

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: December 6, 2017

- Petition/Complaint Page:
- Memorandum - Deputy City Attorney Page:
- Complainant's Supporting Documents Page:
- Respondent's Response Page:
- Correspondence Page:
- Order of Determination Page:
- Minutes Page:
- Committee Recommendation/Referral Page:
- Administrator's Report Page:
- No Attachments

OTHER

- Draft Ethics Commission Enforcement Regulations**
- SOTF By-Laws and Complaint Procedures
- SOTF Rules Committee Minutes/Summary
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: V. Young Date 11/30/17

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



SUNSHINE ORDINANCE TASK FORCE
Rules Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES DRAFT

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

September 26, 2017 - 4:00 PM

Special Meeting

Members: Fiona Hinze (Chair), Chris Hyland, Louise Fischer

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Member Dave Maass was appointed to the serve on the September 26, 2017, Rules Committee in place of Member Chris Hyland.

Chair Fiona Hinze called the meeting to order at 4:05 p.m. On the call of the roll Chair Hinze and Member Maass were noted present. There was a quorum.

Member Fischer was noted present at 4:06 p.m.

There were no agenda changes.

2. Adoption of the minutes for the October 25, 2016, Rules Committee meetings.

The Committee discussed the draft minutes.

Member Maass, seconded by Chair Hinze, moved to approve the October 25, 2016, Complaint Committee meeting minutes.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 – Maass, Fischer, Hinze
Noes: 0 – None

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Speakers:

Male Speaker commented on his experience regarding being informed he could not perform in Union Square. (The Committee provided suggestions as to where to obtain a permit to perform).

Ann Treboux submitted the following summary of her public comment:

"Ann Tricky, The Street Artist Program did a faulty investigation. She claimed that she saw me in a google map search selling mass produced items from a table on Market near Spear. The photo was of Market and Drumm and neither me or a table was visible in the photo. Anne Trickey did another Goggle Map search and claimed that I live in a Japanese Restaurant at 129 E. 60ST ST. NYC. Her photo did not depict a Japanese restaurant but a 5 story building. She further claimed that a photo of a Buszzer System was mailboxes and my name was not on them. Margaret Baumgartner of the SF City Attorney's Office attempted to take documents left on the podium at the last appeals hearing. Trickey called my family and tenants in NYC. NYPD Police reports have been filed against her. Clearly there are issues within the street artist program."

4. **File No. 17103:** Review and possible amendments to the Sunshine Ordinance Task Force By-Laws and Complaint Procedures.

The Committee intends to review the following topics:

- Rules of Reason
- Reconsideration Procedures (Requirements)
- Timeline for responding to SOTF Complaints
- Processing complaints for parties who are unable to attend in person
- Process for complaints and other issues to be initiated by members of the Task Force
- Vote requirement
- Process for reviewing redacted documents
- Other issues related to the By-laws and Complaint Procedures

The Committee discussed proposed changes to the Task Force By-Laws and Complaint Procedures.

The Committee reviewed and proposed revision to the draft language regarding the Rules of Reason and suggested the following:

- Require that the department head authorize the justification that Rule of Reason is justified and that they be a named respondent. (Requiring that the City Attorney authorize invocation of Rule of Reason was not supported.)
- Require that Respondents complaint by California Government Code 6253.1 by proving the proof or acknowledgement that they:
 - Provided assistance in identifying responsive records
 - Described the information technology and physical location of the records

- Provide suggestions for overcoming any practical basis for denying access to records
- Made a reasonable effort to elicit additional clarifying information from the requester to help identify or narrow the public record
- The Respondent will be requested to inform the Task Force if the requester requested a statement as to the “existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records” within seven days.
- The SOTF will use the following criteria or information to determine if the Rules of Reason is applicable (and request the respondent to provide):
 - Estimate of time and resource required to fulfill request
 - Amount of time and resource Respondent has expended to date
 - Amount of time and resources the Respondent would not consider “unduly burdensome”
 - Proof that the Respondent sought greater resources to comply with requests
 - Sample of records it could provide during a reasonable period of time
 - Inventory or records and categories of records identified so far that are responsive to the request

The Committee reviewed the process for reconsideration of complaints and the following was suggested:

- Remove the reconsider of complaints except for situation of administrative errors.
- Clarify the procedure to read as follows to ensure that evidence that new information exist that would change the outcome of the complaint:

Within 10 days of receipt of the Order of Determination, either the complainant or respondent may petition the SOTF for reconsideration only if information exists that was not available at the time of the hearing. The petitioning party must present an offer of proof and documentation as to the new information and provide a written explanation as to how the new information may change the Task Force’s original determination. The SOTF will accept no more than one request for reconsideration per Order of Determination.

