

Date: March 12, 2008

Item No. 10  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

<input type="checkbox"/>	<b>Ordinance Sections 67.30 to 67.37</b>
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Completed by: Frank Darby

Date: March 6, 2008

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

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1  
2 **ARTICLE IV**  
3 **POLICY IMPLEMENTATION**

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4 ~~Sec. 67.30-34~~ The ~~Sunshine Ordinance Task Force~~ Sunshine Commission

5 ~~Sec. 67.31-35~~ Responsibility for Administration.

6 ~~Sec. 67.32-36~~ Provision of Services to Other Agencies; Sunshine Required.

7 ~~Sec. 67.33-37~~ Department Head Declaration.

8 ~~Sec. 67.34-38~~ Willful Failure Shall be Official Misconduct.

9 ~~Sec. 67.35-39~~ Enforcement Provisions.

10 ~~Sec. 67.36-40~~ Sunshine Ordinance Supersedes Other Local Laws.

11 ~~Sec. 67.37-41~~ Severability.

12 *Sec. 67A.1.* Prohibiting the use of Cell Phone, Pagers and Similar Sound-Producing  
Electrical Devices at and During Public Meetings

13  
14 **SECTION 67.3034. THE SUNSHINE ORDINANCE TASK FORCE SUNSHINE**  
15 **COMMISSION**

16 (a) There is hereby established a task force to be known as the Sunshine  
17 ~~Ordinance Task Force~~ Sunshine Commission consisting of eleven voting members appointed  
18 by the Board of Supervisors. All members must have experience and/or demonstrated  
19 interest in the issues of citizen access and participation in local government. Two members  
20 shall be appointed from individuals whose names have been submitted by the local chapter of  
21 the Society of Professional Journalists, one of whom shall be an attorney and one of whom  
22 shall be a local journalist. One member shall be appointed from the press or electronic media.  
23 One member shall be appointed from individuals whose names have been submitted by the  
24 local chapter of the League of Women Voters. Four members shall be members of the public  
25 who have demonstrated interest in or have experience in the issues of citizen access and

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1 participation in local government. Two members shall be members of the public experienced  
2 in ~~consumer advocacy~~obtaining public information from government agencies. One member  
3 shall be a journalist from a racial/ethnic-minority-owned news organization and shall be  
4 appointed from individuals whose names have been submitted by New California- America  
5 Media. ~~At all times the task force~~ The task force COMMISSION shall include at least one  
6 member who shall be a member of the public with a disability that meets the definition of  
7 disabled under the Federal Americans with Disabilities Act and who is physically handicapped  
8 and who has demonstrated interest in citizen access and participation in local government.  
9 The Mayor or his or her designee, ~~and~~ the Clerk of the Board of Supervisors or his or her  
10 designee, and a designated representative of the Youth Commission, shall serve as non-  
11 voting members of the ~~task force~~ COMMISSION. The City Attorney shall serve as legal  
12 advisor to the ~~task force~~ COMMISSION. The ~~Sunshine Ordinance Task Force~~ COMMISSION  
13 shall, at its request, have assigned to ~~in it~~ an attorney from within the City Attorney's Office or  
14 other appropriate City ~~Office~~ office, who is experienced and well informed in public-access law  
15 matters. This attorney shall serve solely as a legal advisor and advocate to the ~~Task Force~~  
16 COMMISSION and an ethical wall will be maintained between the work of this attorney on  
17 behalf of the ~~Task Force~~ COMMISSION and any person or ~~Office~~ office that the ~~Task Force~~  
18 COMMISSION determines may have a conflict of interest with regard to the matters being  
19 handled by the attorney.

20 (b) The term of each appointive member shall be two years ~~unless earlier removed~~  
21 ~~by the Board of Supervisors~~. In the event of such removal or in the event a vacancy otherwise  
22 occurs during the term of office of any appointive member, a successor shall be appointed for  
23 the unexpired term of the office vacated in a manner similar to that described herein for the  
24 initial members. The ~~task force~~ COMMISSION shall elect a chair and vice chair from among  
25

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1 its appointive members. The term of office as for the chair and vice chair shall be one year.  
2 Members of the ~~task force~~ COMMISSION shall serve without compensation.

3 (c) The ~~task force~~ COMMISSION shall advise the Board of Supervisors and provide  
4 ~~information to other City departments, the office of the mayor and other City departments on~~  
5 appropriate ways in which to implement this chapter. The ~~task force~~ COMMISSION shall  
6 develop appropriate goals to ensure practical and timely implementation of this chapter. The  
7 ~~task force~~ COMMISSION shall propose to the Board of Supervisors amendments to this  
8 chapter and solicit advice from City officials, employees and members of the public on ways to  
9 improved the Ordinance. The ~~task force~~ COMMISSION shall report to the Board of  
10 Supervisors at least once annually on any practical or policy problems encountered in the  
11 administration of this chapter. The ~~Task Force~~ COMMISSION shall receive and review the  
12 annual reports of the Supervisor(s) of Public Records and Public Forums, and may request  
13 additional reports or information as it deems necessary. The ~~Task Force~~ COMMISSION shall  
14 is empowered to make referrals to a municipal office or any other appropriate body or official  
15 including the District Attorney or the State Attorney General with enforcement power under  
16 this ordinance or under the California Public Records Act and the Brown Act whenever it  
17 concludes that any person has violated any provisions of this ordinance or the Acts. The ~~Task~~  
18 ~~Force~~ COMMISSION shall, from time to time as it sees fit, issue public reports evaluating  
19 compliance with this ordinance and related California laws by the City or any  
20 ~~Department~~ department, Office office, or Official official thereof.

21 (d) ~~The Task Force~~ COMMISSION shall conduct administrative hearings on  
22 complaints of made by members of the public for alleged violations of the public meeting or  
23 public records provisions of the Ordinance, violations of the State California Public Records  
24 Act, or the State Brown Act governing public meetings. The Task Force COMMISSION may  
25 issue Orders of Determination following the hearing on a particular complaint. An Order of

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1 ~~Determination finding a violation of the Ordinance, the California Public Records Act or the~~  
2 ~~Brown Act above state laws shall be evidence of such violation in any other administrative or~~  
3 ~~judicial proceeding~~

4 ~~(e) — In the event that the Task Force COMMISSION issues an Order of~~  
5 ~~Determination finding that any person or entity covered by the Sunshine Ordinance violated~~  
6 ~~the Ordinance in handling public meetings or release of public records, the Task Force~~  
7 ~~COMMISSION may require that entity or the entity to which the person or entity who has~~  
8 ~~violated the ordinance reports to schedule at its next regularly scheduled meeting the Order of~~  
9 ~~Determination for its discussion and response.~~

10 ~~(d) — In addition to the powers specified above, the Task Force shall possess such~~  
11 ~~powers as the Board of Supervisors may confer upon it by ordinance or as the People of San~~  
12 ~~Francisco shall confer upon it by initiative.~~

13 ~~(f) — Unless otherwise prohibited by state law or other existing local ordinance, the~~  
14 ~~Task Force COMMISSION may subpoena witnesses, compel their attendance and testimony,~~  
15 ~~administer oaths and affirmation, take evidence and require by subpoena the production of~~  
16 ~~any books, papers, records or other items material to the performance of the Task Force's~~  
17 ~~COMMISSION'S duties or exercise of its powers.~~

18 ~~(g) — (1) — In the event the Task Force COMMISSION finds a serious and willful~~  
19 ~~violation of the Ordinance, the Task Force COMMISSION by a 2/3 vote of the entire body may~~  
20 ~~seek appoint outside counsel to prosecute the violation(s) of the Ordinance in the Civil Courts~~  
21 ~~to the extent permitted by the City Charter.~~

22 ~~(2) — The amount of expenditure shall be for outside counsel governed by the budget~~  
23 ~~provisions of the City Charter and in no event shall the expenditure to prosecute these cases~~  
24 ~~shall be no more than \$50,000.00 per fiscal year. The COMMISSION shall adopt bylaws to~~  
25

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1 provide oversight of appointed counsel and expenditures. [Subsection 67.30 (d), (e), (f), and  
2 (g) was moved to new Section 67.35]

3       ~~(f)~~ ~~(h)~~(d)       The Task Force COMMISSION shall approve by-laws specifying a  
4 general schedule for meetings, requirements for attendance by Task Force COMMISSION  
5 members, and procedures and criteria for removing members for non-attendance.

6       ~~(g)~~ ~~(i)~~(e)       In addition to the powers specified above, the Task Force COMMISSION  
7 shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as  
8 the People of San Francisco shall confer upon it by initiative. (Added by Ord. 265-93, App.  
9 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96,  
10 App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

11  
12 **SECTION 67.35. HEARINGS AND ORDERS OF DETERMINATION.**

13       (a)       The COMMISSION shall conduct administrative hearings on complaints of  
14 alleged violations of the public meeting or public records provisions of the Ordinance,  
15 violations of the California Public Records Act, or the Brown Act. The COMMISSION may  
16 issue Orders of Determination following the hearing on a particular complaint. An Order of  
17 Determination finding a violation of the Ordinance, the California Public Records Act or the  
18 Brown Act shall be evidence of such violation in any other administrative or judicial  
19 proceeding, and factual findings made during the hearing shall be reviewed for abuse of  
20 discretion.

21       (b)       In the event that the COMMISSION issues an Order of Determination finding  
22 that any person or entity covered by the Sunshine Ordinance violated the Ordinance in  
23 handling public meetings or release of public records, the COMMISSION may require the  
24 governing entity to which the person or entity who has violated the ordinance reports to  
25

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1 schedule at the governing entity's next regularly scheduled meeting the Order of  
2 Determination for its discussion and response.

3  
4 (c) Unless otherwise prohibited by state law or other existing local ordinance, the  
5 COMMISSION may subpoena witnesses, compel their attendance and testimony, administer  
6 oaths and affirmation, take evidence and require by subpoena the production of any books,  
7 papers, records or other items material to the performance of the COMMISSION'S duties or  
8 exercise of its powers.

9 (d) (1) In the event the COMMISSION finds a serious and willful violation of the  
10 Ordinance, the COMMISSION by a two-third vote of the entire body may appoint outside  
11 counsel to prosecute the violation(s) of the Ordinance in the Civil Courts to the extent  
12 permitted by the City Charter.

13 (2) The amount of expenditure for outside counsel to prosecute these cases shall  
14 be no more than \$50,000per fiscal year or a greater amount if authorized by the Board of  
15 Supervisors. The COMMISSION shall include it its bylaws selection criteria and oversight of  
16 appointed counsel and expenditures.

