task Force's Public Complaint Procedure
3. Mr. Hartz's February 17, 2011 e-mail
4. Task Force's August 15, 2011 referral letter

5. Partial transcript of January 25, 2011 Task Force meeting
6. Minutes of the October 11, 2006 CAC meeting
7. Portions of the 2006-07 edition of the *Good Government Guide*
8. Portions of the 2007-08 edition of the *Good Government Guide*

Chair Johnson referenced the partial transcript of then Chair Knee's statements that he made during the January 25, 2011 Task Force meeting. (See ATTACHMENT C, page 12.) According to the transcript, Chair Knee stated that he thought "the Task Force found it acceptable if the minutes...if the actual comment or 150-word summary of the comment submitted by a member of the public was appended." After Member Knee made these comments, no other member of the Task Force challenged the veracity of his statements or suggested that it was erroneous.

Apparently, as no members of the Task Force objected to his statement, Chair Knee then included the following sentence in the Task Force's Order for this case under the "Findings of Fact and Conclusions of Law" section: "It also noted that the Task Force had found in a previous ruling that placing the 150-word statement as an addendum was acceptable if it was mentioned in the body of the minutes." Both he and Member Snyder signed the Order.

During the September 13, 2011 CAC meeting, Chair Johnson noted that she had reviewed all Task Force Orders from 2000 and she found no reference to a previous ruling regarding a 150-word statement. She claimed that the only reference to the written statement she had found were statements made by a member of the public during the October 11, 2006 CAC meeting.

However, at the time of the January 2011 meeting, Chair Knee's statement was accurate. The Task Force and CAC have been considering amendments to the Sunshine Ordinance over the course of many years. At a discussion regarding possible amendments to the Ordinance during the July 24, 2007 Task Force meeting, Member Caughen referred to the practice of attaching written statements to meeting minutes. (See ATTACHMENT D.) As of June 10, 2008, the draft amendments to section 67.16 included provisions that "any person may submit written comments that shall, if no more than 150 words, be included in the body of the minutes or attached to the minutes and noted in the item." This same language was approved by the CAC on March 3, 2010 and was accepted as part of the draft amendments through February 2011, until Chair Knee proposed a change during the March 17, 2011 special Task Force meeting. (See ATTACHMENTS E - M.) Proposed amendments to section 67.16 were still under consideration during the May 5, 2011 special Task Force meeting.

Therefore, as of the January 25, 2011 meeting, the approved proposed language for section 67.16 was that "any person may submit written comments that shall, if no more than 150 words, be included in the body of the minutes or attached to the minutes and noted in the item." When the Order was issued in January 2011, both the Task Force and CAC had repeatedly reviewed proposed amendments and approved the process that submitted written statements could be attached to the minutes.

At the September 13, 2011 CAC meeting, Chair Johnson did not present information that existed and was not available at the time of the January 2011 hearing, as required for reconsideration of Task Force findings. The Task Force may have since reconsidered its position on section 67.16, but there was no new information presented that was not available at the time of the January 25, 2011 hearing. The Task Force does not appear to change its position until the March 17, 2011 special meeting, which is well past the 10-day deadline to request reconsideration of an Order, past the date of Mr. Hartz's February 17, 2011 e-mail, and past the date that the Ethics Commission approved its January 2011 minutes.

The fact that the Task Force changed its position on section 67.16 months after the Order was issued is not a valid reason for reconsideration. The Procedures clearly state that the complainant or respondent

may petition "only if information exists that was not available at the time of the hearing." Therefore, the Commission contends that the Order regarding this complaint was improperly reconsidered.

c. The Order was reconsidered before the CAC and not the full Task Force.

According to the "Public Complaint Procedure," the full Task Force, *not* a committee of the Task Force, is to consider a petition for reconsideration at its next scheduled meeting.

According to its agenda, the CAC reconsidered this Order at its September 13, 2011 meeting. According to Task Force's by-laws, the CAC "shall monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public." The by-laws do not permit the CAC to reconsider or change content of an Order.

d. A new hearing regarding case #10054 was not scheduled at the next Task Force meeting.

If a petition for reconsideration is granted, a new hearing on the complaint is required to be scheduled for the next Task Force meeting. The Task Force never granted a petition for reconsideration of this Order. If the action it took during the September 27, 2011 meeting was a "reconsideration" of the Order, then Task Force procedures required that a new hearing on the complaint be scheduled at the next meeting, which was October 25, 2011. The Task Force never scheduled a new hearing regarding this matter.

Therefore, for these reasons, the Ethics Commission concludes that the "reconsideration" of this Order was improper.

ii. The revision to this Order was improper because a) the Task Force did not follow its own procedures regarding making a correction to an Order or b) the statements made by Member Knee during the January 25, 2011 meeting were correct.

On August 17, 2011, Chair Johnson e-mailed Deputy City Attorney Threet regarding an "incorrect statement" in the Order. (See ATTACHMENT N.) Chair Johnson included the complainant on the e-mail, but not the respondent. Staff has been unable to find any record that the Chair included the Respondent on any communications regarding the possible reconsideration or amendment of the Order. Respondent received notification from the Task Force Administrator on Friday, September 9, 2011 that the Order would be reconsidered during the Tuesday, September 13, 2011 CAC meeting. (See ATTACHMENT O.)

Chair Johnson asked DCA Threet whether the Order could be placed on the agenda for amendment if she were able to verify that no such ruling occurred. DCA Threet provided a thorough response, explaining the procedures for both reconsideration and correction of a clerical error on an Order. At no time in his response did he mention that the CAC had the authority to act. (See ATTACHMENT P.)

DCA Threet explained that "if there actually was no discussion during the Task Force meeting that the Task Force had previously allowed inclusion as an addendum, then...amending the OD (Order) would be allowed and advisable." He explained that it would not be a reconsideration, but rather a correction of a clerical error that should be agendized and voted on by the Task Force. In this case, a statement was made during the January 25, 2011 meeting that the Task Force had previously allowed inclusion as an addendum.

Most importantly, DCA Threet advised the Chair that “if that statement *was* made during the Task Force meeting when the OD was issued, then the OD may accurately reflect the decision process of the Task Force. Under those circumstances, amending the OD would not be allowed or advisable on the Task Force’s own motion.” As stated above, Member Knee stated during the January 25, 2011 meeting that “the Task Force found it acceptable if the minutes...if the actual comment or 150-word summary of the comment submitted by a member of the public was appended.” At the time the Order was issued, the approved proposed amendments to section 67.16 permitted the summary to be attached to the minutes. Therefore, as the statement *was* made during the January 25, 2011 meeting and the statement was accurate, Chair Johnson failed to follow DCA Threet’s advice not to amend the Order.

DCA Threet also explained that had the Task Force been incorrect about whether it had made a previous ruling, as noted in the second sentence of the “Findings of Fact and Conclusions of Law” section of the Order, then either the complainant or respondent “could have availed themselves of a petition for reconsideration under Section E of the Public Complaint Procedures.” He also stated that “this procedure is limited to the 10 days following an OD, however, so it is not available to the parties in this case.” In a later e-mail to Chair Johnson, DCA Threet stated that Mr. Hartz could have petitioned the Task Force and “did not do so.” He also stated that “objecting to an OD is not the same as petitioning for reconsideration.” (See ATTACHMENT Q.)

For these reasons, the Ethics Commission contends that the revision to Order #10054 was improper.

iii. The CAC violated the Brown Act and Sunshine Ordinance.

The agenda for the September 13, 2011 CAC meeting listed the following item on its agenda: “10054 Reconsideration of the January 25, 2011, Order of Determination of Ray Hartz v Library Commission. (discussion and possible action item) (attachment)(15 min).” However, the CAC does not have the authority to reconsider this Task Force Order. In addition, neither the complainant nor the respondent petitioned the Task Force for reconsideration. Ultimately, the CAC recommended that a sentence be removed from the January 25, 2011 Order. This recommendation was not listed on its September 13, 2011 agenda.

Section 54954.2(a)(2) of the California Government Code states that “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3...”

Section 67.7(d) of the Sunshine Ordinance states that “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.”

In this case, the CAC took action on an item that was not listed on its agenda. After introducing the item, Chair Johnson stated that “it is not really a reconsideration [and that it] would not change the outcome of our findings.” She also stated that she had advised that the parties be notified of the discussion, but that they were not required to attend the meeting. After a discussion, she and the other CAC members agreed to recommend a correction to the Order.

According to the draft minutes of the September 13, 2011 CAC meeting available on the Task Force's website, the final motion on the item was "Member Johnson, seconded by Member Wolfe motioned to forward the matter to the full Task Force." However, according to the recording, the motion did not forward case #10054 to the Task Force for reconsideration. The CAC voted to recommend that the Task Force correct the Order by striking a sentence and to prepare a notice that it was incorrect.

Therefore, the actions taken during the September 13, 2011 CAC meeting were improper. The Task Force's action at its September 27, 2011 meeting on the CAC's improper recommendation was also improper.

- d. *The Ethics Commission considered the same issue in case number 10054 and concluded there was no violation.*

On August 15, 2011, case #10054 was referred from the Task Force to the Ethics Commission. The matter was presented for the Commission's consideration for the September 12, 2011 meeting. Staff's recommendation was submitted to the Ethics Commission for consideration to be calendared at the Regular Meeting of the San Francisco Ethics Commission on September 12, 2011. The matter was not calendared and staff's recommendation was thus accepted.

Section 67.16 of the Sunshine Ordinance requires boards and commissions to record minutes for each regular and special meeting. It also states that "[a]ny person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Office of the City Attorney has published an overview of the laws governing the conduct of public officials in its *Good Government Guide*. In this guide, the Office of the City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment to the minutes. (See SF *Good Govt. Guide*, Part 3, §IV(G)(2)(b), p. 133 – 134 (2011).) (See ATTACHMENT R.)

Mr. Hartz's comments were summarized in the body of the minutes as required by the Sunshine Ordinance. The Library Commission included Mr. Hartz's submitted written statement in the minutes as an attachment. The Library Commission followed specific advice from the Office of the City Attorney, which is consistently given to all City departments. (See ATTACHMENT S.) Mr. Hartz stated that the *Good Government Guide* is not the law and is not a substitute for the requirements of the Sunshine Ordinance. However, City departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Even the Task Force's website includes a link to the *Guide* under its "Laws, Rules, and Regulations" section.

Mr. Hartz has made the same allegation against the Ethics Commission in the present complaint. As the Commission has previously determined that the same practice by a different City agency was proper, the Commission again contends that the attachment of his statement was proper for the January 2011 minutes.

- e. *The Ethics Commission has amended its policy/practice regarding its approved minutes.*

Finally, prior to being notified of this complaint, the Ethics Commission began to review and amend its policy regarding its meeting minutes. Mr. Hartz attended the November 14, 2011 Commission meeting. During public comment, he informed the Commission that if he were to print the minutes off the website as they were posted, his written statement would not be included in the print-out.

According to the Commission's previous practice regarding the posting of approved minutes, a link to Mr. Hartz's 150-word summary appeared in blue and was created in the specific agenda item where Mr.

Hartz spoke during the January 10, 2011 meeting. However, an extra step of clicking on the link was necessary in order to either view or print this summary. As his written statement is included as part of the minutes, staff agreed that the posting of the approved minutes on the Commission's website should be modified.

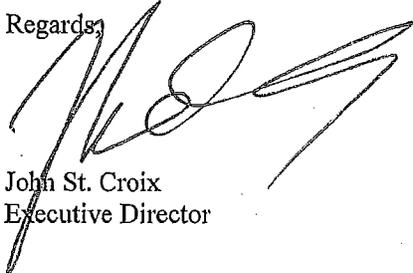
Therefore, staff has amended its policy regarding the posting of the minutes. Staff will now ensure that all written statements submitted in accordance with section 67.16 will be included when someone views or prints the minutes off the Commission's website, without any extra steps. Staff has already made the necessary changes to the January 2011 minutes and is endeavoring to ensure the same for all past minutes. (See ATTACHMENT T.)

f. No one from the Ethics Commission will be present at the November 29, 2011 meeting.

The Ethics Commission has determined that section 67.21(e) only provides the mechanism to compel a custodian of records to appear at a hearing before the Task Force concerning a records request denial. Mr. Hartz's complaint alleged a public meeting violation, not a public records denial. The Sunshine Ordinance provides no mechanism to compel a public official to appear before the Task Force regarding alleged public meeting violations. Therefore, no representative from the Ethics Commission may be compelled to attend the Task Force meeting on November 29, 2011.

In conclusion, the Ethics Commission maintains that it properly followed the law regarding its January 11, 2011 meeting minutes. The Commission will continue to advise other agencies and departments that the practice of attaching submitted written statements to the minutes, rather than including text within the body of the minutes, is acceptable and does not violate section 67.16 of the Ordinance.

Regards,



John St. Croix
Executive Director

Enclosures

Cc: Ray Hartz, Complainant.

ATTACHMENT A

(case #11088)

San Francisco Sunshine Ordinance Task Force

PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code Section (§) 67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised 4/26/2005, Revised as to form 5/22/2007, 3/25/2008 & 4/28/09

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints.

A. Inquiries In Person or by Phone

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the complainant a packet of information regarding the complaint process.

B. Filing a Complaint with the SOTF

1. A letter or complaint form may be submitted to the SOTF via mail, fax or electronic mail (email), or in person. If a complaint letter is received, the Administrator shall complete a complaint form and send a copy to the complainant for their review. The complaint form shall include a box to indicate if the complainant wants a public hearing before the Task Force or a pre-hearing conference before the Complaint Committee to focus the complaint or to otherwise assist the parties to the complaint. Once filed a copy of the complaint shall be sent to the Chairs of the full Task Force and Complaint Committee, and the SOTF Deputy City Attorney.
2. Upon filing a complaint, the complainant shall be given a condensed checklist of procedural requirements (i.e. complaint process, documentation deadlines, etc.). The responding City department/agency (respondent) shall be sent written notice of the complaint with a checklist of procedures, with a request to respond to the charges in the complaint within 5 business days. The Deputy City Attorney who advises City departments/agencies may assist the respondent in preparing a response to the complaint. (See Addendum)

3. Hearing Schedule:
 - (a) If the responding City department (respondent) does not contest jurisdiction or there is no request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint, a hearing will be scheduled with the Full Task Force.
 - (b) If the responding City department (respondent) contests jurisdiction or there is a request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint a hearing will be scheduled with the Complaint Committee prior to the hearing before the Full Task Force.
4. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Complaint Committee and/or Full Task Force meetings at which the complaint will be discussed. The respondent shall have a knowledgeable representative and/or its custodian of records at the meeting. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadlines: five working days before the hearing.
5. The Administrator shall gather all relevant documents prior to the forthcoming hearing/s and shall send the documents to the members for their review. When the documents exceed 75 pages, the complaint will be forwarded without its full exhibits, with an indication that the full exhibits are on file with the Administrator.
6. Complaint Committee Hearings:
 - (a.) The SOTF Deputy City Attorney, shall provide a written opinion to the Complaint Committee as to whether the SOTF has jurisdiction over the complaint.
 - (b.) The Complaint Committee shall review a complaint where jurisdiction is contested or a pre-hearing conference is requested at its next meeting and recommend whether the SOTF has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and SOTF, or otherwise assist the parties.
7. When the Complaint Committee recommends accepting jurisdiction, it shall do so at the next regular SOTF meeting unless this would result in a violation of the 45-day time limit for resolving complaints (mandated by §67.21); in such a case, a special meeting shall be called to hear the matter. The complainant may waive the 45-day rule or request a special hearing within the 45-day period.
8. Continuances:
 - (a) A complainant may waive the 45-day rule and if a request for continuance is submitted at least three business days in advance of the scheduled hearing it shall be granted. For requests submitted less than three business days in advance or for requests for subsequent continuances, the request shall be granted by a simple majority vote of the members present.
 - (b) If a respondent submits a request for continuance at least three business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the

request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present.
(Adopted 5/22/07)

C. Public Hearing Procedure

If jurisdiction is not contested or the Complaint Committee recommends jurisdiction, the complainant and respondent shall receive a written notice of the specific issues that shall be before the SOTF for a hearing, and they shall be advised to submit any evidence no later than 5 working days prior to the hearing.

Documentation

For a document to be considered, it must be received at least 5 working days before the hearing (Tuesday before the actual meeting). At the hearing before the Task Force, should the complainant submit additional documentation that has not been submitted to all parties, he or she shall be given the following options:

- (1) Proceed with the hearing without SOTF consideration of the additional documentation;
- (2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued; but
- (3) If the additional documentation raises a new issue, the complainant may
 - proceed with the hearing and file a new complaint on the additional issue(s), or
 - withdraw and amend the complaint to include the new issue(s).

D. Hearing and Findings of the Task Force

1. Prior to the meeting, the SOTF Deputy City Attorney shall prepare an instructional letter to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
2. The SOTF shall conduct the public hearing with the complainant and respondent present.
3. After hearing all testimony, the SOTF shall vote on an Order of Determination or other directives written by the Chair of behalf of the Task Force stating whether the record is public and/or whether the open meeting laws were obeyed.
4. After the SOTF determines a course of action, the complainant and respondent shall be notified in writing.

E. Reconsideration of Task Force Findings

1. Within 10 days of receipt of the Order of Determination, either the complainant or respondent may petition the SOTF for a reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting. (Approved by Task Force 10/26/04)

F. Department to Comply with Determination of the SOTF

1. The Administrator shall send the Order of Determination to the complainant and the respondent and request a written response within 5 days of the receipt of the Order and as necessary request a written response, which shall be monitored by the SOTF Compliance and Amendments Committee and/or any committee recommended by the Chair. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. If there is a failure to comply, the Compliance and Amendments Committee may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

G. Documentation and Information Regarding Individual Complaints:

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the date of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.
2. Copies of all correspondence relating to a complaint shall be sent to all parties.

Addendum

Complaint Process

1. You may fill out a complaint form online or access a form at sfgov.org/site/sunshine, or you may send your own letter filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may send it by fax to (415) 554-7854 or email to sotf@sfgov.org.
2. After you file a complaint, the Complaint Committee of the Sunshine Ordinance Task Force (SOTF) shall, if jurisdiction is contested and/or a request for a pre-hearing conference is received, review it to determine if the SOTF has jurisdiction and to focus on the relevant issues in the case.
 - Jurisdiction is defined as the authority to address a given issue(s), as specified in the Sunshine Ordinance.
3. If the Complaint Committee finds no jurisdiction over the violations alleged in the complaint, the complainant is notified of the decision and the complainant may request reconsideration before the SOTF at its next scheduled meeting. Should the SOTF find jurisdiction, a full hearing on the merits will be scheduled.
4. If the Complaint Committee finds the SOTF has jurisdiction, the complainant, respondent and SOTF members are notified of the decision.
5. The complaint is then scheduled for a hearing at the next meeting of the SOTF, which has the final say on the jurisdiction issue.
6. If additional information is to be submitted by the complainant or respondent, it must be submitted to the Administrator at least five working days before the scheduled hearing before the Task Force.

If either party submits additional material after the deadline, they will be informed that

- a. The Task Force may proceed without considering the new material.
 - b. The complainant may waive the 45-day time limit and continue the hearing to the next Task Force meeting.
 - c. The complainant may withdraw the complaint and file a new complaint.
 - d. The complainant may proceed to hearing with their current complaint and file a new complaint and use the new information to support the freestanding separate complaint.
7. After the public hearing, the Task Force may make an Order of Determination regarding the complaint.
 8. For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.

ATTACHMENT B

(case #11088)

September 13, 2011

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
AGENDA**

Tuesday, September 13, 2011
4:00 p.m., City Hall, Room 406

Committee Members: Allyson Washburn (Chair), David Snyder, Richard Knee, Bruce Wolfe, Hope Johnson

Note: Public comment on items not listed on the agenda (Item # 9) will be taken at 5:00 p.m. or as soon thereafter as possible.

Call to Order, Roll Call, Agenda Changes

1. Approval of March 8, 2011, regular meeting minutes. (attachment) (action) (5 min)
2. Approval of July 12, 2011, regular meeting minutes. (attachment) (action) (5 min)
3. Approval of August 9, 2011, regular meeting minutes. (attachment) (action) (5 min)
4. 11042 Hearing on the status of the August 23, 2011, Order of Determination of Cynthia Carter v the San Francisco Municipal Transportation Agency. (discussion and possible action item) (attachment) (15 min)
5. 11054 Hearing on the status of the August 23, 2011, Order of Determination of Ray Hartz v Luis Herrera of the Public Library. (discussion and possible action item) (attachment) (15 min)
6. 10054 Reconsideration of the January 25, 2011, Order of Determination of Ray Hartz v Library Commission. (discussion and possible action item) (attachment) (15 min)
7. Next steps on Ethics Commission proposed policy for handling Sunshine-related complaints (no attachment) (discussion and possible action) (30 minutes)
8. Administrator's Report. (discussion only) (attachment) (5 min)
9. Public Comment on items not listed on the agenda (no action) (no attachment)
10. Announcements, questions, and future agenda items from Committee members (discussion only) (no attachment)

Adjournment

Next regularly scheduled meeting: Oct. 11, 2011

THE AGENDA PACKET IS AVAILABLE FOR REVIEW MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

Note: Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a written summary of his/her comments, which, if no more than 150 words, shall be included in the official file.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be part of the official public record.

1. Complainant presents his/her facts and evidence Up to 5 minutes
 Other parties of Complainant present facts and evidence Up to 3 minutes each
2. City responds Up to 5 minutes

Other parties of City respond

Up to 3 minutes each

Above total speaking times for Complainant and City to be the same.

3. Matter is with the Task Force for discussion and questions.
4. Respondent and Complainant presents clarification/rebuttal Up to 3 minutes
5. Matter is with the Task Force for motion and deliberation.
6. Public comment (*Excluding Complainant & City response, witnesses*) Up to 3 minutes each
7. Vote by Task Force (*Public comment at discretion of chair on new motion and/or on new motion if vote fails.*)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access: The hearing room is wheelchair accessible.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, 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.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE: Government's duty is to serve the public, reaching its decision 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 or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code from the Internet, at URL: http://www.sfgov.org/site/sunshine_page.asp?id=34495

Lobbyist Registration & Reporting Requirements: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Governmental Conduct Code Sec. 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317; website: sfgov.org/ethics.

