

Date: May 14, 2008

Item No. 4

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

Ordinance Section 67.30 to 67.37

Completed by: Frank Darby

Date: May 8, 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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ARTICLE IV
POLICY IMPLEMENTATION

Sec. ~~67.30.34~~ The ~~Sunshine Ordinance Task Force~~ Sunshine Commission

Sec. ~~67.31.35~~ Responsibility for Administration.

Sec. ~~67.32.36~~ Provision of Services to Other Agencies; Sunshine Required.

Sec. ~~67.33.37~~ Department Head Declaration.

Sec. ~~67.34.38~~ Willful Failure Shall be Official Misconduct.

Sec. ~~67.35.39~~ Enforcement Provisions.

Sec. ~~67.36.40~~ Sunshine Ordinance Supersedes Other Local Laws.

Sec. ~~67.37.41~~ Severability.

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

14 **SECTION ~~67.30.34~~. 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, shall serve as non-voting members of the ~~task force~~ COMMISSION. The City
11 Attorney shall serve as legal advisor to the ~~task force~~ COMMISSION. The ~~Sunshine~~
12 ~~Ordinance Task Force~~ COMMISSION shall, at its request, have assigned to ~~in it~~ an attorney
13 from ~~within~~ the City Attorney's Office or other appropriate City ~~Office~~ office, who is experienced
14 and well informed in public-access law matters. This attorney shall serve solely as a legal
15 advisor and advocate to the ~~Task Force~~ COMMISSION and when requested by the
16 Commission, shall provide opinions and other advice on legal issues that it deems pertinent to
17 its powers or actions under this Ordinance. ~~an~~ An ethical wall will be maintained between the
18 work of this attorney on behalf of the ~~Task Force~~ COMMISSION and any person or ~~Office~~
19 office that the ~~Task Force~~ COMMISSION determines may have a conflict of interest with
20 regard to the matters being handled by the attorney.

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

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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
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1 ~~provide oversight of appointed counsel and expenditures [Subsection 67.30 (d), (e), (f), and~~
2 ~~(g) were 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
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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/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, including by not limited to the charter. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information and meetings 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

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1 explained at the beginning of each public meeting by the presiding officer. (Added by Ord.
2 286-00, File No. 001155. App. 12/22/2000)

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1. 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)
<p>67.3(b)(1)-(4) Office of the City Attorney</p>	<p>Definition of Meeting 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>
<p>Section 67.3(b)(1) Office of the City Attorney</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 conforming the current definition to that used in the Brown Act.</p>
<p>Section 67.3(b)(4)(C-1) Office of the City Attorney</p>	<p>Definition of Meeting – Standing Committees 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>
<p>67.3(d) (c) (1) Municipal Transit Authority (MTA)</p>	<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 67.3(c)(1)-(5) and 67.4(a)(5) Office of the City Attorney</p> <p>Section 67.3(c)(2) Office 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 reference to "passive meeting bodies" is mistaken and 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>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 standard.</p> <p>Consider extending the period of time for which these tapes may be withheld</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>Sections 67.8-1(a) and 67.14(b) Office of the City Attorney</p> <p>Section 67.8-1</p> <p>67.9 (b) MTA</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 audiorecord 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>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>
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<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>Agenda Disclosures; Closed Sessions Additional Requirements for Closed Sessions Disclosure of Closed Session Discussions and Actions</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>67.8(3) 67.8-1(b) 67.12(3) MTA Section 67.8 Office of the City Attorney</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>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>Sections 67.8-1(a) and 67.14(b) Office of the City Attorney</p>	<p>Requirement to Maintain Meeting Tapes Section 67.14(b) requires boards and commissions enumerated in the Charter to audiorecord 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>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 standard.</p>
<p>Section 67.8-1</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>Consider extending the period of time for which these tapes may be withheld</p>
<p>67.9 (b) MTA</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>