17  
18 **SECTION 67.3436. RESPONSIBILITY FOR ADMINISTRATION.**

19 The Mayor shall administer and coordinate the implementation of the provisions of this  
20 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~  
21 ~~the implementation of the provisions of this chapter~~ and for departments under the control of  
22 boards and commissions appointed by the Mayor. Elected officers shall administer and  
23 coordinate the implementation of the provisions of this chapter for departments under their  
24 respective control. The Clerk of the Board of Supervisors shall provide ~~a full-time staff~~ at least  
25 one full time staff person to perform administrative duties for the ~~Sunshine Ordinance Task~~

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1 ~~Force~~ Sunshine Commission and to assist any person in gaining access to public meetings or  
2 public information. At least one full time staff person shall be the Administrator of the  
3 COMMISSION and shall have no other duties. The Clerk of the Board of Supervisors shall  
4 provide ~~that the~~ staff persons with whatever facilities and equipment are necessary to perform  
5 said their duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App.  
6 7/12/96; Proposition G, 11/2/99)

7

8 **SECTION 67.3237. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE**  
9 **REQUIRED.**

10 ~~(a)~~ It is the policy of the City and County of San Francisco to ensure opportunities for  
11 informed civic participation embodied in this Ordinance to all local, state, regional and federal  
12 agencies and institutions with which it maintains continuing legal and political relationships.  
13 Officers, agents and other representatives of the City shall continually, consistently and  
14 assertively work to seek commitments to enact open meetings, public information and citizen  
15 comment policies by these agencies and institutions, including but not limited to the Presidio  
16 Trust, the San Francisco Unified School District, the San Francisco Community College  
17 District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the  
18 Treasure Island Development Authority, the San Francisco Redevelopment Authority and the  
19 University of California campuses operating within the City. To the extent not expressly  
20 prohibited by law, copies of all written communications with the above identified entities and  
21 any City employee, officer, agents, ~~or and~~ and/or representative, shall be accessible as public  
22 records. To the extent not expressly prohibited by law, any meeting of the governing body of  
23 any such agency and institution at which City officers, agents or representatives are present in  
24 their official capacities shall be open to the public, and this provision cannot be waived by any  
25 City officer, agent or representative. The ~~city~~ City shall give no subsidy in money, tax



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1 abatements, land, or services to any ~~private for profit~~ entity unless that private entity agrees in  
2 writing to ~~provide~~provides the city ~~City~~ with financial projections (including profit and loss  
3 figures), and annual audited financial statements for the project or development thereafter, for  
4 the ~~project upon for~~ which the subsidy is based proposed or provided and all such projections  
5 and financial statements shall be public records that must be disclosed. (Added by Proposition  
6 G, 11/2/99)

7 ~~(b) — Compliance with the Ordinance is a condition precedent to the execution of any~~  
8 ~~new or renewed contract made between the City and any other entity including but not limited~~  
9 ~~to non-profit corporations, where the City issues payments totaling \$100,000.00 or more in~~  
10 ~~money or in-kind consideration.~~

11  
12 **SECTION 67.3338. DEPARTMENT HEAD OPEN GOVERNMENT DECLARATION.**

13 All City department heads and all City management employees and all employees or  
14 officials who are required to sign an affidavit of financial interest with the Ethics Commission  
15 shall sign an annual affidavit or declaration stating under penalty of perjury that they have  
16 read the Sunshine Ordinance and have attended or will attend when next offered, a training  
17 session on the Sunshine Ordinance, to be held at least once annually. The affidavit or  
18 declarations shall be maintained by the Ethics Commission and shall be available as a public  
19 record. Annual training shall be provided by the San Francisco City Attorney's Office in  
20 consultation with the ~~with the assistance of the Sunshine Ordinance Task Force~~ Sunshine  
21 Commission. (Added by Proposition G, 11/2/99) All material and training plans shall be  
22 approved by the Sunshine Commission annually.

23  
24 **SECTION 67.3439. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

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1           The willful failure of any ~~elected official, department head, or other managerial city~~  
2 ~~employee to person or entity to~~ discharge any duties imposed by the Sunshine Ordinance, the  
3 Brown Act or the California Public Records Act shall be deemed official misconduct. If the  
4 Commission makes a determination that any person or entity has willfully failed to discharge  
5 any duty imposed by the Ordinance then the Commission shall refer with written findings, the  
6 matter to the Ethics Commission, Board of Supervisors, District Attorney, and/or the State  
7 Attorney General for investigation and enforcement as appropriate. ~~Complaints involving~~  
8 ~~allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by~~  
9 ~~elected officials or department heads of the City and County of San Francisco shall be~~  
10 ~~handled by the Ethics Commission.~~ (Added by Proposition G, 11/2/99)

11  
12 **SECTION 67.3540. ENFORCEMENT PROVISIONS.**

13           (a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ  
14 of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to  
15 receive a copy of any public record or class of public records under this Ordinance or to  
16 enforce his or her right to attend any meeting required under this Ordinance to be open, or to  
17 compel such meeting to be open.

18           (b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the  
19 prevailing party in an action brought to enforce this Ordinance.

20           (c) If a court finds that an action filed pursuant to this section is frivolous, the City and  
21 County may assert its rights to be paid its reasonable attorneys' fees and costs.

22           (d) Any person may institute proceedings for enforcement and penalties under this act  
23 in any court of competent jurisdiction or before the Ethics Commission if enforcement action is  
24 not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G,  
25 11/2/99)

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**SECTION 67.3641. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

**SECTION 67.3742. SEVERABILITY.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**SECTION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.**

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the ~~remove~~removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155. App. 12/22/2000)

- Using the list of provisions provided, please identify which provision(s) of the Ordinance have caused you difficulty. Include the Admin Code number of each; a description of the problem(s) it has caused; and how it could be amended or eliminated to achieve remedy.

Admin Code Sec.	Description of Problem	Amended or eliminated to achieve remedy (describe amendment)
67.3(b)(1)-(4) Office of the City Attorney	<p>Definition of Meeting</p> <p>This subsection provides that a meeting occurs whenever there is "[a] congregation of a majority of the members of a policy body at the same time and place." This is a broad definition that sometimes must be interpreted nonliterally to avoid absurd results. For instance, if a majority of commission members ride the elevator together, the literal reading of this subsection would render that event a meeting. Compare the Brown Act, which defines a "meeting" to include a congregation of the majority of the members of a body at the same time and place "to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." (Cal. Gov. Code §54952.2(a).)</p>	<p>Consider reviewing to determine whether any purpose is served by using language that differs from the Brown Act. Where there is none, amend to conform to the Brown Act.</p>
Section 67.3(b)(1) Office of the City Attorney	<p>This subsection provides that a meeting occurs whenever there is "[a] congregation of a majority of the members of a policy body at the same time and place." This is a broad definition that sometimes must be interpreted nonliterally to avoid absurd results. For instance, if a majority of commission members ride the elevator together, the literal reading of this subsection would render that event a meeting. Compare the Brown Act, which defines a "meeting" to include a congregation of the majority of the members of a body at the same time and place "to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." (Cal. Gov. Code §54952.2(a).)</p>	<p>Consider conforming the current definition to that used in the Brown Act.</p>
Section 67.3(b)(4)(C-1) Office of the City Attorney	<p>Definition of Meeting – Standing Committees</p> <p>This subsection allows a majority of a policy body to attend a standing committee meeting as observers without transforming the committee meeting into a meeting of the full policy body. The subsection was added to the Ordinance by the Board of Supervisors in 1998 but not included – apparently by mistake – in Proposition G.</p>	<p>Consider renumbering the subsection to indicate more clearly that it remains part of the Ordinance.</p>
67.3(d) (c) (1) Municipal Transit Authority (MTA)	<p>Definitions: Passive Meeting Body</p>	<p>This section defines passive meeting bodies and how they are created. The section should be amended include advisory bodies that are created by City Charter.</p>

<p>Sections 67.4(a)(5) and 67.4(a)(5) of the City Attorney</p> <p>Section 67.3(c)(2) of the City Attorney</p>	<p>Dual Definitions of Passive Meeting Body</p> <p>Both of these subsections define "passive meeting" bodies, but with different wording. Combining the definition of and rules for passive meeting bodies into one section would promote the internal consistency of the Ordinance, assist departments in complying with its requirements, and avoid confusion.</p> <p>Definition of Passive Meeting Body – Group Meeting to Advise City Officials</p> <p>This subsection includes in the definition of "passive meeting body" "[a]ny group that meets to discuss with or advise the Mayor any Department Head on fiscal, economic, or policy issues." This subsection is worded so broadly that it may conflict with the constitutional rights to privacy, to association, to petition government, and to engage in anonymous political speech.</p>	<p>Consider deleting Section 67.4(a)(5) or combining it with Section 67.3(c).</p> <p>Amend this section to refine the text to ameliorate this potential conflict with constitutional rights.</p>
<p>67.6(e) Commission on the Environment</p> <p>Section 67.6(e) Office of the City Attorney</p>	<p>67.6(e) references 67.6(d)(4) which does not exist</p> <p>Incorrect Reference to Passive Meeting Bodies Instead of Advisory Bodies</p> <p>Under Section 67.4(a)(1), gatherings of passive meeting bodies need not be formally noticed, except on the City's website whenever possible. But Section 67.6(e) states that meetings of passive meeting bodies as specified in Section 67.6(d)(4) shall be preceded by 72 hours notice. Thus, this subsection contradicts other provisions of the Ordinance. (Note also that the reference to Section 67.6(d)(4) is erroneous because no such section exists.) The legislative history in fact suggests that the drafters meant to refer to "advisory bodies." But changing this subsection to apply to advisory bodies also does not make sense. Advisory bodies may be constituted as either policy bodies or passive meeting bodies. Other provisions of the Ordinance provide the notice and agenda requirements for both bodies. The provisions of this section would either contradict or repeat the requirements set forth elsewhere in the Ordinance.</p>	<p>Should this be a reference to 67.3(d)(4)?</p> <p>Consider deleting Section 67.6(e)</p>
<p>Possible Addition to Section 67.6 Office of the City Attorney</p>	<p>Policy Body's First Meeting</p> <p>The inaugural meeting of a policy body does not neatly qualify as either a regular or special meeting under either State or local law. Different rules apply to regular and special meetings (the former must allow general public comment, but not the latter; the former may add agenda items in some circumstances, but not the latter); newly created policy body does not yet have a regular meeting</p>	<p>Consider designating the inaugural meeting of a new policy body as a regular meeting, possibly with a requirement that the body provide notice greater than 72 hours.</p>

	<p>place and therefore its inaugural meeting arguably should be considered a special meeting. But one would normally consider the body's first meeting "regular" for purposes of providing general public comment. Another issue arises under Section 67.6 which requires the meetings of policy bodies held at an "alternate location" to be noticed at least 15 days in advance. It is unclear whether the 15 day notice requirement is intended to apply to a policy body's first meeting since the body does not yet have a regular meeting place that is being changed.</p>	
<p>67.8(3) 67.8-1(b) 67.12(3) MTA</p> <p>Section 67.8 Office of the City Attorney</p>	<p>Agenda Disclosures; Closed Sessions Additional Requirements for Closed Sessions Disclosure of Closed Session Discussions and Actions</p> <p>Agenda Requirements for Closed Sessions This section establishes specific agenda requirements for the different types of closed sessions. As previously mentioned, it parallels the section in the Brown Act prescribing "safe harbor" agenda descriptions for closed sessions. (Cal. Gov. Code §54954.5.) But the parallel is not exact. There is overlap and duplication, but there are also differences between the requirements of this section and the "safe harbor" provisions of the Brown Act.</p> <p>Requirement to Maintain Meeting Tapes Section 67.14(b) requires boards and commissions enumerated in the Charter to audiotape meetings and further provides that audio and video recordings of meetings "shall not be erased or destroyed." Section 67.8-1(a) also addresses audio and video recordings of meetings, although that section applies to closed sessions of all policy bodies. Section 67.8-1(a) requires that closed session recordings be "retained for at least TEN years, or permanently where technologically and economically feasible." [Emphasis in original.] Thus, the two sections contain different standards for how long departments must maintain recordings of meetings.</p> <p>Tapes of Closed Sessions for Anticipated Litigation This subsection requires departments to make publicly available, when requested, closed session tapes of meetings pertaining to anticipated litigation two years after the meeting if no litigation has been filed. In some instances, two years may be too short because the statute of limitations applicable to the anticipated litigation may not have expired.</p>	<p>These three sections discuss notice requirements for settlements or existing litigation; however, each section requires different information to be listed. It may be remedied by requiring consistent information.</p> <p>Consider eliminating all references to required disclosure for closed sessions except where the Brown Act does not require adequate disclosures. As to those situations, the Ordinance could specify the additional disclosure requirements.</p> <p>Consider amending these sections so that the retention standards are the same. The Task Force may also want to consider the practical "life span" of audio and video recordings when setting the retention standards.</p> <p>Consider extending the period of time for which these tapes may be withheld</p>
<p>Sections 67.8-1(a) and 67.14(b) Office of the City Attorney</p> <p>Section 67.8-1</p>	<p>Agendas and Related Materials: Public Records This section requires materials intended to be distributed to a policy body be given to others upon request, whether or not the material has been distributed to the policy body. This places staff in a difficult position because it requires them to provide</p>	<p>This should be remedied to require the distribution of materials to the public when the materials are provided to the policy body.</p>