ATTACHMENT C

(case #11088)

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
February 7, 2011

DATE THE DECISION ISSUED
January 25, 2011

RAY HARTZ v LIBRARY COMMISSION (CASE NO. 10054)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the Library Commission (the "Commission" or "Respondent") violated the Sunshine Ordinance by failing to include in the text of the official minutes of its September 16, 2010, meeting his written statement of not more than 150 words. Mr. Hartz alleges that the Commission instead included a summary that did not accurately reflect his testimony. Mr. Hartz's complaint identifies Sunshine Ordinance ("Ordinance") Section 67.16 as having been violated. In his supplemental complaint, Mr. Hartz alleges that the above actions constituted a violation of Section 67.15 of the Ordinance by abridging his public testimony.

COMPLAINT FILED

On October 14, 2010, Mr. Hartz filed a complaint with the Task Force alleging a violation of the Ordinance. On October 20, 2010, Mr. Hartz amended his complaint with supplemental allegations of an additional violation of the Ordinance.

HEARING ON THE COMPLAINT

On January 25, 2011, Mr. Hartz presented his case before the Task Force. Mary Hudson appeared on behalf of the Commission.

Mr. Hartz told the Task Force that the Sunshine Ordinance allows for the inclusion of a 150-or fewer-word summary in the minutes. He said the Commission argues that its practice is supported by the Good Government Guide, which is not the law. He said he has repeatedly appeared before the Commission and have stated what the law requires. Instead, he said, the Commission's practice is to attach it as an addendum and make no mention of it in the body of the minutes. Another problem, he said, is that the Commission puts its own view of what was said in the minutes rather than what was actually said. If he had positive things to say, it would be in the minutes but if he had harsh words, the Commission would limit it or tone it down, he said.

Ms. Hudson of the City Librarian's Office said she was representing Commission Secretary Sue Blackman, who had earlier requested through two emails to the Task Force that the item not be placed on the current agenda because she would be unable to attend as she was on a planned vacation. Ms. Hudson requested that the item be continued to allow for Ms. Blackman's attendance at a future date. Chair Knee denied the request after sensing that members wanted the case heard. She then told Chair Knee that only Ms. Blackman, who is the Commission's lone staff person, was familiar with the complaint. Chair Knee said if that was the case, Commission President Jewelle Gomez should have made an alternate arrangement, including sending one of the seven commissioners.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the testimony and evidence presented, the Task Force finds the testimony of Mr. Hartz to be persuasive. It also noted that the Task Force had found in a previous ruling that placing the 150-word statement as an addendum was acceptable if it was mentioned in the body of the minutes.

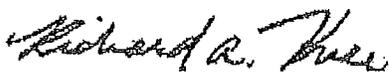
DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission violated Sunshine Ordinance Section 67.15 by altering Mr. Hartz's statement as it constituted an abridgement of the submission and Section 67.16 for attaching the statement as an addendum and not placing it within the body of the minutes. The Task Force also found Ms. Gomez in violation of Section 67.21(e) for not sending a person knowledgeable in this matter to the hearing. The agency shall make the necessary changes and appear before the Task Force on March 22, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Washburn / Chan)

Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee

Excused: Cauthen



Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

c: Ray Hartz, Complainant
Sue Blackman, Respondent
Jewel Gomez, Commission President
Jerry Threet, Deputy City Attorney

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

Complaint Procedure

San Francisco Sunshine Ordinance Task Force PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code Section (§) 67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised 4/26/2005, Revised as to form 5/22/2007 & 3/25/2008

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints.

A. Inquiries In Person or by Phone

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the complainant a packet of information regarding the complaint process.

B. Filing a Complaint with the SOTF

1. A letter or complaint form may be submitted to the SOTF via mail, fax or electronic mail (email), or in person. If a complaint letter is received, the Administrator shall complete a complaint form and send a copy to the complainant for their review and approval. The complaint form shall include a box to indicate if the complainant wants a public hearing before the Task Force or a pre-hearing conference before the Complaint Committee to focus the complaint or to otherwise assist the parties to the complaint. Once filed a copy of the complaint shall be sent to the Chairs of the full Task Force and Complaint Committee, and the SOTF Deputy City Attorney.
2. Upon filing a complaint, the complainant shall be given a condensed checklist of procedural requirements (i.e. complaint process, documentation deadlines, etc.). The responding City department/agency (respondent) shall be sent written notice of the complaint with a checklist of procedures, with a request to respond to the charges in the complaint within 5 business days. The Deputy City Attorney who advises City departments/agencies may assist the respondent in preparing a response to the complaint. (See Addendum)

3. Hearing Schedule:

(a) If the responding City department (respondent), or the SOTF Deputy City Attorney, (a) do not contest jurisdiction, or (b) there is no request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint, a hearing will be scheduled with the Full Task Force.

(b) If the responding City department (respondent), or the SOTF Deputy City Attorney, (a) contest jurisdiction, or (b) there is a request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint a hearing will be scheduled with the Complaint Committee prior to the hearing before the Full Task Force.

4. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Complaint Committee and/or Full Task Force meetings at which the complaint will be discussed. The respondent shall have a knowledgeable representative and/or its custodian of records at the meeting. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadlines: five working days before the hearing.

5. The Administrator shall gather all relevant documents prior to the forthcoming hearing/s and shall send the documents to the members for their review. When the documents exceed 75 pages, the complaint will be forwarded without its full exhibits, with an indication that the full exhibits are on file with the Administrator.

6. Complaint Committee Hearings:

a. The SOTF Deputy City Attorney, shall provide a written opinion to the Complaint Committee as to whether the SOTF has jurisdiction over the complaint.

b. The Complaint Committee shall review a complaint where jurisdiction is contested or a pre-hearing conference is requested at its next meeting and recommend whether the SOTF has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and SOTF, or otherwise assist the parties.

1. When the Complaint Committee recommends accepting jurisdiction, it shall do so at the next regular SOTF meeting unless this would result in a violation of the 45-day time limit for resolving complaints (mandated by §67.21); in such a case, a special meeting shall be called to hear the matter. The complainant may waive the 45-day rule or request a special hearing within the 45-day period.

2. Continuances:

(a) A complainant may waive the 45-day rule and if a request for continuance is submitted at least three business days in advance of the scheduled hearing it shall be

granted. For requests submitted less than three business days in advance or for requests for subsequent continuances, the request shall be granted by a simple majority vote of the members present.

(b) If a respondent submits a request for continuance at least three business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present. (Adopted 5/22/07)

C. Public Hearing Procedure

If jurisdiction is not contested or the Complaint Committee recommends jurisdiction, the complainant and respondent shall receive a written notice of the specific issues that shall be before the SOTF for a hearing, and they shall be advised to submit any evidence no later than 5 working days prior to the hearing.

Documentation

For a document to be considered, it must be received at least 5 working days before the hearing (Tuesday before the actual meeting). At the hearing before the Task Force, should the complainant submit additional documentation that has not been submitted to all parties, he or she shall be given the following options:

- (1) Proceed with the hearing without SOTF consideration of the additional documentation;
- (2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued; but
- (3) If the additional documentation raises a new issue, the complainant may
 - proceed with the hearing and file a new complaint on the additional issue(s), or
 - withdraw and amend the complaint to include the new issue(s).

D. Hearing and Findings of the Task Force

1. Prior to the meeting, the SOTF Deputy City Attorney shall prepare an instructional letter to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
2. The SOTF shall conduct the public hearing with the complainant and respondent present.
3. After hearing all testimony, the SOTF shall vote on an Order of Determination stating whether the record is public and/or whether the open meeting laws were obeyed.
4. After the SOTF determines whether a violation of the Ordinance has occurred, the complainant and respondent shall be notified in writing.

E. Reconsideration of Task Force Findings

1. Within 10 days of issuance of the Order of Determination, either the complainant or respondent may petition the SOTF for a reconsideration only if information exists that was not available at the time of the hearing.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting. (Approved by Task Force 10/26/04)

F. Department to Comply with Determination of the SOTF

1. The Administrator shall send the Order of Determination to the complainant and respondent and request a written response within 5 days, which shall be monitored by the SOTF Compliance and Amendments Committee. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. If there is a failure to comply, the Compliance and Amendments Committee may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

G. Documentation and Information Regarding Individual Complaints:

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the date of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.
2. Copies of all correspondence relating to a complaint shall be sent to all parties.

Fw: Disingenuous or Dishonest?

From: sotf@sfgov.org
o: Subject: Fw: Disingenuous or Dishonest?
Date: Feb 17, 2011 12:49 PM

Members,

This is from Ray Hartz.

Chris Rustom

----- Forwarded by SOTF/SOTF/SFGOV on 02/17/2011 11:49 AM -----

Ray Hartz Jr
<[rwhartzjr@sbcglo
bal.net](mailto:rwhartzjr@sbcglo
bal.net)>

02/17/2011 11:12
AM

Richard Knee
<rak0408@earthlink.net>

To

cc

James Chaffee
<chaffeej@pacbell.net>, Peter
Warfield
<libraryusers2004@yahoo.com>,
kimo@webnetic.net, Allen Grossman
<grossman356@mac.com>, SOTF
<sotf@sfgov.org>

Subject

Disingenuous or Dishonest?

Mr. Knee,

Please consider this an official communication to the SOTF and each of it's members and include it in all the appropriate public records. Please ensure that each member receives a copy.

I still have not received the determinations in the cases I brought before SOTF against the Library Commission and the San Francisco Police Commission. I think it is concerning that just getting a hearing takes,

literally, months and then it takes an unacceptable additional period of time to even get the determination completed. I further question whether Mr. Threet's participation in writing the determination is valid: does Mr. Threet simply ensure the determination is legally accurate or does he actually work to ensure that the City Attorney's office gets to limit and/or restrict anything in the determination that they don't like? Does he get to do this in the cases that are actually brought before the Task Force by citizens against the City Attorney's office? Talk about a "conflict of interest!"

I believe that your actions in the case of the Library Commission are questionable at best! After I made the argument that the Sunshine Ordinance requires the 150 word statements be placed "in the minutes," won that argument by a unanimous vote, was promised a determination, and when all was said and done you simply negate the whole matter by stating that SOTF had decided that the statements DID NOT HAVE TO BE "in the minutes."

A funny coincidence? I filed a 150 word summary with the Ethics Commission stating that placing the statement outside the minutes was in violation of the wording, and intent, of the Sunshine Ordinance. They placed a comment noting the statement had been submitted into the minutes, but, then placed the statement as an attachment. I have to say that it looks as if the SOTF, the Ethics Commission, and the City Attorneys office are actually colluding to evade the wording and the intent of the law. I have to wonder whether, contrary to the Brown Act, discussions are being held outside the view of the public to obtain results which cannot be achieved under the law or in full view of the public.

Very sincerely,

Ray Hartz

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

August 15, 2011

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Enforcement of Order of Determination and Willful Failure
Sunshine Complaint No. 10054, Ray Hartz v. Library Commission**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Jewelle Gomez of the Library Commission for failure to comply with the Order of Determination ("Order") issued on February 7, 2011 in Sunshine Complaint No. 10054, Ray Hartz v. Library Commission.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct" and
- (2) San Francisco City Charter Section 15.105(e) (Official Misconduct).

The Task Force further refers the Order for enforcement, and requests Ms. Gomez be required to include the written summary of 150 words or less submitted by complainant Ray Hartz in the body of the Library Commission minutes for September 16, 2010.

This enforcement referral is made pursuant to Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

Background

Ray Hartz filed a complaint with the Task Force on October 14, 2011 alleging the Library Commission refused to include his written summary of 150 words or less in the body of the official minutes of its September 16, 2011 meeting.

Task Force Hearing on Complaint

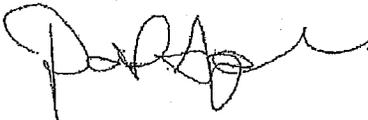
On January 25, 2011, the Task Force held a hearing on the complaint.

A description of the Task Force hearing on the complaint, violations found, and decision are embodied in the Order, a copy of which is attached.

Thank you for your attention to this matter. Please contact the Task Force Administrator at soft@sfgov.org or (415) 554- 7724 for any additional information.



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat No. 1*
Sunshine Ordinance Task Force

Encl.

cc: Ray Hartz, Complainant
Jewelle Gomez, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat No. 1 is a voting seat held by an attorney specializing in sunshine law.

Partial Transcript re Discussion of Previous SOTF Rulings on Attachments to Minutes under Sec. 67.16

Jan. 25, 2011 Regular Meeting of the full SOTF

Complaint No. 10054, Ray Hartz v. Library Commission

At Approx. 00:31:45

Chair Knee: "I have a couple of things. First of all, regarding 67.16, the Task Force has . . . I think this has come before us before, in terms of where in the minutes the summary of a public comment should be. And I think the Task Force, as I recollect, and I may be incorrect in this, it seems to me, that the Task Force found it acceptable if the minutes . . . if the actual comment or the 150 word summary of the comment submitted by a member of the public was appended. But what does bother me here is there was no notation of the appendation, if that's a word, of appending. There's no notation within these minutes that the appending occurred. And that is a concern so in this case I would support the finding of 67.16."

(Full audio of the complaint is at approximately 00:02:50 to 00:38:50)

October 11, 2006

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
MINUTES**

Wednesday, October 11, 2006
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee, Chair; Doug Comstock; Erica Craven

Call to Order 4:04 p.m.

Roll Call Present: Knee, Comstock, Craven

Agenda Change Item #6 taken after item #3

Deputy City Attorney: Ernest Llorente, Jr.

Clerk: Linda Wong

1. Approval of minutes of August 14, 2006, and September 11, 2006.
Speakers: None
Motion to approve minutes of August 14, 2006. (Craven/Comstock)
Ayes: Knee, Comstock, Craven
Motion to approve minutes of September 11, 2006. (Craven/Knee)
Ayes: Knee, Comstock, Craven

2. 06011 Hearing on the status of the September 26, 2006 Order of Determination of Beth Rimbey vs. Office of Emergency Services and the Mayors Office of Communications
Speakers: Beth Rimbey, Complainant; Laura Phillips, Executive Director, Office of Emergency Services.
Member Craven, in accordance with Committee consensus, requested that the item be continued to the next meeting.

3. 06015 Hearing on the status of the September 26, 2006 Order of Determination of Allen Grossman against the Office of the Clerk of the Board and Sunshine Ordinance Task Force Administrator
Speakers: Allen Grossman, Complainant and Gloria Young, Clerk of the Board
Kimo Crossman, stated that he requested the document to be provided to him in Word format and that viewing the document on the monitor is insufficient. That per the Sunshine Ordinance, records should be provided without unnecessary delay and this is unnecessary delay.
Motion to recommend to the full Task Force with a recommend from the Committee that this matter be referred to the State Attorney General, if the record has not been provided within 5 business days in Word format. (Craven/Comstock)
Ayes: Knee, Comstock, Craven

4. Discussion: Overview of metadata in electronic records; Presentation by the Department of Telecommunications and Information Services.
Marco Bruno, Department of Telecommunications and Information Services (DTIS) responded to questions from Committee members regarding the services that they provide to the Office of the Clerk of the Board.
Chair Knee, in accordance with Committee consensus requested Mr. Bruno to provide a diagram of servers maintained by DTIS.
Speakers: Kimo Crossman, stated that the questions asked are related to his two outstanding complaints against DTIS for failure to retrieve the document that the Clerk's Office refuses to provide and urged DTIS to provide the document to him. That the Committee should ask DTIS who has control and backups the servers?

Allen Grossman, asked Mr. Bruno if the Sunshine Ordinance Amendment in Word format is saved in the Board of Supervisors' server and who has access to the network.

5.

Possible amendments to Sections 67.15, 67.16, 67.18, and 67.21 to 67.25 of the Sunshine Ordinance and subsequent sections as time permits. (discussion and possible action item) (attachment)

- a. Sec. 67.15 Public Testimony
- b. Sec. 67.16 Minutes
- c. Sec. 67.18 Supervisor of Public Forum (possible new section)
- d. Sec. 67.21 Process for Gaining Access to Public Records; Administrative Appeals
- e. Sec 67.21-1 Policy Regarding Use and Purchase of Computer Systems.
- f. Sec 67.22 Release of Oral Public Information
- g. Sec 67.23 Public Review File – Policy Body Communications.
- h. Sec 67.24 Public Information that Must Be Disclosed.
- i. Sec 67.25 Immediacy of Response

Speakers: Kimo Crossman made the following suggestions: re Section 67.15 – Allow people to submit written comments for the minutes and the record when they cannot attend in person. Allow a limited Point of Order as long as it is not disruptive. Section 67.16 – change the last sentence in the first paragraph to read "Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes integrally, not as a separate document, attachment, or appendix." Section 67.18 – Have an on-call phone number if there is a dispute about a meeting going into closed session or a meeting has not been properly noticed.

Sections 67.15, 67.16 and 67.18 were discussed and the Clerk recorded recommended amendments.

Chair Knee, in accordance with Committee consensus, asked the Administrator to identify for discussion and possible action Sections 67.20 through 67.29-7 of the Sunshine Ordinance for the November 2006, meeting agenda, and to note that subsequent sections may be heard if time permits.

6.

Public comment on items not listed on the agenda.

Speakers: Allen Grossman, said he learned that the Administrator is no longer a full time staff to the Task Force and that violates the Sunshine Ordinance. That the Administrator should take directions from the Task Force, not the Clerk of the Board; therefore, he would like the matter regarding his request for the Sunshine Ordinance in Word format revisited.

Francisco DeCosta, stated that the City Attorney's Office determined the referendum regarding the Bayview project was not insufficient even though the Office of the Clerk of the Board believes proper procedures were followed.

Kimo Crossman, urged the Committee to reopen public comment to allow the public to speak on the Order of Determination of Allen Grossman against the Office of the Clerk of the Board and Sunshine Ordinance Task Force Administrator. That per the Sunshine Ordinance, the Clerk of the Board shall provide a full time staff to the Task Force. Since the current Administrator is serving as the Records Manager and SOTF Administrator, the Clerk's Office is in violation of the Sunshine Ordinance. Informed the Committee that DTIS failed to attend the Complaint Committee scheduled for October 10, 2006 to speak on his complaint against the department.

7.

Administrator's report.

The Administrator submitted the report.

Speakers: Kimo Crossman, reiterated that the Clerk of the Board violated the Sunshine Ordinance by assigning the Administer to do two jobs and urged the Task Force to address that.

Allen Crossman, agreed wth Kimo Crossman's statement.

8. Announcements, questions, and future agenda items from Committee members.

There is none.

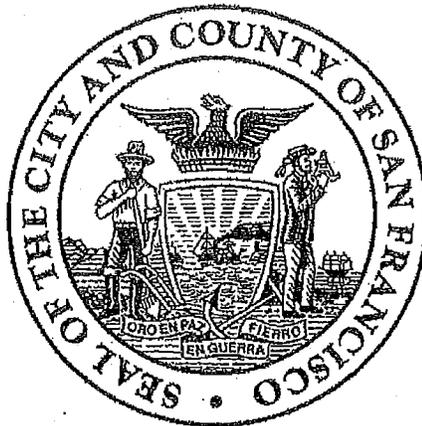
Speakers: None

Adjournment The meeting was adjourned at 6:48 p.m.

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

GOOD GOVERNMENT GUIDE

AN OVERVIEW OF THE LAWS GOVERNING
THE CONDUCT OF PUBLIC OFFICIALS



2006-07 EDITION

DENNIS J. HERRERA
CITY ATTORNEY OF SAN FRANCISCO

If there is a lack of a quorum at a meeting of a policy body that has committees, the parent body may not reconstitute itself as a committee of the whole or as one of its committees, even if a quorum of that committee happens to be present. Such a committee meeting would require a separate notice and the posting of an agenda.

4. VOTING

Secret ballots are prohibited. All votes must be taken publicly, other than votes at meetings permitted as closed sessions. An absent member may not vote by proxy. Charter §§ 2.108 and 4.104(3); Govt. Code § 54953(c); Admin. Code § 67.16.

With two exceptions, the Charter and Administrative Code require members of policy bodies to vote on every matter before them. Charter § 4.104, last paragraph. As noted elsewhere in this Guide, a member must not vote on a matter where the member's vote would violate a conflict of interest law. In addition, a member may be excused for any reason from voting on a matter by a motion adopted by a majority of members present. Charter § 4.104; Admin. Code § 1.29.

Except for certain procedural matters, when determining whether a vote is approved, the vote count is based on the total number of seats, rather than the number of seats currently filled or the number of members present. Charter § 4.104.

5. RECORDS OF MEETINGS

a. TAPE RECORDINGS

The Sunshine Ordinance requires each board or commission listed in the Charter to tape record each regular and special meeting, including closed sessions. These policy bodies must retain copies of tapes of meetings permanently. Admin. Code § 67.14(b). All policy bodies, even those not listed in the Charter, must tape record closed sessions. Tapes of closed sessions must be retained for at least ten years or permanently, if possible. Admin. Code § 67.8-1(a). A policy body may not charge a member of the public to listen to a tape recording of a meeting, or watch a video recording if the policy body made a video recording. Admin. Code § 67.14(b).

b. MINUTES

i. CHARTER BOARDS AND COMMISSIONS.

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting. The record must include how each member voted on each question. Charter § 4.104.

In addition, the Sunshine Ordinance requires the clerk or secretary of every board and commission listed in the Charter to record the minutes of each meeting. Admin. Code § 67.16. The minutes must include the following:

- The time the meeting was called to order and the time the meeting was adjourned;
- The names of the members attending the meeting;
- The roll call vote on each matter considered at the meeting;
- The time the board or commission began and ended any closed session;
- The names of members and the names and titles, where applicable, of any other person attending any closed session (other than the names of applicants or employees considered in closed session for employment or employee discipline);
- A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- A brief summary of each person's statement during the public comment. Admin. Code § 67.16.