The Task Force or its Committee shall consider the petition at its next scheduled meeting and determine if new information exist, is relevant and may change the outcome of the complaint. If a petition for reconsideration is granted, the hearing will be reopened on the complaint to consider the new information. The complaint shall be scheduled before the SOTF or one of its Committees on a future date for a hearing on the merits of the complaint with the inclusion of the new information.

The Committee discussed the timeliness for departments to respond to SOTF complaint and no suggestions were provided.

The Committee discussed complaints for parties who are unable to attend in person. SOTF Administrator Young noted that the procedures currently allow for accommodations for special circumstances and suggested that the following language be included in the notice of hearing:

Complainants: Your attendance is required for this meeting/hearing. (If you are unable to attend the meeting please contact the SOTF Office. Accommodations may be available in certain circumstances or you may request the Task Force to hear your complaint without your attendance base solely upon submitted documents.)

The Committee discussed the potential process for complaints against departments to be initiated by members of the Task Force. The Committee suggested that a new procedure should be developed. The Committee requested that the City Attorney provided advice as to whether or not the SOTF can initiate a complaint against a city agency on their own initiative and how it might be accomplished.

The Committee discussed the possibility of changing the vote requirement due to the lack of a full complement of sitting members. The issue of allowing continuance due to absences of SOTF members was discussed. Chair Bruce Wolfe provided a history of past attempts to change the vote requirement and the recruitment of members to the vacant SOTF seats. Chair Wolfe indicated a ballot initiative would be require to change any vote requirement.

The Committee discussed the possibility of reviewing documents redacted by departments to determine if they have been appropriately redacted. It was requested that inquires be made as to the possibility of having an authorized outside parties (a court judge) review redacted documents on behalf of the Task Force to determine if documents were redacted appropriately. Member Fischer stated that it is the judgement of the SOTF to determine if a party's testimony is believable and/or trusted.

Member Maass, seconded by Member Fischer, moved to approve the Rules Committee's suggestions and to refer the matter to the Task Force for additional discussions.

Public Comment:

Francisco DaCosta stated that the Ethics Commission is having similar discussion and the experience of former Task Force members is missing. Mr. DaCosta stated that there is no vision for the future and the boat needs to be rocked.

The motion PASSED by the following vote:

Ayes: 3 – Maass, Fischer, Hinze
Noes: 0 – None

5. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Rules Committee.**

Member Maass suggested that the discussion of the meeting should have been televised.

6. **ADJOURNMENT**

There being no further business the meeting was adjourned at 5:33 p.m.

APPROVED: DRAFT

Rules Committee

Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.

City and County of San Francisco
Sunshine Ordinance Task Force
By-Laws
(4/1/2015)

ARTICLE I. NAME, AUTHORITY, PURPOSE, AND CONTACT INFORMATION

Section 1. Name and Authority. The Sunshine Ordinance Task Force (“Task Force”) was established pursuant to San Francisco Administrative Code (Sunshine Ordinance), Section 67.30 (a).

Section 2. Purpose. The Task Force shall protect the public’s interest in open government and have the powers and duties enumerated in San Francisco Administrative Code, Chapter 67 (Sunshine Ordinance).

Section 3. Contact Information: Sunshine Ordinance Task Force, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.
Email Address: sotf@sfgov.org Phone: 415-554-7724

ARTICLE II. MEMBERSHIP AND ATTENDANCE.

