



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

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

January 16, 2018 - 4:00 PM

Special Meeting

Seat 1	vacant	Seat 7	Dave Maass
Seat 2	Eric Eldon	Seat 8	Frank Cannata
Seat 3	Josh Wolf	Seat 9	Chris Hyland - Vice Chair
Seat 4	Rishi Chopra	Seat 10	Louise Fischer
Seat 5	Leuwam Tesfai	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - Chair		

Ex-officio (*non-voting*) Clerk of the Board of Supervisors or his or her designee
Ex-officio (*non-voting*) Mayor or his or her designee

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

Chair Bruce Wolfe called the meeting to order at 4:06 p.m. Members Chopra, J. Wolf, and Fischer were noted absent. Member Tesfai was noted excused. There was a quorum.

SOTF Administrator Victor Young noted that the Complainant for Item No. 6 (File No. 17094) requested a continuance due to illness.

2. Approval of minutes from the Sunshine Ordinance Task Force December 19, 2017, meeting.

The SOTF discussed the December 19, 2017, meeting minutes.

Member Cannata, seconded by Member Hinze, moved to approve the December 19, 2017, meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 6 – Eldon, Maass, Cannata, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 3 – Chopra, J. Wolf, Fischer

Excused: 1 – Tesfai

Member Fischer was noted present at 4:13 p.m.

3. **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. (00:03:00 – 00:28:00) (On October 17, 2017, the Education, Outreach and Training Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing.)

Member Cannata disclosed his association with the Petitioner and stated that there is no conflict of interest.

John Russo, Russian Hill Community Association (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. In addition to finding violations of the Sunshine Ordinance, Mr. Russo requested that the SOTF ask the Planning Department to: 1) require all planners to post their documents to the Property Information System as soon as they are created (within 10 days); 2) create a comprehensive procedure manual with compliance considered in staff evaluations; and 3) announce the new procedures to the public. Kathleen Courtney spoke in support of the Petitioner. Christine Silva, Planning Department ((Respondent)), provided a summary of the department's position. Ms. Silva stated that the Department did not intentionally 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, numbering approximately 1,300 documents, and were hidden from online viewing and to members of the public as well as Planning's staff. Ms. Silva stated that the 'glitch' has been addressed and all records are available online. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

Member Cannata, seconded by Member Hinze, moved to find that the Nicholas Foster and the Planning Department violated Administrative Code 67.21, by failing to respond to a public records request in a timely and complete manner and to refer 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. In addition, it is moved to refer the matter to the Education, Outreach and Training Committee to review the Planning Department's procedures, policy and

training to insure that public records are being made available to the public in a timely manner.

Public Comment:

Male Speaker questioned the status of the 1,300 documents unrelated to the complaint but were not available on the Planning Department website.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

4. **File No. 17044: Hearing to determine if the complaint should be reconsidered due to the findings issued by the Office of the District Attorney on October 18, 2017 -** Complaint filed by Laura Clark against the Ethics Commission for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.7(d), by acting or conducting discussions on an item not appearing on the posted agenda (Ethics Commission April 24, 2017, meeting). (00:28:00 – 01:15:00)

Chair Wolfe provided a summary of the request from Member Maass to reconsider the complaint due to new information in the form of the Office of the District Attorney findings dated October 18, 2017, and asked if there were any laws preventing a member of the SOTF to request reconsideration. Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF. DCA Colla stated that the SOTF's procedures clearly set a procedure for reconsideration of complaints and that there is currently no option for members of the SOTF to request reconsideration. Chair Wolfe suggested that the Rules Committee review the reconsideration procedure for possible amendments.

Chair Wolf moved to continue the matter to the call of the chair.

Public Comment:

Laura Clark stated that she will not refile a complaint and expressed her disappointment with the bad decisions of various boards and commissions. Ms. Clark suggested that vacant seats should be filled with knowledgeable elected officials.