In addition, when a member has disclosed on the record a personal, professional, or business relationship as required by Section 3.214 of the Campaign and Governmental Conduct Code, that disclosure must be recorded in the minutes. See Section II(F)(5) above.

There are no other requirements for the content of minutes, except for those that a policy body may impose on itself, for example, through its bylaws. There may be variations among policy bodies in the style, length, and content of the minutes of their respective meetings. Generally, the purpose of minutes is to record the action of the policy body.

Any person speaking during a public comment period may supply a brief written summary of their comments. This summary must be included in the minutes if it is limited to no more than 150 words. Admin. Code § 67.16.

The draft minutes of each meeting must be available for inspection and copying no later than ten working days after the meeting. The officially adopted minutes must be available for inspection and copying no later than ten working days after the meeting at which the minutes are adopted. If requested to do so, the body must produce the minutes in Braille or enlarged type. Admin. Code § 67.16. In addition, each board and commission must send two copies of its minutes to the Government Information Center at the San Francisco Public Library. Admin. Code § 87.16. Minutes must also be posted on the board or commission's Web site within 48 hours after approval. Admin. Code § 67.29-2.

It is customary that minutes of a meeting be considered and adopted at the next meeting of the policy body, although that is not legally required. Occasionally a policy body may find it necessary to consider and adopt the minutes at a later meeting.

When considering approval of minutes of a meeting, a policy body may, but is not required to, vote to excuse a member from participating on the basis that the member did not attend that meeting.

ii. NON-CHARTER BOARDS AND COMMISSIONS, ADVISORY COMMITTEES, AND COMMITTEES OF PARENT BODIES.

Non-charter boards and commissions, advisory committees, and committees of parent bodies should maintain brief minutes of meetings to maintain a record of attendance by members, the actions taken and the votes on those actions. See also C&GC Code § 3.214 discussed at Section II(F)(5) above (minutes required to record disclosure of personal, professional or business relationships).

6. MAINTAINING A WEB SITE

The Sunshine Ordinance requires each City department to maintain a Web site. Each department must post on its Web site all meeting notices, agendas and minutes of all previous meetings of its policy bodies for the previous three years. The department must post notices and agendas no later than the time the department otherwise distributes this information to the public. The department must post minutes of meetings within 48 hours after they have been approved. Each department must review its Web site regularly and update it at least weekly. Admin. Code § 67.29-2.

D. CLOSED SESSIONS

The Legislature, the Board of Supervisors and San Francisco voters have recognized that a policy body may best discuss certain matters in private. Closed sessions are the exception to the general rule requiring public meetings. The exceptions are strictly limited.

Even if one of the exceptions discussed below applies, the policy body usually is not required to meet in a closed session.²⁰ The policy body makes the choice in such circumstances whether to meet in public. No member of the public has the right to demand a closed session. Except for a closed session on pending litigation, the policy body does not have to formally vote to go into closed session, although it may choose to adopt its own rule requiring such a vote.

1. NOTICE AND AGENDA REQUIREMENTS

A gathering of a policy body in closed session is a meeting and therefore subject to most of the requirements of the Brown Act and Sunshine Ordinance, including public notice and agendas. Before going into a closed session, the policy body must first meet in open session to publicly announce its intent to enter a closed session and state the grounds for the closed session. In the closed session, the policy body may consider only those matters listed on the agenda. Admin. Code § 67.11. See generally, Govt. Code §§ 54954.5, 54956.7 through 54957.

²⁰ In some instances, State or federal law requires policy bodies to keep certain matters confidential. Under those circumstances, the body must meet in a closed session to discuss such matters.

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AN OVERVIEW OF THE LAWS GOVERNING
THE CONDUCT OF PUBLIC OFFICIALS



2007-08 EDITION

DENNIS J. HERRERA
CITY ATTORNEY OF SAN FRANCISCO

b. VOTING

Secret ballots are prohibited. All votes must be taken publicly, other than votes at meetings permitted as closed sessions. An absent member may not vote by proxy. Charter §§ 2.108 and 4.104(3); Govt. Code § 54953(c); Admin. Code § 67.16.

With two exceptions, the Charter and Administrative Code require members of policy bodies to vote on every matter before them. Charter § 4.104, last paragraph. As noted elsewhere in this Guide, a member must not vote on a matter where the member's vote would violate a conflict of interest law. In addition, a member may be excused for any reason from voting on a matter by a motion adopted by a majority of members present. Charter § 4.104; Admin. Code § 1.29.

Except for certain procedural matters, when a policy body is determining whether action on an agenda matter is approved, the body must count the vote based on the total number of seats comprising the body rather than the number of seats currently filled or the number of members present. Charter § 4.104.

D. RECORDS OF MEETINGS

1. TAPE RECORDINGS

The Sunshine Ordinance requires each board or commission listed in the Charter to tape record each regular and special meeting, including closed sessions. These policy bodies must retain copies of tapes of meetings permanently. Admin. Code § 67.14(b). All policy bodies, even those not listed in the Charter, must tape record closed sessions. Tapes of closed sessions must be retained for at least 10 years, or permanently if possible. Admin. Code § 67.8-1(a). A policy body may not charge a member of the public to listen to a tape recording of a meeting, or watch a video recording if the policy body made a video recording. Admin. Code § 67.14(b).

2. MINUTES

1. CHARTER BOARDS AND COMMISSIONS.

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting. The record must include how each member voted on each question. Charter § 4.104.

In addition, the Sunshine Ordinance requires the clerk or secretary of every board and commission listed in the Charter to record the minutes of each meeting. Admin. Code § 67.16. The minutes must include the following:

- The time the meeting was called to order and the time the meeting was adjourned;
- The names of the members attending the meeting;

- The roll call vote on each matter considered at the meeting;
- The time the board or commission began and ended any closed session;
- The names of members and the names and titles, where applicable, of any other person attending any closed session (other than the names of applicants or employees considered in closed session for employment or employee discipline);
- A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- A brief summary of each person's statement during the public comment.

Admin. Code § 67.16.

In addition, when a member has disclosed on the record a personal, professional, or business relationship as required by Section 3.214 of the Campaign and Governmental Conduct Code, that disclosure must be recorded in the minutes. See Part Two, Section II(F)(5) above.

There are no other requirements for the content of minutes, except for those that a policy body may impose on itself, for example, through its bylaws. There may be variations among policy bodies in the style, length, and content of the minutes of their respective meetings. Generally, the purpose of minutes is to record publicly the action of the policy body.

Any person speaking during a public comment period may supply a brief written summary of the comments that person made to the policy body. This summary must be included in the minutes if it is 150 words or fewer. Admin. Code § 67.16. Because this summary is not part of the official minutes adopted by the body, the summary may be included as an attachment to the minutes.

The draft minutes of each meeting must be available for public inspection and copying no later than 10 business days after the meeting. The officially adopted minutes must be available for inspection and copying no later than 10 business days after the meeting at which the minutes are adopted. If requested to do so, the body must produce the minutes in Braille or enlarged type. Admin. Code § 67.16. In addition, each board and commission must send two copies of its minutes to the Government Information Center at the San Francisco Public Library. Admin. Code § 87.16. Minutes must also be posted on the board or commission's Web site within 48 hours after approval. Admin. Code § 67.29-2.

It is customary that minutes of a meeting be considered and adopted at the next meeting of the policy body, although that is not legally required. Occasionally a policy body may find it necessary to consider and adopt the minutes at a later meeting, but within a reasonable time, the body must adopt the minutes. Charter § 4.104.

A member may vote on approval of minutes of a meeting even though the member did not attend that meeting. A policy body may, but is not required to, vote to excuse a member from participating on the basis that the member did not attend that meeting.

ii. **NON-CHARTER BOARDS AND COMMISSIONS, ADVISORY COMMITTEES, AND COMMITTEES OF PARENT BODIES.**

Non-charter boards and commissions, advisory committees, and committees of parent bodies should maintain brief minutes of meetings to maintain a record of attendance by members, the actions taken, and the votes on those actions. *See also* C&GC Code § 3.214 discussed at Part Two, Section II(F)(5) above (minutes required to record disclosure of personal, professional or business relationships).

E. MAINTAINING A WEB SITE

The Sunshine Ordinance requires each City department to maintain a publicly accessible Web site. Each department must post on its Web site all meeting notices, agendas and minutes of all previous meetings of its policy bodies for the previous three years. The department must post notices and agendas no later than the time the department otherwise distributes this information to the public. The department must post minutes of meetings within 48 hours after they have been approved. Each department must review its Web site regularly and update it at least weekly. Admin. Code § 67.29-2.

F. CLOSED SESSIONS

The California Legislature, the Board of Supervisors and San Francisco voters have recognized that a policy body may best discuss certain matters in private. Closed sessions are the exception to the general rule requiring public meetings. The exceptions are strictly limited.

Even if one of the exceptions discussed below applies, the policy body usually is not required to meet in a closed session. The policy body decides about whether to meet in public. No member of the public has the right to demand a closed session. Except for a closed session on pending litigation, the policy body does not have to formally vote to go into closed session, although it may choose to adopt its own rule requiring such a vote.

While it is generally the choice of a policy body about whether to meet in closed session where one of the exceptions applies, in some limited instances State or federal law requires policy bodies to keep certain matters confidential. Under those circumstances, the body must meet in a closed session to discuss such matters.

ATTACHMENT D

(case # 11088)

July 24, 2007

**SUNSHINE ORDINANCE TASK FORCE
MINUTES**

**Tuesday, July 24, 2007
4:00 p.m., City Hall, Room 408**

Task Force Members

Seat 1 Erica Craven (Vice Chair)	Seat 8 Bruce Wolfe
Seat 2 Richard Knee	Seat 9 Hanley Chan
Seat 3 Sue Cauthen	Seat 10 Nick Goldman
Seat 4 Vacant	Seat 11 Marjorie Ann Williams
Seat 5 Kristin Chu	
Seat 6 Doug Comstock (Chair)	Ex-officio Angela Calvillo
Seat 7 David Pilpel	Ex-officio Vacant

Call to Order The meeting called to order at: 4:03 P.M.

Roll Call Present: Craven, Knee, Cauthen (out at 8:35), Chu, Comstock, Wolfe (arrived at 5:17), Goldman, Chan (arrived at 4:20)

Absent: Pilpel

Excused: Williams

Agenda Changes: Item #9 was heard after item #5

Deputy City Attorney: Ernie Llorente

Administrator: Frank Darby

Chair Comstock, by Task Force consensus, asked to continue item #1.b. until he has time to review the tapes of the meeting.

1. a. Approval of minutes of June 26, 2007.

Speakers: Peter Warfield said that the Administrators statement on page 8 of the minutes is not correct because he asked that the Task Force not move forward with hearing his complaints. Administrator Darby responded that the minutes are accurate and that the statement was made in reference to the Complaint Committee meeting and not the full Task Force meeting.

Motion to approve minutes of June 26, 2007, as amended. (Craven / Knee)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Goldman

Absent: Pilpel, Wolfe, Chan

Excused Absent: Williams

b. Approval of minutes of June 13, 2007, Special Meeting.

Continued to the call of the Chair.

Report from Complaint Committee meeting of July 10, 2007.

Chair Cauthen made the report.

2. 07045 Determination of jurisdiction of complaint filed by Patrick Monette-Shaw against the San Francisco Health Commission for violation of Sunshine Ordinance §§67.7(a) and (b), and 67.34 for alleged failure to provide adequate public notice of its May 15, 2007, agenda.

Speakers: Patrick Monette-Shaw, Complainant, urged the Task Force to hear the complaint that was filed by Michael Petrellis at

its next meeting.

Motion to accept jurisdiction. (Cauthen / Goldman)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Chan Goldman, Williams

Absent: Pilpel, Wolfe

Excused Absent: Williams

3. 07045 Public Hearing, complaint filed by Patrick Monette-Shaw against the San Francisco Health Commission (SFHC) for violation of Sunshine Ordinance §§67.7(a) and (b), and 67.34 for alleged failure to provide adequate public notice of its May 15, 2007, agenda.
- Speakers: Patrick Monette-Shaw, Complainant, said that the responsible parties named in his complaint are not present. He said that the agenda of the SFHC was so vague as to be meaningless, intentionally evading the requirement for adequate descriptions of agenda items and depriving the public of notice of the true nature of the discussion and that other matters besides the Strategic Plan were discussed, and documents were distributed to members prior to the meeting that were not listed on the agenda. He urged a finding of a violation for improper notice and a finding of willful failure.
- Michele Seaton, Respondent: Said that the discussion was about the Strategic Plan, the overarching document that governs its mission and activities, the Commission wanted to take a step back and review that mission and the implementation of the Strategic Plan and the entire meeting was devoted to that, as noted on the agenda, from review of the Charter, committee structure and meeting formats to the review of the goals and objectives, to the leadership structure. She said the item was meant to be a wide-ranging discussion and she apologized that there were documents distributed prior to the meeting that were not noted on the agenda, that this is not the practice of her office, that she was on leave when the agenda was prepared and apologized. She said that if the agenda was too vague that the problem lies with the staff of the Health Commission, not with the officers or commissioners.
- Mr. Shaw, in rebuttal, said that the major matter discussed at the meeting was the role of the department's leadership structure and of the Commission itself, however only the Strategic Plan was listed on the agenda. He said that the vagueness of the agenda and the unusual step of holding such a meeting off-site at Laguna Honda, led him to conclude that the meeting was about Laguna Honda and prevented him from preparing for such a broad range of issues, including the disclosure by the facilitator that Dr. Katz had submitted his resignation, at which time the focus of the meeting became clear, and it was not the Strategic Plan. And, he said that the Commission's President is ultimately responsible for accepting the agenda as written.
- Public Comment: Kimo Crossman said that the Health Commission should be held accountable for a misleading and inaccurate agenda item. He compared the officers failure to take responsibility to Abu Ghraib
- Vice-Chair Craven: Because this was a Special Meeting, the requirements of the agenda descriptions are more critical to fully inform the public. The summary of the meeting shows that the Strategic Plan was only one of several items to be discussed, in fact, it was listed fourth in the summary. There is no evidence of intent, however, that they wanted to exclude the public or hide the intended discussion.
- Member Knee: Agreed, it does not constitute willful violation. He is not satisfied the item as listed is specific, and it appears to be a violation of §67.7, proposed the some language for finding of violation.
- Chair Comstock: The item was unfortunately not better noticed, but does not indicate a clear violation. There is a real need for wide-ranging discussions by boards and commissions and it shouldn't be discouraged. Suggested that a letter requesting the commission review their policy regarding agenda designation of items.
- Member Knee: Thinks there is some seriousness to the violation, they seemed to be talking about leadership structure in light of the resignation of the Director as well as revamping leadership of the department, none of this is discernable from the agenda description.
- Member Chu: The agenda only tells us what they were planning to talk about, and the topic is sufficiently broad to include a wide discussion, and from the transcript the Commissioners seem to have been confused about what they were allowed to talk about. In hindsight, it could have been better written. She doesn't see it as a violation, however.
- Vice-Chair Craven: When the facilitator began the discussion, he did state the subjects of discussion, one of which was the leadership structure, so the facilitator had previous knowledge of the direction the discussion would take.
- Member Chu: You feel the whole Board knew that? Or just the facilitator?
- Vice-Chair Craven: I think the facilitator probably talked with the Commission President beforehand to set the discussion. It sounds like someone had a detailed agenda before it started.
- Chair Comstock: I'm troubled by this item because the transcript seems to indicate that some of the attendees were aware of the direction the item was leading, I'm not convinced that the Commissioners knew where it was going, other than that was an open-ended discussion that they were trying to encourage. I'm still not convinced there is a violation.
- Member Cauthen: This is a tough one, the announcement of the resignation at this time, and the declaration by the facilitator at one point that "we're moving beyond where we've agreed to go." I don't think there was intentional violation by the Commissioners, but I think they need to be more careful of the public's rights when the descriptions are framed, and also so that the Commissioners know what they need to be prepared to discuss.

Chair Comstock: That particular line in the transcript was the most troubling aspect to this complaint, it gives the impression that the facilitator had a different agenda from what was indicated to the public. But it's not evident that the facilitator shaped the direction of the meeting in cooperation with someone else, or whether he did so himself.

Motion finding a violation of §87.7 of the Sunshine Ordinance for failure to identify with sufficient specificity the subject matter that would be discussed at the May 15, 2007 meeting of the SFHC. (Knee / Chan)

Ayes: Craven, Knee, Cauthen, Chan Goldman

Noes: Chu, Comstock

Absent: Pilpel, Wolfe

Excused Absent: Williams

Motion failed.

Member Cauthen: Could we note in the letter that we only had seven of eleven members present?

Vice-Chair Craven: Your request is that we should write a letter, perhaps it should say that there was a motion, there was concern that the agenda was not as detailed as it could have been, and encourage better agendas in the future.

Chair Comstock, by consensus of the Task Force agreed to write a letter to the Health Commission informing them that there was a motion made to find them in violation of the Ordinance, but the motion failed. The letter will also express the Task Force's concern that the agenda was not as detailed as it could have been and will encourage the Health Department to take particular care with agendas in the future.

No further action was taken on this item.

4. Report: Compliance and Amendments Committee: meeting of July 11, 2007.

Chair Knee made the report.

He said that the minutes were revised and will be redistributed. He informed the Task Force that the CAC's September meeting would take place on Monday, September 10, 2007.

Public Comment: None

5. 07030

The Compliance and Amendments Committee has referred to the Task Force for further consideration their recommendation that the Department of Public Health (DPH) be found in willful failure and official misconduct for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the Task Force on June 26, 2007, by failure to produce the e-mails of Dr. Jeffrey Klausner for the month of December 2006, and that a referral, based on that finding, to the Ethics Commission and to another appropriate body be considered.

Mr. Petrelis: Could the Task Force continue this item until more members are present?

Chair Comstock: A continuance could be granted, if it is approved by a majority of the members:

Member Craven: I suggest that the matter be heard and voted on and if there are not enough votes to recommend a referral that the Task Force revisit the issue of referring it at the next Task Force meeting.

Administrator Darby: The Task Force could also postpone hearing the matter until later in the agenda, since other members are expected to arrive.

Member Knee: I recommend that the matter be postponed until later in the agenda.

Chair Comstock: Question to DCA Llorente how they might proceed.

DCA Llorente: The Task Force should consider the complainant's request, since the Department has indicated that they will not attend.

Chair Comstock: I would grant the continuance if there are no objections.

Mr. Petrelis: Requested to withdraw his request for a continuance and asked that the matter be heard.

Complainant: Michael Petrelis, Complainant, said that the department is guilty of willful failure and official misconduct. He said that DPH did not attend the CAC meeting and did not comply with the Order of Determination. He urged that the matter be referred to the Ethics Commission as the law requires.

Public Comment: Kimo Crossman said that Dr. Katz, Dr. Kausner and Ms. Shields be identified and referred for willful failure and official misconduct. He urged that the matter be sent to the Board of Supervisors, District Attorney and Attorney General.

Patrick Monette-Shaw said that, by not attending the meeting, the department is thumbing its nose at the process and urged referral to the Ethics Commission.

Member Knee: Said that no crime has been committed, so the D.A. and the Attorney General referrals would not be appropriate, but there is willful failure and there is misconduct and he moved to refer to the Ethics Commission.

Vice-Chair Craven: Tends to agree with that, though the Attorney General does have authority to investigate violation of local laws, there doesn't have to be a crime. And our D.A. has a broader set of duties than most D.A.s, for example they investigate

consumer complaints and consumer issues. In light of recent correspondence from the A.G., however, declining to investigate another one of our referrals, she would prefer that it go to Ethics.

With regard to the limited nature of the referral, Ms. Shields came forward with information prior to the meeting of the C&A meeting that the calendar does not exist, therefore we are dealing only with the matter of the e-mails.

She feels very strongly that this issue qualifies as willful failure, simply because the law is clear and the Ordinance is clear. The cases that the City Attorney has given them to rely on basically all come within the CPRA §6255 "balancing act" which the Ordinance clearly disclaims and it cannot be invoked. Asking for e-mails, sent during a certain period is an identifiable record and if the Department needs to take three months to redact inappropriate information, then that is what they should do. That happens all the time at the State and Federal level and should happen here at the local level.

Member Cauthen: Thinks we should make an example of the department because the attempt to resurrect §6255 is becoming common again and would be a major step backward.

Motion finding the Department of Public Health, through its officers Dr. Mitch Katz and Eileen Shields in willful failure and official misconduct for failing to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the Task Force on June 26, 2007, for not producing the e-mails of Dr. Jeffrey Klausner for the month of December 2006. The Task Force refers this matter to the Ethics Commission for investigation and remedy to the extent that the Commission deems appropriate. (Knee / Goldman)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Chan, Goldman

Absent: Pipel, Wolfe

Excused Absent: Williams

6. Possible amendments to Sections 67.9, and 67.12 to 67.18 of the Sunshine Ordinance and subsequent sections as time permits.
- a. Sec 67.9 Agendas and Related Materials: Public Records.
 - b. Sec 67.12 Disclosure of Closed Session Discussions and Actions.
 - c. Sec 67.13 Barriers to Attendance Prohibited.
 - d. Sec 67.14 Tape Recording, Filming and Still Photography.
 - e. Sec 67.15 Public Testimony.
 - f. Sec 67.16 Minutes
 - g. Sec 67.17 Public Comment by Members of Policy Bodies.
 - h. Sec 67.18 Supervisor of Public Forum (new proposed section)

§67.9, Agendas and Related Materials

Vice-Chair Craven: Member Comstock had to step out, This is similar to the existing Ordinance, but that there have been many complaints about materials being presented immediately prior to a meeting, for example when a Department hands out a letter to members at a meeting or prior to the meeting without sufficient time for the members or the public to consider the documents. That has been addressed, so that when there is a contract or plan that the body is going to be reviewing, the public and the body will have an opportunity to study the matter before a vote is taken.

Administrator Darby: I believe we included this because Chair Comstock had some changes to recommend.

