

Date: August 13, 2008

Item No. 2a

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

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

**CCSF Document Retention Policy**

Completed by: Frank Darby

Date: August 8, 2008

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

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

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



Richard Knee  
<rak0408@earthlink.net>

07/15/2008 09:54 AM

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To Natl FOI listserv post <FOI-L@LISTSERV.SYR.EDU>,  
CalAware\_Francke Emily <emily@calaware.org>,  
cc 'SOTF' <sotf@sfgov.org>

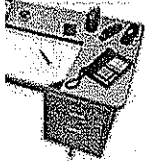
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Subject Seeking best-practices info

San Francisco's Sunshine Ordinance Task Force is examining the records-retention policies and practices of a number of city entities, with the aim of recommending improvements where appropriate. We are focusing on electronic records, especially the question of saving them on paper; and on legislative records, particularly how long they should be maintained after action on specific pieces of legislation has been concluded.

We are seeking information on best practices in other U.S. cities, counties, school and college districts, etc. Pointers and links to sources also will be helpful and appreciated. Thanks, all, for your kind attention.

Regards,  
Richard Knee  
Chairman, SOTF Compliance and Amendments Committee



Ernest  
Llorente/CTYATT@CTYATT  
07/25/2008 11:02 AM

To SOTF/SOTF/SFGOV@SFGOV, Frank  
Darby/BOS/SFGOV@SFGOV, Chris  
Rustom/BOS/SFGOV@SFGOV

cc

bcc

Subject Information of e-mail record keeping

Hi Frank and Chris,  
Please forward the attached information to the members of the CAC. Rick especially needs this information. Thanks.

Ernie



SOTFa.pdf



SOTFb.pdf



SOTFc.pdf



SOTFd.pdf



SOTFd000.pdf

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## 5. DUTY TO MAINTAIN A WEB SITE

Each department must maintain a publicly accessible web site. Admin. Code § 67.29-2. Please see Section IV(E) of this Part Three below, "Maintaining a Web Site," for more information.

## B. RECORDS DEFINED

For the purpose of records retention, the term "records" is defined more narrowly than in the Public Records Act or Sunshine Ordinance. "Records" include any paper, book, photograph, film, sound recording, map, drawing, or other document, or any copy, made or received by the department in connection with the transaction of public business and retained by the department: (1) as evidence of the department's activities; (2) for the information contained in it; or (3) to protect the legal or financial rights of the City or of persons directly affected by the activities of the City. Admin. Code § 8.1.

A number of documents do not fall within the definition of "records" for records retention purposes. These documents may be destroyed when they are no longer of use. Phone message slips, notes of meetings, and research notes prepared for the personal use of the employee creating them may be destroyed immediately. E-mail that does not fall within the definition of "record" for purposes of records retention (see definition directly above) may be destroyed immediately. Similarly, periodicals or publications received by a department that are not of historical significance may be destroyed. Duplicate copies of documents may be destroyed provided that the appropriate City department has retained the original. Govt. Code § 34090.7.

With one exception, drafts of documents that have been superseded by later drafts or a final version need not be retained. Drafts of agreements City representatives are negotiating with another party that have been exchanged with that party must be retained for public review before approval by the department commission or the Board of Supervisors. Admin. Code § 67.24(a)(2).

## C. E-MAIL

\* Any e-mail that is created or received in connection with the transaction of public business and which (1) the department retains as evidence of the department's activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City, must be retained in accordance with the department's records retention schedule. The standard for determining if e-mail is a record that must be retained is identical to the standard that applies to any document. Govt. Code § 6252(e); Admin. Code § 67.20(b). If the e-mail must be retained, it should be printed out and the hard copy retained in the appropriate file unless the department can reliably retain and retrieve the e-mail in electronic format.

## D. CLASSIFICATION OF RECORDS

All documents falling within the definition of "records," described above, must be divided into three classifications. Admin. Code §§ 8.3 and 8.4.

# Sunshine Ordinance

SOFF B

was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## V. SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## W. ARTICLE III PUBLIC INFORMATION AND PUBLIC RECORDS

SEC. 67.20. Definitions.

SEC. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

SEC. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.

SEC. 67.22. Release of Oral Public Information.

SEC. 67.23. Public Review File - Policy Body Communications.