Former SOTF Member Todd David stated that the legal precedent on the matter is not clear but that there is no harm in rehearing the matter. Mr. David stated that the District Attorney provided a knowledgeable opinion that should trigger a rehearing on the matter.

The motion passed without objection.

5. **File No. 18004:** Hearing to review relevant sections of Administrative Code (Sunshine Ordinance), Chapter 67, California Government Code and other related codes to determine if a member of a Commission/Committee/Task Force who is recused from a matter may provide testimony during public comment or as a witness. (01:15:00 – 01:27:00)

The SOTF discussion the process for recusing members of the SOTF from a matter. Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF.

The SOTF noted that their process should mirror the process for recusal due to financial conflict of interest and that recused members should leave the meeting room but may speak during public comment (as the last public commenter).

Public Comment:
None.

6. **File No. 17094:** Complaint filed by Michael Petrelis against President London Breed, Board of Supervisors, 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.

(On September 26, 2017, the Complaint Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing. On December 6, 2017, (The SOTF continued the matter and requested advice from the Office of the City Attorney.)

Member Fischer, seconded by Member Cannata, moved to continue the matter to the call of the chair.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

7. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. *(No Action) Public comment shall be taken at 5:00 p.m. or as soon thereafter as possible.*

Speakers:

Laura Clark questioned the action of the SOTF related to her complaint.

8. **File No. 17091:** Complaint filed by Marvin Lambert against the Planning Department and Recreation and Parks for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.24, 67.25, 67.26 and 67.27, by failing to respond to a public records request in a timely and complete manner. (01:27:00 – 01:50:00)

(On September 19, 2017, the Compliance and Amendments Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing.)

Marvin Lambert (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. Mr. Lambert stated that both the Planning Department and Recreation and Parks acknowledged that they did not provide records in a timely manner. In addition, Mr. Lambert stated that Recreation and Parks incorrectly invoked Attorney Client Privilege to justify withholding of records and that records should be provided in a redacted format. There were no speakers in support of the Petitioner. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva acknowledged that the Planning Department response was two days late but all records have been provided. Eric Pawlowsky, Recreation and Parks (Respondent) provided a summary of the department's position. Mr. Pawlowsky stated that the department's initial response was timely but additional records were found and provided on a later date. Mr. Pawlowsky stated that five (5) emails between Recreation and Park staff and their city attorney representative regarding CEQA on a project was withheld as allowed under Attorney Client Privilege. Mr. Pawlowsky stated that Recreation and Parks attempt to remain neutral in CEQA discussion and disclosing privileged information would bias discussions on various subject matter discussion. Mr. Pawlowsky stated that the work product or CEQA is currently online and available to the public. There were no speakers in support of the Respondents. A question and answer period followed. The parties were provided an opportunity for rebuttal.

Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF.

Member Cannata, seconded by Member Hinze, moved to find that the Planning Department violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely manner.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

Member Cannata, seconded by Vice Chair Hyland, moved to find that Recreation and Parks violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely manner.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

9. **File No. 17112:** Complaint filed by Marvin Lambert against the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and complete manner. (01:50:00 – 02:18:00)

(On November 13, 2017, the Compliance and Amendments Committee determined that the SOTF has jurisdiction and referred the matter to the SOTF for hearing.)

Marvin Lambert (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. Mr. Lambert stated that the Planning Department incorrectly invoked Attorney Client Privilege to justify withholding of records and that records should be provided in a redacted format. There were no speakers in support of the Petitioner. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that communications between the Planning Department staff and their assigned deputy city attorney was withheld pursuant to Attorney Client Privilege. Ms. Silva stated that certain privileged documents were accidentally provided and that it was requested that the protected documents be destroyed. There were no speakers on behalf of the Respondents. A question and answer period followed. The parties were provided an opportunity for rebuttal.

Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF. DCA Colla stated that in court procedures it is normal to request that protected documents be destroyed if they were accidentally provided.

