From: Steinberg, David (DPW)
Sent: Aug 10, 2021 22:01:30.233725700 UTC
Subject: RE: SOTF is a Legislative Body under The Brown Act and therefore a Policy Body under the SF Sunshine Ordinance; Advisory Committees created by a Department Head are a “Passive Meeting Body” but requires Notification and Public Access to Meetings.
To: Heckel, Hank (MYR) ; RUSSI, BRAD (CAT) ; Thompson, Marianne (ECN) ; PRADHAN, MANU (CAT)

Interesting, Hank. And what, exactly, is Mr. Sullivan trying to prove in this odd letter?

-d.

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From: Heckel, Hank (MYR) <hank.heckel@sfgov.org>
Sent: Tuesday, August 10, 2021 2:53 PM
To: RUSSI, BRAD (CAT) <Brad.Russi@sfcityatty.org>; Thompson, Marianne (ECN) <marianne.thompson@sfgov.org>; Steinberg, David (DPW) <david.steinberg@sfdpw.org>; PRADHAN, MANU (CAT) <Manu.Pradhan@sfcityatty.org>
Subject: FW: SOTF is a Legislative Body under The Brown Act and therefore a Policy Body under the SF Sunshine Ordinance; Advisory Committees created by a Department Head are a “Passive Meeting Body” but requires Notification and Public Access to Meetings.

See below from Mr. Sullivan in response to SOTF’s recent claims that they are not a policy body.

From: sfneighborhoods [redacted: Privacy] >
Sent: Tuesday, August 10, 2021 2:41 PM
To: Bruce Wolfe (Chair, SOTF, SF) <sotf@brucewolfe.net>; SOTF, (BOS) <sotf@sfgov.org>; Heckel, Hank (MYR) <hank.heckel@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>
Subject: SOTF is a Legislative Body under The Brown Act and therefore a Policy Body under the SF Sunshine Ordinance; Advisory Committees created by a Department Head are a “Passive Meeting Body” but requires Notification and Public Access to Meetings.

Dear Chair Wolfe, SOTF, and City Officials,
As a public communication

Opinion
SOTF is a Legislative Body under The Brown Act and therefore a Policy Body under the SF Sunshine Ordinance (SFSO); Advisory Committees created by a Department Head are a

“Passive Meeting Body” but requires Notification and Public Access to Meetings.
SOTF is a Legislative Body under The Brown Act and therefore a Policy Body under the SF Sunshine Ordinance (SFSO)

The Brown Act is the bat.

At the August 4, 2021 full Sunshine Ordinance Task Force (SOTF) meeting, with the advisory support of SOTF council, Chair Wolfe said that SOTF is a “passive meeting body” under the SF Sunshine Ordinance (SFSO). The reasoning is that SFSO, Sec 67.3 (d) the definition of a “Policy Body” that is created by ordinance is by “of the Board of Supervisors”. The electorate voted the SF Sunshine Ordinance in and not by the Board of Supervisors.

The SF Sunshine Ordinance definition of “passive meeting body” does not contain a definition that would apply to the SOTF. It is faulty reasoning to say that since the definitions under “policy body” do not apply, therefore the other definition “passive meeting body” must apply.

The Brown Act has a definition that applies to SOTF.

The Brown Act does not distinguish between a “policy body” and “passive meeting body” in those terms. The SF Sunshine Ordinance language of “policy body” is taken from The Brown Act “legislative body”. SFSO Sec 67.5 Meetings to be Open and Public; Application of Brown Act “All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article.” To apply The Brown Act, “legislative body” and “policy body” must be interchangeable for the SF Sunshine Ordinance to provide greater access.

From the Brown Act:

54592 As used in this chapter, “legislative body” means:

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

Note the use of the “or”s and comma between “resolution, or formal action of a legislative body.” The Serial Comma Rule specifies that in a series of three or more items where each is set off by a comma, each item should be viewed as independent of each other. If there was not a comma between the last two items, this segment is considered a single unit. The use of a comma before a conjunction removes ambiguity.

Ordinance is not qualified by “of a legislative body”. Since SOTF was created by ordinance, it is a legislative body.

The definitions in the SF Sunshine Ordinance are in many places weaker or less than the definitions in The Brown Act. The Brown Act 54953.7 “Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter.” allows for greater requirements but not less than requirements of The Brown Act. Furthermore, the Sunshine Ordinance, Sec. 67.5 …Application of Brown Act “….In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.” Since a legislative body created by ordinance (SOTF)in The Brown Act but not by the limitation of “created by ordinance or resolution of the Board of Supervisors” as in definition of the Sunshine Ordinance “Policy Body” Sec. 67.3 (d)(3), there is an inconsistency. Applying the “the requirement which would result in greater or more expedited public access shall apply” would make SOTF a policy body under the Sunshine Ordinance. The Sunshine Ordinance, Sec. 67.5 incorporates provisions of The Brown Act as its own if it provides greater public access.