SEC. 67.24. Public Information that Must Be Disclosed.

SEC. 67.25. Immediacy of Response.

SEC. 67.26. Withholding Kept to a Minimum.

SEC. 67.27. Justification of Withholding.

SEC. 67.28. Fees for Duplication.

SEC. 67.29. Index to Records.

SEC. 67.29-1. Records Survive Transition of Officials.

SEC. 67.29-2. Internet Access/World Wide Web Minimum Standards.

SEC. 67.29-3.

SEC. 67.29-4. Lobbyist On Behalf of the City.

SEC. 67.29-5. Calendars of Certain Officials.

SEC. 67.29-6. Sources of Outside Funding.

SEC. 67.29-7. Correspondence and Records Shall Be Maintained.

## X. SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).
- (c) "Supervisor of Records" shall mean the City Attorney. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

# Administrative Code of San Francisco

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## CHAPTER 8: DOCUMENTS, RECORDS AND PUBLICATIONS

- Sec. 8.1. "Records" Defined.
- Sec. 8.2. Responsibility for Preservation and Filing of Records.
- Sec. 8.3. Retention and Destruction of Records Generally.
- Sec. 8.3-1. Sound Recordings.
- Sec. 8.4. Records Classifications.
- Sec. 8.5. Establishment, Use, Etc., of Records Center.
- Sec. 8.7. Prerequisites to Destruction of Records; Sale in Lieu of Destruction.
- Sec. 8.8. Disposal of Obsolete Law Books.
- Sec. 8.9. Preservation of Essential Records.
- Sec. 8.12.2. Cost of Publication, Etc.
- Sec. 8.12.3. Disposition of Money.
- Sec. 8.12.4. Free Publications.
- Sec. 8.12-1. Sale of Systems Time and Programming Time.
- Sec. 8.14. Medical Examiner's Fees for Copies of Documents and Certain Services.
- Sec. 8.15. Filing or Posting of Departmental Rules and Regulations.
- Sec. 8.16. Filing of Annual Reports and Official Documents with San Francisco Public Library.
- Sec. 8.17. Mailing of Documents.
- Sec. 8.21. Library Commission--Note Cards.
- Sec. 8.21-1. Establishment of a Library Publication Fund.
- Sec. 8.21-2. Library Fines and Fees.
- Sec. 8.21-3. Library Fee Amnesty Program.
- Sec. 8.22. Registrar's Fees.
- Sec. 8.23. Police Department Fees.
- Sec. 8.24. Recorder's Fees.
- Sec. 8.24-1. Establishment of a Recorder's Fund.
- Sec. 8.24-2. Establishment of a Recorder's Modernization Fund.
- Sec. 8.24-3. Additional Fee for Filing of Preliminary 20-Day Notices.
- Sec. 8.24-4. Recorder's Access and Indexing Fees and Fund.
- Sec. 8.24-5. Real Estate Fraud Prosecution Recordation Fee.
- Sec. 8.24-6. Survey Monument Preservation Fee.
- Sec. 8.25. Destruction of Criminal History Records.
- Sec. 8.26. Civil Service Commission Inspection and Fingerprint Fees.
- Sec. 8.27. Sheriff's Department Fees.
- Sec. 8.27-1. Booking Fee; Sheriff and Police Departments.
- Sec. 8.28. City Planning Fees.
- Sec. 8.29. Establishment of a Municipal Railway Video Production Fund.
- Sec. 8.30. Adult Probation Department--Project 20 Administrative Fee.
- Sec. 8.31. Adult Probation Department--Restitution Collection Fee.
- Sec. 8.31-1. Adult Probation Department--Restitution Fine Administrative Fee.
- Sec. 8.32. Small Claims Court Judgment Debtor Fee.
- Sec. 8.33.1. County Clerk's Fees.
- Sec. 8.33.2. County Assessor-Recorder's Fees.
- Sec. 8.34. Tax Collector Fees.
- Sec. 8.34.1. Tax Billing--Administrative Fees.
- Sec. 8.36. Juvenile Probation Department--Restitution Collection Fee.
- Sec. 8.36-1. Juvenile Probation Department--Stepparent Adoptions.
- Sec. 8.37. Clerk of the Board of Supervisors--Fees.
- Sec. 8.38. Adult Probation Booking Fee.
- Sec. 8.39. Regional Transit Discount Identification Card Fees.
- Sec. 8.40. Department of Public Works ("DPW") Geographic Information System ("GIS") Data License Agreements; Ratification of Prior Fees.
- Sec. 8.41. Controller's Fees.
- Sec. 8.42. Penalty Assessment for Emergency Medical Services.