<p>information to the public, including the press, before it has been provided to the governing body of the Department.</p>	<p>Consider amending this section to conform to Section 54957(a) of the Brown Act.</p>
<p>Section 67.10(e) Office of the City Attorney</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>
<p>Section 67.12(b)(3)</p>	<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>
<p>67.14(b) MTA</p>	<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>
<p>67.16 Department of Building Inspection (DBI)</p>	<p>Eliminate the requirement to publish minutes due to other mediums that are now available to the public. would save considerable staff time and paper.</p>
<p>Article III Department of Public Works (DPW)</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>Electronic Information 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 requester 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(l). Section 67.21(l) 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>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>67.21(a) Library Commission</p>	<p>Process for Gaining Access to Public Records 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>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>Sections 67.3(c) and 67.4(a)(5) Office of the City Attorney</p> <p>5)</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 reference to "passive meeting bodies" is mistaken and 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>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>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>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>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	Requester must state valid reason why request is immediate, amend 67.25(c)	<p>Immediacy of Response Misuse of "Immediate Disclosure" Request</p>	
67.25 DBI	The correct reference is Government Code section 5243(c).	<p>Government Code section 6456.1 referenced in (b) is incorrect.</p>	
67.25(a) Library Commission	<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>	<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>	
Section 67.25 Office of the City Attorney	<p>(1) Consider amending subsection (a) to reference Government Code Section 6253(c) rather than Section 6256.</p> <p>(2) Consider amending subsection (b) to reference Government Code Section 6253(c), rather than Section 6456.1.</p> <p>(3) Consider including a provision addressing a department's receipt of an immediate disclosure request after 5:00 p.m.</p> <p>(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>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).</p> <p>(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."</p> <p>(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.</p> <p>(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>language or a computer program, or to construct a computer report to extract data." (Cal. Gov. Code §6253(c)(4).)</p>	
<p>67.27 Dept of Status of Women</p>	<p>Justification of Withholding I do not fully understand the components of this section.</p>	<p>Technical assistance provided.</p>
<p>67.29 Dept of Status of Women</p>	<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>
<p>Section 67.35(d) Office of the City Attorney</p>	<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>
<p>Admin Code Section 76.24(c) Police Department</p>	<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." 832.7 Personnel records; confidentiality; discovery; exceptions; complaint disposition notification (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>

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.

Penal Code Section 832.8 defines a "personnel records" as "any file maintained under an individual's name" that contains "personal data."

832.8 Personnel records

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:

- (a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.
- (b) Medical history.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (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.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of privacy

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.

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 specificity 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 employees or 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 Dep</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 TIDA	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

the department) must compare these two closely related provisions and attempt compliance with both. 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>, <sotf@sfgov.org>,
 To <frank.darby@sfgov.org>, <ernest.llorente@sfgov.org>,
 <rak0408@earthlink.net>
 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: sotf@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 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 ForceCommission 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~~ 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~~ development for which the subsidy is based 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-TION 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.

(ei) 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.

(dj) 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 ~~removal~~ 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@lrolaw.com>, "Doug Comstock"
 cc "Allen Grossman" <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

"Kimo Crossman" <kimo@webnetic.net>, "Richard A. Knee"
To <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 as 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 <soft@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@pachell.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/>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
[and] or italics
[Beggiatoa] 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,
Allen Grossman <grossman356@mac.com>, Bruce Wolfe
cc 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@pachell.net>
cc Richard Knee <rak0408@earthlink.net>, Kimo Crossman
<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

"Erica Craven" <elc@irolaw.com>, "Allen Grossman"
To <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@lrolaw.com>, "Dougcoms@aol.com" <Dougcoms@aol.com>, "Richard A. Knee" <rak0408@earthlink.net>, "Harrison Sheppard" "Islais Wharf" <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 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
kimo@webnetic.net

To SOTF <soif@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"

bcc

Subject OOPS, How to enforce SOTF unique Contract Provisions to prevent bad deals

On Jan 10, 2008 8:04 AM, kimo <kimo@webnetic.net> wrote:

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:

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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.



Allen Grossman
<grossman356@mac.com>
04/02/2008 03:12 PM

To SOTF <sotf@sfgov.org>
cc "Richard A. Knee" <rak0408@earthlink.net>, Kimo
Crossman <kimo@webnetic.net>
bcc
Subject C&A Committee Meeting April 9, 2008

Mr. Darby,

Although there is no agenda yet posted, I assume that Article IV of the Ordinance Amendments will be on it for discussion.

Please include the two attached Word documents in connection with the agenda item for that discussion in the package that goes to the Committee members.

Thank You

Allen Grossman



Memo to C&A re Article IV Revision.doc SO Amended ARTICLE IV(AG Rev) 040208.doc

Memorandum to Compliance & Amendments Committee

Re: Grossman proposed Revision of Article IV – Sunshine Ordinance

Date: April 2, 2008

These are some comments intended to explain and raise some issues regarding on the draft revision of Article IV submitted to the Committee with this Memorandum.

First, I confess that given the chance to “edit” the entire section, I approached the task aggressively and just could not resist the opportunity to include some semi-substantive changes – as will be quite evident when you review the revision.

Second, a couple of definitions would help.

For example, why not cover all three public access laws, the Sunshine Ordinance, the CPRA and the Brown Act in a single definition, such as “Public Access Laws”? This would avoid having to repeat all three in the various places they are referred to.

If possible, maybe the various “entities” that are covered, such as departments, offices/officials, agencies, policy bodies and/or passive policy bodies, could be grouped together under some defined term as often references to more than one are made.

Third, I wonder whether the powers to take testimony under oath, subpoena witnesses, etc. will stand up, given that the only way to enforce these powers may be by court action and potential questions such as the right to counsel, the need for available complete transcripts, appeals (where?) and the like are bound to be raised.

