

Date: June 11, 2008

Item No. 4

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*



Ordinance Sections, Article IV



Completed by: Frank Darby

Date: June 5, 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.

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

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

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

5 Sec. ~~67.31.35~~ Responsibility for Administration.

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

7 Sec. ~~67.33.37~~ Department Head Declaration.

8 Sec. 67.38 Role of City Attorney's Office; Advice Shall Be Public Information

9 Sec. 67.39 Hearing and Orders of Determination

10 Sec. 67.40 Administrative Enforcement Provisions

11 Sec. ~~67.34.41~~ Willful Failure Shall be Official Misconduct.

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

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

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, when possible,
10 at least one member who shall be a member of the public with a disability that meets the as
11 defined by definition of disabled under the Federal Americans with Disabilities Act and who is
12 physically handicapped and who has demonstrated interest in citizen access and participation
13 in local government. The Mayor or his or her designee, and the Clerk of the Board of
14 Supervisors or his or her designee, shall serve as non-voting members of the task force
15 COMMISSION. ~~The City Attorney shall serve as legal advisor to the task force.~~ ~~The~~
16 ~~Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from~~
17 ~~within the City Attorney's Office or other appropriate City Office, who is experienced in public-~~
18 ~~access law matters. This attorney shall serve solely as a legal advisor and advocate to the~~
19 ~~Task Force and an ethical wall will be maintained between the work of this attorney on behalf~~
20 ~~of the Task Force and any person or Office that the Task Force determines may have a~~
21 ~~conflict of interest with regard to the matters being handled by the attorney.~~¹

22 (b) The term of each appointive member shall be two years ~~unless earlier removed~~
23 ~~by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise~~
24

25 ¹ Reference to City Attorney moved to Article IV "Role of City Attorney's Office; Advice..."

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 occurs during the term of office of any appointive member, a successor shall be appointed for
2 the unexpired term of the office vacated in a manner similar to that described herein for the
3 initial members. The ~~task force~~ COMMISSION shall elect a chair and vice chair from among
4 its ~~appointive-voting~~ members. The term of office ~~as~~ for the chair and vice chair shall be one
5 year. Members of the ~~task force~~ COMMISSION shall serve without compensation.

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

24 (d) ~~The Task Force~~ COMMISSION shall conduct administrative hearings on
25 complaints of made by members of the public for alleged violations of the public meeting or

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 ~~public records provisions of the Ordinance, violations of the State California Public Records~~
2 ~~Act, or the State Brown Act governing public meetings. The Task Force COMMISSION may~~
3 ~~issue Orders of Determination following the hearing on a particular complaint. An Order of~~
4 ~~Determination finding a violation of the Ordinance, the California Public Records Act or the~~
5 ~~Brown Act above state laws shall be evidence of such violation in any other administrative or~~
6 ~~judicial proceeding~~

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

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

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

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

25

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

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

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

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

14
15 **SECTION 67.3435. RESPONSIBILITY FOR ADMINISTRATION.**

16 The Mayor shall administer and coordinate the implementation of the provisions of this
17 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~
18 ~~the implementation of the provisions of this chapter and~~ for departments under the control of
19 boards and commissions appointed by the Mayor. Elected officers shall administer and
20 coordinate the implementation of the provisions of this chapter for departments under their
21 respective control. The Board of Supervisors shall provide sufficient staff, facilities, equipment
22 and any other resources to enable the Sunshine Commission to fulfill its duties under this
23 Ordinance.¹ ~~The Clerk of the Board of Supervisors shall provide a full-time staff at least one~~

24
25
¹ Sentenced moved/copied verbatim, from existing §67.21(e)

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 full time staff person, who shall be the Administrator of the Commission, to perform
2 administrative duties for the Sunshine Ordinance Task Force Sunshine Commission including
3 and to assist assisting any person in gaining access to public meetings or public information.
4 At least one full time staff person shall be tThe Administrator of the COMMISSION and shall
5 have no other duties. The Clerk of the Board of Supervisors shall provide that the staff
6 persons with whatever facilities and equipment are necessary to perform said their duties.

7 (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G,
8 11/2/99)

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

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

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 their official capacities shall be open to the public, and this provision cannot be waived by any
2 City officer, agent or representative.

