

**File No.** 22108

**Item No. 5**

## SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

## Rules Committee

**Date: October 11, 2022**

- |                          |  |                    |
|--------------------------|--|--------------------|
| <input type="checkbox"/> | <b>Petition/Complaint</b>                          | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Memorandum - Deputy City Attorney</b>           | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Petitioner/Complainant Supporting Documents</b> | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Respondent's Response</b>                       | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Public Correspondence</b>                       | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Order of Determination</b>                      | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Minutes</b>                                     | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>Administrator's Report</b>                      | <b>Page: _____</b> |
| <input type="checkbox"/> | <b>No Attachments</b>                              |                    |

**OTHER**

- ☐ Proposal to enact changes  
☐ to Complaint Process

Completed by: C. Leger Date 10/7/22

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

August 11, 2022

**SUPPLEMENT – PROPOSAL TO ENACT CHANGES TO COMPLAINT  
PROCESS – by Complaint Committee Chair Schmidt**

Reference is made to my previous memos dated December 16, 2021 and February 10, 2022. The Complaint Committee took consideration of recommendations of members of public **SULLIVAN AND ANONYMOOSE** to streamline the SOTF complaint resolution process, which in its current iteration has produced an enormous backlog of unresolved cases, and other impermissible delays. A six-part proposal was passed by the Committee and was then presented at the July Task Force meeting. In the meantime, the Task Force's backlog has increased even further in 2022.

Somewhere in the processing of a Petition, there is an option – The Petition may request a hearing – whereupon, the SOTF has discretion – it “may” – conduct a public hearing. It is evident that Task Force members ultimately have full discretion to decide how to limit the number of matters that merit conducting a public hearing. We need to ask ourselves – has the SOTF implicitly simply forgotten that it decides which cases actually merit a hearing? Right now, every case is automatically given not one, but two hearings of a sort (the first being a Committee hearing, which is not really a hearing per se. These substantially consume precious time, time which we clearly do not have.

**PROPOSAL ITEMS I, IV, AND V**

Justifications for these measures are set forth in the supporting record. Deleted language is in italics, added language underlined.

I. The Complaint Procedure should be amended at Section C as follows:

C.1 will be edited as follows: “1. When each Petitioner’s file is deemed ready for a decision, it shall be reviewed by three (3) Task Force members, chosen randomly and in rotation. Members at their option

take turns reviewing, or simultaneously review, each such file and then confer to proceed per one of the following. If they can agree to a determination it should be placed on the upcoming SOTF Consent Calendar. If not, they may submit it with any recommendations and pertinent findings to the SOTF Chair, who will decide whether to hold a hearing or to proceed otherwise. Finally, in more complex matters or where more it appears plausible that further time could benefit the Petitioner's case, they can submit it to the Complaints Committee Chair to determine an appropriate manner to proceed next by Committee. Any Committee reviewing a Petition can direct that it be placed on the next SOTF Consent Calendar with a proposed Determination. All reasonable efforts will be made at each of these points to work toward a determination on the Petition per S.F. Admin. Code section 67.21(e), and order where appropriate. *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."*

At C.4, the first sentence shall be deleted.

Lastly, the Addendum to the Complaint Procedure should be removed.

IV. The 5-minute "opening statements" at hearing should be removed. The parties would still be allowed 3 minutes of time each after questioning. The Bylaws should be amended at Article IV, Section 10, as follows.

**"The Task Force 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. The Chair shall ask whether parties other than Complainant are present to present facts and evidence in support of Complainant, and shall have discretion to allow them up to***

3 minutes to do so. (up to 3 minutes each) 2. *The Respondent presents his or her facts and evidence. (5 minutes)* Other parties of City respond. The Chair shall ask whether parties other than Complainant are present to present facts and evidence in support of Complainant, and shall have discretion to allow them up to 3 minutes to do so. (up to 3 minutes each) 3. The complaint is with the Task Force for discussion and questions to parties. 4. Complainant and Respondent and Complainant present argument/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. The Task Force may vote to take one of the following actions: a) make a motion to find a violation; make a motion to find no violation; make a motion to take no further action and close the file. This Section 10 is inapplicable to Committee hearings.

V. The Complaint Procedure should be amended at C.1 and C.7 to eliminate the Complainant attendance requirements, as follows.

**“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 is required to attend the Committee hearing to review the complaints.”**

**“7. Attendance and Requirements for the Complainant and Respondent: (a) Unless otherwise provided in these procedures the Complainant and the Respondent are is required to attend the hearings regarding complaints. However, at the discretion of the SOTF or its Committees, accommodations may be made in response to special circumstances or requests made by the Complainant and/or the Respondent.**

Eliminate (b). Move (c) to (b), amend present (d) to become (c) as follows:

**(c) After an initial appearance, fThe Complainant may authorize the SOTF to proceed with the hearing in absentia on the complaint without the Complainant's presence at the hearing. The only information to be considered from the Complainant will be the submitted written documents or information provided at previous hearings or as submitted timely prior to the hearing. Complainant waives their rights to provide testimony if they authorize the SOTF to proceed without their attendance."**

### **REMINDER REGARDING PROPOSAL ITEMS III AND VI**

The Complaint Committee already forwarded each of the six aspects of its proposal to the full Task Force. There was no rejection of numbers III and VI – nor were they included among those that were sent back to the Complaints and Rules Committees. Those could still be acted upon, as forwarded. Because those are submitted as other strategies to reduce the serious Backlog problem and to align the Complaints process with legal requirements, they need serious continued consideration.

– (III) that the SOTF should adjust its procedures to recognize that the hearing mechanism laid out in 67.21(e) does not extend to complaints regarding meeting access. Public meeting violation cases could be decided with a more limited process. Currently, for unclear reasons, each of these petitions is automatically guaranteed not just one, but two (almost always lengthy) public hearings at the Committee and Task Force level. These should never be sent for a Committee hearing and should be handled more efficiently.

– (VI) that the SOTF should hold an extra meeting per month that would be devoted to case hearings only. That could occur in lieu of one of the Committee slots, at least until the case backlog is substantially reduced.

