

Date: October 13, 2009

Item No. 11

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

Proposed amendments

Completed by: Chris Rustom

Date: Oct. 7, 2009

***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 2008

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PROPOSED ORDINANCE AMENDMENTS

Note: Additions are single-underline;
deletions are ~~strikethrough~~.

ARTICLE I
IN GENERAL

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

SECTION 67.1 FINDINGS AND PURPOSE.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

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1 (d) The right of the people to know what their government and those acting on
2 behalf of their government are doing is fundamental to democracy, and with very few
3 exceptions, that right supersedes any other policy interest government officials may use to
4 prevent public access to information. Only in rare and unusual circumstances does the public
5 benefit from allowing the business of government to be conducted in secret, and those
6 circumstances should be carefully and narrowly defined to prevent public officials from
7 abusing their authority.

8 (e) Public officials who attempt to conduct the public's business in secret should be
9 held accountable for their actions. Only a strong Open Government and Sunshine Ordinance,
10 enforced by a strong Sunshine Commission¹~~Sunshine Ordinance Task Force~~, can protect the
11 public's interest in open government.

12 (f) The people of San Francisco enact these amendments to assure that the people
13 of the City remain in control of the government they have created.

14 (g) Private entities and individuals and employees and officials of the City and County of
15 San Francisco have rights to privacy that must be respected. However, when a person or
16 entity is before a policy body or passive meeting body, that person, and the public, has the
17 right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by
18 Proposition G, 11/2/99)

20 **SECTION 67.2. CITATION.**

21 This ~~Chapter~~ chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord.
22 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

23 ¹ The Task Force is changing its name from "Task Force" – which implies a body established
24 for a temporary purpose – to "Commission" throughout the Ordinance. This is a non-
25 substantive change, based on advice from Deputy City Attorney Ernest Llorente, in
consultation with the City Attorney Office's government team, that the body's name change
would not alter the body's appointment process or powers.

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2 **ARTICLE II**
3 **PUBLIC ACCESS TO MEETINGS**
4

- 5 Sec. 67.3. Definitions.
6 Sec. 67.4. Passive Meetings.
7 Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
8 Sec. 67.6. Conduct of Business; Time and Place For Meetings.
9 Sec. 67.7. Agenda Requirements; Regular Meetings.
10 Sec. 67.7-1. Public Notice Requirements.
11 Sec. 67.8. Agenda Disclosures: Closed Sessions.
12 Sec. 67.8-1. Additional Requirements for Closed Sessions
13 Sec. 67.9. Agendas and Related Materials: Public Records.
14 Sec. 67.10. Closed Sessions: Permitted Topics.
15 Sec. 67.11. Statement of Reasons For Closed Sessions.
16 Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
17 Sec. 67.13. Barriers to Attendance Prohibited.
18 Sec. 67.14. Tape Recording, Filming and Still Photography.
19 Sec. 67.15. Public Testimony.
20 Sec. 67.16. Minutes.
21 Sec. 67.17. Public Comment By Members of Policy Bodies.
22 Sec. 67.18 Supervisor of Public Forums

23 **SECTION 67.3. DEFINITIONS.**

24 Whenever in this ~~Article~~ article the following words or phrases are used, they shall have
25 the following meanings:

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1 (a) "City" shall mean the City and County of San Francisco.

2 (b) "Meeting" shall mean any of the following:

3 (1) A congregation of a majority of the members of a policy body at the same time
4 and place; to hear, discuss, or deliberate upon any item that is within the subject matter
5 jurisdiction of the City.

6 (2) A series of gatherings, each of which involves less than a majority of a policy
7 body, to hear, discuss or deliberate upon any item ~~that is within the subject matter jurisdiction~~
8 of the ~~City~~policy body, if the cumulative result is that a majority of the members of the policy
9 body has become involved in such gatherings; or

10 (3) Any other use of personal intermediaries or communications media that could
11 permit a majority of the members of a policy body to become aware of an item of business
12 and of the views or positions of other members with respect thereto, and to negotiate
13 consensus thereupon.

14 (4) "Meeting" shall not include any of the following:

15 (A) Individual contacts or conversations between a member of a policy body and
16 another person that do not convey to the member of the policy body the views or positions of
17 other members of the policy body upon the subject matter of the contact or conversation and
18 in which the member of the policy body does not solicit or encourage the restatement of the
19 views of the other members of the policy body;

20 (B) The attendance of a majority of the members of a policy body at a local,
21 regional, statewide, or national conference, or at a meeting organized to address a topic of
22 local community concern and open to the public, provided that a majority of the members of a
23 policy body refrains from using the occasion to collectively discuss ~~the topic of the gathering~~
24 ~~or any other business item~~ within the subject matter jurisdiction of the City policy body; or

25

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1 (C) The attendance of a majority of the members of a policy body at a purely social,
2 recreational, or ceremonial occasion other than one sponsored or organized by or for the
3 policy body itself, provided that a majority of the members of the policy body refrains from
4 using the occasion to discuss any business-item within the subject matter jurisdiction of ~~this~~
5 the policy body. A meal gathering of a policy body before, during, or after a ~~business-meeting~~
6 of the policy body is part of that meeting and shall be conducted only under circumstances
7 that permit public access to hear and observe the ~~discussion-of members~~. Such meetings
8 shall not be conducted in restaurants or other ~~accommodations-locations~~ where public access
9 is possible only in consideration of making a purchase or some other payment of value.

10 (D) The attendance of a majority of the members of a policy body at a meeting of a
11 standing committee of the policy body, provided that the members of the policy body who are
12 not members of the standing committee attend only as observers or as members of the
13 public.²

14 (E) When a majority of members attend a meeting of another policy body to
15 comment on a matter specifically noticed before that policy body.

16 ~~(D) Proceedings of the Department of Social Services Child Welfare Placement and~~
17 ~~Review Committee or similar committees which exist to consider confidential information and~~
18 ~~make decisions regarding Department of Social Services clients.~~

19 (c) "Passive meeting body" shall mean:³
20
21

22 ² As noted in the Good Government Guide, "the drafters of Proposition G (November 2, 1999)
23 inadvertently omitted section 67.3(b)(4)(C-1), formerly Section 67.3(b)(4)(D), from the text of
24 the ordinance submitted to the voters." This corrects that omission.

25 ³ Revised 67.3(c) and (d) to: clarify ambiguity regarding "advisory" committees and bodies;
make clear that where body is tasked with changing or implementing new policy – they are
policy bodies; all bodies created by Mayor (except ones that include City employees to meet
with residents) are now "Policy Bodies."

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1 (1) Advisory committees created by the initiative of a member of a policy body, the
2 Mayor, or a department head other than the Mayor;

3 (2) Any group that ~~meets to discuss with or advise the Mayor or any Department~~
4 ~~Head on fiscal, economic, or policy issues;~~ includes City employees assigned by a policy body,
5 the Mayor, or department head to meet with residents or community groups to obtain
6 information that would result in a report or recommendation from the group back to the policy
7 body, the Mayor or department for action by the policy body, Mayor or department;

8 (3) Social, recreational or ceremonial occasions sponsored or organized by or for a
9 policy body to which a majority of the body has been invited.

10 (4) "Passive meeting body" shall not include a committee that consists solely of City
11 ~~employees of the City and County of San Francisco~~ created by the initiative of a member of a
12 policy body, the Mayor, or a department head; to study internal departmental affairs which is
13 not expected to modify or change City policy;

14 (5) ~~Notwithstanding the provisions of paragraph (4) above, "Passive meeting body"~~
15 ~~shall include a committee that consists solely of employees of the City and County of San~~
16 ~~Francisco when such committee is reviewing, developing, modifying, or creating city policies~~
17 ~~or procedures relating to the public health, safety, or welfare or relating to services for the~~
18 ~~homeless;~~

19 (d) "Policy Body" shall mean:⁴

20 (1) The Board of Supervisors;

21 (2) Any other board, ~~or commission,~~ or other body enumerated in the charter;

22 (3) Any board, commission, committee, or other body created by ordinance or
23 resolution of the Board of Supervisors;

24
25 _____
⁴ See above; expanded categories of policy bodies.

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1 ~~(4)(5)~~ Any advisory board, commission, committee or other body, created by the
2 initiative ~~Mayor or~~ of a policy body;

3 ~~(5)(4)~~ Any board, commission, committee or other body, standing committee of a policy
4 body composed of members of the Policy Body, irrespective of its composition.;

5 ~~(6)~~ "Policy Body" shall not include a committee which consists solely of employees
6 of the City and County of San Francisco, unless such committee was established by charter
7 or by ordinance or resolution of the Board of Supervisors.

8 ~~(7)(6)~~ Any advisory board, commission, committee, or council created by a federal,
9 state, or local grant whose members are appointed by ~~city~~ City officials, employees or agents.
10 (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G,
11 11/2/99)

12
13 **SECTION 67.4. PASSIVE MEETINGS BODIES: CONDUCT OF BUSINESS.**

14 (a) All gatherings of passive meeting bodies shall be accessible to individuals upon
15 inquiry and to the extent possible ~~consistent with the~~ that the meeting locations have sufficient
16 capacity, facilities, furniture and equipment, in which they occur.

17 ~~(1)(b)~~ Such gatherings must ~~need not~~ be formally noticed with a contact person's
18 name and contact information, at least 72 hours prior to the scheduled meeting except on the
19 City's website whenever possible, although and the time, place and nature of the gathering
20 shall be posted at the main library and on the City's website and be disclosed by mail, e-mail,
21 or fax upon inquiry by a member of the public, and any. If an agenda actually is prepared in
22 advance for the gathering, it shall be accessible to such inquirers as a public record provided
23 upon request, and as practicable posted with the notice.⁵

24
25 ⁵ Revised 67.4(b), passive meeting bodies are now required to formally notice meetings at least 72 hours in advance; mandates enhanced notice and website posting requirements.

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1 ~~(2) — Such gatherings need not be conducted in any particular space for the~~
2 ~~accommodation of members of the public, although members of the public shall be permitted~~
3 ~~to observe on a space available basis consistent with legal and practical restrictions on~~
4 ~~occupancy.~~⁶

5 ~~(3)(c) Such gatherings of a business nature need not provide opportunities for~~
6 ~~comment by members of the public, although the person presiding may, ~~in~~ at his or her~~
7 ~~discretion, entertain such questions or comments from spectators members of the public as~~
8 ~~may be relevant to the business of the gathering.~~

9 ~~(4)(d) Such gatherings of a social or ceremonial nature need not provide refreshments~~
10 ~~to spectators members of the public.~~

11 ~~(5) — Gatherings subject to this subsection include the following: advisory committees~~
12 ~~or other multimember bodies created in writing or by the initiative of, or otherwise primarily~~
13 ~~formed or existing to serve as a non-governmental advisor to, a member of a policy body, the~~
14 ~~Mayor, the City Administrator, a department head, or any elective officer, and social,~~
15 ~~recreational or ceremonial occasions sponsored or organized by or for a policy body to which~~
16 ~~a majority of the body has been invited. This subsection shall not apply to a committee which~~
17 ~~consists solely of employees of the City and County of San Francisco.~~⁷

18 ~~(6) — Gatherings defined in section 67.3(c) subdivision (5) may hold closed sessions~~
19 ~~under circumstances allowed by this Article.~~

20 ~~(b) — To the extent not inconsistent with state or federal law, a policy body shall~~
21 ~~include in any contract with an entity that owns, operates or manages any property in which~~
22 ~~the City has or will have an ownership interest, including a mortgage, and on which the entity~~
23 ~~performs a government function related to the furtherance of health, safety or welfare, a~~
24

25 ⁶ Provision consolidated with subsection 67.4(a) above.

⁷ Removed as unnecessary.

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1 ~~requirement that any meeting of the governing board of the entity to address any matter~~
2 ~~relating to the property or its government related activities on the property, or performance~~
3 ~~under the contract or grant, be conducted as provided in subdivision (a) of this section.~~
4 ~~Records made available to the governing board relating to such matters shall be likewise~~
5 ~~available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a~~
6 ~~higher actual cost as demonstrated in writing to such governing board.~~⁸(Added by Ord. 265-
7 93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

8
9 **SECTION 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

10 All meetings of any policy body shall be open and public, and governed by the provisions of
11 the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In
12 case of inconsistent requirements under the Brown Act and this article, the requirement which
13 would result in greater or more expedited public access shall apply.

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

15
16 **SECTION 67.6. POLICY BODY: CONDUCT OF BUSINESS; TIME AND PLACE FOR**
17 **MEETINGS.**

18 (a) Each policy body, except for advisory bodies specified in Section 67.3(d)(5) and
19 67.3(d)(6), shall establish by resolution or motion the time and place for holding regular
20 meetings.

21 ~~(b) Unless otherwise required by state or federal law or necessary to inspect real~~
22 ~~property or personal property which cannot be conveniently brought within the territory of the~~
23 ~~City and County of San Francisco or to meet with residents residing on property owned by the~~
24 ~~City, or to meet with residents of another jurisdiction to discuss actions of the policy body that~~

25

⁸ Task Force recommends moving this entire section to new 67.24 [not yet moved].

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1 ~~affect those residents, all meetings of its policy bodies shall be held within the City and County~~
2 ~~of San Francisco.~~⁹

3 ~~(e)(b)~~ If a regular meeting would otherwise fall on a holiday, it shall instead be held on
4 the next business day, unless otherwise rescheduled in advance. If a meeting must be
5 canceled, continued or rescheduled for any reason, notice of such change shall be provided
6 to the public as soon as is reasonably possible, including posting of a cancellation notice in
7 the same manner as described in section 67.7(c), and mailed notice if sufficient time
8 permits.¹⁰

9 ~~(d)(c)~~ If, because of fire, flood, earthquake or other emergency, it would be unsafe to
10 meet at the regular meeting place, meetings may be held for the duration of the emergency at
11 some other place specified by the policy body. The change of meeting site shall be
12 announced, by the most rapid means of communication available at the time, in a notice to the
13 local media who have requested written notice of special meetings pursuant to Government
14 Code Section 54956. Reasonable attempts shall be made to contact others regarding the
15 change in meeting location.

16 ~~(e)(d)~~ Meetings of passive meeting bodies as specified in Section 67.3(d)(5) and
17 67.3(d)(6) 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail,
18 e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting
19 to each person who has requested, in writing, notice of such meeting. If the advisory body
20 elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by
21 that advisory body for the conduct of its business, for the time and place for holding such
22 regular meetings. ~~In such case, no notice of regular meetings, other than the posting of an~~
23
24

25 ⁹ Moved to new 67.6(f).

¹⁰ Moved from former 67.6(g).

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1 agenda pursuant to Section 67.7 of this article in the place used by the policy body which it
2 advises, is required.

