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Ed Harrington, Chair
Commission Streamlining Task Force
c/o City Administrator's Office
City Hall, Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4694

"Your Staff claims the SOTF's membership qualifications are too 'rigid.' Hogwash!"

Re: Sunshine Ordinance Task Force

Dear Chair Harrington and Commission Streamlining Task Force Members,

There are a number of inaccuracies in the City Administrator's Staff recommendations in its 97-page [memo](#) regarding the Sunshine Ordinance Task Force (SOTF) that must be corrected for the public record.

The most egregious error is the suggestion on page 96 that the Streamlining Task Force consider potentially eliminating the SOTF altogether and combining it with the Ethics Commission. As the Ethics Commission's Executive Director, Patrick Ford, [wrote](#) to you (which is posted on your web page for today's meeting) the Ethics Commission should — and must — remain independent from the Sunshine Task Force. Ford supports your Staff recommendation to keep SOTF independent from Ethics.

Member Terms Inequality

Second, on page 96 the Staff also advises that if you keep the two-year term length's for SOTF members, you should add a four-term limit to the maximum time an SOTF member could serve — for a total of 8 years. That would, however, be patently unfair, because your standard for all other bodies has been for a maximum of 12-years of service per member, either using a four-year term length and a maximum of three terms, or a three-year term length and a maximum of four terms. You are applying a different standard to the SOTF, restricting SOTF members to a maximum of 8 years. Why are you essentially cheating them out of being able to serve for an additional four years?

I believe for other bodies whose members serve two-year terms, you have allowed them to serve for six terms. What's different about the SOTF that you are applying a different, random metric to?

Don't Apply a Sunset Date to the SOTF

Third, while the City Administrator's staff rightly noted in its "*Staff Discussion*" section (page 95) that it would be "*overly burdensome to combine SOTF into other bodies*," the Staff also qualified that assessment by recommending that the Streamlining Task Force should:

"... also add a sunset date to allow the Board of Supervisors to confirm the purpose, necessity, and significance of the Sunshine Ordinance Task Force on a regular basis."

You are randomly granting exemptions to **not** applying sunset dates. You have exempted other bodies before today from applying your template sunset date requirement, and for at least four other bodies today, you explicitly have stated "*do not apply sunset dates*" for the Ballot Simplification Committee, the Redistricting Task Force, the Capital Planning Committee, and the State Legislation Committee. Why are you treating the SOTF differently?

Applying a mandatory sunset date would place an unnecessary burden on the Board of Supervisors to have to periodically revisit whether the SOTF's purpose remains a significant enough of an issue worthy of extending the life of the body. Obviously, without Sunshine enforcement as a deterrent, public access to public records and public meetings would instantly shrivel, and violations would soar.

"You are randomly applying sunset dates. You are exempting at least four other bodies today from applying sunset dates. Why are you treating the SOTF differently?"

When the SOTF was created by ordinance, its framers could have applied a sunset date to it then, but did not. Then when voters passed amendments to it in 1999, there was no stipulation added that the SOTF should ever be sunsetted.

Sunsetting the SOTF makes no sense, because given the human nature of elected and appointed City officials, and the tens of thousands of City employees, it's not likely the need for the SOTF will ever vanish!

SOTF Membership Qualifications

The Streamlining Task Force is also selectively seeking to treat the Sunshine Task Force's member qualifications and nominating requirements differently from other bodies.

Specifically, the Staff recommendation memo today **WRONGLY** states on page 97:

"Although not specifically addressed in the advisory committee template, the Task Force should consider eliminating SOTF's mandatory qualification and nomination requirements."

In fact, your two-page "Advisory Committee" [template](#) actually specifically states regarding membership qualifications:

"Specific requirements should be decided on an individual body basis. If no explicit requirements, [were enumerated] require appointing authority to submit some information on why a candidate is qualified."

So, it is abundantly clear that the framers of the SOTF **HAD** expressly stipulated explicit requirements for member appointments to the SOTF. And for other bodies the Streamlining Task Force has considered, you have allowed other bodies to keep their seat-level membership qualification (even though members of the public know that you don't like seat-level quals, as a general matter)!

The "Advisory Committee" template's evaluation criteria the Streamlining Task Force yourself developed didn't specifically address the *basis* that the creators of any given Policy Body may chose to develop seat-level qualifications criteria, which are best left to the advocates who created the bodies. Nevertheless, the Staff brazenly recommended:

"While the requirements were well-intentioned and designed to ensure subject matter expertise and representation from journalism, advocacy, and civic organizations, they are overly narrow and exclude individuals who could effectively serve on the [Sunshine] Task Force, [the Streamlining] Task Force should consider eliminating SOTF's mandatory qualification and nomination requirements."

The staff claims the qualifications are too "rigid." Hogwash!

That's selective reasoning, or selective prosecution and persecution, because the Streamlining Task Force has not claimed that any of the seat-level qualifications for any of the **other** 150 boards and Commissions should eliminate mandatory seat-level qualifications. Worse, the Staff justifies the recommendation, in part by alleging that *"The specificity of the nomination and professional background criteria ... limits flexibility for appointing authorities."*

Use of the word "flexibility" gives away the game you are playing. This is not about making the nomination and member selection process *easier* for the appointing authorities ... which is exclusively the purview of the Board of Supervisors to appoint — not the Mayor's — and the purview of professional associations to nominate.

