

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

November 7, 2011

DATE THE DECISION ISSUED

October 25, 2011

CHARLES PITTS v SHELTER MONITORING COMMITTEE (CASE NO. 11046)

FACTS OF THE CASE

Complainant Charles Pitts alleges that on May 18, 2011, the Shelter Monitoring Committee (the "Committee") temporarily recessed its regularly-scheduled meeting and during that recess discussed business that was part of the agenda in violation of public meeting laws.

COMPLAINT FILED

On June 15, 2011, Mr. Pitts filed a complaint against the Committee, alleging violations of public meeting laws without specifying the sections of law that had been violated. On July 18, 2011, Mr. Pitts amended his complaint to add the Committee chair and staff as respondents to the complaint.

HEARING ON THE COMPLAINT

On October 25, 2011, Mr. Pitts presented his case to the Task Force. Bernice Casey, policy analyst for the Committee, presented the response.

Mr. Pitts told the Task Force the Committee was in the middle of Item IV(C) of its May 18 agenda when a recess was declared. He then played a video of the alleged violation that showed Ms. Casey speaking to an unidentified person behind the dais while members of the Committee appeared to watch and talk to each other. Mr. Pitts said the audience could not hear the Committee members or staff discussion. This, he said, is the kind of meeting that prevents public attendance and participation.

Ms. Casey said Committee Chair LJ Cirilo had drafted a letter to Mayor Ed Lee and Board of Supervisors President David Chiu concerning the budget. The draft was posted on the website and circulated to the public and committee members 72 hours before the May 18 meeting. At the start of the meeting, Chair Cirilo submitted a second draft. Staff advised the Committee to recess for a brief time after the Committee discussed major and substantive edits to the document to provide staff an opportunity to record revisions. Ms. Casey said she is the meeting recording secretary and could not take meetings notes and record edits at the same time. She consulted with Committee Member and Secretary

Matt Luton to ensure all edits had been captured and the meeting was then reconvened by Chair Cirilo. The revised letter, including all edits, was read into the record. Ms. Casey said staff did not hold a discussion with Committee members during the recess. Ms. Casey also said the meeting room microphones remained on during the recess.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On further questioning, the Task Force found that although the microphones had remained on during the recess, no audio was available because Committee meetings are not video or audio recorded. The Task Force found the May 18, 2011 Committee meeting was held in Room 408 of City Hall, a room equipped with audio or video recording facilities. Ms. Casey told the Task Force she was advised by the City Attorney's Office a number of years ago that audio recordings were not required under the Sunshine Ordinance, and the Deputy City Attorney who advised her on that issue is now retired. She said the Committee is currently working with the Department of Technology to record meetings.

The Task Force further found there was insufficient evidence to conclude the Committee had violated public meeting laws during the recess.

DECISION AND ORDER OF DETERMINATION

Based on the evidence presented, the Task Force finds the Shelter Monitoring Committee in violation of Sunshine Ordinance Section 67.14(c) for not audio or video recording every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities.

The Committee is reminded of its requirement under Section 67.14(c) and is ordered to appear before the Education, Outreach & Training Committee on Thursday, November 10, 2011 at 4:00 p.m. in Room 406 at City Hall. The Education, Outreach & Training Committee will evaluate and monitor the Shelter Monitoring Committee's progress in complying with Section 67.14(c).

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 25, 2011 by the following vote: (Knee/Chan)

Ayes: Snyder, Knee, Manneh, Washburn, Costa, Wolfe, Chan, Johnson

Excused: Cauthen

Absent: Knoebber, West



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Charles Pitts, Complainant
Bernice Casey, Respondent
LJ Cirilo, Chair, Shelter Monitoring Committee
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.