



SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee

CITY AND COUNTY OF SAN FRANCISCO

MINUTES

**Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689**

October 17, 2017 - 3:30 PM

Regular Meeting

Members: Josh Wolf (Chair), Eric Eldon, Louise Fischer

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

Member Louise Fischer assume the chair and called the meeting to order at 3:35 p.m. On the call of the roll Member Eldon and Member Fischer were noted present. There was a quorum.

Chair Wolf was noted present at 3:50 p.m.

There were no agenda changes.

2. Adoption of the minutes for the August 15, 2017, Education, Outreach, and Training Committee meetings.

The Committee discussed the approval of the meeting minutes.

Member Fischer, seconded by Member Eldon, moved to approve the August 15, 2017, meeting minutes.

Public Comment:

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 - Eldon, Fischer

Noes: 0 – None

Absent: 1 – J. Wolf

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

Speakers:

None.

The Education, Outreach and Training Committee (Committee) shall hold hearing(s) on File Nos. 17078, 17079, 17080, 1781, 17097 and 17104 to: 1) determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and 3) issue a report and/or recommendation to the Task Force. The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint.

4. **File No. 17078:** Complaint filed by Patrick Monette-Shaw against Jay Huish, Norm Nickens and the Board of Trustees, San Francisco Employees' Retirement System, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(a), 67.14(b), 67.15 and 67.34, by willfully failing to post and agenda listing proposed actions or a statement that the item is for discussion only, failing to provide complete audio recording of the meeting and failing to provide an opportunity for public comment (May 22, 2017, SFPER Board of Trustee's Special Meeting).

Member Eldon, seconded by Member Fischer, moved to find jurisdiction in the matter and find that the requested records are public.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 2 - Eldon, Fischer

Noes: 0 - None

Absent: 1 - J. Wolf

Patrick Monette-Shaw (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Monette-Shaw summarized the missing section of the audio recording in question. Mr. Monette-Shaw stated that there were multiple agenda issues, which caused confusion, and stated that the printed agenda did not provide for an opportunity for public comment. Mr. Monette-Shaw stated that a willful violation of the Sunshine Ordinance occurred as the department did not discharge their duties pursuant to the Sunshine Ordinance. Norm Nickens, San Francisco Employee Retirement System (SFPERS) (Respondent), provided a summary of the department's position and stated that the meeting in question was an all-day retreat. Mr. Nickens stated that the new audio equipment used to record the meeting was untested and that it is his belief that somebody may have accidentally paused the audio recording, which was not noticed until after the lunch break. Mr. Nickens states that that entire afternoon session

was recorded (*Mr. Monette-Shaw stated that the recording for the afternoon was not long enough and must therefore be incomplete.*) Mr. Nickens stated that an initial agenda was distributed to the SFPERS members. Mr. Nickens stated that it was his belief that since the initial agenda was not yet distributed to members of the public it was only a draft agenda and subsequently issue a new agenda without indications of corrections. Mr. Nickens stated if he knew there would be confusion he would have issued the agenda as a revised or corrected version. Mr. Nickens stated that general public comment was accepted at the beginning of the meeting even though general public comment was not listed on the agenda. Mr. Nickens stated that the error made by the SFPER was not intention or willful. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee opined that there appears to be a violation of the following:

- Sunshine Ordinance, Section 67.14(b), for failing to audio record the entire meeting
- Sunshine Ordinance, Section 67.15 for failing to list an opportunity for public comment in the agenda

The Committee could not reach consensus regarding the following issues and requests that the full Task Force conduct additional review of the following:

- Sunshine Ordinance, Section 67.7(a), agenda posting requirements
 - If an agenda was only provided to members is it considered publish agenda? Was a documented “revised” agenda required?
- Sunshine Ordinance, Section 67.34, should the violations be considered a willful failure.

Member Eldon, seconded by Chair Wolfe, move to refer the matter to the full Task Force for hearing without recommendation.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Fischer, Wolf
Noes: 0 - None

With the agreement of the Petitioner and the Respondent File Nos. 17079, 17080 and 17081 were called and heard together.

5. **File No. 17079:** Complaint filed by Mary Miles against Mike Sallaberry, San Francisco Municipal Transportation Agency, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Mary Miles (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Miles stated that four public records requests were submitted to different staff members at the San Francisco Municipal Transportation Agency (SFMTA) and that each staff member is required to respond separately as all staff members are considered custodian of records. Ms. Miles stated she only receive 1 response to her 4 requests. Ms. Miles state here opinion that a representative is not able to respond on behalf of another party accurately or completely. Caroline Celaya, SFMTA (Respondent), provided a summary of the department's position. Ms. Celaya stated that the four public records requests were for the same documents and only one response was provided. Ms. Celaya stated that all named respondents and addition staff members were polled regarding the request for public records and it was indicated to Ms. Celaya that there were no additional documents. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee stated the circumstances in question are unusual and requested that Deputy City Attorney Colla review and respond based upon the information provided during the hearing. The Committee opined that the Sunshine Ordinance is not clear if individuals must respond to public records requests personally or if they are allowed to have a representative respond on their behalf. The Committee would like advice and citations of relevant law/policy as to whether or not it is acceptable for a departmental representative to respond to a public records request on behalf of individual staff members. The Committee would like to note that the Sunshine Ordinance only appears to authorize a custodian of records to represent other individuals at Task Force hearings.