Section 67.10(a) Office of the City Attorney	<p>information to the public, including the press, before it has been provided to the governing body of the Department.</p> <p>Closed Session for Threats to Security This subsection authorizes a closed session with the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to security of public buildings or a threat to the public's right of access to public services or public facilities. The Brown Act was amended after September 11, 2001 to address closed sessions for security-related reasons and, as a result, the language of the Brown Act is broader in scope than Section 67.10(a). (Cal. Government Code §54957(a).) The Brown Act provision differs from Section 67.10(a) by, first, allowing the closed session to be held with the agency counsel or a security consultant or security operations manager and, second, allowing consideration of matters posing a threat to the security of essential public services including water, drinking water, wastewater treatment, natural gas service and electric service.</p>	Consider amending this section to conform to Section 54957(a) of the Brown Act.
Section 67.12(b)(3)	<p>Settlement Agreements Available 10 Days Before Meeting to Approve This subsection requires written settlement agreements and documents attached to or referenced in them to be publicly available at least 10 days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program "or otherwise acting other than to pay an amount of money less than \$50,000" [emphasis added]. The term "otherwise acting" is unclear. What other types of settlement agreements is it intended to cover?</p>	Consider either clarifying what other types of settlement agreements are meant to be included, or deleting the phrase "otherwise acting other than to pay an amount of money less than \$50,000" and substituting "or payment of \$50,000 or more."
67.14(b) MTA	<p>Tape Recording, Filming and Still Photography Audiotapes currently kept forever. Because the tape will deteriorate over time and will eventually disintegrate, a reasonable time limit should be established. The MTA receives request to review a tape approximately once a year. Those requests are made within a month of the meeting date.</p>	We suggest at two-year time limit.
67.16 Department of Building Inspection (DBI)	<p>That the City is still requiring meeting minutes when meetings are tape recorded and broadcasted on SFGTV.</p>	Eliminate the requirement to publish minutes due to other mediums that are now available to the public. This would save considerable staff time and paper.
Article III Department of Public Works (DPW)	<p>Public Information and Records Requests The Department's experience is that public records requests are used most frequently by contractors and lawyers using it for their business gain or as a shortcut for discovery. We feel that much of the reality of public records requests is that they are less about open government and more about private entity or person using the open government laws to gain a business or litigation advantage. One example of a request that was received was from a law firm</p>	<p>We do not believe that these types of requests, although lawful, are in the spirit of the Sunshine Ordinance. They are not for good government purposes. We respectfully request that the Sunshine Task Force take these issues under consideration with respect to such matters as provisions governing fees. As you are aware, Section 67.28(c) only allows the Department to recover 10¢ per page, well below our costs to produce and copy these requested documents. Perhaps other aspects of the Sunshine Ordinance should be reconsidered as well given the reality that private entities and persons use the open government laws for their business gain or litigation advantage.</p>

	<p>requesting copies of documents for one of our projects. Our Department identified 21 banker boxes related to their request, containing approximately 2,500 – 5,500 documents each. Since the request was for copies, the Department requested a deposit of \$8,400 before we copied all of the documents. We estimated that there were approximately 4,000 documents per box (21 boxes x 4,000 x .10¢/page). We also invited the requestor to view the documents before they were copied or suggested that they narrow down their request, if they wished. The law firm responded by narrowing their request for copies to sixteen boxes. The Department then requested a deposit of \$6,400 (16 boxes x 4,000 x .10¢/page) prior to photocopying the documents and, once again, invited the requestor to come in to inspect the documents before they were copied. The law firm never provided the deposit and never contacted us to view the documents.</p>	
<p>Section 67.21 Office of the City Attorney</p>	<p><b>Electronic Information</b> The provisions of the Sunshine Ordinance and the Public Records Act contain overlapping, but somewhat different, requirements with respect to electronic information.</p> <p>The Public Records Act provides that a person who requests information stored in electronic form has the right to it in any format that has been used by the agency to create copies for its own use or for provision to other agencies. The Act further provides that with respect to requests in different formats, the requestor must bear the cost of programming and computer services necessary to produce a copy when (i) the record is one that is produced only at otherwise regularly scheduled intervals or (ii) production of the information would require data compilation, extraction, or programming.</p> <p>The Ordinance provides that information stored electronically shall be made available in any form "which is available to or easily generated" by the department. Sec. 67.21(i). Section 67.21(j) further provides that "nothing in this section shall require a department to program or reprogram a computer to respond to a request for information .....</p>	
<p>67.21(a) Library Commission</p>	<p><b>Process for Gaining Access to Public Records</b> Responding to drop-in requests - the Sunshine Ordinance requires "inspection and examination during normal times/hours of operation without an appointment." Some members of the public insist on immediate service (1) to inspect and (2) to obtain copies after inspection without regard to other responsibilities of city staff. Sometimes these demands are the result of honest misunderstandings and sometimes these access provisions appear to be used specifically to harass city employees who must juggle many responsibilities.</p>	<p>Consider reviewing the provisions of the Ordinance covering electronic information in light of those of the Public Records Act and amending them to make the Ordinance conform with State law.</p> <p>The Library recognizes that prompt access to public records is an important goal of the Sunshine Ordinance. However "without unreasonable delay" should be clarified so that it is clear that the public does not have a right to insist that the department immediately produce public records which require more than minimal search time to locate, or that staff make instantaneous copies of inspected records, particularly when many pages and files are involved.</p>



<p>3.67.21(b) Library Commission</p>	<p>Process for Gaining Access to Public Records Oral requests - the Sunshine Ordinance recognizes the right to make an ORAL request for public records. While this can be important where a record request is simple and easily satisfied, the Library appreciates that the Task Force has usually required requesters to have made a written request before undertaking an enforcement action, so that the nature and extent of the request is clear.</p>	<p>The Ordinance should require that a request must be placed in writing and the department be allowed the full response period before it may be the basis for a SOTF complaint for "withholding" or "untimely" response.</p>
<p>67.21 67.25 Library Commission</p>	<p>Process for Gaining Access to Public Records immediacy of Response Multiple Requests for the Same Records – These sections of the Ordinance should clearly state that an individual is NOT entitled to make multiple requests for the same records. Responding to public records requests is an important, but costly obligation for City Departments because the requesting party ordinarily only pays nominal costs if he or she desires copies and nothing if he or she only wishes to inspect records. Therefore some members of the public find it more convenient to make multiple requests for the same materials rather than to keep track of copies of records previously provided to them.</p>	<p>The Ordinance should not permit multiple "bites" of the same "apple." Instead it should clearly state that individuals may update their requests so that they may obtain the most recent responsive records available after a prior request, but that departments do not need to locate and re-produce the same responsive records again and again to the same, or an affiliated, requesting party.</p>
<p>67.21(e) Library Commission</p>	<p>Process for Gaining Access to Public Records SOTF petitions and public hearings. In disputes about record requests, the SOTF should first solicit written explanations from City departments and reserve public hearings for situations where the matter cannot be resolved in writing. SOTF hearings are notoriously long and expensive requiring departments to pay overtime where the City can present its justification in writing. The existing public hearing process more often devolves into an adversarial relationship than it does a reasoned inquiry about how the department responded and whether the departmental response complied with the law. Certainly City employees should never disregard the public's right of access to non-exempt public records. But the Sunshine Ordinance does not do away with the many laws, which allow or require withholding, nor does it require departments to create documents just because members of the public believe that a certain document would be nice to have.</p>	<p>A written explanation would enable the SOTF to exercise its role in a more analytic fashion so that it could become an authority that departments would approach for compliance advice before requests devolve into polarized disputes. The Sunshine Ordinance could easily be amended to limit public hearings to situations where a less formal, written process fails. Alternatively, the SOTF could require complaining parties to consult with the Supervisor of Records before scheduling a public hearing, and limit appeals to the SOTF to situations where departments do not adhere to a Supervisor of Records written determination.</p>
<p>67.23(a) (b)</p>	<p>Public Review File – Policy Body Communications</p>	<p>This section requires a 3-day "Communications Received" file and a 30-day "Communications Received" file to be kept. This is duplicative and since very few members of the public access this file, we recommend the elimination of the 3-day "Communications Received" file and maintaining the 30-day "Communications Received" file.</p>
<p>67.24 Dept on the Status Of Women</p>	<p>Public Information that Must be Disclosed I am not always sure what is open to the public and have to contact our City Attorney with questions.</p>	<p>More examples would clarify the section.</p>
<p>67.24(e) MTA</p>	<p>Public Information that Must be Disclosed Public Information related to Contracts, Bids and Proposals</p>	<p>The relevant materials should be released once a contract has been awarded to avoid giving an unfair advantage to competitors and avoid risk of increased cost to the city.</p>

	<p>This section requires that the evaluation forms, score sheets and any other documents used in an RFP process to be available for review after the evaluation of an RFP has been completed.</p>		
67.25 Fire Department	<p>Immediacy of Response Misuse of "Immediate Disclosure" Request</p>	<p>Requester must state valid reason why request is immediate, amend 67.25(c)</p>	
67.25 DBI	<p>Government Code section 6456.1 referenced in (b) is incorrect.</p>	<p>The correct reference is Government Code section 5243(c).</p>	
67.25(a) Library Commission	<p>Immediacy of Response Although the current ordinance suggest that "more extensive or demanding requests are more appropriate for the maximum deadlines," the ordinance has no disincentive for a requester to make every request an immediate disclosure request, whether or not the request is actually "simple, routine or otherwise readily answerable."</p>	<p>Since section 67.25(c) of the ordinance requires records to be produced "as soon as reasonable possible," subsection (a) should be clearly limited to situations where a single document or report is readily identifiable and maintained in active files. The Ordinance should make explicit that immediate disclosure requests are not available for the general subject matter records searches frequently requested, such as "give me all records relating to employee comp time for the past ten years."</p>	
Section 67.25 Office of the City Attorney	<p>Immediate Disclosure Requests; Electronic Information (1) Subsection (a) of this Section requires that departments, when they receive written requests marked "Immediate Disclosure Request," respond to the request by the close of business the next day. Subsection (a) states that the "immediate disclosure" requirement applies "[n]otwithstanding the 10-day period . . . permitted in Government Code Section 6256 . . ." Government Code Section 6256 was repealed in 1998. The drafters apparently intended to refer to Government Code Section 6253(c). (2) Subsection (b) provides that the department may, under specified circumstances, notify the requester of the need to extend the time to respond by "10 days as provided in Government Code Section 6456.1 . . ." The reference to Section 6456.1 seems to be a mistaken reference to Section 6256.1, which addressed extensions of time. To further complicate matters, the Legislature repealed Section 6256.1 in 1998 and in its place added Section 6253(c). Former Section 6256.1 permitted an extension of time of not more than "10 working days"; Section 6253(c) permits an extension of not more than "14 days." (3) The Ordinance does not address the issue of a department's duty to respond by the close of business day to a request received after 5:00 p.m. (4) Subsection (b) provides three reasons that warrant the "10-day" extension: the voluminous nature of the information requested, its location in a remote storage facility, or the need to consult with another interested department. The Legislature amended the Public Records Act after 1999, when the voters approved amendments to the Sunshine Ordinance, to provide a fourth reason for an extension: "[t]he need to compile data, to write programming</p>	<p>(1) Consider amending subsection (a) to reference Government Code Section 6253(c) rather than Section 6256.  (2) Consider amending subsection (b) to reference Government Code Section 6253(c), rather than Section 6456.1.  (3) Consider including a provision addressing a department's receipt of an immediate disclosure request after 5:00 p.m.  (4) Consider adding to the reasons for an extension of time for immediate disclosure requests the fourth reason for extensions of time permitted under the Public Records Act: the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. (See, also, the discussion above of Section 67.21 regarding issues relating to electronic information.)</p>	

	<p>language or a computer program, or to construct a computer report to extract data." (Cal. Gov. Code §6253(c)(4).)</p>	
67.27 Dept of Status of Women	<p>Justification of Withholding I do not fully understand the components of this section.</p>	<p>Technical assistance provided.</p>
67.29 Dept of Status of Women	<p>Index of Records I would like to have technical assistance provided to make sure that we are meeting the full components of this section.</p>	<p>Please see my explanation under description of problem.</p>
Section 67.35(d) Office of the City Attorney	<p>Enforcement Provisions This subsection provides that any person "may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed."  This subsection raises two questions. First, this provision seems to preclude a person who believes that a City official or employee has violated the Ordinance from filing a lawsuit or a complaint with the Ethics Commission until 40 days has passed from the time that the complainant "filed" a "complaint." If that is the intent, to what department or agency must the "complaint" be filed? The commission or department in question? The Sunshine Ordinance Task Force? Second, the scope of the Ethics Commission's jurisdiction is unclear. Is its role limited to determining whether the official or employee's actions constitute official misconduct? May it compel the official or employee to take action or refrain from taking action?</p>	<p>Consider clarifying (a) whether citizens must first pursue a complaint with a City agency before filing a complaint with the Ethics Commission or suing in court for violations of the Ordinance and, if so, (b) with which City agency or agencies the citizen must file the complaint. (c) In addition, consider clarifying the scope of the Ethics Commission's jurisdiction.</p>
Admin Code Section 76.24(c) Police Department	<p>Personnel Information "None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:  State law conflicts with this provision when it comes to dealing with peace officer personnel records, as opposed to records of other city employees.  Under California law, Penal Code Section 832.7 and 832.8, states that peace officer personnel records or information obtained from these records "are confidential and shall not be disclosed."  <b>832.7 Personnel records; confidentiality; discovery; exceptions; complaint disposition notification</b>  (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant</p>	<p>Perhaps Admin Code Sec. 76.24(c) could be amended to read clearer. Here is a suggested revision:  "None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), unless so specified by State law.</p>