§67.12 Disclosure of Closed Session Discussions and Actions

Vice-Chair Craven: Much of this is consistent with the Brown Act, however, there is a significant addition, Subdivision (f) is a concept borrowed from a New Jersey open document law, and comes to us by way of a suggestion from the Chair. It requires that each policy body maintain a file of Closed Sessions which records the date, time, and justification for each closed session. At least quarterly, the body shall review that record to ascertain that the justification for maintaining the privacy of the record still applies. For example when litigation is settled, or the statute of limitations is passed, it is no longer necessary to maintain its secrecy and the files shall accordingly be made public. Other examples include public employee contracts, purchasing decisions and real estate. I think this is very innovative and very helpful, once departments get over the initial resistance, it should be very easy to maintain a list. We made it clear that the consideration of files would be going forward, so they do not have to go back into the long history of Closed Sessions, which would be a burden. I recommend that we pass this. Any questions, dissenting opinions? Seeing none, moving on.

67.13 Barriers to Attendance Prohibited.

Vice-Chair Craven: New provisions in this section were made with advice from the representative of the Mayor's Office of Disability, who gave us good ideas to make this language stronger and more user friendly.

Timelines were added for when requests for assisted listening devices or interpreters should be made. Fulfilling interpreter requests is not mandatory if made less than 72 hours in advance, though the departments should strive to fulfill such requests even when made after the 72 hour time has lapsed.

We encouraged all policy bodies to broadcast their meetings on the City's SFGTV channel or via audio and/or video streaming

on the internet.

In (g) added that all policy bodies and passive meeting bodies shall comply with the Mayor's Office of Disability Successful Public Events Checklist, a list they use to advise bodies about what they need to do to assure accessibility.

Member Wolfe: Re (f), broadcast of meetings, noted that the Mayor attempted to remove funding for some of the broadcast of meetings, and he would like stronger language to discourage such attempts.

Vice-Chair Craven: Requested suggestions for language that would accomplish that. Noted that consideration was given at the CAC to do that, but we did not find any language that could do that without requiring that all bodies be televised or that was not fiscally or technologically, a nightmare. Some rooms are not equipped for broadcast, and we didn't want to specify one commission over another.

Member Wolfe: Suggested a timeline to comply with stronger language, such as by the year 2010 all bodies shall be televised.

Member Knee: Agreed with the deadline idea, suggested that we check with the Controller or another office that could give us a sense of what the costs associated would be.

Chair Comstock: Noted that we still need language and a landing place for it.

Member Wolfe: Suggested "All policy bodies shall be televised, and/or broadcast over the government channel and/or via audio or video stream on the internet by the year 2010.

Chair Comstock: Supposed there could be opposition to the item and to the amendments as a whole by those who feel the associated costs are prohibitive and unnecessary. The Controller's statement in the ballot handbook would use this and other associated costs in his summary to the voters, and that big ticket prices would tend to discourage more conservative voters from approving the amendments, especially as we head for a June ballot.

Member Wolfe: Asked if the other amendments we are requesting have any fiscal considerations attached?

Vice-Chair Craven: Opined that some of them do, and this would be a large ticket item that would add to that.

Member Cauthen: Stated that, while she would like to see this mandated, it could be a deal-breaker.

Member Wolfe: Noted that there were stanchions for broadcast located around the room for cameras and that there may very well be wiring already in place there for them. There is likely a plan to do this sometime in the future, since the provisions are in place, so it's just a matter of what year it will get budgeted.

Member Knee: Suggested we need to determine what the state of the various rooms is.

Administrator Darby: Inquired if we were talking about bodies that meet in City Hall or those that meet in other places as well? That Media Services might be our best bet for information of that nature regarding the rooms at City Hall.

Vice-Chair Craven: Noted that we could limit the requirement to policy bodies in the Charter.

DCA Lorente: Advised that we change the language now to capture the consensus of the group, then leave it open for discussion after we have consulted with departments to determine if it is fiscally and politically possible.

Vice-Chair Craven: Suggested language – "The Board of Supervisors, its standing committees and all Charter Commissions shall, by 2010, broadcast their meetings on the San Francisco government cable channel, and/or via audio and video streaming on the internet. All other policy bodies are encouraged to broadcast their meetings similarly, as feasible.

Chair Comstock: Requested that §67.9 be postponed until Member Pilpel is present, because he had expressed some objections to the language.

67.14 Tape Recording, Filming and Still Photography.

Member Cauthen: Prefers language that states that "the recordings, etc shall be kept by the department to which they pertain" to increase access. She cited the Library CAC's recordings, which the Library refuses to keep, so the recordings are kept at a member's home.

Vice-Chair Craven: Agreed that keeping records at someone's home is not acceptable, however the City is moving toward a central storage, especially as meetings become more digitized. This will result in economies of scale and cost savings. If each department has to have its own storage server, it becomes more costly.

Member Cauthen: As the City moves to digital or disc, the amount of space is not that great, the problem is getting departments to do it.

Vice-Chair Craven: Suggested language: "shall be kept indefinitely on City premises."

Member Wolfe: Said we need to look at what the plans are for the future and that we need to determine that from DTIS and other entities regarding a central repository for all information. There is a data center, and there is backup all the time so that it is stored somewhere or in cyberspace. What is important is that there is a backup of information.

Vice-Chair Craven: "shall be kept by the City" would encompass all the meetings, and allow departments with great storage facilities to continue to store info as they do now.

Chair Comstock: Looking at the language "encouraging bodies to digitally record their meetings", wondered if they could be required to digitally record their meetings by a certain date, noting that we do have to move in that direction. (Held up four boxes of tape recorded data.) This is just one meeting.

Member Wolfe: Stressed there are economic and environmental advantages to moving to digital recordings.

Member Chu: Asked if that was within our scope or jurisdiction to inform departments what media their records should be kept on? Does this operational detail bring us some advantage? Won't we be finding violations for failure to record digitally?

Vice-Chair Craven: Stated that it is within our jurisdiction to mandate that they are all taped, and the language now states that they be audio tape recorded, so we are trying to broaden the language to allow digital recording, rather than narrowly define how they shall be recorded as Chair Comstock suggested.

Chair Comstock: Said that he had spoken to a technician from DTIS or Media Services, regarding recording the meetings on his iPod, he was informed that the rooms are all wired for digital recording. Only the media equipment would have to be changed, perhaps requiring only a different input jack and a program to record sessions that can be downloaded for free could replace the tape recording machines.

Vice-Chair Craven: Notes that, even for off-site locations, there are inexpensive digital recording machines that would provide economic storage benefits as well as portability and feasibility. So she's not averse to saying "required" as long as we give it at least 5 years to comply.

Member Wolfe: Stated that these rooms are the only ones left that record by tape, everything else is being video recorded and stored digitally or online, so we are already there. We are doing the digital recordings. These devices that need to be replaced are very inexpensive, the Ordinance is lagging way behind technology.

Chair Comstock: Adds that there are Sunshine considerations as well, since digital recordings can be easily accessed over the web and that a digital record is more user-friendly, because you have to go through all of these tapes to find the portion that you seek, while digital records provide a dial or button that quickly moves the inquirer to the desired portion.

Member Chu: Clarifies that she is not saying digital is not good, just that she doesn't look forward to having to find a violation for failure to digitally record a meeting. Departments may find this to be overreaching.

Member Wolfe: Explained that our goal must be to move Sunshine and accessibility forward, but perhaps we could include a phrase that would allow bodies that can't afford to acquire new equipment to continue to record on tape. He expressed frustration with trying to find a particular statement on a tape recording that may be several hours long as being almost impossible. Online video recordings have a jump feature that quickly move you to the portion that you are interested in.

Vice-Chair Craven: Pointed to complaints we've had about erased tapes that were principally the same. The question is what is reasonable. We had considered requiring that Sunshine responses be posted online to decrease the number of repeat requests, etc. This requirement is in Assemblyman Leno's bill before the legislature now.

Administrator Darby: Speaking as a Records Manager, we often have to look at whether the technology will continue to exist in the future and whether we will be able to continue to retrieve that information later as the technology moves forward. Keep in mind as you make narrow requirements that the City may have to bear the costs of migrating that information to a new technology and keeping the old technology to read the information.

Vice-Chair Craven: Observed that is what we are doing now with tape recordings and asked if anyone had been to a microfiche room recently.

Chair Comstock: Remarked that we should get an estimate of the costs to convert to the new technology when DTIS or similar authorities are before us.

Vice-Chair Craven: Proposed that the language require digital recording by 2013.

Member Chan: Stated that he supports digital recording.

§67.15 Public Testimony.

Chair Comstock: Introduced the changes. (c) Time and Order of Speakers is a substantial change.

Vice-Chair Craven: (b) shouldn't be underlined, it is not new, it was moved from (a) to (b). (c) has substantial changes, including raising the minimum speaking time to three minutes,

Member Cauthen: It currently says up to three minutes, originally it said a minimum of three minutes, now it's back to that, which is a good idea.

Vice-Chair Craven: And it provides an out, under (2) that gives leeway to the Chair to allow only two minutes under certain defined conditions. We had considered allowing five minutes, but reconsidered after a time and went back to three.

Member Cauthen: Asked what a "large number of speakers" means.

Chair Comstock: That is left up to the discretion of the Chair. But the recently overused automatic two-minute time limit without any consideration of the size of the audience, was not what the relaxed limitation in Prop G contemplated.

Vice-Chair Craven: In addition, there is the accommodation for those who need extra speaking time, such as speaking through an interpreter, or someone who has speech challenges.

Member Cauthen: Accommodation needs to be clarified, because a Chair could accommodate a speaker who hadn't said everything they wanted in three minutes. We need to spell out the interpreter and speech challenged public in the language.

Vice-Chair Craven: Agreed. So the language should read, "who need accommodation for an interpreter or because they have a disability."

Chair Comstock: Item (3) Authorizing a Designated Speaker may be more controversial than the other items, but only initially. This is an idea that neighborhood activists have been advocating for many years, and from many years of experience, it has been observed that when there is a controversial issue before a board or commission, there is usually a leader, or there are a few leaders that are more knowledgeable than their supporters on an issue, and there should be an accommodation for those leaders. This would tend to even the playing field, since departments can present their side on an issue without limitation of time, and often may take an hour or more to make a presentation, while the public is often limited to two minutes, regardless of their expertise. Sometimes there will be a board or committee member who will graciously ask a question, but this usually only happens when there is a member who is friendly to the sentiment of the speaker, and is an end-run around the Ordinance as well as being unfair to those who espouse a particularly unpopular opinion. This solution came about in cooperation with Martin MacIntyre, the first President of the Coalition for San Francisco Neighborhoods (some 35 years ago).

Having a designated speaker gives community groups an opportunity to present their case in full by a knowledgeable speaker, whether in opposition or support of a proposed action. This item gives a Designated Speaker or Speakers up to 15 minutes to present the views of a group. It will not take up more time than is currently expended, since members of the public, willing and present, donate their three minutes to the Speaker.

Member Goldman: Asked, "How do they manage that? So no one else can speak on the issue?"

Chair Comstock: Public Comment is allowed, as it currently exists. Only those who designate their speaking time to the Speaker will not be allowed to speak. (3)(B) defines the method for designating a Speaker. It requires that six members of the public be present and prepared to speak and that they relinquish their time to the Designated Speaker in writing.

And the Speaker as well as the department or whoever is proposing an action, will have five minutes immediately prior to the vote to summarize if they choose to do so.

Member Chan: So if I bring 15 people, and they donate their time that I would be allowed to speak 45 minutes?

Vice-Chair Craven: No it is a maximum of 15 minutes. And we need to be clear that it is not a case where six people could hand in Designated Speaker cards and then leave the meeting, they must be present for the presentation. Interest groups already pack meetings and instruct speakers regarding their speaking time, so it's not so different from the way it is currently, nor is it subject to abuse that doesn't already exist. I think it is a very interesting idea.

Perhaps the most controversial part of this is the part that allows the Designated Speaker 15 minutes or as long as the department had to present their case. This is in response to many complaints we've heard about how long presentations, with several speakers and consultants who may speak for 40 minutes, while the public is limited to two minutes. I don't find this to be inherently bad. While it is important that boards and commissions hear a full report on proposed legislation, and be allowed to ask questions to their satisfaction, I'm not sure they should be required to give equal time to the "gadflies," since the time of a commission is valuable. I am not against this, but I can see that this might be the cause for Complaints in the future, because it is difficult to administer. However, since it does exclude the time for questions and answers from the board, it may not be as difficult as it otherwise would be.

Member Wolfe: Doesn't think the public would have much of a problem if they were confident that the board would ask the questions they want to have asked. The public gets exasperated when, for example, a committee passes on something without asking the questions the public may want to hear. I think the public would want to have equal time to make their case. And you will have the "gadflies" who do come and do the work, and they do it for free.

Chair Comstock: I'd be willing to scratch, "or for the time which is equal to the time posed by the body." If that would facilitate the passage of the amendments, so that we could take this baby step now, and add the equal time language perhaps ten years down the line.

Vice-Chair Craven: Then we should take out the "up to" so that the Speaker shall present arguments for 15 minutes.

Re item (4), we have had several complaints about the order of speakers, and the public's perceived bias by the Chair of some commissions and the order of speakers. However, I would give the Chair discretion when there is good cause, such as when there may be childcare issues. So that it reads: "A chair shall accept public testimony in a fair and evenhanded way, without manipulation in the order of speakers, *absent good cause.*"

Member Cauthen: (4) A) should read: "Speaker cards, when available and submitted, shall be used in the order of submission to designate the order of speakers" rather than "*as the order of speakers.*"

Chair Comstock: Very good.

Vice-Chair Craven: That leaves (4) (f), a significant addition that should be called out.

Member Goldman: Isn't this common sense, kind of ADA compliant?

Vice-Chair Craven: This came to us from a complaint by Mr. Chaffee, because he was not allowed to use a projector or other equipment that the Library Commission had used, to make his public comment presentation. So this is a provision to allow that based on a complaint that has come before us.

Member Wolfe: Mr. Chaffee has been making Powerpoint presentations to the Board of Supervisors for at least a year, so the Library Commission should have no qualms about allowing him to use their equipment.

§ Sec 67.16 Minutes

Chair Comstock: There are a few changes in (b). For example, that the minutes shall reflect when members arrive and depart. And then later "Any person may submit written comments that shall, if no more than 150 words, be included in the body of the minutes."

Member Cauthen: Or be attached, I think that would keep the minutes from being cluttered by lot of comment, as long as the comment is referenced it would be better to be attached.

Member Wolfe: Where would the reference be located?

Member Cauthen: In the body of the minutes, and I think we need to insert some language here that would require the City Administrator to provide assistance to the person who takes minutes about how to attach comments to documents to fulfill the web requirement in (c). I know we've had complaints about secretaries who responded that they didn't have the technical know-how to fulfill some requirement, and I know that, as the new Chair of the Library CAC, I would not have the know how to attach something to a document for the web. I would insert some language in (c) after "website," "the CAO will assist policy bodies in carrying out their duties under this subsection."

Chair Comstock: Any objections to that? No? I think it helps.

Vice-Chair Craven: Suggested the language regarding real time captioning in the last sentence, should add the word "also" so it is less confusing. And that the CAO assistance language Member Cauthen suggested should come after the last sentence that deals with real time captioning.

Member Wolfe: Asked if there was any suggestion from the Mayor's Office of Disability came to the CAC, did they have any suggestions about leaving the door open for new technologies that may develop in these provisions? I just want to make sure we leave the language broad enough to adapt to new circumstances.

Member Craven: They talked about specific language that avoids problems down the line regarding certain phrases, there was no discussion about technology per se. I think the term "captioning" captures any similar technology that may come about for now.

Member Wolfe: I'm concerned about "real time" which is a specific technology that will evolve.

Member Craven: Would simply saying "captioning" be better?

Member Wolfe: No, I was just wondering if the MOD had any comments about the phrase.

§ Sec 67.17 Public Comment by Members of Policy Bodies

Chair Comstock: This language is pretty much the same as the old language

This is meant to clarify the intent of the Ordinance regarding the members rights to speak on issues that may not be popular with a majority of the members. There is a member of the PUC's Revenue Bond Oversight Committee, an appointee from the Board of Supervisors, and an engineer who is not allowed to speak unless he has permission from other members to do so. I do not think this is what being on a Board or Commission is meant to be about.

Member Wolfe: Tends to agree, but are we limiting the ability to deliberate? Roberts Rules allows speakers to speak two times. How about allowing bodies to set up their own rules.

Chair Comstock: That is just the problem at the RBOC, where members who have been appointed to oversee the expenditure of billions are not allowed to satisfy the questions they have before they vote on issues.

§ Sec 67.18 Supervisor of Public Forum (new proposed section)

Vice-Chair Craven: This came from public suggestions, because whereas we have a Supervisor of Records, we do not have something similar for meetings.

Member Wolfe: Asked whether this position could be adjoined to our body, because we're having an individual make determinations. I'm uncomfortable with this.

Vice-Chair Craven: I think it's a good thing to have a stand-alone person you can go to if you need definitive clarification regarding a public process, such as: "does the Chair have to take public comment on each subdivision of an item on the agenda, or only on the item?" The SOTF may agree or disagree with the conclusion of the Supervisor of Public Forums.

Member Chu: Cautioned about the perceived cost of the position, and inquired if it could be combined with the Supervisor of Public Records?

Chair Comstock: Pointed to the fact that there are so few complaints about public meetings, that it would not be a full-time job. It would likely be assigned to existing staff.

Speakers: None

Sections 67.12 through 67.18 were discussed and the Administrator recorded recommended amendments.

Chair Comstock: Asked the Administrator to invite someone from the Controller's Office, the Department of Telecommunications and Information Services and Media Services to attend a subsequent meeting to discuss the feasibility of requiring digital recording as proposed in §67.13 (f), and 67.14 (d), and to provide an estimated cost to implement such measures.

7.

Discussion regarding the Budget Committee's proposed mission/goals:

- The Committee shall provide input to the Sunshine Ordinance Task Force regarding its budget.
- The Committee will assess the needs of the Task Force and its related efforts to implement and enforce the San Francisco Sunshine Ordinance.
- The Committee will advocate for full funding for the Task Force and evaluate and estimate the needs of the Task Force to operate at optimal performance level.

Member Wolfe made the report. He suggested that the Committee may be responsible, in part, for the new staffer that the Task Force will soon have.

Speakers: None

8. Administrator's Report.

The Administrator made the report.

Member Craven suggested that the Chair forward a copy of the Attorney General's letter to each member of the Ethics Commission and the Board of Supervisors, so that they know what the Attorney General is saying.

Chair Comstock said that he would forward a copy of the letter to suggested individuals.

Chair Comstock said that he was concerned about the impression that he received from Jeff Ente, whom he had encouraged to file a complaint, that the Administrator discouraged him from filing a complaint, because of a statement made by Supervisor Peskin's office. He said that the Administrator should not be seen as taking sides on an issue; that persons should be encouraged to use the process, especially since many are not knowledgeable of the process. Chair Comstock said that Mr. Ente was frightened by the way the Administrator continually discouraged him, and cautioned the Administrator to encourage filers to participate in the process and express themselves, and that he should not take the word of Peskin's office.

Administrator Darby responded that he does not discourage parties from filing complaints; that the process he uses to mediate matters is the same for both complainants and respondents. He said that he doesn't take the word of any party or show favoritism; that he does inform parties of the complaint process and what the Task Force expects. He attempts to resolve the matter if it can be resolved without a hearing, but if that does not occur, he asks the Complainant if they would like to move forward with a hearing.

DCA Llorente responded that when dealing with legal process and due process parties should be made aware of how the process works; that those hearing the case will base their decision on the evidence that they hear. He said that when giving an objective view of the way the case would play out, some people, especially those new to the process, may take it negatively because they didn't realize they needed to present some evidence.

Speakers: None.

9. Public comment for items not listed on the agenda. Public comment to be held at 5:00 p.m., or as soon thereafter as possible.

Speakers: Kimo Crossman, said when there is a close quorum, e.g., six or seven members present, the Complainant should be notified before their item is heard so that they might request a continuance, because six votes are needed on substantive matters, and is often very difficult to attain. It constitutes a super-majority, a unanimous vote is needed when there is a bare quorum of six members. The TF should consider reopening cases where such a majorities were required.

Patrick Monette-Shaw: Said that he was not aware that six votes were required to find a violation in his matter, otherwise he would have asked for a continuance. He said that he would like to have his matter reconsidered and asked that a Task Force Member, on the prevailing side, reopen the matter at a future meeting when more members are present. He felt that it was unfair.

Michael Petrelis: Said that he filed a complaint against the SF AIDS Foundation, which is a 12L organization, because they have "guidelines" on their website that hinders or prevents attendance of the public to their required Sunshine meetings.

DCA Llorente: Informed members that individuals with a complaint against a 12L nonprofit organization must first seek dispute resolution with the City department who is administrating the contract before seeking an advisory opinion from the Task Force.

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

Chair Comstock: Informed Task Force (TF) members of a request from the Graffiti Advisory Board that a representative of the TF attend their August 9, meeting to discuss the Sunshine law meeting requirements. By consensus the Task Force nominated Member Pilpel to attend the meeting and asked that the GAB be urged to also invite DCA Paul Zarefsky to discuss communications outside of the regular meeting (serialim meetings).

Member Knee: Informed the Task Force that the Board of Supervisors is having a special Rules Committee meeting at 10:00 am on Thursday to discuss having a closed door meeting bimonthly to discuss emergency preparedness and homeland security issues, which he has concerns about. He urged members to attend their meeting.

Member Knee also informed the Task Force that Supervisor Alioto-Pier is sponsoring a charter amendment, for the February ballot, that will set minimum service qualifications for members of City bodies that oversee and administer election, campaign

finance, lobbying, conflict of interest, open meeting and public records laws. It would prohibit persons who have run for office in the last four years, or managed a campaign, been a treasurer, etc. from serving on the Ethics Commission, Elections Commission, or the SOTF. He said that members should be concerned about this amendment.

Member Wolfe: This is aimed at people like me, Doug Comstock and Eileen Hansen, it appears to be aimed at activists.