Dean Schmidt, SOTF Seat 1



Leger, Cheryl (BOS)

From: dschmi4@aol.com  
Sent: Thursday, February 10, 2022 10:15 PM  
To: SOTF, (BOS)  
Subject: Re: sotf complaints  
Attachments: Final20220210\_22133423.pdf

Hello Cheryl, I am submitting a 4-page document to be up front on the matter involving procedure changes. The packet should also include the same 14 pages that were in for the January packet. So it will be 18 pages total.

—Original Message—

From: SOTF, (BOS) <sotf@sfgov.org>  
To: DSchmi4@aol.com <DSchmi4@aol.com>  
Sent: Mon, Jan 10, 2022 9:35 am  
Subject: FW: sotf complaints

Dean, Can you please send me another copy of your 7page memo to be included in the January Complaint Committee Agenda? I already have Sullivan's. Thank you.


Cheryl Leger  
Assistant Clerk, Board of Supervisors

[Cheryl.Leger@sfgov.org](mailto:Cheryl.Leger@sfgov.org)

Tel: 415-554-7724

Fax: 415-554-5163

[https://url.avanan.click/v2/\\_www.sfbos.org\\_YXAzOnNmZHQyOmE6bzo3MTB\[YTA4M2UyNjBhZDVmNzVkYzdiMDkzY2Y1MDRjZTQ1OjFjNTg6MGZmZjE2ZGI5MTg3NDhlNjU1NTAyY2YzNjZlMDU1OTY1ZWV3MjFjMzViZTk1NTdiNjhlMzVjZmM4Njc0MDk0YTp0Ok4](https://url.avanan.click/v2/_www.sfbos.org_YXAzOnNmZHQyOmE6bzo3MTB[YTA4M2UyNjBhZDVmNzVkYzdiMDkzY2Y1MDRjZTQ1OjFjNTg6MGZmZjE2ZGI5MTg3NDhlNjU1NTAyY2YzNjZlMDU1OTY1ZWV3MjFjMzViZTk1NTdiNjhlMzVjZmM4Njc0MDk0YTp0Ok4)

 Click here to complete a Board of Supervisors Customer Service Satisfaction form

The [San Francisco Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 2008.

*Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect and copy.*

included in the Complaint Committee Agenda? I already have Sullivan's materials. Thank you.

From: dschmi4@aol.com <dschmi4@aol.com>  
Sent: Monday, December 27, 2021 6:35 PM  
To: Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>  
Subject: sotf complaints

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Cheryl, See that last complaints meeting. I think we should get a copy of my seven page memo and then have seven Anonymous/Sullivan pages over to Anonymous Sullivan, and of course, Warfield. Do you have a suggestion how these could be set up? Thank you, Dean.

February 10, 2022

**SUPPLEMENT – PROPOSAL TO ENACT CHANGES TO COMPLAINT  
PROCESS – by Complaint Committee Chair Schmidt**

The Complaint Committee has taken consideration of recommendations of members of public SULLIVAN AND ANONYMOOSE to streamline the SOTF complaint resolution process, which in its current iteration has produced an enormous backlog of unresolved cases, and other impermissible delays. Reference is also made to the written Response by Chair Schmidt dated December 16, 2021 and discussed at the 1-2022 Complaint Committee hearing.

The present processes do not accurately reflect the structure of Section 67.21(e) of the Sunshine Ordinance. That law prescribes the filing of a Petition (STEP ONE) claiming failure to satisfy a records request within ten (10) days. The next step does not specify a hearing – the SOTF must deliver a "determination" (STEP TWO) within 45 days to the Petitioner. The SOTF must issue an "order" (STEP THREE) that the records custodian comply. If there is not compliance within 5 days, the SOTF must "notify" (STEP FOUR) the D.A. or A.G. There is no provision that interjects the word "hearing" amid the above four required steps.

Further on in Section 67.21(e) is the first mention of the idea of a hearing. The Petition described above at STEP ONE may request a hearing – whereupon, the SOTF has discretion – it "may" – conduct a public hearing. It is evident that Task Force members ultimately have full discretion to decide (by appropriate vote regarding process) how to limit the number of matters that merit conducting a public hearing. Has this "may" decision been offloaded to the Chair, or has the SOTF implicitly simply forgotten or removed the statutory discretion to decide which cases actually merit a hearing?

The hearings procedures as written now were created not by law but by past SOTF votes. There are several optional extra layers – add-ons – that

while likely well-intentioned, substantially consume precious time. The current rendition of SOTF processes seem to have resulted from some kind of belief that there is supposed to be a quasi-courtroom, with "opening statements", "witnesses", "rebuttals" etc. – which the Ordinance never envisioned. Sullivan proposes we rethink why we are doing it this way. He can see that the current process has through accretion become disconnected from the actual Ordinance language. He also notes rampant SOTF disregard for 5-day and 45-day requirements – contained, ironically, in the same law the SOTF is tasked to enforce vis-a-vis others.

## PROPOSAL

In light of the huge and expanding backlog and the inflated, duplicative process that is currently being used, these proposals should be taken seriously. Petitioners are being delayed for several months; it is unclear if this has been the case so long that it has become acceptable. Further, the time requirements of the Ordinance itself are not even close to being addressed – specifically, the 5-day and 45- day requirements. There is no conceivable reading of the Sunshine Ordinance that would countenance the amounts of delay Petitioners currently encounter before they see an actual Order.

The following is a 6-part proposal that could greatly enhance efficiency, without sacrificing those valuable aspects of the SOTF's role that seek maximum transparency and fundamental fairness.

1. Sullivan proposes matters be reviewed by members in an effort to formulate a "determination" before scheduling any Petition for a hearing of any kind. Members would decide which cases do, or do not, merit any hearing, whether it be at the SOTF or possibly be sent for specific work in a Committee. Member Schmidt suggests each case when deemed ready be assigned randomly to three (3) members to read. Member Stein makes a wise suggestion that they read sequentially to build up to a decision on what action should occur.



Here, Sullivan adds that these three (3) members could then impose the order to the custodian of section 67.21(e). Another option implicit in Sullivan's analysis would be to stop after the hearing/no hearing decision and take a different next step. That could be where Sullivan's and Anonymoose's proposal (II. below) might complement each other and merge.

