

Date: April 26, 2011

Item No. 1  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Rules Committee recommendation**
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Chris Rustom

Date: April 22, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



"David Snyder"  
<DSnyder@sheppardmullin.com>  
04/19/2011 11:11 AM

To <sof@sfgov.org>  
cc  
bcc  
Subject FW: 'Majority vote' definition

Chris,

Could you please include this email in the packet for the April 26 regular meeting? Thank you.

In response to Rick's request of March 23 (see email below), I have put together some thoughts about the Rules Committee's proposal to change the Sunshine Ordinance Task Force bylines to redefine "majority vote."

I have reviewed the May 21, 2007 memorandum by Deputy City Attorney Thomas J. Owen; the December 7, 2010 and January 21, 2011 memoranda by Allen Grossman, and the February 14, 2011 report by Bruce Wolfe, all regarding the "majority vote" rule(s) of San Francisco City Charter Section 4.104.

I have not conducted any independent legal research, other than reviewing the pertinent Sunshine Ordinance and City Charter provisions. What follows is therefore an opinion based solely on my reading of the analyses noted above. I believe that to fully investigate this issue would take a considerable amount of time.

As a policy matter and a personal preference, I dislike the "majority vote" rule in the San Francisco City Charter as it has been applied by the Sunshine Ordinance Task Force. I think it can and has led to nonsensical results. However, I have seen nothing in the analyses I have read to suggest that DCA Owen's analysis is incorrect as a matter of law. As much as I would personally like the rule to be different, I do not see a principled or credible way to avoid it. It is my view -- again, based solely on my reading of the above-noted analyses -- that a) the SOTF is subject as a general matter to the provisions of the City Charter; b) the SOTF is subject to Charter Section 4.104, and c) the interpretation of 4.014 which the City Attorney has espoused is legally correct.

Based on these three conclusions, I must come -- to my personal regret -- to the conclusion that DCA Owen's legal conclusions are sound, and that the rule as it has been interpreted is correct under the City Charter.

Sincerely,

David

---

David Snyder  
Four Embarcadero Center  
17th Floor  
San Francisco, CA 94111

DSnyder@sheppardmullin.com  
Direct: 415.774.3117  
Fax: 415.403.6240

Circular 230 Notice: In accordance with Treasury Regulations we notify you that any tax advice given herein (or in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or in any attachments).

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

---

From: Richard Knee [mailto:rak0408@earthlink.net]  
Sent: Wednesday, March 23, 2011 1:27 PM  
To: David Snyder  
Cc: SOTF@SFGov.org; SFCityAtty\_Threet Jerry  
Subject: 'Majority vote' definition

David,

The SOTF Rules Committee is recommending a bylaws change to redefine "majority vote" on substantive matters as 50%+1 of the members present at a meeting.

Since you are our voting-member attorney, your input on this will be extremely important. Accordingly, I strongly encourage you to submit your thoughts on the matter to Chris Rustom by Tuesday, April 19, for inclusion in the information packet for the April 26 regular meeting.

Please do NOT communicate your thoughts on the matter directly to me or any other SOTF member, in order to avoid seriatim violation.

Thanks,  
Rick

C: Chris Rustom, Jerry Threet



Richard Knee  
<rak0408@earthlink.net>  
04/17/2011 12:41 PM

To SOTF@SFGov.org  
cc  
bcc

Subject Fwd: Re: 'Majority' vote (one more time) -- CORRECTION

Chris,

If there is still time to include the e-mail chain below in the information packet for the April 26 (not April 21) meeting, please do so. Otherwise, please print it out and distribute to SOTF members and public attendees at the meeting.

Thanks,  
Rick

----- Original Message -----

**Subject:** Re: 'Majority' vote (one more time)  
**Date:** Fri, 15 Apr 2011 16:39:13 -0700  
**From:** Terry <terry@calaware.org>  
**To:** Peter Scheer <pscheer@earthlink.net>  
**CC:** Richard A. Knee <rak0408@earthlink.net>

No, I agree there's no legal bar to a procedural standard adopted to govern the decisional process of an essentially advisory body in municipal government. It forecloses no one's rights and, if proven unworkable or fraught with unforeseen problems, can always be tuned back to another rule.

