

Date: Sept. 10, 2008

Item No. 1

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

**SUNSHINE ORDINANCE TASK FORCE**  
**RULES COMMITTEE**  
**AGENDA PACKET CONTENTS LIST\***

- Draft Minutes: Rules for May 8, 2008**
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Completed by: Chris Rustom

Date: Sept. 5, 2008

**\*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.

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE  
RULES COMMITTEE  
DRAFT MINUTES  
Thursday, May 8, 2008  
4:00 p.m., City Hall, Room 406**

**Committee Members:** Bruce Wolfe (Chair); Doug Comstock; Hanley Chan

**Call to Order:** 4:00 p.m.  
**Roll Call:** Present: Wolfe, Comstock  
Excused: Chan

**Agenda Changes:** None

**Deputy City Attorney:** Ernie Llorente  
**Clerk:** Chris Rustom

Member Comstock reminded Chair Wolfe that Member Pilpel had requested to be seated as an ex-officio. Chair Wolfe said he did not respond to the email and besides Member Pilpel was not present.

1. Motion to approve minutes from Feb 14, 2008 ( Comstock / Wolfe.)

Public Comment: None

On motion  
Ayes: Wolf, Comstock  
Excused: Chan

2. Discussion and creation of recommended procedure of enforcement of Sunshine Ordinance Task Force Orders of Determination for enforcement agencies or entities as noted in the Sunshine Ordinance.

Chair Wolfe said he placed this item on the agenda because the Task Force was having difficulty with the various enforcement agencies The Ethics Commission seems to be dealing with it. At one of the SOTF meetings an Ethics representative stated that the commission did not have a process for dealing with SOTF referrals. Because of that, Chair Wolfe said he wanted to start a process that resulted in providing them with a template or guideline or how to follow the Ordinance. He wanted everybody present to voice their thoughts so he could forward it to the Task Force.

Member Comstock said he was speechless over the issue.

Chair Wolfe said certain members of the public had contacted him about the issue and mentioned that the state of Florida has a process through the courts in dealing with enforcement that included changing the way a contract reads, donating money or performing community service. He wanted to know what tools the EC had to provide enforcement and if it was limited only to the Fair Political Practices Commission.

DCA Ernie Llorente said he was not exactly sure what Chair Wolfe was attempting to do. TF Member Craven had asked him to obtain the regulations of the EC as it relates to their investigations and public hearings, and was to be the subject of discussion at the Compliance and Amendments Committee. He asked Chair Wolfe to expand on the creation of a template.

Chair Wolfe said the EC has said it doesn't really know what to do with the Orders. They don't know how to process them because they don't really fall under their regular process considering what they enforce most of the time was in relation to the FPPC rules which has no application with the TF.

Member Comstock said he doesn't know what this committee could do to compel the EC to take any course of action

Member Wolfe said it was not a matter of compelling but rather to at least provide them with either some examples of what the TF actually wanted them to do. That, he said, would be helpful to get it started considering that many of the EC commissioners did not know about the referrals.

Member Comstock said the CAC, which was considering enforcement issues, was the appropriate body to do the proposal. He could not imagine how the Rules Committee could setup up such a procedure without knowing where the CAC wanted to go. The new process, which includes a more specific Order of Determination, gives the EC a little more information on what they can do, he added. The EC has to setup its own procedures and undoubtedly it will or will just continue on the same track they are on now, he said. What concerned him was that the EC was re-adjudicating the cases that were being referred.

Chair Wolfe wanted to know why the EC would be reinvestigating the complaint because the TF had done the investigation and issued the Order.

Member Comstock said the EC has broad powers and it has investigators whereas the TF can only hold hearings, not investigations.

DCA Llorente said he thinks that the EC would be wondering or fearful of a lawsuit against them saying that they were simply enforcing what another body has done and not able to fully defend the due process safeguards.

Chair Wolfe wanted to know if the TF could then ask the EC to investigate a complaint because of its broad powers.

DCA Llorente said that would make the TF the complaining entity.

Chair Wolfe said having the discussion in CAC is probably more feasible because the committee is currently discussing the amendments.

Public Comment: Allen Grossman said he had sent a number of letters to Mr John St. Croix, executive director of the EC, and the investigator who was assigned to the referral regarding his complaint against the DA and had concluded that:

- The EC was duty-bound to produce a procedure to deal with the referrals. The Charter has a provision that addressed it. It was clear that the EC anticipated a different set of rules to deal with public records and public meeting laws.
- Most of the referrals come with a finding of official misconduct. That is also dealt with in the Charter and in the article that sets up the commission, and the provision is that if another body finds misconduct, then it's official misconduct as far as the EC is concerned. The only issue for them would be, not is it, but what to do about it.
- The issues involved, at least in the public records cases were pretty straightforward. Either there was a disclosure of a record that should have been disclosed and was not and that failure was willful or the particular department did or did not show up at a hearing or at any hearing. One doesn't need a lot of investigations and subpoenas to produce witnesses to testify that because it is all in the record.
- The record is pretty complete. You've got the complaint, the hearing on the complaint, a finding, an Order and a CAC hearing. Did they comply? They didn't? They get another chance when it is heard again by the TF. It's all in the open. There are recordings of the meetings and the hearings.