A significant number of cases could be deemed not worth a full-blown SOTF hearing (or, for that matter, a second, non-decisive Committee hearing precedent thereto).

The Complaint Procedure would be amended at Section C as follows: C.1 rewritten as follows: "When each Petitioner's file is deemed ready for a decision, it shall be reviewed by three (3) Task Force members, chosen randomly and in rotation. Members take turns reading each such file and then pass on their recommendations. If they can agree to a determination it is then provided to the Petitioner and an Order follows, per Admin. Code section 67.21(e). Alternatively, a matter can be sent on for a hearing, before the Task Force; to a consent calendar; or, in some cases needing further work, to a Committee"; C.2 replace "the" with "a". C.4 and C.5 replace "shall" with "may", and alter the addendum accordingly,

Committees should not continue to have hearings that result in no decisions. If committees are to be scheduled to hear complaint Petitions in the future, those should be limited to (1) specifically referred matters per Anonymoose/Sullivan above, or (2) reviews to determine whether to send to Consent per the Anonymoose proposal.

II. The Anonymoose proposal is a sound one, establishing a Committee-originated consent calendar process that would further eliminate waste of valuable hearing time on unnecessary matters. Or, the Anonymoose proposal could be built upon Sullivan's (2a) use of groups of individual members. Sullivan's ideas to have either individual Members review first (2a) or to have Committees decide whether to send a matter to

hearing (2b) are both sound. They may also dovetail well with the Anonymoose proposal.

The Anonymoose proposal should be adopted in full, as written.

III. Sullivan points out that the hearing mechanism laid out in §7.21(e) does not extend to complaints regarding meeting access. Public meeting violation cases could often be decided with a more limited process – why should each of these petitions automatically be guaranteed not just one, but two (almost always lengthy) public hearings. These should never be sent for a Committee hearing and should be handled more efficiently.

IV. Sullivan proposes removing the Complainant 5-minute "opening statement" at any hearing. This would also presumably apply to the Respondent's 5-minutes. They would still be allowed 3 minutes of time each after questioning. The Bylaws should be amended to delete lines 1 and 2 of Article IV, Section 10.

Further, there should be no confusion that Article IV, Section 10 is inapplicable to Committee hearings.

V. Sullivan also recommends allowing (and not discouraging) petitioners to waive hearings or to have matters heard in their absence. The Complaint Procedure should be amended at C.1 and C.7 (a), (b) and (c) to eliminate the Complainant attendance requirements.

VI. This Member proposes the SOTF should hold an extra meeting per month that would be devoted to case hearings only. That could occur in lieu of one of the Committee slots, at least until the case backlog is substantially reduced. This would be coordinated with the Clerk's office.

Dean Schmidt SOTF Seat 1



Legen, Cheryl (BOS)

From: Anonymouse (@journal\_anna) H Q <arecordsrequestor@protonmail.com>  
Sent: Thursday, November 18, 2021 2:38 PM  
To: SOTF, (BOS)  
Subject: A proposed fast-track procedure for simple complaints - public correspondence  
Attachments: signature.asc

Dear SOTF,  
(acc custodians)

Thank you for your recent full SOTF-wide pilot approval of the streamlining of complaint responses requiring detailed written responses including allowing SOTF to rule without a hearing if no response is provided, and the separate improvement proposed on Tuesday by the complaint committee for both reconsiderations and complainant-side instructions.

I recommend another pilot procedural change (concrete proposal) at bottom:

Amend the Complaint Procedure to allow: Any committee initially hearing a complaint can direct that a complaint be placed on the next full Task Force's consent agenda with a proposed specific set of violations, proposed reasons that each section was violated, and (if applicable, in a public records case) proposed order to respondents to lawfully disclose the records in compliance with all Sunshine requirements. As with any other consent agenda, any member of SOTF could still pull items from the consent agenda and have them follow the full-fledged hearing process if there was a lack of consensus. The agendas and notices for the initial committee hearing should conspicuously include a new subitem "(c) Decide whether to place complaint on the next Task Force consent agenda". This process would also better comply with the words of SFAC 67.21(e) - if the records are determined public, the order to disclose should be issued as soon as possible after that determination.

Combined with the written response requirements created a few weeks ago, this should solve what is a large percent of SOTF cases which almost always end up with unanimous rulings: the City simply ignoring a records request or being very late. A far smaller number of cases are about the intricacies of exemption laws, detailed redactions, meeting quorum, etc.

In this fashion, simple complaints take less of everyone's time and are completely resolved faster for the public (the whole purpose of SOTF), while only more complex issues require the full brainpower, time, and other features of full-fledged SOTF hearings. Simple cases also don't have to wait in line behind much more complex cases. If someone files a simple "It's been more than 10 days with no response" complaint right now, at the moment even ignoring all of my own complaints - it would take 75-90 months for that complaint to get to a decision from the full Task Force under the current procedure.

my personal goal is to get all of the simple cases resolved as quickly as possible. It is unduly frustrating to be delayed by the SOTF process for a simple case that is not a complex one. I am not a lawyer but I am a citizen and I am a member of the SOTF. I am not a lawyer but I am a citizen and I am a member of the SOTF. I am not a lawyer but I am a citizen and I am a member of the SOTF.

Thank you for your time and consideration. I am a citizen and I am a member of the SOTF. I am not a lawyer but I am a citizen and I am a member of the SOTF.

"To amend the Complaint Procedures, on a pilot basis until April 30, 2022, by adding the following as Rule C12: 'Consent Agenda: Any Committee hearing a complaint may direct that it be placed on the next full Task Force meeting's consent agenda with a proposed set of violations, proposed reasons for each violation, and (if applicable, in a public records case) proposed order to respondents to lawfully disclose the records in compliance with all Sunshine requirements. In addition, the Chair or their delegate may add to the next full Task Force meeting's consent agenda any complaint which Respondents either accept or declare no contest or fail to timely respond to. The attendance of parties at a consent agenda meeting is optional. Upon request during the consent agenda of any member of the Task Force, any complaint may be removed from the consent agenda and regular hearings scheduled instead.'; and to have the Task Force consider whether to permanently amend the procedure during its April 2022 meeting."

