



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

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

July 17, 2018 - 4:30 PM

Regular Meeting

Members: Frank Cannata (Chair), Fiona Hinze and Chris Hyland

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

Chair Frank Cannata called the meeting to order at 4:33 p.m. On the call of the roll Chair Cannata and Member Hinze were noted present. Member Hyland was noted not present. There was a quorum.

There were no agenda changes.

2. Approval of the May 15, 2018, Compliance and Amendments Committee meeting minutes.

The Committee discussed the minutes.

Member Hinze, seconded by Chair Cannata, moved to approved the May 15, 2018, Compliance and Amendments Committee meeting minutes.

Public Comment:

None.

The motion PASSED the follow vote:

Ayes: 2 – Hinze, Cannata

Noes: 0 – None

Absent: 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:

Ann Treboux provided the following public comment: "On June 15, 2018 I was standing on Market and Spear at 8:00 am when a female standing six inches in front of me took photos from her cell phone. I said nothing and taped a 58 second incident where she said, 'What you shoved me. That is the wrong thing to do. Stop shoving me. I now have to call the police.' A few hours later, I learned this was Anne Trickey of the San Francisco Arts Commission. Trickey filed and Assault report in the Tenderloin Station, claiming I shoved her twice and was verbally abusive. This was a false report that was not investigated as I showed a cell phone tape of the incident. Don't know Trickey but suggest she invents situations to suit her needs. No oversight at the SFAC and no response from the SFCA's office."

4. **File No. 17104: Hearing on the Order of Determination:** 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.

(On January 16, 2018, the SOTF heard the matter, found a violation of Administrative Code (Sunshine Ordinance), Section 67.21 and referred the matter to the Compliance and Amendments Committee to confirm that documents that were accidentally hidden have posted online as intended by the Planning Department and that the documents related to the complaint have been provided.)

Chair Cannata stated that he has had past associations with Kathleen Courtney but it would not affect his ability to remain impartial in reviewing the complaint.

Kathleen Courtney, Russian Hill Community Association (RHCA) (Petitioner/Complainant) provided a summary of her complaint and requested that the SOTF find violations. Ms. Courtney provided a description of the Planning Department's inadequate process for ensuring that all records are posted online for public review in timely and complete manner. Ms. Courtney acknowledge that the requested documents were eventually received and suggested regarding improvements to the Planning Department's process. Ms. Courtney stated that Jonas Ionin at the Planning Department acknowledged that written procedures for posting records online does not exist due to the constant changes to the process at this time. Ms. Courtney stated that it took several months before it was discovered by the Planning Department that the requested records were not posted online along with thousands of other documents. Ms. Courtney stated that the Planning Department acknowledged that there was a glitch in their computer system and that some documents were not provided. Ms. Courtney provided the following three suggestions to prevent future problems; 1) to require the Planning Department show that such lapses will be prevented in the future by requiring all

Planners to post documents on the property information map in a timely manner; 2) to require the Planning Department include this instruction in a comprehensive manual; and 3) to require the Director of the Planning Department inform the Planning Commission of this process.

Jonas Ionin, Planning Department (Respondent), informed the SOTF via email that they were unable to send a representative due to conflict of schedules.

Administrator Victor Young informed Ms. Courtney and the members of the Committee of the limits of the actions allowed pursuant to the Order of Determination of the SOTF.

A question and answer period occurred.

Chair Cannata request that the SOTF be informed when the Planning Department creates the procedures manual for posting records online.

Member Hinze, seconded by Chair Cannata, moved to find that the Planning Department has complied with the Order of Determination and filed the complaint.

Public Comment.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Hinze, Cannata

Noes: 0 – None

Absent: 1 - Hyland

5. **File No. 18048:** Complaint filed by Rebecca Peacock against Supervisor Jane Kim (Board of Supervisors) for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-7, and California Government Code, Section 34090, by failing to maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to, letters, emails, drafts, memorandum, invoices, reports and proposals.

Rebecca Peacock (Complainant/Petitioner), provided a summary of her complaint and requested that the SOTF find violations. Ms. Peacock stated that her issue with Supervisor Kim’s office is one of first amendment rights and members of the public should have the right to express their views via Facebook without censorship. Ms. Peacock stated that since Supervisor Kim used Facebook for public business and as a public forum it should be considered a public record and maintained accordingly. Ms. Peacock stated that by deleting public posts Supervisor Kim was deleting a public record. Ms. Peacock reference recent court rules related to social media being considered a public record. There were no speakers on behalf of the Petitioner.