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

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

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

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

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

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

3 (a) The City Attorney shall serve as legal advisor to the COMMISSION. The
4 COMMISSION shall, at its request, have assigned to it an attorney from the City Attorney's
5 Office or other appropriate City office, who is experienced and well informed in public-access
6 law matters. This attorney shall serve solely as a legal advisor and advocate to the
7 COMMISSION and when requested by the Commission, shall provide opinions and other
8 advice on legal issues that the Commission deems pertinent. An ethical wall will be
9 maintained between the work of this attorney on behalf of the COMMISSION and any person
10 or office that the COMMISSION determines may have a conflict of interest with regard to the
11 matters being handled by the attorney.

12 (b) The City Attorney's office shall act to protect and secure the rights of the people
13 of San Francisco to access public information and public meetings and shall not act as legal
14 counsel for any City employee or any person having custody of any public information for
15 purposes of denying access to public meetings or public information.

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

23 (d) Notwithstanding the provisions of this section, the City Attorney may defend the
24 City or a City Employee in litigation under this Ordinance to the extent required by State Law
25 or the City Charter.

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 ¹(e) Every year on September 30, and as otherwise requested by the Sunshine
2 Commission, the Supervisor of Public Records and Supervisor of Public Forums shall prepare
3 a tally and report of every petition brought before it for access to records and public forum
4 questions since the time of its last tally and report. The report shall at least identify for each
5 petition the record or records sought, the custodian of those records, the public forum
6 question presented, the ruling of the Supervisor of Public Records and Supervisor of Public
7 Forums, whether any ruling was overturned by a court and whether each order given to a
8 custodian of public records and/or any employee, official, department, agency, or policy body
9 was complied with. The report shall also summarize any court actions during that period
10 regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have
11 decided as well as court actions regarding or implicating the Sunshine Ordinance. The report
12 shall also include copies of all rulings made by the Supervisor of Public Records and
13 Supervisor of Public Forums and all opinions issued.

14
15 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**

16 (a) The COMMISSION shall conduct administrative hearings on complaints of
17 alleged violations this Ordinance, the California Public Records Act, or the Brown Act. The
18 COMMISSION may issue Orders of Determination following the hearing on a particular
19 complaint. If the COMMISSION determines on the basis of substantial evidence presented
20 during the hearing that a violation of the Ordinance, the California Public Records Act or the
21 Brown Act has occurred, it shall issue an Order of Determination with written findings of fact
22 and law. The Order of Determination shall issue to the Complainant and the Respondent and
23 shall be posted on the Commission's website.

24
25 ¹ Provision moved from existing §67.21 (h) and supplemented to cover Supervisor of public forums and include
court actions in Ordinance.

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 ¹(b) To the extent not prohibited by State law the COMMISSION may subpoena
2 witnesses, compel their attendance and testimony, administer oaths and affirmation, take
3 evidence and require by subpoena the production of any books, papers, records or other
4 items material to the performance of the COMMISSION'S duties or exercise of its powers.

5
6 (c) An authorized representative of the respondent employee, official, department,
7 agency, policy body, or custodian of public record who has personal knowledge of the matters
8 alleged in the complaint shall attend each COMMISSION hearing and COMMISSION
9 committee hearing to explain the response to the request for access to public meetings or
10 public information, as well as provide a detailed description of the records search conducted,
11 and the statutory or case law basis for any decision to withhold or redact the records
12 requested as applicable.

13
14 **SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.**

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

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25

¹ Section/language moved from 67.21 to new/revised 67.20

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 **(b)** Upon issuing an Order of Determination, the COMMISSION may require the
2 governing entity to which the person or entity that has violated the Ordinance reports, to
3 schedule at the governing entity's next regularly scheduled meeting the Order of
4 Determination for its discussion and response.

5 **(c)** Upon issuing an Order of Determination, the COMMISSION may require the
6 governing entity or department to which the person or entity that has violated the Ordinance
7 reports, to post the Order of Determination prominently on the entity's or department's website
8 for 60 days.

