



SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES DRAFT

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

January 9, 2017 - 4:00 PM

Regular Meeting

Members: Frank Cannata (Chair) Chris Hyland, and Dave Maass

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

Chair Frank Cannata called the meeting to order at 4:01 p.m. On the call of the roll Members Cannata, Maass, and Hinze were noted present. Member Hyland was noted excused. There was a quorum.

Member Hinze was appointed to serve on the Compliance and Amendments Committee in place of Member Hyland for the January 9, 2017, meeting.

There were no agenda changes.

2. Approval of the November 14, 2016, Compliance and Amendments Committee meeting minutes.

The Committee discussed the minutes.

Member Maass, seconded by Member Hinze, moved to approve the November 14, 2016, meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata
Noes: 0 - None
Excused: 1 - Hyland

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

Speakers:

Ellen Tsang expressed concern of documents submitted by the departments being illegible due to dark highlighting.

Tom Borden (SF Forest Alliance) expressed concern with the Planning Department’s abuse of joint meetings to reduce the amount of public comment.

Dee Selinger (SF Forest Alliance) expressed concern with the Planning Department’s combining of issues for a single hearing.

4. **File No. 16103: Report:** Use of automatic ‘out-of-office’ email responses and its effect on public records requests.

David German provided a summary of the city’s email system in relation to out of office messages and public records request and answered questions from the Committee. Mr. German stated certain parties are working on developing related policies. In addition, Mr. German stated that automatically forwarding emails based on keywords is unreliable and instead recommended the use of a central email account for public records requests and a clear delegation of responsibility to another individual.

Member Maass, seconded by Member Hinze, moved to continue the matter to the call of the chair and requested that a report be provided to the Sunshine Ordinance Task Force.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata

Noes: 0 - None

Excused: 1 - Hyland

5. **File No. 16081: Report:** City and County of San Francisco’s compliance with Senate Bill 272 (Amendment to the California Public Records Act regarding open source database and summaries and requirement for online maintenance).

Joy Bonaguro provided a summary of the city’s continuing efforts in regards to complying with Senate Bill 272 and answered questions from the Committee.

Member Maass, seconded by Member Hinze, moved to continue the matter to the call of the chair and requested that a report be provided to the Sunshine Ordinance Task Force.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata

Noes: 0 - None

Excused: 1 - Hyland

6. **File No. 16071: Hearing on the Status of the Order of Determination** - Complaint filed by Tom Borden against John Rahaim and the Planning Department, for violating Administrative Code (Sunshine Ordinance), Sections 67.21 (c) and 67.27, by failing to provide assistance in identifying the existence, form, and nature of any record and failing to provide justification for withhold/redacting records.

(On October 5, 2016, the SOTF heard and referred the matter to the Compliance and Amendments Committee. It was requested that the Respondent provide justification for the redactions to the documents provided in response to the public records request.)

Christian Silva, Planning Department (Respondent), provided the reason for redacting the draft report subject to the public records request, stated that the information was previously provided to the Complainant and that the Planning Department has complied with the Order of Determination. Tom Borden (Complainant) acknowledged that the reason for the redaction was provided. However, Mr. Borden stated that the Sunshine Ordinance, Section 67.24(a), is inconsistent as it allows redaction in draft documents based upon the recommendation of the author and not in other related situations.

The Committee suggested that the Rules Committee review the inconsistent application of redactions in order to propose improvements to the Sunshine Ordinance in the future.

Member Hinze, seconded by Member Maass, moved to find that the Planning Department complied with the Order of Determination and concluded the matter.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata

Noes: 0 - None

Excused: 1 - Hyland

7. **File No. 16066: Hearing on the Status of the Order of Determination:** Complaint filed by Ellen Tsang against Tom Hui, Daniel Lowrey, and Lily Madjus, Department of Building Inspection, for violating Administrative Code (Sunshine Ordinance), Sections

67.21 (b) and 67.25 (b), for failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

(On November 2, 2016, the SOTF heard and referred the matter to the Compliance and Amendments Committee. It was requested that the Ms. Tsang review the documents provided to her on October 28, 2016, and November 2, 2016, and provide a detail list of specific documents that have not yet been provided and are within the scope of the request. The Compliance and Amendments Committee shall determine if the Respondent has provided the documents requested by Ms. Tsang and/or evaluate Respondent's position that they do not have documents responsive to the request.)

Ellen Tsang (Complainant) and Lily Madjus, Department of Building Inspection (Respondent) provided summary of their positions and answered questions from the Committee throughout the hearing.

The Committee reviewed each of the response from the Department of Building Inspection (DBI) and the concerns of Ms. Tsang in regards to Ms. Tsang's eleven requests for public records. The Committee found that the DBI either provided the requested records or does not have any responsive records in regards to request Nos. 1, 2, 3, 5, 6, 7, 9, 10 and 11. The Committee requested that DBI provide the job card or state that there are no additional records in regards to request No. 4. In, addition, DBI has agreed to review the letters to be provided by Ms. Tsang and provided related documents/history or state that there are no additional records in regards to request No. 8.

Member Hinze, seconded by Member Maass, moved to find that the Department of Building Inspection complied with the Order of Determination and concluded the matter pending receipt of DBI's responses regarding request Nos. 4 and 8.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata

Noes: 0 - None

Excused: 1 - Hyland

SPECIAL ORDER – The hearings on File No. 16091 and 16099 will not begin earlier than 5:00 p.m.