Fourth, while I tried to make enforcement through Ethics more specific, I believe that those provisions could go further. If it were up to me, I would make the determinations of the Sunshine Commission binding on Ethics in the absence of a preponderance of evidence (or similar high standard) provided to Ethics by the respondent; require Ethics to make all files related to these referred cases fully disclosable public records and conduct an open hearing on every referred case. It may be possible to include an amendment to the Ethics provisions in the City charter to incorporate some specific sanctions directed to violations of the Ordinance, or possibly do it in the new Ordinance by giving those choices to Ethics when matters are referred to Ethics. By shifting enforcement to Ethics with “teeth”, better compliance should become the norm.

Finally, once the entire amended document is edited and all the various provisions properly harmonized, undoubtedly there will probably be changes to this Article.

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ARTICLE IV

POLICY IMPLEMENTATION

- Sec. 67.34 The Sunshine Commission
- Sec. 67.35 Responsibility for Administration.
- Sec. 67.36 Provision of Services to Other Agencies; Sunshine Required.
- Sec. 67.37 ~~Department Head~~Open Government Declaration.
- Sec. 67.38 Hearings and Orders of Determination
- Sec. 67.3839 Willful Failure Shall be Official Misconduct.
- Sec. 67.40 Commission Enforcement Provisions
- Sec. 67.3941. Public Enforcement Provisions.
- Sec. 67.420 Sunshine Ordinance Supersedes Other Local Laws.
- Sec. 67.434 Severability.
- Sec. 67A.1. Prohibiting the use of Cell Phone, Pagers and Similar Sound-Producing
[to be moved] Electrical Devices at and During Public Meetings

SECTION 67.34. THE SUNSHINE COMMISSION

____(a) There is hereby established the Sunshine Commission, which shall consist
consisting of eleven voting members appointed by the Board of Supervisors. All members
shall be residents of the City who must shall have had 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 member of the
California State Bar and one of whom shall be a local journalist. One member shall be

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1 appointed an individual from the press or electronic media. One member shall be appointed
2 from an individual whose ~~names have~~ name has been submitted by the local chapter of the
3 League of Women Voters. ~~Four members shall be members of the public who have~~
4 ~~demonstrated interest in or have experience in the issues of citizen access and participation in~~
5 ~~local government.~~ Two members shall be individuals members of the public experienced in
6 obtaining public information from government offices, agencies or policy bodies. One member
7 shall be a journalist from a racial/ethnic-minority-owned news organization and shall be
8 appointed from an individual whose ~~names name-~~ name- ~~have has~~ been submitted by New - America
9 Media. Four members shall be individuals from the general public, one of whom shall have a
10 "disability", as such term ~~The COMMISSION shall include at least one member who shall be a~~
11 ~~member of the public with a disability that meets the definition of disabledis then defined in~~
12 ~~under the~~ The Federal Americans with Disabilities Act of 1990 (or any successor statute) and
13 ~~who has demonstrated interest in citizen access and participation in local government.~~ The
14 Mayor or ~~his or her~~ the Mayor's designee, and the Clerk of the Board of Supervisors or ~~his or~~
15 ~~her~~ the Clerk's designee, and a designated representative of the Youth Commission, shall
16 serve as non-voting ex-officio members of the Sunshine Commission.

17 _____(b) ~~The City Attorney shall serve as legal advisor to the COMMISSION. The~~
18 ~~ACOMMISSION shall, at its request, have assigned to it a~~ An attorney from the City Attorney's
19 Office or other appropriate City office, who is experienced and well informed in public-access
20 law matters, shall be assigned to the Sunshine Commission. This assigned attorney shall
21 serve solely as a legal advisor and advocate to the Sunshine Commission and, when
22 requested by the Sunshine Commission, shall provide opinions and other advice on legal
23 issues that it deems pertinent to its powers or actions under this Ordinance. ~~and a~~ An ethical
24 wall will be maintained between the work of this attorney on behalf of the COMMISSION

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1 Sunshine Commission and that of the City Attorney's Office or any person or office that the
2 ~~COMMISSION~~ Sunshine Commission determines may have a conflict of interest with regard
3 to the matters being handled by ~~the~~ this attorney.

4 _____ (bc) The term of each appointive member shall be two years. ~~In the event~~ If a
5 vacancy occurs during the term ~~of office~~ of any appointive member, a successor member shall
6 be appointed for the unexpired term of ~~the office~~ such member vacated in a the same manner
7 similar ~~to~~ as that described herein for the former initial members. The ~~COMMISSION~~ Sunshine
8 Commission shall elect a chair and vice chair from among its appointive members. The term
9 of office ~~for the chair and vice chair~~ shall be one year. Members of the ~~COMMISSION~~
10 Sunshine Commission shall serve without compensation.