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

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

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

20 **(e)** The administrative remedies provided under this Ordinance shall in no way limit
21 the availability of other administrative remedies provided to any person with respect to any
22 officer or employee of any agency, executive office, department or policy body; nor shall the
23 administrative remedy provided by this section in any way limit the availability of judicial
24 remedies otherwise available to any person. If a custodian of a public record refuses or fails to
25 comply with the request of any person for inspection or copy of a public record or with an

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 Order of Determination under this Ordinance, the Superior Court shall have jurisdiction to
2 order compliance.¹

3 (f) An Order of Determination shall be evidence of a violation of this Ordinance or
4 other applicable open government law in any other administrative or judicial proceeding, and
5 factual findings made during the hearing shall be reviewed for abuse of discretion.
6

7 **SECTION 67.3441. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

8 ~~The willful failure of any elected official, department head, or other managerial city~~
9 ~~employee to person, office or entity to discharge any duties imposed by the Sunshine~~
10 ~~Ordinance, the Brown Act or the California Public Records Act shall be deemed official~~
11 ~~misconduct for purposes of this Ordinance and any other applicable provisions of the City~~
12 ~~Charter, Ordinances, and State law. If the Commission makes a determination that any~~
13 ~~person or entity has willfully failed to discharge any such duties, then the Commission shall~~
14 ~~refer with written findings of law and fact the matter to the Ethics Commission for~~
15 ~~enforcement. The Commission may also refer the matter by to the Board of Supervisors,~~
16 ~~District Attorney or the State Attorney General for investigation and enforcement. Complaints~~
17 ~~involving allegations of willful violations of this ordinance, the Brown Act or the Public Records~~
18 ~~Act by elected officials or department heads of the City and County of San Francisco shall be~~
19 ~~handled by the Ethics Commission. (Added by Proposition G, 11/2/99)~~
20

21 **SECTION 67.42. REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION.**
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¹ Last sentence moved from 67.21(f) verbatim.

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 (a) The Ethics Commission is authorized to enforce the Orders of Determination of
2 the Sunshine Commission. Upon referral of any Order of Determination to the Ethics
3 Commission, the following procedures and standards shall apply.

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

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

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

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

18 (v) Upon referral the Sunshine Commission may, in a referral of a finding of
19 official misconduct, recommend the level of fines that may be imposed.

20 (vi) The Ethics Commission may impose any additional penalty authorized by
21 law for official misconduct.

22 (vii) Any such fines imposed by the Ethics Commission under this provision,
23 shall be placed in the COMMISSIONS litigation fund.

24 (b) The COMMISSION'S Order of Determination and, as applicable, finding of willful
25 violation constituting official misconduct, shall be evidence of a violation of this Ordinance or

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 other applicable open government law in any Ethics Commission investigation or proceeding.
2 Factual findings made during COMMISSION hearings and in its orders shall be reviewed for
3 abuse of discretion.

4
5 **SECTION 67.3543. PUBLIC ENFORCEMENT PROVISIONS.**

6 (a) In any court proceeding pursuant to this Ordinance there shall be a presumption
7 that the information sought is disclosable, that any meeting or portion of a meeting should be
8 open to the public as well as the records of such meeting, and the burden shall be upon the
9 respondent to prove with specificity that they have fully complied with the request and/or that
10 an exemption to disclosure applies.

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

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

23 (d) Prior to any action being commenced pursuant to subsection (b), the person
24 shall make a demand on the policy body to cure or correct the action alleged to have been
25

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 taken in violation of this Ordinance. The demand shall be in writing and clearly describe the
2 challenged action of the policy body and the nature of the alleged violation.

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

5 (ii) Within 45 calendar days of receipt of the demand, the policy body shall cure or
6 correct the challenged action and inform the complainant in writing of its actions
7 to cure or correct or inform the complainant in writing of its decision not to cure
8 or correct the challenged action.

9 (iii) If the policy body takes no action within the 45-calendar-day period, the inaction
10 shall be deemed a decision not to cure or correct the challenged action.

11 (iv) The complainant who receives notice of the policy body's decision not to cure or
12 correct the challenged action, or if the policy body takes no action within the 45-
13 calendar-day period, may file a complaint with the Sunshine Commission. If the
14 Sunshine Commission finds that the policy body violated the Ordinance, the
15 complainant may commence an action pursuant to subsection (b). The Sunshine
16 Commission shall not have authority to void an action of a policy body, but filing
17 a complaint and exhausting the Commission's complaint and hearing
18 procedures is a prerequisite to filing an action under subsection (b).