**SEC. 8.1. "RECORDS" DEFINED.**

"Records," as used in this Chapter, shall mean such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County.

(Ord. No. 7070(1939), Sec. 1)

**8.2. RESPONSIBILITY FOR PRESERVATION AND FILING OF RECORDS.**

The head of every department shall be responsible for the preservation and proper filing of papers, film or other records of the department and the ultimate disposition of the same in accordance with the applicable law.

(Ord No. 7070(1939), Sec. 1; amended by Ord. 530-88, App. 12/16/88)

**SEC. 8.3. RETENTION AND DESTRUCTION OF RECORDS GENERALLY.**

It shall be the duty of each department head to classify the department's records, using the classifications set forth in Section 8.4 of this Code, and to prepare a schedule for the systematic retention and destruction of such records, which schedule shall comply with the provisions of this Section and of Sections 8.4 and 8.9 of this Code and will be effective only upon approval by the officers and boards specified below.

Current records and storage records, as defined in Section 8.4 of this Code, may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or other public purpose, except that records pertaining to financial matters shall be destroyed only after approval by the Controller; those having legal significance only after approval by the City Attorney; and payroll checks, time cards and related documents only after approval by the Retirement Board.

If requested by the Retirement Board, payroll checks, time cards and related documents shall be delivered to the Retirement Board instead of being destroyed. Current records and storage records less than five years old may be destroyed or otherwise disposed of if their destruction or other disposition within a shorter length of time will not be detrimental to the City and County or defeat any public purpose and if a definitive description of such records and the retention period applicable to them are set forth in a schedule for the systematic retention and destruction of records that is prepared by the department head, approved by the Mayor or the Mayor's designee, or the board or commission concerned, and approved by the City Attorney as to records of legal significance, by the Controller as to records relating to financial matters, by the Retirement Board as to time rolls, time cards, payroll checks and related matters.

Permanent records, as defined in Section 8.4 of this Code, and essential records, as defined in Section 8.9 of this Code, shall not be destroyed or otherwise disposed of except as set forth in those sections.

The provisions of this Section do not apply to sound recordings of radio or telephone communications as described in Section 8.3-1.

Nothing in this Section shall be deemed to apply to or authorize the destruction of any records that are required to be retained by local, State or federal law.

(Amended by Ord. 583-81, App. 12/10/81; Ord. 530-88, App. 12/16/88; Ord. 278-96, App. 7/3/96)

**SEC. 8.3-1. SOUND RECORDINGS.**

(a) The words "sound recordings," as used in this Section, mean the routine daily taping and recording of telephone communications to and from a department of the City and County of San Francisco and all radio communications relating to the operations of that department.

(b) The San Francisco Municipal Railway shall retain sound recordings relating to its operations for at least one year. The San Francisco Police Department and Fire Department shall retain sound recordings relating to their respective operations for at least six months.

(c) Any department not mentioned in Section 8.3-1(b) shall retain sound recordings relating to its operations for at least 100 days.

(d) Sound recordings of any department may be destroyed or otherwise disposed of at any time upon authorization of the department head and the written consent of the City Attorney; provided, that the minimum time limits for retention set forth in this section are complied with and provided further that in the event that sound recordings maintained by a department are evidence in any claim filed or any pending litigation, such recordings shall be preserved until pending litigation is resolved.

(Added by Ord. 583-81, App. 12/10/81)

#### **SEC. 8.4. RECORDS CLASSIFICATIONS.**

"Records," as defined in Section 8.1 of this Code, shall for the purposes of this Chapter be divided into three classifications: current records, storage records and permanent records.

"Current records" are records which for convenience, ready reference or other reason are retained in office space and equipment of the department involved.

"Storage records" are records which need not be retained in office space and equipment of the department involved, but which must be, or should be, prudently preserved for a time or permanently in the facilities of a records center, as specified in the following section.

