

Date: June 4, 2008

Item No. 1

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*



**Ordinance Sections, Article 4**



Completed by: Frank Darby

Date: May 28, 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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2 **ARTICLE IV**  
3 **POLICY IMPLEMENTATION**

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

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12 Sec. 67.42 Referrals and Enforcement by the Ethics Commission

13 Sec. ~~67.35-43~~. Public Enforcement Provisions.

14 Sec. ~~67.36-44~~ Sunshine Ordinance Supersedes Other Local Laws.

15 Sec. ~~67.37-45~~ Severability.

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

17  
18 **SECTION 67.3034. THE SUNSHINE ORDINANCE TASK FORCE SUNSHINE**  
19 **COMMISSION**

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

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

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

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

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1       ~~(d) — The Task Force COMMISSION shall conduct administrative hearings on~~  
2 ~~complaints of made by members of the public for alleged violations of the public meeting or~~  
3 ~~public records provisions of the Ordinance, violations of the State California Public Records~~  
4 ~~Act, or the State Brown Act governing public meetings. The Task Force COMMISSION may~~  
5 ~~issue Orders of Determination following the hearing on a particular complaint. An Order of~~  
6 ~~Determination finding a violation of the Ordinance, the California Public Records Act or the~~  
7 ~~Brown Act above state laws shall be evidence of such violation in any other administrative or~~  
8 ~~judicial proceeding~~

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

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

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

23       ~~(g) — (1) — In the event the Task Force COMMISSION finds a serious and willful~~  
24 ~~violation of the Ordinance, the Task Force COMMISSION by a 2/3 vote of the entire body may~~

25

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1 ~~seek appoint outside counsel to prosecute the violation(s) of the Ordinance in the Civil Courts~~  
2 ~~to the extent permitted by the City Charter.~~

3 ~~(2) The amount of expenditure shall be for outside counsel governed by the budget~~  
4 ~~provisions of the City Charter and in no event shall the expenditure to prosecute these cases~~  
5 ~~shall be no more than \$50,000.00 per fiscal year. The COMMISSION shall adopt bylaws to~~  
6 ~~provide oversight of appointed counsel and expenditures. [Subsection 67.30 (d), (e), (f), and~~  
7 ~~(g) were moved to new Section 67.35]~~

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

11 (g) ~~(i)~~(e) In addition to the powers specified above, the Task Force COMMISSION  
12 shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as  
13 the People of San Francisco shall confer upon it by initiative. (Added by Ord. 265-93, App.  
14 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96,  
15 App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

17 **SECTION 67.3435. RESPONSIBILITY FOR ADMINISTRATION.**

18 The Mayor shall administer and coordinate the implementation of the provisions of this  
19 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~  
20 ~~the implementation of the provisions of this chapter and~~ for departments under the control of  
21 boards and commissions appointed by the Mayor. Elected officers shall administer and  
22 coordinate the implementation of the provisions of this chapter for departments under their  
23 respective control. The Board of Supervisors and the City Attorney's office shall provide  
24 sufficient staff and resources to allow the Sunshine Commission to fulfill its duties under this  
25 Ordinance. ~~The Clerk of the Board of Supervisors shall provide a full-time staff at least one full~~

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

8  
9 **SECTION 67.3236. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE**  
10 **REQUIRED.**

11 (a) It is the policy of the City and County of San Francisco to ensure opportunities for  
12 informed civic participation embodied in this Ordinance to all local, state, regional and federal  
13 agencies and institutions with which it maintains continuing legal and political relationships.  
14 Officers, agents and other representatives of the City shall continually, consistently and  
15 assertively work to seek commitments to enact open meetings, public information and citizen  
16 comment policies by these agencies and institutions, including but not limited to the Presidio  
17 Trust, the San Francisco Unified School District, the San Francisco Community College  
18 District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the  
19 Treasure Island Development Authority, the San Francisco Redevelopment Authority and the  
20 University of California campuses operating within the City. To the extent not expressly  
21 prohibited by law, copies of all written communications with the above identified entities and  
22 any City employee, officer, agents, ~~or and/or~~ representative, shall be accessible as public  
23 records. To the extent not expressly prohibited by law, any meeting of the governing body of  
24 any such agency and institution at which City officers, agents or representatives are present in  
25 their official capacities shall be open to the public, and this provision cannot be waived by any