3 ~~(f)~~(e) Special meetings of any policy body, including ~~advisory~~ bodies identified in
4 subsection 67.3(d)(5) and 67.3(d)(6) that choose to establish regular meetings ~~times~~, may be
5 called at any time by the presiding officer thereof or by a majority of the members thereof, by
6 delivering ~~personally or by mail~~ written notice to each member of such policy body and the
7 local media who have requested written notice of special meetings in writing. Such notice ~~of a~~
8 ~~special meeting~~ shall be delivered personally or by mail, e-mail, or facsimile as requested so
9 that it is delivered ~~as described in (e)~~ at least 72 hours before the time of such meeting as
10 specified in the notice. The notice shall specify the time and place of the special meeting and
11 the business to be transacted. No other business shall be considered at such meetings.
12 Such written notice may be dispensed with as to any member who at or prior to the time the
13 meeting convenes files with the presiding officer or secretary of the body or commission a
14 written waiver of notice. ~~Such waiver may be given by telegram.~~ Such written notice may
15 also be dispensed with as to any member who is actually present at the meeting at the time it
16 convenes. Each special meeting shall be held at the regular meeting place of the policy body
17 except that the policy body may designate an alternate meeting place provided that such
18 alternate location is specified in the notice of the special meeting; further provided that the
19 notice of the special meeting of the policy body shall be given at least 45-10 calendar days
20 prior to said special meeting being held at an alternate location. This provision shall not apply
21 where the ~~alternative~~ alternate meeting location is ~~located~~ within the same building as the
22 regular meeting place.¹¹

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25 ¹¹ Revised to provide consistency for accepted methods of delivery of notice; to allow shorter
advance time to provide special meeting notice to accommodate policy bodies because of
increased use of electronic/instantaneous notice.

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1 (f) Unless otherwise required by state or federal law or necessary to inspect real
2 property or personal property which cannot be conveniently brought within the territory of the
3 City and County of San Francisco or to meet with residents of property owned by the City, or
4 to meet with residents of another jurisdiction to discuss actions of the policy body that affect
5 those residents, all meetings of its policy bodies shall be held within the City and County of
6 San Francisco.¹²

7 ~~(g) If a meeting must be canceled, continued or rescheduled for any reason, notice~~
8 ~~of such change shall be provided to the public as soon as is reasonably possible, including~~
9 ~~posting of a cancellation notice in the same manner as described in section 67.7(e), and~~
10 ~~mailed notice if sufficient time permits.~~¹³

11 ~~(h)~~(g) Each policy body shall designate one or more posting locations for notices and
12 agendas required by this ordinance. The Sunshine Commission for Open Government shall
13 be so notified in writing and shall maintain a master list of such designated posting locations.¹⁴

14 (h) The initial meeting of a policy body shall be considered a regular meeting and
15 notice of the time and location of the meeting shall be given at least 10 calendar days prior to
16 said initial meeting being held, and delivered personally or by mail, e-mail, or facsimile as
17 requested.¹⁵ (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

18
19 **SECTION 67.7. AGENDA REQUIREMENTS; REGULAR FOR MEETINGS OF POLICY**
20 **BODIES.**

21 (a) At least 72 hours before a ~~regular~~ meeting, a policy body shall post an agenda
22 containing a meaningful description of each item of business to be transacted or discussed at
23

24 ¹² Moved and amended from former 67.6(b).

¹³ Moved to new 67.6(b).

¹⁴ Revised to provide more consistency for posting notice.

¹⁵ Added to correct omission in Ordinance, providing notice of initial meetings.

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1 the meeting. Agendas shall specify ~~for whether~~ each item of business ~~the proposed is~~ subject
2 to possible action or a statement the item is for discussion only. If a specific action is
3 proposed or contemplated it shall be included in the agenda item. In addition, a policy body
4 shall post a current agenda on its ~~Internet~~ website at least 72 hours before a ~~regular meeting,~~
5 and a link to the agenda on a "central master calendar" available on the City's website where
6 the date, time and location of all City policy body meetings shall be listed.¹⁶

7 (b) A description is meaningful if it is ~~sufficiently~~ sufficiently clear and specific to
8 alert a person of average intelligence and education whose interests are affected by the item
9 that he or she may have reason to attend the meeting or seek more information on the item.
10 The description ~~should~~ shall be brief, concise and written in plain, easily understood English.
11 It shall refer to any explanatory documents that have been provided to the policy body in
12 connection with an agenda item, such as correspondence or reports, and such documents
13 shall be posted adjacent to the agenda or, if such documents are of more than one page in
14 length, made available for public inspection and copying at a location indicated on the agenda
15 during normal office hours.

16 (c) The agenda shall specify the time and location of the regular meeting and shall
17 be posted, at the main public library, and in the branch libraries in a locations that ~~is~~ are freely
18 accessible to members of the public. The requirement that a policy body post copies of its
19 agendas at the branch libraries is satisfied if the branch library has a computer upon which
20 members of the public can access the City's website to search for agendas of meetings of
21 City policy bodies. The agenda shall also be posted outside the meeting room as soon as
22 practicable but no later than the start of the meeting.¹⁷

23 ¹⁶ Revised to clarify language and to provide for a central master calendar to provide
24 accessible and consistent access to meeting information.

25 ¹⁷ Revised to require posting of agendas at branch libraries, achieved through access to
computers and master calendar provision; provides for posting agendas outside of meeting
room.

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1 (d) No action or discussion shall be undertaken on any item not appearing on the
2 posted agenda, except that members of a policy body may respond to statements made or
3 questions posed by persons exercising their public testimony rights, to the extent of asking a
4 question for clarification, providing a reference to staff or other resources for factual
5 information, or requesting staff to report back to the body at a subsequent meeting concerning
6 the matter raised by such testimony.

7 (e) Notwithstanding subdivision (d), the policy body may take action on items of
8 business not appearing on the posted agenda under any of the following conditions:

9 (1) Upon a determination by a majority vote of the body that an accident, natural
10 disaster or work force disruption poses a threat to public health and safety.

11 (2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or,
12 if less than two-thirds of the members are present, a unanimous vote of those members
13 present, that (A)(i) the need to take immediate action on the item is so imperative as to
14 threaten serious injury to the public interest if action were deferred to a subsequent special or
15 regular meeting, (ii) or relates to a purely commendatory action, and (B) that the need for such
16 action came to the attention of the body subsequent to the agenda being posted as specified
17 in subdivision (a).

18 (3) The item was on an agenda posted pursuant to subdivision (a) for a prior
19 meeting of the body occurring not more than five calendar days prior to the date action is
20 taken on the item, and at the prior meeting the item was continued to the meeting at which
21 action is being taken. In addition, notice of the continuation shall be posted with the agenda of
22 the prior meeting specifying that a particular agenda item was continued to that meeting.¹⁸

23 (f) Each board and commission enumerated in the charter shall ensure that
24 agendas for regular and special meetings are made available to speech and hearing impaired

25 _____
¹⁸ Revised to provide adequate information on the continued agenda item.

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1 ~~persons through telecommunications devices for the deaf, telecommunications relay services~~
2 ~~or equivalent systems, and, upon request, to sight impaired persons through Braille or~~
3 ~~enlarged type, and other material related to meetings are accessible to persons with~~
4 disabilities. Upon request, materials shall be made available in alternative formats. Requests
5 should be made to the secretary or clerk of the board or commission at least 48 hours prior to
6 the meeting. Requests for material in alternative formats made less than 48 hours prior to the
7 meeting shall be met when possible. All policy bodies and passive meeting bodies shall
8 comply with the guidelines and recommendations of the Mayor's Office of Disabilities
9 Accessible Public Event Checklist.¹⁹

10 (g) Each policy body shall ensure that notices and agendas for regular and special
11 meetings shall include the following notice:

12
13 KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

14 (Chapter 67 of the San Francisco Administrative Code)

15
16 ~~Government's~~Government's duty is to serve the public, reaching its decisions in full
17 view of the public. Commissions, boards, councils and other agencies of the City and County
18 exist to conduct the people's business. This ordinance assures that deliberations are
19 conducted before the people and that City operations are open to the people's review.

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24 ¹⁹ Revised after consultation with Mayor's Office on Disability to provide that for all board and
25 commissions in charter agendas and all materials related to meetings shall be made available
in alternative formats for persons with disabilities, when requested, at least 48 hours in
advance of meetings.

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1 FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE
2 ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT
3 THE SUNSHINE COMMISSIONS~~SUNSHINE ORDINANCE TASK FORCE~~.

4
5 (h) Each agenda of a policy body covered by this ~~Sunshine Ordinance~~ shall include
6 the address, area code and phone number, fax number, e-mail address, and a contact
7 ~~person's name~~person for the Sunshine Commission ~~Sunshine Ordinance Task Force~~.
8 Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each
9 agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord.
10 185-96, App. 5/8/96; Proposition G, 11/2/99)

11 (i) Each agenda of a policy body shall state that members of the public may submit
12 statements and/or comments regarding any item on those bodies' meeting agendas; those
13 statements or comments shall become a public record, regardless of whether their authors
14 are present when the item at issue is discussed. The policy body may review and consider
15 those statements or comments if received before or during the discussion of the item.
16 Statements or comments received within ten business days after the meeting shall be
17 included in the public record with a notation as to when they were received.²⁰ (Added by Ord.
18 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

19
20 **Section 67.7-1. PUBLIC NOTICE REQUIREMENTS.**

21 (a)(1) Any public notice that is mailed, posted or published by a City department,
22 board, agency or commission to residents residing within a specific area to inform those
23

24 _____
25 ²⁰ Added to provide members of the public with ability to weigh in on matters before the body,
especially those who cannot attend meetings; consistent with the minutes requirements of
former Section 67.16.

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1 residents of a matter that may impact their property or that neighborhood area, shall be brief,
2 concise and written in plain, easily understood English.

3 ~~(2)(b)~~ The notice should inform the residents of the proposal or planned activity, the
4 length of time planned for the activity, the effect of the proposal or activity, and a telephone
5 contact for residents who have questions.

6 ~~(3)(c)~~ If the notice informs the public of a public meeting or hearing, then the notice
7 shall state that persons who are unable to attend the public meeting or hearing may submit to
8 the City, by the time the proceeding begins, written comments regarding the subject of the
9 meeting or hearing, that these comments will be made a part of the official public record, and
10 that the comments will be brought to the attention of the person or persons conducting the
11 public meeting or hearing. The notice should also state the name, ~~and address,~~ fax and e-
12 mail address of the person or persons to whom those written comments should be submitted.

13 (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

14 15 **SECTION 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**²¹

16 In addition to meeting requirements for closed session agendas provided in the Brown
17 Act, Government Code Section 54954.5, any agenda shall specify and disclose the nature of
18 any closed session by providing all of the following information:

19 (a) With respect to every item of business to be discussed in closed session pursuant
20 to Government Code section 54956.9 (a), each agenda item for a policy body covered by this
21 Ordinance that involves existing litigation shall identify the court, case number, and date the
22 case was filed on the written agenda.²²

23
24 ²¹ Revised 67.8 to generally streamline and make Ordinance consistent with the current
25 Brown Act and to focus on the provisions of the Sunshine Ordinance that exceed
requirements under Brown Act. No substantive changes intended.

²² Moved from former 67.8-1(b).

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1 ~~(a)(b) In addition to the brief general description of items to be discussed or acted upon~~
2 ~~in open and public session, the agenda posted pursuant to Government Code Section~~
3 ~~54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any~~
4 ~~call and notice delivered to the local media and posted pursuant to Government Code Section~~
5 ~~54956 shall specify and disclose the nature of any closed sessions by providing all of the~~
6 ~~following information:~~With respect to every item of business to be discussed in closed session
7 pursuant to Government Code section 54957:

8
9 ~~(1) With respect to a closed session held pursuant to Government Code Section~~
10 ~~54956.7:~~

11 ~~LICENSE/PERMIT DETERMINATION:~~

12 ~~applicant(s)~~

13 ~~The space shall be used to specify the number of persons whose applications are to be~~
14 ~~reviewed.~~

15 ~~(2) With respect to every item of business to be discussed in closed session pursuant~~
16 ~~to Government Code Section 54956.8:~~

17
18 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATOR~~

19 ~~Property:~~

20 ~~Person(s) negotiating:~~

21 ~~Under negotiation:~~

22 ~~Price: Terms of payment: Both:~~

23
24 ~~The space under "Property" shall be used to list an address, including cross streets~~
25 ~~where applicable, or other description or name which permits a reasonably ready identification~~

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1 of each parcel or structure subject to negotiation. The space under "Person(s) negotiating"
2 shall be used to identify the person or persons with whom negotiations concerning that
3 property are in progress. The spaces under "Under negotiation" shall be checked off as
4 applicable to indicate which issues are to be discussed.

5
6 ~~(3) With respect to every item of business to be discussed in closed session pursuant~~
7 ~~to Government Code Section 54956.9, either:~~

8
9 ~~CONFERENCE WITH LEGAL COUNSEL~~

10 ~~Existing litigation:~~

11 ~~Unspecified to protect service of process~~

12 ~~Unspecified to protect settlement posture~~

13 ~~or:~~

14 ~~CONFERENCE WITH LEGAL COUNSEL~~

15 ~~Anticipated litigation:~~

16 ~~As defendant As plaintiff~~

17
18 ~~The space under "Existing litigation" shall be used to specifically identify a case under~~
19 ~~discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the~~
20 ~~case name, court, and case number, unless the identification would jeopardize the City's~~
21 ~~ability to effectuate service of process upon one or more unserved parties, in which instance~~
22 ~~the space in the next succeeding line shall be checked, or unless the identification would~~
23 ~~jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in~~
24 ~~which instance the space in the next succeeding line shall be checked. If the closed session is~~
25 ~~called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be~~

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1 checked under "Anticipated litigation" to indicate the City's anticipated position as defendant
2 or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed,
3 space may be saved by entering the number of separate instances in the "As defendant" or
4 "As plaintiff" spaces or both as appropriate.