"Permanent records" are records required by law to be permanently retained. Unless otherwise required by law or regulation, permanent records shall be stored by microfilming the paper records or placing them on an optical imaging storage system, placing the original film or tape in a State-approved storage vault and delivering a copy to the department. The paper records may then be destroyed.

(Ord. No. 7070(1939), Sec. 3; amended by Ord. 530-88, App. 12/16/88)

#### **SEC. 8.5. ESTABLISHMENT, USE, ETC., OF RECORDS CENTER.**

The Director of Administrative Services shall provide for the establishment, maintenance and operation of a records center for the orderly storage, care, management and safeguarding of storage records of the departments and offices of the City and County and of the San Francisco Unified School District and for the destruction of storage records pursuant to retention and destruction schedules prepared and approved as provided in Section 8.3 of this Code. The Director of Administrative Services may establish, maintain and operate such a records center as a function of one of the departments under the Director of Administrative Services' jurisdiction or, in lieu thereof may contract with a reputable and experienced archival firm to establish, maintain and operate such a records center and to provide retrieval and accession services.

A representative of the Director of Administrative Services may also be available as a consultant to departments in the formulation of paper records storage alternatives such as microfilming and optical imaging records storage systems.

Within two years from the effective date of such contract, and at three-year intervals thereafter, the Director of Administrative Services shall have prepared for public hearing at the Board of Supervisors a report on the merits and demerits of the contract as compared with a municipal records center. Any of the departments or offices of the City and County and the San Francisco Unified School District may elect to use the facilities of the records center for its storage records provided that: (a) copies of an approved schedule for systematic retention and destruction of records shall first be delivered to the Director of Administrative Services and to the records center; and (b) the cost for the use of the records center facilities shall be the obligation of, and be paid by, the department or office using the facilities or by the San Francisco Unified School District if it shall use the facilities.

(Amended by Ord. 111-76, App. 4/1/76; Ord. 530-88, App. 12/16/88; Ord. 278-96, App. 7/3/96)

#### **SEC. 8.7. PREREQUISITES TO DESTRUCTION OF RECORDS; SALE IN LIEU OF DESTRUCTION.**

(a) Before any book, document, photograph, map, architectural drawing, record, bond certificate, or other material of historical significance is destroyed, the following procedure shall be observed:

(1) It shall be offered by the officer concerned, i.e., the Mayor or the Mayor's designee, or by boards or commissions for departments under their respective jurisdiction, to the San Francisco History Room of the San Francisco Public Library;

(2) Such items not accepted by the San Francisco Public Library may be sold by the office of the Mayor, together with copies thereof;



(3) In the event the Public Library declines to accept said historical material, or after sale thereof by the Mayor, any remaining such historical material may be offered to an historical society.

(b) After all the steps outlined in Paragraph (a) above have been observed, any remaining historical records, as well as any large volume of records without historic significance which are to be destroyed, shall be offered for sale by the City Purchaser. The sales contract must provide that the buyer guarantees to the satisfaction of the City Purchaser that the records will be shredded beyond identification or otherwise destroyed within a short period of time after taking delivery.

(Amended by Ord. 306-72, App. 10/19/72; Ord. 70-95, App. 3/24/95; Ord. 278-96, App. 7/3/96; Ord. 260-99, File No. 991365, App. 10/15/99)

### **SEC. 8.8. DISPOSAL OF OBSOLETE LAW BOOKS.**

The City Attorney is authorized to destroy or otherwise dispose of any and all obsolete law books or other published legal materials in his or her possession or control which have been a part of the library of the office of the City Attorney once such materials have been superseded or are otherwise determined to be obsolete.

(Ord. No. 3646(1939), Sec. 1; amended by Ord. 330-00, File No. 001964, App. 12/28/2000)

### **SEC. 8.9. PRESERVATION OF ESSENTIAL RECORDS.**

It is hereby declared that the public interest demands that various City and County records which would be essential to the continuity of government and the protection of rights and interests of individuals in event of a major disaster (hereinafter referred to as "essential records") be preserved against possible destruction by fire, earthquake, flood, enemy attack or other cause. It shall be the duty of each department head to develop a program for the selection and preservation of the essential records of the department and to arrange for safe storage of those essential records and duplicates thereof in the same manner as is provided for the storage of permanent records under Section 8.4 of this Code.

