

Date: 02-14-08

Item No. 2

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Amend Hearing Procedure:**
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Chris Rustom

Date: 02-11-08

**\*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.

## MEMORANDUM

**To:** SOTF Rules Committee  
**From:** Allen Grossman  
**Date:** December 17, 2007  
**Re:** Proposed Amendments to the Hearing and Complaint Procedures and to the SOTF By-laws

---

### Amend Hearing Procedure:

Presently the hearing procedure on complaints does not allow the complainant or City respondent any time after the 3 minute rebuttal (#3 of the current procedure) to deal with perceived misstatements made by respondent or complainant in answer to members' questions or to speak to issues relevant to the complaint that become confused or diffused during the members' discussion and deliberations (# 5 of the current procedure), sometimes before and sometimes after the motion is made and seconded.

I propose several changes to help clarify the process. First, separate the members' discussion from their deliberation on the motion, with discussion preceding the motion and deliberation after the motion. The questioning of the parties would only take place during "discussion". Next, following the discussion, each party would have 2 minutes to address facts brought out during the discussion and to speak to any issues that have become less precise. Then a motion could be made and the deliberations among the members would take place before the vote is taken.

To implement this sequence, the text of the amended hearing procedure could read as follows (**changes in bold font**):

1. Complainant presents his/her facts and evidence, 5 minutes.  
Other parties of Complainant present facts & evidence; up to 3 minutes each.
2. City responds, 5 minutes.  
Other parties of City respond; up to 3 minutes each.  
Above total speaking time for Complainant and City to be the same.
3. Complainant presents rebuttal, 3 minutes.
4. Public comment; up to 3 minutes each.  
(Excluding Complainant & City response, witnesses)
5. Matter is with the Task Force for discussion, **during which time members may direct questions to the Complainant and the City respondent.**

Department must have had a claimed reason for denying the public records before the complaint was filed, so its response should be pretty much in hand. If it doesn't provide its answer within the 10 days, it is foreclosed from submitting anything else.

Second, give either party the right file additional documents up to seven business days before the meeting date and require each to give the other a copy when the document is sent to the SOTF Administrator. That will give both sides equal ability to get its documents in the meeting "package".

Third, no additional documentation may be submitted at the meeting by either complainant or the City respondent if the other objects to the submission.

The proposed amendment would read as follows:

- "1. For the City respondent's answer to a complaint to be considered, it must be received by the Administrator within five business days after the City respondent's receipt of the complaint. If the answer is not timely received, no other document submitted by the City respondent will be considered at any hearing on the complaint.
- "2. For any additional document to be considered at a hearing, it must be received from the complainant or City respondent (if it has complied with #1) seven working days **before** the scheduled hearing date).
- "3. At the hearing before the Task Force, no additional documentation) that has not been previously submitted in accordance with the foregoing paragraphs may be considered at the hearing if the other party objects."

#### Rationalize the 6-Vote Rule.

As we know the full SOTF meetings have been running longer and longer to the point where by 9:30 or so, there are only 6 or 7 voting members still present. At these late hours, there are often agenda items that require the six-member vote of the SOTF to approve the action, such as recommendations of the Amendments and Compliance Committee that a custodian of record be found in willful misconduct for failure to discharge his duties under the Sunshine Ordinance. If two of the seven members or one in six voted against accepting the recommendations, those two or one members would defeat the motion, thus a city officer is relieved of any responsibility for his or her non-compliance and contemptuous actions. In addition, a good deal of time and effort on the part of the Committee members, the SOTF members and the complainant leading up to the hearing would have been wasted.

Several things are apparent:

First the requirement that an absolute majority of the members approve such action progressively increases the power of a progressively smaller number of members as the number of members in attendance falls from the full number to the quorum of six.

Second, according to the City Attorney's Office, the provisions of the city charter and Section