5
6 (4) With respect to every item of business to be discussed in closed session pursuant
7 to Government Code Section 54957, either:

8
9 ~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

10 Name, title and agency of law enforcement officer(s) to be conferred with:

11 or:

12 ~~PUBLIC EMPLOYEE APPOINTMENT/HIRING~~

13 Title/description of position(s) to be filled:

14 ~~PUBLIC EMPLOYEE PERFORMANCE EVALUATION~~

15 Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

16 or:

17 ~~PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE~~

18 Number of employees affected:

19 or:

20
21 ~~(5)(c)~~ With respect to every item of business to be discussed in closed session
22 pursuant to Government Code Section 54957.6, either:

23
24 ~~CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING~~

25 Name and title of City's City's negotiator:

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- 1 Organization(s) representing:
- 2 Police officers, firefighters and airport police
- 3 Transit Workers
- 4 Nurses
- 5 Miscellaneous Employees
- 6 Anticipated issue(s) under negotiation:
- 7 Wages
- 8 Hours
- 9 Benefits
- 10 Working Conditions
- 11 Other (specify if known)
- 12 All

13

14 Where renegotiating a memorandum of understanding or negotiating a successor
15 memorandum of ~~under-standing~~understanding, the name of the memorandum of ~~under-~~
16 ~~standing~~understanding:

17 In case of multiple items of business under the same category, lines may be added and
18 the location of information may be reformatted to eliminate unnecessary duplication and
19 space, so long as the relationship of information concerning the same item is reasonably clear
20 to the reader. As an alternative to the inclusion of lengthy lists of names or other information in
21 the agenda, or as a means of adding items to an earlier completed agenda, the agenda may
22 incorporate by reference separately prepared documents containing the required information,
23 so long as copies of those documents are posted adjacent to the agenda within the time
24 periods required by Government Code Sections 54954.2 and 54956 and provided with any

25

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1 mailed or delivered notices required by Sections 54954.1 or 54956. (Added by Ord. 265-93,
2 App. 8/18/93; amended by Proposition G, 11/2/99)

3
4 **SECTION 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.**²³

5 ~~(a) All closed sessions of any policy body covered by this Ordinance shall be either~~
6 ~~audio recorded or audio and video recorded in their entirety and all such recordings shall be~~
7 ~~retained for at least TEN years, or permanently where technologically and economically~~
8 ~~feasible. Closed session recordings shall be made available whenever all rationales for~~
9 ~~closing the session are no longer applicable. Recordings of closed sessions of a policy body~~
10 ~~covered by this Ordinance, wherein the justification for the closed session is due to~~
11 ~~"anticipated litigation" shall be released to the public in accordance with any of the following~~
12 ~~provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the~~
13 ~~statute of limitations for the anticipated litigation if no litigation is filed; as soon as the~~
14 ~~controversy leading to anticipated litigation is settled or concluded.~~²⁴

15 ~~(b) Each agenda item for a policy body covered by this ordinance that involve existing~~
16 ~~litigation shall identify the court, case number, and date the case was filed on the written~~
17 ~~agenda.~~²⁵ ~~For each agenda item for a group covered by this ordinance that involves~~
18 ~~anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time~~
19 ~~requested and to any member of the public whether such anticipated litigation developed into~~
20 ~~litigation and shall identify the court, case number, and date the case was filed.~~²⁶ (Added by
21 Proposition G, 11/2/99)

22
23 ²³ The provisions of this section have been moved in order to streamline and consolidate like
24 provision on the Ordinance.

25 ²⁴ Revised and moved to new 67.14(b), (c),

²⁵ Moved to new 67.8(a).

²⁶ Moved to new 67.12(e).

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1 SECTION 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

2 (a) Agendas of meetings, meeting packets, or documents created by a department,
3 and or any other documents on file with the clerk or secretary of the policy body, when
4 intended for distribution to all, or a majority of all, of the members of a policy body in
5 connection with a matter anticipated for discussion or consideration at a public meeting shall
6 be made available to the public for inspection and copying at the office of the policy body at
7 least 48 hours before the hearing. To the extent possible, such documents shall also be made
8 available through the policy body's Internet site. However, this disclosure need not include an
9 material exempt from public disclosure under this ordinance. Unless demonstrably unfeasible
10 these materials shall be made available on the policy body's web site, at least 48 hours prior
11 to the meeting. Public review copies of the agenda and all related documents that constitute
12 the meeting packet shall be made available at the meeting to the public in sufficient quantities
13 commensurate with the anticipated number of people attending the hearing. The materials
14 that are distributed at the hearing shall be of such a quality that a person with 20/20 vision
15 would have no difficulty reading them.²⁷

16 (b) If any document subject to adoption, approval or award by a Policy Body is not
17 available at least 48 hours before the meeting at which that document is scheduled to be
18 adopted, approved or awarded and a member of the policy body requests that the matter be
19 continued, the policy body must continue the item to a time not less than 48 hours after the
20 document was made available. Nothing in this subsection shall prohibit the policy body from
21 amending a document at a meeting.²⁸

22
23 ²⁷ Revised 67.9(a) requires that agenda packets be made available for public inspection 48
24 hours before a meeting and, where practicable, posted on a website.

25 ²⁸ New 67.9(b) requires that documents subject to adoption, approval or award by a Policy
Body be available at least 48 hours in advance before the meeting at which action will be
taken to ensure public's ability to review and prepare comment.

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1 ~~(b) — Records which are subject to disclosure under subdivision (a) and which are~~
2 ~~intended for distribution to a policy body prior to commencement of a public meeting shall be~~
3 ~~made available for public inspection and copying upon request prior to commencement of~~
4 ~~such meeting, whether or not actually distributed to or received by the body at the time of the~~
5 ~~request.~~²⁹

6 ~~(c) — Records which are subject to disclosure under subdivision (a) and which are~~
7 ~~distributed during a public meeting but prior to commencement of their discussion shall be~~
8 ~~made available for public inspection prior to commencement of, and during, their discussion.~~³⁰

9 ~~(d)(c) Records which are~~Documents which are distributed prior to or during ~~subject to~~
10 ~~disclosure under subdivision (a) and which are distributed during their discussion at a public~~
11 ~~meeting~~ to members of a policy body shall be made available for public inspection
12 immediately or as soon thereafter as is practicable.

13 ~~(e)(d) A policy body may charge a duplication fee of one cent per page for a copy of a~~
14 ~~public record prepared for consideration at a public meeting, unless a special fee has been~~
15 ~~established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor~~
16 ~~the California Public Records Act (Government Code sections 6250 et seq.) shall be~~
17 ~~construed to limit or delay the public's right to inspect any record required to be disclosed by~~
18 ~~that act, whether or not distributed to a policy body.~~³¹ (Added by Ord. 265-93, App. 8/18/93;
19 amended by Proposition G, 11/2/99)

20
21 **SECTION 67.10. CLOSED SESSIONS: PERMITTED TOPICS.**

22 A policy body may, but is not required to, hold closed sessions:
23

24 ²⁹ Moved into subsection (a) above.

25 ³⁰ Moved into subsection (a) above.

³¹ Moved to new 67.29(f).

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1 (a) With the Attorney General, district attorney, agency counsel, security consultant,
2 sheriff, or chief of police, or their respective deputies, on matters posing a threat to the
3 security of public buildings or a threat to the ~~public's~~public's right of access to public services
4 or public facilities.³²

5 (b) To consider the appointment, employment, evaluation of performance, or dismissal
6 of a City employee, if the policy body has the authority to appoint, employ, or dismiss the
7 employee, or to hear complaints or charges brought against the employee by another person
8 ~~or employee unless the employee complained of requests a public hearing. The body may~~
9 ~~exclude from any such public meeting, and shall exclude from any such closed meeting,~~
10 ~~during the comments of a complainant, any or all other complainants in the matter. If the~~
11 employee, who is the subject of the discussion, requests a public hearing the hearing shall be
12 public.³³ The term "employee" as used in this section shall not include any elected official,
13 member of a policy body or applicant for such a position, or person providing services to the
14 City as an independent contractor or the employee thereof, including but not limited to
15 independent attorneys or law firms providing legal services to the City for a fee rather than a
16 salary.

17 (c) Notwithstanding section (b), an Executive Compensation Committee established
18 pursuant to a Memorandum of Understanding with the Municipal Executives Association may
19 meet in closed session when evaluating the performance of an individual officer or employee
20 subject to that Memorandum of Understanding or when establishing performance goals for
21 such an officer or employee where the setting of such goals requires discussion of that
22 ~~individual's~~individual's performance.

23
24
25 ³² Revised to be consistent with the Brown Act.

³³ Revision to clarify public employee's right to a public hearing.

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1 (d) Based on advice of its legal counsel, and on a motion and vote in open session to
2 assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel
3 regarding pending litigation when discussion in open session concerning those matters would
4 likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be
5 considered pending when any of the following circumstances exist:

6 (1) An adjudicatory proceeding before a court, administrative body exercising its
7 adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been
8 initiated formally; or,

9 (2) A point has been reached where, in the opinion of the policy body on the advice of
10 its legal counsel, based on existing facts and circumstances, there is a significant exposure to
11 litigation against the City, or the body is meeting only to decide whether a closed session is
12 authorized pursuant to that advice or, based on those facts and circumstances, the body has
13 decided to initiate or is deciding whether to initiate litigation.

14 (3) A closed session may not be held under this section to consider the qualifications or
15 engagement of an independent contract attorney or law firm, for litigation services or
16 otherwise.

17 (e) With the ~~City's~~City's designated representatives regarding matters within the scope
18 of collective bargaining or meeting and conferring with public employee organizations when a
19 policy body has authority over such matters.

20 (1) Such closed sessions shall be for the purpose of reviewing the ~~City's~~City's position
21 and instructing its designated representatives and may take place solely prior to and during
22 active consultations and discussions between the ~~City's~~City's designated representatives and
23 the representatives of employee organizations or the unrepresented employees. A policy body
24 shall not discuss compensation or other contractual matters in closed session with one or
25 more employees directly interested in the outcome of the negotiations.

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1 (2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy
2 body subject to Government Code Section 3501 may hold closed sessions with its designated
3 representatives on mandatory subjects within the scope of representation of its represented
4 employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93;
5 amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

6
7 **SECTION 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**

8 Prior to any closed session, a policy body shall state the general reason or reasons for
9 the closed session, and shall cite the statutory authority, including the specific section and
10 subdivision, or other legal authority under which the session is being held. In the closed
11 session, the policy body may consider only those matters covered in its statement. In the case
12 of regular and special meetings, the statement shall be made in the ~~form of the agenda~~
13 disclosures and specifications required by Section 67.8 of this article. In the case of adjourned
14 and continued meetings, the statement shall be made with the same disclosures and
15 specifications required by Section 67.8 of this article, as part of the notice provided for the
16 meeting.

17 In the case of an item added to the agenda as a matter of urgent necessity, the
18 statement shall be made prior to the determination of urgency and with the same disclosures
19 and specifications as if the item had been included in the agenda pursuant to Section 67.8 of
20 this article. Nothing in this section shall require or authorize a disclosure of information
21 prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by
22 Proposition G, 11/2/99)

23
24 **SECTION 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

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1 (a) After every closed session, a policy body may in its discretion and in the public
2 interest, disclose to the public any portion of its discussion that is not confidential under
3 federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and
4 vote in open session, elect either to disclose no information or to disclose the information that
5 a majority deems to be in the public interest. The disclosure shall be made through the
6 presiding officer of the body or such other person, present in the closed session, whom he or
7 she designates to convey the information.

8 (b) A policy body shall publicly report any action taken in closed session and the vote
9 or abstention of every member present thereon, as follows:

10 (1) Real Property Negotiations: Approval given to a policy ~~body~~body's negotiator
11 concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be
12 reported as soon as the agreement is final. If its own approval renders the agreement final,
13 the policy body shall report that approval, the substance of the agreement and the vote
14 thereon in open session immediately. If final approval rests with another party to the
15 negotiations, the body shall disclose the fact of that approval, the substance of the agreement
16 and the ~~body~~body's vote or votes thereon upon inquiry by any person, as soon as the other
17 party or its agent has informed the body of its approval. If notwithstanding the final approval
18 there are conditions precedent to the final consummation of the transaction, or there are
19 multiple contiguous or closely located properties that are being considered for acquisition, the
20 document referred to in subdivision (b) of this section need not be disclosed until the condition
21 has been satisfied or the agreement has been reached with respect to all the properties, or
22 both.

23 (2) Litigation: Direction or approval given to the ~~body~~body's legal counsel to
24 prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise
25 enter as a party, intervenor or amicus curiae in any form of litigation as the result of a

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1 consultation pursuant to Government Code Section 54956.9 shall be reported in open session
2 as soon as given, or at the first meeting after an adverse party has been served in the matter
3 if immediate disclosure of the ~~City's~~City's intentions would be contrary to the public interest.
4 The report shall identify the adverse party or parties, any co-parties with the City, any existing
5 claim or order to be defended against or any factual circumstances or contractual dispute
6 giving rise to the ~~City's~~City's complaint, petition or other litigation initiative.

7 (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement
8 which would preclude the release of the text of the settlement itself and any related
9 documentation communicated to or received from the adverse party or parties. Any written
10 settlement agreement and any documents attached to or referenced in the settlement
11 agreement shall be made publicly available at least 10 calendar days before the meeting of
12 the policy body at which the settlement is to be approved to the extent that the settlement
13 would commit the City or a department thereof to adopting, modifying, or discontinuing an
14 existing policy, practice or program or ~~otherwise acting other than to pay an amount of money~~
15 ~~less than \$50,000 or more.~~³⁴ The agenda for any meeting in which a settlement subject to this
16 section is discussed shall identify the names of the parties, the case number, the court, and
17 the material terms of the settlement. Where the disclosure of documents in a litigation matter
18 that has been settled could be detrimental to the ~~city's~~city's interest in pending litigation
19 arising from the same facts or incident and involving a party not a party to or otherwise aware
20 of the settlement, the documents required to be disclosed by subdivision (b) of this section
21 need not be disclosed until the other case is settled or otherwise finally concluded.

22 (4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the
23 resignation of a public employee in closed session pursuant to Government Code Section
24 54957 shall be reported immediately in a manner that names the employee, the action taken

25 _____
³⁴ Revised to clarify. No substantive change intended.

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1 and position affected and, in the case of dismissal for a violation of law or of the policy of the
2 City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any
3 termination of employment at the will of the employer rather than of the employee, however
4 characterized. The proposed terms of any separation agreement shall be immediately
5 disclosed as soon as presented to the body, and its final terms shall be immediately disclosed
6 upon approval by the body.

7 (5) Collective Bargaining: Any collectively bargained agreement shall be made publicly
8 available at least 15 calendar days before the meeting of the policy body to which the
9 agreement is to be reported.

10 (c) Reports required to be made immediately may be made orally or in writing, but shall
11 be supported by copies of any contracts, settlement agreements, or other documents related
12 to the transaction that were finally approved or adopted in the closed session and that
13 embody the information required to be disclosed immediately shall be provided to any person
14 who has made a written request regarding that item following the posting of the agenda, or
15 who has made a standing request for all such documentation as part of a request for notice of
16 meetings pursuant to Government Code Sections 54954.1 or 54956.

17 (d) A written summary of the information required to be immediately reported pursuant
18 to this section, or documents embodying that information, shall be posted by the close of
19 business on the next business day following the meeting, in the place where the meeting
20 agendas of the body are posted. (Added by Ord. 265-93, App. 8/18/93; amended by
21 Proposition G, 11/2/99)

22 (e) For each agenda item of a policy body covered by this Ordinance that involves
23 anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time
24 requested and to any member of the public whether such anticipated litigation developed into
25

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1 litigation and shall identify the court, case number, and date the case was filed.³⁵ (Added by
2 Proposition G, 11/2/99) [Moved from 67.8-1 (b)]

3 (f) Review of Closed Session Justifications³⁶

4 No later than 30 days following the effective date of this subsection.

5 (1) For each closed session, each public body shall maintain a record of the date and
6 time of the closed session, the justification for the closed session and the subject matter
7 discussed in closed session, and shall include all minutes, recordings or other records

8 (2) At least quarterly, a public body shall review the records of prior closed meetings.
9 The review shall determine whether any part of the minutes, recordings or other records
10 withheld from public access can now be made accessible to the public. If the public body
11 determines that any part of the previously withheld materials can now be disclosed, it shall do
12 so. Upon completion of a review, the body shall adopt a resolution stating that the body has
13 conducted the review and that all information from closed meetings that can be made
14 available to the public, as of the date of the review, has been made available. The resolution
15 shall also state, as precisely as possible, when and under what circumstances any remaining
16 withheld materials may be disclosed to the public.