(Amended by Ord. 126-62, App. 5/24/62; Ord. 530-88, App. 12/16/88)

### **SEC. 8.12.2. COST OF PUBLICATION, ETC.**

When funds have been provided, the Purchaser of Supplies may publish such manuals, documents, pamphlets, bulletins or other publications as may be deemed to be in the best interests of the City and County, or for information, upon the recommendation of a department head, and with the approval of the Mayor or the Mayor's designee, board or commission.

The cost of handling and distribution by the Purchaser of Supplies in accordance herewith shall be payable out of the departmental funds referred to in this Section.

(Added by Ord. 259-73, App. 7/3/73; amended by Ord. 278-96, App. 7/3/96)

### **SEC. 8.12.3. DISPOSITION OF MONEY.**

All moneys received from the sale of documents or printed publications shall be paid as revenue into the City and County treasury to the credit of the fund from which the cost of the printing of the manuals, documents, pamphlets or other publications sold shall have been paid.

(Added by Ord. 259-73, App. 7/3/73)

### **SEC. 8.12.4. FREE PUBLICATIONS.**

Copies of publications of the Board of Supervisors required for the use of a City and County department shall be

### III. CALIFORNIA PUBLIC RECORDS ACT (CAL. GOV'T CODE § 6250 ET SEQ.)

#### A. GOVERNMENT CODE

Title 1. General  
Division 7. Miscellaneous  
Chapter 3.5. Inspection of Public Records  
Article 1. General Provisions

#### B. § 6250. LEGISLATIVE FINDINGS AND DECLARATIONS

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

#### C. § 6251. SHORT TITLE

This chapter shall be known and may be cited as the California Public Records Act.

#### D. § 6252. DEFINITIONS

As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

#### E. § 6252.5. ELECTED MEMBER OR OFFICER OF STATE OR LOCAL AGENCY

Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

Westlaw.

STATE GOVERNMENT CODE 14741 et seq Page 1

West's Annotated California Codes Currentness  
 Government Code (Refs & Annos)  
 Title 2. Government of the State of California  
 Division 3. Executive Department (Refs & Annos)  
 Part 5.5. Department of General Services (Refs & Annos)  
 Chapter 5. State Records (Refs & Annos)  
 Article 1. General (Refs & Annos)  
 → § 14740. Short title

SOTF E

This chapter shall be known as the "State Records Management Act."

#### § 14741. "Record" or "records" defined

As used in this chapter "record" or "records" means all papers, maps, exhibits, magnetic or paper tapes, photographic films and prints, punched cards, and other documents produced, received, owned or used by an agency, regardless of physical form or characteristics. Library and museum materials made or acquired and preserved solely for reference or exhibition purposes, and stocks of publications and of processed documents are not included within the definition of the term "record" or "records" as used in this chapter.

#### § 14741.1. Public use forms defined

As used in this chapter, "public use forms" means those forms used by the state to obtain or to solicit facts, opinions, or other information from the public or private citizens, partnerships, corporations, organizations, business trusts, or any nongovernmental entity or legal representative thereof.

#### § 14745. Records management program

The director shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records.

#### § 14746. Duties of director

The duties of the director shall include but not be limited to:

- (a) Establishing standards, procedures, and techniques for effective management of records.
- (b) Providing appropriate protection for records designated by state agencies, with the concurrence of the director, as essential to the functioning of state government in the event of a major disaster.
- (c) Obtaining from agencies reports required for the administration of the program.

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**§ 14750. Agency records; management program requirements; compliance with rules and regulations**

The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records and information collection practices of the agency. The program shall ensure that the information needed by the agency shall be obtained with a minimum burden upon individuals and businesses, especially small business enterprises and others required to furnish the information. Unnecessary duplication of efforts in obtaining information shall be eliminated as rapidly as practical. Information collected by the agency shall, as far as is expedient, be collected and tabulated in a manner which maximizes the usefulness of the information to other state agencies and the public.

(b) Determine, with the concurrence of the director, records essential to the functioning of state government in the event of a major disaster.

(c) Comply with the rules, regulations, standards and procedures issued by the director.