Section 1. Membership. The Task Force shall be composed of eleven voting members appointed by the Board of Supervisors pursuant to San Francisco Administrative Code, Section 67.30 (a). In addition, The Mayor or his/her designee and the Clerk of the Board of Supervisors or his/her designee serve as nonvoting members of the Task Force.

Section 2. Attendance. Members of the Task Force shall notify the Task Force Administrator if he/she is unable to attend a regular meeting of the Task Force. The Administrator of the Task Force shall notify any member who misses two regular meetings in any twelve month period of time. If a third or subsequent absence from a regular meeting occurs, the Chair of the Task Force shall notify the Board of Supervisors of the member’s lack of attendance.

Section 3. Holdover. Members may serve past the expiration of their term until they are replaced.

ARTICLE III. OFFICERS AND DUTIES.

Section 1. Officers and Duties. The Officers of this Task Force shall be a Chair and a Vice Chair.

Section 2. Duties of the Chair. The Chair shall preside at meetings of the Task Force. The Chair, working with the Administrator and Task Force members, shall oversee the preparation of the agenda for the Task Force meetings. The Chair shall appoint and may remove the chair and members of committees and shall perform all other duties as prescribed by the Task Force or by these By-Laws which are necessary or incident to the office.

Section 3. Duties of the Vice Chair. In 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 elect one of the members to act temporarily as Chair.

Section 4. Terms of Office. The Officers shall hold offices for one year and until their successors are elected.

Section 5. Election of Officers. The officers shall be elected at the first regular meeting of the Task Force held after April 27th of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting after April 27th of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.

ARTICLE IV. MEETINGS.

Section 1. Regular Meetings. Regular meetings of the Task Force shall be held on the first Wednesday 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 of the Task Force.

Section 3. Notice of Meetings. The agendas of all 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 e-mailed or otherwise provided to each Task Force member.

Section 4. Cancellation of Meetings. The Chair may cancel a meeting if he/she is informed by the Task Force Administrator that a quorum will not be present or for other good cause. 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.

Section 5. Conduct of Meetings.

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

(c) Sound producing electronic devices shall be silenced during meetings of the Task Force. The Chair may issue a warning to any member of the public whose electronic device disrupts the Task Force meeting. In the event of repeated disruptions caused by pagers, cell phones or any sound producing device, 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 Task Force members (six) shall constitute a quorum. The affirmative vote of a majority of the members of the Task Force (six) shall be required for the approval of all substantive matters. Procedural matters shall require an affirmative vote of a majority of the members present. At committee meetings a quorum shall be a majority of the members of the committee. If a quorum is not present, no official action may be taken, except roll call, recess or adjournment.

Section 8. Voting and Abstention. Task Force members must be present to participate and vote. Each Task Force member present shall vote "Yes" or "No" when a question is posed, unless the member is excused from voting by a motion adopted by a majority of the Task Force members present or the member has a conflict of interest that precludes participation in the discussion and vote. The Task Force shall take action on items by roll call, voice vote or by show of hands. The minutes shall reflect how each Task Force member voted on each question.

Section 9. Order of Business. The Task Force may change the order of agenda items at any meeting. The normal order of business at Task Force meetings shall be:

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

Section 10. Hearing Procedures for Complaints

The Task Force and its committees shall hold hearings on the merits of complaints pursuant to the following procedure:

1. The Complainant presents his/her facts and evidence. (5 minutes)
Other parties of Complainant present facts and evidence. (Up to 3 minutes each)
2. The Respondent presents his or her facts and evidence. (5 minutes)
Other parties of City respond. (Up to 3 minutes each)
3. The complaint 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. The complaint 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.)

Section 11. Public Comment. Members of the public may comment on each agenda item at the Task Force or committee meeting. The Chair shall permit each person who wishes to speak on an agenda item to be heard once for up to three minutes. Members of the public may address the Task Force on matters within the jurisdiction of the Task Force but not on the agenda once for up to three minutes during general public comment. The Chair shall allot each member of the public the same maximum speaking time at the beginning of each agenda item, excluding persons making presentations requested by the Task Force. The Chair may limit the time permitted for public comment consistent with state and local laws. 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.

ARTICLE V. TASK FORCE RECORDS.