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

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

23 (eg) Any person may institute proceedings for enforcement and penalties under this
24 act in any court of competent jurisdiction or Ordinance before the Ethics Commission if
25 enforcement action is not taken by a city or state official 40 days after a complaint is filed60

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 calendar days after an Order of Determination was issued by the Sunshine Commission, the
2 City department, entity, official, body or employee has not complied with the Order of
3 Determination issued by the Sunshine Commission. (Added by Proposition G, 11/2/99)
4

5 **SECTION 67.3644. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

6 The provisions of this Sunshine Ordinance supersede other local laws, including by not
7 limited to the charter. Whenever a conflict in local law is identified, the requirement which
8 would result in greater or more expedited public access to public information and meetings
9 shall apply. (Added by Proposition G, 11/2/99)
10

11 **SECTION 67.3745. SEVERABILITY.**

12 The provisions of this chapter are declared to be separate and severable. The invalidity
13 of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the
14 invalidity of the application thereof to any person or circumstances, shall not affect the validity
15 of the remainder of this chapter, or the validity of its application to other persons or
16 circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)
17

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

20 At and during a public meeting of any policy body governed by the San Francisco
21 Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing
22 electronic devices shall be prohibited. The presiding officer of any public meeting which is
23 disrupted may order the ~~remove~~removal from the meeting room of any person(s) responsible
24 for the ringing or use of a cell phone, pager, or other similar sound-producing electronic
25 devices. The presiding officer may allow an expelled person to return to the public meeting

AMENDMENTS FOR 2007

REVISED 6/4/2008 by the CAC

1 following an agreement by the expelled person to comply with the provisions of this Section. A
2 warning of the provisions of this Section shall be printed on all meeting agendas, and shall be
3 explained at the beginning of each public meeting by the presiding officer. (Added by Ord.
4 286-00, File No. 001155. App. 12/22/2000)

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14 May 2008 DRAFT Old 67.33

Members of Charter Boards and Commissions,
Secretaries of Charter Boards and Commissions,
Department Heads,
Public Information Officers designated pursuant to section 67.22,
and any other city employees designated by their Appointing Officer [Department Head] in writing by
December 31st annually,
shall be subject to filing Sunshine Declarations and Sunshine Ordinance training.

Powers and Duties

New bodies or significantly changed powers

Chair and Vice Chair (if one exists) of Asian Art Museums Board and Fine Arts Museums Board, Chair
and Vice Chair of Charter Advisory Committees, Ordinance policy bodies,
2A.40 officers, PIO's / Department Records Officers, Zoo ?

Appointment of new persons or election of officers must be communicated in writing to Ethics
Or first training that occurs after they assume office

Those designated persons shall, by January 31st for those in office on January 1 and within 30 days of
assuming office for others, file a Sunshine Declaration with the Ethics Commission indicating that they
have read the Sunshine Ordinance and Sunshine Ordinance training materials (as designated by the City
Attorney) and will attend the next Sunshine Ordinance training session. Sunshine Ordinance training
materials and training sessions shall be prepared by the City Attorney and subject to the review and
comment by the Sunshine Ordinance Task Force or a committee thereof.

Sunshine Ordinance training sessions shall be scheduled at least twice a year and attendance shall be
required in person. Such Sunshine Ordinance training sessions shall be differentiated for prior
attendees and new attendees, and may be further differentiated by category of individual (Members of
Charter Boards and Commissions, Department Heads, etc.).

The Sunshine Ordinance Task Force may urge Department Heads and others to require or otherwise
subject additional persons to Sunshine Ordinance training where circumstances warrant. Additionally,
any other person not required to may attend any Sunshine Ordinance training session as such sessions
are hereby designated open and public sessions.

Persons who have filed a Sunshine Declaration with the Ethics Commission pursuant to this section are
deemed to be knowledgeable regarding their Sunshine Ordinance obligations. As such, the Ethics
Commission shall review referrals and findings from the Sunshine Ordinance Task Force and may
consider the conduct of persons who have filed a Sunshine Declaration official misconduct for failure
to perform a required act or discharge a duty imposed under the Sunshine Ordinance. The Ethics
Commission shall have the power to impose appropriate discipline, pursuant to the applicable Civil
Service and Ethics provisions of the City Charter.

The Ethics Commission, subject to the review and comment by the Sunshine Ordinance Task Force,
may adopt and amend forms and regulations to implement provisions of this section.