**§ 14755. Preservation of records having value**

(a) No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, or fiscal value and the Secretary of State has determined that the record is inappropriate for preservation in the State Archives.

(b) The director shall not authorize the destruction of any record subject to audit until he or she has determined that the audit has been performed.

(c) The director shall not authorize the destruction of all or any part of an agency rulemaking file subject to Section 11347.3.

**§ 14756. Microfilmed, electronically data imaged and photographically reproduced records; standards; certification**

The public records of any state agency may be microfilmed, electronically data imaged, or otherwise photographically reproduced and certified upon the written authorization of the head of the agency. The microfilming, electronic data imaging, or photographic reproduction shall be made in compliance with the minimum standards or guidelines, or both, as recommended by the American National Standards Institute or the Association for Information and Image Management, and as adopted by the Department of General Services in consultation with the Secretary of State, for recording of permanent records or nonpermanent records.

The certification of each reproduction or set of reproductions shall be in accordance with the standards, or have the approval, of the Attorney General. The certification shall contain a statement of the identity, description, and disposition or location of the records reproduced, the date, reason, and authorization for the reproduction, and other information that the Attorney General requires.

The certified reproductions shall be deemed to be original public records for all purposes, including introduction in courts of law and state agencies .

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**§ 14760. Report to governor**

The director shall, through the Secretary of the State and Consumer Services Agency, make an annual written report to the Governor. The report shall describe the status and progress of programs established pursuant to this chapter and shall include the recommendations of the director for improvements in the management of records in the state government.

**§ 14765. Transfers; personnel**

All persons, other than temporary employees, serving in the state civil service and employed by the Secretary of State in the Central Record Depository, shall remain in the state civil service and are hereby transferred to the Department of General Services. The status, positions, and rights of such persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act.

**§ 14766. Transfers; equipment and records**

All equipment and records in the Central Record Depository in the office of the Secretary of State are transferred to the Department of General Services.

**§ 14767. Record centers; purposes**

The director shall establish, maintain and operate record centers for the storage, processing, and servicing of records for state agencies pending their deposit with the Archives of the State of California or their disposition in any other manner authorized by law.

**§ 14768. Operative date of article**

This article shall become operative on January 1, 1967.

**§ 14769. Reproduction of public record plant**

(a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Public record plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of that person or which is used by that person in his or her business.

(b) If public records of any state agency have been lost or destroyed by conflagration or other public calamity, the director may acquire the right to reproduce any portion of a public record plant as is necessary for the purpose of restoring or replacing the records or their substance.

### **3. EMPLOYEES' RIGHTS TO EXPRESS OPINIONS**

The Sunshine Ordinance addresses personal communications by City employees. Public employees have a right when off duty to express their personal opinions on any matter of public concern. But public employees may not represent that their opinions are those of the department or misrepresent a department's opinion. In addition, employees have no right to engage in off-duty speech that could undermine their ability to do their City job or the capacity of their department to function. Admin. Code § 67.22(d). Before curtailing off-duty speech activities of an employee, a department representative should consult the City Attorney's Office.

### **H. DUTY TO PREPARE ANNUAL REPORTS AND FILE WITH THE PUBLIC LIBRARY**

Under the Charter, each City board and commission must to prepare an annual report describing its activities, and must file such report with the Mayor and the Clerk of the Board of Supervisors. Charter § 4.103. Boards, commissions or departments that produce an annual report must: (i) post the report on the City's Web site and transmit the URL to the Public Library within 10 days of final approval, (ii) provide a copy printed from the Web site upon request, and (iii) obtain earlier approval from the Board of Supervisors to expend City funds to procure printing of the report. Admin. Code §§ 1.56, 8.16.

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## **III. RECORDS RETENTION AND DESTRUCTION LAWS**

Various City, state and federal laws govern the retention and destruction of records. Some of the most important requirements are summarized below. Department heads should familiarize themselves with the requirements contained in Chapter 8 of the San Francisco Administrative Code and in the Sunshine Ordinance, as well as rules relating to particular documents in the department's possession.

The purpose of the records classification and retention laws is to ensure that the government preserves important records for an appropriate period of time in an orderly fashion. Retention of records ensures that the legal and financial rights of the City and its residents are protected. In addition, a carefully considered policy obviates the need of a department to retain unnecessary records and for the City to incur unnecessary storage costs. Accordingly, each department head must develop a written policy specifically outlining which records it must maintain and for how long.