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1 City officer, agent or representative. The ~~city~~ City shall give no subsidy in money, tax  
2 abatements, land, or services to any ~~private-for-profit~~ entity unless that ~~private~~ entity agrees in  
3 writing to ~~provide~~ provides the ~~city~~ City with financial projections (including profit and loss  
4 figures); and annual audited financial statements for the project or development thereafter, ~~for~~  
5 ~~the project upon for~~ which the subsidy is ~~based~~ proposed or provided and all such projections  
6 and financial statements shall be public records that must be disclosed. (Added by Proposition  
7 G, 11/2/99)

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

12  
13 **SECTION 67.3337. DEPARTMENT HEAD OPEN GOVERNMENT DECLARATION.**

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



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1 **SECTION 67.38. ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC**  
2 **INFORMATION.**

3 (a) The San Francisco City Attorney's office shall act to protect and secure the  
4 rights of the people of San Francisco to access public information and public meetings and  
5 shall not act as legal counsel for any City employee for purposes of denying access to public  
6 meetings or public information.

7 (b) Notwithstanding the attorney-client privilege and work-product protections that  
8 might otherwise be applicable, all written or oral communications with the City Attorney's  
9 Office with regard to this Ordinance, and obligations under the California Public Records Act,  
10 the Brown Act, and any other applicable open government law, including petitions, requests  
11 for opinion, opinions and advice shall be disclosable public records and public information.  
12 The City Attorney's Office shall not have a policy to provide oral advice in lieu of written advice  
13 to avoid disclosure under this provision.

14 (c) Notwithstanding the provisions of this section, the City Attorney may defend the  
15 City or a City Employee in litigation under this Ordinance to the extent required by the State  
16 Law or the City Charter.

17 (d) Every year on September 30, and as otherwise requested by the Sunshine  
18 Commission, the Supervisor of Public Records and Supervisor of Public Forums shall prepare  
19 a tally and report of every petition brought before it for access to records and public forum  
20 questions since the time of its last tally and report. The report shall at least identify for each  
21 petition the record or records sought, the custodian of those records, the public forum  
22 question presented, the ruling of the Supervisor of Public Records and Supervisor of Public  
23 Forums, whether any ruling was overturned by a court and whether each order given to a  
24 custodian of public records and/or any employee, official, department, agency, or policy body  
25 was complied with. The report shall also summarize any court actions during that period

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1 regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have  
2 decided as well as court actions regarding or implicating the Sunshine Ordinance. The report  
3 shall also include copies of all rulings made by the Supervisor of Public Records and  
4 Supervisor of Public Forums and all opinions issued.

5  
6 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**

7 (a) The COMMISSION shall conduct administrative hearings on complaints of  
8 alleged violations of the public meeting or public records provisions of the Ordinance, the  
9 California Public Records Act, or the Brown Act. The COMMISSION may issue Orders of  
10 Determination following the hearing on a particular complaint. If the COMMISSION  
11 determines on the basis of substantial evidence presented during the hearing that a violation  
12 of the Ordinance, the California Public Records Act or the Brown Act has occurred, it shall  
13 issue an Order of Determination with written findings of fact and law.

14 (b) To the extent not prohibited by State law or other the City Charter, 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 [MOVED from 67.21 – new/revised 67.20]

20  
21 (c) An authorized representative of the respondent employee, official, department,  
22 agency, policy body, or custodian of public record who has personal knowledge of the matters  
23 alleged in the complaint shall attend each COMMISSION hearing and COMMISSION  
24 committee hearing to explain the response to the request for access to public meetings or  
25 public information, as well as provide a detailed description of the records search conducted,

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1 and the statutory or case law basis for any decision to withhold or redact the records  
2 requested as applicable.