Regards,

Anonymous

Twitter: @jourmu\_anna

**IMPORTANT:**

1. If you are a public official: I intend that these communications all be disclosable public records, and I will not hold in confidence any of your messages, notwithstanding any notices to the contrary.
2. If you are NOT a public official: This communication is confidential and may contain unpublished information or confidential source information, protected by the California Shield Law, Evidence Code sec. 1070. I am a member of the electronic media and regularly publish information about the conduct of public officials.
3. I am not a lawyer. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever.
4. The digital signature (signature.asc attachment), if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender.

Sent with [ProtonMail](#) Secure Email.

Lager, Cheryl (BOS)

From: sfneighborhoods.net <info@sfneighborhoods.net>  
Sent: Monday, November 22, 2021 9:29 AM  
To: SOTF, (BOS)  
Subject: Ideas for speeding up the Sunshine Ordinance Task Force

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Chair Wolfe and SOTF members,

*As a Public Communication*

Index

1. Rewrite SOTF procedures and by-laws to use fully the Sunshine Ordinance and The Brown Act for greater expedited public access.

2. Procedure Rewrite Suggestions.

a) Determination by not holding a hearing

b) Determination by committee less than the Full SOTF

3. Rewrite SOTF By-Laws

4. Violations by SOTF of Sunshine Ordinance "shall"s

5. Burden of Proof on the Respondent.

6. SOTF "passive meeting" advisory committees for talking about changes in procedures and by-laws

7. Changing the order of a hearing

8. Changing the order of hearings on the agenda.

SOTF regularly violates and does not fully use the Sunshine Ordinance and The Brown Act. The Disposition and enforcement of complaints can be speeded up by the full use of the Sunshine Ordinance and The Brown Act. The City has self imposed restrictions (and at least one city imposed requirement) in the SOTF by-laws and Public Comment procedures that do not fully use or fully impede SOTF from the requirements of the public access laws.

Rewrite SOTF procedures and by laws to use fully the Sunshine Ordinance and The Brown Act for the requirements which would result in greater or more expedited public access shall apply" Sec 57.5 with similar words in The Brown Act and the CPRA 5751. a) SOTF procedures and by-laws are currently violating these provisions 179(b)(1) meetings may 179(b)(3) minutes before being heard by SOTF means people not getting public hearing 179(b)(2) and 179(b)(4) and 179(b)(5) the other provisions provisions on timely hearing public hearing



2. Procedure rewrite suggestions. (Sec. 67.30 (c) The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter.)

a) Write procedures that allow for "may conduct public hearing concerning a record request denial."  
Sec. 57.21 (a).

1) SOTF Member(s) determine that a complaint is straightforward. There was a denial of public records, and cite the violations or no denial of public records.

2) Reviewed by (number 7) of SOTF members that concur. This can be called a committee though they wouldn't actually meet. The concurring would be by individual review with each individual citing violation or none.

3) These SOTF members make a determination that the record is public and "immediately order the custodian of the public record to comply with the person's request." Sec 67.21 (e) You can call this a "determination" The "determination" is made from a majority agreed upon violations cited.

"Order of Determination" does not exist in the Sunshine Ordinance. It is a fabrication of previous SOTF. "Order of Determination" can still be used to distinguish a full SOTF determinations from other determinations. A SOTF "determination" is used 4 times in 67.31 (d) and 4 times in 57.21 (e).

NOTE: The "may conduct public hearing" seems to be only or a record request denial and not to public access of a meeting, Sec 67.30 (c) and Sec 67.5 "expedited" and "timely" would support using this process for straightforward public access complaints.

b) Write procedures that allow for adjudicating a complaint with a SOTC Committee. There is nothing in public access laws that prohibit this, Sec 67.30 (c) and Sec 67.5 "expedited" and 'timely' would support.

1) SOTF Committee members determine that a complaint does not go into areas of law that are not well known or that other complicated question arise (example: jurisdiction, what a under consideration body is)

2) If SGTf Committee members determine a complaint should be heard by full SGTf, they can at any time decide to hold a preliminary hearing to bring clarity to the issues of a complaint and forward a report and the complaint to the full SGTf.

3) The SOFF Committee members make a determination if 0.1 is the decided rate

Other stipulations for procedures 1 and 2 are:

1.  $\lim_{x \rightarrow 0} \frac{\sin x}{x} = 1$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{\cos x}{1} = 1$ )

2.  $\lim_{x \rightarrow \infty} \frac{1}{x} = 0$  (Direct Substitution)

3.  $\lim_{x \rightarrow 0} \frac{e^x - 1}{x} = 1$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{e^x}{1} = 1$ )

4.  $\lim_{x \rightarrow 0} \frac{\ln(1+x)}{x} = 1$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{1/(1+x)}{1} = 1$ )

5.  $\lim_{x \rightarrow 0} \frac{x^2 \sin(1/x)}{x} = 0$  (Squeeze Theorem:  $-x \leq x^2 \sin(1/x) \leq x$ )

6.  $\lim_{x \rightarrow 0} \frac{\cos x - 1}{x^2} = -\frac{1}{2}$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{-\sin x}{2x} = -\frac{1}{2}$ )

7.  $\lim_{x \rightarrow \infty} \frac{\ln x}{x} = 0$  (L'Hôpital's Rule:  $\lim_{x \rightarrow \infty} \frac{1/x}{1} = 0$ )

8.  $\lim_{x \rightarrow 0} \frac{1 - \cos x}{x^2} = \frac{1}{2}$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{\sin x}{2x} = \frac{1}{2}$ )

9.  $\lim_{x \rightarrow 0} \frac{x - \sin x}{x^3} = \frac{1}{6}$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{1 - \cos x}{3x^2} = \frac{1}{6}$ )

10.  $\lim_{x \rightarrow 0} \frac{e^x - 1 - x}{x^2} = \frac{1}{2}$  (L'Hôpital's Rule:  $\lim_{x \rightarrow 0} \frac{e^x - 1}{2x} = \frac{1}{2}$ )

"Action taken" requires only a majority of members of a committee or full task force voting in the affirmative or negative on all matters. The Brown Act 54952.6

Other smaller changes to SOTF By-Laws are probably required in order for 2 a) and b) procedures to work. I do not intend this document to be all-encompassing. Further changes to SOTF by-laws would have to happen with other suggestions below.