	<p>to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.</p> <p>Penal Code Section 832.8 defines a "personnel records" as "any file maintained under an individual's name" that contains "personal data."</p>	
	<p><b>832.8 Personnel records</b></p> <p>As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:</p>	
	<p>(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.</p>	
	<p>(b) Medical history.</p>	
	<p>(c) Election of employee benefits.</p>	
	<p>(d) Employee advancement, appraisal, or discipline.</p>	
	<p>(e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.</p>	
	<p>(f) Any other information the disclosure of which would constitute an unwarranted invasion of privacy</p>	
	<p>The California State Legislature enacted these sections after deciding that peace officers, due to the nature of their work, are to be afforded greater privacy rights than other employees. It is the position of the San Francisco Police Department that it will protect from disclosure information relating to police officer personnel data, and will not release such information without utilizing the discovery procedures pursuant to Sections 1043 and 1046 of the Evidence Code or by order of the court.</p>	

2. Please identify which provision(s) of the Ordinance have proven useful but which still need improvement. Include the Admin Code number of each; a description of its benefit(s); and how it could be improved.

Admin Code Sec.	Description of Benefit(s)	How it could be improved
67.7 Commission on the Environment	Agenda Requirements, Regular meetings	Add agenda requirements and definitions for special meetings such as off-site, rescheduled, cancelled, etc. Provide more detail as to what the agenda language should contain, time posting requirements for each type of special mtg.

67.7(c) Commission on the Environment	Agenda Requirements, Regular meetings posting	More rity as to where agendas should be posted -- at the meeting site, Library, web, etc.
67.7(f) Commission on the Environment	Agendas to be provided to speech and hearing impaired persons	Add notification allowance to provide service in this section e.g. notify Secretary within 48 hours of meeting, etc. (without having to go to another section to find the same information)  Add section on seriatim meetings - also rules concerning email correspondence for Commission Secretaries and email between Commissioners, etc. What can be discussed and sent by email and not, etc.
Section 67.8-1 and 67.14 Civil Service Commission	Additional Requirements for Closed Sessions Tape Recording, Filming and Still Photography Storage for tapes will eventually reach capacity of office and tapes eventually become brittle.	Add provision for alternative format for tapes and storage.
Section 67.10 Civil Service Commission	Closed Sessions: Permitted Topics There are no provisions requiring Charter Boards and Commissions to establish Rules or a process for affected members of the public to request a closed session on matters where there may be protected privacy rights.	Add a provision that requires Charter Boards and Commissions to establish Rules or a process for employees or affected members of the public to request a closed session particularly where there are matters of privacy (medical, personnel, etc.) and related issues.
67.14 Civil Service Commission	Tape Recording, Filming and Still Photography Able to provide information to members of the public at the Commission meeting who question others recording.	Stock language flyer, which could be handed out at every meeting.
67.15(c) Commission on the Environment	Public Testimony Sets a time for public comment up to three minutes.	To explain whether the three minutes is consecutive for all agenda items throughout the meeting or can be changed for different items on the same agenda--various items may be more controversial and have more public comment. Also, is it disallowed to have more than three minutes? Add that the Chair should announce the # of minutes before each item and if not announced the Secretary sets a default three minutes.
67.16 Commission on the Environment	Minutes Basic description of Action Minutes	Provide description of various formats of Minutes that may be used other than Action Minutes--more people like to read minutes with a basic understanding of what happened at the meeting (such as topics, etc.) The section may be interpreted to mean that only Action Minutes are allowed.
67.21 Police Department	Process for Gaining Information to Public Records This section allows for a request for information to be made "orally or in writing."	In an effort to insure accuracy and clarity, we recommend that this section be amended to require that all requests for information be in writing. This avoids a "he-said, she-said" situation should there be a discrepancy over exactly what information was requested or, more importantly, when the request was made.  It is the desire of the department to cooperate fully with the public in processing these requests. It has been the experience of the department, however, that it is easier to process a request that has been made in writing because there is less confusion over what is being requested.
67.25 Fire Department	Immediacy of Response Key individuals who have exclusive access to information are not available to provide documents due to illness, vacation or other leave.	Provide extension for this in 67.25(b)

<p>Police Department</p>	<p>This section is helpful because it provides specific deadlines for when an inquiry must be responded to, and it also describes the manner in which a response should be made (i.e. in writing, with an explanation for why anything is being withheld).</p> <p>Sec. 67.25(a) however, allows for an "immediate disclosure request" to be served on a department requiring a response by the next business day. Because the department has some 2,000 employees, these requests have not always been forwarded to the appropriate departmental personnel in a timely fashion. These requests place a burden on the department greater than civil and criminal discovery requests.</p>	<p>By implementing a more reasonable response time, the ordinance would enhance the departments ability to respond within a required timeframe that is more reasonable than the end of business the following day.</p> <p>Creating such a pressure filled deadline can result in responsive material being overlooked, or more likely, the department responding after the deadline. This immediate deadline raises the expectations of the public and places a tremendous burden on the department. A more reasonable deadline, perhaps five days, would ensure that the public receives information without placing the inquiring party and the department in an adversarial position.</p>
<p>67.29 Library Commission</p>	<p>Index of Records The index to records is part of the City Administrator's on-line records retention policy site. Sometimes members of the public believe that the Sunshine Ordinance requires another more detailed listing of all existing files or even file contents.</p>	<p>The Ordinance should clarify that the index can be found on the City Administrator's site.</p>
<p>67.29-2 Treasure Island Development Authority (TIDA)</p>	<p>Internet Access/WWW Minimum Standards Provides wider access to information as well as encouraged resource-conservation</p>	<p>Provide better definition of status of groups such as citizen advisory panels' notices and agendas under web-posting section.</p>
<p>67.21 (c) Library Commission</p>	<p>Process for Gaining Access to Public Information Similarly is apparently intended to ensure that requesters and departments conduct meaningful dialog to assist a member of the public in finding needed information. However, sometimes members of the public use the "right" to a written statement of all records on a certain subject as a harassment tactic rather than an honest inquiry to enable the requester to target his or her eventual records request.</p>	<p>This provision should be redrafted to emphasize the interactive nature of formulating a reasonable and directed public records request on a narrow subject rather than a public right to have any City department provide a global index of all of its files.</p>
<p>67.27(b) Library Commission</p>	<p>Justification for Withholding Recognizes justifications for withholding set forth in state law. But the state law that requires library user records be kept confidential (Gov't Code Section 6254(j) and 6267 may not adequately cover all of the library user records that now exist, particularly with respect to the information related to use of on-line resources.</p> <p>We understand that laws in other states, such as New York,</p>	<p>The Sunshine Ordinance should be updated to ensure that all records related to a library user's access to and uses of materials remain confidential.</p> <p>In summary, the SOTF has the challenging job of enforcing both the public's right to access information relating to the public's business while protecting information held by City departments that is permitted or required by law to remain confidential from disclosure. The SOTF has the further challenge of protecting public rights without sanctioning careless, frivolous or harassing behavior by the few which misuse the rights afforded by public records laws.</p>

	<p>have more comprehensive definitions of "library circulation material" that should be exempt for disclosure. Library privacy is extraordinarily important to San Franciscans.</p>	<p>But no public benefit is served when departments undertake costly records searches and the requesting party either never returns or comes in to inspect the located and set aside files for brief cursory reviews spread out over a lengthy period. The Library has had important working files only available to staff on a limited basis for as long as three months so that a member of the public could drop in for ten or fifteen minutes every other week to "inspect" requested records. No "right to know" is furthered when a member of the public asks for the same records to be retrieved over and over again. No purpose is furthered when a party knows exactly what he or she wants, but makes a very broad, hide-the-ball "subject matter" request, and then plays "gotcha" when the specific record he or she had in mind is not among the records located. These are the challenges of departments implementing the Sunshine Ordinance.</p>

3. Please identify which provision(s) of the Ordinance have proven useful and should not be revised or eliminated. Include the Admin Code number, and a description of its benefit(s).

Admin Code Sec.	Description of Benefit(s) (not revised or eliminated)
67.7-1 Dept on the Status of Women	Public Notice Requirements Thorough instructions are provided
67.15 67.25 TIIDA	Public Testimony Immediacy of Response Provides useful rules for how office staff should handle public records requests and how staff should handle comment at meetings that help staff avoid possible confusion with the public
67.3 – 67.17 Library Commission	Public Access to Meetings Public comment
67.28 Police Department	Fees for Duplication This section is helpful because it allows the department to recoup money in return for the provision of materials. This section should be updated to ensure departments are recouping a fair amount for the material provided.

#### 4. Please discuss any relevant issues that the foregoing does not address.

- The SOTF should encourage every City Department to establish clear written procedures for responding to public records requests that fully conform to the requirements of the Sunshine Ordinance. The Library has found that its adoption of written Procedures for Public Records Requests patterned after procedures adopted by the Board of Supervisors have significantly improved staff's ability to respond quickly and effectively to requests for public records. The Library's written procedures also provide an easily understood guide for members of the public. The SOTF should facilitate, as the Ethics Commission does, 1. a training process for each Department's designated Custodian of Public Records so that they can better advise City department staff how to fully and appropriately comply with the Sunshine Ordinance and 2. a SOTF resource for departmental Custodians of Records to consult with about compliance issues that may arise. The Public Library Administration and the Public Library Commissioners seek to work closely with the members of the Sunshine Ordinance Task Force to promote our shared responsibility to enlighten and inform the citizens of San Francisco. (Library Commission)
- Ordinance has created an order and format for proper issuance of public information. Notice requirements benefit all interested parties. No complaints. (Dept of Admin Services)
- Generally, the Civil Service Commission Department has found the Sunshine Ordinance easy to implement and consistent with the goals and policy of the Commission. Where we have questions, we have been ably assisted by legal counsel provided by the City Attorney's office. (Civil Service Commission)
- Technical assistance should be provided on a quarterly basis to City staff. (Department on the Status of Women)
- The Children and Families Commission finds all aspects of the Sunshine Ordinance useful and unburdensome. (Children & Families Commission)
- It is unfortunate that a City department has not rights against someone requesting the same information over and over again because they do not like the department's answer over their issues. We have seen a lot of staff time wasted on requests where customers were "fishing" for information but there was no real reason for the information being asked. (Department of Building and Inspection)
- The Office of the City Attorney serves several functions under the Sunshine Ordinance – as legal adviser to City departments, as a City agency responsible for complying with the Ordinance, and as a reviewing administrative body ("Supervisor of Records") responsible for determining whether a record that has been withheld is public. We also publish annually a Good Government Guide, which includes an overview of the public record and public meeting laws applicable to City officials, boards and commissions. In those capacities, we have become aware of various issues involving the interpretation of the Ordinance.

The enclosed document reflects the comments of those deputies in this office who are the most knowledgeable about the Ordinance. These comments identify (1) possible conflicts with other local, state or federal laws that the Task Force may want to address by suggesting amendments to the Ordinance (e.g. conflicts with constitutional protections) and (2) possible corrections of drafting errors, inconsistencies and ambiguities. Our recommendations are limited to these two areas. We do not address policy issues, other than to identify in a few instances policy issues for the Task Force to consider in light of possible conflicts with other laws, inconsistencies and ambiguities.