ELC Suggested Art III Revisions to Consolidate with Article IV

[NOTE this is the REVISED section 67.21, revised to 67.20 adopted by the C&A Cttee]

SECTION 67.20. PROCESS FOR GAINING ACCESS TO PUBLIC INFORMATION; ADMINISTRATIVE APPEALS.

Every person having custody of any public record or public information, as defined herein,) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person. and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(a) All City Departments and Policy Bodies that are subject to the provisions of this Ordinance shall also designate an employee within that Department or Policy Body as its custodian of records ("custodian of records"). Each custodian of records shall have written procedures and forms to streamline request and assist members of the public who request public records and information. The custodian of records shall have identified departmental deputies to fulfill this role when the custodian of records is unavailable.

(b) A request for inspection or copying of public records may be submitted to the Department, Policy Body or the custodian of records by the requester orally or in writing by fax, U.S. Mail, hand delivery, e-mail or other means.

(c) A custodian of records shall ensure that, as soon as possible but no later than 10 calendar days following the receipt of the request, a Department, Policy Body or custodian of records shall comply with the request by doing the following:

(1) If the requester seeks a copy of public records, one copy thereof shall be provided upon payment of a reasonable copying charge, not to exceed the actual cost of physical duplication or ten cents per page, whichever is less;

(2) If the requester seeks to inspect public records, a reasonable opportunity for the requester to review the records shall be provided during normal and reasonable business hours, without unreasonable delay and without requiring an appointment, or at another time convenient to both the requester and the custodian of records. In no event shall the custodian of records be required to set the records aside for review for longer than 14 days, unless agreed to between the requester and the custodian of records.

(3) If the Department, Policy Body or custodian of records believes the record or information requested is, in whole or in part, exempt from disclosure, the withholding or redaction shall be justified in writing pursuant to Section 67.28 of this Ordinance.

(4) An oral request for information shall be treated as a written request. Oral requests that are not fulfilled by an employee immediately shall be documented as to date, time, place and requester by the Department or Policy Body in order to maintain a public record of the public request.

(d) A custodian of a public records shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the Department or Policy Body, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, amount or count, form, nature, and physical or electronic location of records relating to a particular subject matter with enough specificity to enable a requester to identify records. If the requested record or information is not within the possession, custody or control of the Department or Policy Body, the request shall be directed to the proper Department, Policy Body or staff person, with notification to the requester of that action.

(e) The person seeking any records or information under this Ordinance need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. However, where a requested record contains information the majority of which is exempt from disclosure under the California Public Records Act or this Ordinance, the City Attorney or custodian of records may inform the requester of the nature and extent of the exempt and non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or, if necessary, to otherwise prepare a response to the request.¹

(f) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the Supervisor of Records for a determination whether the record requested is disclosable in whole or in part. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days of its determination. This determination shall be in writing. Upon the determination by the supervisor of records that the record is disclosable, in whole or in part, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the San Francisco Ethics Commission, Board of Supervisors, District Attorney, or the State Attorney General who shall take whatever measures they deem necessary and appropriate to insure compliance with the provisions of this Ordinance. The Supervisor of Records shall copy all correspondence pertaining to its duties under this subsection to the Sunshine Commission's public review file.

(g) If the custodian refuses, fails to comply, or incompletely complies with a request described in subsection (b) above or if a petition is denied or not acted on by the Supervisor of Public Records, the person making the request may petition the Sunshine Commission for a determination whether the record requested is disclosable, in whole or in part pursuant to [CITE ARTICLE IV; Hearings and Orders of Determination]

¹ Provision moved from existing 67.25.

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~~The Commission may conduct a public hearing concerning the response to the records request. An authorized representative of the Department, Policy Body or custodian of public records, which must be someone with personal knowledge of the request and response, shall attend any hearing and explain the response to the request, provide a detailed description of the records search conducted, and the basis for any decision to withhold or redact the records requested. The Sunshine Commission shall inform the requester, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, unless an extension is agreed to by the requester and respondent, of its Order of Determination whether the record requested, or any part of the record requested, is disclosable. This determination shall be in writing. Upon the determination that the record should be released or other action should be taken by the Department, Policy Body, the Sunshine Commission shall immediately order the custodian of public records to comply with the Order of Determination. If the custodian refuses or fails to comply with any such Order within 5 days, the Sunshine Commission may notify the San Francisco Ethics Commission, Board of Supervisors, District Attorney or the State Attorney General who may take whatever measures they deem necessary to insure compliance with the provisions of this Ordinance. 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.~~