Section 1. Minutes. Minutes shall be taken at all meetings of the Task Force and its committees and shall comply with the provisions of the San Francisco Sunshine Ordinance that apply to Charter boards and commissions. 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 agendaized at the full Task Force for review and approval.

Section 2. Public Review File. The Task Force shall maintain a public review file.

Section 3. Records Retention Policy. The Task Force records shall be maintained pursuant to the records retention and destruction policy and scheduled approved by the Board of Supervisors.

Section 4. Audio Recordings. The Task Force shall make and retain audio recordings of all meetings of the Task Force and its committees.

ARTICLE VI. COMMITTEES.

Section 1. Standing Committees. The Task Force may form standing committees to advise the Task Force on its on-going functions, hold hearings, make recommendations, and perform delegated tasks. The standing committees shall be composed of less than a quorum of members of the Task Force. The Chair of the Task Force shall appoint or remove the Chair and members of the Standing Committees. The Task Force shall establish the following Standing Committees: Rules Committee; Education, Outreach and Training Committee; Complaints Committee; and Compliance & 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. In addition, the Rules Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full 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, maintain an ongoing education and training program for City employees and the public, and make recommendations to the Task Force regarding outreach and publicity to the media. In addition, the Education, Outreach and Training Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full 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. The Complaint Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

(d) Compliance & Amendments Committee. The Compliance and Amendments Committee may monitor compliance with the Orders of Determination adopted by the Task Force, monitor changes in state law and court decisions affecting access to public meetings and records, and make recommendations to the Task Force regarding amendments to the Sunshine Ordinance. In addition, the Compliance and Amendments Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.

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. AMENDMENT TO THE BY-LAWS

The Task Force may amend these by-laws at the next meeting held at least 14 calendar days after an initial meeting at which the proposed amendments were presented. A notice of intent to amend the bylaws shall be posted at the same location as other Task Force notices before the proposed amendments may be adopted.

Adopted 8/22/2000
Amended 8/27/2002
Amended 3/25/2008
Amended 4/28/2009
Amended 4/26/2011
Amended 12/5/2012
Amended 4/1/2015

San Francisco Sunshine Ordinance Task Force

PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code, Section §67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised on: 4/26/2005; 5/22/2007; 3/25/2008; 4/28/09; 11/05/14; 04/04/17

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §67.21(e), 67.30(c) and 12L.1-10 to respond to public complaints.

A. INQUIRIES IN PERSON OR BY PHONE

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the Complainant the SOTF Complaint Procedure.

B. FILING A COMPLAINT WITH THE SOTF

1. **How to submit a Complaint:** A letter or complaint form may be submitted to the SOTF via mail, fax, electronic mail (e-mail), or in person.
2. **What to include with the Complaint:** The Sunshine Ordinance Task Force Administrator shall review incoming complaints prior to acceptance to ensure that the following criteria are met at a minimum:
 - Short and concise description of the facts: (i.e. a description of documents requested, date of request, and any information regarding the agency's response).
 - The name of the Department where the request was submitted – as well as any individual working at the agency who the request involves.
(i.e. John Smith at the Police Department. Note: we need to know the actual person involved in the alleged violation, otherwise we list the department head).
 - A description of how the action or inaction violates the Sunshine Ordinance.
 - Supporting documentation, if applicable, such as a copy of the request to department and or any response from the department.

- o Provide at least one reliable method of contacting the requester (i.e. email address, mailing address or telephone number).
3. Petitioners/Complainants who do not include the minimum amount of information, as stated in Section B2, required to open a complaint file and are unresponsive to requests (no response or response that does not address the minimum filing requirements) for additional information will be schedule before the SOTF for consideration of not accepting a submitted petition/complaint.
 4. **Requirements for the case:** The case must be under the jurisdiction of the SOTF. Additionally, with approval of the SOTF Chair, one must ensure that the complaint is not duplicative of previously filed complaints or subject matter.
 5. **Public openness and anonymity:** All submissions are considered public records and are open for public review. The SOTF will accept anonymous complaints. However, please note the SOTF will not redact submitted documents, unless mandated by law.