We have provided comments on specific sections of the Sunshine Ordinance ("Ordinance") below. We begin with a few general comments highlighting a recurring theme in the comments on specific sections. Many of the provisions of the Ordinance duplicate and overlap many of the provisions of the Public Records Act and the Brown Act. The duplication and overlap between two different sets of laws make interpretation of and compliance with both laws difficult, frequently without enhancing the public's right of access to public meetings and records.

To give just two examples:

- Section 67.3 of the Ordinance excludes from the definition of "meeting" the attendance of a majority of the members of a policy body at various gatherings, including regional, statewide and national conferences, meetings organized to address a topic of local community concern, and open and noticed meetings of a standing committee of the policy body. See Sections 67.3(b)(4)(B) and (C-1). But none of the exceptions expressly includes open and noticed meetings of another body of the local agency. The Brown Act includes an exception for attendance at the meetings of another body of the local agency. (Cal. Gov. Code §54952.2(c)(4).) Although it was presumably not the drafters' intent to preclude a majority of the members of a policy body (such as the members of a City commission) from attending a meeting of another City policy body (such as the Board of Supervisors), the absence of this exception in the Ordinance (and its inclusion in the Brown Act) provide an argument for such an intent.
- Section 67.8 establishes specific agenda requirements for the different types of closed sessions. It parallels the section in the Brown Act prescribing "safe harbor" agenda descriptions for closed sessions. (Cal. Gov. Code §54954.5.) But the parallel is not exact. Thus, when preparing agendas for closed sessions, departmental staff (and often the Deputy City Attorney advising



apartment) must compare these two closely related provisions and attempt to clarify them. The process is time-consuming and can be confusing for both City officials and the public. A related issue arises when State law changes. We are frequently called on to construe the Ordinance in light of revisions to State laws adopted after 1999, the year that the voters approved amendments to the Sunshine Ordinance. For example, after September 11, 2001, the Brown Act was amended to broaden a public entity's right to meet in closed session to address security issues. While we do not think that the voters intended to prevent San Francisco from meeting in closed session under this newly added State law amendment, it would be preferable to eliminate differences between the two sets of laws in order to preclude an argument that different language demonstrates an intent that State law not apply.

In light of these concerns, the Task Force may find it useful to compare State law and the Ordinance on the subject matters covered by both and identify in what respects the State law falls short. The Ordinance could then incorporate basic state law and add the requirements necessary to meet those shortcomings. Rather than duplicating the State laws, which already apply to the City, the Ordinance could be streamlined so that it simply adds new provisions that do not exist in State law.

Even if this review and revision were undertaken, the enactment of changes in state law may create uncertainties. Moreover, practical experience implementing the Ordinance may suggest the need for changes. Therefore, the Task Force may want to consider an amendment approved by the voters allowing certain future amendments to the Ordinance through Board of Supervisors approval. There is recent precedent for such review and refinement. The Ethics Commission undertook an extensive review of the local laws governing conflicts of interest. The Commission found that many of the laws were outdated, confusing and did not adequately address the conduct they were intended to regulate. One problem considered by the Commission was the discrepancies between local and state laws with respect to conflicts.

After undertaking this review, the Ethics Commission proposed a package of amendments, which the voters approved as Proposition E at the November 2003 election. With respect to discrepancies between state and local laws, Proposition E resolved the issue by incorporating the state law, including subsequent amendments. (Campaign and Governmental Conduct Code §3.206.) With respect to providing amendments without voter approval, Proposition E provided that the Board of Supervisors may amend the measure if the Ethics Commission approves the amendment by at least a 4/5 vote of all its members, the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors and a committee of the Board, and the Board approves the amendment by at least a 2/3 vote of all of its members. (Charter §18.115; Campaign and Governmental Conduct Code §3.204.)

Whether the approach proposed by the Ethics Commission is appropriate for the Sunshine Ordinance is a policy question for the Task Force, the Board and, ultimately, the voters to decide. In any event, resolution of these issues could assist in clarifying the interpretation of the Ordinance where it differs from state law. (Office of the City Attorney)

8/5/05

TO: Doug Comstock, Chairman  
Sunshine Ordinance Task Force

January 10, 2008

FROM: Harrison Sheppard, Mayor's Appointee  
Sunshine Ordinance Task Force

SUBJECT: Proposed Amendment to the Ordinance: Section 67.34 ("The Sunshine Commission")

## MEMORANDUM

**Introduction.** This memorandum offers comments on the proposed Section 67.34 amendments to the Ordinance. Most of these comments are intended to raise issues I believe need to be resolved by the Task Force, rather than to state a firm position on the merits of the questions raised; others are trivial corrections to the proposed text; and a few state policy positions I would personally advocate with respect to the issues discussed. I offer the memorandum for circulation to all Task Force Members.

### I. Proposed Section 67.34, *The Sunshine Commission*

**Subsection (a): General Media Appointments:** Section (a) includes a provision carried over from the present Ordinance requiring appointment to the Commission of "One member...from the press or electronic media." I presume that the absence of any change in this provision indicates that there has been no difficulty in implementing it. Nevertheless, its broad language makes it unclear whether such appointment is intended to be restricted to working print or electronic journalists, or also to include the possibility, for example, of appointing members of media management or ownership as well. Should this be clarified, or is its present breadth intended?

**Public Interest Advocacy.** Section (a) changes the requirement for appointment of two members of the public "experienced in consumer advocacy" to members of the public "experienced in obtaining public information from government agencies." I question the merits of this change. Rather than adding to general representation of the broad public ("consumer advocate") interests, this change may threaten to open Commission seats to frankly partisan political advocacy. The substantial required representation of journalists and other media representatives on the Commission already provides for membership by individuals "experienced in obtaining public information from government agencies" -- in the broad public interest of transparency in government and the public's right and need to know. The proposed change, however, therefore appears to add required seating only for persons who have engaged in repeated Sunshine requests for purposes not necessarily essentially related to broad public interests, but, rather, to serve narrower objectives and interests. I think it would be useful to ask of this proposed amendment: "What are the likely constituencies other than members of the media who are likely to have such 'experience?' Is there a risk that these would be political activists with a partisan agenda? If so, do we really want to open the door to making the Commission an obvious instrument of partisan politics in this way, rather than a body judicially balancing the public interest in disclosure and production against governmental claims of privilege or exemption, and encouraging frankly partisan administration of the Ordinance for narrow, self-interested purposes?"

**Commission Attorney.** Proposed Section (a) also provides that the Commission “shall, at its request, have assigned to it an attorney....who is experienced in public access law matters.” I respectfully suggest that this be amended to require an attorney “who is experienced or well-informed in public access law matters.” I make this recommendation in light of the fact, repeatedly demonstrated in my long government experience, that recent or relatively recent law school graduates are often the most diligent, conscientious, and industrious employees of a public agency’s legal staff, and the amendment should not foreclose the possibility of obtaining as its counsel highly capable recent law graduates with little or no former experience in the field. Such law graduates are, in fact, likely to be able to survey and quickly absorb the relevant body of law that would be helpful to the Commission in providing it with well-informed legal counsel.

**“Ethical Wall.”** As part of the provision just discussed, the proposed Ordinance retains the requirement that “an ethical wall...be maintained between the work of this attorney...and any person or office that the Commission determines may have a conflict of interest with regard to the matters being handled by the attorney.” This provision evidently refers primarily to contacts between the Commission attorney and the office of the City Attorney. In light of my previously expressed view that there is a critical need for improved relations, and a more coordinated legal and policy understanding, between the Commission and the office of the City Attorney on Sunshine matters, I am curious as to how the Members of the Task Force presently view the dimensions of this “ethical wall,” and whether it may operate to preclude productive collegial, or negotiative discussions in the public interest between the appointed Commission attorney and attorneys in the City Attorney’s Office.

**Subsection (c): Advice to Board of Supervisors and Mayor.** Proposed Section 67.34(c) provides that “The Commission shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.” In light of the provisions of proposed Section 67.35 (“The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control”), and the express reference to the Commission’s advising “other City departments,” it seems to me anomalous that the first sentence of this subsection does not presently read: “The Commission shall advise the Board of Supervisors and the Office of the Mayor and provide information to other City departments on appropriate ways in which to implement this chapter,” and I respectfully suggest that this change should be made. The Ordinance should not implicitly presume that the Office of the Mayor is anything other than an ally in the Commission’s public policy objectives, and his Office should be as much the beneficiary of the Commission’s advice on implementation of the Ordinance as the Board of Supervisors. As you are aware, I am a strong proponent for promotion throughout the city government of as collegial a policy as possible in implementation of the Ordinance, despite the adversarial position to which the Commission or the Mayor’s Office may sometimes be compelled with respect to some particular Sunshine requests.

**Abuse of the Ordinance.** I further propose that subsection (c) be modified to read as follows:

“The Commission shall advise the Board of Supervisors and the Office of the Mayor and provide information to other City departments on appropriate ways in which to implement this chapter and prevent, mitigate, or remedy its actual or potential abuse.”

It is my view that the Commission has a duty, not only to safeguard and advance the right of the public to know what their government is doing and has done, but also to be vigilant to the possibility that the Ordinance may be used and abused for self-interested purposes contrary to the broader public interest, potentially imposing excessively burdensome, avoidable costs upon government operations and

San Francisco taxpayers, just as I have always believed it is not only the duty of law enforcement agencies to *prosecute* alleged offenders, but to operate *in the interests of justice*; see, e.g., my opinion editorial, "When Lawmen Ignore Rule of Law," *San Francisco Chronicle*, May 21, 1998.

**Subsection (e): Response to Orders of Determination.** I propose, for clarity's sake and grammatical correction, that the latter half of proposed Section 67.34(e) be amended to read as follows:

"...may require that person or entity...to schedule at the governing entity's next regularly scheduled meeting the Order of determination for [deletion] discussion at such meeting and the governing entity's response."

**Subsection (f)(2): Prosecutorial Budget.** I propose the following change in the text of this proposed amendment:

"The amount of expenditure to prosecute these cases shall be no more than \$50,000 per fiscal year or such greater amount as may be authorized by the Board of Supervisors."

**Subsection (i): Additional Legislated Powers:** I question the need for the addition of this amendment provision. It seems to me to be superfluous. Can it already be otherwise than as the proposed amendment states?

Respectfully submitted,

Harrison Sheppard  
Mayor's Appointee  
SOTF

67.34 THE SUNSHINE COMMISSION

(f) Upon the Sunshine Commission's final consideration of the Order of Determination, it may issue an order, which may require the violator to:

- (1) Cease and desist the violation; and or
- (2) Release any documents or information required by law; and or
- (3) Pay a monetary penalty to the general fund, and or
- (4) Undergo imprisonment in the County jail.

\*\*\*\*\*

The second proposed text combines the proposed 67.38 and 67.39 into the new 67.38 and separates the Civil recourse provisions to its own section 67.39.

SECTION 67.38. ENFORCEMENT PROVISIONS

Willful failure shall be official misconduct. The willful failure of any person or entity to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the California Public Records Act shall be deemed official misconduct.

(a) Any public officer or employee who violates any provision of this chapter, the Brown Act or the California Public Records Act commits a noncriminal infraction, punishable by a fine not to exceed \$1000.

(b) Any public officer or employee who knowingly violates any provision of this chapter or who persists in a violation as determined at a public hearing of the Sunshine Commission is subject to suspension and removal or impeachment and commits a misdemeanor punishable by up to 1 year imprisonment and a fine up to \$5000 or any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(c) The Sunshine Ordinance Commission shall determine the appropriate punishment for any violation it finds and shall refer its determination to the Ethics Commission, Board of Supervisors, District Attorney, and/or the State Attorney General for enforcement.

(d) The Ethics Commission shall be authorized to enforce the decisions of the Sunshine Commission. It shall impose fines and other sanctions against violations of the Sunshine Ordinance.

(e) The Ethics Commission shall, at its next regularly scheduled meeting following the adoption of this section, institute methods and schedules of punishment that will authorize and require the imposition of the sanctions specified in the orders forwarded to it from the Sunshine Commission.

(f) Failure to impose sanctions against violators of the Sunshine Ordinance shall be a violation of this Ordinance and shall compel a fine equal to twice the fine authorized by the Sunshine Commission against

the original violator that shall be levied upon the official responsible for its enforcement and it shall be sufficient cause for suspension or removal of the responsible official.