City Charter §16.130(i) — passed by voters with "Prop. B" on November 6, 2018 regarding privacy, open meetings, or public records — prohibits the Streamlining Task Force from altering the Sunshine Task Force in any manner that is inconsistent with the voter-approved Sunshine Ordinance voters amended by "Prop. G" on November 2, 1999. Only the Board of Supervisors can amend the Sunshine Ordinance, but **only** in ways that strengthen it. Significant amendments may require additional voter approval.

§16.130(i)'s clause, "not inconsistent with the [Sunshine Ordinance's] intent or purpose," essentially restricts the Board of Supervisors to only **strengthening** Sunshine.

"City Charter §16.130(i) prohibits the Streamlining Task Force from altering the Sunshine Task Force in any manner inconsistent with the voter-approved Sunshine Ordinance."

Changing the SOTF's membership qualifications would be inconsistent with the Ordinance's clear intent and purposes."

The Streamlining Task Force is nefariously trying to weaken the Sunshine Ordinance, by sabotaging the SOTF's seat-level membership qualifications."

Changing the SOTF's membership qualifications *would* be inconsistent with the Sunshine Ordinance's intent and purposes!

The Streamlining Task Force is nefariously trying to weaken the Sunshine Ordinance, by sabotaging the SOTF's seat-level membership qualifications. No two ways about it. One fear is that changing the membership composition of the SOTF as an open-government watchdog will facilitate stacking the Sunshine Task Force with members likely to let open government violators skate, and turn a blind eye to a "*strong mayor*" violating Sunshine, like Mayor Breed did.

SOTF Is a Regulatory Body and Quasi-Judicial Body

Finally, the Staff recommendation to the Streamlining Task Force on page 94 acknowledges by its own admission that the SOTF is a "*Regulatory*" body. Yet on page 96, the Staff recommendation applies its "*Advisory Bodies*" template to assess the SOTF, and explicitly includes a footnote saying "*advisory committees are not **required** to have [seat-level] qualifications.*"

But as noted above, that's misinformation, because your "*Advisory Committee*" template *allows* — and not doesn't expressly *prohibit* — seat-level requirements, even if the template doesn't *require* bodies to have seat-level quals.

Notably, when the Streamlining Task Force was developing your evaluation criteria and templates, you decided to deliberately neglect developing a template unique to **regulatory** bodies, although you had started out to do so. As far back as March 19, Henry O'Connell, a Senior Performance Analyst in the City Controller's Office had informed the Streamlining Task Force, that 16 regulatory bodies had been identified in the City, half of which had authority to hire and fire department heads, and had policy-making authority. Instead of developing evaluation criteria unique to regulatory bodies, this Task Force just threw in the towel and decided to use extraneous evaluation criteria.

And as Sunshine Task Force members themselves have testified, the SOTF is, in fact, also an official policy body, by definition in Article II of the Sunshine Ordinance. It was expressly formed to, and required to, make policy recommendations to the Mayor and to the Board of Supervisors.

As Marie Jobling testified to this Task Force on September 15 regarding the Dignity Fund: "*If it ain't broke, don't keep trying to fix it!*"

Undermining the SOTF's Independence

The Staff recommendation permits the "*at will*" removal of the SOTF's appointees. At a minimum, the Streamlining Task Force should stipulate that "*at will*" removal is allowed **only** by the SOTF members' appointing authority, and upgrade it further to removal only "*for cause.*" Otherwise, as Ethics Commission Executive Director Patrick Ford noted in regard to Ethics Commissioners, "*at will*" removal would severely undermine the independence of the Ethics Commission.

It's the same thing with the SOTF. As Ford noted, allowing the SOTF's appointing authorities — all elected members of the Board of Supervisors — to remove any SOTF member at-will would undermine the SOTF's ability to effectively and impartially hear and conclude Sunshine Ordinance complaint cases. The "*at-will*" removal could lead to the appearance of potential conflicts of interests, as happened when the SOTF upheld Sunshine violations against then-Supervisor Scott Wiener, David Chiu, Eric Mar, and Malia Cohen — who were all referred to the Ethics Commission in 2011 for **official misconduct** regarding withholding of last-minute amendments to the Park Merced development deal. The ensuing punishment of SOTF members by Wiener lead to the SOTF effectively being shut down for over six months in retribution.

The quasi-judicial role of the SOTF requires that they should only be able to be removed by their appointing authority "*for-cause.*"

The Streamlining Task Force should just leave the SOTF as it is currently configured! Stop trying to fix something that's not broken!

Or as Governor Tim Walz said while campaigning with Kamla Harris during the 2024 presidential election season, his Minnesotan neighbors might say: "*Mind your own damn business!*"

Sincerely,

/s/

Patrick Monette-Shaw

cc: Rachel Alonso, Project Director, City Administrator's Office