~~(h)⁵ The administrative remedy 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, Department or Policy 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. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an Order of Determination under this Ordinance, the Superior Court shall have jurisdiction to order compliance.~~

~~(i)⁷ In any court proceeding pursuant to this Ordinance there shall be a presumption that the record sought is disclosable, and the burden shall be upon the custodian to prove with specificity that they have fully complied with the request and/or that an exemption to disclosure applies.~~

² Provisions dealing with Sunshine Commission hearings moved to Article IV "Hearings and Orders of Determination".

³ Provisions dealing with enforcement of Orders of Determination moved to Article IV "Administrative Enforcement Provisions"

⁴ Provisions dealing with staffing of Sunshine Commission moved to Article IV "Responsibility for Administration"

⁵ Provisions dealing with administrative remedy not limiting availability of other admin or judicial remedies moved to Article IV "Administrative Enforcement Provisions"

⁶ Provision dealing with jurisdiction of Superior Court moved to Article IV "Public Enforcement Provisions"

⁷ Provisions dealing with court presumptions moved to Article IV "Public Enforcement Provisions"

~~⁸(j) — Every year on September 30, and as otherwise requested by the Sunshine Commission, the Supervisor of Public Records shall prepare a tally and report of every petition brought before it for access to records 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 ruling of the Supervisor of Public Records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor of Public Records has decided. The report shall also include copies of all rulings made by the Supervisor of Public records and all opinions issued.~~

~~²(k) — 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 or any person having custody of any public record for purposes of denying access to the public. The City Attorney shall publish legal opinions in response to a request from any person as to whether a record or information is disclosable. All communications whether written or oral with the City Attorney's Office with regard to this Ordinance, including petitions, requests for opinion, opinions and advice shall be disclosable public records and public information.~~

~~(l) — 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 extent required by the City Charter or California Law.~~

~~(mh) Release of public records, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) to the extent not addressed by this Ordinance and in accordance with the enhanced disclosure requirements provided in this Ordinance.~~

~~(ni) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form the information is held by the Department or Policy Body, any format that has been used by the Department or Policy Body to create copies for its own use or for provision to other agencies, or which is easily generated by the Department or Policy Body, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this Ordinance. Nothing in this section shall require a department to create a new computer program or system to respond to a request for information or would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)~~

⁸ Provision regarding reports by Supervisor of Public Records moved to Article IV "Role of City Attorney's Office; Advice Shall be Public Information."

⁹ Provisions regarding role of City Attorney, advice shall be public and CAO defending city employees moved to Article IV "Role of City Attorney's Office; Advice Shall be Public Information"

ELC Suggested Consolidated Article IV Revisions [6/5/2008 1:02 PM/6/4/2008 10:20 AM/5/13/2008 2:33 PM - with changes adopted at May C&A mtg – additional ELC suggestions in red-line]

67.34 THE SUNSHINE ORDINANCE COMMISSION.

[NOTE these changed have been adopted by C&A; additional ELC suggestions are in red-line]

(a) There is hereby established the Sunshine Commission consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in obtaining public information from government agencies. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New - America Media. The COMMISSION shall include at least one member who shall be a member of the public with a disability that meets the definition of disabled under the Federal Americans with Disabilities Act and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the COMMISSION.¹⁰ ~~The City Attorney shall serve as legal advisor to the COMMISSION. The COMMISSION shall, at its request, have assigned to it an attorney from the City Attorney's Office or other appropriate City office, who is experienced and well informed in public access law matters. This attorney shall serve solely as a legal advisor and advocate to the COMMISSION and when requested by the Commission, shall provide opinions and other advice on legal issues that it deems pertinent to its powers or actions under this Ordinance. An ethical wall will be maintained between the work of this attorney on behalf of the COMMISSION and any person or office that the COMMISSION determines may have a conflict of interest with regard to the matters being handled by the attorney.~~

(b) The term of each appointive member shall be two years. In the event a vacancy occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The COMMISSION shall elect a chair and vice chair from among its appointive members. The term of office -for the chair and vice

¹⁰ Reference to City Attorney moved to "Role of City Attorney's Office: Advice Shall be Public Information"

chair shall be one year. Members of the COMMISSION shall serve without compensation.