Chair Comstock, asked the Administrator to agendize a discussion re: the text of the Proposed Charter amendment and to get a copy of proposed language from the Clerk of the Rules Committee; also to invite someone from Supervisor Alloto-Piers office to attend the meeting.

Vice-Chair Craven: Stated that she doesn't see the nexus that would bring a discussion of the qualifications for appointments under our jurisdiction.

Chair Comstock: To the extent that it sets the parameters for appointment to this Task Force that are already set out in §67.30, it is within our jurisdiction.

Member Chan: Asked when the CAC would be discussing proposed amendments to Article IV of the Ordinance.

Member Craven: Said that they will discuss it during the August meeting.

Member Wolfe: Apologized to the Task Force for being late to various meetings. He said that he has a new job in Marin.

Administrator Darby: Reminded Chair Comstock of an e-mail that he sent notifying him of a possible quorum issue at the Complaint Committee.

Chair Comstock: Informed members that he has a work related problem that limits his time as well.

Speakers: None

Adjournment

The meeting was adjourned at 7:10 p.m.

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

ATTACHMENT E
(case #11088)

January 21, 2009

SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
RESCHEDULED MEETING
MINUTES

Tuesday, January 21, 2009
Rescheduled from January 13, 2009
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee (Chair), Erica Craven

Call to Order: 4:04 p.m.

Roll Call: Present: Knee, Craven

Task Force Chair Kristin Chu in attendance

Deputy City Attorney: Rosa Sanchez

Clerk: Chris Rustom

Agenda Changes: Items 5 heard before Item 4

1. Chair Knee announced that President Obama has rescinded a memorandum that then-United States Attorney General John Ashcroft had issued in October, 2001, that urged federal agencies and departments resist to the legal limit all Freedom of Information requests.
2. Approval of minutes of December 9, 2008, meeting.
Motion to approve minutes of December 9, 2009, meeting (Chu /Craven)
Public Comment: None
On the motion:
Ayes: Craven, Chu, Knee
3. Continued discussion of Ethics Commission responses to Sunshine Ordinance violation referrals (discussion and possible action) (no attachment)
The committee continued discussing the referrals. Members also discussed the merits and demerits of sending a letter to the Ethics Commission regarding the referrals.
Member Chu said she preferred to hold off on sending the letter and to discuss the issue at the SOTF-Ethics joint meeting.
Chair Knee said he will send members a memo after he reviewed the audiotapes that cover the Nov.27, 2007, Task Force meeting and the Dec.12, 2007, CAC meeting.
Public Comment: Ray Hartz said one of the things that the Task Force needs to address is the Ethics Commission's reliance on the City Attorney's Office, which tends to prevent the release of public documents. He also questioned DCA Lorente's commitment to the Task Force because 80 percent of his time is spent for the City Attorney's Office.
No official action taken.
4. Continued discussion on the status of proposed Sunshine Ordinance amendments and next steps the Task Force will take regarding submitting amendments to the voters. (discussion and possible action) (no attachment)
Member Craven said the item was not clear and should have read as "Consideration of annotations to Articles I and II of the Amendments (discussion and possible adoption) "
However, she said, it would not be a violation.
Chair Knee asked for the November, 2009, and June, 2010, election deadlines.
Member Craven said a special meeting needed to be scheduled to discuss the suggested additional changes to Articles I, II, III & IV.
Discussed items included:
 - The sequence on Page 7 lines 15 and 17
 - The missing sentence or paragraph linked to footnote 7 on Page 8
 - The word "for" in Line 15 of Page 13

- The difference between section a and b on Page 18
- The capitalization on Page 29, line 8
- Setting the three minute minimum in line 13 of Page 30
- Para 3 (A) on Page 31 needs to be broken down
- Para (f) on Page 32 is new
- Para (c) on Page 33 includes old and new and is double-underlined
- Use of "constitutional" in line 3 on Page 34

Corrections were made to

- The comma on Page 8 line 9
- The extra period in line 20 of Page 28

Chair Knee commented:

- Bodyis in line 17, Page 18 needs spacing
- Footnote 27 needs to be moved to Sec. 67.13 (paragraph not visible)

Member Craven said a protocol is needed to keep changes in the document consistent.

DCA Sanchez suggested Member Craven send her the document and she would use a comparison program to highlight the changes.

Public Comment: Ray Hartz said Sec 67.9 should include a sentence that says items not available 48 hours prior to a meeting shall be moved to the next meeting because he would need that time to research and analyze the item.

Member Craven suggested that the item for the next meeting read: "Continued discussion on the proposed amendments and annotations to Articles I & II of the Sunshine Ordinance." She also suggested adopting the proposed annotations and any other amendments to Articles I & II.

Members then discussed outreach issues.

5. Administrator's Report. (discussion only) (attachment)

Mr. Rustom made the report.

Public Comment: Ray Hartz said some of the complaints because of scheduling and other issues get dragged out for several months. That action, he said, discourages the public and should not happen. A schedule, he added, would be beneficial if placed on the web.

6. Public Comment on items not listed on the agenda to be taken at 5:00 p.m. or as soon thereafter as possible. (no action) (no attachment)

Public Comment: None

7. Announcements, questions, and future agenda items from Committee members. (discussion only) (no attachment)

Next meeting scheduled Tuesday, February 9, 2009, at 5 p.m.

AdjournmentThe meeting adjourned at 5:25 p.m.

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

Date: January 21, 2009

Item No. 3

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Continued discussion on the status of proposed Sunshine
- Ordinance amendments
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: January 16, 2009

*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.

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

1 (B) Members of the public who have not submitted speakers cards may form
2 a line to speak and shall be called upon in the order of appearance at the front of the
3 line, except that the chair may allow disabled or elderly-frail members of the public to
4 speak out of turn.

5 (C) If a meeting is recessed, adjourned or the chair has ordered a break, the
6 order of speakers from the previous session shall be maintained.

7 (d) A policy body shall not abridge, reproach or prohibit public criticism of the policy;
8 procedures, programs or services of the City, or of any other aspect of its proposals or
9 activities, or of the acts or omissions of the body, on the basis that the performance of one or
10 more public employees is implicated, or on any basis other than reasonable time constraints
11 adopted in regulations pursuant to subdivision (c) of this section.

12 (e) To facilitate public input, any agenda changes or continuances shall be
13 announced by the presiding officer of a policy body at the beginning of a meeting, or as soon
14 thereafter as the change or continuance becomes known to such presiding officer.

15 (f) Members of the public shall have access to all audio-visual equipment used by a
16 department or Policy Body for presentations made to that policy body consistent with time
17 limits provided in subsection (c). Prior notification in the agenda or public notice that a
18 presentation will be made using audio/visual equipment or technology shall be provided,
19 listing the specific equipment.⁴⁸

20 21 **SECTION 67.16. MINUTES.**

22 (a) The clerk or secretary of all policy bodies shall record the minutes for each
23 regular and special meeting of those bodies.⁴⁹

24
25 ⁴⁸ Explicitly provides public access to equipment used by city employees.

⁴⁹ Revised to provide that minimum minute requirements apply to all Policy Bodies.

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

1 (b) The minutes shall state the time the meeting was called to order, the names of
2 the members attending the meeting, time of each member's arrival if after commencement of
3 the meeting and the time of each member's departure if prior to the adjournment of the
4 meeting, the roll call vote on each matter considered at the meeting, the time the board or
5 commission began and ended any closed session, the names of the members and the
6 names, and titles where applicable, of any other persons attending any closed session, a list
7 of those members of the public who spoke on each matter if the speakers identified
8 themselves, whether such speakers supported or opposed the matter, a brief summary of
9 each person's statement during the public comment period for each agenda item, and the
10 time the meeting was adjourned. Any person may submit written comments that shall, if no
11 more than 150 words, be included in the body of the minutes or attached to the minutes and
12 noted in the item. The minutes shall also include the text of any resolution adopted by or
13 modified by a policy body within the body of the minutes or as an attachment.⁵⁰

14 (c) The draft minutes and any attachments thereto from each meeting shall be
15 posted on the policy body's website and be available for inspection and copying upon request
16 no later than ten working days after the meeting. The officially adopted minutes shall be
17 available for inspection and copying upon request no later than ten working days after the
18 meeting at which the minutes are adopted. Upon request, minutes required to be produced
19 by this section shall be made available in alternative formats for persons with disabilities. If
20 real time captioning is provided at a meeting, if separable, it shall also be posted on the web
21 site. The City Administrator shall assist policy bodies in carrying out their duties under this
22 subsection.⁵¹ (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

23
24 ⁵⁰ Provides increased information must be provided in the minutes to allow more information for public
review, tracking and historical research purposes.

25 ⁵¹ Requires posting of draft minutes on policy body website, and in alternative formats where available, as
well as posting of any real-time captioning provided at a meeting to improve public access and ability to monitor
actions taken in public meetings.

ATTACHMENT F

(case #11088)

February 10, 2009

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
MEETING MINUTES**

**Tuesday, February 10, 2009
5:00 p.m., City Hall, Room 406**

Committee Members: Richard Knee (Chair), Erica Craven, Doyle Johnson

Call to Order: 5:04 p.m.

Roll Call: Present: Knee, Craven, Johnson

Deputy City Attorney: Ernie Llorente

Clerk: Chris Rustom

Agenda Changes: Item 7 heard before Item 5

1. Approval of January 21, 2009, rescheduled meeting minutes
Motion to approve minutes of January 21, 2009, rescheduled meeting (Johnson / Craven)
Public Comment: None
On the motion:
Ayes: Craven, Johnson, Knee

2. Hearing on the status of the January 6, 2009, Order of Determination of Kimo Crossman vs. the Department of Telecommunications and Information Services, San Francisco Government TV, and the City Attorney's Office.
Complainant Kimo Crossman said he has received a spreadsheet from DTIS but that metadata had been removed from it. In addition, a log he received stated that personal information and comment had been removed without justification. He said the document did not include filepath information that DTIS has said is a back door for hackers. Other departments have long provided the information, he added.
Respondent Barry Fraser of the Department of Technology said the spreadsheet that was provided was run through a data removal application sent by Mr. Crossman. The application did not allow the user to make distinctions on the kind of data that was to be removed. He noted that the document's date was modified. Best practices in the industry says file paths should not be provided but in this case it was provided because he copied the document to his desktop and ran the application from there, he said.
Member Craven reminded Mr. Fraser that Task Force Chair Kristin Chu had wanted the department to show what data was removed and why. Mr. Fraser said besides the filepath information nothing in the document was exempt from disclosure. The printer path information was of slight concern because it would show how the department was structured. He also agreed that Mr. Crossman would get an exact copy of the document that was located on his desktop.
Mr. Crossman said the Ordinance addresses the location of a file and that it was not limited to onsite or offsite storage. He also said an expert witness has never said filepaths are dangerous to a system or network.
Mr. Fraser in summary said other departments may not think twice about a filepath but the city's IT department sees it as a risky and is not best practice.
Mr. Crossman said the filepath issue is a red herring and the city network has not been hacked because of its release.
Public Comment: Ray Hartz wanted to know why the department did not review the document when it was first requested and only waited until today to release it.
Member Craven noted that she hoped DTIS would provide documents in their native format in the future and also provide justification when necessary. She also said it hasn't been proven to her that releasing filepath information creates a security risk but that the department had made a good-faith argument that releasing it would compromise the network. She also said she did not see the need to forward this case for enforcement.
Member Craven suggested that the department issue the entire document from the desktop in its entirety within five days and for the item to be placed in next month's agenda if Mr. Crossman reported back to say the department did not comply.
Chair Knee agreed.
No further action taken.

3. Hearing on the status of the January 6, 2009, Order of Determination of Alvin Xex vs the Arts Commission
Complainant Alvin Xex said the respondents are claiming that tracking data for allocation of tax monies and recipients is

non-existent. He has not received the information that he had requested several times, he said. This information should be given to him because, he said, it was not a medical or military matter.

Respondent Nancy Gonchar of the Arts Commission said the agency has provided all the documents it has that were responsive to Mr. Xex's request. Ms. Gonchar also said she had contacted the Department of Human Resources and was told that the Arts Commission had not hired an African-American male in the last five years although people of color had been hired during the same period

Member Craven wanted to know if Ms. Gonchar could contact DHR to inquire if it had the forms of successful applicants for the last five years and if any applicant had checked the box for African-American.

Motion to continue (Johnson)

No second, motion fails.

In summary, she said she will contact DHR and inquire how long job applications are retained, and if it is kept for five years to see if the African-American box was checked.

Mr. Xex said the grant application does have an option to list the applicant's structure and the personnel that will be employed. He also said a name in many cases would indicate the ethnicity and race of the applicant and tracking data is involved when money is given to certain groups. It was improbable for an agency handing out millions of dollars over several years not to have this kind of data, he added.

Public Comment: Ray Hartz said the federal government requires regular reports on all known statistics regarding a grant program to show that all monies are being shared in a fair and equitable basis. He said he was surprised that the city does not keep track of such information. He suggested having the matter continued and having DHR personnel answer the question. Kimo Crossman said the respondent has the information but did not want to provide it because it would show that the department was not distributing the funds equitably.

Member Craven reminded Mr. Xex that the only issue that the Task Force had referred to the Compliance and Amendments Committee was on records disclosing if the agency had employed African-American males in the last five years.

Chair Knee urged both parties to work together and noted that the respondent has indicated that she was willing to work with the complainant to see what additional information is discoverable and disclosable.

No further action taken

4.

Continued discussion on the proposed amendments and annotations to Articles I & II of the Sunshine Ordinance

Chair Knee praised Member Craven for all the time and effort she has put into the amendments.

Member Craven explained to Member Johnson the placement of certain sections of the amendments and discussed with the clerk on how the corrections to the document is being tracked.

Public Comment: Kimo Crossman said the file size of the proposed amendments posted on line was not in proportion to the number of pages. He added that Open Government activists are discouraged because only about 10 percent of their suggestions are incorporated into the drafts. He said there was a move to introduce an independent version to the voters because of the way the activists were being treated.

Chair Knee in response said despite the appearance the efforts by the activists are deeply appreciated. He said comments from all parties had to be weighed and also the committee had to be fair to the departments at the same time. Compromises are a component of a process like this, he said. He also said those involved in a presenting a comparable packet to the voters would find meaningful support from current and present Task Force members. However, the current effort is continuing.

Ray Hartz asked to speak because Chair Knee spoke out of order. Chair Knee agreed. Mr. Hartz said he seems to be the only person who attends all Sunshine meetings except when he had to attend the Board of Supervisors meetings. He said members need to be honest with themselves by realizing that they are discouraging public participation by not accepting the participants' well-researched proposals.

Member Craven suggested and Chair Knee agreed to

- review the 2004 packet and compare it to the latest packet and see what is significantly missing
- ask Terry Francke if he could go through the proposed amendments in Articles I & II.

Member Craven said she would

- review the amendments proposed by Allen Grossman, Kimo Crossman and others to see if anything was overlooked.
- review the San Jose, Oakland and Berkeley Ordinances to see if there were provisions that the Task Force needs to consider.

Member Johnson agreed to

- review current changes and look for inconsistencies

Continued to next meeting without objection

5. The Sunshine Ordinance Task Force's response to Ethics Commission communications regarding referrals of Sunshine Ordinance violations to the Commission by the Task Force
Chair Knee announced that Chair Chu was arranging for a joint meeting to be held among members of the Compliance and Amendments Committee and the Ethics Commission at an undetermined date in March. He also said he agreed to review tapes of the Nov. 27, 2007, and Jan. 8, 2008, Task Force meetings and the Dec 7, 2007, Compliance and Amendments Committee meeting. His memo, he said, provides guidance for the letter Chair Chu was going to send to the Ethics Commission and she can incorporate whatever she wants from his memo.
Public Comment: Ray Hartz said he has read all the correspondence involved in this issue. The trend, he said, seems to indicate that the City Attorney is saying: "I am the City Attorney. I don't want to give you something. I'm going to send it to a committee where one of my employees will simply tell you the same thing." It's like telling a defendant that he or she is guilty and then dismissing the case if the person did not agree to the penalty. It's a journey in circles, he said.
No action taken. No motion necessary. Chair knee said issue is back with Chair Chu.
6. Administrator's Report. (discussion only) (attachment)
Mr. Rustom made the report.
Public Comment: None
7. Public Comment on items not listed on the agenda to be taken at 5:00 p.m. or as soon thereafter as possible. (no action) (no attachment)
Public Comment: Ray Hartz he does not mean to demean any of the Task Force members but every Tuesday he attends the Board of Supervisors meetings to present to them "SF Open Government: A Journey in Circles" because he sees people wandering around the bureaucracy and the most they could get from the Task Force was an Order of Determination.
8. Announcements, questions, and future agenda items from Committee members. (discussion only) (no attachment)
Chair Knee said the Society of Professional Journalists, Northern California chapter, plans to hold its annual James Madison Awards dinner March 18, 2009, at the New Delhi Restaurant in San Francisco.
Next meeting scheduled Tuesday, March 10, 2009, at 5 p.m.

AdjournmentThe meeting adjourned at 5:20 p.m.

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

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

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11 SECTION 67.16. MINUTES.

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13 ~~charter all policy bodies shall record the minutes for each regular and special meeting of the~~
14 ~~board or commission those bodies.~~⁴⁹

15 (b) The minutes shall state the time the meeting was called to order, the names of
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AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

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ATTACHMENT G

(case #11088)

August 11, 2009

SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE

MEETING AGENDA

Tuesday, August 11, 2009

4:00 p.m., City Hall, Room 406

Committee Members: Erica Craven-Green (Chair), Kristin Chu, Doyle Johnson, Richard Kneee, Allyson Washburn

Notes: Public comment on items not listed on the agenda (Item # 6) will be taken at 5:00 p.m. or as soon thereafter as possible.

Call to Order, Roll Call, Agenda Changes

1. Approval of July 14, 2009, regular meeting minutes (action)(attachment)
2. 09018 Continued hearing on the status of the April 28, 2009, Order of Determination of Anonymous Tenants against the Department of Building Inspection (discussion and possible action item) (attachment)
3. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force (discussion and possible action item)
4. Continued discussion on the proposed amendments to the Sunshine Ordinance. (discussion and possible action item) (attachment)
5. Administrator's Report. (discussion only) (attachment)
6. Public Comment on items not listed on the agenda. (no action) (no attachment)
7. Announcements, questions, and future agenda items from Committee members. (discussion only) (no attachment)

Adjournment

Next regularly scheduled meeting: Sept. 8, 2009

THE AGENDA PACKET IS AVAILABLE FOR REVIEW MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

Note: Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a written summary of his/her comments, which, if no more than 150 words, shall be included in the minutes. (Section 67.16)

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be part of the official public record. (Section 67.7-1 (c))

- | | |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence | 5 minutes |
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | 5 minutes |
| Other parties of City respond | Up to 3 minutes each |

(Above total speaking times for Complainant and City to be the same.)

- | | |
|---|----------------------|
| 3. Matter is with the Task Force for discussion and questions. | |
| 4. Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. Matter is with the Task Force for motion and deliberation. | |
| 6. Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access: The hearing room is wheelchair accessible.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, 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.

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE: Government's duty is to serve the public, reaching its decision 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 or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sof@sfgov.org

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Date: August 11, 2009

Item No. 4
File No. 09018

SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
AGENDA PACKET CONTENTS LIST*

- Proposed amendments
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Completed by: Chris Rustom

Date: August 6, 2009

*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.

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

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AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

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ATTACHMENT H

(case #11088)

October 13, 2009

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
MEETING AGENDA**

Tuesday, October 13, 2009
4:00 p.m., City Hall, Room 406

Committee Members: Erica Craven-Green (Chair), Kristin Chu, Doyle Johnson, Richard Knee, Allyson Washburn

Notes: Public comment on Items not listed on the agenda (Item # 13) will be taken at 5:00 p.m. or as soon thereafter as possible.

Call to Order, Roll Call, Agenda Changes

1. Approval of September 8, 2009, regular meeting minutes (action)(attachment)
2. 09033 Hearing on the status of the July 28, 2009, Order of Determination of Sue Cauthen against the Library Commission. (discussion/action) (attachment) (10 min)
3. 09031 Hearing on the status of the August 25, 2009, Order of Determination of Kenneth Kinnard against the Human Rights Commission (discussion and possible action item)(10 min)
4. 09038 Hearing on the status of the August 25, 2009, Order of Determination of Anmarie Mabbutt against the Department of Recreation and Park (discussion and possible action item)(10 min)
5. 09042 Hearing on the status of the August 25, 2009, Order of Determination of Peter Warfield against the Public Library (discussion and possible action item)(10 min)
6. 09044 Hearing on the status of the August 25, 2009, Order of Determination of Peter Warfield against the Board of Appeals (discussion and possible action item)(10 min)
7. 09039 Hearing on the status of the September 22, 2009, Order of Determination of Rita O'Flynn against the Mayor's Office on Housing (discussion and possible action item)(10 min)
8. 09046 Hearing on complaint filed by Randall Evans against the Ella Hill Hutch Community Center for allegedly not providing documents under Chapter 12L. (discussion and possible action item)(10 min)
9. 09050 Hearing on the status of the September 22, 2009, Order of Determination of Randall Evans against African American Art and Culture Complex. (discussion and possible action item)(10 min)
10. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force (discussion and possible action item)
11. Continued discussion on the proposed amendments to the Sunshine Ordinance. (discussion and possible action item) (attachment)
12. Administrator's Report. (discussion only) (attachment)
13. Public Comment on items not listed on the agenda. (no action) (no attachment)
14. Announcements, questions, and future agenda items from Committee members. (discussion only) (no attachment)

Adjournment Next regularly scheduled meeting: Nov. 10, 2009

**THE AGENDA PACKET IS AVAILABLE FOR REVIEW
MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244**

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

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Persons wishing to comment at meetings of the Task Force and its committees are encouraged to fill out speaker cards to ensure accuracy of identification. This is not a requirement; speakers may remain anonymous.

- | | | |
|----|---|----------------------|
| 1. | Complainant presents his/her facts and evidence | 5 minutes |
| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. | City responds | 5 minutes |
| | Other parties of City respond | Up to 3 minutes each |

(Above total speaking times for Complainant and City to be the same.)

