



# Is the Sunshine Ordinance Task Force Ethically Challenged?

Hold the Sunshine Task Force to the highest standard

*This article is also published in the **Westside Observer**: <https://westsideobserver.com/23/4-Is-the-sunshine-task-force-ethically-challenged.php>*

Can a City Commissioner vote on whether they have a "conflict of interest?" The Sunshine Ordinance Task Force (SOTF), whose mission is to champion and defend public access laws, has decided to test these and other questions.

Like many good movies, we will start in the middle, flash backward, and then forward. I will tell this story over a series of articles. The story has yet to play out. Two complaints are before the Ethics Commission. Bring the popcorn.

SOTF received two complaints, one against the SOTF Compliance and Amendments Committee and the other against the full SOTF. The full SOTF complaint is about how they write their agenda items. Both complaints have yet to be made public, but an agenda item refers to them both.

**On SOTF's December 7, 2022 agenda:**

## **6. A. Complaints Involving the SOTF:**

Development of procedures for handling a pending complaint naming a committee of the Sunshine Ordinance Task Force as the respondent, and potential consideration of standing

procedures when an SOTF committee is named as a party to a complaint. (*Discussion and Action*)

## **B. Complaints Involving the SOTF:**

Development of procedures for handling a pending complaint naming the entire Sunshine Ordinance Task Force as the respondent, and potential consideration of standing procedures when the entire SOTF is named as a party to a complaint. (*Discussion and Action*)

**6. A** “a pending complaint naming a committee of the Sunshine Ordinance Task Force as the respondent” is the SOTF Compliance and Amendments Committee.

### **Task Force discussion**

Members referred to these two complaints during the discussion without naming the SOTF committee, the people involved, or disclosing the details of the complaints. Member Schmidt noted he did not know any details of the complaints. It was unclear whether other members had any knowledge about of them either.

So, what did SOTF members do without seeing the complaints that they were taking action on?

“**Action:** Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructing the SOTF Administrator to refer the complainants to Administrative Code 67.35 (d) for information on how they may institute proceedings for enforcement with other entities....”

The motion PASSED by the following vote:

Ayes: 6 - Yankee, Wolfe, LaHood, Stein, Hyland, Wong

Noes: 2 - Schmidt, Padmanabhan

Absent: 1 - Hill

Note — SOTF’s action states "the complaints" which presumes the two "a pending complaints" (sic) in the agenda description.

**Apparently, SOTF thinks you can determine if you have a “conflict of interest” by simply voting on whether you have a “conflict of interest” or not and doing this by not seeing the complaints you are taking action on. If that vote had failed, would it mean the people who voted that they had a "conflict of interests" magically did not have a conflict?**

City and state laws outline “conflicts of interest” and what you are supposed to do if you have a “conflict of interest.” It is not voting on whether you have a “conflict of interest” or not. If you have a "conflict of interest," you are supposed to state what it is and recuse yourself from any discussion or vote on the matter. The San Francisco ethics laws outline this. It is a little ironic to vote if you have a “conflict of interest” on something when the ethics laws state you are not supposed to take part in any discussion or vote on matters where you have a “conflict of interest”.

How can the six “Ayes” SOTF members know whether they have a "conflict of interest" if they have not seen the complaints and understand the issues and the people involved? It is possible that the six SOTF members who voted “Aye” read the two complaints. SOTF violated several SF Sunshine and the Brown Act laws if that is the case. Except for attorney-client privilege, SOTF must make all records on matters for discussion on an agenda item available to the public before the meeting.

### **Documents for discussion must be available to the public**

**San Francisco Sunshine Ordinance Sec 67.9 (a)** “Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.”

So, SOTF may have violated other provisions of the Sunshine Ordinance and the Brown Act by referring to specific complaints in the agenda item and discussion but not making them public. Or is there a big loophole in the law that allows a policy body to "kind of" talk about documents and matters and then take action that affects them, letting no one see what is being affected? Does SOTF care about transparency? About the intent of public access laws? Are they setting a good example?

### **What is a Conflict of Interest?**

City and state ethics laws on “conflict of interest” can be simply categorized as financial, relationship, and personal. Having a “conflict of interest” is a situation where a public official's decisions are influenced by their personal interests that are established in law. For example, a public official with a financial interest in a decision can move something forward or block a matter. A public official could move to accept a contract or block other contracts so that it gives the contract where they have an interest in an advantage.

Both city and state ethics laws say a person must state what their conflict of interest is. When a city official or a group of city officials like SOTF members say they have a "conflict of interests" but do not state the conflicts, it leaves the door open to possibilities. There is no transparency. If you peel back the layers of the origins of the Compliance and Amendments Committee complaint, they revolve around benefit districts, city contracts with non-profits, the Department of Public Works money, and taxpayer assessments. The potential for financial or relationship ethics law violations is there. The SOTF members who voted "Aye" to a "conflict of interests" without stating it are basically saying I need to be investigated.

The “conflict of interest” stated must be defined in the laws. There is no vague or general “conflict of interest” defined in the laws. It would be problematic to allow an undefined "conflict of interest." Allowing officials to say they have a “conflict of interest” but not what it is can hide officials with actual “conflict of interest” from following ethics laws or can provide cover if they

are caught. Also, it would allow officials to dodge any vote they do not want to take simply by stating they have a "conflict of interest." Many scenarios can occur when you create loopholes in procedures and laws. Loopholes make procedures meaningless and laws less enforceable or unenforceable.

There is no "conflict of interest" law just because you sit on a commission with another person who is under scrutiny.