11 _____ (d) The Sunshine Commission shall approve by-laws specifying, among other things,
12 a general schedule for meetings, quorum, voting rules, formation and functions of committees,
13 requirements for attendance by its appointive members and procedures and criteria for
14 removing appointive members for non-attendance.

15 (ee) The ~~COMMISSION~~ Sunshine Commission shall:

16 _____ (1) advise the Board of Supervisors, ~~the office~~ Office of the ~~mayer~~ Mayor and ___ other
17 City departments [and policy bodies?] on appropriate ways in which to ___ implement this
18 ~~chapter~~ Ordinance,

19 _____ (2) ~~The COMMISSION~~ shall develop appropriate goals to ensure practical and timely
20 implementation of this ~~chapter~~ Ordinance,

21 _____ (3) ~~The COMMISSION~~ shall propose to the Board of Supervisors amendments to this
22 ~~chapter~~ Ordinance and solicit advice from City officials, employees and ___ members of the
23 public on ways to improved ~~the~~ this Ordinance, (
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1 ~~_____ (4). The COMMISSION shall report to the Board of Supervisors at least once-~~
2 ~~_____ annually on any practical or policy problems encountered in the administration of this~~
3 ~~_____ chapter Ordinance.~~

4 ~~_____ (5). The COMMISSION shall receive and review the annual reports of the Supervisor(s)~~
5 ~~of Public Records and Public Forums, and may request such additional _____ reports or~~
6 ~~information as it deems necessary and~~

7 ~~_____ (6). The COMMISSION is empowered to make referrals to a municipal office or _____ any~~
8 ~~_____ other appropriate body or official including the District Attorney or the State~~
9 ~~_____ Attorney General with enforcement power under this ordinance or under the~~
10 ~~_____ California Public Records Act and the Brown Act whenever it concludes that any~~
11 ~~_____ person has violated any provisions of this ordinance or the Acts. [Moved to Section~~

12 ~~_____ 67.40] The COMMISSION shall, from time to time as it sees fit, issue public reports~~
13 ~~_____ evaluating compliance with this ordinance Ordinance and related California laws by~~
14 ~~_____ the City or any department, office, or official thereof. [What about policy/passive policy~~
15 ~~bodies?]~~

16 (ef) In addition to the powers specified in this Ordinance, the COMMISSION
17 Sunshine Commission shall possess such powers as the Board of Supervisors may confer
18 upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

19
20 ~~SECTION 67.35. HEARINGS AND ORDERS OF DETERMINATION. [Moved to Section~~
21 ~~67.38]~~

22 ~~(a) The COMMISSION shall conduct administrative hearings on complaints of alleged~~
23 ~~violations of the public meeting or public records provisions of the Ordinance, violations of the~~
24

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1 ~~California Public Records Act, or the Brown Act. The COMMISSION may issue Orders of~~
2 ~~Determination following the hearing on a particular complaint.~~

3 ~~An Order of Determination finding a violation of the Ordinance, the California Public Records~~
4 ~~Act or the Brown Act shall be evidence of such violation in any other administrative or judicial~~
5 ~~proceeding, and factual findings made during the hearing shall be reviewed for abuse of~~
6 ~~discretion.~~

7 ~~(b) In the event that the COMMISSION issues an Order of Determination finding that any~~
8 ~~person or entity covered by the Sunshine Ordinance violated the Ordinance in handling public~~
9 ~~meetings or release of public records, the COMMISSION may require the governing entity to~~
10 ~~which the person or entity who has violated the ordinance reports to schedule at the governing~~
11 ~~entity's next regularly scheduled meeting the Order of Determination for its discussion and~~
12 ~~response.~~

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

19 ~~(d) (1) In the event the COMMISSION finds a serious and willful violation of the~~
20 ~~Ordinance, the COMMISSION by a two third vote of the entire body may appoint outside~~
21 ~~counsel to prosecute the violation(s) of the Ordinance in the Civil Courts to the extent~~
22 ~~permitted by the City Charter. The amount of expenditure for outside counsel to prosecute~~
23 ~~these cases shall be no more than \$50,000 per fiscal year or a greater amount if authorized by~~
24
25

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1 ~~the Board of Supervisors. The COMMISSION shall include its bylaws selection criteria and~~
2 ~~oversight of appointed counsel and expenditures.~~

3
4 **SECTION 67.3635. RESPONSIBILITY FOR ADMINISTRATION.**

5 (a) ~~___~~ The Mayor shall administer and coordinate the implementation of the provisions of this
6 ~~chapter Ordinance~~ for departments under his or her the Mayor's control and for departments
7 under the control of boards and commissions appointed by the Mayor. ~~Each other Elected~~
8 ~~elected officers~~ official shall administer and coordinate the implementation of the provisions of
9 this ~~chapter Ordinance~~ for departments under their such official's ~~respective~~ control.