3 (d) The Sunshine Commission shall inform the requester, as soon as possible and  
4 within 2 business days after its next meeting but in no case later than 45 calendar days from  
5 when a complaint in writing is received, unless an extension is agreed to by the requester and  
6 respondent, of its Order of Determination whether there has been a violation of the Ordinance,  
7 the California Public Records Act or the Brown Act. Orders of Determination shall be posted  
8 on the Commission's website.

9  
10 **SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.**

11 (a) Upon issuance of an Order of Determination finding that a record should be  
12 released or other action should be taken by an employee, official, department, agency, policy  
13 body or custodian of public records, the Sunshine Commission shall immediately order the  
14 person or entity to comply with the Order of Determination. If the person or entity fails to  
15 comply with any such Order within 5 business days after issuance, the Sunshine Commission  
16 may refer the matter to the San Francisco Ethics Commission, Board of Supervisors, District  
17 Attorney or the State Attorney General or other appropriate enforcement body who may take  
18 whatever measures they deem necessary to insure compliance with the Order of  
19 Determination.

20 (b) If the COMMISSION issues an Order of Determination, the COMMISSION may  
21 require the governing entity to which the person or entity that has violated the Ordinance  
22 reports, to schedule at the governing entity's next regularly scheduled meeting the Order of  
23 Determination for its discussion and response.

24 (c) If the COMMISSION issues an Order of Determination, the COMMISSION may  
25 require the governing entity or department to which the person or entity that has violated the

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1 Ordinance reports, to post the Order of Determination prominently on the entity's or  
2 department's website for 60 days.

3 (d) (1) Upon finding a serious and willful violation of this Ordinance, the  
4 COMMISSION by not less than a two-thirds vote of the voting members may appoint outside  
5 counsel to prosecute the violation(s) of the Ordinance by bringing an action in the Civil Courts  
6 to the extent permitted by the City Charter.

7 (2) The amount of expenditure for outside counsel to prosecute these cases  
8 shall not exceed \$50,000 per fiscal year or such greater amount authorized by the Board of  
9 Supervisors ("litigation fund"). The COMMISSION shall include it, its bylaws selection criteria  
10 and oversight of appointed counsel and expenditures.

11 (3) If attorney fees are recovered in litigation proceedings initiated under this  
12 provision, fees in the amount paid out of the litigation fund to outside counsel for the litigation  
13 shall be credited back into the litigation fund.

14 (e) The administrative remedies provided under this Ordinance shall in no way limit  
15 the availability of other administrative remedies provided to any person with respect to any  
16 officer or employee of any agency, executive office, department or policy body; nor shall the  
17 administrative remedy provided by this section in any way limit the availability of judicial  
18 remedies otherwise available to any person.

19 (f) In any court proceeding pursuant to this Ordinance there shall be a presumption  
20 that information sought is disclosable or meeting is public, and the burden shall be upon the  
21 respondent to prove with specificity that they have fully complied with the request and/or that  
22 an exemption to disclosure applies.

23 (g) An Order of Determination shall be evidence of a violation of this Ordinance or  
24 other applicable open government law in any other administrative or judicial proceeding, and  
25 factual findings made during the hearing shall be reviewed for abuse of discretion.

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1  
2 **SECTION 67.3441. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

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

19  
20 **SECTION 67.42. REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION.**

21       (a) Upon referral of any Order of Determination to the Ethics Commission, the  
22 following procedures and standards shall apply.  
23       (i) The Chair or Vice-Chair of the COMMISSION and the underlying complainant  
24 in whose favor the COMMISSION'S Order of Determination was issued, shall both be  
25

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1 considered the "complainant of record" for purposes of Ethics Commission investigations and  
2 enforcement of Orders of Determination.

