

Date: March 10, 2011

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE
RULES COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Exploring possible changes to certain procedural rules**
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Completed by: Chris Rustom

Date: March 7, 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.

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 (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 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. If a member of the Task Force misses more than three regular meetings in any twelve-month period of time, the Task Force 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

MEMORANDUM

To: Rick Knee, Chair SOTF
CC: Members of the SOTF
From: Allen Grossman
Date: January 3, 2011
Re: Mandatory Six-Vote Rule

There are 13 complaints agendized to be heard at the January 4, 2010 SOTF special meeting, nine of which involve public records disclosure denials. If only six or seven members show up, it is quite possible that there will be a number of five-to-one or five-to-two votes on motions to find claimed violations that the public complainants will lose. On the other hand, the respondent departments/officials will not need more than one or two votes to win on the claimed violation. Stated another way, with two seats vacant and two or three members absent, the respondents have four or five automatic “no” votes on any motion to find a violation.

Obviously that is inherently unfair, the playing field is tilted in favor of the respondents and defeats the purpose of the SOTF as a quasi-judicial body to ensure that the public gets the public records. It is also contrary to the public’s constitutional right of access that is guaranteed by Proposition 59.

On the other hand, if the motions to find violations were reversed, so that the motions were to find “no violations”, the complainant would win if one or two SOTF members (out of six or seven present) voted against the motion. While this might seem an odd result, it is, in fact, not odd at all in the context of the CPRA and the Sunshine Ordinance provisions placing the burden of establishing whether a public record is exempt from disclosure.

CPRA §6253(b) provides, in part:

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.

Sections 67.21(b) and 67.21(g) of the Sunshine Ordinance provide:

“(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

“(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and **the burden shall be upon the custodian to prove with specificity the exemption which applies.**”

Reading these provisions of the two laws that control the process by which the public gains access to public records, makes two principles clear:

- (1) All public records are *presumptively* fully disclosable;
- (2) The State or local agency (e.g. the departments, offices of officials and the policy bodies) have the burden of establishing the specific exemption from disclosure of the requested public record.

Section 67.21(e), which describes what the SOTF is to determine when a petition is filed, i.e., whether the public record is disclosable, does not establish who carries the burden of showing whether an exemption applies or does not:

“If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public... Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request.”

Thus, the requirement of proving of a “violation” is, in a sense, unnecessary and, accordingly, the need for a motion to find a “violation” is also unnecessary. The motion should be for a “determination” whether the specific exemption relied on by the respondent applies; and the burden of carrying that burden forward should rest on the respondent, rather than requiring the complainant to establish that the claimed exemption does not apply.

I recognize that my proposal to reverse the burden when the applicable exemption issue is before the SOTF is contrary to the practice that has been in place for years and memorized in the complaint procedure, etc., but, in all fairness to the public members who are being shut out notwithstanding their having over 50% or an even higher percentage of the votes in favor of their position, I believe that the change is warranted. The mandatory six vote requirement is bad enough when there are less than all appointed 11 members attending and voting, but the present situation is untenable and, when looked at carefully, not the correct one.