17 (3) The Sunshine Commission is authorized to adopt any rules and regulations
18 necessary to implement this section.

19
20 **SECTION 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**³⁷

21
22 ³⁵ Moved from former 67.8-1(b).

23 ³⁶ New 67.12(f) provides a requirement for Policy Bodies to track and routinely review records
24 of closed sessions to determine when those materials may be released to the public when
justification for closed session no longer exists.

25 ³⁷ Revised 67.13 – developed in consultation with Mayor's Office on Disability to provide for
enhanced accommodations and time frames for requesting accommodations; applied to all
policy bodies and not just boards and commissions enumerated in Charter.

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1 (a) No policy body shall conduct any meeting, conference or other function in any
2 facility or in a manner that excludes persons on the basis of actual or presumed class identity
3 or characteristics, or which is inaccessible to persons with physical disabilities, or where
4 members of the public may not be present without making a payment or purchase. Whenever
5 the Board of Supervisors, a board or commission enumerated in the charter, or any committee
6 thereof anticipates that the number of persons attending the meeting will exceed the legal
7 capacity of the meeting room, any public address system used to amplify sound in the
8 meeting room shall be extended by supplementary speakers to permit the overflow audience
9 to listen to the proceedings in an adjacent room or passageway, unless such supplementary
10 speakers would disrupt the operation of a City office.

11 (b) ~~Each board and commission~~ All policy bodies enumerated in the charter shall
12 provide sign language interpreters, assisted listening devices, or note-takers, or other needed
13 accommodations for persons with disabilities at each regular meeting, provided that a request
14 for such services is communicated to the secretary or clerk of the board or commission, at
15 least 48 hours before the meeting, except for Monday meetings, for which the deadline shall
16 be 4 p.m. of the last business day of the preceding week. When requests for such services are
17 made by a member or members of the public at least 72 hours prior to the meeting, - the
18 policy body shall comply with the request. If the request is made less than 72 hours before
19 the meeting the policy body should attempt to comply with the request, if possible.

20 (c) ~~Each board and commission~~ All policy bodies enumerated in the charter shall
21 ensure that accessible seating for persons with disabilities, including those using wheelchairs,
22 is made available for each regular and special meeting.

23 (d) ~~Each board and commission~~ All policy bodies enumerated in the charter shall
24 include on the agenda for each regular and special meeting the following statement: "In order
25 to assist the City's efforts to accommodate persons with severe allergies, environmental

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1 illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are
2 reminded that other attendees may be sensitive to various chemical based products. Please
3 help the City accommodate these individuals."

4 (e) All Policy Bodies ~~The Board of Supervisors~~ shall seek to provide translators at
5 each of its regular meetings and all meetings of its committees for each language requested,
6 where the translation is necessary to enable San Francisco residents ~~members of the public~~
7 with limited English proficiency to participate in the proceedings provided that a request for
8 such translation services is communicated to the Policy Body Clerk ~~of the Board of~~
9 ~~Supervisors~~ at least 48 hours before the meeting. For meetings on a Monday or a Tuesday,
10 the request must be made by noon of the last business day of the preceding week. The
11 Policy Body Clerk ~~of the Board of Supervisors~~ shall first solicit volunteers from the ranks of
12 City employees and/or from the community to serve as translators. If volunteers are not
13 available the Policy Body Clerk ~~of the Board of Supervisors~~ may next solicit translators from
14 non-profit agencies, which may be compensated. If these options do not provide the
15 necessary translation services, the Policy Body Clerk ~~may~~ employ professional translators.
16 The unavailability of a translator shall not affect the ability of the Policy Body ~~Board of~~
17 ~~Supervisors~~ or its committees to deliberate or vote upon any matter presented to them. ~~In any~~
18 ~~calendar year in which the costs to the City for providing translator services under this~~
19 ~~subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter,~~
20 ~~review the provisions of this subsection.~~

21 (f) Boards and Commissions enumerated in the charter shall, by 2010 broadcast all
22 meetings held in City Hall on the San Francisco Government TV channel or its successor via
23
24
25

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1 real-time audio streaming and/ or real-time audio/video streaming on the Internet. All other
2 policy bodies are encouraged to broadcast their meetings similarly as feasible.³⁸

3 (g) All policy bodies and passive meeting bodies shall comply with the guidelines
4 and recommendations of the Mayor's Office of Disabilities Accessible Public Event Checklist.
5 Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96,
6 App. 12/20/96; Proposition G, 11/2/99)

7
8 **SECTION 67.14. ~~TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.~~**³⁹

9 (a) Any person attending an open and public meeting of a policy body or passive
10 meeting body shall have the right to record the proceedings with an audio, ~~or~~ video and/or
11 digital recorder or a still or motion picture camera, or to broadcast the proceedings, in the
12 absence of a reasonable finding of the policy body that the recording or broadcast cannot
13 continue without such noise, illumination or obstruction of view as to constitute a persistent
14 disruption of the proceedings.

15 (b) All Policy Bodies ~~Each board and commission enumerated in the charter shall~~
16 audio record each regular and special meeting, including closed sessions. Each such audio
17 recording, and any other audio ~~or video~~ recording of a meeting of ~~any other policy body~~ made
18 at the direction of the policy body, shall be a public record subject to inspection pursuant to
19 the California Public Records Act (Government Code Section 6250 et seq.). These recordings
20 shall be kept indefinitely by the City, and shall not be erased or destroyed unless the
21 recordings are being transferred into a different format for archival or accessibility
22 requirements. ~~and shall not be erased or destroyed.~~ Inspection of any such recording shall

23 ³⁸ New 67.13(f) provides that boards and commissions enumerated in the Charter shall
24 broadcast their meetings on SFGTV by 2010 and encourages other policy bodies to do so.

25 ³⁹ Revised 67.14 provides that in light of advances in technology, recordings of meetings shall
be kept indefinitely; clarifies costs City can charge for making copies; and requires all policy
bodies to digitally record meetings by 2010 and post recordings on their website within 3 days.

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1 be provided without charge on an appropriate play back device made available by the City;
2 copies of any such recordings shall be provided upon request and payment for the actual cost
3 of the medium on which the copy is recorded. Requests shall be made through the
4 department, board, commission, task force, or committee whose meeting is recorded.
5 Requests shall be completed in the order of receipt and no additional charges shall be
6 assessed for expedited service.

7 (c) Closed session recordings, made pursuant to Section 67.14(b), shall be made
8 available whenever all rationales for closing the session are no longer applicable. Recordings
9 of closed sessions of bodies covered by this Ordinance wherein the justification for the closed
10 session is "anticipated litigation" shall be released to the public in accordance with any of the
11 following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION
12 of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the
13 controversy leading to anticipated litigation is settled or concluded.⁴⁰

14 (d) All policy bodies shall be required to digitally record their meetings by 2010. Any such
15 digital recordings that are made shall be posted on the policy bodies' website within three
16 days. The City Administrator shall assist policy bodies in carrying out their duties under this
17 subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

18
19 **SECTION 67.15. PUBLIC TESTIMONY.**

20 (a) Every agenda for regular and special meetings shall provide an opportunity for
21 members of the public to directly address a policy body on any items of interest to the public
22 that is ~~are~~ within the policy body's subject matter jurisdiction, provided that no action shall be
23 taken on any item not appearing on the agenda unless the action is otherwise authorized by
24 Section 67.7(e) of this article. ~~However, in the case of a meeting of the Board of Supervisors,~~

25 _____
⁴⁰ Moved from former 67.8-1(a).

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1 ~~the agenda need not provide an opportunity for members of the public to address the Board~~
2 ~~on any item that has already been considered by a committee, composed exclusively of~~
3 ~~members of the Board, at a public meeting wherein all interested members of the public were~~
4 ~~afforded the opportunity to address the committee on the item, before or during the~~
5 ~~committee's consideration of the item, unless the item has been substantially changed since~~
6 ~~the committee heard the item, as determined by the policy bodyBoard.⁴¹~~

7 (b) Every agenda for ~~special~~ special meetings at which action is proposed to be
8 taken on an item shall provide an opportunity for each member of the public to directly
9 address the body concerning that item prior to action thereupon. However, in the case of a
10 meeting of the Board of Supervisors, the agenda need not provide an opportunity for
11 members of the public to address the policy body on any item that has already been
12 considered by a committee, composed exclusively of members of the policy body, at a public
13 meeting wherein all interested members of the public were afforded the opportunity to address
14 the committee on the item, before or during the committee's consideration of the item, unless
15 the item has been substantially changed since the committee heard the item, as determined
16 by the policy body.⁴²

17 (c) Time and Order of Public Speakers

18 A policy body shall adopt reasonable regulations to ensure that the intent of
19 subdivisions (a) and (b) are carried out, including, but not limited to;

20 (1) ~~regulations limiting the total amount of time allocated for public testimony on~~
21 ~~particular issues and for each individual speaker.~~ Each policy body shall adopt a rule
22 providing that each person wishing to speak on an item before the body at a regular or special
23
24

25 ⁴¹ Moved to subsection (b) below for consistency. No substantive change intended.

⁴² Moved from subsection (a) above for consistency. No substantive change intended.

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1 meeting shall be permitted to be heard once for ~~up to a~~ minimum of three minutes per agenda
2 item.⁴³

3 (2) If the Chair of a meeting finds that a large number of speakers wish to speak on
4 a particular item, the chair may reduce each individual speaker's time, but may not limit the
5 time to less than two minutes per speaker. The Chair shall announce any modification of the
6 three-minute minimum before public testimony on that item commences. The chair has
7 discretion to provide extra time for those who need accommodation for an interpreter or
8 because they have a disability. Time limits shall be applied uniformly-consistently to members
9 of the public wishing to testify.⁴⁴

10 (3). The Chair May Allow a Designated Speaker(s)⁴⁵

11 (A). If allowed by the chair members of the public may, for any item which is
12 agendized for adoption or discussion by any Policy Body, authorize a Designated
13 Speaker or Speakers, who will present the arguments regarding an issue for adoption
14 for up to 15 minutes, or for a time which is equal to the amount of time allowed to the
15 Department or presenting party, excluding the time required to answer questions posed
16 by the body. The Designated Speaker(s) and the Department or other presenting party
17 for an item to be adopted shall be allowed to speak in summary for five minutes directly
18 prior to the vote by a Policy Body.

19 (B). It shall be the responsibility of the designated speaker to file, with the
20 Clerk or Secretary, a Request to Authorize a Designated Speaker prior to the
21 commencement of an item and to guarantee that at least six members of the public,
22

23
24 ⁴³ Revised to provide a minimum of three minutes public testimony in normal course.

25 ⁴⁴ Clarifies circumstances and method by which chair may set public comment to less than three minutes but no less than two minutes.

⁴⁵ Creates new procedure for designated public speaker(s).

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1 present and prepared to speak, have designated their allotted speaking time to the
2 requester.

3 (C). The Chair shall, by show of hands, determine that a designated speaker
4 has the consent of six members of the public who are present and prepared, to speak
5 on an issue, and shall announce the designated speaker(s).

6 (4) Rules for the Order of Speakers.⁴⁶

7 A chair shall accept public testimony in a fair and evenhanded way, without
8 manipulation in the order of speakers, absent good cause. Each policy body shall adopt
9 regulations for the order of speaking, which shall include but not be limited to the following:

10 (A) Speaker cards, when available and submitted, shall be used in the order
11 of submission to designate the order of speakers, except that the chair may alternate
12 “pro” and “con” speakers if they are designated on the forms.

13 (B) Members of the public who have not submitted speakers cards may form
14 a line to speak and shall be called upon in the order of appearance at the front of the
15 line, except that the chair may allow disabled or elderly-frail members of the public to
16 speak out of turn.

17 (C) If a meeting is recessed, adjourned or the chair has ordered a break , the
18 order of speakers from the previous session shall be maintained.

19 (d) A policy body shall not abridge, reproach or prohibit public criticism of the policy,
20 procedures, programs or services of the City, or of any other aspect of its proposals or
21 activities, or of the acts or omissions of the body, on the basis that the performance of one or
22 more public employees is implicated, or on any basis other than reasonable time constraints
23 adopted in regulations pursuant to subdivision (c) of this section.

24
25 _____
⁴⁶ Provides additional guidance and limitations on order of speakers.

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1 (e) To facilitate public input, any agenda changes or continuances shall be
2 announced by the presiding officer of a policy body at the beginning of a meeting, or as soon
3 thereafter as the change or continuance becomes known to such presiding officer.

4 (f) Members of the public shall have access to all audio-visual equipment used by a
5 department or Policy Body for presentations made to that policy body consistent with time
6 limits provided in subsection (c). Prior notification in the agenda or public notice that a
7 presentation will be made using audio/visual equipment or technology shall be provided,
8 listing the specific equipment.⁴⁷ (Added by Ord. 265-93, App. 8/18/93; amended by
9 Proposition G, 11/2/99)

10
11 **SECTION 67.16. MINUTES.**

12 (a) ~~The clerk or secretary of each board and commission enumerated in the~~
13 ~~charter~~ all policy bodies shall record the minutes for each regular and special meeting of the
14 ~~board or commission~~ those bodies.⁴⁸

15 (b) The minutes shall state the time the meeting was called to order, the names of
16 the members attending the meeting, time of each member's arrival if after commencement of
17 the meeting and the time of each member's departure if prior to the adjournment of the
18 meeting, the roll call vote on each matter considered at the meeting, the time the board or
19 commission began and ended any closed session, the names of the members and the
20 names, and titles where applicable, of any other persons attending any closed session, a list
21 of those members of the public who spoke on each matter if the speakers identified
22 themselves, whether such speakers supported or opposed the matter, a brief summary of
23 each person's statement during the public comment period for each agenda item, and the

24 _____
25 ⁴⁷ Explicitly provides public access to equipment used by city employees.

⁴⁸ Revised to provide that minimum minute requirements apply to all Policy Bodies.

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1 time the meeting was adjourned. Any person ~~speaking during a public comment period may~~
2 ~~supply~~ submit a brief written summary comments of their comments which that shall, if no
3 more than 150 words, be included in the body of the minutes or attached to the minutes and
4 noted in the item. The minutes shall also include the text of any resolution adopted by or
5 modified by a policy body within the body of the minutes or as an attachment.⁴⁹

6 (c) The draft minutes and any attachments thereto from of each meeting shall be
7 posted on the policy body's website and be available for inspection and copying upon request
8 no later than ten working days after the meeting. The officially adopted minutes shall be
9 available for inspection and copying upon request no later than ten working days after the
10 meeting at which the minutes are adopted. Upon request, minutes required to be produced
11 by this section shall be made available in Braille ~~or increased type size~~ alternative formats for
12 persons with disabilities. If real time captioning is provided at a meeting, if separable, it shall
13 also be posted on the web site. The City Administrator shall assist policy bodies in carrying
14 out their duties under this subsection.⁵⁰ (Added by Ord. 265-93, App. 8/18/93; amended by
15 Proposition G, 11/2/99)

17 SECTION 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

18 Every member of a policy body retains the full constitutional rights of a citizen to
19 comment publicly on the wisdom or propriety of government actions, including those of the
20 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or
21 deprive members of their rights as elected or appointed officials for expressing their
22 judgments or opinions, including those which deal with the perceived inconsistency of non-

23 ⁴⁹ Provides increased information must be provided in the minutes to allow more information
24 for public review, tracking and historical research purposes.