3 (ii) Any public officer, employee, agency, policy body or department that willfully  
4 fails to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the  
5 California Public Records Act shall be deemed to have committed official misconduct.

6 (iii) Any public officer or employee found to have committed official misconduct  
7 under this Ordinance shall be fined at least \$500, and up to \$5,000 depending upon the  
8 egregiousness and seriousness of the conduct. Any such fine shall be paid personally by the  
9 officer or employee and not from City funds.

10 (iv) Any agency, policy body or department found to have committed official  
11 misconduct under this Ordinance shall be fined at least \$500, and up to \$5,000 depending  
12 upon the egregiousness and seriousness of the conduct.

13 (v) All such fines imposed by the Ethics Commission under this provision, shall  
14 be placed in the COMMISSIONS litigation fund.

15 (b) The COMMISSION'S Order of Determination and, as applicable, finding of willful  
16 violation constituting official misconduct, shall be evidence of a violation of this Ordinance or  
17 other applicable open government law in any Ethics Commission investigation or proceeding.  
18 Factual findings made during COMMISSION hearings and in its orders shall be reviewed for  
19 abuse of discretion.

20  
21 **SECTION 67.3543. PUBLIC ENFORCEMENT PROVISIONS.**

22 (a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ  
23 of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to  
24 receive a copy of any public record or class of public records under this Ordinance or to  
25

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1 enforce his or her right to attend any meeting required under this Ordinance to be open, or to  
2 compel such meeting to be open.

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

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

7 (d) Any person may institute proceedings for enforcement and penalties under this act  
8 in 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. (Added by Proposition G,  
10 11/2/99)

11  
12 **SECTION 67.3644. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

13 The provisions of this Sunshine Ordinance supersede other local laws, including by not  
14 limited to the charter. Whenever a conflict in local law is identified, the requirement which  
15 would result in greater or more expedited public access to public information and meetings  
16 shall apply. (Added by Proposition G, 11/2/99)

17  
18 **SECTION 67.3745. SEVERABILITY.**

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

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



**67.34 THE SUNSHINE ORDINANCE TASK FORCE.**

[See adopted revisions]

**67.35 RESPONSIBILITY FOR ADMINISTRATION.**

[See adopted revisions]

**67.36 PROVISIONS OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.**

[See adopted revisions]

**67.37 DEPARTMENT HEAD DECLARATION.**

[Revisions to be proposed by David Pilpel]

**67.38 HEARINGS AND ORDERS OF DETERMINATION.**

[NOTE prior adopted subsections c and d moved below]

(a) 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. If the ~~Commission~~ COMMISSION determines on the basis of substantial evidence presented during the hearing that a violation of the Ordinance, the California Public Records Act or the Brown Act has occurred, it shall issue an Order of Determination with written findings of fact and law.

(b) ~~To the extent not~~ ~~Unless otherwise prohibited by s~~State law or other ~~the City Charter~~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.

[MOVED from 67.21 – new/revised 67.20]

(c) An authorized representative of the respondent employee, official, department, agency, policy body, or custodian of public record who has personal knowledge of the matters alleged in the complaint shall attend ~~any~~each COMMISSION hearing and

COMMISSION committee hearing to explain the response to the request for access to public meetings or public information, as well as provide a detailed description of the records search conducted, and the statutory or case law basis for any decision to withhold or redact the records requested as applicable.

(d) The Sunshine Commission shall inform the requester, as soon as possible and within 2 business days after its next meeting but in no case later than 45 calendar days from when a petition-complaint in writing is received, unless an extension is agreed to by the requester and respondent, of its Order of Determination whether there has been a violation of the Ordinance, the California Public Records Act or the Brown Act. Orders of Determination shall be posted on the Commission's website.

(e) The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Commission to fulfill its duties under this Ordinance.