Upon receipt of a complaint, the Complainant shall be given a summary of the Complaint Procedure (see addendum). The responding City department/agency (respondent) shall be sent written notice of the complaint, with a request to respond to charges in the complaint within five business days. Failure to respond to a SOTF complaint and/or failure to provide requested documents may lead to a finding of violation of the Sunshine Ordinance.

C. SOTF PUBLIC HEARING PROCEDURE

1. Committee Hearing Schedule: At the discretion of the Chair, all complaints will be referred to the next available Committee to conduct a hearing to 1) determine if the SOTF has jurisdiction; 2) review the merits of the complaint; and/or 3) issue a report and/or recommendation to the SOTF. The Complainant and Respondent are required to attend the Committee hearing to review the complaints.
2. Prior to the Committee hearing, the SOTF Deputy City Attorney shall prepare a memorandum to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
3. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Committee and/or Full Task Force meetings at which the complaint will be discussed. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadline: five working days before the hearing.

4. Upon receipt of the referral/recommendation from its Committees, the SOTF shall conduct a public hearing. The Respondent is required to attend the SOTF hearings. However, accommodations can be made due to special circumstance by consensus of the SOTF or its committees.
5. After hearing all testimonies, the SOTF shall determine if violations of the Sunshine Ordinance has occurred and/or provide other directives as needed. An Order of Determination shall be issued by the Chair, on behalf of the Task Force.
6. Documentation:

To ensure that the SOTF is able to review documentation prior to meeting, it is requested that supporting documentation be provided at least five working days prior to the hearing date to both the Task Force and the opposing party (Respondent or Complainant). Any documents or other evidence provided less than five days prior to the meeting may not be review or may not be allowed as evidence.

(If documents are provided less than five working days prior to the hearing, the complaint hearing may be continued unless the opposing party agrees to allow the late acceptance of the new evidence. The Task Force reserves the right to determine if any late submission of documents will have an impact on the complaint hearings and take action as needed.)

7. Attendance at the Hearing by the Complainant and Respondent:
 - (a) Unless otherwise provided in these procedures the Complainant and the Respondent are required to attend the hearings regarding complaints. However, at the discretion of the SOTF or its Committees, accommodations may be made to accommodate special needs, circumstances, or requests of the Complainant.
 - (b) If the Complainant fails to appear at a SOTF or Committee hearing regarding their complaint without prior communication the matter shall be tabled without prejudice (Tabled complaints are considered closed and no further actions are to be taken.) The Complainant shall be notified of the action and may request that their complaint be reopened in writing if requested within 60 days. The SOTF or its Chair shall determine if the complaint shall be reopened.
8. Continuances:
 - (a) A complainant may waive the 45-day rule and request a continuance. If the request is received five business days in advance of the scheduled hearing it shall be granted. For requests submitted less than five business days in advance or for requests for subsequent continuances, the request may be granted by a simple majority vote of the members present.
 - (b) If a respondent submits a request for continuance at least five business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within five business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present.

- (c) It shall be the policy to grant continuance if requested by the Complainant for the first time. The SOTF Chair and his/her designee as authorized to grant a first time continuance request at his/her discretion.
- (d) Request for continuance until further notice shall not be granted.

9. Administrator's Authority to Table/Close Files:

At the discretion of the Task Force Administrator, complaint hearings may be delayed or scheduled before the SOTF for hearing to consider tabling the matter if the Complainant is unresponsive to communication attempts.

After six months have elapsed and at the discretion of the Administrator, the Administrator may inform the Complainant that complaint files will be closed unless they provide confirmation of intent to attend a hearing on a specific date.

The Complainant will be notified of the intent to table/close complaint files and the matter will be scheduled before the SOTF for consideration of tabling/closing the complaint due to inactivity.

10. Combining Petitions/Complaints

The Complaint Committee or other Committee authorized to process complaints shall review and determine whether or not to combine complaints for a single hearing prior to scheduling before the Task Force. However, at the Task Force hearing, members may request that certain items/complaints be severed and heard separately. If a complaint is severed at the time of hearing, the parties, with approval of the Task Force, may request a continuance of the severed item.