25 ⁵⁰ Requires posting of draft minutes on policy body website, and in alternative formats where
available, as well as posting of any real-time captioning provided at a meeting to improve
public access and ability to monitor actions taken in public meetings.

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1 public discussions, communications or actions with the requirements of state or federal law or
2 of this ordinance. Every member of a policy body shall be allowed to speak freely on any
3 issue before the body subject only to time limits, which may be imposed on all members
4 equally.⁵¹ The release of specific factual information made confidential by state or federal law
5 including, but not limited to, the privilege for confidential attorney-client communications, may
6 be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor
7 seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93;
8 amended by Proposition G, 11/2/99)

9
10 **SECTION 67.18. SUPERVISOR OF PUBLIC FORUMS**⁵²

11 (a) Within three months of the enactment of this provision, the City Attorney's office
12 shall establish a Supervisor of Public Forums position, which can at the discretion of the City
13 Attorney be combined with the existing Supervisor of Public Records position mandated by
14 Section 67.21 of the Ordinance.

15 (b) Any person may petition the Supervisor of Public Forums for a determination
16 whether a Policy Body or Passive Meeting Body has violated any provision of Article II, Public
17 Access to Meetings, of this Ordinance. The Supervisor of Public Forums shall inform the
18 petitioner, as soon as possible and within 10 days, of its determination on whether a violation
19 occurred. This determination shall be in writing. Upon determination by the Supervisor of
20 Public Forums that a violation has occurred, the Supervisor of Public Forum shall immediately
21 order the Policy Body or Passive Meeting Body to correct such violation as soon as possible,
22 but no later than at its next meeting. If the Policy Body or Passive Meeting Body fails to

23
24 ⁵¹ Revised to alleviate allegations of favoritism and provide equal opportunity for comment to
body members.

25 ⁵² New 67.18 creates new Supervisor of Public Forums, consistent with existing provisions for
Supervisor of Public Records.

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1 comply with any such order, the Supervisor of Public Forums shall notify the San Francisco
2 Ethics Commission, Board of Supervisors, District Attorney, or the State Attorney General
3 who shall take whatever measures they deem necessary and appropriate to insure
4 compliance with the provision of this Ordinance. The Supervisor of Public Forums shall copy
5 the Sunshine Commission on all correspondence pertaining to its duties under this
6 subsection.

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ARTICLE III
PUBLIC INFORMATION AND PUBLIC RECORDS

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- Sec. ~~67.20~~19. Definitions.
- Sec. ~~67.21~~20. Process for Gaining Access to Public Records; Administrative Appeals.
- ~~Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.~~
- Sec. 67.21 Immediacy of Response; Immediate Disclosure
- Sec. 67.22 Production on Incremental or "Rolling Basis"
- Sec. ~~67.22~~23. Release of Oral Public Information.
- Sec. ~~67.23~~24. Public Review File - Policy Body Communications.
- Sec. ~~67.24~~25. Public Information that Must Be Disclosed.
- ~~Sec. 67.25. Immediacy of Response.~~
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27 Prohibited Basis for Withholding
- Sec. ~~67.27~~28. Justification of Withholding.
- Sec. ~~67.28~~29. Fees for Duplication.
- Sec. 67.30 Minimum Standards; Electronic Records; Computer Systems; Web Posting
- Sec. 67.31 Policy Regarding Use and Purchase of Computers
- Sec. 67.32 Internet Access/World Wide Web Minimum Standards.
- Sec. ~~67.29~~33. Index to Records.
- Sec. ~~67.29-1~~33-1 Records and Correspondence Shall be Maintained and Shall Survive Tenure and Transition of Officials.
- Sec. ~~67.29-2~~33-2 Internet Access/World Wide Web Minimum Standards.

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- 1 ~~Sec. 67.29-3.~~
- 2 Sec. ~~67.29-4-33-2~~ Lobbyist On Behalf of the City.
- 3 Sec. ~~67.29-5-33-3~~ Calendars of Certain Officials.
- 4 Sec. ~~67.29-6-33-4~~ Sources of Outside Funding.
- 5 ~~Sec. 67.29-7. Correspondence and Records Shall Be Maintained.~~

6

7 **SECTION 67.2019. DEFINITIONS.**

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

9 (a) "Department" shall mean a department of the City and County of San Francisco.

10 (b) "Public Information" shall mean the content of "public records" as defined in the
11 California Public Records Act (Government Code Section 6252), whether provided in
12 documentary form or in an oral communication. "Public Information" shall not include
13 "computer software" developed by the City and County of San Francisco as defined in the
14 California Public Records Act (Government Code Section 6254.9).

15 (c) "Supervisor of Records" shall mean the City Attorney or a deputy City Attorney so
16 designated. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96;
17 Proposition G, 11/2/99)

18

19 **SECTION 67.2420. PROCESS FOR GAINING ACCESS TO PUBLIC**

20 **RECORDS INFORMATION; ADMINISTRATIVE APPEALS.**

21 (a) Every person having custody of any public record or public information, as
22 defined herein, ~~(hereinafter referred to as a custodian of a public record)~~ shall, at normal times
23 and during normal and reasonable hours of operation, without unreasonable delay, and
24 without requiring an appointment, permit the public record, or any segregable portion of a
25 record, to be inspected and examined by any person, ~~and shall furnish one copy thereof upon~~

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1 ~~payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten~~
2 ~~cents per page.¹~~

3 (a) All City Departments and Policy Bodies that are subject to the provisions of this
4 Ordinance shall also designate an employee within that Department or Policy Body as its
5 custodian of records ("custodian of records"). Each custodian of records shall have written
6 procedures and forms to streamline request and assist members of the public who request
7 public records and information. The custodian of records shall have identified departmental
8 deputies to fulfill this role when the custodian of records is unavailable.²

9 ~~(b) A custodian request for inspection or copying of a public records may shall, as~~
10 ~~soon as possible and within ten days following receipt of a request for inspection or copy of a~~
11 ~~public record, comply with such request. Such request may be delivered submitted to the~~
12 ~~office Department, Policy Body or of the custodian of records by the requester orally or in~~
13 ~~writing by fax, postal U.S. Mail, hand delivery, or e-mail or other means. If the custodian~~
14 ~~believes the record or information requested is not a public record or is exempt, the custodian~~
15 ~~shall justify withholding any record by demonstrating, in writing as soon as possible and within~~
16 ~~ten days following receipt of a request, that the record in question is exempt under express~~
17 ~~provisions of this ordinance.~~

18 (c) A custodian of records shall ensure that, as soon as possible but no later than
19 10 calendar days following the receipt of the request, a Department, Policy Body or custodian
20 of records shall comply with the request by doing the following:³

21 _____
22 ¹ Language regarding cost of copies moved to new 67.29(b) to clarify and streamline ordinance.

23 ² Clarifies requirements that all entities subject to the Ordinance appoint a custodian of records; that the entities develop written procedures and forms to streamline handling of records requests; and adds specific requirement that designated custodians of records identify deputies to full the custodians' role when the custodians are unavailable.

25 ³ Provisions broken out to clarify existing law and revised to provide reasonable timeframes for in person review of documents and require tracking of oral requests.

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- 1 (1) If the requester seeks a copy of public records, one copy thereof shall be provided
2 upon payment of a reasonable copying charge, not to exceed the actual cost of
3 physical duplication or ten cents per page, whichever is less;
- 4 (2) If the requester seeks to inspect public records, a reasonable opportunity for the
5 requester to review the records shall be provided during normal and reasonable
6 business hours, without unreasonable delay and without requiring an appointment,
7 or at another time convenient to both the requester and the custodian of records. In
8 no event shall the custodian of records be required to set the records aside for
9 review for longer than 14 days, unless agreed to between the requester and the
10 custodian of records.
- 11 (3) If the Department, Policy Body or custodian of records believes the record or
12 information requested is, in whole or in part, exempt from disclosure, the
13 withholding or redaction shall be justified in writing pursuant to Section 67.28 of this
14 Ordinance.
- 15 (4) An oral request for information shall be treated as a written request. Oral requests
16 that are not fulfilled by an employee immediately shall be documented as to date,
17 time, place and requester by the Department or Policy Body in order to maintain a
18 public record of the public request.

19 ~~(e)~~(d) A custodian of ~~a~~ public records shall assist a requester in identifying the
20 existence, form, and nature of any records or information maintained by, available to, or in the
21 custody of the Department or Policy Body, custodian, whether or not the contents of those
22 records are exempt from disclosure and shall, when requested to do so, provide in writing
23 within seven days following receipt of a request, a statement as to the existence, quantity
24 amount or count, form, and nature of records, and physical or electronic location of records
25 relating to a particular subject matter or questions with enough specificity to enable a

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1 requester to identify records in order to make a request under (b). A custodian of any public if
2 the requested record, when or information is not in within the possession of the record
3 requested, custody or control of the Department or Policy Body, the request shall be assist a
4 requester in directing a directed to the request to the proper office Department, Policy Body or
5 staff person, with notification to the requester of that action.⁴

6 (e) The person seeking any records or information under this Ordinance need not
7 state his or her reason for making the request or the use to which the information will be put,
8 and requesters shall not be routinely asked to make such a disclosure. However, where a
9 requested record contains information the majority of which is exempt from disclosure under
10 the California Public Records Act or this Ordinance, the City Attorney or custodian of records
11 may inform the requester of the nature and extent of the exempt and non-exempt information
12 and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources
13 for the information which may involve less redaction or, if necessary, to otherwise prepare a
14 response to the request.⁵

15 (d)(f) If the custodian refuses, fails to comply, or incompletely complies with a request
16 described in (b), the person making the request may petition the ~~supervisor~~ Supervisor of
17 records Records for a determination whether the record requested is disclosable public in
18 whole or in part. The supervisor of records shall inform the petitioner, as soon as possible
19 and within 10 days of its determination, ~~of its determination whether the record requested, or~~
20 ~~any part of the record requested, is public. Where requested by the petition, and where~~
21 ~~otherwise desirable, this~~ This determination shall be in writing. Upon the determination by the
22 supervisor of records that the record is public disclosable, in whole or in part, the supervisor of
23

24 ⁴ Revised to clarify existing requirements and expanded to require City to identify location
25 where electronic records are maintained and require City employees to forward requests to
other entities who have or might have information responsive to requests.

⁵ Provision moved from existing 67.25.

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1 records shall immediately order the custodian of the public record to comply with the person's
2 request. If the custodian refuses or fails to comply with any such order within 5 days, the
3 supervisor of records shall notify the ~~district attorney or the attorney general~~ San Francisco
4 Ethics Commission, Board of Supervisors, District Attorney, or the State Attorney General
5 who shall take whatever measures ~~she or he deems~~ they deem necessary and appropriate to
6 insure compliance with the provisions of this ~~ordinance.~~ Ordinance. The Supervisor of
7 Records shall copy all correspondence pertaining to its duties under this subsection to the
8 Sunshine Commission's public review file.⁶

9 (e)(g) If the custodian refuses, fails to comply, or incompletely complies with a request
10 described in subsection (b) above or if a petition is denied or not acted on by the ~~supervisor~~
11 Supervisor of public ~~Public records~~ Records, the person making the request may petition the
12 ~~Sunshine Task Force~~ Sunshine Commission for a determination whether the record requested
13 is ~~public~~ disclosable, in whole or in part. ~~The Task Force shall inform the petitioner, as soon~~
14 ~~as possible and within 2 days after its next meeting but in no case later than 45 days from~~
15 ~~when a petition in writing is received, of its determination whether the record requested, or~~
16 ~~any part of the record requested, is public. Where requested by the petition, and where~~
17 ~~otherwise desirable, this determination shall be in writing. Upon the determination that the~~
18 ~~record is public, the Sunshine Task Force shall immediately order the custodian of the public~~
19 ~~record to comply with the person's request. If the custodian refuses or fails to comply with any~~
20 ~~such order within 5 days, the Sunshine Task Force shall the district attorney or the attorney~~
21 ~~general who may take whatever measures she or he deems necessary to insure compliance~~
22 ~~with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office~~
23 ~~shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties~~

24 _____
25 ⁶ Clarifies and expands entities to which Supervisor of Records can refer orders on petitions to
and requires that the Sunshine Commission be kept informed of all correspondence regarding
petitions.

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1 under this provision. Where requested by the petition, the Sunshine Task Force may conduct
2 a public hearing concerning the records request denial. An authorized representative of the
3 custodian of the public records requested shall attend any hearing and explain the basis for its
4 decision to withhold the records requested.⁷

5 (f) — The administrative remedy provided under this article shall in no way limit the
6 availability of other administrative remedies provided to any person with respect to any officer
7 or employee of any agency, executive office, department or board; nor shall the administrative
8 remedy provided by this section in any way limit the availability of judicial remedies otherwise
9 available to any person requesting a public record. If a custodian of a public record refuses or
10 fails to comply with the request of any person for inspection or copy of a public record or with
11 an administrative order under this section, the superior court shall have jurisdiction to order
12 compliance.⁸

13 (g) — In any court proceeding pursuant to this article there shall be a presumption that
14 the record sought is public, and the burden shall be upon the custodian to prove with
15 specificity the exemption which applies.⁹

16 (h) — On at least an annual basis, and as otherwise requested by the Sunshine Task
17 Force, the supervisor of public records shall prepare a tally and report of every petition
18 brought before it for access to records since the time of its last tally and report. The report
19 shall at least identify for each petition the record or records sought, the custodian of those

20 ⁷ Provisions regarding Sunshine Commission hearings have been moved to Article IV,
21 "Hearings and Orders of Determination." Provisions regarding the enforcement of Orders of
22 Determination have been moved to Article IV, "Administrative Enforcement." Provisions
23 regarding staffing of the Sunshine Commission have been moved to Article IV, "Responsibility
24 for Administration."

24 ⁸ Provisions dealing with remedies have been moved to Article IV, "Administrative
25 Enforcement Provisions." Provisions dealing with jurisdiction and remedies in Superior Court
have been moved to Article IV, "Public Enforcement Provision."

25 ⁹ Provisions dealing with actions in Superior Court have been moved to Article IV, "Public
Enforcement Provisions."