(g) Any penalty imposed by this Ordinance shall be borne by the offender personally and shall not be paid out of public funds.

#### SECTION 67.39. CIVIL ENFORCEMENT PROVISIONS.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G, 11/2/99)

(e) Any person or entity who knowingly or negligently violates or who causes another person to violate this chapter, the Brown Act or the California Public Records Act shall be liable in a civil action brought by the City Attorney for an amount up to \$5000 per violation or double the pecuniary gain derived from the offense as well as reasonable attorney's fees.



"Erica L. Craven"  
 <elc@lrolaw.com>  
 09/29/2007 02:15 PM

"erica l. craven" <elc@lrolaw.com>, <soft@sfgov.org>, <frank.darby@sfgov.org>, <ernest.llorente@sfgov.org>, <rak0408@earthlink.net>  
 To  
 cc <elc@lrolaw.com>

bcc  
 Subject Re: ELC's Proposed Revisions to 67.30

Oops - I take it back. Here are the final versions of my proposed revisions. Forgot to add some comments suggested by Dr. Lanier.  
 Erica

-----Original Message-----

From: "Erica L. Craven" <elc@lrolaw.com>  
 Sent 9/29/2007 4:58:48 PM  
 To: soft@sfgov.org, frank.darby@sfgov.org, ernest.llorente@sfgov.org, rak0408@earthlink.net  
 Cc: elc@lrolaw.com  
 Subject: ELC's Proposed Revisions to 67.30

All,

Attached are my proposed revisions for 67.30 for the next C&A meeting. Attached in plain text and as a redline against the current ordinance.

I tried to capture all of the proposed revisions approved last time around and the ones we've worked through in the past couple of months and then added in extra suggestions - mainly to the enforcement 67.35 section initially drafted by Ernie.

Have a good meeting!



Erica Section 67.30 Rev 2 ELC.doc Section 67.30 Rev ELC Redline.doc

## SECTION 67.34. THE SUNSHINE COMMISSION

(a) There is hereby established a Commission to be known as the Sunshine Commission ("Commission") consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New America Media. The Commission shall include at least one member who shall be a member of the public with a disability that meets the definition of disabled under the Federal Americans with Disabilities Act and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, the Clerk of the Board of Supervisors or his or her designee, and a designated representative of the Youth Commission, shall serve as non-voting members of the Commission. The City Attorney shall serve as legal advisor to the Commission. The Commission shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City office who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Commission and an ethical wall will be maintained between the work of this attorney on behalf of the Commission and any person or office that the Commission determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years. In the event a vacancy occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The Commission shall elect a chair and a vice-chair from among its appointive members. The term of office for the chair and vice-chair shall be one year. Members of the Commission shall serve without compensation.

(c) The Commission shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The Commission shall develop appropriate goals to ensure practical and timely implementation of this chapter. The Commission shall propose to the Board of Supervisors amendments to this chapter. The Commission shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Commission shall receive and review the annual reports of the Supervisor(s) of Public Records and Public Forums, and may request additional reports or information as it deems necessary. The Commission is empowered



to make referrals to a municipal office or other appropriate body including the District Attorney or the State Attorney General 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. The Commission shall, from time to time as it sees fit, issue public reports evaluating compliance with this Ordinance and related California laws by the City or any department, office, or official thereof.

(d) The Commission shall conduct administrative hearings on complaints of alleged violations of the public meeting or public records provisions of the Ordinance, violations of the California Public Records Act, or the Brown Act. The Commission may issue Orders of Determination following the hearing on a particular complaint and, as necessary, order actions to remedy a violation of the Ordinance, California Public Records Act, or the Brown Act. The Order of Determination shall contain a brief summary of the claims made by the complainant(s) and claims made by the respondent, and an explanation of the violations found by the Sunshine Commission. All Orders of Determination shall be posted to the Sunshine Commission's website in portable document format (PDF) or in another readily accessible and searchable format. The posted Orders of Determination shall be indexed by date and cross-indexed according to the Chapter 67 provision violated. An Order of Determination finding a violation of the Ordinance, the California Public Records Act or the Brown Act shall be evidence of such violation in any other administrative or judicial proceeding.

(e) In the event that the Commission issues an Order of Determination finding that any person or entity covered by the Sunshine Ordinance violated the Ordinance in handling public meetings or release of public records, the Commission may require that entity, or the entity to whom the person who violated the Ordinance reports, to schedule at the entity's next regularly scheduled meeting the Order of Determination for its discussion and response.

(f) Unless otherwise prohibited by state law or other existing local ordinance, the Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmation, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(g) (1) In the event the Commission finds a serious and willful violation of the Ordinance, the Commission by a 2/3 vote of the entire body may appoint outside counsel to prosecute the violation(s) of the Ordinance in the Civil Courts to the extent permitted by the City Charter.

(2) The amount of expenditure for outside counsel to prosecute these cases shall be more than \$50,000.00 per fiscal year. The Commission shall adopt by-laws to provide oversight of appointed counsel and expenditures under this provision.

(h) The Commission shall approve by-laws specifying a general schedule for meetings and hearings, requirements for attendance by Commission members, and procedures and criteria for removing members for non-attendance.

(i) In addition to the powers specified above, the Commission shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative. [Moved from 67.30(d)]

#### SECTION 67.35. RESPONSIBILITY FOR ADMINISTRATION.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control and for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide at least one full-time staff person to perform administrative duties for the Commission and to assist any person in gaining access to public meetings or public information. At least one full time staff person shall be the Administrator of the Commission and shall have no other duties. The Clerk of the Board of Supervisors shall provide the staff person(s) with whatever facilities and equipment are necessary to perform their duties.

#### SECTION 6736. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California campuses operating within the City. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, and/or representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any for-profit entity unless that entity provides the City with financial projections (including profit and loss figures) and annual audited financial statements for the project or development for which the subsidy is proposed or provided and all such projections and financial statements shall be public records that must be disclosed.

#### SECTION 67.37. SUNSHINE DECLARATION.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office in consultation with the Sunshine Commission.

#### SECTION 67.38. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any person or entity to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the California Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this Ordinance, the Brown Act or the California Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission and may also be referred to the Board of Supervisors, District Attorney or the State Attorney General for investigation and enforcement.

#### SECTION 67.39. ENFORCEMENT PROVISIONS.

(a) Any person may commence proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open. Filing a complaint with the Sunshine Commission or exhausting the Commission complaint and hearing procedures is not a prerequisite to filing an action under this subsection.

(b) Any person may commence proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction for purposes of obtaining a judicial determination that an action taken by a policy body in violation of this Ordinance is null and void under this section. Nothing in this chapter shall be construed to prevent a policy body from curing or correcting an action challenged pursuant to this section.

(c) Prior to any action being commenced pursuant to subsection (b), the person shall make a demand of the policy body to cure or correct the action alleged to have been taken in violation of the Ordinance. The demand shall be in writing and clearly describe the challenged action of the policy body and the nature of the alleged violation.

(i) Written demand shall be made within 30 days from the date the action was taken.

(ii) Within 30 days of receipt of the demand, the policy body shall cure or correct the challenged action and inform the complainant in writing of its actions to cure or correct or inform the complainant in writing of its decision not to cure or correct the challenged action.

(iii) If the policy body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action.

(iv) The complainant who receives notice of the policy body's decision not to cure the challenged action, or if the policy body takes no action within the 30-day period, may file a complaint with the Sunshine Commission. After the completion of the Commission's complaint and hearing procedures, if the Sunshine Commission finds that the policy body violated the Ordinance, then the complainant may commence an action pursuant to subsection (b). The Sunshine Commission shall not have authority to void an action of a public body, but filing a complaint and exhausting the Commission's complaint and hearing procedures is a prerequisite to filing an action under subsection (b).

(h) A court shall award costs and reasonable attorneys' fees to the plaintiff if that person or entity is the prevailing party in an action brought to enforce this Ordinance.

(i) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(j) Any person may institute proceedings for enforcement and penalties under this Ordinance before the Ethics Commission if 60 days after an Order of Determination was issued by Sunshine Commission, the City department, official, body or employee has not complied with the Order of Determination.

#### SECTION 67.40 SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

#### SECTION 67.41. SEVERABILITY.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

#### SECTION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer.

SEC. SECTION 67.30-34. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION

(a) ~~There is hereby established a task force Commission to be known as the Sunshine Ordinance Task Force Commission ("Commission") consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California America Media. At all times the task force The Commission shall include at least one member who shall be a member of the public who is physically handicapped and with a disability that meets the definition of disabled under the Federal Americans with Disabilities Act and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, and a designated representative of the Youth Commission, shall serve as non-voting members of the task force Commission. The City Attorney shall serve as legal advisor to the task force Commission. The Sunshine Ordinance Task Force Commission shall, at its request, have assigned to in it an attorney from within the City Attorney's Office or other appropriate City Office, office who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force Commission and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force Commission and any person or Office office that the Task Force Commission determines may have a conflict of interest with regard to the matters being handled by the attorney.~~

(b) ~~The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force Commission shall elect a chair and a vice-chair from among its appointive members. The term of office as for the chair and vice-chair shall be one year. Members of the task force Commission shall serve without compensation.~~

(c) ~~The task force~~ The Commission shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. ~~The task force Commission shall develop appropriate goals to~~

ensure practical and timely implementation of this chapter. ~~The task force~~Commission shall propose to the Board of Supervisors amendments to this chapter. ~~The task force~~Commission shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. ~~The Task Force~~Commission shall receive and review the annual ~~report~~reports of the Supervisor(s) of Public Records and Public Forums, and may request additional reports or information as it deems necessary. ~~The Task Force shall~~. The Commission is empowered to make referrals to a municipal office or other appropriate body including the District Attorney or the State Attorney General with enforcement power under this ordinance ~~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. ~~The Task Force~~Commission shall, from time to time as it sees fit, issue public reports evaluating compliance with this ~~ordinance~~Ordinance and related California laws by the City or any Department, Office, or ~~Official~~department, office, or official thereof.

~~(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.~~(d)

The Commission shall conduct administrative hearings on complaints of alleged violations of the public meeting or public records provisions of the Ordinance, violations of the California Public Records Act, or the Brown Act. The Commission may issue Orders of Determination following the hearing on a particular complaint and, as necessary, order actions to remedy a violation of the Ordinance, California Public Records Act, or the Brown Act. The Order of Determination shall contain a brief summary of the claims made by the complainant(s) and claims made by the respondent, and an explanation of the violations found by the Sunshine Commission. All Orders of Determination shall be posted to the Sunshine Commission's website in portable document format (PDF) or in another readily accessible and searchable format. The posted Orders of Determination shall be indexed by date and cross-indexed according to the Chapter 67 provision violated. An Order of Determination finding a violation of the Ordinance, the California Public Records Act or the Brown Act shall be evidence of such violation in any other administrative or judicial proceeding.

~~(e) The Task Force~~(e) In the event that the Commission issues an Order of Determination finding that any person or entity covered by the Sunshine Ordinance violated the Ordinance in handling public meetings or release of public records, the Commission may require that entity, or the entity to whom the person who violated the Ordinance reports, to schedule at the entity's next regularly scheduled meeting the Order of Determination for its discussion and response.

(f) Unless otherwise prohibited by state law or other existing local ordinance, the Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmation, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(g) (1) In the event the Commission finds a serious and willful violation of the Ordinance, the Commission by a 2/3 vote of the entire body may appoint outside counsel to prosecute the violation(s) of the Ordinance in the Civil Courts to the extent permitted by the City Charter.

(2) The amount of expenditure for outside counsel to prosecute these cases shall be more than \$50,000.00 per fiscal year. The Commission shall adopt by-laws to provide oversight of appointed counsel and expenditures under this provision.

(h) The Commission shall approve by-laws specifying a general schedule for meetings and hearings, requirements for attendance by Task Force Commission members, and procedures and criteria for removing members for non-attendance.

SEC.(i) In addition to the powers specified above, the Commission shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative. [Moved from 67.34.30(d)]

#### SECTION 67.35. RESPONSIBILITY FOR ADMINISTRATION.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. ~~The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor.~~ Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide ~~a~~ at least one full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force Commission and to assist any person in gaining access to public meetings or public information. At least one full time staff person shall be the Administrator of the Commission and shall have no other duties. The Clerk of the Board of Supervisors shall provide ~~that~~ the staff person(s) with whatever facilities and equipment are necessary to perform said ~~their~~ duties.