10 (b) ~~___~~ The Clerk of the Board of Supervisors shall ~~provide~~ assign at least one full-time staff
11 ~~person to the Sunshine Commission, subject to its approval, to (i) act as its full-time~~
12 ~~Administrator, (ii) - perform all other administrative duties for the Sunshine Commission and to~~
13 ~~(iii) assist any person in gaining access to public meetings or public information. At least one~~
14 ~~full-time staff person shall be the Administrator of the COMMISSION and shall have no other~~
15 ~~duties. The Clerk shall provide additional support staff, as needed. The Clerk of the Board of~~
16 ~~Supervisors shall provide the as well as staff persons with whatever facilities and equipment~~
17 ~~are necessary for the Administrator and any additional staff to perform their duties. ___~~

18 (c) When requested by the Sunshine Commission, the Board of Supervisors and the City
19 Attorney's office shall provide sufficient staff and resources to allow the Sunshine Commission
20 to fulfill its duties under this Ordinance.

21
22 **SECTION 67.3736. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE**
23 **REQUIRED.**

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1 (a) It is the policy of the City and County of San Francisco to ensure opportunities for
2 informed civic participation embodied in this Ordinance to all local, state, regional and federal
3 agencies, departments and ~~institutions~~ entities with which it maintains continuing legal and
4 political relationships. Officers, agents and other representatives of the City shall continually,
5 consistently and assertively work to seek commitments to enact open meetings, public
6 information and citizen comment policies by these agencies, departments and
7 ~~institutions~~ entities, including, without limitation, but not limited to, the Presidio Trust, the San
8 Francisco Unified School District, the San Francisco Community College District, the San
9 Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island
10 Development Authority, the San Francisco Redevelopment Authority and the University of
11 California campuses operating within the City. _

12 (b) To the extent not expressly prohibited by law, for all purposes of this Ordinance (i)
13 ~~copies of all written communications with the above identified~~ agencies, departments or
14 entities identified in subsection (a) and any City employee, officer, agents, and/or
15 representative, shall be ~~accessible as public records.~~ and (ii) To the extent not expressly
16 prohibited by law, any meeting of the governing body authority of any such agency,
17 department or entity and institution at which City officers, agents or representatives are present
18 in their official capacities shall be open to the public, ~~and this provision cannot be waived by~~
19 ~~any~~ No City officer, agent or representative. can waive the application of this subsection.

20 (c) The City shall ~~give~~ not provide any subsidy, whether in money, tax abatements, land,
21 or services, to any for profit entity or enterprise unless that entity or enterprise provides the
22 City [Controller?] with financial projections (including profit and loss figures) and annual
23 audited financial statements for the project or development for which the subsidy is proposed
24
25

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1 or ~~provided~~ provided, and all such projections and financial statements shall ~~be to~~ constitute
2 fully disclosable public records that must be ~~disclosed~~. [Should this be a separate section?]

3
4 **SECTION 67.3837. OPEN GOVERNMENT DECLARATION.**

5 All ~~Each~~ City department heads, and all City management employees and all ~~each other~~
6 employees or officials who are required to sign ~~provide~~ an affidavit of financial interest with to
7 the Ethics Commission shall ~~sign~~ also provide to the Ethics Commission an annual affidavit or
8 declaration ~~stating~~ under penalty of perjury that ~~they have~~ such person ~~read~~ has read the
9 ~~Sunshine~~ this Ordinance and ~~have~~ has attended or will attend when next offered, a training
10 session on the ~~Sunshine~~ this Ordinance, ~~to be held at least once annually~~. The ~~Such~~ affidavits
11 ~~or and~~ declarations shall be maintained by the Ethics Commission and shall ~~be~~ constitute fully
12 disclosable available as a public records. ~~Annual training~~ Training sessions shall be held at
13 least annually ~~provided by the San Francisco City Attorney's Office in consultation with the~~
14 ~~Sunshine Commission, using~~. All material and training plans shall ~~be~~ approved by the
15 Sunshine Commission annually.

16
17 **SECTION 67.38. HEARINGS AND ORDERS OF DETERMINATION.**

18 (a) The ~~COMMISSION~~ Sunshine Commission shall conduct administrative hearings on
19 complaints of alleged violations of the ~~public meeting or public records provision~~ this of the
20 Ordinance, ~~and any~~ violations of the California Public Records Act, or the Brown Act,
21 including without limitation, if (1) a custodian refuses, fails to comply, or incompletely complies
22 with a request for inspection or a copy of a public record made pursuant to section 67.21(b) or
23 (2) a petition is denied or not acted on by the Supervisor of Public Records as provided in
24 section 67.21(f). The COMMISSION may issue Orders of Determination following the hearing