Noelle Duong, Legislative Aide to Supervisor Jane Kim, Board of Supervisors (Respondent), provided a summary of the department's position. Ms. Duong stated that Supervisor Kim does not maintain the Facebook account in question in her role as a Member of the Board of Supervisor. Ms. Duong stated that no city resources or employees were used in producing the reference post on Facebook. Ms. Duong stated that the Facebook page in question is not a public record and requested that the SOTF review the definition of a public record. Ms. Duong stated that the Office of the City Attorney has advised that since the Facebook page was not used in her official role as Supervisor and was not under the sole control of Supervisor Kim it is not a public record. Ms. Duong clarified that the City Attorney advised that in order for space to be considered a public forum, it must be owned and/or controlled by the City government which Supervisor Kim's Facebook account is not.

There were no speakers on behalf of the Respondent.

A question and answer period occurred.

SOTF Administrator Young requested that Ms. Duong provide any potential legal question to the SOTF prior to the next meeting for possible review by the SOTF's counsel. Mr. Young further stated that the SOTF generally does not have jurisdiction over the United States Constitution or the First Amendment and that the complaint should be based on Administrative Code (Sunshine Ordinance), Chapter 67 and the California Public Records Act.

Chair Cannata, seconded by Member Hinze, moved to find that the SOTF has jurisdiction, find that the requested records are public, and referred to the SOTF for hearing without recommendation.

Public Comment.

Speakers: Steven Busse commented on First Amendment rights in relation to the complaint.

The motion PASSED by the following vote:

Ayes: 2 – Hinze, Cannata

Noes: 0 – None

Absent: 1 - Hyland

6. **File No. 18050:** Complaint filed by Don Chan against the Juvenile Probation Commission 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.

SOTF Administrator Young stated that the Juvenile Probation Commission was unable to send a representative to the hearing due to the resignation of their President and conflict

of schedules with other members of the staff. SOTF Administrator Young suggested that the matter be referred to the SOTF for hearing.

Don Chan (Petitioner/Complainant) provided a summary of his complaint and requested that the SOTF find violations. Mr. Chan stated that this is the second complaint he has filed against the Juvenile Probation Commission for a similar matter. Mr. Chan stated that he is concerned that the Juvenile Probation Commission has not maintain required records. Mr. Chan stated that not having records for the years in question is a serious offense in not being responsible and keeping records in a businesslike manner. Mr. Chan inquired as to possible enforcement actions against the Juvenile Probation Commission.

In response to Mr. Chan's inquiry, SOTF Administrator Young stated that Sunshine Ordinance does not have enforcement provisions and further stated that legal action through the California Court system is a possibility.

Member Hinze, seconded by Chair Cannata, moved to find that the SOTF has jurisdiction in the matter, that the records are public, and referred the matter to the SOTF without recommendation.

Public Comment.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Hinze, Cannata

Noes: 0 – None

Absent: 1 - Hyland

The Compliance and Amendments Committee (Committee) reviewed File No(s). 18049, 18053, 18054, 18057, and 18058 to determine if the Sunshine Ordinance Task Force has jurisdiction and determine if the requested records are public pursuant to Administrative Code (Sunshine Ordinance), Sections 67.21(e). The Complainant and Respondent were **NOT REQUIRED** to attend the July 17, 2018, Committee meeting but may attend to provide testimony related to the above listed determinations. A hearing to review the merits of the complaint will be scheduled on a future date.

Member Hinze, seconded by Chair Cannata, moved to find that the SOTF has jurisdiction in File Nos. 18049, 18053, 18054, 18057 and 18058 and that the records are public. A hearing on the merits of the complaint will be scheduled on a future date.

Public Comment.

Speakers: None.

Ayes: 2 – Hinze, Cannata

Noes: 0 – None

Absent: 1 - Hyland

7. **File No. 18049:** Complaint filed by Robert M. Smith against the Fine Arts Museums of San Francisco (FAMSF) 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.

See above for action on the matter.

8. **File No. 18053:** Complaint filed by Ann Treboux against the Arts Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner. (*attachment*)

See above for action on the matter.

9. **File No. 18054:** Complaint filed by Mike Black against the Office of the Controller for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, by inappropriately invoking provisions for extensions of time to respond due to the voluminous nature of a request or need to consult with another department. (*attachment*)

See above for action on the matter.

10. **File No. 18057:** Complaint filed by Ann Treboux against Rebekah Krell and the Arts Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25, 67.26 and 67.27, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner and for withholding records from disclosure and justification for withholding records. (*attachment*)

See above for action on the matter.

11. **File No. 18058:** Complaint filed by Deonte Walker and Tamara Reed against the San Francisco Municipal Transportation Agency 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. (*attachment*)

See above for action on the matter.

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

There were no announcement or comments.

13. **ADJOURNMENT**

There being no further business the meeting was adjourned at 5:15 p.m.

APPROVED: 9/18/18
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.