~~SEC. 67.32.~~

#### SECTION 6736. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San



San Francisco Redevelopment Authority and the University of California campuses operating within the City. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, and/or ~~and~~ representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. ~~The city~~ City shall give no subsidy in money, tax abatements, land, or services to any ~~private-for-profit~~ private entity unless that ~~private~~ entity ~~agrees in writing to provide~~ provides the ~~city~~ City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, ~~for the project upon or development for~~ proposed or provided and all such projections and financial statements shall be public records that must be disclosed.

~~SEC. SECTION 67.33. DEPARTMENT HEAD 37. SUNSHINE DECLARATION.~~

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the ~~Sunshine Ordinance~~ Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office in consultation with the ~~assistance of the Sunshine Ordinance Task Force~~ Commission.

~~SEC. 67.34.~~

~~SECTION 67.38. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.~~

The willful failure of any ~~elected official, department head, or other managerial city employee~~ person or entity to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the California Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance ~~Ordinance~~, the Brown Act or ~~the~~ the California Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission and may also be referred to the Board of Supervisors, District Attorney or the State Attorney General for investigation and enforcement.

~~SEC. SECTION 67.35-39. ENFORCEMENT PROVISIONS.~~

(a) Any person may ~~institute~~ commence proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open. Filing a complaint

with the Sunshine Commission or exhausting the Commission complaint and hearing procedures is not a prerequisite to filing an action under this subsection.

(b) Any person may commence proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction for purposes of obtaining a judicial determination that an action taken by a policy body in violation of this Ordinance is null and void under this section. Nothing in this chapter shall be construed to prevent a policy body from curing or correcting an action challenged pursuant to this section.

(c) Prior to any action being commenced pursuant to subsection (b), the person shall make a demand of the policy body to cure or correct the action alleged to have been taken in violation of the Ordinance. The demand shall be in writing and clearly describe the challenged action of the policy body and the nature of the alleged violation.

(i) Written demand shall be made within 30 days from the date the action was taken.

(ii) Within 30 days of receipt of the demand, the policy body shall cure or correct the challenged action and inform the complainant in writing of its actions to cure or correct or inform the complainant in writing of its decision not to cure or correct the challenged action.

(iii) If the policy body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action.

(iv) The complainant who receives notice of the policy body's decision not to cure the challenged action, or if the policy body takes no action within the 30-day period, may file a complaint with the Sunshine Commission. After the completion of the Commission's complaint and hearing procedures, if the Sunshine Commission finds that the policy body violated the Ordinance, then the complainant may commence an action pursuant to subsection (b). The Sunshine Commission shall not have authority to void an action of a public body, but filing a complaint and exhausting the Commission's complaint and hearing procedures is a prerequisite to filing an action under subsection (b).

(h) A court shall award costs and reasonable attorneys' fees to the plaintiff who if that person or entity is the prevailing party in an action brought to enforce this Ordinance.

(e) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or Ordinance before the Ethics Commission if enforcement action is not taken by a city or state official 40-60 days after a complaint is filed an Order of Determination was issued by Sunshine

Commission, the City department, official, body or employee has not complied with the Order of Determination.

SEC. SECTION 67.36. SUNSHINE 40 SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

SEC. TION 67.37-41. SEVERABILITY.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

SEC. TION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the ~~remove~~removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer.

SECTION 67.34. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION FOR OPEN GOVERNMENT

.....

(d) The ~~Task Force~~ COMMISSION shall conduct administrative hearings on complaints of alleged violations of the public meeting or public records provisions of the Ordinance, violations of the California Public Records Act, or the Brown Act. The ~~Task Force~~ COMMISSION may issue Orders of Determination following the hearing on a particular complaint. An Order of Determination finding a violation of the Ordinance, the California Public Records Act or the Brown Act shall be evidence of such violation in any other administrative or judicial proceeding. An Order of Determination may also recommend actions required to remedy a violation of the ordinance, the California Public Records Act or the Brown Act. All Orders of Determination shall be published in Portable Document Format [PDF] in a readily available searchable public database, indexed according to sections of Chapter 67. All Orders of Determination, in addition to citing violations found, shall contain a brief summary of claims made by the complainant(s) and claims made by the defendant entity. Orders of Determination may, at the discretion of the ~~Task Force~~ COMMISSION, cite by complaint number previous Orders of Determination as precedent for decisions.

(e) In the event that the ~~Task Force~~ COMMISSION issues an Order of Determination finding that any entity covered by the Open Government Ordinance violated the Ordinance in handling public meetings or release of public records, or recommends a remedy for such violation, the ~~Task Force~~ COMMISSION may require that entity to schedule at its next regularly scheduled meeting the Order of Determination for its discussion and response.



"Kimo Crossman"  
 <kimo@webnetic.net>  
 09/29/2007 11:05 AM

"Wayne Lanier" <w\_lanier@pacbell.net>, "Richard A. Knee" <rak0408@earthlink.net>, "Erica Craven" <elc@irolaw.com>, "Doug Comstock" <grossman356@mac.com>

bcc  
 Subject RE: As per your suggestion - Specific language for revision of Chapter 67

Why PDF? Formats change - why not ODF or XML (Open formats) for example. I think the particular format should not be legislated.

**From:** Wayne Lanier [mailto:w\_lanier@pacbell.net]  
**Sent:** Sunday, September 23, 2007 5:36 PM  
**To:** Richard A. Knee; Erica Craven; Doug Comstock; Members of SOTF  
**Cc:** Allen Grossman; Kimo Crossman  
**Subject:** As per your suggestion - Specific language for revision of Chapter 67

*As per your suggestion, I have provided here an attempt to capture the sense of "Maintain Sunshine Ordinance Task Force [SOTF] Orders of Determinations as readily-available Public Records such that prior Orders of Determination may serve as precedent in resolution of future complaints."*

I have attached a PDF copy of a WORD document, in which I employed the "Track Changes" feature to show how the original language of one section of Chapter 67.34(d)(e) [with other recommendations shown] might be changed in a simple and direct manner.

Below is copied the revision without the tracking:

**Section 67.34. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION FOR OPEN GOVERNMENT**

....  
 (d) The Task Force Commission shall conduct administrative hearings on complaints of alleged violations of the public meeting or public records provisions of the Ordinance, violations of the California Public Records Act, or the Brown Act. The Task Force Commission may issue Orders of Determination following the hearing on a particular complaint. An Order of Determination finding a violation of the Ordinance, the California Public Records Act or the Brown Act shall be evidence of such violation in any other administrative or judicial proceeding. **An Order of Determination may also recommend actions required to remedy a violation of the ordinance, the California Public Records Act or the Brown Act. All Orders of Determination shall be published in Portable Document Format [PDF] in a readily available searchable public database, indexed according to sections of Chapter 67. All Orders of Determination, in addition to citing violations found, shall contain a brief summary of claims made by the complainant(s) and claims made by the defendant entity. Orders of Determination may, at the discretion of the Task Force COMMISSION, cite by complaint number previous Orders of Determination as precedent for decisions.**

(e) In the event that the Task Force Commission issues an Order of Determination finding that any entity covered by the Open Government Ordinance violated the Ordinance in handling public meetings or release of public records, or recommends a remedy for such violation, the Task Force Commission may require that entity to schedule at its next regularly scheduled meeting the Order of Determination for its discussion and response.

Here I have included changes proposed to the Board of Supervisors.

---Shown below is the previous change suggested---

**SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.**

(a) The Mayor and all Department Heads shall maintain by controlled written instructions all records, documents, and correspondence, in a manner assuring preservation and recovery in the event of disaster or other loss. Such records shall include, but not be limited to letters, e-mails, drafts, memoranda, invoices, reports, and proposals; and shall be disclosed in accordance with this ordinance.

Regards,

Wayne Lanier, PhD <w\_lanier@pacbell.net>



Wayne Lanier  
<w\_lanier@pacbell.net>  
09/29/2007 05:41 PM

To "Kimo Crossman" <kimo@webnetic.net>, "Richard A. Knee"  
<rak0408@earthlink.net>, "Erica Craven"  
<elc@lrolaw.com>, "Doug Comstock"  
cc "Allen Grossman" <grossman356@mac.com>

bcc

Subject RE: As per your suggestion - Specific language for revision  
of Chapter 67

Normally, I would agree that legislating formats can cause problems as new technology develops. Portable Document Format, however, is likely to be with us for awhile. For the simple reason that it was actually designed to be, and only to be, a record format, with many features lacking in other formats, facility for very wide cross-platform use, is quite robust, and is now very widely used.

**Extensible Markup Language [XML]**, on the other hand, is one of a wide variety of open-source markup languages that are still specialized languages and not widely used or understood by most ordinary, non-computer folks. As an example, I invite all the other folks on this copy-thread to click on the blue bold underlined text above, go to the Wikipedia page on XML, read the entire page, and report back to Kimo on how much of it made sense to them [particularly the syntax bit - I use this syntax in composing my BLOG site pieces and it still gives me the willies...!].

The great advantage of PDF is that just about anyone can create a PDF file, even sign it electronically, and for most users, that file is difficult to change or corrupt. Yes, PDF files can be messed about by a skilled user, but it usually leaves obvious tracks. Word files, Excel files, text files, *etc.*, can be easily corrupted accidentally, as well as intentionally.

Some other document format systems are very good, it is just that they are not in such common use. A more "generic" way of writing the change might be technically better, but I suspect that a long paragraph spent on capturing the essential advantages of PDF, without specifying PDF itself, would doom the change.

We very badly need to have the SOTF Determinations available on the Internet in readily available form, indexed in some simple manner [such as by relevant sections of Chapter 67], and available for use in precedent citations.

I see this as a "next step" in the evolution or maturation of SOTF. At present, I sense two competing directions: SOTF as a sort of referee urging folks to come together and work out request problems; and, SOTF as a deliberative body interpreting Sunshine law.

I think the first direction is a deadly trap, leading to a trivialized SOTF. No doubt some complaints do arise from misunderstandings. Mostly, however, I see complaints arising from failure to understand Chapter 67 or the Sunshine Amendment to the Constitution; from failure to understand technical issues that are part of a Sunshine Request; from failure to understand responsibilities laid out in Chapter 67; or, with disturbingly high frequency, simple willful obstruction resulting from fear of open government.

The second direction, that of interpretation of Sunshine law, is part of Democracy maturing. Part of maturation occurs when new freedoms become settled law. If this seems high-flown when applied to San Francisco Code, the SOTF, and Sunshine rights, just remember that the Supreme Court began an a circuit court [one problem in finding Justices to serve was the need to ride



"Richard A. Knee"  
<rak0408@earthlink.net>

09/30/2007 01:17 AM

Please respond to  
rak0408@earthlink.net

To Administrator <soff@sfgov.org>, "Wolfe Bruce"  
<bruce@brucewolfe.net>

cc

bcc

Subject Fwd: RE: As per your suggestion - Specific language for  
revision of Chapter 67

----- Forwarded message -----

From: "Wayne Lanier" <w\_lanier@pacbell.net>  
To: "Kimo Crossman" <kimo@webnetic.net>, "Richard A. Knee"  
<rak0408@earthlink.net>, "Erica Craven" <elc@lrolaw.com>, "Doug Comstock"  
<Dougcoms@aol.com>  
Cc: "Allen Grossman" <grossman356@mac.com>  
Subject: RE: As per your suggestion - Specific language for revision of  
Chapter 67  
Date: Sat, 29 Sep 2007 21:45:33 -0700

Oooooo...! This is fun.

Emacs!

Click on the ODF URL provided by Kimo below,  
instead of clicking on my XML URL embedded in my  
post. Read all about ODF. Then report back to  
Kimo about your understanding of that stuff...!

Realize that I admit, candidly, that Kimo is  
entirely right about the format and entirely  
right about XML code. It's great stuff. I use  
it to make my  
<[http://arch.ced.berkeley.edu/kap2/php/Hidden\\_Ecologies/](http://arch.ced.berkeley.edu/kap2/php/Hidden_Ecologies/)>Hidden  
Ecologies BLOG.