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1 records, the ruling of the supervisor of public records, whether any ruling was overturned by a
2 court and whether orders given to custodians of public records were followed. The report
3 shall also summarize any court actions during that period regarding petitions the Supervisor
4 has decided. At the request of the Sunshine Ordinance Task Force, the report shall also
5 include copies of all rulings made by the supervisor of public records and all opinions issued.¹⁰

6 (i) ~~The San Francisco City Attorney's office shall act to protect and secure the~~
7 ~~rights of the people of San Francisco to access public information and public meetings and~~
8 ~~shall not act as legal counsel for any city employee or any person having custody of any~~
9 ~~public record for purposes of denying access to the public. The City Attorney may publish~~
10 ~~legal opinions in response to a request from any person as to whether a record or information~~
11 ~~is public. All communications with the City Attorney's Office with regard to this ordinance,~~
12 ~~including petitions, requests for opinion, and opinions shall be public records.~~

13 (j) ~~Notwithstanding the provisions of this section, the City Attorney may defend the~~
14 ~~City or a City Employee in litigation under this ordinance that is actually filed in court to any~~
15 ~~extent required by the City Charter or California Law.¹¹~~

16 (k)(h) Release of documentary public information records, whether for inspection of the
17 original or by providing a copy, shall be governed by the California Public Records Act
18 (Government Code Section 6250 et seq.) in particular to the extent not addressed by this
19 ordinance Ordinance and in accordance with the enhanced disclosure requirements provided
20 in this ordinance Ordinance.

21 (l)(i) Inspection and copying of documentary public information stored in electronic
22 form shall be made available to the person requesting the information in any form requested

23 _____
24 ¹⁰ Provisions regarding reports by the Supervisor of Records have been moved to Article IV,
"Role of City Attorney."

25 ¹¹ Provisions regarding the role of the City Attorney have been moved to Article IV, "Role of
City Attorney."

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1 the information is held by the Department or Policy Body, any format that has been used by
2 the Department or Policy Body to create copies for its own use or for provision to other
3 agencies, or which is available to or easily generated by the departmentDepartment or Policy
4 Body, its officers or employees, including disk, tape, printout or monitor at a charge no greater
5 than the cost of the media on which it is duplicated. Inspection of documentary public
6 information on a computer monitor need not be allowed where the information sought is
7 necessarily and unseparably inseparably intertwined with information not subject to disclosure
8 under this ordinanceOrdinance. Nothing in this section shall require a department to create a
9 new computer program or reprogram a computersystem to respond to a request for
10 information or to ~~release information where the release of that information would violate a~~
11 ~~licensing agreement or copyright law.~~ would jeopardize or compromise the security or integrity
12 of the original record or of any proprietary software in which it is maintained.¹² (Added by Ord.
13 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)
14

15 **~~SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.~~**¹³

16 (a) ~~It is the policy of the City and County of San Francisco to utilize computer~~
17 ~~technology in order to reduce the cost of public records management, including the costs of~~
18 ~~collecting, maintaining, and disclosing records subject to disclosure to members of the public~~
19 ~~under this section. To the extent that it is technologically and economically feasible,~~
20 ~~departments that use computer systems to collect and store public records shall program and~~
21 ~~design these systems to ensure convenient, efficient, and economical public access to~~
22

23 _____
24 ¹² Provision amended to be consistent with existing law and clarify that an electronic record
25 shall be provided in any format specified by the requester when the record exists or has
existed in that format.

¹³ Provision moved to new 67.30 in order to clarify and streamline Ordinance.

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1 records and shall make public records easily accessible over public networks such as the
2 Internet.

3 (b) Departments purchasing new computer systems shall attempt to reach the following
4 goals as a means to achieve lower costs to the public in connection with the public disclosure
5 of records:

6 (1) Implementing a computer system in which exempt information is segregated or filed
7 separately from otherwise disclosable information.

8 (2) Implementing a system that permits reproduction of electronic copies of records in a
9 format that is generally recognized as an industry standard format.

10 (3) Implementing a system that permits making records available through the largest
11 non-profit, non-proprietary public computer network, consistent with the requirement for
12 security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App.
13 6/19/96; Proposition G, 11/2/99)

14
15 **SECTION 67.21. IMMEDIACY OF RESPONSE; IMMEDIATE DISCLOSURE REQUEST**¹⁴

16 (a) Maximum deadlines provided in this Ordinance are appropriate for more extensive
17 or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise
18 readily answerable request.

19 (b) Notwithstanding the 10-day period for response to a request permitted in section
20 67.21(c) of this Ordinance, a written request for information described in any category of non-
21 exempt public information shall be satisfied no later than the close of business on the day
22 following the day of the request. This deadline shall apply only if the words "Immediate
23 Disclosure Request" are placed across the top of the request and on the envelope, subject

24
25 ¹⁴ Revised and new provisions on deadlines for responses, based on former 67.25, in order to clarify and streamline Ordinance.

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1 line, or cover sheet in which the request is transmitted, and only if the request is received by 4
2 PM. Immediate Disclosure Requests are appropriate for records which are readily identifiable
3 and maintained by the Department or Policy Body in its active files. Requests to inspect or for
4 copies of documents which must be gathered from multiple sources or offices, or document
5 maintained in a remote storage facility are not appropriate for Immediate Disclosure
6 Requests.

7 (c) If the voluminous nature of the information requested, its location in a remote
8 storage facility or the need to consult with another interested department warrants an
9 extension of 14 days as provided in Government Code Section 6253(c)(1), the requester shall
10 be notified as required by the close of business on the business day following the request.
11 The requester shall be notified as required by the close of business of the length of extension,
12 the reason for the extension, and a summary of the search method and results conducted to
13 date justifying the extension.

14
15 **SECTION 67.22. PRODUCTION ON INCREMENTAL OR "ROLLING" BASIS¹⁵**

16 In response to a request under this Ordinance the Department, Policy Body, or
17 custodian of records shall produce any and all responsive public records as soon as
18 reasonably possible, and where requested, on an incremental or "rolling" basis such that
19 responsive records are provided as soon as possible by the end of the same business day
20 that they are reviewed and collected. This section is intended to prohibit the withholding of
21 public records that are responsive to a request until all potentially responsive documents have
22 been reviewed and collected. Failure to comply with this provision is a violation of this

23
24
25 ¹⁵ Revised and new provisions on deadlines for responses, based on former 67.25, in order to clarify and streamline Ordinance.

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1 Ordinance. Each custodian of a public record shall keep notes of the time and personnel
2 used to comply with records request under this section.

3
4 **SECTION 67.2223. RELEASE OF ORAL PUBLIC INFORMATION.**

5 Release of oral public information shall be accomplished as follows:

6 (a) Every ~~department head~~Department or Policy Body shall designate a person or
7 persons knowledgeable about the affairs of the Department or Policy Body~~department~~, to
8 provide information, including oral information, to the public about the ~~department's~~
9 Department's or Policy Body's operations, plans, policies and positions. The Department or
10 Policy Body ~~department head~~ may designate himself or herself the custodian of records
11 identified pursuant to 67.21 (a) of the Ordinance for this assignment, but in any event shall
12 arrange that an alternate be available for this function during the absence of the person
13 assigned primary responsibility. If a Department or Policy Body~~department~~ has multiple
14 bureaus or divisions, ~~the department may designate a person or persons for each bureau or~~
15 division may be designated to provide this information.

16 (b) The role of the person or persons so designated shall be to provide information
17 on as timely and responsive a basis as possible to those members of the public who are not
18 requesting information from a specific person. Each public employee has a duty to respond to
19 enquiries from the public. This section shall not be interpreted to curtail existing informal
20 contacts between employees and members of the public when these contacts are occasional,
21 ~~acceptable to the employee and the department~~, not disruptive of his or her operational duties
22 and confined to accurate information not confidential by law.

23 (c) ~~No employee shall be required to respond to an inquiry or inquiries from an~~
24 ~~individual if~~ If it would take an the employee more than fifteen minutes to obtain the information
25 responsive to thean inquiry or inquiries, the employee shall notify the requester of the

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1 procedures for obtaining records under sections 67.21 and 67.23 of this Ordinance, and
2 provide an appropriate form for that request if available.

3 (d) Notwithstanding any other provisions of this ordinance, public employees shall
4 not be discouraged from or disciplined for disclosing any information that is public information
5 or a public record to any journalist or any member of the public. Any public employee who is
6 disciplined for disclosing public information or a public record shall have a cause of action
7 against the City and the supervisor imposing the discipline.¹⁶ (Added by Ord. 265-93, App.
8 8/18/93; amended by Proposition G, 11/2/99)

9 ~~(d)~~(e) Public employees shall not be discouraged from or disciplined for the expression
10 of their personal opinions on any matter of public concern while not on duty, so long as the
11 opinion (1) is not represented as that of the department and does not misrepresent the
12 department position; and (2) does not disrupt coworker relations, impair discipline or control
13 by superiors, erode a close working relationship premised on personal loyalty and
14 confidentiality, interfere with the employee's performance of his or her duties or obstruct the
15 routine operation of the office in a manner that outweighs the employee's interests in
16 expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely
17 to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public
18 employees. Nothing in this section shall be construed to provide rights to City employees
19 beyond those recognized by courts, now or in the future, under the First Amendment, or to
20 create any new private cause of action or defense to disciplinary action.

21 ~~(e) Notwithstanding any other provisions of this ordinance, public employees shall~~
22 ~~not be discouraged from or disciplined for disclosing any information that is public information~~
23 ~~or a public record to any journalist or any member of the public. Any public employee who is~~
24

25 _____
¹⁶ Moved up from former 67.22(e).

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1 ~~disciplined for disclosing public information or a public record shall have a cause of action~~
2 ~~against the City and the supervisor imposing the discipline.~~¹⁷ ~~(Added by Ord. 265-93, App.~~
3 ~~8/18/93; amended by Proposition G, 11/2/99)~~

4
5 **SECTION 67.2324. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.**

6 (a) The clerk of the Board of Supervisors and the clerk of each ~~board and~~
7 ~~commission enumerated in the charter~~ Policy Body shall maintain a file, accessible to any
8 person during normal office hours, at the office of the Policy Body or at a place nearby clearly
9 designated to the public containing in a chronological order a copy of any letter, memorandum
10 or other communication which the clerk has distributed to or received from a quorum of the
11 policy body concerning a matter calendared by the body within the previous 30 days or likely
12 to be calendared within the next 30 days, irrespective of subject matter, origin or recipient,
13 except commercial solicitations, periodical publications or communications exempt from
14 disclosure under the California Public Records Act (Government Code Section 6250 et seq.)
15 and not deemed disclosable under Section 67.24 of this article.

16 (b) ~~Communications, as described in subsection (a), sent or received in the last~~
17 ~~three business days shall be maintained in chronological order in the office of the department~~
18 ~~head or at a place nearby, clearly designated to the public. After documents have been on file~~
19 ~~for two full days, they may be removed, and, in the discretion of the board or commission,~~
20 ~~placed in a monthly chronological file.~~¹⁸ The identity of the sender of any letter or
21 communication shall be presumed to be public information unless confidentiality is specifically
22 requested by the sender or otherwise required by law.¹⁹

23
24 ¹⁷ Moved to new 67.23(d).

25 ¹⁸ Removed as duplicative of subsection (a) above.

¹⁹ Added to make clear that identities will be disclosed unless confidentiality specifically requested.

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1 (c) Multiple-page reports, studies or analyses which are accompanied by a letter or
2 memorandum of transmittal need not be included in the file so long as the letter or
3 memorandum of transmittal is included. (Added by Ord. 265-93, App. 8/18/93; amended by
4 Proposition G, 11/2/99)

5
6 **SECTION 67.2425. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

7 Notwithstanding a department's~~the~~ legal discretion to withhold certain information
8 under the California Public Records Act, the following policies shall govern specific types of
9 documents and information and shall provide enhanced rights of public access to information
10 and records:

11 (a) Drafts and Memoranda.

12 ~~(1) — Except as provided in subparagraph (2), no~~ No preliminary or draft document
13 and no inter or intra-agency memoranda, or department memorandum, whether in printed or
14 electronic form, shall be exempt from disclosure under Government Code Section 6254,
15 subdivision (a) or any other provision. If such a document is not normally kept on file and
16 would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only
17 the recommendation of the author may, in such circumstances, be withheld as exempt. This
18 section is not intended to alter or extend the requirements under any document retention
19 policy adopted by a Policy Body or Department.²⁰

20 ~~(2) — Draft versions of an agreement being negotiated by representatives of the City~~
21 ~~with some other party need not be disclosed immediately upon creation but must be~~
22 ~~preserved and made available for public review for 10 days prior to the presentation of the~~
23 ~~agreement for approval by a policy body, unless the body finds that and articulates how the~~
24

25 ²⁰ Revised to clarify existing legal requirements under Ordinance and expanded disclosure requirement for drafts not normally kept, consistent with existing Public Records Act caselaw.

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1 ~~public interest would be unavoidably and substantially harmed by compliance with this 10 day~~
2 ~~rule, provided that policy body as used in this subdivision does not include committees. In the~~
3 ~~case of negotiations for a contract, lease or other business agreement in which an agency of~~
4 ~~the City is offering to provide facilities or services in direct competition with other public or~~
5 ~~private entities that are not required by law to make their competing proposals public or do not~~
6 ~~in fact make their proposals public, the policy body may postpone public access to the final~~
7 ~~draft agreement until it is presented to it for approval.~~²¹

8 (b) Litigation and Attorney-Client Material.

9 (1) Notwithstanding any exemptions otherwise provided by law, the following are
10 public records subject to disclosure under this Ordinance:

11 (i) A pre-litigation claim against the City;

12 (ii) A record ~~previously~~ received or created by a ~~department~~Policy Body or
13 Department in the ordinary course of business that was not ~~attorney/client~~attorney-client
14 privileged when at the time it was ~~previously~~ received or created;

15 (iii) Advice on compliance with, analysis of, an opinion concerning liability or duties
16 under, or any communication otherwise concerning the California Public Records Act, the
17 Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics
18 codeEthics Code, or this Ordinance.

19 (2) Unless otherwise ~~privileged~~ prevented under an express provision of California
20 law, when litigation is finally adjudicated or otherwise settled, records of all communications
21 between the Policy Body or Department~~department~~ and the adverse party shall be subject to
22 disclosure, including the text and terms of any settlement.

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24
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²¹ Moved to new 67.25(e)(8) in order to clarify and streamline Ordinance.

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1 (c) Personnel Information. None of the following shall be exempt from disclosure
2 under Government Code Section 6254, subdivision (c), or any other provision of California
3 Law where disclosure is not forbidden:

4 (1) The job pool characteristics and employment and education histories of all
5 successful job applicants, including at a minimum the following information as to each
6 successful job applicant:

7 (i) Sex, age and ethnic group;

8 (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

9 (iii) Years of employment in the private and/or public sector;

10 (iv) Whether currently employed in the same position for another public agency.

11 (v) Other non-identifying particulars as to experience, credentials, aptitudes, training
12 or education entered in or attached to a standard employment application form used for the
13 position in question.

14 (2) The professional biography, curriculum vitae or job application of any applicant,
15 whether successful or not, for a position as a Department Head, or member of a City
16 Commission, Task Force or City commissioners; provided that the home address, home
17 telephone number, social security number, age, and marital status of the applicant shall be
18 redacted.²²

19 ~~(2)~~(3) The professional biography, ~~or~~ curriculum vitae or job application of any
20 employee, provided that the home address, home telephone number, social security number,
21 age, and marital status of the employee shall be redacted.²³

22 ~~(3)~~(4) The job description of every employment classification.
23
24

25 ²² Expanded disclosure requirements for applicants to high-level positions in the City.