- | | | |
|----|--|----------------------|
| 3. | Matter is with the Task Force for discussion and questions. | |
| 4. | Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. | Matter is with the Task Force for motion and deliberation. | |
| 6. | Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

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Date: October 13, 2009

Item No. 11
File No. _____

SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
AGENDA PACKET CONTENTS LIST*

- Proposed amendments
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Completed by: Chris Rustom

Date: Oct. 7, 2009

***This list reflects the explanatory documents provided**

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AMENDMENTS FOR 2008

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AMENDMENTS FOR 2008

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ATTACHMENT I
(case #11088)

December 8, 2009

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE**

MEETING AGENDA

Tuesday, December 8, 2009

4:00 p.m., City Hall, Room 406

Committee Members: Erica Craven-Green (Chair), Doyle Johnson, Richard Knee, Allyson Washburn

Note: Public comment on items not listed on the agenda (Item # 9) will be taken at 5:00 p.m. or as soon thereafter as possible.

Call to Order, Roll Call, Agenda Changes

1. Approval of November 10, 2009, meeting minutes (action)(attachment)(5 min)
2. 09031 Hearing on the status of the complaint filed by Kenneth Kinnard against the Human Rights Commission for allegedly withholding information. (discussion and possible action item) (attachment) (15 min)
3. 09039 Hearing on the status of the September 22, 2009, Order of Determination of Rita O'Flynn against the Mayor's Office on Housing (discussion and possible action item) (attachment) (15 min)
4. 09051 Hearing on the status of the October 27, 2009, Order of Determination of Marilyn Mollinedo against the Zoological Society (discussion and possible action item) (attachment) (15 min)
5. 09057 Hearing on the status of the October 27, 2009, Order of Determination of Peter Warfield against the Clerk of the Board for withholding applicant information (discussion and possible action item) (attachment) (15 min)
6. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force (discussion and possible action item) (no attachment) (15 min)
7. Discussion on the proposed amendments to the Sunshine Ordinance (discussion and possible action item) (attachment) (15 min)
8. Administrator's Report. (discussion only) (attachment)
9. Public Comment on items not listed on the agenda (no action) (no attachment)
10. Announcements, questions, and future agenda items from Committee members (discussion only) (no attachment)

Adjournment Next regularly scheduled meeting: Jan. 12, 2009

THE AGENDA PACKET IS AVAILABLE FOR REVIEW
MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

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| | Other parties of Complainant present facts and evidence | Up to 3 minutes each |
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(Above total speaking times for Complainant and City to be the same.)

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| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

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Date: Dec. 8, 2009

Item No. 7

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Proposed amendments
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Completed by: Chris Rustom

Date: Dec. 4, 2009

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~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

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AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the Task Force

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ATTACHMENT J

(case #11088)

January 12, 2010

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE**

MEETING AGENDA

Tuesday, January 12, 2010

4:00 p.m., City Hall, Room 406

Committee Members: Erica Craven-Green (Chair), Richard Knee, Allyson Washburn, Doyle Johnson, Nick Goldman

Note: Public comment on items not listed on the agenda (Item # 6) will be taken at 5:00 p.m. or as soon thereafter as possible.

Call to Order, Roll Call, Agenda Changes

1. Approval of December 8, 2009, meeting minutes (action)(attachment)(5 min)
2. 09070 Hearing on the status of the December 1, 2009, Order of Determination of Anmarie Mabbutt against the Department of Recreation and Park. (discussion and possible action item) (attachment) (15 min)
3. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force (discussion and possible action item) (attachment) (15 min)
4. Discussion on the proposed amendments to the Sunshine Ordinance (discussion and possible action item) (attachment) (15 min)
5. Administrator's Report. (discussion only) (attachment)
6. Public Comment on items not listed on the agenda (no action) (no attachment)
7. Announcements, questions, and future agenda items from Committee members (discussion only) (no attachment)

Adjournment

Next regularly scheduled meeting: Feb. 9, 2010

THE AGENDA PACKET IS AVAILABLE FOR REVIEW
MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

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Date: Jan. 12, 2010

Item No. 4
File No. _____

SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
AGENDA PACKET CONTENTS LIST*

- Proposed Sunshine Ordinance amendments
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Completed by: Chris Rustom

Date: Jan. 7, 2010

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ATTACHMENT K

(case #11088)

February 9, 2010

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
MEETING MINUTES**

Tuesday, February 9, 2010
4:00 p.m., City Hall, Room 406

Committee Members: Erica Craven-Green (Chair), Richard Knee, Allyson Washburn, Doyle Johnson, Nick Goldman

Call to Order: 4:00 p.m.

Roll Call: Present: Craven-Green, Knee, Washburn, Johnson, Goldman

Deputy City Attorney: Jerry Threet
Clerk: Chris Rustom

Agenda Changes: None

1. Approval of January 12, 2010, meeting minutes.

Motion to approve January 12, 2010, meeting minutes. (Goldman / Washburn)

Public Comment: None

On the motion:

Ayes: Knee, Washburn, Johnson, Goldman, Craven-Green

2. 09070 Hearing on the status of the December 1, 2009, Order of Determination of Anmarie Mabbutt against the Department of Recreation and Park.

The Complainant was not present. There was nobody in the audience to present facts and evidence in support of the complainant.

Respondent Olive Gong, Custodian for the Recreation and Park Department, said the department has provided 43 pages of emails regarding Terry Schwartz. On the posting of audio on line, she said Ron Vinson, the director of the Department of Technology, has said that he is working with staff to implement it this fiscal year.

After further discussion, Chair Craven-Green asked Ms. Gong to inquire when Dr. Schwartz's started working for the department and when it ended. She also asked Ms. Gong to inquire the parameters used in searching for the email Ms Mabbutt claimed that the department had not produced. Chair Craven-Green also said Ms. Mabbutt would be asked to produce the email that she says exists

Public Comment: Melvyn Banks said the data should be recoverable from the department's backup server.

Ms. Gong did not make any closing remarks.

Matter continued to March 9, 2010, meeting. Without objection.

3. 09069 Hearing on the status of the December 1, 2009, and January 5, 2010, Orders of Determination of Asian Law Caucus against the Mayor's Office.

The Complainant was not present. There was nobody in the audience to present facts and evidence in support of the complainant.

The Respondent was not present. There was nobody in the audience to present facts and evidence in support of the complainant.

A motion was made after members discussed how to proceed with the matter.

Motion to send matter back to the full Task Force for possible referral to the Ethics Commission with a finding of willful failure to comply with the Order of Determination and willful failure to comply with the requirement to appear at the hearings and willful failure to provide justification for withholding under Sec(s) 67.34 and 67.30 (c). (Johnson / Goldman)

Member Knee wanted to make a friendly motion to include Sec(s) 67.21 e and 67.27.

The friendly motion was accepted.

Public Comment: None

On the motion:

Ayes: Knee, Washburn, Johnson, Goldman, Craven-Green

A Point of Order was called after #4 because of the complainant's presence in the audience. Chair Craven-Green told Angela Chan of the Asian Law Caucus of the Committee's decision.

4. 09082 Hearing on the status of the January 5, 2010, Order of Determination of Melvyn Banks against the Department of Public Health.

Complainant Melvyn Banks wanted to know why his other case #09077 was sent to the Education, Outreach and Training Committee when the minutes show that the motion was to send it to this committee. In this case, he said he has received some information from the department but wanted more information to know the reasons behind the Local Share Mandate Policy.

The Respondent was not present. There was nobody in the audience to present facts and evidence in support of the respondent. Member Washburn said the department had produced something but there was a lack of assistance on the department's part in trying to help Mr. Banks get what he wants.

After further discussion Mr. Banks was told that he needed to make a broad request to get the information he needed.

Mr. Banks agreed.

On the issue of #09077, Member Knee, who is the chair of the Task Force, said that case was about an open meeting violation and was best dealt with by the Education, Outreach and Training Committee. This case, he said, was about documents and best handled by this committee.

Matter concluded.

5. 09078 Hearing on the status of the January 5, 2010, Order of Determination of Anonymous Tenants against the Planning Department.

Complainant Anonymous Tenants said he has not received anything from the Planning Department and requested that the matter be forwarded to the Ethics Commission because the respondent was willfully violating the law.

Respondent Brian Smith, senior Information Technology and Operations Manager of the Planning Department, said the complainants had requested documentation regarding a Hyde Street property. All related materials, he said, were placed in a box ready for the complainant's review and for two weeks nobody came. He also said there was an email exchange with Anonymous Tenants regarding photos and 3R reports, which did not exist in this case. He said Anonymous Tenants was informed that the photos and 3R reports did not exist but was encouraged to come and review the documents personally.

Members then asked the complainant and respondent to verify the existence or non-existence of photos.

In closing, Anonymous Tenants said Mr. Smith was only saying what the Committee wanted to hear.

Public Comment: Ellen Tsang said she and the complainant went to the department and spent hours looking at the materials. She said they were denied information that had to be part of the file before a building permit is issued.

Motion to continue the matter to the next regularly scheduled meeting and for the department to provide the process involved in issuing a permit. (Knee / Johnson)

Chair Craven-Green said no further action should be taken because there was a lack of proof on both sides to show whether the docket did or did not contain photos. The department's cataloguing process, she said, was not a matter of the Task Force.

Member Knee said he agreed with Chair Craven-Green. He said there was nothing that this committee or the Task Force could do in this case. Motion to find no further action. Without objection.

6. 09083 Hearing on the status of the January 5, 2010, Order of Determination of Ellen Tsang against the Department of Building Inspection.

Complainant Ellen Tsang said the Department of Building Inspection has provided her with the document she requested.

Respondent William Strawn of the Department of Building Inspection said the document and several other files, were at the vendor for digitizing and an exception had to be made to meet the Order of Determination. He also said the department has a multi-year budget to digitalize all of its records.

Member Knee said the Order of Determination has been met and no further action was necessary.

In closing, Ms. Tsang said Mr. Strawn needs to concentrate on one document and not muddle the scene by bring in other issues.

Public Comment: None

Chair Craven-Green announced that the matter is concluded.

7. 09085 Hearing on the status of the January 5, 2010, Order of Determination of Mike Addario against the Arts Commission.

Complainant Mike Addario said he had asked the Arts Commission for the Street Artists Program's yearend statement and was given some numbers by the respondent Howard Lazar. Mr. Lazar, however, could not back up the numbers, he said. The program's budget committee has voted on an increase in the next financial budget to cover costs associated with responding to document requests through the City Attorney's Office, he said.

The Respondent was not present. There was nobody in the audience to present facts and evidence in support of the respondent.

Member Knee wanted to know if the Arts Commission had provided what he wanted. Mr. Addario said his issue was a document that appeared to have been doctored, but that all documents had been provided.

Chair Craven-Green said she was concerned by the Street Artists Program charging members to pay for public record requests. The Ordinance, she said, requires every City and County employee to respond to public record requests. She requested that the Task Force chair refer the matter to the Education, Outreach and Training Committee.

Member Knee shared her concern and agreed to forward it to the Education, Outreach and Training Committee.

Public Comment: None

In closing, Mr. Addario said the Arts Commission certainly needs the training.

No further action.

8. Developing recommendations for the proposed electronic document retention policy of the Sunshine Ordinance Task Force and possible presentation from COIT on status of conversion of City email systems to Microsoft Exchange.

Richard Robinson, Chief Operations Officer for the Department of Technology made the report.

9. Discussion on the proposed amendments to the Sunshine Ordinance: Article II, including but not limited to Sections 67.3 and 67.4, definitions of meetings of policy bodies and passive bodies.

Members discusses the changes and continued the matter to next month.

10. Administrator's Report.

Mr. Rustom made the report

11. Public Comment on items not listed on the agenda. None

12. Announcements, questions, and future agenda items from Committee members.: None

Adjournment

The meeting adjourned at 5:10 p.m.

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

Date: Feb. 9, 2010

Item No. 9

File No. _____

SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
AGENDA PACKET CONTENTS LIST*

- proposed amendments to the Sunshine Ordinance
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Completed by: Chris Rustom Date: Feb. 4, 2010

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18 Every member of a policy body retains the full constitutional rights of a citizen to
19 comment publicly on the wisdom or propriety of government actions, including those of the
20 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or
21 deprive members of their rights as elected or appointed officials for expressing their
22 judgments or opinions, including those which deal with the perceived inconsistency of non-

23 ⁴⁹ Provides increased information must be provided in the minutes to allow more information
24 for public review, tracking and historical research purposes.

25 ⁵⁰ Requires posting of draft minutes on policy body website, and in alternative formats where
available, as well as posting of any real-time captioning provided at a meeting to improve
public access and ability to monitor actions taken in public meetings.

ATTACHMENT L

(case #11088)

February 17, 2011 - special

SUNSHINE ORDINANCE TASK FORCE SPECIAL MEETING AGENDA

Thursday, February 17, 2011
5:00 p.m., City Hall, Room 406

Task Force Members

Seat 1	David Snyder	Seat 8	Bruce Wolfe (Vice Chair)
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson
Seat 4	Suzanne Manneh	Seat 11	(Vacant)
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	(Vacant)
Seat 7	(Vacant)	Ex-officio	(Vacant)

Note: Public comment on items not listed on the agenda (Item # 3) will be taken at 6:00 p.m. or as soon thereafter as possible.

Call to Order; Roll Call; Agenda Changes

1. Discussion on whether (a) to continue the section-by-section changes to the proposed Sunshine Ordinance amendments, or (b) to focus on the half-dozen or so issues that the Task Force believes need the most immediate redress. (discussion and action item) (no attachment)
2. If the Task Force has opted for option (a) in Item #1: Consideration of amendments to Sunshine Ordinance Articles III and IV.

OR

If the Task Force has opted for option (b) in Item #1: Consideration of amendments to Sunshine Ordinance Article I and subsequent articles as time and quorum factors permit. (discussion and action item) (attachment)
3. Public Comment on items not listed on the agenda (no action) (no attachment)
4. Announcements, questions and future agenda items from Task Force members (discussion only) (no attachment)

Adjournment

Next regularly scheduled meeting: Feb. 22, 2011.

THE AGENDA PACKET IS AVAILABLE FOR REVIEW MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

Note: Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be made a part of the official public record.

1. Complainant presents his/her facts and evidence Up to 5 minutes
Other parties of Complainant present facts and evidence Up to 3 minutes each
2. City responds Up to 5 minutes
Other parties of City respond Up to 3 minutes each

Above total speaking times for Complainant and City to be the same.

3. Matter is with the Task Force for discussion and questions.
4. Respondent and Complainant presents clarification/rebuttal Up to 3 minutes
5. Matter is with the Task Force for motion and deliberation.
6. Public comment (*Excluding Complainant & City response, witnesses*) Up to 3 minutes each
7. Vote by Task Force (*Public comment at discretion of chair on new motion and/or on new motion if vote fails.*)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access: The hearing room is wheelchair accessible.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, 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.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE: Government's duty is to serve the public, reaching its decision 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 or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code from the Internet, at URL: http://www.sfgov.org/site/sunshine_page.asp?id=34495

Lobbyist Registration & Reporting Requirements: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Governmental Conduct Code Sec. 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317; website: sfgov.org/ethics.

Date: Feb. 17, 2011

Item No. 2
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Proposed amendments
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Chris Rustom

Date: Feb. 10, 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.

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline; deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force
Note: Track change mode in use. As of June 1, 2010

1 time limits provided in subsection (c). To the extent feasible, pPrior notification in the
2 agenda or public notice that a presentation will be made using audio/visual equipment
3 or technology shall be provided, listing the specific equipment.⁴⁶ (~~Added by Ord. 265-~~
4 ~~93, App. 8/18/93; amended by Proposition G, 11/2/99)~~
5

6 SECTION 67.16. MINUTES.

7 (a) ~~The clerk or secretary of each board and commission enumerated in the~~
8 ~~Charter~~all policy bodies shall record the minutes for each regular and special meeting of the
9 ~~board or commission~~those bodies.⁴⁷

10 (b) The minutes shall state the time the meeting was called to order, the names of
11 the members attending the meeting, time of each member's arrival if after commencement of
12 the meeting and the time of each member's departure if prior to the adjournment of the
13 meeting, the roll call vote on each matter considered at the meeting, the time the board or
14 commission began and ended any closed session, the names of the members and the
15 names, and titles where applicable, of any other persons attending any closed session, a list
16 of those members of the public who spoke on each matter if the speakers identified
17 themselves, whether such speakers supported or opposed the matter, a brief summary of
18 each person's statement during the public comment period for each agenda item, and the
19 time the meeting was adjourned. ~~Any person speaking during a public comment period may~~
20 ~~supply~~submit a brief written summary~~comments of their comments which~~that shall, if no
21 more than 150 words, be included in the body of the minutes or attached to the minutes and
22 _____

23 ⁴⁶ Explicitly provides public access to equipment used by city employees.

24 ⁴⁷ Revised to provide that minimum minute requirements apply to all Policy Bodies.

25

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

Note: Track change mode in use. As of June 1, 2010

1 noted in the item. The minutes shall also include the text of any resolution adopted by or
2 modified by a policy body within the body of the minutes or as an attachment.⁴⁸

3 (c) The draft minutes and any attachments thereto from of each meeting shall be
4 posted on the policy body's website and be available for inspection and copying upon request
5 no later than 10 businessworking days after the meeting. The officially adopted minutes shall
6 be available for inspection and copying upon request no later than ten business business
7 workingdays after the meeting at which the minutes are adopted. Upon request, minutes
8 required to be produced by this section shall be made available in Braille or increased type
9 size alternative formats for persons with disabilities. If real time captioning is provided at a
10 meeting, if separable, it shall also be posted on the web site. The City Administrator shall
11 assist policy bodies in carrying out their duties under this subsection.⁴⁹ (Added by Ord. 265-
12 93, App. 8/18/93; amended by Proposition G, 11/2/99)

14 SECTION 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

15 Every member of a policy body retains the full constitutional rights of a citizen to
16 comment publicly on the wisdom or propriety of government actions, including those of the
17 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or
18 deprive members of their rights as elected or appointed officials for expressing their
19 judgments or opinions, including those which deal with the perceived inconsistency of non-
20 public discussions, communications or actions with the requirements of state or federal law or

21 ⁴⁸ Provides increased information must be provided in the minutes to allow more information
22 for public review, tracking and historical research purposes.

23 ⁴⁹ Requires posting of draft minutes on policy body website, and in alternative formats where
24 available, as well as posting of any real-time captioning provided at a meeting to improve
25 public access and ability to monitor actions taken in public meetings.

ATTACHMENT M

(case #11088)

March 17, 2011 - special

SUNSHINE ORDINANCE TASK FORCE SPECIAL MEETING AGENDA

Thursday, March 17, 2011
5:00 p.m., City Hall, Room 406

Task Force Members

Seat 1	David Snyder	Seat 8	Bruce Wolfe (Vice Chair)
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chau
Seat 3	Sue Cauthen	Seat 10	Hope Johnson
Seat 4	Suzanne Manneh	Seat 11	(Vacant)*
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	(Vacant)
Seat 7	(Vacant)*	Ex-officio	(Vacant)

Note: Public comment on items not listed on the agenda (Item # 2) will be taken at 6:00 p.m. or as soon thereafter as possible.

Call to Order; Roll Call; Agenda Changes

1. Consideration of amendments to Sunshine Ordinance. (discussion and action item) (attachment)
2. Public Comment on items not listed on the agenda (no action) (no attachment)
3. Announcements, questions and future agenda items from Task Force members (discussion only) (no attachment)

Adjournment

Next regularly scheduled meeting: March. 22, 2011.

*Seat may be filled by Board of Supervisors action and the new member sworn in by the start of this meeting.

THE AGENDA PACKET IS AVAILABLE FOR REVIEW MONDAY THROUGH FRIDAY AT CITY HALL, ROOM 244

SUNSHINE ORDINANCE TASK FORCE HEARING PROCEDURES

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- | | |
|---|----------------------|
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | Up to 5 minutes |
| Other parties of City respond | Up to 3 minutes each |
- Above total speaking times for Complainant and City to be the same.*
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 5. Matter is with the Task Force for motion and deliberation.
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Date: March 17, 2011

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	Chair Knee's submissions	Page 4
<input checked="" type="checkbox"/>	Member Johnson's submissions	Page 8
<input checked="" type="checkbox"/>	Proposed amendments	Page 10
<input type="checkbox"/>	_____	_____

Completed by: Chris Rustom Date: _____

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LIST OF MAJOR SUNSHINE ISSUES AND PROPOSED SOLUTIONS
Respectfully submitted by Richard Knee, Sunshine Ordinance Task Force Chair

1. "Task Force" or "Commission"?

It is possible that the latter name would garner a bit more respect for our body from City officials and employees, and from citizens. But that cannot be guaranteed. Broadening our authority, and clarifying the sunshine-related duties and responsibilities of City officials and employees is much more urgent and would be much more effective in helping us to do our job.

Furthermore, a name change would give voters that much more to pore through when weighing a ballot initiative.

Recommendation: Leave it alone this time around.

2. Complaint respondents' absence from Task Force and committee meetings.

The Ordinance requires respondents to complaints dealing with public records access to send knowledgeable representatives to hearings of the Task Force and its committees (Sec. 67.21(e)). In the spirit of Sec. 67.1(e), the Task Force has expanded its interpretation of that requirement to include respondents to complaints alleging open-meeting violations as well. However, entities with enforcement/penalization authority, especially the Ethics Commission, insist on going by the letter of the law on this particular issue.

Moreover, respondents to public records-related complaints too often flout Sec. 67.21(e), even though the letter of that provision clearly pertains to them.

The Ordinance must be amended to require that respondents to complaints alleging any and all sunshine-related violations be required to send knowledgeable representatives to hearings of the Task Force and its committees. The consensus seems to be that this would be most easily accomplished by revising the relevant language in 67.21(e). This might not be the case, because that section is part of Ordinance Article III, which deals specifically with public records. I believe there are other options:

- Add or append a section in Article II, which deals with open meetings.
- Add or append a section in Article IV, which deals with implementation and enforcement of the requirements in the Ordinance.

