

File No. N/A

Item No. 2

SUNSHINE ORDINANCE TASK FORCE  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: November 2, 2022

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Completed by: C. Leger Date 10/28/22

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# **SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES - DRAFT**

## **REMOTE SPECIAL MEETING**

**October 5, 2022 - 7:00 PM**

Seat 1	Dean Schmidt	Seat 7	Matthew Yankee - <b>Chair</b>
Seat 2	Lila LaHood	Seat 8	Chris Hyland
Seat 3	Vacant	Seat 9	Laurie Jones Neighbors
Seat 4	Jaya Padmanabhan	Seat 10	Thuan Thao Hill
Seat 5	Jennifer Wong - <b>Vice-Chair</b>	Seat 11	Bruce Wolfe
Seat 6	Laura Stein		

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 Yankee called the meeting to order at 7:07 PM. On the call of the roll Chair Yankee and Members, Schmidt, LaHood, Stein, Hyland and Wolfe were noted present. Members Padmanabhan, Hill, Neighbors and Vice-Chair Wong were noted not present. A quorum was present.

The Task Force discussed the agenda and there were no changes.

#### **1A. FINDINGS TO ALLOW TELECONFERENCED MEETINGS UNDER CALIFORNIA GOVERNMENT CODE SECTION 54953(e).**

The Task Force is expected to consider a motion setting forth findings required under Assembly Bill 361 (AB 361) that would allow the committee to hold the meeting remotely according to the modified Brown Act teleconferencing set forth in AB 361.

The SOTF noted that every thirty days, the SOTF must have findings for continued meetings of this body, to recognize that the state of emergency will continue to impact the body and as long as local officials continue to recommend that emergency procedures remain in place. The SOTF is required to approve these findings, or the remote meeting cannot take place.

**Action: Moved by Member Stein, seconded by Member Wolfe, to approve the attached motion 1A.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 6 - Stein, Wolfe, LaHood, Yankee, Schmidt, Hyland

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

**2. Approval of minutes from the Sunshine Ordinance Task Force meeting of August 3, 2022, meeting.**

The SOTF discussed the draft meeting minutes and the suggested changes from Anonymous.

**Action: Moved by Member Schmidt, seconded by Member LaHood, to approve the August 3, 2022, meeting minutes with the suggested edits included.**

Public Comment:

Anonymous provided suggested changes to the Sunshine Ordinance Task Force August 3, 2022 minutes.

**The motion PASSED by the following vote:**

Ayes: 6 - Schmidt, LaHood, Hyland, Yankee, Wolfe, Stein

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

**3. Approval of the minutes from the Sunshine Ordinance Task Force September 7, 2022, regular meeting.**

The SOTF discussed the draft meeting minutes and the suggested changes from Anonymous.

**Action: Moved by Chair Yankee, seconded by Member Stein to approve the Sunshine Ordinance Task Force September 7, 2022, meeting minutes as with the suggested edits included.**

Public Comment:

Anonymous provided suggested changes to the September 7, 2022 minutes.

**The motion PASSED by the following vote:**

Ayes: 6 - Yankee, Stein, Schmidt, LaHood, Hyland, Wolfe

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

**4. Approval of the Order of Determinations:**

- **August 3, 2022, Actions – File Nos. 22036, 22037, 22038, 22039, 22041, and 22056.**
- **September 7, 2022, Actions - File Nos. 21151, 21156, 22012, 22013, and 22014.**

**Action: Moved by Chair Yankee, seconded by Member Schmidt, to approve the Orders of Determination except for Order Nos. 22037 and 22056 which will be signed by the Chair after the requested edits have been made..**

Public Comment:

Anonymous approved including the Orders of Determination in the Agenda of the Sunshine Ordinance Task Force as a great idea because they are moved up one month after the hearing on the matters.

**The motion PASSED by the following vote:**

Ayes: 6 - Yankee, Schmidt, Stein, LaHood, Hyland, Wolfe

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

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

The SOTF Administrator presented the Administrator's Report to the SOTF. Chair Yankee announced that Deputy City Attorney David Ries has left the department.

Public Comment:

Anonymous noted that in viewing the number of emails received by the SOTF Administrator, more administrative staff should be provided by Clerk of the Board Calvillo.

No action taken on this item.

6. **Bylaws Amendment – Parental Leave Policy:** Hearing to amend the Sunshine Ordinance Task Force's Bylaws pursuant to Administrative Code Chapter 67B.

Chair Yankee pointed out that on pages 227 and 228, article 2 section 4 is the new additional Bylaw language suggested by SOTF Deputy City Attorneys.

**Action: Moved by Member Stein, seconded by Member LaHood, to approve the new language in the Bylaw amendments article 2, section 4.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 6 - Stein, LaHood, Yankee, Schmidt, Hyland, Wolfe

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

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. *Public comment shall be taken at 7:45 p.m. or as soon thereafter as possible and will be reopened at 8:00 p.m. or as soon thereafter as possible for those members of the public who were unable to provide public comment earlier.*

Anonymous announced his new strategy to deal with the numerous violations and that is to take the outstanding complaints against department heads and send them to Ethics Commission.