4. SOTF currently violates and does not use fully these sections of the Sunshine Ordinance. The regular use of the enforcement clauses in Sunshine Ordinance may lower the rate of complaints submitted because of better compliance by custodians of records. These are the shalls:

67.30 (c) "The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts." (Thanks Anonymous) Note: Violations do not have to be willful. It is any violation. Repeat offenders will become known to the municipal office with enforcement power. Repeat offenders may be willful. It is up to that municipal office to determine enforcement not to rehear a complaint or determine the violation(s).

67.21 (e) "If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance."

67.21 (f) "The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public."

67.21 (g) "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."

5. Sec 67.21 (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." While this is written for "any court", SOTF can use "the burden shall be upon the custodian to prove with specificity the exemption which applies". Burden of proof is implied in SOTF procedures "all inferences and evidence shall be viewed in the light most favorable to the petitioner." Burden of proof is implied in CA Constitution, The Brown Act, and CPRA.

The "specificity the exemption which applies" should happen in writing before any hearing. In fact, custodian of records should have already done this, Sec. 67.21 (b), Sec 67.21, and CPRA 6253 (c) in the original response to the public record request. If the respondent does not submitted in writing before a hearing then SOTF "pursuant to this article there shall be a presumption that the record sought is public" (Sec 67.21 (g)) and order the records to be public. No allowing for exemptions which apply before or after a hearing.

6. At the 12-25-2023 meeting after displaying all records requested, SOTF should have a hearing and a record of proceedings. Minutes from 12/25/23 meeting: <https://www.southcoastca.gov/DocumentCenter/View/10000/Minutes-12-25-2023>

7. SOTF should have a hearing and a record of proceedings.

8. SOTF should have a hearing and a record of proceedings.

These passive advisory committees do not have to include the Chair of SOTF, but do have to include at least one member of the public because 67.5 (4) "passive meeting body" shall not include a committee that consists solely of employees...." SOTF members alone cannot talk without a hearing.

These passive advisory committees do not require SOTF administrative presence, any type of clerk, minutes, recording, or agenda, though if "any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record." Sec. 67.4 (2) (1).

I would formally notice such meetings with enough time to allow the public to observe. It is up to these passive meeting committees to decide to allow public comment beyond the public member(s) of the committee. The above would be in keeping with the requirements of 67.4 (1) (2). These are meetings, not hearings. Not having minutes or recordings should not be a problem, since any advisory documentation coming out of such passive advisory committees should suffice.

7. Consider changing the order of a hearing. The petitioner opening statement before the respondent has little use other than a rehash of the complaint submitted. Even for petitioners familiar with the hearing process, a first statement is like randomly providing clarification and trying to address issues that may come up after the respondent opening statement and the SOTF questions and discussion are going to happen. A petitioner really does not know where the discussion is going to go. The respondent has the advantage of hearing the petitioner and being able to counter, while the petitioner is left to try and counter all at the very end of the discussion in 3 minutes. It is very unfair to the petitioner. It is often felt that it is the petitioners "burden of proof" to prove when it is not.

Suggested: Start with questioning and then discussion from the SOTF members. They should be prepared. The more prepared SOTF members are before a hearing the faster the hearings should go. From SOTF procedures: 6 (2) "All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting." The SOTF questioning and discussion will bring quick focus to the issues of the complaint and whether the respondent has met the burden of proof on all alleged violations.

Next, allow a 3 or 5 minutes response from the respondent and the petitioner. The response time should be allowed to vary depending on the complexity of the issues. Chair's call on time allowed.

Possible further discussion by SOTF members.

Formulation of a motion.

4-minute public comment.

Vote on Motion.

(Other Motions?) You will not have to pass everything to the motion, especially in complex complaints.

8. Consider making the chairman that takes more and power to the beginning of hearings when SOTF members are appointed. They should do such in quicker hearings like motions with easier straightforward complaints later in the hearing can be given the choice to. Although the SOTF is involved with the hearing in assertion of the complaint. Many are hesitant to assert anything before either side has opened their side of their. It is up to SOTF to reduce the burden of proof of the respondent and to move the burden of proof in hearing motions to the petitioner.

Sec 67.1 (e) "Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government."

SOTF is not a neutral party. Protecting the public's interest is not neutral. It often seems that SOTF gives too much deference to the government's interest. Just look at SOTF By-Laws Section 7. Action at a Meeting; Quorum and Required Vote. Who's interest is that?

SOTF procedures 7 (d) "After an initial in-person appearance, the Complainant may authorize the SOTF to proceed with the hearing in absentia on the complaint without the Complainant's presence at the hearing. The only information that will be considered from the Complainant will be the submitted written documents or information provided at prior hearings. Complainant waives their rights to provide testimony if they authorize the SOTF to proceed without their attendance."

All the above should speed up the adjudication and hearing of complaints and keep SOTF from violating multiple provisions of the Sunshine Ordinance and The Brown Act.

Sullivan

December 16, 2021

## RESPONSE TO SULLIVAN AND ANONYMOOSE – by Complaint Committee Chair Schmidt

The Complaint Committee and the SOTF should be considering ideas to streamline the SOTF complaint resolution process, which in its current iteration has produced an enormous backlog of unresolved cases. Several good suggestions have come from knowledgeable members of the public Sullivan and Anymoose (a.k.a. Anonymous #3).

Also, it is important in this regard to reference the repeated mentions by member of the public Warfield of Administrative Code Section 67.30 (c), the enumeration of the seven (7) statutory "jurisdictional roles" of the SOTF. In the present situation, with the presently written configuration of bylaws/rules/procedures, most members of this SOTF spend over 90% of their time with the sixth (#6) of those seven roles – preparing for and participating in hearings of individual violation cases. There is little or no time left to work in roles 1, 2, 3, 4, 5, or 7. With the current backlog, it is nearly impossible to deal with anything else, other than deciding cases (#6).