On Apr 15, 2011, at 4:27 PM, Peter Scheer wrote:

> Rick,  
>  
> I don't see why not. It's a policy choice. Your current policy assures a near-consensus for all substantive actions. The new policy allows action to be taken by a minority of all members, but also makes it harder for a dissenting minority to block action (simply by not attending, like the Democrats in the Wisconsin legislature).  
>  
> These governance choices are not addressed by the Brown Act. I'm not aware of other laws that might impose quorum/majority requirements.  
>  
> Let's run this by Terry and see if he knows of anything that could restrict your choices.--Peter

>  
>  
>

-----

-  
> Peter Scheer, Executive Director  
> FIRST AMENDMENT COALITION  
> 534 4th St., Suite B  
> San Rafael, CA 94901  
> 415.460.5060 / 415.886.7081 (direct)  
> [pscheer@firstamendmentcoalition.org](mailto:pscheer@firstamendmentcoalition.org)  
> <http://www.firstamendmentcoalition.org>  
>

-----

-  
> Defending freedom of speech and the public's right  
> to know. Please support our work: <http://bit.ly/dy0dEI>  
>

-----

-

>  
> On Apr 15, 2011, at 3:06 PM, Richard Knee wrote:  
>

> SF Sunshine Ordinance Task Force will soon weigh a proposed  
bylaw that would establish a "majority" vote on substantive  
matters as 50%+1 of those attending a meeting, as long as a  
quorum is present.

>  
> The Task Force has 11 seats, meaning a quorum is 6 or more, and  
the rule we've always followed is that 6 or more votes are  
required to approve a motion on a substantive matter --  
regardless of whether any seats are vacant and whether 9 or fewer  
members are at a meeting.

>  
> Under the proposed bylaw, the number of votes required for  
approval would be 4 if only 6 or 7 members were present, and 5 if  
8 or 9 members were present.

>  
> Would that pass legal muster?  
>

> Thanks,  
> Rick  
>

# **SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE**

## **BY-LAWS**

### **Article I – Name and Purpose**

#### **Section 1. Name**

The name of this Task Force shall be the Sunshine Ordinance Task Force.

#### **Section 2. Purpose**

The Sunshine Ordinance Task Force is established by Chapter 67 of the San Francisco Administrative Code. The Task Force shall protect the public's interest in open government and shall carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code.

### **ARTICLE II – OFFICERS**

#### **Section 1. Officers**

The Officers of this Task Force shall be a Chair and a Vice Chair.

#### **Section 2. Terms of Office**

The Officers shall hold offices for one year and until their successors are elected.

#### **Section 3. Election of Officers**

The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.

### **ARTICLE III – DUTIES OF OFFICERS**

#### **Section 1. Duties of the Chair**

The Chair shall preside at all meetings of the Task Force. The Chair, working with members of the Task Force and the staff, shall oversee the preparation and distribution of the agenda for the Task Force meetings. The Chair shall appoint all Committees and their chairs and shall perform all other duties as prescribed by the Task Force or by the By-Laws which are necessary or incident to the office. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

#### **Section 2. Duties of the Vice Chair**

In the event of the absence, or inability of the Chair to act, the Vice Chair shall preside at the meetings and perform the duties of the Chair. In the event of the absence of the Chair and the Vice Chair, the remaining Task Force members shall appoint one of the members to act temporarily as Chair.

## **ARTICLE IV – MEETINGS**

### **Section 1. Regular Meetings**

Regular meetings of the Task Force shall be held on the fourth Tuesday of the month at 4:00 p.m. at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 408, San Francisco, California.

### **Section 2. Special Meetings**

The Chair or a majority of the members of the Task Force may call special meetings.

### **Section 3. Notice of Meetings**

The agendas of all regular meetings and notices and agendas of all special meetings shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center and the office of the Task Force. Agendas and notices shall be mailed to each Task Force member and any person who files a written request for such notice with the Task Force.