Mark Sullivan provided the following written public comment:

"Task force hearings should not be heard as a debate between the petitioner and the respondent weighing both sides equally. When received, a complaint should be presumed to be true. The agency has the burden of justifying the denial of access. Williams vs. Superior Court. Sunshine Ordinance Sec 67.21 (e) last line "representative" "shall" "explain the basis for its decision to withhold the records requested." Question for Respondents: "What part of the law are you citing to support your decision for your action?" SOTF Decision: is the law being correctly applied? The task force should conduct itself more like a court. Sec 67.21 (g) "burden shall be upon the custodian to prove with specificity the exemption which applies." Cutting out the debate like atmosphere to the burden of proof on to the respondent with specificity of the law which applies, will shorten your hearings. You will make better decisions."

Wynship Hillier provided the following written public comment:

“The Behavioral Health Commission continues to commit the very same violations which you found against them on Oct. 6, 2021, and Feb. 2 and Apr. 6 of this year. Your Compliance and Amendments Committee held a hearing on this issue on Aug. 23 of this year. However, no motion was placed on the agenda, and, at the meeting, the item was postponed at the call of the chair. Since then, the Commission has continued to commit the same violations with similar or greater frequency. We ask that the Chair of the Compliance and Amendments Committee agendaize for their Oct. 25 meeting a motion to enter a finding of willful noncompliance against Terry Bohrer, Harriette Stevens, Bahlam Vigil, Stephen Vigil, Stephen Banuelos, Geoffrey Grier, and Amber Gray, and that the SOTF recommend that the Board of Supervisors dismiss the Commissioners and Behavioral Health Services discipline the staff, for official misconduct.”

The meeting recessed from 7:55 PM until 8:02 PM

Roll Call: Schmidt, LaHood, Stein, Hyland, Wolfe, Yankee

8. **File No. 22104: Hearing Regarding Request for Reconsideration of Complaint No. 22036:** Complaint filed by Anonymous (ARE) against Charles Jung (Elections Commission) for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Anonymous stated that Mr. Jung, as a former Commissioner, never received the notice sent to him regarding the hearing before the Sunshine Task Force. Anonymous stated that Mr. Jung should be granted the request for reconsideration, but he also believes that a violation of the Sunshine Ordinance still occurred.

Charles Jung (Respondent) provided a summary of his situation. Mr. Jung stated that he did not receive the actual notice of the original hearing or the original request. Mr. Jung stated that he was confused and immediately upon learning of this he reached out and searched for responsive records and provided a total of 242 pages the same day of the request to the SOTF Chair Yankee. Mr. Jung noted that everyone at the Elections Commission knew how to contact him which is at his law office.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

**Action: Moved by Chair Yankee, seconded by Member Stein, to grant reconsideration in this matter based on the fact that Respondent, Charles Jung, did not receive official noticing of the Sunshine Task Force meeting.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 6 - Yankee, Stein, LaHood, Schmidt, Hyland, B. Wolfe

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

9. **File No. 20084:** Complaint filed by Anonymous against Harlan Kelly and the Public Utilities Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 failing to respond to a records request in a timely and/or complete manner; 67.26 withholding kept to a minimum and 67.27 failing to provide justification for withholding responsive documents; 67.29-7(a) failing to maintain correspondence and records in a professional and businesslike manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Task Force find a violation. Anonymous stated that in June 2020, he made a request for texts between Harlan Kelly and Walter Wong which were produced but improperly redacted. Anonymous noted that the redactions were excessive and they were not keyed. Anonymous asked for a violation of 67.26 for nonminimal withholding.

Mayara Ruski Augusto Sa (Public Utilities Commission (PUC)) (Respondent), provided a summary of the department's position. Ms. Augusto Sa stated that the PUC did send a letter to the SOTF regarding the allegations in the complaint. Ms. Augusto Sa stated that the PUC relied on Mr. Kelly to prepare the redactions properly.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

**Action: Moved by Member Schmidt, seconded by Member Stein, to find that Harlan Kelly and the Public Utilities Commission violated Administrative Code, Sunshine Ordinance, Section(s) 67.21(b) by failing to respond to the records request in a timely and/or complete manner; 67.26 by failing to keep withholding to a minimum; 67.27 by failing to provide a specific justification for withholdings; California Public Records Act (CPRA) Section(s) 6253(b) by failing to provide responsive records in a timely and complete manner; and 6253(d)(3) by failing to identify the name and title of all persons responsible for denying access to the records. In addition, the SOTF orders the Public Utilities Commission to produce any and all attachments to the emails and text records that were sought in the Petitioner's (Anonymous') request.**

**Public Comment:**

David Pilpel stated that all city departments should conduct their own redaction review regardless of the source of the records even if it is a file or email in the system. The process for redaction should be conducted by the department with the guidance of the City Attorney.

**The motion PASSED by the following vote:**

Ayes: 6 - Schmidt, Stein, LaHood, Yankee, Hyland, B. Wolfe

Noes: 0 - None

Absent: 4 - Padmanabhan, Hill, Neighbors and Wong

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

Member LaHood announced that the Compliance and Amendments Committee (CAC) is having an open call for anyone to present records and provide comments regarding suggested revisions to the Sunshine Ordinance. All interested parties will be provided equal time for their presentation at the CAC's meeting on October 25, 2022. Anyone who would like to present at that meeting should contact the SOTF Administrator.

**Public Comment:**

David Pilpel stated that he will consider her suggestion and will find suggested amendments and bring them forward to the Compliance and Amendments Committee meeting.

Anonymous thinks that Member LaHood is doing a spectacular job and thinks that having an open call is a great idea.

**11. ADJOURNMENT**

There being no further business the meeting was adjourned at 9:17 pm.

**APPROVED: DRAFT**

**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.