(f) Every year on September 30, and as otherwise requested by the Sunshine Commission, the Supervisor of Public Records and Supervisor of Public Forums shall prepare a tally and report of every petition brought before it for access to records and public forum questions since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the public forum question presented, the ruling of the Supervisor of Public Records and Supervisor of Public Forums, whether any ruling was overturned by a court and whether each orders given to a custodians of public records and/or any employee, official, department, agency, or policy body wasere complied with. The report shall also summarize any court actions during that period regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have decided as well as court actions regarding or implicating the Sunshine Ordinance. The report shall also include copies of all rulings made by the Supervisor of Public Records and Supervisor of Public Forums and all opinions issued.

### **67.39 ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC INFORMATION**

(a) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any City ~~Employee~~ employee for purposes of or any person having custody of any public record for purposes of unlawfully denying access to public meetings or public information ~~the public.~~

(b) Notwithstanding the attorney-client privilege and work-product protections that might otherwise be applicable, Aall written or oral communications whether written or oral with the City Attorney's Office with regard to this Ordinance, and obligations under the California Public Records Act, the Brown Act, and any other applicable open government law, including petitions, requests for opinion, opinions and advice shall be disclosable public records and public information. The City Attorney's Office shall not have a policy to provide oral advice in lieu of written advice to avoid disclosure under this provision.

(c) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this Ordinance ~~after a case is filed in court to any~~ the extent required by the State Law or the City Charter or California Law.

(d) Every year on September 30, and as otherwise requested by the Sunshine Commission, the Supervisor of Public Records and Supervisor of Public Forums shall prepare a tally and report of every petition brought before it for access to records and public forum questions since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the public forum question presented, the ruling of the Supervisor of Public Records and Supervisor of Public Forums, whether any ruling was overturned by a court and whether each order given to a custodian of public records and/or any employee, official, department, agency, or policy body was complied with. The report shall also summarize any court actions during that period regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have decided as well as court actions regarding or implicating the Sunshine Ordinance. The report shall also include copies of all rulings made by the Supervisor of Public Records and Supervisor of Public Forums and all opinions issued.

#### **SECTION 67.40 ADMINISTRATIVE ENFORCEMENT PROVISIONS.**

(a) Upon issuance of an Order of Determination finding that a record should be released or other action should be taken by an employee, official, department, agency, policy body or custodian of public records, the Sunshine Commission shall immediately order the person or entity to comply with the Order of Determination. If the person or entity fails to comply with any such Order within 5 business days after issuance, the Sunshine Commission may refer the matter to the San Francisco Ethics Commission, Board of Supervisors, District Attorney or the State Attorney General or other appropriate enforcement body who may take whatever measures they deem necessary to insure compliance with the Order of Determination.

(b) ~~In the event that the~~ If the COMMISSION issues an Order of Determination, the COMMISSION may require the governing entity to which the person or entity that has violated the Ordinance reports, to schedule at the governing entity's next regularly scheduled meeting the Order of Determination for its discussion and response.

(c) ~~In the event that~~ If the COMMISSION issues an Order of Determination, the COMMISSION may require the governing entity or department to which the person or entity that has violated the Ordinance reports, to post the Order of Determination prominently on the entity's or department's website for 60 days.

(d) (1) ~~In the event the COMMISSION finds~~ Upon finding a serious and willful violation of thise

Ordinance, the COMMISSION by not less than a two-thirds vote of the voting members-entire body may appoint outside counsel to prosecute the violation(s) of the Ordinance by bringing an action 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 no more than~~ not exceed \$50,000 per fiscal year or such a greater amount if authorized by the Board of Supervisors ("litigation fund"). The COMMISSION shall include it, its bylaws selection criteria and oversight of appointed counsel and expenditures.

(3) If attorney fees are recovered in litigation proceedings initiated under this provision, fees in the amount paid out of the litigation fund to outside counsel for the litigation shall be credited back into the litigation fund for use on future cases.