### **A. DUTIES OF DEPARTMENTS AND DEPARTMENT HEADS**

The Sunshine Ordinance imposes certain duties on departments and department heads.

## **1. MAINTAINING AND PRESERVING RECORDS**

The Sunshine Ordinance requires the Mayor and all department heads to maintain and preserve all documents and correspondence in a professional and businesslike manner. Admin. Code § 67.29-7(a). Institution of and compliance with a department's records classification and retention policy satisfies this requirement.

The Sunshine Ordinance also provides that documents prepared, received or maintained by the Mayor's Office, elected officials or department heads are the City's property. The City must retain the originals under record retention policies, even after the official leaves the office. Admin. Code § 67.29-1.

## **2. DEPARTMENT HEAD CALENDARS**

The Sunshine Ordinance requires the Mayor, City Attorney and department heads to keep and maintain a daily calendar. City officials must record the time and place of each meeting or event attended, excluding purely personal or social events at which no City business is discussed. For meetings not otherwise publicly recorded, the calendar must include a general statement of the issues discussed. The Ordinance does not state that the official must include on the calendar the names of individuals attending the meeting. Admin. Code § 67.29-5.

Calendars must be available to any requester three business days after the calendar entry date. The calendar entry date is not when the meeting or event was physically entered into the calendar, but rather is the date of the meeting or event itself. The official need not disclose calendars in advance of the calendar entry date. Admin. Code § 67.29-5.

## **3. MAINTENANCE OF LIST OF SOLE SOURCE CONTRACTS**

The Sunshine Ordinance requires each department, at the end of each fiscal year, to provide to the Board of Supervisors a list of all sole source contracts the department entered into during the past fiscal year. The department must make this list available to the public. Admin. Code § 67.24(e)(3).

## **4. DUTY TO COOPERATE WITH CITY ADMINISTRATOR IN COMPILING CITY INDEX**

The Sunshine Ordinance requires the City Administrator to compile an index that identifies the types of information and documents the City's departments, agencies, boards, commissions, and elected officials maintain. Each department, commission, and public official must cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity, those documents it receives in the ordinary course of business and the types of requests that it regularly receives. Admin. Code § 67.29.

## 5. DUTY TO MAINTAIN A WEB SITE

Each department must maintain a publicly accessible web site. Admin. Code § 67.29-2. Please see Section IV(E) of this Part Three below, "Maintaining a Web Site," for more information.

## B. RECORDS DEFINED

For the purpose of records retention, the term "records" is defined more narrowly than in the Public Records Act or Sunshine Ordinance. "Records" include any paper, book, photograph, film, sound recording, map, drawing, or other document, or any copy, made or received by the department in connection with the transaction of public business and retained by the department: (1) as evidence of the department's activities; (2) for the information contained in it; or (3) to protect the legal or financial rights of the City or of persons directly affected by the activities of the City. Admin. Code § 8.1.

A number of documents do not fall within the definition of "records" for records retention purposes. These documents may be destroyed when they are no longer of use. Phone message slips, notes of meetings, and research notes prepared for the personal use of the employee creating them may be destroyed immediately. E-mail that does not fall within the definition of "record" for purposes of records retention (see definition directly above) may be destroyed immediately. Similarly, periodicals or publications received by a department that are not of historical significance may be destroyed. Duplicate copies of documents may be destroyed provided that the appropriate City department has retained the original. Govt. Code § 34090.7.

With one exception, drafts of documents that have been superseded by later drafts or a final version need not be retained. Drafts of agreements City representatives are negotiating with another party that have been exchanged with that party must be retained for public review before approval by the department commission or the Board of Supervisors. Admin. Code § 67.24(a)(2).

## C. E-MAIL

Any e-mail that is created or received in connection with the transaction of public business and which (1) the department retains as evidence of the department's activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City, must be retained in accordance with the department's records retention schedule. The standard for determining if e-mail is a record that must be retained is identical to the standard that applies to any document. Govt. Code § 6252(e); Admin. Code § 67.20(b). If the e-mail must be retained, it should be printed out and the hard copy retained in the appropriate file unless the department can reliably retain and retrieve the e-mail in electronic format.