The following criteria shall be used to determine if complaints should be combined for hearing purposes:

- Same nucleus of facts
- Same Complainant and Respondent
- Same Complaint and/or Administrative Codes Section in question
- Issues or violations must be within 90 days of submission of the initial complaint

11. Limiting the number of complaints per Petitioner/Complainant to be scheduled at each meeting

The SOTF and its Committees shall limit each Petitioner/Complainant to a maximum of two (2) complaints per meeting. The Chair of the SOTF or its Committees may exceed the maximum number of complaint per Petitioner/Complainant per meeting at their discretion.

D. RECONSIDERATION OF TASK FORCE FINDINGS

1. Within 10 days of receipt of the Order of Determination, either the complainant or respondent may petition the SOTF for reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The request for reconsideration shall be placed in the Administrator's Report under Communications. The Task Force or its Committee shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled before the SOTF or one of its Committees.

E. DEPARTMENT TO COMPLY WITH DETERMINATION OF THE SOTF

1. The Administrator shall send the Order of Determination to the complainant and the respondent and, as necessary, request a written response which shall be monitored by the SOTF Compliance and Amendments Committee or any Committee recommended by the Chair. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within five business days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. If there is a failure to comply, a Committee of the SOTF may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

F. DOCUMENTATION AND INFORMATION REGARDING INDIVIDUAL COMPLAINTS

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the dates of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.

G. CORRESPONDENCE

1. Communications and/or written arguments to the SOTF or its individual members regarding open SOTF complaints shall be placed into the complaint file and distributed to complainants, respondents, the public, and members of the SOTF as part of the agenda packet material upon scheduling for hearing.
2. New complaint filings, general communications to the SOTF, and communications in which the SOTF was copied will be logged and listed in Administrator's Report for review at the regularly scheduled meeting of the SOTF.
3. If so requested and at the discretion of the Chair of the SOTF and/or his/her designee, communications not related to an open complaint will be included in the Administrator's Report for the SOTF's review; and/or forwarded to the members of the SOTF.
4. It is the preference of the members of the SOTF to limit forwarded communications as the SOTF cannot discuss requests or take actions outside of a noticed public hearing. Requests for communications to be immediately forwarded to the members of the SOTF must specifically be stated on the request.

H. MISCELLANEOUS

The Chair of the SOTF and his/her designee has the authority to take action on any issues not directly addressed by the By-Laws or Complaint Procedures.

Addendum

Complaint Procedure Summary

1. You may fill out a complaint form or access a form online at sfgov.org/site/sunshine, or you may send a letter by U.S. mail or e-mail filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may submit it by fax to (415) 554-5163 or e-mail to soff@sfgov.org.
2. The SOTF staff, upon review of the complaint for completeness, shall refer the complaint to the Respondent who has five days to respond to the complaint.
3. The complaint shall be scheduled for a hearing before the SOTF or its Committee. Both parties shall be notified of the scheduled hearing date.
4. Additional supporting documents may be submitted but must be received five working days prior to the hearing date in order to be included in the packet material.
5. At the Committee hearing, the Committee shall: a) determine jurisdiction; b) review the merits of the complaint; and c) refer the matter with recommendations to the SOTF.
6. At the SOTF hearing, the SOTF will review the recommendation of its Committee and conduct a hearing on the merits of the complaint.
7. If the SOTF finds violations, an Order of Determination shall be issued and provided to all parties. At the discretion of the Chair the matter may be referred to Committee for following up on directives and/or compliance.
8. If needed the SOTF has the ability to refer the complaint to the Ethics Commission and/or the Board of Supervisor for enforcement proceedings.
9. For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.

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H. MISCELLANEOUS

The Chair of the SOTF and his/her designee has the authority to take action on any issues not directly addressed by the By-Laws or Complaint Procedures.

Rule of Reason:

A Respondent who invokes a Rule of Reason argument must provide the Task Force with the following letters:

- A letter signed by the head of the department or office authorizing the justification and joining as a Respondent if not already named in the complaint
- A letter signed by the City Attorney's office concurring with the justification

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A Respondent who invokes the Rule of Reason as justification for delaying a response or denying access to public records requests should demonstrate compliance with Section 6253.1 of the California Public Records Act. This section requires a public agency to "in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records."