²³ Revised to clarify existing requirements.

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1 ~~(4)(5)~~ The exact employment classification, gross salary and City-paid benefits
2 available to every each employee identified by name, as well as salary actually earned,
3 including all overtime, compensatory time, and paid leave time.²⁴

4 ~~(5)(6)~~ Any memorandum of understanding between the City or department and a
5 recognized employee organization.

6 ~~(6)(7)~~ The amount, basis, and recipient of any performance-based increase in
7 compensation, benefits, or both, or any other bonus, awarded to any employee, ~~which.~~ To the
8 extent the performance-based award is granted by a Policy Body, the details of that award
9 shall be announced during the open session of a ~~policy body~~Policy Body at which the award is
10 approved.

11 ~~(7)(8)~~ The All records regarding confirmed employee of any confirmed misconduct, of
12 a public employee involving personal dishonesty, misappropriation of public funds, resources
13 or benefits, unlawful discrimination against another on the basis of status, abuse of authority,
14 or violence, and or allegations of misconduct that are of a substantial nature, as distinct from
15 the baseless or trivial, and there is reasonable cause to believe that complaint is well founded,
16 including records of any discipline or warnings imposed for such misconduct. Any
17 investigation and report regarding allegations of employee misconduct – whether or not the
18 investigation is conducted by an attorney – shall be released upon conclusion of that
19 investigation where the allegations have been found to be substantial, even if there is no
20 ultimate finding of misconduct, no discipline imposed, or warning issued.²⁵

21 (d) Law Enforcement Information.

22
23
24 ²⁴ Revised to clarify existing requirements.

25 ²⁵ Revised to conform to existing Public Records Act law and expanded to clarify that reports
conducted or requested by public agencies regarding allegations of public employee
misconduct are public records subject to release at conclusion of investigation.

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1 The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the
2 press and other members of the public in allowing access to local records pertaining to
3 investigations, arrests, and other law enforcement activity. However, no provision of this
4 ordinance Ordinance is intended to abrogate or interfere with the constitutional and statutory
5 power and duties of the District Attorney and Sheriff as interpreted under Government Code
6 section 25303, or other applicable state law or judicial decision. Records pertaining to any
7 investigation, arrest or other law enforcement activity shall be disclosed to the public once the
8 District Attorney or court determines that a prosecution will not be sought against the subject
9 involved, or once the statute of limitations for filing charges has expired, whichever occurs
10 first. Notwithstanding the occurrence of any such event, individual items of information in the
11 following categories may be segregated and withheld if, on the particular facts, the public
12 interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

13 (1) The names of juvenile witnesses (whose identities may nevertheless be
14 indicated by substituting a number or alphabetical letter for each individual interviewed);

15 (2) Personal or otherwise private information related to or unrelated to the
16 investigation if disclosure would constitute an unwarranted invasion of privacy;

17 (3) The identity of a confidential source;

18 (4) Secret investigative techniques or procedures;

19 (5) Information whose disclosure would endanger law enforcement personnel; or

20 (6) Information whose disclosure would endanger the successful completion of an
21 investigation where the prospect of enforcement proceedings is concrete and definite.

22

23

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1 This subdivision shall not exempt from disclosure any portion of any record of a
2 concluded inspection or enforcement action by an officer or department responsible for
3 regulatory protection of the public health, safety, or welfare.²⁶

4 (e) Requests, Contracts, Bids and Proposals

5 (1) All City Requests for Bids (RFB), Requests for Proposals ("RFP"), Requests for
6 Quotes ("RFQuote"), Requests for Information ("RFI"), and Requests for Qualifications
7 ("RFQ") shall be posted on the City's website from the date of issuance and also kept in a
8 central repository and shall be made available for public inspection.

9 (2) All responses to a RFQuote, RFI, and RFQ are public records that shall be
10 made public upon receipt by the City. The City is encouraged to post all responses to
11 RFQuotes, RFIs and RFQs on the City's websites.

12 (4)(3) Contracts, contractors' bids, responses to requests for proposals RFBs, RFPs
13 and all other records of communications between the department Department and persons or
14 firms seeking contracts, including the dollar amount of any contract, shall be open to
15 inspection immediately after a contract has been awarded. Within five days after a contract
16 has been awarded, the successful RFB or RFP and the contract shall also be posted on the
17 City's website. Nothing in this provision requires the disclosure of a private person's or
18 organization's net worth or other proprietary financial data submitted for qualification for a
19 contract or other benefit until and unless that person or organization is awarded the contract
20 or benefit. All bidders and contractors shall be advised that information provided which is
21 covered by this subdivision will be made available to the public upon request.

22 (4) Immediately after any review or evaluation or rating of responses to a RFB or
23 RFP has been completed, evaluation forms and score sheets and any other documents used

24 _____
25 ²⁶ After consultation with departments and members of the public, the disclosure requirements
for requests and contracts generally have been revised to improve clarity and provide
enhanced disclosure to facilitate public review and comment on the contracting process.

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1 by persons in the RFB or RFP evaluation or contractor selection process shall be available for
2 public inspection. The names of panel members, scorers, graders or evaluators, along with
3 their job title and employer (if not employed by the City) along with their individual ratings,
4 comments, and score sheets or comments on related documents, shall be made immediately
5 available after the review or evaluation of a RFB or RFP has been completed.

6 (2)(5) Notwithstanding the provisions of this subdivision or any other provision of this
7 ordinance, the Director of Public Health may withhold from disclosure proposed and final rates
8 of payment for managed health care contracts if the Director determines that public disclosure
9 would adversely affect the ability of the City to engage in effective negotiations for managed
10 health care contracts. The authority to withhold this information applies only to contracts
11 pursuant to which the City (through the Department of Public Health) either pays for health
12 care services or receives compensation for providing such services, including mental health
13 and substance abuse services, to covered beneficiaries through a pre-arranged rate of
14 payment. This provision also applies to rates for managed health care contracts for the
15 University of California, San Francisco, if the contract involves beneficiaries who receive
16 services provided jointly by the City and University. This provision shall not authorize the
17 Director to withhold rate information from disclosure for more than three years.

18 (3)(6) During the course of negotiations for:

19 (i) personal, professional, or other contractual services not subject to a competitive
20 process, or where such ~~at~~ the negotiations process has arrived at a stage where there is only
21 one qualified or responsive bidder;

22 (ii) leases or permits having total anticipated revenue or expense to the City and
23 County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or
24 more; or

25 (iii) any franchise agreements;

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1 ~~all~~ All documents exchanged and related to the position of the parties, including draft
2 contracts, shall be made available for public inspection and copying upon request. In the
3 event that no records are prepared or exchanged during negotiations in the above-mentioned
4 categories, or the records exchanged do not provide a meaningful representation of the
5 respective positions, the ~~city attorney~~ City Attorney or ~~city~~ City representative familiar with the
6 negotiations shall, upon a written request by a member of the public, prepare written
7 summaries of the respective positions within five working days following the final day of
8 negotiation of any given week. The summaries will be available for public inspection and
9 copying. The summaries shall not be a substitute for release of the actual documents
10 exchanged between the parties.

11 (7) No later than July 15th annually, Upon completion of negotiations, the executed
12 contract, including the dollar amount of said contract, shall be made available for inspection
13 and copying. At the end of each fiscal year, each City department shall provide to the Board
14 of Supervisors a list of all sole source contracts entered into or renewed during the past fiscal
15 year. This list shall be made available for inspection and copying as provided for elsewhere in
16 this Article posted to the City's website and also kept in a central repository and shall be made
17 available for public inspection and copying.

18 (8) Contracts, leases or other business subject to approval by a Policy Body:
19 Draft versions of an agreement being negotiated by representatives of the City with another
20 party need not be disclosed immediately upon creation but must be preserved and made
21 available alone with the version of the agreement to be presented to the Policy Body for public
22 review at least 10 days prior to the presentation of the agreement for approval by a Policy
23 Body, unless the body finds that and articulates how the public interest would be unavoidably
24 and substantially harmed by compliance with this 10 day rule, provided that policy body as
25 used in this subdivision does not include committees. In the case of negotiations for a

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1 contract, lease or other business agreement in which an agency of the City is offering to
2 provide facilities or services in direct competition with other public or private entities that are
3 not required by law to make their competing proposals public or do not in fact make their
4 proposals public, the Policy Body may postpone public access to the final draft agreement
5 until it is presented to it for approval.²⁷

6 (f) Budgets and Other Financial Information. Budgets, whether tentative, proposed
7 or adopted, for the City or any of its departments, programs, projects or other categories, and
8 all bills, claims, invoices, vouchers or other records of payment obligations as well as records
9 of actual disbursements showing the amount paid, the payee and the purpose for which
10 payment is made, other than payments for social or other services whose records are
11 confidential by law, shall not be exempt from disclosure under any circumstances.

12 ~~(g) — Neither the City nor any office, employee, or agent thereof may assert California~~
13 ~~Public Records Act Section 6255 or any similar provision as the basis for withholding any~~
14 ~~documents or information requested under this ordinance.~~²⁸

15 ~~(h) — Neither the City nor any office, employee, or agent thereof may assert an~~
16 ~~exemption for withholding for any document or information based on a "deliberative process"~~
17 ~~exemption, either as provided by California Public Records Act Section 6255 or any other~~
18 ~~provision of law that does not prohibit disclosure.~~²⁹

19 ~~(i) — Neither the City, nor any office, employee, or agent thereof, may assert an~~
20 ~~exemption for withholding for any document or information based on a finding or showing that~~
21 ~~the public interest in withholding the information outweighs the public interest in disclosure.~~³⁰

22 All withholdings of documents or information must be based on an express provision of this

23
24 ²⁷ Moved from former 67.24(a)(2).

25 ²⁸ Moved to new 67.27.

²⁹ Moved to new 67.27.

³⁰ Moved to new 67.27.

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1 ordinance providing for withholding of the specific type of information in question or on an
2 express and specific exemption provided by California Public Records Act that is not
3 forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95,
4 App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

5
6 ~~Section 67.25. IMMEDIACY OF RESPONSE.~~³¹

7 (a) ~~Notwithstanding the 10-day period for response to a request permitted in~~
8 ~~Government Code Section 6256 and in this Article, a written request for information described~~
9 ~~in any category of non-exempt public information shall be satisfied no later than the close of~~
10 ~~business on the day following the day of the request. This deadline shall apply only if the~~
11 ~~words "Immediate Disclosure Request" are placed across the top of the request and on the~~
12 ~~envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines~~
13 ~~provided in this article are appropriate for more extensive or demanding requests, but shall~~
14 ~~not be used to delay fulfilling a simple, routine or otherwise readily answerable request.~~

15 (b) ~~If the voluminous nature of the information requested, its location in a remote~~
16 ~~storage facility or the need to consult with another interested department warrants an~~
17 ~~extension of 10 days as provided in Government Code Section 6456.1, the requester shall be~~
18 ~~notified as required by the close of business on the business day following the request.~~

19 (c) ~~The person seeking the information need not state his or her reason for making~~
20 ~~the request or the use to which the information will be put, and requesters shall not be~~
21 ~~routinely asked to make such a disclosure. Where a record being requested contains~~
22 ~~information most of which is exempt from disclosure under the California Public Records Act~~
23 ~~and this article, however, the City Attorney or custodian of the record may inform the~~
24 ~~requester of the nature and extent of the non-exempt information and inquire as to the~~

25 _____
³¹ Moved to new 67.28.

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1 requester's purpose for seeking it, in order to suggest alternative sources for the information
2 which may involve less redaction or to otherwise prepare a response to the request.³²

3 ~~(d) Notwithstanding any provisions of California Law or this ordinance, in response~~
4 ~~to a request for information describing any category of non-exempt public information, when~~
5 ~~so requested, the City and County shall produce any and all responsive public records as~~
6 ~~soon as reasonably possible on an incremental or "rolling" basis such that responsive records~~
7 ~~are produced as soon as possible by the end of the same business day that they are reviewed~~
8 ~~and collected. This section is intended to prohibit the withholding of public records that are~~
9 ~~responsive to a records request until all potentially responsive documents have been~~
10 ~~reviewed and collected. Failure to comply with this provision is a violation of this article.~~

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

12
13 **SECTION 67.26. WITHHOLDING KEPT TO A MINIMUM.**

14 No record shall be withheld from disclosure in its entirety unless all information
15 contained in it is exempt from disclosure under express provisions of this Ordinance or the
16 California Public Records Act ~~or of some other statute~~. Information that is exempt from
17 disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt
18 portion of a requested record may be released, and keyed by footnote or other clear reference
19 to the appropriate justification for withholding required by section ~~67.27~~67.28 of this article.

20 This work shall be done personally by the attorney or other staff member conducting the
21 exemption review. The work of responding to a public-records request and preparing
22 documents for disclosure shall be considered part of the regular work duties of any city
23 employee, and no fee shall be charged to the requester to cover the personnel costs of

24
25

³² Moved to new section 67.20(e)

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1 responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by
2 Proposition G, 11/2/99)

3
4 **SECTION 67.27. PROHIBITED BASIS FOR WITHHOLDING.**³³

5 (a) Neither the City nor any officer, employee, or agent thereof may assert
6 California Public Records Act Section 6255 or any similar provision as the basis for
7 withholding any documents or information requested under this Ordinance.

8 (b) Neither the City nor any office, employee, or agent thereof may assert an
9 exemption for withholding for any document or information based on a "deliberative process"
10 exemption, either as provided by California Public Records Act Section 6255 or any other
11 provision of law that does not prohibit disclosure.

12 (c) Neither the City, nor any office, employee, or agent thereof, may assert an
13 exemption for withholding for any document or information based on a finding or showing that
14 the public interest in withholding the information outweighs the public interest in disclosure.
15 All withholdings of documents or information must be based on an express provision of this
16 ordinance providing for withholding of the specific type of information in question or on an
17 express and specific exemption provided by California Public Records Act that is not
18 forbidden by this ordinance.

19
20 **SECTION 67.2728. JUSTIFICATION OF WITHHOLDING.**

21 Any withholding of information shall be justified, in writing, as follows:

22 (a) A withholding under a specific permissive exemption in this Ordinance or in the
23 California Public Records Act, or elsewhere, which permissive exemption is not forbidden to
24 be asserted by this ~~ordinance~~Ordinance, shall cite that authority.

25 _____
³³ Moved from former 67.24(g), (h) and (i).

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1 (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific
2 statutory authority in this Ordinance or in the Public Records Act or elsewhere.

3 (c) A withholding on the basis that disclosure would incur civil or criminal liability shall
4 cite any specific statutory or case law, or any other public agency's litigation experience,
5 supporting that position.

6 (d) When a record being requested contains information, most of which is exempt from
7 disclosure under this Ordinance or in the California Public Records Act and this Article, the
8 custodian shall inform the requester of the nature and extent of the nonexempt information
9 and suggest alternative sources for the information requested, if available. (Added by Ord.
10 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

11
12 **SECTION 67.2829. FEES FOR DUPLICATION.**

13 (a) No fee shall be charged for making public records available for review.