In this vote, the most obvious violation of "conflict of interest" law is that the two Compliance and Amendments Committee members, Committee Chair Lila LaHood and Member Jennifer Wong, voted not to have SOTF hear the complaint against them. Chair LaHood was primarily responsible for conducting the meeting cited in the complaint. It is questionable if Member Wong had any obligation to intervene or violated any law.

### **San Francisco Administrative Code (AC) SEC. 3.210. VOTING ON OWN CHARACTER OR CONDUCT.**

**(a) Prohibition.** No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.

**AC Sec. 3.210 (a)** is applicable here. We know they are city officers, and they voted on a government decision that prevented SOTF from hearing a complaint about their "own character or conduct." Did they know the complaint was against them? It is most likely the two of them knew that the complaint was against them because I tried to resolve some issues in the complaint with them. There were multiple exchanges of e-mails. One or both of them probably read the complaint.

### **Misleading Agenda**

SOTF Chair Yankee knew that the complaint was against the Compliance and Amendments Committee. As Chair, he has the power to set the agenda, the wording of agenda items, and the records attached to an agenda item. By wording an agenda item "a pending complaint naming a committee of SOTF," but intentionally failing to attach or otherwise make the complaint public, and allowing those two SOTF members to vote on what would be the action on a complaint against them, did he violate **AC SEC. 3.236. AIDING AND ABETTING.** *"No person shall knowingly and intentionally provide assistance to or otherwise aid or abet any other person in violating any of the provisions of this Chapter."*

The meeting provision language of the San Francisco Sunshine Ordinance and The Brown Act are written to the meeting body and not a person. The laws establish minimum standards for how meetings are to be conducted. Since the Chair conducts meetings, it is most likely the Chair violated the meeting provision of the San Francisco Sunshine Ordinance and The Brown Act.

### **Complaints against a Task Force member**

At their November 2022 meeting, SOTF members voted unanimously that they could hear complaints against one SOTF member. The action was a general policy statement. There was no mention of any "conflict of interest."

After the "conflict of interests" vote, I tried to get SOTF to reconsider. Via e-mail, I pointed out that the agenda item and action were specific to two complaints that were not attached to the agenda item or made public. How could they know they had a "conflict of interests"? By e-mail to each SOTF member, I pointed out that as city officials, they could get consultations from the Ethics Commission. I pointed out that the proper way to handle SOTF member "conflicts of interest" was to state what it was once a member knew they had a "conflict of interest" and to recuse themselves from the discussion and any vote on the matter. Also, some "conflicts of interest" had reporting requirements to the Ethics Commission. If enough task force members had a "conflict of interest" and recused themselves that the quorum dropped below the required minimum, then the matter could not be heard before that body and would have to be heard before a [different body](#).

[SOTF members were allowed to reconsider their December 7, 2022 vote on this matter at their next meeting on February 1, 2023, Item 12.](#)

12. **Complaints Involving the SOTF:** Potential consideration of rescinding the Sunshine Ordinance Task Force on Item #4B from its November 2, meeting and Items #6A & #6B from its December 7, 2022, regular meeting.

Chair Yankee provided a summary as to the reason the matter was scheduled and provided an opportunity for members of the SOTF to comment.

Public Comment:

None.

No Actions taken on Item No. 12.

There was no action. The SOTF members knowingly stood by their December 7, 2022 vote of "conflict of interests" without question. "Knowingly" or "willful" is important in any ethics complaint. "Conflict of interest" falls under the jurisdiction of the San Francisco Ethics Commission.

**The Conflict of Interest question remains unanswered**

Maybe SOTF is right? Maybe all boards and commissions, including the Board of Supervisors, can do what they have done. The Ethics Commission now has a chance to weigh in with its findings and a ruling.

I believe SOTF did not follow the intent of laws and procedures. If the Ethics Commission rules it is OK for officials to vote on whether they have a “conflict of interest” or not, it should be written into law. If the Ethics Commission rules that officials can determine that they have a conflict of interest with no knowledge of what they are making that determination on, it should be written into law. If the Ethics Commission rules that an official does not have to state what their “conflict of interest” is, it should be written into law. If any of the above is allowed, it will diminish government transparency and accountability, and erode of our democracy.

I give SOTF Chair Yankee kudos for listening to my points and scheduling the chance for SOTF to reconsider their "conflict of interests" vote. After the February 1, 2023 chance to reconsider the matter was over, Member Schmidt thanked me for trying to keep SOTF accountable.

Fundamental to democracy and accountability is transparency. The Sunshine Ordinance Task Force is one of the entities to enforce transparency. In the past, SOTF Chairs have stated that SOTF should be exemplary in transparency and following all open government laws and procedures. I believe SOTF is failing and is a facade. The facade is that because San Francisco has its own Sunshine Ordinance, which has greater requirements for transparency and a task force to enforce it, our city government is supposed to be more transparent than those cities that do not. There is little evidence that San Francisco is more transparent than other cities. Recent scandals would say we need more transparency to hold government officials accountable. The open government and ethics laws are there. They need to be followed and enforced.

To contact the Sunshine Ordinance Task Force go to [sotf@sfgov.org](mailto:sotf@sfgov.org). It meets on the first Wednesday of each month. Agendas are posted at least 72 hours before meetings <https://sfgov.org/sunshine/meetings/20>

*Sullivan runs the website <https://www.sfneighborhoods.net/> committed to giving power to citizens to promote transparency, democratic equality and to increase participation in their neighborhoods and government.*