### CURRENT STATUS

The most available measure to assess the extreme nature of the backlog is to compare the Pending Case numbers according to the administrator reports with a pertinent past date. The most current Administrator report was reviewed December 1, 2021. The SOTF October 7, 2020 was the point in time when the SOTF resumed hearing of cases, though remotely, after the COVID shutdown. That was also when two SOTF members, Jen Wong and Dean Schmidt, began. In 14 months, the numbers increased:

	10-7-20	12-1-21
Cases pending SOTF hearing	12	8
Cases pending Committee decision	58	112



Cases pending

100

179\*

\*Notably, 105 from the same complainant, Anonymoose.

Under current protocol, all 179 of the current "cases" are being channeled through at least two hearings each – a committee, and the full SOTF. That is a structure that may or not have worked in the past, but these numbers show it may not be workable any more.

The present public hearing schedule includes three committee hearings per month in addition to the full SOTF meeting. Each of those meetings is administered and staffed by the Clerk of the Board office. Needless to say, there is a finite amount of time available each month to have hearings on case complaint petitions.

Compared to the above-listed 61 backlogged cases ready to be heard by the SOTF, only 4 to 6 are calendared to be heard each month. Perhaps most notably, those monthly meetings have recently been extending to 7 or even over 8 hours.

#### **ANONYMOOSE PROPOSAL – 11-18-2021**

Anonymoose proposes increased use of a consent agenda.

It is important to look at the extent to which use of a Consent Agenda can be appropriate. Consent calendars are for routine, non-controversial items. One common use is described in Robert's Rules: when a matter is heard in a Committee and the sponsor, or an administrator, then places it on the consent calendar. Robert's Rules at 361. Typically, any member of the body may have an item removed and heard by regular order.

This new proposal by Anonymous seems to follow the RONR concept. Significantly, this use of a Consent Calendar only applies to complaints heard in a Committee, and the Committee directs placing onto the Consent

Calendar. The power to designate an item as a Consent matter would not be reserved only to a single member.

Anonymoose references the recent Pilot project use of a Consent Agenda. That is a different kind of use of a consent calendar in at least two regards. First, it does not provide that a Committee place a matter on the Consent Agenda, instead, that is decided by a single member, the SOTF Chair. Second, though some of those matters involve an explicit agreement by each party to a dispute to a finding of a violation, there are others where a Respondent has not indicated consent (unless silence is somehow deemed to be consent).

#### SULLIVAN MEMORANDUM 11-22-2021

Sullivan enumerates eight (8) Ideas. Using that numbering, here are some observations.

1. General recommendation to rewrite bylaws/rules, eliminate "self-imposed restrictions."
2. There is good material in Sullivan 2. Sullivan essentially focuses on finding better, more workable approaches to implementing 67.21(e).
  - A. Fundamentally, the fact that SOTF "may conduct [a] public hearing" concerning a record request denial strongly suggests that Task Force members have full capability to decide (by appropriate vote regarding process) how to limit the number of matters that merit full SOTF attention.

The hearings procedures as written now were created not by law but by past SOTF votes. There are several optional extra layers – add-ons – that, while likely well-intentioned, substantially consume precious time. Sullivan proposes we rethink why we are doing it this way. He can see that the

current process has through accretion become disconnected from the actual Ordinance language.

Essentially, the Sullivan proposal is a much simpler method instead of the present double committee/task force hearing regimen. Per Sullivan, before scheduling any hearing, a records denial complaint/petition file could be simply read over by a decided number of members (possibly 3, could be chosen randomly, distributed fairly). They would decide whether a "hearing" is needed; and they could devise a "determination" Here, Sullivan adds that these members could then impose the order to the custodian of section 67.21(e). Another option implicit in Sullivan's analysis would be to stop after the hearing/no hearing decision and take a different next step. That could be where Sullivan's and Anonymoose's proposals might complement each other and merge.

Sullivan then questions why/when there is a need for an Order Of Determination per se, and proposes that term only be used in full SOTF cases. Importantly, he anticipates that a significant number of cases could be deemed not worth a full-blown SOTF hearing (or, for that matter, a second, non-decisive Committee hearing precedent thereto).

Lastly, Sullivan points out that the whole hearing mechanism laid out in 67.21(e) does not extend to complaints regarding meeting access. He hints that public meeting violation cases could often be decided with a more limited process – certainly not requiring two (almost always lengthy) public hearings.

- B. Then, as an alternative new procedure, Sullivan proposes permitting Committees to distinguish between straightforward cases that can be decided in Committee, versus the cases worthy of a full hearing. This too could be merged with the ideas in the Anonymoose proposal.

C. There is a further step proposed, a denied Petitioner requesting a full SOTF hearing. Sullivan would require the full SOTF decide when to grant a hearing. It is not completely clear but Sullivan here seems to be suggesting that his A and B might not be the final say.

3. Propose reducing level of necessary quorums.
4. Here, Sullivan simply cites the Ordinance.
5. Nothing here.
6. The suggestion here is to create advisory bodies, each of which would need to include a member of the public, in order to have a different kind of opportunity for meeting less formally.
7. Notable here is the time-saving proposal of removing the Complainant 5-minute "opening statement." This would also presumably apply to the Respondent's 5-minutes.
8. Notable here is the ability of a complaining party to waive "rights" to testify, and have a Complaint hearing without their presence.

#### BRIEF RESPONSE

In light of the serious backlog and the inflated, duplicative process that is currently being used, these proposals should be taken seriously. Some bylaw and/or rule changes could be done permanently; for others, it might be necessary to implement a Temporary Urgent Streamlining Process to be in effect until the Backlog is sufficiently erased, to reach a level at least as low as 11 waiting for SOTF; 50 to 75 others.

There is a compelling case for better assisting the public to get their rightful access to records/meetings without unnecessary delay. Some will want

their cases heard to obtain a timely Order [of Determination]. Delays in the final Orders, to them, can be harmful, as several petitioners have recently noted. There are other petitioners for whom the Order is less important than pushing to get as many records as possible, or to have their access violations noted.

The following are proposals that could greatly enhance efficiency, without losing those valuable aspects of the SOTF's role that seek maximum transparency and fundamental fairness. This Member approves five items from Sullivan and Anonymoose:

(From Sullivan 2a) Have matters reviewed by members before scheduling any Petition for a hearing of any kind.

(From Sullivan 2a) Take due recognition that 67.21 procedures need not dictate the process for meeting access violation complaints.