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1 on a particular complaint. ~~An Order of Determination finding a violation of the Ordinance, the~~
2 ~~California Public Records Act or the Brown Act shall be evidence of such violation in any other~~
3 ~~administrative or judicial proceeding, and factual findings made during the hearing shall be~~
4 ~~reviewed for abuse of discretion. [Last sentence moved to subsection (e).]~~

5 (b) An authorized representative of the respondent department, agency, policy body or the
6 custodian of public records, who has personal knowledge of the matters described in a
7 complaint, shall attend the administrative hearing on each complaint, as well as each
8 subsequent hearing with respect to thereto. [From Section 67.21 (g)]

9 (c) If the complaint is based upon a request for a public record, the respondent's authorized
10 representative shall explain the response to the request, provide a detailed description of the
11 records search conducted, the basis for any decision to withhold from disclosure or redact the
12 records requested, and compliance with any Order of the Commission. Unless an extension is
13 agreed to by the petitioner [complainant?] and the respondent, the Sunshine Commission shall
14 inform the petitioner [complainant?], as soon as possible and within two days after its next
15 meeting [after the hearing?], but in no case more than 45 days after the petition [complaint]
16 was received, of its written Order of Determination (i) that the record requested, or any part of
17 that record, is or is not disclosable and (ii) if disclosable, that the respondent and the
18 custodian of such public records comply with such Order within five days from respondent's
19 receipt thereof. [From Section 67.21(g)]

20 ~~(b) In the event that the COMMISSION issues an Order of Determination finding that any~~
21 ~~person or entity covered by the Sunshine Ordinance violated the Ordinance in handling public~~
22 ~~meetings or release of public records, the COMMISSION may require the governing entity to~~
23 ~~which the person or entity who has violated the ordinance reports to schedule at the governing~~
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1 entity's next regularly scheduled meeting the Order of Determination for its discussion and
2 response. [Moved to subsection (f).]

3 _____(ed) ~~Unless otherwise~~To the extent not prohibited by state law or other existing local
4 ordinance, the COMMISSION Sunshine Commission may subpoena witnesses, compel their
5 attendance and testimony, administer oaths and affirmation, take evidence and require by
6 subpoena the production of any books, papers, records or other items material to the
7 performance of the COMMISSION'S Sunshine Commission's duties or exercise of its powers,
8 including, without limitation, administrative hearings on complaints.

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. The amount of expenditure for outside counsel to prosecute~~
13 ~~these cases shall be no more than \$50,000 per fiscal year or a greater amount if authorized by~~
14 ~~the Board of Supervisors. The COMMISSION shall include in its bylaws selection criteria and~~
15 ~~oversight of appointed counsel and expenditures. [Moved to Section 67.40(b).]~~

16 (e) ~~An Order of Determination~~Any finding of a violation of the Ordinance, the California
17 Public Records Act or the Brown Act shall be presumptive evidence of such violation in any
18 other administrative or judicial proceeding, and factual findings [where documented?] made
19 during the hearing shall may be reviewed solely for abuse of discretion.

20 (bf) In the event that the COMMISSION Sunshine Commission issues an Order of
21 Determination with a finding that any person or entity policy body [or passive policy body?]-or
22 member thereof covered by the Sunshine Ordinance violated the this Ordinance [any Public
23 access Law?] in handling in the conduct of public meetings or release the disclosure of public
24 records, the COMMISSION Sunshine Commission may require the governing entity such policy

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1 body [or passive policy body] to which the person or entity who has violated the ordinance
2 reports to schedule to take up the Order of Determination for discussion and response at the
3 governing entity sits next regularly scheduled meeting, the Order of Determination for its
4 discussion and response. [References to "entity" in the draft seemed inappropriate as
5 executive departments or agencies don't have "scheduled meetings" in the same sense as
6 commissions etc.] [From Section 67.35(b).]

7
8
9
10
11 (g) Every year on September 30, and as otherwise requested by the Sunshine
12 Commission, the Supervisor of Public Records shall prepare a tally and report of every petition
13 brought before it for access to records since the time of its last tally and report. The report
14 shall at least identify for each petition the record or records sought, the custodian of those
15 records, the ruling of the Supervisor of Public Records, whether any ruling was overturned by a
16 court and whether orders given to custodians of public records were followed. The report shall
17 also summarize any court actions during that period regarding petitions the Supervisor of
18 Public Records has decided. The report shall also include copies of all rulings made by the
19 Supervisor of Public records and all opinions issued. [From 67.21(i).]