Recommendations:

1) Leave 67.21(e) as is and add 67.18, under Article II, to state:

"SEC. 67.18. PUBLIC-MEETING COMPLAINTS; HEARINGS.

"Where requested by petition, the Sunshine Ordinance Task Force may conduct a public hearing into a complaint that a policy body, an advisory body or a passive meeting body violated any of the foregoing sections in Article II of this Ordinance or any provision in the Ralph M. Brown Act

that apply to the specific body. An authorized representative of that body shall attend every hearing on the matter and explain the basis for the body's conduct therein."

2) Create a new Section 67.30(d) to state: "The Sunshine Ordinance Task Force is authorized to (1) issue subpoenas to compel testimony and evidence from parties-in-interest to complaints filed with the Task Force, and (2) place under oath, during testimony, any party-in-interest to and any person claiming knowledge regarding a complaint filed with the Task Force."

3. Electronic records withholding and reformatting.

Officials and employees of numerous City entities routinely provide Portable Data File (PDF) copies of documents, even when asked to provide the documents in their native format. They argue that the original documents contain metadata that include information that is exempt or barred from disclosure. The Task Force has consistently held that that reasoning is invalid, notwithstanding advice to the contrary from the City Attorney's Office. The Sunshine Ordinance and the Public Records Act both make clear that all City records are public, and that when a document includes both disclosable and non-disclosable data, the disclosable portion(s) must be provided upon request.

Recommendation: Add language to Sec. 67.21(l) to stipulate that requesters have the right to view and receive copies of electronic documents in any format in which they were produced or used: "Members of the public have the right to view and receive copies of electronic documents in any format in which the documents were produced or used in the conduct of the City's business. Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Metadata contained in an electronic document are officially deemed part of the public record and shall be treated as such; when such metadata include both disclosable and non-disclosable portions, the entity responding to an electronic-record request shall edit out the non-disclosable portion(s) and shall include the disclosable portion(s) in the record provided to the requester, unless such editing is provably impossible. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law."

4. Meeting minutes.

"Action" minutes, while easy to take and produce, and easy to review for the policy body whose meetings they are intended to summarize, create extra work for members of the public who want details of what has transpired at the meeting, especially to learn the bases for decisions the body has made. The availability of audio-recordings is only a partial remedy; in fact, it is no remedy for the hard-of-hearing. In addition, there is no clear instruction on whether written comments submitted to a body should be included in the text of the minutes or appended as footnotes. I expect that the possible remedies I suggest immediately below will meet vigorous opposition from the Clerk of the Board of Supervisors.

Recommendation: Amend Sec. 67.16 to state: "The clerk or secretary of each ~~board and commission enumerated in the charter~~ City policy and advisory body shall record the minutes for each regular and special meeting of the ~~board or commission~~ body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll-call vote on each matter considered at the meeting, the time the ~~board or commission~~ body began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. The minutes shall also list the time that discussion of each matter started, and shall include a summary of the position statements that members make on each matter considered at the meeting. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the body of the minutes. If those comments pertain to a matter that has been discussed at the meeting, they shall be placed in the section of the minutes dealing with that item. ...

OR

"The clerk or secretary of each ~~board and commission enumerated in the charter~~ City policy and advisory body shall record the minutes for each regular and special meeting of the ~~board or commission~~ body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll-call vote on each matter considered at the meeting, the time the ~~board or commission~~ body began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. The minutes shall also list the time that discussion of each matter started. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the body of the minutes. If those comments pertain to a matter that has been discussed at the meeting, they shall be placed in the section of the minutes dealing with that item. When minutes are taken and posted in "action" rather than in complete format, hearing-challenged persons may request a transcript of the audio-recording of a public meeting or any portion thereof. ...

5. Fines and penalties for violations.

Ethics Commission members and staff aides have complained that they do not know what fines or penalties to impose for sunshine-law violations, because the Ordinance provides no guidance.

Recommendation: Amend Sec. 67.34 to state: "The willful failure of any elected official, department head, or other managerial ~~e~~ City employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of When issuing a finding of a willful violations of this ~~e~~ Ordinance, the Brown Act or the Public Records Act by an elected officials, or department

heads or other managerial employee of the City and County of San Francisco, the Sunshine Ordinance Task Force may refer the matter to shall be handled by the Ethics Commission, the Board of Supervisors, the District Attorney and/or the State Attorney General, with a recommendation that a fine and/or other penalty(ies) be imposed on the violator, such fine or other penalty(ies) to depend on the nature and severity of the violation, and on how many previous violations are on the person's record of conduct.

"The fine imposed shall range between five hundred dollars (\$500) and five thousand dollars (\$5,000) for each violation. Other penalties may include a letter of reprimand or censure to be placed in the violator's file, and/or demotion or dismissal."

6. Disagreements with the City Attorney, including the Deputy City Attorney assigned to the Task Force.

It has been suggested that the Task Force be authorized to spend up to \$50,000 per fiscal year (July-June) to hire an outside attorney when members strongly believe that the Ethics Commission, Board of Supervisors, DA and/or state AG are failing to take sufficient, decisive action on a violation or are otherwise subverting City or state sunshine law. This raises a question of whether a board, commission, department or agency may sue another entity within the same government. An outside attorney queried on the subject mentioned to me that federal agencies do, in fact, sue one another, though he did not know whether this does or could occur at the state or local level. There is also a political question – whether this type of empowerment would generate enough heat to weaken the chances that our reform package would pass.

Recommendation: Do NOT add this type of provision without obtaining legal and political analyses.

7. Disclosability of responses to Requests for Qualifications, Bids etc. preparatory to hiring outside contractors.

The language in Sec. 67.24(e)(1) is not broad enough in the types of request responses covered. It should clarify that responses to all types of requests preparatory to awarding of contracts are covered. I would NOT change the actual disclosability requirements; drafters of the current Ordinance recognized that requiring disclosure of request responses too early in the process can undermine the competitive nature thereof.

Recommendation: Amend Sec. 67.24(e)(1) to state: "Contracts, contractors' bids, responses to requests for any and all types of documents issued preparatory to the awarding of contracts – including but not limited to proposals, bids, qualifications and quotes – and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. ..."

MEMO

To: Chris Rustom, SOTF Administrator
Sunshine Ordinance Task Force Members

From: Hope Johnson, SOTF Member, Seat 10

Date: March 10, 2011

Re: SOTF Amendments for Special Meeting on March 17, 2011
(Top Five Issues for Ballot)

On March 6, 2011, SOTF Chair Knee requested SOTF members forward to our Administrator a list detailing the top five Sunshine Ordinance amendments to present to voters. Following is my list of potential amendments for discussion at the special meeting scheduled for March 17, 2011.

1. Requirement for respondent to appear at SOTF hearings for alleged violations of public meeting requirements

Sec. 67.21(e) requires an appearance only for public information allegations. Although the TF has used the section for violations of public meeting requirements, the Ethics Commission has rejected that use (see, for example, Member Cauthen's complaint against the Library Commission). An amendment could be added to (1) Article II requiring an appearance for public meeting violations that mirrors 67.21(e) or (2) the new sections on hearings and enforcement proposed during the work with former Member Craven-Green (see, for example, new sections 67.39 and 67.40).

2. Update definitions

Several terms remain undefined in the current ordinance. Ethics Commission has issued at least one report stating the terms "file" and "complaint" are difficult to address because they are not defined within the ordinance (see Member Cauthen's complaint against the Library Commission). Amendments could be added to the most appropriate Articles, depending on the TF's final adoption or rejection of the proposed work with former Member Craven-Green.

3. Revise Sec. 67.24(e) on Contracts, bids, and Proposals to include an RFQ

The Stow Lake vendor case demonstrated the City, especially Rec & Park, frequently now use a Request for Qualifications (RFQ) as a complete substitute for a Request for Proposals (RFP). Because this was not the standard practice when the ordinance was written, the current requirements assume an RFQ will precede an RFP. The amendments proposed during the work with former Member Craven-Green (see new section 67.25(e)) are an excellent beginning but may need revisions based on (1) the City Attorney's June 25, 2010 memo discussing potential conflicts with law (for example, the proposed section references a "RFQuote" which is not a term used by the City) and/or (2) there are some contracts where standard practice is the use of only an RFQ (for example, contracts for office supplies or a court reporter service).

4. Broadcast requirement

New Sec. 67.13(f) proposed during the work with former Member Craven-Green would require bodies enumerated in the Charter are broadcast by 2012. I suggest the same amendment with a revised deadline of 2014 and the addition of specific bodies not in the Charter such as the Sunshine Ordinance Task Force and the Rent Board. A broadcasting requirement would ensure budget revisions to include broadcasting rather than waiting for "a better revenue time."

5. Change the name of the Task Force to the Sunshine Commission

This revision is already included throughout the ordinance from the proposals completed with former Member Craven-Green. I think this is an important amendment because the term "commission" has a formal connotation that the term "task force" does not evoke. The same can be said for referring to Task Force members as "commissioners" rather than "members" during our quasi-judicial hearings. There is consensus among TF members of a need to increase respect for compliance with the Sunshine Ordinance and our hearings, and the name change would be a good beginning.

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force
Note: Track change mode in use. As of June 1, 2010

PROPOSED ORDINANCE AMENDMENTS

ARTICLE I IN GENERAL

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

SECTION 67.1 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

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force
Note: Track change mode in use. As of June 1, 2010

1 time limits provided in subsection (c). To the extent feasible, pPrior notification in the
2 agenda or public notice that a presentation will be made using audio/visual equipment
3 or technology shall be provided, listing the specific equipment.⁴⁶ (~~Added by Ord. 265-~~
4 ~~93, App. 8/18/93; amended by Proposition G, 11/2/99)~~
5

6 SECTION 67.16. MINUTES.

7 (a) ~~The clerk or secretary of each board and commission enumerated in the~~
8 ~~Charter~~ all policy bodies shall record the minutes for each regular and special meeting of the
9 ~~board or commission~~ those bodies.⁴⁷

10 (b) The minutes shall state the time the meeting was called to order, the names of
11 the members attending the meeting, time of each member's arrival if after commencement of
12 the meeting and the time of each member's departure if prior to the adjournment of the
13 meeting, the roll call vote on each matter considered at the meeting, the time the board or
14 commission began and ended any closed session, the names of the members and the
15 names, and titles where applicable, of any other persons attending any closed session, a list
16 of those members of the public who spoke on each matter if the speakers identified
17 themselves, whether such speakers supported or opposed the matter, a brief summary of
18 each person's statement during the public comment period for each agenda item, and the
19 time the meeting was adjourned. Any person speaking during a public comment period may
20 supply submit a brief written summary comments of their comments which that shall, if no
21 more than 150 words, be included in the body of the minutes or attached to the minutes and
22 _____

23 ⁴⁶ Explicitly provides public access to equipment used by city employees.

24 ⁴⁷ Revised to provide that minimum minute requirements apply to all Policy Bodies.
25

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

Note: Track change mode in use. As of June 1, 2010

1 noted in the item. The minutes shall also include the text of any resolution adopted by or
2 modified by a policy body within the body of the minutes or as an attachment.⁴⁸

3 (c) The draft minutes and any attachments thereto from of each meeting shall be
4 posted on the policy body's website and be available for inspection and copying upon request
5 no later than 10 businessworking days after the meeting. The officially adopted minutes shall
6 be available for inspection and copying upon request no later than ten business business
7 workingdays after the meeting at which the minutes are adopted. Upon request, minutes
8 required to be produced by this section shall be made available in Braille or increased type
9 size alternative formats for persons with disabilities. If real time captioning is provided at a
10 meeting, if separable, it shall also be posted on the web site. The City Administrator shall
11 assist policy bodies in carrying out their duties under this subsection.⁴⁹ (Added by Ord. 265-
12 93, App. 8/18/93; amended by Proposition G, 11/2/99)

14 SECTION 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

15 Every member of a policy body retains the full constitutional rights of a citizen to
16 comment publicly on the wisdom or propriety of government actions, including those of the
17 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or
18 deprive members of their rights as elected or appointed officials for expressing their
19 judgments or opinions, including those which deal with the perceived inconsistency of non-
20 public discussions, communications or actions with the requirements of state or federal law or

21 ⁴⁸ Provides increased information must be provided in the minutes to allow more information
22 for public review, tracking and historical research purposes.

23 ⁴⁹ Requires posting of draft minutes on policy body website, and in alternative formats where
24 available, as well as posting of any real-time captioning provided at a meeting to improve
25 public access and ability to monitor actions taken in public meetings.

ATTACHMENT N

(case #11088)



Amending the OD in Case No. 10054
Hope Johnson to: Jerry Threet
Cc: SOTF, Bruce Wolfe, Ray Hartz Jr
Please respond to Hope Johnson

08/17/2011 10:22 AM

DCA Threet

The Order of Determination in Case No. 10054 includes what appears to be an incorrect statement that the SOTF has previously ruled as acceptable attaching public comment summaries of 150 words or less to minutes rather than placing them in the body of the minutes. If I verify that no such ruling has been made, are we able to place that OD back on our agenda to consider amending it (a referral to Ethics has also gone out)?

Thanks for your help.

Hope Johnson

ATTACHMENT O

(case #11088)

SOTF hearing reminder:#10054 Ray Hartz vs Public Library
SOTF to: rwhartzjr, lherrera, sblackman

09/09/2011 03:28 PM

A hearing is scheduled with the Compliance and Amendments Committee of the Sunshine Ordinance Task Force to reconsider the January 25, 2011, Order of Determination of Ray Hartz v Library Commission..

Date: Tuesday, September 13, 2010
Location: City Hall, Room 406
Time: 4:00 p.m.

Complainants and Respondents: Your attendance is not required.

To access the agenda please click on the link below. Then click on the associated item number to access the packet material related to your item.

<http://www.sfbos.org/index.aspx?page=12192>

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724
FAX: (415) 554-7854
SOTF@sfgov.org

ATTACHMENT P

(case #11088)



Re: Amending the OD in Case No. 10054 
Jerry Threet to: Hope Johnson
Cc: Ray Hartz Jr, Bruce Wolfe, SOTF

08/17/2011 11:59 AM

Chair Johnson -

There are several elements to this issue.

First, the OD is the record of the determination of the Task Force at its meeting where the complaint was decided. If there actually was no discussion during the task force meeting that the Task Force had previously allowed inclusion as an addendum, then the OD does not accurately reflect the action of the Task Force in reaching a determination. Under those circumstances, amending the OD would be allowed and advisable. Technically, this would not be reconsideration of the decision, but rather correction of a clerical error in reducing the decision to a written order. Nevertheless, I believe such action should be agendized and voted on by the Task Force so as to avoid any question of its propriety.

Second, if that statement *was* made during the Task Force meeting when the OD was issued, then the OD may accurately reflect the decision process of the Task Force. Under those circumstances, amending the OD would not be allowed or advisable on the Task Force's own motion.

Third, I believe the conclusion of example two, above, is true even if the Task Force was wrong about whether they had made a previous ruling to that effect. However, under this circumstance, a party in interest could have availed themselves of a petition for reconsideration under Section E of the Public Complaint Procedures of the Task Force. That section allows a petition within 10 days of a decision, so that a party may present evidence not available at the time of the original hearing which may bear on the decision. Given that the parties likely could not reasonably have anticipated the issue of the previous rulings of the Task Force being mentioned, it would be reasonable to allow a party to petition for reconsideration and present evidence on those previous rulings in an effort to change the OD of the Task Force. This procedure is limited to the 10 days following an OD, however, so it is not available to the parties in this case.

In addition, although I advise under number 1 above that the Task Force could take action to change a previous OD, this advice must be qualified by noting that the parties may protest that such an action does not comply with Section E of the Public Complaint Procedures of the Task Force. That section deals with a petition to reconsider filed by a party to a complaint. My view is that Section E deals only with a petition by a party-in-interest, and is a procedural rule adopted by the Task Force to deal with a request by such a party. Traditionally, a judge has inherent authority to correct clerical errors in an order. I believe this fits into that model, and the Public Complaint Procedure, section E does not prevent such actions by the Task Force.

Procedurally, to achieve number 1 above, one of the task force members who voted for the OD in question must make a motion to rescind and amend a portion of it. Under Robert's Rules, a motion to rescind and/or amend a previous decision must pass by a 2/3 vote, unless the entire majority who voted for the original motion are present or have received notice of the motion. Since I am proposing that this be done on a noticed agenda, it should require only a majority vote.

Jerry Threet, Deputy City Attorney
Neighborhood and Resident Safety Division
Counsel to Sunshine Task Force
Office of City Attorney Dennis J. Herrera

1390 Market Street, 6th Floor
San Francisco, CA 94102
Direct: (415) 554-3914
Fax: (415) 437-4644
jerry.threet@sfgov.org

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From: Hope Johnson <hopeannette@earthlink.net>
To: Jerry Threet <jerry.threet@sfgov.org>
Cc: SOTF <sof@sfgov.org>, Bruce Wolfe <sof@brucewolfe.net>, Ray Hartz Jr <rhartzjr@sbcglobal.net>
Date: 08/17/2011 10:22 AM
Subject: Amending the OD in Case No. 10054

DCA Threet

The Order of Determination in Case No. 10054 includes what appears to be an incorrect statement that the SOTF has previously ruled as acceptable attaching public comment summaries of 150 words or less to minutes rather than placing them in the body of the minutes. If I verify that no such ruling has been made, are we able to place that OD back on our agenda to consider amending it (a referral to Ethics has also gone out)?

Thanks for your help.

Hope Johnson

ATTACHMENT Q

(case #11088)



Re: Amending the OD in Case No. 10054

Ray Hartz Jr

to:

Jerry.Threet

08/17/2011 01:41 PM

Cc:

Hope Johnson, SOTF, Bruce Wolfe, David Snyder, rak0408

Hide Details

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net> Sort List...

To: Jerry.Threet@sfgov.org

Cc: Hope Johnson <hopeannette@earthlink.net>, SOTF <sotf@sfgov.org>, Bruce Wolfe <sotf@brucewolfe.net>, David Snyder <DSnyder@sheppardmullin.com>, rak0408@earthlink.net

Chair Johnson,

Mr. Threet has really not reviewed the substance of the emails noted. He picked up one phrase, regarding the EOT meeting, which I did not want delayed. It was at that meeting that I raised the conflict regarding the OD and that resulted in its return to the full Task Force. Remember the questions about: "why is this back again?"

Is there something in your policies and/or procedures that states a request for reconsideration must be in a certain form? If you actually read the emails, they were all about my questioning and then objecting to the statement in the OD. Must I actually use specific words? By the time of the EOT meeting, it seemed obvious to me that Mr. Knee was not going to reconsider the wording. It was Mr. Knee at the original hearing on the matter that mentioned the "prior ruling" AFTER the motion and vote. It seemed really odd at the time, but, I did not realize the true impact until I received the actual OD.

Must a person use the actual words: "I want this reconsidered!" ? Or, perhaps Mr. Threet can tell me the "open sesame" phrase a complainant must use.

Sincerely,

Ray Hartz

From: "Jerry.Threet@sfgov.org" <Jerry.Threet@sfgov.org>
To: rwhartzjr@sbcglobal.net
Cc: Hope Johnson <hopeannette@earthlink.net>; SOTF <sotf@sfgov.org>; Bruce Wolfe <sotf@brucewolfe.net>; David Snyder <DSnyder@sheppardmullin.com>; rak0408@earthlink.net
Sent: Wed, August 17, 2011 1:12:52 PM
Subject: Re: Amending the OD in Case No. 10054

Chair Johnson -

As you know, I advise the Task Force on matters that are coming before it for decision, as well as responding to requests from the Task Force on other matters it is considering.

As I mentioned, Mr. Hartz could have petitioned the Task Force to reconsider its decision through the Section E procedure I noted in my previous email. He did not do so. Mr. Hartz now urges in response to that advice that be objected to the OD. Objecting to an OD is not the same as petitioning for reconsideration. In fact, Mr. Hartz also objected to the OD in the March 21, 2011 email he forwarded today, but he clearly states in the last sentence: "And no, before you ask, I am NOT asking for a continuance! I've been ready for this battle for the **5 months** it took to get the hearing and finally get the determination." That suggests to me that Mr. Hartz wished to proceed, whatever his objections may have been to the wording of the OD, rather than to go back and correct what he saw as error in the OD. Perhaps you should consult members Snyder and Knee to see what their views of these matters are?

In any event, my previous email gives you my thoughts on the questions you raised.

Sincerely,

Jerry Threet, Deputy City Attorney
Neighborhood and Resident Safety Division
Counsel to Sunshine Task Force
Office of City Attorney Dennis J. Herrera
1390 Market Street, 6th Floor
San Francisco, CA 94102
Direct: (415) 554-3914
Fax: (415) 437-4644
jerry.threet@sfgov.org

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From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Jerry Threet <Jerry.Threet@sfgov.org>, Hope Johnson <hopeannette@earthlink.net>
Cc: Bruce Wolfe <sotf@brucewolfe.net>, SOTF <sotf@sfgov.org>
Date: 08/17/2011 12:43 PM
Subject: Re: Amending the OD in Case No. 10054.

Not to complicate this matter anymore than it is, but:

January 25, 2011 Date of Decision
February 7, 2011 Date on OD
March 16, 2011 email transmission of OD to complainant
March 16, 2011 email request to soft regarding ruling cited in OD
March 17, 2011 email response stating there was no finding in a prior case
March 19, 2011 email interchange with Allen Grossman stating: "Finally the sentence is wholly gratuitous-- it doesn't add anything, but creates a possible issue when and if the matter gets to the Ethics Commission for enforcement. It has to be taken has to be taken out."
March 23, 2011 email titled: A VERY LOUD VOCAL OBJECTION

I believe this series of exchanges, and subsequent verbal efforts, to correct this OD are sufficient to make the case that I did (and do) object to the misstatement in the OD. I also did so also did so within the time frame Mr. Threet mentions, but, both emails and statements were were basically ignored by Mr. Knee. Unless you submit that there is some particular form the the objection must take, I think there is strong evidence that I've been challenging this OD from from the very day I received it. The pertinent emails were cc'd: both to SOTF and Jerry Threet. Threet.