### **Section 4. Cancellation of Meetings**

The Chair may cancel a meeting if she or he is informed by the Task Force Administrator that a quorum of the body will not be present or if the meeting date conflicts with a holiday or other responsibilities of the Task Force members. Notices of cancellation shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center, and the office of the Task Force. If time permits, notices of meeting cancellations shall be mailed to all members of the public who have requested, in writing, to receive notices and agendas of Task Force meetings.

### **Section 5. Conduct of Meetings**

(a) All Task Force meetings shall be conducted in compliance with all applicable laws, including but not limited to the Ralph M. Brown Act (Government Code Section 54950 et. seq.), the San Francisco Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the Task Force's By-Laws. Except where state or local laws or other rules provide to the contrary, meetings shall be governed by Robert's Rules of Order.

(b) Subject to the availability of funds, the Task Force shall comply with the provisions of the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) that apply to Charter boards and commissions.

(c) When a member of the Task Force desires to address the Task Force, she or he shall seek recognition by addressing the Chair, and when recognized, shall proceed to speak. The member shall confine her or his comments or remarks to the question before the Task Force.

(d) Cell phones and pagers shall be turned off during meetings of the Task Force. The Chair may issue a warning to any member of the public whose pager or cell phone disrupts the Task Force meeting. In the event of repeated disruptions caused by pagers and cell phones, the Chair shall direct the offending member of the public to leave the meeting.

## **Section 6. Setting Agendas**

The Task Force Administrator, at the direction of the Chair, shall prepare the agenda for meetings. The agenda for all regular meetings shall contain an item during which Task Force members may request items for the Task Force to consider at future meetings.

## **Section 7. Action at a Meeting; Quorum and Required Vote**

The presence of a majority of the members (six members) of the Task Force shall constitute a quorum for all purposes. The affirmative vote of a majority of the members of the Task Force present (~~six votes~~) shall be required for the approval of all substantive matters. Procedural motions require an affirmative vote of a majority of the members present. If a quorum is not present, no official action may be taken, except roll call and adjournment.

## **Section 8. Voting and Abstention**

Task Force members must be present to vote and participate. Teleconference participation is permitted as provided by Section 4.104 of the Charter. Each member present at a Task Force meeting shall vote "Yes" or "No" when a question is put, unless the member is excused from voting on a matter by a motion adopted by a majority of the members present or the member has a conflict of interest that legally precludes participation in the discussion and vote. The Task Force shall take action on items on the agenda by roll call, voice vote or by show of hands. The minutes shall reflect how each Task Force member voted on each item.

## **Section 9. Order of Business**

The order of business at Task Force meetings may be:

- Call to Order
- Roll Call
- Approval of Meeting Minutes
- Hearings on the Jurisdiction and Hearing on the merits of Complaints
- Committee Reports
- Other Policy Matters
- Administrator's Report
- Future Agenda Items

The order of items on the agenda may be changed by action of the Task Force at any meeting. Public comment shall be specially set as the first new item considered after 5:00 p.m.

## **Section 10. Hearing Procedures for Complaints**

The Complaint Committee and the full Task Force hearing complaints shall follow the following procedures.

1. Complainant presents his/her facts and evidence. (5 minutes)



- Other parties of Complainant present facts and evidence. (Up to 3 minutes each)
- 2. City responds. (5 minutes)  
Other parties of City respond. (Up to 3 minutes each)  
(The above total speaking times for Complainant and City to be the same.)
- 3. Matter is with the Task Force for discussion and questions to parties.
- 4. Respondent and Complainant present clarification/rebuttal based on Task Force discussions. ( 3 minutes)
- 5. Matter is with the Task Force for motion and deliberation.
- 6. Public Comment (Excluding Complainant and City response and witnesses.)
- 7. Vote by the Task Force (Public comment at the discretion of the Chair on each motion and/or new motion if vote fails.)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

### **Section 11. Public Comment**

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes. [§67.16]

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be made a part of the official public record. [§67.7-1 (c)]

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may address the Task Force on any matter within the subject matter jurisdiction of the Task Force for up to three minutes during public comment. The Chair may limit the time permitted for public comment consistent with state and local laws.