20
21 **SECTION 67.39. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

22 The willful failure of any person, including any elected official, to discharge any duties imposed
23 by this Ordinance, the Brown Act or the California Public Records Act [any Public Access Law]
24 shall be deemed official misconduct for purposes of any relevant provision of the City Charter
25

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1 ~~and of any applicable State law. If the Commission makes a determination that any person or~~
2 ~~entity has willfully failed to discharge any duty imposed by the Ordinance then the Commission~~
3 ~~shall refer with written findings, the matter to the Ethics Commission, Board of Supervisors,~~
4 ~~District Attorney, and/or the State Attorney General for investigation and enforcement as~~
5 ~~appropriate. [Second sentence moved to Section 67.40(c).]~~
6

7 **SECTION 67.40. SUNSHINE COMMISSION ENFORCEMENT PROVISIONS.**

8 (a) If the respondent or custodian of a public record refuses or fails to comply with an Order
9 of Determination within -5 days, the Sunshine Commission may refer such refusal or failure to
10 the San Francisco Ethics Commission, Board of Supervisors, District Attorney or the State
11 Attorney General ~~who may take whatever measures~~ **for such enforcement as the official or**
12 **policy body they deems** necessary to insure compliance with the provisions of this Ordinance.
13 [From Section 67.21(g).]

14 (b) ~~(1)~~ In the event the ~~COMMISSION~~ Sunshine Commission finds a one or more
15 serious and willful violations of the this Ordinance, the Sunshine Commission ~~COMMISSION~~
16 ~~by upon not less than a two-thirds~~ vote of the entire body ~~its members~~ may appoint outside
17 counsel to ~~prosecute~~ remedy the such violation(s) of the Ordinance by bringing an appropriate
18 action in the Civil Superior Courts to the extent permitted by the City Charter. ~~(2)~~ The amount
19 ~~of expenditure~~ total fees and costs expended in connection with these actions ~~for outside~~
20 ~~counsel to prosecute these cases shall be no more than~~ not exceed \$50,000 per in any fiscal
21 year or a such greater amount if as may be authorized by the Board of Supervisors. The
22 Sunshine Commission's by-laws ~~COMMISSION~~ shall include ~~it its by-laws~~ selection criteria and
23 oversight of any appointed counsel and expenditures related top these actions.
24
2

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1 (c) If the Commission makes a determination, with supporting findings, that any person or
2 entity has willfully failed to discharge any duty imposed by the Ordinance, it is empowered to
3 and then the Commission shall refer with written findings, the matter its determination to the
4 Ethics Commission, Board of Supervisors, District Attorney, and/or the State Attorney General
5 for investigation and enforcement, as appropriate. Any such referral shall include the Sunshine
6 Commission's determination that such person's willfull failure constitutes official misconduct,
7 as provided in Section 67. 39.

8 (d) Whenever The the Sunshine Commission COMMISSION determines that any person
9 has violated any provisions of the California Public Records Act and the Brown Act, the
10 Sunshine Commission, it is empowered to make referrals its determination to a municipal
11 office or any other appropriate body or City official or other appropriate body or official with
12 enforcement power including the District Attorney or the State Attorney General with
13 enforcement power under this eOrdinance or under the California Public Records Act and the
14 Brown Act whenever it concludes that any person has violated any provisions of this ordinance
15 or the Acts, including, without limitation, the [Ethics Commission], the District Attorney or the
16 Sate Attorney General. [From Section 67.34 (c).]

17
18 **SECTION 67.41 PUBLIC ENFORCEMENT PROVISIONS**

19 (a) The administrative remedy provided under this -Ordinance shall in no way limit the
20 availability of other administrative remedies provided to any person with respect to any officer
21 official or employee of any agency, executive office, D department or Policy policy Bodybody
22 or agency; nor shall the administrative remedy provided by this-section 67.40 in any way limit
23 the availability of judicial remedies otherwise available to any person seeking relief under this
24 Ordinance, the California Public Records Act or the Brown Act [any Public Access
25

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1 Law? requesting a public record. If a custodian of a public record refuses or fails to comply with
2 the request of any person for inspection or copy of a public record or with an Order of
3 Determination under this Ordinance, the Superior Court shall have jurisdiction to order
4 compliance. [From Section 67.21(h)]

5 (b) ___ Any person may institute proceedings for enforcement and penalties under this
6 Ordinance act in any court of competent jurisdiction or before the Ethics Commission if
7 enforcement action is not taken by a city or state official 40 days after a complaint is filed. In
8 keeping with the public policy favoring expeditious proceedings to resolve any matters
9 affecting the public's access to public meetings and public information, the Ethics Commission
10 shall give priority to any such complaint and provide a schedule for a hearing on the complaint
11 with the object of securing a decision at the earliest possible date. [The first sentence is from
12 67.40.][The last part of this sentence comes from Section 6258 of the CPRA.]