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

[Subsection 67.30 (d), (e), (f), and (g) were moved to new Section 67.35]

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

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

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99) [See adopted revisions]

67.35 RESPONSIBILITY FOR ADMINISTRATION.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control and for departments under the control of boards and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The 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.¹¹ The Clerk of the Board of Supervisors shall provide at least one full time staff person to perform administrative duties for the Sunshine Commission and to assist any person in gaining access to public meetings or public

¹¹ Sentence moved/copied verbatim, from existing 67.21(e).

information. At least one full time staff person shall be the Administrator of the COMMISSION and shall have no other duties. The Clerk of the Board of Supervisors shall provide the staff persons with whatever facilities and equipment are necessary to perform their duties.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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 ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC INFORMATION [As amended in May C&A mtg – with additional changes suggested by ELC redlined]

(a) The City Attorney shall serve as legal advisor to the COMMISSION. The COMMISSION shall, at its request, have assigned to it an attorney from the City Attorney's Office or other appropriate City office, who is experienced and well informed in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the COMMISSION and when requested by the Commission, shall provide opinions and other advice on legal issues that it deems pertinent to its powers or actions under this Ordinance. An ethical wall will be maintained between the work of this attorney on behalf of the COMMISSION and any person or office that the COMMISSION determines may have a conflict of interest with regard to the matters being handled by the attorney.

(ba) 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 or any person having custody of any public information for purposes of denying access to public meetings or public information.

(cb) Notwithstanding the attorney-client privilege and work-product protections that might otherwise be applicable, all written or oral communications 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.

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

(ed) 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.¹²

67.39 HEARINGS AND ORDERS OF DETERMINATION.

(a) The COMMISSION shall conduct administrative hearings on complaints of alleged violations of ~~the public meeting or public records provisions of the~~ this Ordinance, 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 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. The OD shall issue to the Complainant and the Respondent and shall be posted on the Commission's website.

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

(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 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.

¹² Provision moved from existing 67.21(h) and supplemented to cover Supervisor of Public Forums and include court actions on Ordinance.

~~(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 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) moved and included in 67.35 verbatim]

~~(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.~~

SECTION 67.40 ADMINISTRATIVE ENFORCEMENT PROVISIONS.

[NOTE these suggestions not adopted by C&A Cttee – DCA Llorente to revise subsection (d)]

(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, 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 COMMISSION issues~~Upon issuing 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 the COMMISSION issues~~Upon issuing 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 ~~this~~ Ordinance, the COMMISSION by not less than a two-thirds vote of ~~the~~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.

(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~~. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an Order of Determination under this Ordinance, the Superior Court shall have jurisdiction to order compliance.¹³

~~(f) In any court proceeding pursuant to this Ordinance there shall be a presumption that a record sought is disclosable, 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) The Ethics Commission is authorized to enforce the Orders of Determination of the Sunshine Commission. Upon referral of any Order of Determination to the Ethics Commission, the following procedures and standards shall apply.

¹³ Last sentence moved from 67.21(f) verbatim.

(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) The Ethics Commission may impose any additional penalty authorized by law for official misconduct.

(vi) Any such fines imposed by the Ethics Commission under this provision, shall be placed in the Sunshine COMMISSION'S 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) In any court proceeding pursuant to this Ordinance there shall be a presumption that the information sought is disclosable, that any meeting or portion of a meeting should be open to the public as well as the records of such meeting, 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.

(ba) 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.

(bc) 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.

(ed) 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).

(ed) 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.

(fe) 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.

(gf) 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 67.434 SUNSHINE ORDINANCE SUPERCEDES OTHER LOCAL LAWS.

[See adopted revisions]

SECTION 67.445 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

Memorandum to the Compliance and Amendments Committee:

Putting aside any specific comments I may have on the changes in the May 27, 2008 revision, I would like to present the following as potential issues that will not go away, even with the more expanded sections dealing with the role of the City Attorney, the referrals to Ethics and the preeminence of the Sunshine Ordinance over the City Charter:

First, the Amended Sunshine Ordinance does NOT amend anything in the City Charter. Thus, anything in the City Charter, such as (1) the role of the City Attorney as "attorney" for the city departments, agencies and policy bodies, the secret "investigative" powers of the Ethics Commission staff and the "six-vote" rule, will be challenged by the City Attorney, the Ethics staff after the adoption of the Amended SO on the same basis as the current one.