Member Hinze, seconded by Member Cannata, moved to find that the Planning Department did not violate Administrative Code (Sunshine Ordinance), Section 67.21.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 6 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze

Noes: 1 – B. Wolfe

Absent: 2 – Chopra, J. Wolf

Excused: 1 – Tesfai

Vice Chair Hyland was noted absent for the remainder of the meeting at approximately 6:30 p.m.

10. **File No. 17135:** Hearing to review Administrative Code (Sunshine Ordinance), Section 67.21, regarding the legality of a named respondent in a public records request, who is in custody of records, transferring their responsibility of fulfilling the request to another member of staff without notifying the requester. (02:18:00 – 03:45:00)

The SOTF discussed the hearing matter. Chair Wolfe stated that the SOTF should set a policy regarding the matter for consistency purposes.

Chair Wolfe opined that each member of SFMTA staff is a custodian of records and obligated to respond directly to public records request as they may personally have records not available to a departmental representative.

Member Maass opined that pursuant to the California Public Records Act it is the responsibility of the department to provide a comprehensive response to public records request which should include any records held by individual staff members.

Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF.

A possible compromise was provided as follows:

- Member of staff receives and refers public records request to their departmental representative along with any responsive records.
- Departmental representative insures that all responsive records in possession of the department and any individual members of staff is collected for disclosure.
- Departmental representative provide a response to the requester and state that they are responding on behalf of the department and named city employee (specific employee response also attached).

Public Comment.

Carolyn Celaya, San Francisco Municipal Transportation Agency (SFMTA), stated that the Sunshine Ordinance needs to be updated to reflect the increase number of public records request and other changes to the public records request process. Ms. Celaya provided a summary of the SFMTA process for handling public records request and her role in responding to public records request on behalf of the department and staff.

No action taken.

11. **File No. 17105:** Hearings to review legislation and policy at the Federal, State, and local (San Francisco) level as well as other jurisdictions related to the Sunshine Ordinance and California Public Records Act.

There was no discussion or actions.

Public Comment:
None.

12. **Sunshine Ordinance Task Force - Annual Report.**

Chair Wolfe requested that the matter be continued to the call of the chair.

Public Comment:
None.

The motion was adopted without objection.

13. **File No. 17103:** Review and possible amendments to the Sunshine Ordinance Task Force By-Laws and Complaint Procedures to review and revised the following (*Discussion and Action*):

- Sunshine Ordinance Task Force Hearing Procedure
- Reconsideration of Order of Determination
- Rule of Reason

Member Maass, seconded by Member Eldon, moved to adopt the proposed changes to the procedures for reconsideration as further amended to increase the deadline to request reconsideration from 10 days of issuance to 30 days of issuance and adopt as amended.

Public Comment:
None.

The motion passed without objection.

14. **Reports from Sunshine Ordinance Task Force Committees.**

- Complaints Committee
- Compliance and Amendments Committee
- Education, Outreach and Training Committee
- Rules Committee
- Information Technology Ad Hoc Committee

The SOTF discussed various actions and future agendas of their committees.

Public Comment:
None.

15. **Sunshine Ordinance Task Force - Chair's Report.**

- Ethics Commission Advice regarding Ordinance 001-17 (Behested Payment Ordinance)

The SOTF discussed issues related to Behest Payment Legislation.

Public Comment:
None.

16. **Administrator's Report, Complaints and Communications.**

- Task Force and Committee hearing schedule
- Complaints submitted and hearing files created
- Communications to the Task Force
- Summary of pending complaints and other issues

SOTF Administrator Victor Young presented the Administrator's report and provided an update on the meeting schedule.

Public Comment:
None.

17. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.**

There were no announcements.

18. **ADJOURNMENT**

By a rise in vote the meeting was adjourned without objection at 8:15 p.m.

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

APPROVED by the Sunshine Ordinance SOTF: February 7, 2018