13 (c) ___ Any person may institute proceedings for injunctive relief, declaratory relief, or writ of
14 mandate in any court of competent jurisdiction to enforce his or her rights to inspect or to
15 receive a copy of any public record or class of public records under this Ordinance, including,
16 without limitation, the rights to inspect and obtain copies of public records or to enforce his
17 or her right to attend any meeting required under this Ordinance to be open, or to compel such
18 meeting to be open. A The court shall award costs and reasonable attorneys' fees to the
19 plaintiff, who is if the prevailing party in an any such action brought to enforce this Ordinance. If
20 a court finds that any such action filed pursuant to this section is frivolous, the City and County
21 may assert its rights to be paid be reimbursed its reasonable attorneys' fees and costs. [From
22 Section 67.40.]

23 (d) In any court proceeding or Ethics Commission procedure brought pursuant to this
24 Ordinance with respect to a custodian's refusal, failure to comply with or the incomplete

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1 compliance with a request for inspection or a copy of a public record made pursuant to section
2 67.21(b), it shall be a presumed there shall be a presumption that the record sought is fully
3 disclosable, and the burden shall be upon the custodian to prove with specificity -that they
4 such custodian have has fully complied with the request and/or that an exemption to
5 disclosure applies under this Ordinance. [From Section 67.21(i).]
6

7 ~~(e) ___ Any person may institute proceedings for enforcement and penalties under this act in~~
8 ~~any court of competent jurisdiction or before the Ethics Commission if enforcement action is~~
9 ~~not taken by a city or state official 40 days after a complaint is filed.~~
10

11 **SECTION 67.41. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

12 The provisions of this ~~Sunshine Ordinance~~ supersede other local laws, including, without by
13 not limited to limitation, the City eCharter. Whenever there is a conflict between any provision
14 of this Ordinance and one in local law is identified, the requirement ~~which that~~ would result in
15 greater or more expedited public access to public information and public meetings shall apply.
16

17 **SECTION 67.42. SEVERABILITY.**

18 The provisions of this ~~chapter~~ Ordinance are declared to be separate and severable. The
19 invalidity of any clause, sentence, paragraph, subdivision, section or portion of this
20 ~~chapte~~ Ordinancer, or the invalidity of the application thereof to any person or circumstances,
21 shall not affect the validity of the remainder of this ~~chapter~~ Ordinance or the validity of its
22 application to other persons or circumstances.
23

24 [The following Section should be moved to 67.14, probably as subsection (e)].
25

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

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



"Kimo Crossman"
 <kimo@webnetic.net>
 04/02/2008 06:44 PM

"Allen Grossman" <grossman356@mac.com>, <elc@lrolaw.com>, <Dougcoms@aol.com>, "Richard Knee" <rak0408@earthlink.net>
 cc "SOTF" <sotf@sfgov.org>, "Bruce Wolfe, MSW" <sotf@brucewolfe.net>
 bcc
 Subject Crossman Feedback on Grossman revisions

In new 67.34 (e) (6) SOTF should be allowed to give reports on any Sunshine ordinance matter including contracts etc

In new 67.36 I think there are more bodies to add now including LAFCO, what about these Community Benefits districts?
<http://central-market.org/index.php>

For new 67.37, I believe Doug has wanted at least for trainings per year?

Side note - if SOTF is given power to have hearings on Public Records, is it exclusive - preventing Ethics from also having hearings on if - what if someone files a formal complaint about a record directly with Ethics? Also how about now were they reinvestigate matters?

For 67.38 (c) Can we get the detailed description of the records search conducted in writing before the complaint is heard? Why do we have to wait for a hearing to see this?

67.38 (f) Here is where the other BASICALLY FREE political options I have been suggesting could be included:

- 1) SOTF may require posting of a link of all SOTF Determinations & Referrals on front page (first screen above the fold) of Department or Body website.
- 2) All Management or Financial audits must review the entities compliance with sunshine and workplans to come into compliance based on recent relevant determinations & referrals.
- 3) All entities must submit with annual budget request summary of relevant SOTF determinations & referrals and how the agency is and will in the future abide by them.
- 4) SOTF may request that the BOS have a hearing on any Determination or Referral

(g) Supervisor of Records & FORUMs (missing here) will include the Sunshine Ordinance on all communications and must be bound by SOTF Precedent.

Typo page 13 line 6 "TOP" vs "to"

Type page 14 line 22 Sate STATE also it says "with enforcement power under this ordinance or under Acts, including without limitation" this doesn't make sense.

What happens if a Commission votes to withhold a document or go into closed session – can the body as a whole be found in Official Misconduct?

67.41 – I fear that the way this whole section is written it is not clear that one can go to court over sunshine matters like contracts and so forth that are not inspect a record or attend a meeting and that there is no Presumption in favor of the complaint.

67.41 is listed twice. under Superseds other laws including Charter I would include reference to 6253 (e)

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

From: Allen Grossman [mailto:grossman356@mac.com]

Sent: Wednesday, April 02, 2008 1:03 PM

To: Kimo Crossman

Subject: Re: Revised SO Article IV.

Kimo,

Here its is as a PDF.

Allen