Second, by adopting the title of a "Commission", the City Attorney may claim that it is a "Commission" or Board that is subject to all the other provisions in the charter such as Article IV, Sections 4.100.1 through 4.100.4 or, conceivably, city ordinances that relate to a Commission or Board. I say that because the City Attorney has already taken the position that the Task Force is governed by Article IV's general provisions (see DCA Thomas J. Owen's six-vote rule" May 21, 2007 Memorandum) and its position that because the Sunshine Ordinance is called an "ordinance" it is trumped by the City Charter, as unbelievable a position as that seems.

Third, what is the best way to avoid the problems of the primacy of the Amended SO over the City Charter? Not being a lawyer that familiar with municipal law, I can't make specific suggestions, but it probably is up to the DCA who advises the SOTF to recommend the best way or ways to do it.

My ideas would include:

- (1) A direct Amendment to the City Charter that is "coupled" to the Amended SO when it is submitted to the voters, so that they pass or fail together. The Charter amendment could say something to the effect that "Nothing in this Charter shall be deemed to invalidate, restrict or limit any provision in eth SO, the provisions of which shall supersede any provision hereof inconsistent therewith".
- (2) A provision in the Amended SO that makes it clear that (a) it is not subject to the City Charter and (b) nothing in the City Charter shall be deemed to invalidate, supersede or restrict or limit any provision in the SO, the provisions of which shall supersede any provision thereof inconsistent with any provision in the SO, with express text supporting that provision from the California Constitution and Section 6253(e) of the CPRA.



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

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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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

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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 ~~ACOMMISSION shall, at its request, have assigned to it a~~ An attorney from the City Attorney's
19 Office or other appropriate City office, who is experienced and well informed in public-access
20 law matters, shall be assigned to the Sunshine Commission. This assigned attorney shall
21 serve solely as a legal advisor and advocate to the Sunshine Commission and, when
22 requested by the Sunshine Commission, shall provide opinions and other advice on legal
23 issues that it deems pertinent to its powers or actions under this Ordinance. ~~and a~~ An ethical
24 wall will be maintained between the work of this attorney on behalf of the COMMISSION
25

AMENDMENTS FOR 2007

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Grossman Revisions 040208

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

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

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

15 (ee) The COMMISSION Sunshine Commission shall:

16 _____(1) advise the Board of Supervisors ~~-, the office~~ Office of the mayor 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, (

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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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AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

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

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

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

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

19 (d) — (1) — In the event the COMMISSION finds a serious and willful violation of the
20 Ordinance, the COMMISSION by a two-third vote of the entire body may appoint outside
21 counsel to prosecute the violation(s) of the Ordinance in the Civil Courts to the extent
22 permitted by the City Charter. The amount of expenditure for outside counsel to prosecute
23 these cases shall be no more than \$50,000 per fiscal year or a greater amount if authorized by
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AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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 ~~electd 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
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AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

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

20 (c) The City shall ~~give~~ not provide any subsidy, whether in money, tax abatements, land,
21 or services, to any for profit entity or enterprise unless that entity or enterprise provides the
22 City [Controller?] with financial projections (including profit and loss figures) and annual
23 audited financial statements for the project or development for which the subsidy is proposed
24
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AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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~~ 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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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
25

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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 if its by-laws selection criteria and
23 oversight of any appointed counsel and expenditures related top these actions.

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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 Ordinance~~, or the invalidity of the application thereof to any person or circumstances,
21 shall not affect the validity of the remainder of this ~~chapter Ordinance~~ or the validity of its
22 application to other persons or circumstances.
23

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

AMENDMENTS FOR 2007

REVISED 3/12/2008 by the CAC

Grossman Revisions 040208

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

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

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

In new 67.36 I think there are more bodies to add now including LAFCO, what about these Community Benefits districts?

<http://central-market.org/index.php>

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

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

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

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

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

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

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

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

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

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

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

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

From: Allen Grossman [mailto:grossman356@mac.com]
Sent: Wednesday, April 02, 2008 1:03 PM
To: Kimo Crossman
Subject: Re: Revised SO Article IV.

Kimo,

Here its is as a PDF.

Allen