(From Anonymoose (per Sullivan 2b)) Sullivan's Ideas to have either individual Members review first (2a) or to have Committees decide whether to send a matter to hearing (2b) are both sound. They may also dovetail well with the Anonymoose proposal. The Anonymoose proposal is a sound one, establishing a Committee-originated consent calendar process that would further eliminate waste of valuable hearing time on unnecessary matters. Or, the Anonymoose proposal could be built upon Sullivan's (2a) use of groups of individual members.

(From Sullivan 7) Eliminate 2x5 minute opening statements, yet still allowing 3 minutes of time each after questioning.

(From Sullivan 8) Permit (and do not discourage) complaining petitioners to waive hearings or to have matters heard in their absence.

*Original* - as Member proposes, we make revisions. First, the SOTF could hold an extra hearing period that would be devoted to case management. This would be run by the chair of the Committee's



Second, Committees should not continue to have hearings that result in no decisions. If committees are to be scheduled to hear complaint Petitions in the future, those should be limited to (1) specifically referred matters per Anonymoose/Sullivan above, or (2) reviews to determine whether to send to Consent per the Anonymoose proposal.

Dean Schmidt, SOTF Seat 1

## **San Francisco Sunshine Ordinance Task Force (SOTF)**

### **COMPLAINT PROCESS**

This document explains how to bring a complaint to the SOTF, how to present and support your complaint, and the process the SOTF follows to consider and resolve your complaint. The SOTF exists to help the public gain access to public records and meetings. We will work with you to resolve your complaint informally, and if necessary to formally schedule your complaint for a hearing before the full task force.

#### **A. STEP 1: CONTACT SOTF ABOUT RESOLVING YOUR REQUEST**

1. If you believe you have been improperly denied access to public records or public meetings, you may contact the SOTF Administrator to discuss the issue. The Administrator will attempt to resolve the issue by mediating with the appropriate City or County agency. You may contact the Administrator by phone at 415-554-7724, by email at [sotf@sfgov.org](mailto:sotf@sfgov.org) or in person at Sunshine Ordinance Task Force, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683

2. If unable to reach a resolution, the Administrator will advise you of your right to file a petition with the Supervisor of Records (the City Attorney's Office) and to file a formal complaint with the SOTF.

#### **B. STEP 2: FILE A COMPLAINT WITH THE SOTF**

1. If the Administrator is not able to obtain an informal resolution, you may submit a complaint form or letter to the SOTF.

2. Carefully review the recommendations below on how to present your complaint. To present an effective complaint, the SOTF strongly recommends that you include the following:

- The name of the City or County agency, department or governmental body which is the object of your complaint.
- The person(s) who handled your request at that agency (example: John Smith at the Police Department).
- A clear and concise description of what occurred. This description may include what documents were requested, what response was received, the dates of the request and response, and other pertinent information.
- A clear and concise description of how public records and/or public meeting laws were violated. Include references to the relevant sections of the law whenever possible.

For example, if you believe records were not provided in a timely fashion, state that they were not provided within the 10 days required and cite the applicable section of the law if you know it (example: Sunshine Ordinance, Section 67.21(a)).

- o Documentation that directly supports or shows that the alleged violations occurred (example: your dated request for information and an agency's dated response). Choose your documentation carefully and avoid supplementary material that does not clearly address whether public records and meetings laws were violated. Good documentation is critical to presenting your case effectively. Please submit only 1 copy of each supporting document, including email exchanges.
- o Information on how we can best contact you by email, phone, and surface mail. If you want to remain anonymous, you should list "Anonymous" as your name, use alternate anonymous contact information, and ensure that your submissions do not include information that might reveal your identity. We will not accept the use of alias or alternative names on complaints, and we do not redact or edit submissions. All submissions are public records open to public review. It is your responsibility to protect your confidential personal information.

3. SOTF will work with you to ensure that you present the strongest possible case. However, if your case lacks basic information necessary to make a reasoned determination, we may decline to consider your case.

4. Once we receive your complaint, we will send the relevant City or County agency written notice of the complaint and a request for response within 5 business days. Failure to respond to a SOTF complaint or to provide the requested documents may lead to a determination that the City or County agency violated 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 and if the complaint is new or duplicates a previous complaint by the same complainant; 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 complaint.

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. Members of the public who attend meetings of the Sunshine Ordinance Task Force are expected to behave responsibly and respectfully. Any member of the Sunshine Ordinance Task Force may call for decorum due to disorderly conduct of meeting participants. Persons who engage in threatening and/or menacing behavior may be asked to leave. This provision supplements the rules and policies adopted by City Hall, the Sheriff's Office, or the Board of Supervisors related to decorum, prohibited conduct or activities, noise, etc. and is not meant to be exhaustive.

5. After hearing all testimonies, the SOTF shall determine if violations of the Sunshine Ordinance have occurred and/or provide other directives as needed. Orders stated at the conclusion of the SOTF complaint hearing are effective immediately and compliance is required within 5 business days of the hearing. The task force will also notify the parties by email of their orders on the business day following the hearing. A memorandum summarizing the reasoning behind the decision and order may be issued by the Task Force at a later date.

#### 6. Documentation:

To ensure that the SOTF can 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 reviewed 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 to take actions as needed.)

#### 7. Attendance and Requirements for 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 in response to special circumstances or requests made by the Complainant and/or the Respondent.

(b) If the Complainant fails to appear at a SOTF or Committee hearing regarding their complaint without prior communication the matter may be filed and dismissed without prejudice. Complaints dismissed without prejudice 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 Complainant may also refile the complaint

on a future date. The SOTF or its Chairperson shall determine if the complaint shall be reopened.

(c) Complainant may authorize a knowledgeable person to represent them at SOTF hearings. The signed letter authorizing a representative must be submitted with the following information: File No. and statement that the third party is authorized to represent the complainant. The SOTF reserves the right to verify information as needed.

(d) After an initial in-person appearance, the Complainant may authorize the SOTF to proceed with the hearing in absentia on the complaint without the Complainant's presence at the hearing. The only information that will be considered from the Complainant will be the submitted written documents or information provided at prior hearings. Complainant waives their rights to provide testimony if they authorize the SOTF to proceed without their attendance.