### **Section 12. Public Testimony**

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may comment on every item on the Task Force agenda. Each person wishing to speak on an item before the Task Force shall be permitted to be heard once for up to three minutes.

## **ARTICLE V -- TASK FORCE RECORDS**

### **Section 1. Minutes**

Minutes shall be taken at every regular and special Task Force meeting and shall comply with the provisions of the San Francisco Sunshine Ordinance, including the provisions that apply to Charter boards and commissions. (See San Francisco Administrative Code, Chapter 67.16) Minutes shall be approved by the majority vote of the Task Force. In the event a committee does not meet for a period of six months after

its last meeting the minutes of that meeting shall be agendized at the full Task Force for review and approval.

## **Section 2. Public Review File**

The Task Force shall maintain a public review file in compliance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.23.]

## **Section 3. Records Retention Policy**

The Task Force shall prepare, maintain and adopt a records retention and destruction policy as provided in Section 8.3 of the San Francisco Administrative Code.

## **Section 4. Tape Recordings**

The Task Force shall audio record all regular and special meetings of the Task Force. The audio recordings shall be maintained in accordance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.14(b)]

# **ARTICLE VI -- COMMITTEES**

## **Section 1. Standing Committees**

Upon approval by a majority of the members of the Task Force, the Task Force may form standing committees to advise the Task Force on its on-going functions. The standing committees shall be composed of members of the Task Force. Unless specified otherwise by the Task Force, the Chair of the Task Force shall appoint or remove the Chair and members of the Standing Committees~~name the Chair of the Standing Committees and its members.~~ The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

The Task Force shall establish the following Standing Committees: Rules Committee, Education, Outreach and Training Committee, Complaints Committee and Compliance and Amendments Committee.

### **(a) Rules Committee**

The Rules Committee shall review matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and shall assist the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force.

### **(b) Education, Outreach and Training Committee**

The Education, Outreach and Training Committee may monitor compliance with the Orders of Determination adopted by the Task Force; shall make recommendations to the Task Force regarding outreach and publicity to the media and to the general public about the Sunshine Ordinance and the Task Force.

### **(c) Complaint Committee**

The Complaint Committee shall monitor the complaint process and make recommendations to the Task Force regarding how the complaints should be handled.

(d) Compliance & Amendments Committee

The Compliance and Amendments Committee shall ~~shall~~ may monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public. (Added 8/27/02)

**Section 2. Special or Ad Hoc Committees**

Upon approval by a majority of the members of the Task Force, the Task Force may form special or ad hoc committees. Special committees shall be formed for a specific purpose and cease to exist after completion of a designated task. Special committees may be composed of members of the Task Force and may include members of the public, city officials or city employees as well.

**ARTICLE VII – ATTENDANCE**

Members of the Task Force shall notify the Task Force Administrator if she or he is unable to attend a regular or special meeting of the Task Force. The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force shall may notify the Board of Supervisors of the member's lack of attendance. If a member of the Task Force misses more than three regular meetings in any twelve-month period of time, the Task Force ~~shall~~ may notify the Board of Supervisors and request that action be taken to remove the member from the Task Force. ~~The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force may notify the Board of Supervisors of the member's lack of attendance.~~

**ARTICLE VIII - AMENDMENT OF BY-LAWS**

The By-Laws of the Task Force may be amended by a vote of a majority of the members of the Task Force after presentation of the proposed amendments as an agenda item at a meeting of the Task Force. The Task Force shall give ten days notice prior to final action by posting on the Sunshine Ordinance Task Force website and by sending a copy to the Public Library Government Information Center before considering any amendments to its by-laws.

Adopted 8/22/2000  
Amended 8/27/2002  
Amended 3/25/2008  
Amended 4/28/2009