Sincerely,

Ray Hartz

From: Jerry Threet <Jerry.Threet@sfgov.org>
To: Hope Johnson <hopeannette@earthlink.net>
Cc: Ray Hartz Jr <rwhartzjr@sbcglobal.net>; Bruce Wolfe <soft@brucewolfe.net>; SOTF <soft@sfgov.org>
Sent: Wed, August 17, 2011 11:59:42 AM
Subject: Re: Amending the OD in Case No. 10054

Chair Johnson -

There are several elements to this issue.

First, the OD is the record of the determination of the Task Force at its meeting where the complaint was decided. If there actually was no discussion during the task force meeting that the Task Force had previously allowed inclusion as an addendum, then the OD does not accurately reflect the action of the Task Force in reaching a determination. Under those circumstances, amending the OD would be allowed and advisable. Technically, this would not be reconsideration of the decision, but rather correction of a clerical error in reducing the decision to a written order. Nevertheless, I believe such action should be agendized and voted on by the Task Force so as to avoid any question of its propriety.

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Jerry Threet, Deputy City Attorney
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 Counsel to Sunshine Task Force
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Thanks for your help.

Hope Johnson

ATTACHMENT R
(case #11088)

Good Government Guide

An Overview of the Laws Governing
the Conduct of Public Officials



2010-11 Edition

Dennis J. Herrera
City Attorney of San Francisco

G. Records of meetings

1. Audio recordings

Each board or commission listed in the Charter must audio record regular and special meetings. Admin. Code § 67.14(b). Other policy bodies are not required to audio record their meetings, except for closed session portions of meetings. Admin. Code § 67.8-1(a).

When a policy body tapes a meeting, even if taping is not required, the tape becomes a public record and may not be erased or destroyed. Govt. Code § 54953.5(b); Admin. Code § 67.14(b). Tapes of closed sessions must be retained for at least 10 years, or permanently if possible. Admin. Code § 67.8-1(a).

A policy body may not charge a member of the public to listen to a tape recording of a meeting, or watch a video recording if one was made. Inspection of recordings shall be provided without charge on equipment made available by the City. Govt. Code § 54953.5(b); Admin. Code § 67.14(b). As with any public record, policy bodies may charge for copies of a tape recording or video recording.

2. Minutes

The Brown Act imposes no requirements on policy bodies regarding minutes of meetings. Only local law imposes requirements, which vary greatly depending on the type of policy body.

a. Appointive boards, commissions, and other units of government in the executive branch

The Charter requires each appointive board, commission, or other unit of government in the executive branch to keep a "record" of the proceedings of each regular or special meeting. The record must include how each member voted on each question. Charter § 4.104(a)(3). The Charter does not otherwise require specific information to be included in the record.

b. Charter boards and commissions

The Sunshine Ordinance imposes detailed requirements for meeting minutes of boards and commissions listed in the Charter. These requirements do not apply to other policy bodies. The clerk or secretary for Charter boards and commissions must record the minutes of each meeting and include certain information in the minutes:

- The beginning time of the meeting.
- The ending time of the meeting.
- The names of the members in attendance.
- The roll call vote on each matter considered.

- A list of those members of the public who spoke on each matter who identified themselves, whether the speaker supported or opposed the matter, and a brief summary of the speaker's public comment.

Admin. Code § 67.16. As discussed earlier in this Guide, when a City officer or employee has disclosed on the record a personal, professional, or business relationship as required by Section 3.214 of the Campaign and Governmental Conduct Code, that disclosure must be recorded in the minutes.

If the Charter body held a closed session, the minutes must also include:

- The beginning time of the closed session.
- The ending time of the closed session.
- The members of the policy body and others, identified by name and title, in attendance at the closed session.

Admin. Code § 67.16. But the name of a person whose presence in the closed session may be kept confidential, such as a candidate for appointment interviewed in a closed session, need not be disclosed.

There are no other legal requirements for the content of minutes. There are variations among policy bodies in the style, length, and detail of the minutes of their respective meetings.

The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code § 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment.

Draft minutes of each meeting must be available for public inspection and copying no later than 10 business days after the meeting. The officially adopted minutes must be available for inspection and copying no later than 10 business days after the meeting at which the minutes are adopted. If requested to do so, the body must produce the minutes in Braille or enlarged type. Admin. Code § 67.16. Each board or commission must send two copies of its minutes to the Government Information Center at the San Francisco Public Library. Admin. Code § 8.16. Minutes must also be posted on the board or commission's website within 48 hours after approval, and thus typically will be available for inspection and copying them. Admin. Code § 67.29-2.

It is customary, but not legally required, that minutes of a meeting be considered and adopted at the next meeting of the policy body. Sometimes policy bodies adopt the minutes at a later meeting.

A member of a policy body may vote on approval of minutes of a meeting even though the member did not attend that meeting. A policy body may but is not required to excuse a member from voting to approve minutes for a meeting that the member did not attend.

ATTACHMENT S

(case #11088)



DENNIS J. HERRERA
City Attorney

ALICIA CABRERA
Deputy City Attorney

DIRECT DIAL: (415) 554-4673

E-MAIL: alicia.cabrera@sfgov.org

MEMORANDUM

TO: Library Commission
FROM: Alicia Cabrera
Deputy City Attorney
DATE: June 1, 2011
RE: 150 Word Summary

You have asked the City Attorney's Office to for advice on the following sentence in Section 67.16 of the Sunshine Ordinance: "Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." (S.F. Admin. Code § 67.16.)

The City Attorney's Good Government Guide, which is available on the City Attorney's website (under "Resources"), addresses this provision. The Good Government Guide states, at page 134:

The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code § 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment.

In addition, if the commenter's summary is included as an attachment to the minutes, we recommend that the text of the minutes cross-reference the attachment so as to direct the reader to the attachment. While the Sunshine Ordinance does not require the cross-reference, it will facilitate public access to written summaries of comments.

ATTACHMENT T
(case #11088)

Minutes - January 10, 2011

SHARE TEXT FONT SIZE

**Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 10, 2011
Room 408, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102**

I. Call to order and roll call.

Chairperson Studley called the meeting to order at 5:34 PM and welcomed the new Commissioner, Beverly Hayon.

COMMISSION MEMBERS PRESENT: Jamiene Studley, Chairperson; Eileen Hansen, Commissioner; Beverly Hayon, Commissioner; Benedict Y. Hur, Commissioner. Commissioner Ward was excused from the meeting.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Peter Warfield; Ray Hartz; David Pilpel; Charles Marsteller; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff memorandum re: Complaint Disposition (No. 01-100115), dated October 14, 2010.
- Staff memorandum re: Proposed Amendments to the Campaign Consultant Ordinance, dated January 6, 2011.
- Draft Campaign Consultant Ordinance amendments, dated January 4, 2011.
- Memorandum from the Office of the City Attorney re: Retention of Outside Counsel for Advice Regarding the 2011 Mayoral Election
- Minutes of the Regular Meeting of the San Francisco Ethics Commission on December 13, 2010.
- Executive Director's Report to the Ethics Commission for the Meeting of January 10, 2011.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

Ray Hartz stated that section 67.16 of the Sunshine Ordinance states that "any person speaking during the public comment period may supply a brief written summary... which shall, if no more than 150 words, be included in the minutes." He objected to the placement of a written summary as an attachment to the minutes. He asked what the compelling state interest was in refusing to follow the Sunshine Ordinance and refusing to place a summary in the minutes. He stated that the Ethics Commission is enumerated in the Charter and is required to follow Sunshine. He stated that the *Good Government Guide* gives an opinion that attaching the minutes is sufficient, but the law states "in the minutes." [Mr. Hartz also submitted a written statement which has been included at the end of these minutes.]

Peter Warfield then asked whether he would be permitted to make comments about agenda item 3 now and later. Chairperson Studley stated that the Commission would not address item 3 during the meeting. Executive Director St. Croix stated that the item was to be heard, but staff was unable to reach one of the parties. He stated that the party contacted the office earlier that day and asked for a continuance. He granted the continuance, as the party was unable to come to the meeting.

Chairperson Studley apologized for any inconvenience and for the short notice and asked for public comment.

Peter Warfield stated that he serves on a committee with Ms. Cauthen, but he was not speaking as a member of that committee. He stated that he agreed generally with Mr. Hartz. He stated that the inclusion of the summaries in the minutes is appropriate and intended to permit someone to read along what the person has said.

Mr. Warfield stated that he was extremely disappointed regarding the cancellation of item 3. He stated that his plans have been affected and he would have appreciated some notice. He made several comments regarding staff's memorandum of item 3. He stated that staff stated Ms. Gomez violated section 67.15 of the Sunshine Ordinance, but then later recommended the dismissal of the violation. He informed the Commission of another incident in March where he experienced similar treatment from Ms. Gomez. He stated that staff's memorandum downplayed the incident dramatically. He stated that Ms. Gomez yelled at Ms. Cauthen and asked the Commission to listen to the meeting tape or view the meeting DVD.

Chairperson Studley stated that she allowed Mr. Warfield to speak as though he spoke for two items, as there was a possibility that Mr. Warfield would not be able to return for a future meeting.

Commissioner Hansen asked Mr. Warfield a question about his first point regarding staff's recommendation about Ms. Gomez. She stated that staff's recommendation was not to dismiss the violation against Ms. Gomez, but against Ms. Blackman. Mr. Warfield stated that he was unclear as to why it would be dismissed against either of them, when the violation had occurred. He stated that he raised the question for the Commission to discuss the issue. Chairperson Studley stated that the Commission could not discuss the merits of the item, until it is placed on the agenda.

Mr. Hartz asked whether he would have additional time since Mr. Warfield was given additional time. He stated that he had been at last month's Ethics Commission meeting. He stated that he too had been disrupted by Ms. Gomez and that he had to justify

his right to speak. He stated that Ms. Gomez would not come to the Ethics Commission to explain her behavior. He mentioned a Police Commissioner who had also committed a Sunshine and Brown Act violation and failed to explain his behavior.

III. Consideration of Ethics Complaint No. 01-100115, alleging that the Library Commission, through its representative Secretary Sue Blackman, violated Sunshine Ordinance sections 67.15(a) and 67.34 by failing to allow public comment at a Library Commission meeting, and section 67.21(e) by failing to send a knowledgeable representative to Task Force hearings.

Item continued.

Public Comment:

None.

IV. Consideration of possible amendments to the Campaign Consultant Ordinance ("Ordinance"), San Francisco Campaign and Governmental Conduct code section 1.500 et seq.

Decision Point 2

Commissioner Hansen stated that she had concerns regarding this decision point, as the voters should have full participation. Executive Director St. Croix stated that before going to the voters, this matter must go before the Board and they have to agree to this point as well. He stated that whenever changes are made, sometimes there are unintended consequences and allowing super-majorities would permit the Commission to make the necessary changes without going to the voters.

Chairperson Studley asked the deadline for submitting this item for the November ballot. Mr. St. Croix estimated that the deadline was in June 2011.

Commissioner Hur stated that he saw the benefit of this authority. Chairperson Studley stated that the voters should decide what should come to them. Mr. St. Croix stated that the process of submitting items for the ballot is difficult and once the Commission sends an item for the ballot, the Commission must remain silent on the item. When there are proposed amendments with super-majorities, the Commission is permitted to comment and provide advice. Commissioner Hayon stated that many voters may feel overwhelmed with the number of ballot measures on the ballot, especially measures regarding technical changes with legalese.

Motion 11-01-10-1 (Hur/Hayon): Moved, seconded and passed (3-1; Hansen dissent) that the Commission adopt decision point 2.

Public Comment:

Mr. Pilpel welcomed the new Commissioners. He stated that the changes would be more streamlined and are consistent with other local laws.

Decision Point 3b

Deputy Director Ng stated that Commissioner Hansen expressed interest in returning to the original definition of "candidate" and staff agreed to leave the definition basically unchanged.

Motion 11-01-10-2 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 3b.

Public Comment:

Mr. Pilpel asked about the definition of "economic consideration" at the top of page 4 in the draft amendments, but then realized the question was for the next decision point.

Decision Point 3c

Commissioner Hansen expressed concerns regarding the last line of additional language on page 4, "reimburse vendors." Ms. Ng stated that staff recommended the language to match language from a 2001 Ethics Commission advice letter regarding economic consideration. She stated that consultants should not be deemed to have earned that money. Commissioner Hansen stated that the Commission would be assuming the reimbursement occurs and that the vendor pays.

Chairperson Studley asked the purpose of this definition. Ms. Ng stated that this definition would be used in defining the minimum thresholds for a consultant, as well as calculating what the consultant earns. Commissioner Hansen stated that she had concerns regarding hidden costs and the timing of reporting. Ms. Ng stated that the client (campaign committee/candidate) would report payments made on its campaign statements.

Commissioner Hur asked about lines 16-19 on page 4, which were proposed to be removed. Ms. Ng stated that the ordinance was too broad and that staff did not see why these exceptions should still exist. The Commissioners discussed possible scenarios of the proposed stricken language.

Motion 11-01-10-3 (Hansen): Moved and not seconded that the Commission approve only the proposed changes to the definition of "vendor" in section 1.510(i).

Commissioner Hur stated that he was not comfortable changing the definition of "vendor," as there could be unintended consequences.

Public Comment:

Mr. Pilpel stated that regarding "vendor," the relationship between candidates, committees, consultants, and vendors was a complex arrangement. He stated that the definition may exclude someone who would not otherwise qualify as a consultant. He stated that just because there is a vendor and economic consideration does not make the vendor subject to the Ordinance. He stated that "services" are defined elsewhere (in 1.510(b)-(d)) and it all goes together.

Mr. St. Croix stated that the intent was not to have reimbursements considered as income to the consultant. He suggested taking "reimbursements" from line 2, page 4, as well as the last sentence of the definition of "economic consideration." Commissioner Hayon asked why attorneys, accountants, and pollsters were originally excluded from the Ordinance. Mr. St. Croix stated that he did not know why.

Mr. Pilpel stated that some vendors, such as printers, are reluctant to work with campaigns because the campaign may not pay or take a while to pay. He stated that these vendors also do not want the cost becoming a contribution, if the campaign does not pay. He stated that the vendors work with consultants because they know they will be paid. He stated that vendors seek business and are eager to be paid for their work.

Charles Marsteller stated that Mike Housch or Larry Bush may be able to explain the reasons behind the inclusion or exclusion of certain groups in the Ordinance.

Mr. Pilpel stated that if someone is a professional campaign manager and that person is also an attorney, then that person would qualify under the Ordinance because that person is not providing "only legal services." He suggested deleting lines 16-19 from "vendor."

Mr. St. Croix suggested changing the language of the second sentence in "economic consideration" to the following: "Economic consideration does not include reimbursements made to consultants for payments made to vendors." Commissioner Hur suggested deleting the second sentence, if there were other ways to limit the payments, such as a time limit. Mr. St. Croix agreed with removing the second sentence. Ms. Ng suggested adopting regulations to clarify "reimbursements." Commissioner Hansen suggested adding a time frame for the reimbursements. Mr. St. Croix suggested adding "made on a timely basis."

Mr. Marsteller stated that a common issue is where a mail house will advance postage to a committee and not bill the consultant and/or campaign committee. He stated that would be an accrued debt, but the Commission now has an accrued debt limit.

DCA Shen reminded the Commissioners that the definition of "economic consideration" is important in order to determine whether a consultant qualifies under the Ordinance. He expressed concerns including words like "timely" or "reasonable."

Motion 11-01-10-4 (Hur/Hansen): Moved and seconded that the Commission adopt decision point 3c, except that the phrase "reimbursements for expenses" be stricken from the first sentence and the second sentence be stricken in its entirety, and that the Commission adopt regulations after further research to clarify this issue.

Public Comment:

Mr. Pilpel approved of the changes, but stated that the language is duplicative and unnecessary. Mr. Marsteller stated that staff may have a difficult task regarding the timeliness question.

The Commissioners discussed the possibility of kickbacks or commissions from vendors to consultants.

Motion 11-01-10-5 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission adopt decision point 3c, except to strike the phrase "reimbursement for expenses" from line 2, page 4, and strike the additional proposed language and the second sentence of the definition of "economic consideration"; in addition, the Commission proposes that staff research the issue of providing anything else of value for the potential for reimbursements that are not made in a long period of time and draft regulations.

Public Comment:

None.

Mr. Marsteller suggested adding examples into the campaign consultant manual in order to clarify this issue.

Decision Point 7

Commissioner Hur stated that section 1.525(b) – evasion of obligations – seemed vague and was too broad. Ms. Ng stated that the language mirrored that which is in the Lobbyist Ordinance. Commissioner Hansen noted that the decision point incorrectly referenced lines 12-18 on page 11 of the draft amendments, when it actually referenced lines 3-9 on page 12 of the draft amendments.

Motion 11-01-10-6 (Hansen/Hayon): Moved, seconded and passed (3-1; Hur dissent) that the Commission adopt decision point 7.

Public Comment:

Mr. Marsteller stated that the FPPC may have experience with the evasion question.

Decision Point 10

Commissioner Hur stated that he did not see "preponderance of the evidence" in the draft amendments. Staff agreed to add the language "on the basis of a preponderance of the evidence" in line 15, page 14 where "on the basis of substantial evidence" used to be.

The Commissioners then discussed the proposal to delete language in section 1.540(c) allowing the Commission to cancel the registration of any campaign consultant who has violated the registration or reporting requirements of the Ordinance for up to one year. Ms. Ng stated that the administrative penalty mirrors that in CFRO and that the monetary penalty would be sufficient. She also stated that it had never been used. Commissioner Hur expressed concerns that there was no limitation on the Commission to cancel a consultant's registration. Mr. St. Croix suggested adopting regulations to limit the Commission's ability

to do so.

Mr. Pilpel stated that the language in lines 11-14 on page 15 was strange.

Mr. Marsteller stated that the cancellation of someone's registration was a severe sanction.

Motion 11-01-10-7 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 10, except for the fourth bullet point from staff's memorandum.

Public Comment:
None.

Motion 11-01-10-8 (Hur/Hansen): Moved, seconded and passed (4-0) that Commission staff consider regulations that would provide guidance when that power would be used by the Commission.

Public Comment:
None.

Decision Point 17

Commissioner Hur clarified that the decision point would take everything discussed at this meeting and during December's meeting into account.

Motion 11-01-10-9 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 17.

Public Comment:

Mr. Pilpel stated that line 12 on page 5 may need to be changed; he suggested "employee." Chairperson Studley stated that line 14 on page 5 was being changed. Mr. St. Croix stated that would be taken under consideration. Mr. Pilpel stated that subsections 7 and 8 of section 1.515(b) were unlikely. He also encouraged the Commission to add the requirement for a consultant to disclose whether s/he or any employee serves as an officer or director of a general purpose recipient committee and, if so, to require the consultant to list the name of the organization. He stated that he suggested that the Commission require disclosure and not prohibit it.

V. Possible retention of the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.

Executive Director St. Croix stated that staff would like the Commission's approval on this arrangement, so that staff would have someone if any questions are raised regarding the mayoral race. DCA Shen clarified the nature of the firewall within the Office of the City Attorney. He stated that the City Attorney's office would handle general questions regarding public financing and campaign finance, without the assistance of Dennis Herrera. He stated that the City Attorney's office would not be involved in specific questions regarding the mayoral race.

Motion 11-01-10-10 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission retain the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.

Public Comment:

Mr. Pilpel stated that Mr. Morodomi previously worked for the FPPC and asked whether the written agreement was a public document.

DCA Shen stated that there may not be a need for a written agreement.

VI. Closed session.

Motion 11-01-10-11 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission enter into closed session.

Public Comment:

Mr. Marsteller stated that he had a comment, but missed the earlier item for general public comment. He stated that there may be coordination for ranked-choice voting. He stated that there may be deployment of public financing resources to ranked-choice tickets and coordination between committees. He suggested that the Commission hold interested persons' meetings about it.

Mr. Pilpel stated that he had questions regarding the budget, but then stated that it was not on the agenda. He then asked about the item to be discussed during closed session. DCA Shen stated that there was a constitutional challenge to the public financing program.

[Entered CLOSED SESSION at 8:13 PM.]

[Returned FROM CLOSED SESSION at 8:27 PM.]

VII. Discussion and vote regarding closed session action and deliberations.

Motion 11-01-10-12 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: existing legislation.

Public Comment:

None.

VIII. Minutes of the Commission's regular meeting of December 13, 2010.

Motion 11-01-10-13 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of December 13, 2010, without discussion.

Public Comment:

None.

IX. Executive Director's Report.

Executive Director St. Croix stated that February's meeting will be on Valentine's Day. He stated that there had been a probable cause hearing scheduled, but that has been continued. He stated that another probable cause hearing is scheduled for February and is expected to take the majority of the meeting time. He stated that the Commission will need to consider the annual budget at the February meeting. He stated that the Commission was required to submit \$53,000 in savings from this year's budget and that was approved. He stated that there have already been many questions regarding public financing for the Mayoral race and there is a training scheduled for the end of January 2011.

Mr. St. Croix then stated that this meeting may be the last meeting that Commissioner Hansen would attend as a Commissioner, but that she may remain on the Commission in February and March. He stated that he wanted to thank her for her tenure. Chairperson Studley stated that she appreciated Commissioner Hansen's tenacity and candor and her work on the Commission. Commissioner Hur stated that he appreciates hearing her comments and views and agrees with Chairperson Studley and the Executive Director.

Commissioner Hansen stated that at times it was a struggle, but that she has had a phenomenal six years. She stated that she was appreciative to have been able to serve the City in this way. She stated that she hopes her replacement would work well with the other Commissioners and that s/he would continue in the same vein. She stated that she hopes that the Commission sets the bar high enough so that other cities would follow and thanked the Commissioners for their service.

X. Items for future meetings.

Public Comment:

None.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XII. Adjournment.

Motion 11-01-10-14 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission adjourn.

Public Comment:

None.

Meeting adjourned at 8:35 PM.

Respectfully submitted,

Catherine Argumedo

This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.

The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?