The Compliance and Amendments Committee (Committee) shall hold hearing(s) on File Nos. 16091 and 16099 to: 1) determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force. The Complainant and Respondent may attend to provide clarification, evidence and related testimony. However, attendance by the

Complainant and Respondent are **not required** at the January 9, 2017, Compliance and Amendments Committee meeting.

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. The Complainant and Respondent will be required to attend the Task Force meeting to review the merits of the complaint(s).

8. **File No. 16091:** Complaint filed by Michael Petrelis against Director LeeAnn Pelham and Commissioners Paul Renne, Peter Keane and Quentin Koop (Ethics Commission), Sheriff Vicki Hennessy, and City Attorney Dennis Herrera for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.15 and 67.21, by not allowing an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the policy body's jurisdiction, abridging or prohibiting public criticism of the policy, procedures programs or services of the City and by failing to respond to a request for public records in a timely and/or complete manner (September 26, 2016, Ethics Commission meeting).

Member Maass disclosed that he personally made a public records request which may be related to the complaint but does not believe it will bias his ability to act impartially on the complaint. Neither the Complainant nor Respondent objected to Member Maass hearing the complaint.

The Committee viewed the video of the relevant portion of the Ethics Commission Meeting.

Michael Petrelis (Complainant) provided a summary of his complaint and requested the Task Force to find violations. Mr. Petrelis stated that the Ethics Commission interrupted his 3 minutes of public comment to discuss bans on political signs and that the Ethics Commission could not provide written documentation of the policy regarding the matter. Mr. Petrelis stated that he has the right to 3 minutes of uninterrupted public comment.

Jessica Blome, Ethics Commission (Respondent), provided a summary of the department position. Ms. Blome stated that staff pauses the timer during any questioning by the Ethics Commissioners to ensure that all commenters receive 3 minutes of public comment. Ms. Blome stated that the Ethics Commission did not have any records response to the request for policy regarding political signs and that the request for a City Attorney written opinion has not yet been provided to the Ethics Commission.

Upon discussion and review of the complaint Mr. Petrelis agreed that the Office of the Sheriff and the Office of the City Attorney did not violate Sunshine Ordinance, Sections 67.15 and 67.21, as they were not involved with public comment at the Ethics Commission meeting, they were not in possession of the requested records, or the requested records were provided. Mr. Petrelis withdrew his complaints against the Office of the City Attorney and the Office of the Sheriff. In addition, Mr. Petrelis

withdrew his complaint against the Ethics Commission in regards to Sunshine Ordinance, Section 67.21, as the Ethics Commission stated that were not aware of any documents related the request for records.

The Committee opined that that the Ethics Commission did not violate Sunshine Ordinance, Section 67.15. Ethics Commission staff did not count the Ethics Commission’s interruption and questions of Mr. Petrelis’ public comment as part of his three minutes of public comment. In addition, the Committee does not believe that Mr. Petrelis’ comments were abridged or prohibited in regards to Section 67.15(d).

Member Hinze, seconded by Member Maass, moved to refer the matter to the Sunshine Ordinance Task Force with the recommendation to find that the Task Force has Jurisdiction and to find that the Ethics Commission did not violate Sunshine Ordinance Section 67.15.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata
Noes: 0 - None
Excused: 1 - Hyland

9. **File No. 16099:** Complaint filed by Michael Petrelis against the San Francisco Ethics Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7 (a) and 67.15, by failing to post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting and failing to provide an opportunity for members of the public to directly address a policy body on items of interest to the public (October 17, 2016, meeting).

The Committee viewed the video of the relevant portion of the Ethics Commission Meeting.

Michael Petrelis (Complainant) provided a summary of his complainant and requested the Task Force to find violations. Mr. Petrelis stated that the Ethics Commission creation of a “Meeting Decorum” section and its insertion into the informational area of the agenda constituted the creation of policy which should have been placed onto the agenda for review and approval by the Ethics Commission and public comment. Jessica Blome, Ethics Commission (Respondent), stated that the information listed in “Meeting Decorum” section is based upon a collections of policies used by other city bodies and already in existence and not recently created. Ms. Blome stated that the Chair of the Ethics Commission intention was to point out the existence of the existence of he “Meeting Decorum” section as additional information listed in the informational section

of the agenda and that there was no need for the Ethics Commission for formally adopt existing policy.

The Committee opined that the adoption of the “Meeting Decorum” section should have been placed onto the agenda for review and public comment prior to adoption. The Committee believes that a violations of Sunshine Ordinance, Section 67.7 and 67.15, occurred for taking action on items not listed on the agenda and failing to provide an opportunity for public comment on a matter prior to official action.

Member Maass, seconded by Member Hinze, moved to refer the matter to the Sunshine Ordinance Task Force with the recommendation to find that the Task Force has Jurisdiction and to find that the Ethics Commission violated Sunshine Ordinance, Section 67.7 and 67.15, by failing to post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting and failing to provide an opportunity for members of the public to directly address a policy body on items of interest to the public.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Maass, Cannata
Noes: 0 - None
Excused: 1 - Hyland

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

There were no announces, comments or questions.

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 7:35 p.m.

**APPROVED: DRAFT
Compliance and Amendment Committee
Sunshine Ordinance Task Force**

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