In the below reasoning, I use the following to further strengthen the use of the Serial Comma Rule: An accepted rule of statutory construction is that qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. (2A Sutherland, Statutory Construction (5th ed. 1992) § 47.33, p. 270.) “Every word in a statute is presumed to have meaning.” (Reno v. Baird (1998) 18 Cal. 4th 640, 658 [76 Cal. Rptr. 2d 499, 957 P.2d 1333]. Besides comporting with rules of statutory construction, interpretations should make common sense.

Other reasoning for supporting the use of the Serial Comma Rule:
1. In 54592 (b) The first is “created by charter”. In CA Constitution art XI § 3 (a) “For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question.” Charters are elected by the people. Charters can be revised by the voters or the local legislative body. The current San Francisco Charter was adopted by the voters in November 7, 1995. Reading 54592 (b) “created by charter” and apply the qualifier “of a legislative body” or Board of Supervisors would disregard the action of voters. The writers of the Sunshine Ordinance note this by separating “Charter” from “of the Board of Supervisors” in Sec 67.3 (d) (2) “Any other board or commission enumerated in the Charter;” They failed to do it for ordinance, or resolution.
Ordinances can also be elected by the people. In 54592 (b) The arguments used for “charter” can be applied to “ordinance”.
2. 54592 (b) “or formal action of a legislative body”, formal action means the taking of any vote on any resolution, rule, order, motion, regulation, or ordinance or the setting of any official policy. In 54592 (b) “or formal action of a legislative body” is used as a catch-all of any action, not as a redundancy to “ordinance” or “resolution” before it. “Action” is the actual taking of the vote.
In The Brown Act defines “action” in 54952.6 “As used in this chapter, “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”
The Sunshine Ordinance lacks any such definition of action but incorporates The Brown Act where it falls short or on “inconsistent requirements” (SFSO Sec. 67.5).
3. If the legislators meant for “charter, ordinance, resolution,” not to have meaning beyond “of a legislative body” qualifier, they could have simply said “…. created by formal action of a legislative body”. Instead, the legislation repeats it again in further down in 54592 (b) …. “or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.” It is clear that the legislature wants each separation by a comma to be considered on its own.
4. The Brown Act does not express to the contrary and constitutional canon requires an interpretation that maximizes the public’s right of access. *Sierra Club v. Superior Court* (2013) “where terms are ambiguous the constitutional canon requires an interpretation that maximizes the public’s right of access unless the Legislature has expressly provided to the contrary.” Constitution Article 1, Section 3 (b) (2) “A statute, court rule, or other authority, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” A “legislative body” or “policy body” have more requirements put on them for public access than a “passive meeting body”.

Advisory Committees created by a Department Head are a “Passive Meeting Body” but requires Notification and Public Access to Meetings

At the August 4, 2021 full SOTF meeting, with the advisory support of SOTF council, Chair Wolfe said that his creation of an advisory committee for Project Catalytic was under SFSO Sec. 67.3 (c) “"Passive meeting body" shall mean:” (1) “Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head; “.
The Brown Act is silent on advisory committees that are not created by a legislative body. It is doubtful that “passive meeting bodies” definitions add any greater requirements from The Brown Act beyond clarifying unless SOTF applies broad interpretation to requirements of SFOS Sec. 67.4 Passive Meetings, especially to the notice and access of the public to a passive meeting body.
SFSO Sec 67.4 (a) “All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.
(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.
(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.”
There is ambiguity in the notice to the public requirement. My reading of the above is that passive

meeting bodies will be accessible to the public based on prior inquiry to the extent possible. There must be some notice to the public beforehand, just not a need to be formal with some attempt to post it on the City's website. Prior notice to the public is required in order for the public to inquire and have the access that is required in Sec 67.4 (a). With the use of access to meetings by telephone, there should be no restriction based on facilities.

I do think Chair Wolfe correctly created the Project Catalytic advisory committee using SFSO Sec. 67.3 (c) (1). It is unclear if Chair Wolfe provided prior notice, attempted to notice on the City's website or allowed public access to the Project Catalytic advisory committee meeting(s). It is also clear that Chair Wolfe has the right to assemble his advisory committees with whomever he sees fit.

Regards,

M Sullivan