#### 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) In order to provide determinations in a timely manner the SOTF will schedule complaints for hearing as soon as possible at the discretion of the Chair. If the Complainant is unable or refuses to attend a scheduled hearing on a specific date within 120 days, the SOTF may schedule a hearing to consider taking no further action and to close the file due to inactivity.

(d) It shall be the policy to grant continuances if requested by the Complainant for the first time. The SOTF Chair and their designee is authorized to grant a first-time continuance request at their discretion. Further continuances are at the discretion of the Chair.

#### 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 schedule 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 complaints per Petitioner/Complainant per meeting at their discretion.

#### **D. DEPARTMENT TO COMPLY WITH SOTF ORDER**

1. 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 hearing at which the orders were announced. The Administrator will also send notice of any orders to the complainant and the respondent on the business day following a complaint hearing. The SOTF may also request that the Compliance and Amendments or another SOTF Committee monitor and review whether a department has complied with SOTF's orders.

2. If there is a failure to comply, a SOTF 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 shall be included with any 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.

#### **E. REQUEST FOR RECONSIDERATION OF TASK FORCE FINDINGS**

1. The petitioner or respondent may submit a request for reconsideration of any SOTF order within 30 days only in cases where new and pertinent information becomes available. The petitioning party must provide the new information, new supporting documents, and a written explanation of why or how this new information should change the SOTF's determination. The petitioning party must also certify that the new information and new supporting documents were not available at the time of the original complaint. The SOTF will accept no more than one request for reconsideration from each party for any given complaint. A request for reconsideration is not an appeal or a rehearing of the entire case; it addresses only whether the new information is pertinent to the outcome. A Request for Reconsideration form is available from the SOTF Administrator.

2. The SOTF or one of its committees shall consider a request for reconsideration at its next available meeting to determine whether the information and supporting materials are new, and whether they warrant a reconsideration of the outcome of the complaint.

3. The Reconsideration Hearing Procedure:

(a) If the request for reconsideration is granted, we will reopen the complaint and schedule it for the next available hearing before the SOTF in order to consider the new information exclusively.

(b) The SOTF's previous vote to find violation shall be considered rescinded with a vote pending action.

(c) The requester of the reconsideration shall be provided five (5) minutes to provide testimony as to how the new information provided will affect the decision of the SOTF.

(d) The opposing parties will be provided five (5) minutes to provide testimony regarding the new information provided. NOTE: Testimony should be limited to the submitted new information.

(e) The SOTF may perform one of the following actions based upon the new information submitted by the petitioner:

(i) Move to revote on the original motion without changes

(ii) Move to substitute a motion with a different action (f) Accept public comment on the motion

(g) SOTF votes on the motion

(h) If the actions of the SOTF changes, a Revised Order of Determination will be issued. An additional Orders of Determination will not be issued by the SOTF if their decision is unchanged.

#### **F. DOCUMENTATION AND INFORMATION REGARDING INDIVIDUAL COMPLAINTS**

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 file 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 actions on any issues not directly addressed by the By-Laws or Complaint Procedures.

#### **Addendum Complaint Procedure Summary**

You may fill out a complaint form or access a form online at [sfgov.org/site/sunshine](http://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 [sotf@sfgov.org](mailto:sotf@sfgov.org).

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.

The complaint shall be scheduled for a hearing before the SOTF or its Committee. Both parties shall be notified of the scheduled hearing date.

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.

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.

At the SOTF hearing, the SOTF will review the recommendation of its Committee and conduct a hearing on the merits of the complaint.

If the SOTF determines any violations occurred, the custodian will be ordered to comply at the conclusion of the hearing and a written notice provided to all parties by email the following business day. At the discretion of the Chair the matter may be referred to Committee for following up on directives and/or compliance.

If a motion to find violations fails or if no motion is made, no violation is found and the matter is closed and essentially dismissed. The maker of the motion may vote against their own motion but cannot speak against it.

If needed the SOTF can refer the complaint to the Ethics Commission and/or the Board of Supervisor for enforcement proceedings.

For further information, contact the Sunshine Ordinance Task Force Administrator, at (415) 554-7724.

SUNSHINE ORDINANCE TASK FORCE

Tel: 415 554-7724  
Fax: 415 554-7854  
TDD/TTY: 415 554-5227



City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco 94102-4689

NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN THAT** the Sunshine Ordinance Task Force will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** June 1, 2022  
**Time:** 4:00 p.m.  
**Location:** Remote Regular Meeting  
**Subject:** File No. 22061: Proposed amendments to By-Laws, Section 9 to change Order of Business.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments prior to the time the hearing begins. These comments will be made as part of the official public record in this matter and shall be brought to the attention of the members of the Task Force. Written comments should be addressed to Cheryl Leger, Administrator, Sunshine Ordinance Task Force, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Agenda information relating to this matter will be available for public review on Wednesday May 18, 2022.

Cheryl Leger, Administrator  
Sunshine Ordinance Task Force



**City and County of San Francisco  
Sunshine Ordinance Task Force  
By-Laws**

**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@sf.gov](mailto:sotf@sf.gov) 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 and the SOTF Chair if a member is unable to attend a regular meeting of the Task Force. The Task Force Administrator shall notify any member who misses two consecutive or three regular meetings in any twelve-month period of time. If a third consecutive or fourth subsequent absence from a regular meeting occurs in that same twelve-months, the Chair or Vice-Chair (acting in the absence of 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.

5/19/2022

**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 ~~they are~~ 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.

5/19/2022



(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
- Administrator's Report
- General Public Comment (will not be heard until 5:00 PM or later)
- Hearings on the Jurisdiction and Hearings on the merits of Complaints (will not be heard until 5:00 PM or later)
- Committee Reports
- Other Policy Matters
- Future Agenda Items
- Adjournment

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

The Task Force 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. The Task Force may vote to take one of the following actions:
  - a) make a motion to find a violation;
  - b) make a motion to find no violation;
  - c) make a motion to take no further action and close the file.

**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 agendized 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

Amended 12/6/2017

Amended 1/2/2019

Amended 6/5/2019

Amended 7/16/2019

Amended 8/7/2019

5/19/2022