Respondent invoking "Rule of Reason" should provide the Task Force with documentation and testimony answering the following questions:

- 1) How did Respondent "assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated"? [Sec. 6253.1(a)(1)]
- 2) Did Respondent "describe the information technology and physical location in which the records exist"? [Sec. 6253.1(a)(2)]
- 3) What "suggestions for overcoming any practical basis for denying access to the records or information sought" did Respondent provide to the member of the public? [Sec. 6253.1(a)(2)]
- 4) Was the requester "unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester" to help identify the public records"? [Sec. 6253.1(b)]

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If Respondent did not make a reasonable effort regarding items 1-3, then Rule of Reason justification may not be found.

In addition, Respondent must show evidence pursuant to the San Francisco Sunshine Ordinance:

- 1) Did the requester request a statement as to "the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records"? [Sunshine Ordinance Sec. 67.21(c)]
- 2) Did the Respondent provide such a written statement within seven days?

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Respondent who invoke the Rule of Reason should not note that the SOTF will use the following as a criteria to evaluate validity of a Rule of Reason finding:

A clearly framed request which requires an agency to search an enormous volume of data for a "needle in the haystack" or, conversely, a request

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which compels the production of a huge volume of material may be objectionable as unduly burdensome. Records requests, however, inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort. *California First Amendment Coal. v. Superior Court*, 67 Cal. App. 4th 159, 166.

A Respondent who invokes the Rule of Reason regarding an unduly burdensome search or volume of material should provide documentation and testimony regarding the following:

1. An estimate of time and resources required to fulfill the request, and the formula used to generate this estimate.
2. The amount of time and resources Respondent has expended to date on the request (excluding time spent preparing materials and testimony for Sunshine complaint).
3. The maximum amount of time and resources the Respondent would not consider "unduly burdensome."
4. Proof the Respondent sought greater resources from the city budget to comply with requests.

In addition, a Respondent who invokes the Rule of Reason because it would require production of an unduly burdensome volume of material should provide the following testimony and documentation:

- 1) Provide a sample of the records it could provide during a reasonable period of time
- 2) Provide an inventory or records and categories of records identified so far that are responsive to the request

Ultimately, the burdens fall on the Respondent to prove that the Rule of Reason is a justification for not fully complying with a request for records. The Task Force must apply an evidentiary test.

- 1) Did the respondent provide evidence and testimony that the agency engaged the requester in an attempt to focus the request? This evidence would typically be in the form of letters, emails, or an account of a phone or in-person conversation.
- 2) Did the respondent provide clear and convincing evidence, including documentation, showing that complying with the request would be unreasonably burdensome? The Task Force will consider whether the Respondent has provided a detailed explanation of its options for conducting a search or producing records, what steps it has taken thus far, and an estimate of the types and volume of records that would be responsive to the request.
- 3) Did the respondent provide a detailed estimate of resource and staff time required to comply with the request, and is this information contextualized by the overall resources and staff time available to the agency?

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Addendum

Complaint Procedure Summary

1. You may fill out a complaint form or access a form online at sfgov.org/site/sunshine, or you may send a letter by U.S. mail or e-mail filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco, CA 94102-4689; or you may submit it by fax to (415) 554-5163 or e-mail to soff@sfgov.org.
2. The SOTF staff, upon review of the complaint for completeness, shall refer the complaint to the Respondent who has five days to respond to the complaint.
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**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227**

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Sunshine Ordinance Task Force will hold a public hearing to consider changes to their bylaw and procedures, at which time all interested parties may attend and be heard:

Date: Wednesday, December 6, 2017

Time: 4:00 p.m.

Location: City Hall, Room 408
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subject: **File No. 17103:** Review and possible amendments to the Sunshine Ordinance Task Force By-Laws and Complaint Procedures to review and revise the following:

- Sunshine Ordinance Task Force Hearing Procedure
- Reconsideration of Order of Determination
- Rule of Reason