## D. CLASSIFICATION OF RECORDS

All documents falling within the definition of "records," described above, must be divided into three classifications. Admin. Code §§ 8.3 and 8.4.



### 1. CURRENT RECORDS

Records that for convenience, ready reference, or other reason are retained in the office space and equipment of the department involved.

### 2. STORAGE RECORDS

Records that need not be retained in the office space and equipment of the department but that must be, or should be, prudently preserved for a time or permanently in the facilities of a records center.

### 3. PERMANENT RECORDS

Records required by law to be permanently retained. Unless otherwise required by law or regulation, permanent records shall be stored by microfilming the paper records or placing them on an optical imaging storage system, placing the original film or tape in a State-approved storage vault and delivering a copy to the department. The paper records may then be destroyed.

In addition, each department must designate its "Essential Records": records essential to the continuity of government and the protection of rights and interests of individuals in the event of a major disaster. The public interest demands that Essential Records be preserved against possible destruction by fire, earthquake, flood, enemy attack or other cause.

## E. RETENTION AND DESTRUCTION OF RECORDS

The department head must prepare a schedule for the systematic retention and destruction of its records. Admin. Code § 8.3. State law requires all records subject to records retention requirements to be maintained for at least two years. Govt. Code § 34090.

- **Current Records and Storage Records over five years old** may be destroyed if they have served their purpose and are no longer required for any public business or other public purpose. But records pertaining to financial matters may be destroyed only after approval by the Controller; those having legal significance only after approval by the City Attorney; and payroll checks, time cards and related documents only after approval by the Retirement Board. If requested by the Retirement Board, payroll checks, time cards and related documents must be delivered to the Retirement Board instead of being destroyed. Admin. Code § 8.3.
- **Current Records and Storage Records more than two but less than five years old** may be destroyed or otherwise disposed of under the following conditions: (1) if their destruction will not be detrimental to the City or defeat any public purpose; and (2) if a definitive description of such records and the retention period applicable to them are set forth in a records retention schedule that is prepared by the department head, approved by the Mayor, or the Mayor's designee, or the board or commission concerned, and ap-

proved by the City Attorney as to records of legal significance, by the Controller as to records relating to financial matters, by the Retirement Board as to time rolls, time cards, payroll checks, and related matters. Admin. Code § 8.3.

- **Permanent Records and Essential Records** may not be destroyed. But paper records may be destroyed if the records have been microfilmed or placed on an optical imaging storage system. Admin. Code § 8.4. Under the Sunshine Ordinance, tapes of meetings of boards and commissions enumerated in the Charter must be classified as permanent records. Admin. Code § 67.14(b).

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## IV. PUBLIC MEETING LAWS

### A. WHO IS SUBJECT TO PUBLIC MEETING LAWS?

#### 1. LEGISLATIVE OR POLICY BODIES

The Brown Act applies to “legislative bodies.” Generally, the Brown Act defines a legislative body as any local government board, commission, committee, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action of a legislative body. Govt. Code § 54952(b).

The Sunshine Ordinance applies to “policy bodies.” “Policy bodies” include all of the City’s boards and commissions, any advisory body created by the initiative of a board, commission, or other policy body, any committee of a policy body and any advisory board, commission, committee or council created by federal, state or local grant whose members are appointed by City officials, employees, or their agents. Committees consisting solely of City employees or officials that are created by Charter, ordinance, resolution or formal action of a policy body are policy bodies subject to the provisions of the Brown Act and Sunshine Ordinance. Govt. Code § 54952(b); Admin. Code § 67.3(d).

In this discussion of open meeting laws, we use the term “policy body” to encompass all of these bodies under the Sunshine Ordinance as well as all legislative bodies under the Brown Act.

#### 2. PASSIVE MEETING BODIES

The Sunshine Ordinance goes beyond the Brown Act by requiring certain gatherings that are not subject to the formal requirements of the Brown Act or Sunshine Ordinance comply with “passive meeting” rules.

##### a. PASSIVE MEETING GATHERING

The following are the four types of groups or gatherings subject to passive meeting rules:

- First, meetings of advisory committees or other multimember bodies created in writing, or by the initiative of, or otherwise primarily formed or existing to serve