(e) The administrative remedies provided under this Ordinance shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, ~~D~~department or ~~P~~policy ~~B~~body; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person ~~requesting a public record~~.

(f) In any court proceeding pursuant to this Ordinance there shall be a presumption that a ~~record~~ information sought is disclosable or meeting is public, and the burden shall be upon the respondent to prove with specificity that they have fully complied with the request and/or that an exemption to disclosure applies.

(g) An Order of Determination shall be evidence of a violation of this Ordinance or other applicable state open government law in any other administrative or judicial proceeding, and factual findings made during the hearing shall be reviewed for abuse of discretion.

#### **67.41 WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

The willful failure of any person, office 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 for purposes of this Ordinance and any other applicable provisions of the City Charter, ordinances, and State law. If the Commission makes a determination that any person or entity has willfully failed to discharge any such duties, then the Commission shall refer with written findings of law and fact the matter to the Ethics Commission for enforcement. The Commission may also refer the matter by to the Board of Supervisors, District Attorney or the State Attorney General for investigation and enforcement.

#### **SECTION 67.42 REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION**

(a) Upon referral of any Order of Determination to the Ethics Commission, the following procedures and standards shall apply.

(i) The Chair or Vice-Chair of the COMMISSION and the underlying complainant in whose favor the COMMISSION'S Order of Determination was issued, shall both be considered the "complainant of record" for purposes of Ethics Commission investigations and enforcement of Orders of Determination.

(ii) Any public officer, employee, agency, policy body or department that willfully fails to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the California Public Records Act shall be deemed to have committed official misconduct.

(iii) Any public officer or employee found to have committed official misconduct under this Ordinance shall be fined at least \$500, and up to \$5,000 depending upon the egregiousness and seriousness of the conduct. Any such fine shall be paid personally by the officer or employee and not from City funds.

(iv) Any agency, policy body or department found to have committed official misconduct under this Ordinance shall be fined at least \$500, and up to \$5,000 depending upon the egregiousness and seriousness of the conduct.

(v) All such fines imposed by the Ethics Commission under this provision, shall be placed in the COMMISSIONS litigation fund.

(b) The COMMISSION'S Order of Determination and, as applicable, finding of willful violation constituting official misconduct, shall be evidence of a violation of this Ordinance or other applicable open government law in any Ethics Commission investigation or proceeding. Factual findings made during COMMISSION hearings and in its orders shall be reviewed for abuse of discretion.

#### **SECTION 67.432 PUBLIC ENFORCEMENT PROVISIONS.**

(a) ~~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 a 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 on the policy body to cure or correct the action alleged to have been taken in violation of this 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 calendar days from the date the action was taken.
- (ii) Within 45 calendar 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 45-calendar-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 or correct the challenged action, or if the policy body takes no action within the 45-calendar-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, the complainant may commence an action pursuant to subsection (b). The Sunshine Commission shall not have authority to void an action of a policy body, but filing a complaint and exhausting the Commission's complaint and hearing procedures is a prerequisite to filing an action under subsection (b).

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

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

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

**SECTION 67.43 SUNSHINE ORDINANCE SUPERCEDES OTHER LOCAL LAWS.**

[See adopted revisions]

**SECTION 67.44 SEVERABILITY.**

[See adopted revisions]

67A.1



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.

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



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.

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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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 individuals 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 individuals whose names 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 disabled is 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 COMMISSION 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 ~~the~~ 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~~

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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~~  
~~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

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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.**  
24  
25

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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. \_

(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

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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 provisions~~ 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  
25

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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~~  
24

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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  
25



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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's~~ 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(j).]

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

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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 bylaws~~ selection criteria and  
23 oversight of any appointed counsel and expenditures related to these actions.  
24  
25

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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

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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 ~~or 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  
25

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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 ~~(d) \_\_\_ 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)].

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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>,  
To <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 Supersedes 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