Chair Wolfe asked Mr. Grossman, what he would suggest?

Mr. Grossman said the TF should find a similar body that has somewhat similar responsibilities in this area and see what they've done. He said he will be addressing the EC meeting soon and would tell them that they have to adopt a set of rules because they are creating the very problem that the TF is dealing with and that they're going to have to deal with it. The lack of enforcement has also encouraged departments, department heads and elected officials to not show up, to not disclose documents, and the more that happens

the more referrals they are going to get, he said.

Member Comstock said the TF has an interesting case involving the Mayor's Office that did not respond to requests. Didn't confirm whether they received it or not and never showed up for any of the hearings on the complaint. That, to him, was a clear-cut case of willful failure and was watching what the EC would respond. He asked Mr Grossman how much would it cost to file a lawsuit how expensive it would be and whether he thought it would be an affect way to force the Mayor's Office into complying?

Mr Grossman said he would take a different slant on it because the EC has four lawyers out of the five members and the point to be made with them is 'You've got a problem and you're not going to get around it by using some procedure that has nothing to do with what these referrals are.' At some point, he said, the EC has to adopt a set of rules then send it over to the BOS. If the Board doesn't do anything for 60 days its in place. But if they don't a lawsuit obviously was the only way to get them to do it. He said it would be a fairly expensive lawsuit because every lawsuit against the city, which has over 200 lawyers, is going to take awhile.

Mr Crossman said the answer to Mr Comstock's question is \$500 to file a case and thought it was an interesting idea. He said the TF has a fair proceeding even though it may not be a court level proceeding it is a fair proceeding and believed it would hold up if there were a challenge to it. He said most of the findings by the TF for official misconduct aren't about invalid redactions. He suggested obtaining a copy of the guidelines used by the Oakland's EC and see if they have official misconduct proceedings. He also suggested that the TF have a joint meeting with EC to iron out issues and to invite Mr St Croix to the CAC meeting.

Ray Hartz said he believed that the EC wanted to have its own procedure for handling a case as opposed to enforcing it. But what if, he questioned, someone brought a case before the TF against the EC for failure to carry out their duties under the law. He said he has run into the same problem with the Office of Citizen Complaints. A determination is issued after a hearing but nothing happens because if the police decide they don't want to enforce it they just hold it and don't allow it to be filed. If one asks for more information they say it cannot be provided because it is personnel information and is not entitled to it. He said he doesn't know who heard the case, who said what and in his case before the board he alleged that members from the CA's office said untruthful things. He said he never had one person who actually sat down and talked with him during the entire process he had with Supervisor Aaron Peskin's office, the City Attorney's office and the Mayor's office. Yet, he said, they had ways of coming up with all these things about his motivations. He asked what he should do with the Order of Determination issued against Mr Peskin and wondered if the whole issue had been set up somewhere in a backroom so that it

looked like there was citizen control over the police department and enforcement of the Sunshine Ordinance. Most people just give up and go away, he added.

Member Pilpel, who arrived late for the meeting and addressed the committee from the floor, said he had agreed at the last TF meeting to prepare a letter to be sent to the EC through TF Chair Comstock. The letter was about what procedures the EC uses to process referrals. He also asked Mr Grossman to share with the TF the correspondence he has had with the EC on the subject. He said he believed the TF was to be under the EC when it was created. But it did not happen and Prop G in 1999 cemented Sunshine's role within the COB and since then the conflicting goals have never been reconciled. He said that Ethics should either develop and adopt rules and regulations governing such referrals or announce if they were going to use their existing procedures. He said that would indicate where the burdens were. He wanted the TF to change the way items were on the calendar so that it was not just a referral from the CAC committee but its consideration of willful failure and findings related to it.

Chair Wolfe invited additional comment.

Mr Grossman, in response to Member Pilpel, said the administrator sends out a very complete record and the only items missing are the audio tapes of the hearings. Another issue he brought up was the EC's confidentiality issue because it does not provide the public with details even though the document is a referral and not a complaint.

Mr Crossman encouraged the committee to consider asking for a joint session between the TF and the EC commissioners to deal with this in the open. He believed the EC was going to sit on the referrals until the statute of limitations ran out.

Chair Wolf said he would contact CAC Chair Knee and request the item be placed on the CAC agenda. Member Comstock agreed.

3. Public comment for items not listed on the agenda.

Public Comment: None

4. Announcements, questions, and future agenda items from Committee members.

Speakers: None

## **Adjournment**

**Meeting adjourned at 5:00 PM**

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force.