Member Eldon, seconded by Member Fischer, move to find jurisdiction in the matters (File Nos 17079, 17080 and 17081), find that the requested records are public and referred the matters to the Task Force for hearing without recommendations.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Fischer, Wolf

Noes: 0 - None

6. **File No. 17080:** Complaint filed by Mary Miles against Will Tabajonda, San Francisco Municipal Transportation Agency, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

See File No. 17079 for summary and actions.

7. **File No. 17081:** Complaint filed by Mary Miles against Luis Montoya, San Francisco Municipal Transportation Agency, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

See File No. 17079 for summary and actions.

8. **File No. 17097:** Complaint filed by Marc Bruno against the Planning Department, Board of Appeals and the Department of Building Inspection for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a public records request in a timely and/or complete manner.

Marc Bruno (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Bruno stated that it should not be difficult to request plans. Mr. Bruno stated that the departments should have had the plans in their possession and it is required by law and existing policy. Mr. Bruno stated that the city agencies are not following required laws/policies and pursuant to the Sunshine Ordinance, should be providing assistance to acquire requested records. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that the department received 4 public records requests from Mr. Bruno and responded to all of them in a timely manner. Ms. Silva stated that the request were not Immediate Disclosure Requests and that certain records were not in the possession of the Planning Department at the time the request was made. Ms. Silva state that she is not aware of any other request but would look into any other potential request if additional information can be provided. Dan Lowrey and William Strawn, Department of Building Inspection (DBI) (Respondent), provided a summary of the department's position. DBI stated that the requested plans in question were cancelled and no longer considered a public record. DBI stated it is their standard procedure that cancelled plans are routed for destructions and that they are no longer considered valid or active documents. DBI stated that they were able to retrieve the plans prior to destruction, at the request of Mr. Bruno. DBI stated that Mr. Bruno was offered the opportunity to view the document in person but could not provide copies as the plans were withdrawn/cancel and considered to be copyrighted documents by the architect and project sponsor. DBI stated that they could only release the plans without the permission of the sponsor and architect pursuant to California Health and Safety Code, Section 19851. Cynthia Goldstein, Board of Appeals (Respondent), provided a summary of the department's position. Ms. Goldstein stated that Mr. Bruno was informed that the Board of Appeals did not have the plans and referred Mr. Bruno to the city agencies who were likely to have the plans. Ms. Goldstein stated that the Board of Appeals, at a public meeting, refused to take actions on the matter

until copies of the plans were provided. Ms. Goldstein stated that the complete records were not submitted to the Board of Appeals and it is not the responsibility of the Board of Appeals to enforce requirements of other bodies. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee stated that the Sunshine Ordinance Task Force (SOTF) jurisdiction is limited to public records. The SOTF does not have the ability to influence departmental policy, procedure or workflow.

The Committee provided the following summary and opinion:

The Board of Appeals should have had copies of the plans but they never received them. Mr. Bruno was referred to the agency most likely to have copies of the plans.

The Department of Building Inspection's policy is to destroy plans that have been cancelled. Pursuit to California Health and Safety Code, Section 19851, cancelled plans cannot be provided to the public without the permission of the sponsor and architect due to copyright issues. However, DBI retrieved the plans scheduled for destructions and Mr. Bruno was provided an opportunity to view the plans in person.

The Planning Department only received 4 public records request and has stated that they responded in timely and complete manner. Ms. Silva has agreed to review any other public records requested that may have been overlooked or not received. The Committee requested that Mr. Bruno provide the dates of public records request submission and any responses provided by the Planning Department.

Chair J. Wolf, seconded by Member Eldon, move to find jurisdiction in the matters, find that the requested records are public and referred the matters to the Task Force for hearing without recommendations. (The Complaint regarding the Board of Appeals will be divided into File No. 17114; the Department of Building Inspection will be divided into File No. 17115; and the Planning Department will be divided into File No. 17097.)

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Fischer, Wolf

Noes: 0 - None

9. **File No. 17104:** Complaint filed by Kathleen Courtney and the Russian Hill Community Association against Nicholas Foster and the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner.

Kathleen Courtney (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Ms. Courtney stated that they received responses to their 4 initial requests but found that they were incomplete. Ms. Courtney accepts the Planning Department's statement that they did not willfully withhold records but stated that the Planning Department's process for maintaining records and posting them online is out of date and not enforced. Ms. Courtney requested that the Sunshine Ordinance Task Force direct the Planning Department to create and enforce records retention policy and maintain procedures. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that the Department did not initially withhold records when responding to the public records request. However, upon review of the issue the Planning Department found a "glitch" in the online system where certain documents were misclassified and certain classification of documents were hidden from view online and to Planning's staff. Ms. Silva stated that that the 'glitch' has been addressed. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

The Committee asked the Planning Department to review how many records were inadvertently withheld as they may be the subject of future complaints.

Member Fischer, seconded by Chair J. Wolf, move to find jurisdiction in the matter, find that the requested records are public and referred the matters to the Task Force for hearing with a recommendation to find that the Planning Department violated Sunshine Ordinance 67.21 by failing to respond to a public records request in a complete manner. The Committee requested that the Task Force explore the Planning Department's records retention policy and the possible of transmitting an advice letter regarding the Planning Department.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Eldon, Fischer, Wolf

Noes: 0 - None

10. **Announcements, Comments, Questions, Future Agenda Items and Pending Calendar by Members of the Education, Outreach and Training Committee.**

There were no announcements or questions.

Public Comment:

None.

11. **ADJOURMENT**

There being no further business the meeting was adjourned at 6:40 p.m.

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

Approved by the Education, Outreach and Training Committee: February 20, 2018