If you click on my Blue Underlined Bold type in  
the above sentence, you will see that the BLOG  
looks reasonably nice [if, perhaps, boring],  
thanks to XML [actually, a slight variant, but nevermind].

I sweated and slaved over <fname> and </fname>  
[usually, I forgot the second one, or accidentally  
stuck it somewhere else, or left out the not = / so everything was fname].

Actually, I was usually interested in bold  
[<strong> and </strong>] or italics  
[<em><strong>Beggiatoa</strong></em>] or  
beginning and end of "insert Youtube video"  
[<object width="425" height="350"><param  
name="movie"  
value="http://www.youtube.com/v/uDg4qA4Nk7Y"></param><embed  
src="http://www.youtube.com/v/uDg4qA4Nk7Y"  
type="application/x-shockwave-flash" width="425"  
height="350"></embed></object>] or "size of photomicrograph", etc.

And, I can tell you honestly, that I could write  
the BLOG without using the code - except for some  
glitches - because of a WISIWIG  
enablement. Unfortunately, it is actually easier  
to use the code because of the few  
glitches. Well, that's the price of progress.

Seriously, however, who knows what new  
technologies will be available a few years from  
now. It is impossible to write technical code that will last.





"Kimo Crossman"  
<kimo@webnetic.net>  
09/29/2007 06:07 PM

"Wayne Lanier" <w\_lanier@pacbell.net>, "Richard A.  
Knee" <rak0408@earthlink.net>, "Erica Craven"  
<elc@lrolaw.com>, "Doug Comstock"  
cc "Allen Grossman" <grossman356@mac.com>

bcc

Subject RE: As per your suggestion - Specific language for revision  
of Chapter 67

Responding to the PDF question - not the other points Dr. Lanier makes. OpenDocument format (ODF) is a growing standard which uses XML to provide context to the information in a document with gives the semantic meaning to the data for example instead of saying "Wayne Lainer" as in a PDF it can store in formats like:

<fname> Wayne </fname> <lname> Lanier </lname>

providing this contextual information allows search engines and humans to query information much more effectively.

Also PDF's strip all metadata on the original document where ODF can preserve it. Also ODF does support digital signing which would indicate tampering of the document. Many governments and standards bodies are considering adopting this approach. There is no need for a user to understand all this complexity - it is hidden by the application, the user just chooses to do a File Save as ODF.

<http://en.wikipedia.org/wiki/OpenDocument>

Maybe the Taskforce can adopt the Order of Determination PDF file format as a procedure/rule rather than bylaw or legislation to allow easy updates in the future if ODF continues with it's momentum.

As long as the taskforce is an advisory body of the people for the people - which has serious advantages because lawyers are kept out of the proceedings - as soon as sanctions are allowed that will change everything - then ex-parte communications will be disallowed, discovery, & lawyers will come to represent their clients and the cost and work of the taskforce will significantly increase - and probably the Public will lose more of their cases and the membership qualifications of the Taskforce would have to change.

Another option would be to replace the Taskforce with outside council which would make rulings.

I think strengthening what the Ethics Commission and DA have to do with referrals and adding transparency to that process is a better solution since they are already designed to deal with sanctions.

Nonetheless I agree that the Orders of Determination should be posted online - there is a small chance that recalcitrant departments will back down if shown relevant rulings.

I think tying departments budgets to Sunshine compliance and requiring the Mayor to personally approve any withholding of information would be good levers.

**From:** Wayne Lanier [mailto:w\_lanier@pacbell.net]  
**Sent:** Saturday, September 29, 2007 5:41 PM  
**To:** Kimo Crossman; 'Richard A. Knee'; 'Erica Craven'; 'Doug Comstock'; 'Members of SOTF'  
**Cc:** 'Allen Grossman'  
**Subject:** RE: As per your suggestion - Specific language for revision of Chapter 67

Normally, I would agree that legislating formats can cause problems as new technology develops. Portable Document Format, however, is likely to be with us for awhile. For the simple reason



Wayne Lanier  
<w\_lanier@pacbell.net>  
09/30/2007 12:04 PM

To Richard Knee <rak0408@earthlink.net>, Kimo Crossman  
<kimo@webnetic.net>, Erica Craven <elc@lrolaw.com>,  
Doug Comstock <Dougcoms@aol.com>, Members of SOTF  
cc Allen Grossman <grossman356@mac.com>, Bruce Wolfe  
MSW <sotf@brucewolfe.net>

bcc

Subject Re: As per your suggestion - Specific language for revision of  
Chapter 67

Oops...!

Actually, in my last post to Kimo, I deleted the Members of SOTF because I thought there would be neither interest in or patience with such a technical exchange. My apologies. I am replying here with the essence so as to include the members and Bruce Wolfe.

1. My real interest is in what Kimo referred to as "...the other points...". Specifically, the part captured in the copies of previous posts appended below, shown in larger bold type, and beginning with the sentence: **We very badly need to have the SOTF Determinations available on the Internet in readily available form, indexed in some simple manner [such as by relevant sections of Chapter 67], and available for use in precedent citations.**

2. Kimo is quite correct about other, possibly better, formats for the "...readily available form..." - in spite of my teasing him over the difficulty of using XML languages. The point stands, however, that **Portable Document Format [PDF]** was specifically designed for the required documentation purpose, meets the requirements, is easily understood, and is very widely used.

I feel an urgency in accomplishing the task stated in bold type above and expanded in the bold type previous copy chained below. The Sunshine Ordinance has a built-in "self correcting" feature, being exercised by the Task Force now, that will enable changes to be made in response to technical improvements.

3. The Sunshine Ordinance is recent. It is also a remarkably complex and subtle document. SOTF, as an institution, is still evolving. Although we cherish a view of democracy as flowing from the pen of founding genius, reality is much more prosaic: Democratic institutions change and grow in response to the aggregate interaction of many people dealing with the events and conflicts of daily life. In the few years over which I have followed the actions of SOTF and during the year in which I have appeared before SOTF, I have seen this change and growth. It begs to be captured as a living and available record, so that yesterday's Orders of Determination may inform tomorrow's.

Wayne Lanier



"Bruce Wolfe, MSW"  
<sotf@brucewolfe.net>  
10/01/2007 12:33 AM

To Wayne Lanier <w\_lanier@pacbell.net>  
Richard Knee <rak0408@earthlink.net>, Kimo Crossman  
cc <kimo@webnetic.net>, Erica Craven <elc@lrolaw.com>,  
Doug Comstock <Dougcoms@aol.com>, Members of SOTF  
bcc  
Subject Re: As per your suggestion - Specific language for revision of  
Chapter 67

I would suggest looking at the Rent Board's database of determinations. It is an interesting taxonomy but the software they are using is archaic. It can be done far better, simpler and with "free software w/ source code" (as opposed to 'open source').

Bruce

## DRAFT FOR DISCUSSION PURPOSES

### Voiding unlawful actions by a policy Body

#### SEC. 67.35. ENFORCEMENT PROVISIONS.

a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

b) Any person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a policy body in violation of this Ordinance is null and void under this section. Nothing in this chapter shall be construed to prevent a policy body from curing or correcting an action challenged pursuant to this section.

c) Prior to any action being commenced pursuant to subdivision (b), the person shall make a demand of the policy to cure or correct the action alleged to have been taken in violation of the Ordinance. The demand shall be in writing and clearly describe the challenged action of the policy body and the nature of the alleged violation.

d) Written demand shall be made within 30 days from the date the action was taken.

e) Within 30 days of receipt of the demand, the policy body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

f) If the policy body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action.

g) The person who receives notice of the policy body's decision not to cure the challenged action or the policy body takes no action within the 30-day period, then the person could file a complaint with the SOTF who will hold a hearing and determine if the policy body violated the Ordinance. Should the SOTF find that the policy body violated the Ordinance, it will send the policy body an Order of Determination and state its findings.

h) Should the policy body still take no action to cure the challenged action, then the person would then file a mandamus action as stated subsection (b) above.

b) A court shall award costs and reasonable attorney's fees to the plaintiff person who is the prevailing party in an action brought to enforce this Ordinance.

c) If a court finds that action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.



"Kimo Crossman"  
<kimo@webnetic.net>  
10/05/2007 01:10 PM

To "Erica Craven" <elc@lrolaw.com>, "Allen Grossman"  
<grossman356@mac.com>, "Wayne Lanier"  
<w\_lanier@pacbell.net>, "Doug Loranger"  
"Bruce Brugmann" <bruce@sfbg.com>, <tim@sfbg.com>,  
cc "Amanda Witherell" <amanda@sfbg.com>, "Steve Jones"  
<Steve@sfbg.com>

bcc

Subject suggestions to SOTF Compliance and Amendments  
committee - Enforcement

I have read the suggestions by Ms. Craven to be discussed on Wednesday and in general I like them.

<http://www.sfgov.org/site/uploadedfiles/sunshine/compliance/materials/101007item7.pdf>

I would like to make a few minor suggestions:

- 1) Under 67.38 I would suggest language that would allow the SOTF to require the Board of Supervisors to have a hearing for any Department or Agency that receives a Willful Failure/Official Misconduct referral.
- 2) I would suggest that the SOTF be required to report to the Board of Supervisors the Sunshine compliance of every agency that is requesting city funding at the annual budget process and that the agency be required to provide a written plan to come into full compliance as part of their budget submission for review by the Budget Analyst. And that this information be posted on both the SOTF and agency's website.
- 3) 67.34 c I think the intent is that the Orders of Determination be in a PDF Searchable format and that they be posted on the SOTF website.
- 4) 67.34 a, the New American Media seat is often unfilled - a new qualification for this seat should be determined.
- 5) 67.37 The one annual Sunshine training session should be in person - not by video, correspondence or online, by the City Attorney's office. Those other forms may be offered for those who cannot attend.
- 6) The Good Government guide must be updated annually by the City Attorney with all the relevant SOTF Orders of Determination and local and state rulings which will determine the advice provided in consultation with the SOTF.



kimo <kimo@webnetic.net>  
Sent by:  
kimocrossman@gmail.com

01/10/2008 08:04 AM

Please respond to  
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, "Erica Craven" <elc@irolaw.com>, "Dougcoms@aol.com" <Dougcoms@aol.com>, "Richard A. Knee" <rak0408@earthlink.net>, "Harrison Sheppard" <islaiswharf@gmail.com>, "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier" <w\_lanier@pacbell.net>, "Peter Warfield"  
cc  
bcc  
Subject OOPS, How to enforce SOTF unique Contract Provisions to prevent bad deals

*SOTF Admin, please add this to the meeting packet for the Compliance and Amendments Committee regarding suggested changes to the SOTF Ordinance.*

Rick Knee, Chair of Compliance and Amendment Committee and other members:

One of the big arguments for Sunshine is that it can expose back room deals for awarding of contracts that may not be in the best interest of the city.

Based on a recent ruling at SOTF, an enforcement flaw has been identified with the unique disclosure requirements under SOTF regarding Contracts.

In 67.24 a 2, a provision is made for a 10 day rule requiring posting of a draft contract before adoption by a policy body.

In 67.24 e, a procedure for immediate disclosure of the selection criteria and ratings for bids on contracts and real-time and 1 week delay of written negotiations and verbal negotiations respectively are outlined.

Unfortunately there is no enforcement mechanism for SOTF if these procedures are not followed in neither the current NOR the draft ordinance. In particular, the SOTF does not have the ability to require a department to delay submission of a contract to a policy body for approval, nor does it have the ability to require a contract that has been approved to be reagentized for approval or rejection at a later point if these procedures were not followed initially.

I would request that this unfortunate hole be addressed at the Compliance and Amendments Committee in the very near future.

Thank you for your consideration.



kimo <kimo@webnetic.net>  
Sent by:  
kimocrossman@gmail.com

02/02/2008 10:34 AM

Please respond to  
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To SOTF <sotf@sfgov.org>, "Erica Craven" <elc@lrolaw.com>, "Dougcoms@aol.com" <Dougcoms@aol.com>, "Richard A. Knee" <rak0408@earthlink.net>, "Harrison Sheppard" <islaiswharf@gmail.com>, "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier" <w\_lanier@pacbell.net>, "Peter Warfield"  
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On Jan 10, 2008 8:04 AM, kimo <kimo@webnetic.net> wrote:

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