14 (b) For documents routinely produced in multiple copies for distribution, e.g.
15 meeting agendas and agenda packet ~~related~~ materials, unless a special fee has been
16 established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page
17 may be charged, plus any postage costs.

18 (c) For documents assembled and copied to the order of the requester, unless a
19 special fee has been established pursuant to subdivision (d) of this section, a fee not to
20 exceed 10 cents per page may be charged, plus any postage.

21 (d) A department may establish and charge a higher fee than the one cent
22 presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it
23 prepares and posts an itemized cost analysis establishing that its cost per page impression
24 exceeds 10 cents or one cent, as the case may be. The cost per page impression shall
25 include the following costs: one sheet of paper; one duplication cycle of the copying machine

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1 in terms of toner and other specifically identified operation or maintenance factors, excluding
2 electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and
3 maintenance contractor, if any, of the copying machine or machines referred to.

4 (e) Copies of video, audio, or digital ~~Video copies of video~~-recorded meetings shall
5 be provided to the public upon request for the actual cost of materials (i.e. Tape, disk, CD,
6 DVD) only. \$10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by
7 Proposition G, 11/2/99)

8 (f) A policy body may charge a duplication fee of one cent per page for a copy of a
9 public record prepared for consideration at a public meeting, unless a special fee has been
10 established pursuant to the procedure set forth in Section 67.29(d). Neither this section nor
11 the California Public Records Act (Government Code sections 6250 et seq.) shall be
12 construed to limit or delay the public's right to inspect any record required to be disclosed by
13 that act, whether or not distributed to a policy body.³⁴ (Added by Ord. 265-93, App. 8/18/93;
14 amended by Proposition G, 11/2/99)

15
16 **SECTION 67.30. MINIMUM STANDARDS; ELECTRONIC RECORDS; COMPUTER**
17 **SYSTEMS; WEB POSTINGS.**³⁵

18 (a) Inspection and Copying of Documentary Public Information Stored in
19 Electronic Form.

20 Unless prohibited by law, any Department or Policy Body that has information that
21 constitutes and identifiable public record not wholly exempt from disclosure pursuant to an
22 express provision of this Ordinance that is in an electronic format shall make that information
23 available in the native electronic or the specifically requested format as follows:

24 ³⁴ Moved from former 67.9(d).

25 ³⁵ New section combines former sections 67.21-1, and clarifies standards for computer systems and copies or access for electronic records.

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1 (1) Inspection and copying of documentary public information stored in
2 electronic format shall be made available to the person requesting the information in
3 any format in which the information is held by the Department or Policy Body, any
4 format that has been used by the Department or Policy Body to create copies for its
5 own use or for provisions to other agencies, or which is easily generated by the
6 Department or Policy Body, its officers or employees, including but not limited to any
7 word processing, spreadsheet, database, raw text, raw data or other software
8 programs used by or reasonably available to the Department or Policy Body.

9 (2) Copies of any public information stored in electronic form shall be made
10 available in an industry standard format, including but not limited to, CD-ROM, DVD,
11 disk, tape, or printout at a charge no greater than the cost of the medium on which it is
12 duplicated. Where requested and reasonably practicable, copies shall be provided via
13 electronic mail or other form of electronic transmission to the requestor.

14 (3) Where public information stored in electronic form contains information
15 that is exempt from disclosure pursuant to express provisions of this Ordinance, the
16 Department or Policy Body shall ensure that exempt information is segregated or
17 segregable from the disclosable information to allow disclosure or inspection of the
18 non-exempt information in electronic format pursuant to this section.

19 (4) Inspection of documentary public information in the application in which it
20 was created shall be allowed by providing reasonable access to a workstation provided
21 by a Department or Policy Body. However, such inspection need not be allowed where
22 the information sought is necessarily and inseparably intertwined with information
23 exempt from disclosure under express provisions of this Ordinance.

24 (5) Nothing in this section shall require a Department or Policy Body to
25 create a new computer program or system to respond to a request for information or to

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1 provide access that would jeopardize or compromise the security or integrity of the
2 original record or violate a licensing agreement or copyright law.

3
4 **(b) Converting Records to Electronic Format**

5 When responding to Sunshine Ordinance or public record requests, every Department
6 and Policy Body shall, if requested, and if necessary technology and equipment are available,
7 to transfer documents that are otherwise only available in hard copy/paper form into an
8 electronic format that is searchable and electronically archivable for delivery via electronic
9 mail or other electronic means and posting on the Department or Policy Body's website.³⁶

10
11 **(c) Minimum Standards for Use, Purchase and Upgrading of Computer**
12 **Systems.**

13 (1) It is the policy of the City and County of San Francisco to utilize computer
14 technology in order to reduce the cost of public records management, including the
15 costs of collecting, maintaining, and disclosing records subject to disclosure to
16 members of the public under this Ordinance. On an ongoing basis, Departments and
17 Policy Bodies that use computer systems to collect and store public records shall
18 program and design these systems to ensure convenient, efficient, and economical
19 public access to records pursuant to subsection (a) above, including providing the
20 ability to redact or extract information specifically exempt from disclosure under this
21 Ordinance from information that is otherwise disclosable and maintained in an
22 electronic format. Departments and Policy Bodies shall also make public records

23
24
25 ³⁶ Creates new provision for transfer of paper records to electronic format to increase public accessibility and utility of public information where reasonable and technologically feasible.

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1 easily accessible over public networks such as the Internet pursuant to subsection (d)
2 below.

3 (2) Departments and Policy Bodies purchasing or upgrading computer
4 systems shall reach the following goals as a means to achieve lower costs to the public
5 in connection with the public disclosure or records:

6 (i) Implementing a computer system in which exempt information is or
7 can be easily segregated from otherwise disclosable information.

8 (ii) Implementing a system that permits reproduction of electronic
9 copies of records in formats that are generally recognized as
10 industry standards.

11 (iii) Implementing a system that permits making records available
12 through the largest non-profit, non-proprietary public computer
13 network, consistent with the requirement for security of
14 information.

15 (3) A Department or Policy Body shall not enter into a contract for the
16 creation or maintenance of a computer system if that contract impairs the public's
17 ability to inspect or copy public information.

18 (d) Minimum Internet and Website Standards

19 Each Department and Policy Body shall maintain a website, or on a comparable,
20 readily accessible location on the Internet, information that it is required to make publicly
21 available.

22 (1) Each Department and Policy Body is encouraged to make publicly
23 available through its website as much information and as many documents as possible
24 concerning its activities. At a minimum, each Department or Policy Body within six
25 months of the end of each fiscal year shall make available through its website as much information and as many documents as possible concerning its activities. At a minimum, each Department or Policy Body within six

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1 months or 6 months after creation, shall post on its website all meeting notices required
2 under this Ordinance, agendas, and the minutes of all previous meetings for the last
3 three years. Notices and agendas shall be posted no later than the time that the
4 Department or Policy Body otherwise distributes this information to the public, allowing
5 reasonable time for posting. Minutes of meetings shall be posted as soon as possible,
6 but in any event within 48 hours after they have been approved.

7 (2) Each Department and Policy Body shall make reasonable efforts to post
8 documents and information on its website in an industry standard, text searchable
9 format.

10 (3) Each Department and Policy Body shall make reasonable efforts to
11 ensure that its website is regularly reviewed for timeliness and updated on at least a
12 weekly basis.

13 (4) Each Department and Policy Bodies home page shall contain a link, titled
14 "Records and Sunshine," to a page wherein the name, phone number, and e-mail
15 address of its custodian of records, and its records retention policy, and as reasonably
16 practicable post Sunshine Ordinance and public documents requests and the
17 responses thereto.

18 (5) As reasonably practicable, each Department and Policy Body that
19 digitally records its meeting shall post those digital recordings to its website within 48
20 hours.

21 (6) The City and County shall also make available on its website, or on a
22 comparable, readily accessible location on the Internet, a current copy of the City
23 Charter and all City Codes.

24
25

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1 **SECTION 67.21-431. POLICY REGARDING USE AND PURCHASE OF COMPUTER**
2 **SYSTEMS.**

3 (a) It is the policy of the City and County of San Francisco to utilize computer
4 technology in order to reduce the cost of public records management, including the costs of
5 collecting, maintaining, and disclosing records subject to disclosure to members of the public
6 under this section. To the extent that it is technologically and economically feasible,
7 departments that use computer systems to collect and store public records shall program and
8 design these systems to ensure convenient, efficient, and economical public access to
9 records and shall make public records easily accessible over public networks such as the
10 Internet.

11 (b) Departments purchasing new computer systems shall attempt to reach the following
12 goals as a means to achieve lower costs to the public in connection with the public disclosure
13 of records:

14 (1) Implementing a computer system in which exempt information is segregated
15 or filed separately from otherwise disclosable information.

16 (2) Implementing a system that permits reproduction of electronic copies of
17 records in a format that is generally recognized as an industry standard format.

18 (3) Implementing a system that permits making records available through the
19 largest non-profit, non-proprietary public computer network, consistent with the
20 requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended
21 by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

22
23 **SECTION 67.29-232. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.**
24
25

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1 Each department of the City and County of San Francisco shall maintain on a World
2 Wide Web site, or on a comparable, readily accessible location on the Internet, information
3 that it is required to make publicly available. Each department is encouraged to make publicly
4 available through its World Wide Web site, as much information and as many documents as
5 possible concerning its activities. At a minimum, within six months after enactment of this
6 provision, each department shall post on its World Wide Web site all meeting notices required
7 under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for
8 the last three years. Notices and agendas shall be posted no later than the time that the
9 department otherwise distributes this information to the public, allowing reasonable time for
10 posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48
11 hours after they have been approved. Each department shall make reasonable efforts to
12 ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at
13 least a weekly basis. The City and County shall also make available on its World Wide Web
14 site, or on a comparable, readily accessible location on the Internet, a current copy of the City
15 Charter and all City Codes. (Added by Proposition G, 11/2/99)

16 (a) Unless otherwise prohibited by law, any agency that has information that
17 constitutes an identifiable public record not exempt from disclosure pursuant to this chapter
18 that is in an electronic format shall make that information available in an electronic format
19 when requested by any person and, when applicable, shall comply with the following:

20 (1) The agency shall make the information available in any electronic format
21 in which it holds the information.

22 (2) Each agency shall provide a copy of an electronic record in the format
23 requested if the requested format is one that has been used by the agency to create
24 copies for its own use or for provision to other agencies. The cost of duplication shall
25 be limited to the direct cost of producing a copy of a record in an electronic format.

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1 **(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the**
2 **cost of producing a copy of the record, including the cost to construct a record, and the cost of**
3 **programming and computer services necessary to produce a copy of the record when either**
4 **of the following applies:**

5 **(1) In order to comply with the provisions of subdivision (a), the public**
6 **agency would be required to produce a copy of an electronic record and the record is**
7 **one that is produced only at otherwise regularly scheduled intervals.**

8 **(2) The request would require data compilation, extraction, or programming**
9 **to produce the record.**

10 **(c) Nothing in this section shall be construed to require the public agency to**
11 **reconstruct a record in an electronic format if the agency no longer has the record available in**
12 **an electronic format.**

13 **(d) If the request is for information in other than electronic format, and the**
14 **information also is in electronic format, the agency may inform the requester that the**
15 **information is available in electronic format.**

16 **(e) Nothing in this section shall be construed to permit an agency to make**
17 **information available only in an electronic format.**

18 **(f) Nothing in this section shall be construed to require the public agency to release**
19 **an electronic record in the electronic form in which it is held by the agency if its release would**
20 **jeopardize or compromise the security or integrity of the original record or of any proprietary**
21 **software in which it is maintained.**

22 **(g) Nothing in this section shall be construed to permit public access to records held**
23 **by any agency to which access is otherwise restricted by statute.**

24
25 **SECTION 67.2933. INDEX TO RECORDS.**

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1 The City and County shall prepare a public records index that identifies the types of
2 information and documents maintained by City and County departments, agencies, boards,
3 commissions, and elected officers. The index shall be for the use of City officials, staff and
4 the general public, and shall be organized to permit a general understanding of the types of
5 information maintained, by which officials and departments, for which purposes and for what
6 periods of retention, and under what manner of organization for accessing, e.g. by reference
7 to a name, a date, a proceeding or project, or some other referencing system. The index
8 need not be in such detail as to identify files or records concerning a specific person,
9 transaction or other event, but shall clearly indicate where and how records of that type are
10 kept. Any such master index shall be reviewed by appropriate staff for accuracy and
11 presented for formal adoption to the administrative official or policy body responsible for the
12 indexed records. The City Administrator shall be responsible for the preparation of this
13 records index. The City Administrator shall report on the progress of the index to the
14 ~~Sunshine Ordinance Task Force~~ Sunshine Commission on at least a semi-annual basis until
15 the index is completed. Each department, agency, commission and public official shall
16 cooperate with the City Administrator to identify the types of records it maintains, including
17 those documents created by the entity and those documents received in the ordinary course
18 of business and the types of requests that are regularly received. Each department, agency,
19 commission and public official is encouraged to solicit and encourage public participation to
20 develop a meaningful records index. The index shall clearly and meaningfully describe, with
21 as much specificity as practicable, the individual types of records that are prepared or
22 maintained by each department, agency, commission or public official of the City and County.
23 The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any
24 changes in the department, agency, commission or public official's practices or procedures
25 affecting the accuracy of the information provided to the City Administrator shall be recorded

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1 by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of
2 the index. The index shall be continuously maintained on the City's World Wide Website and
3 made available at public libraries within the City and County of San Francisco. (Added by Ord.
4 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

5
6 **SECTION 67.29-433-1. RECORDS AND CORRESPONDENCE SHALL BE MAINTAINED,**
7 **AND SHALL SURVIVE TENURE AND TRANSITION OF OFFICIALS.**

8 (a) All documents prepared, received, or maintained by the Office of the Mayor, by
9 any elected ~~city~~ City and ~~county~~ County official, and by the head of any City or County
10 Department – including but not limited to those enumerated in this Section – are permanently
11 the property of the City and County of San Francisco. The originals of these documents shall
12 be maintained consistent with the records retention and accessibility policies of the City and
13 County of San Francisco. The City Attorney, or Deputy City Attorney shall monitor the
14 transition of the Mayor, members of the Board of Supervisors, or any department head when
15 he/she leaves office to ensure that public documents are not unlawfully removed or destroyed
16 during the transition. These records shall be maintain and preserve, in a professional and
17 businesslike manner, all documents and correspondence, including but not limited to letters,
18 e-mails, drafts, memoranda, invoices, reports and proposals, and shall disclose all such
19 records in accordance with this ordinance.³⁷

20 (b) The Department of Elections shall keep and preserve all records and invoices
21 relating to the design and printing of ballots, mechanical or digital vote tabulation equipment
22 and other election materials, and all records documenting who had custody of ballots from the
23 time ballots are cast until ballots are received and certified by the Department of Elections.³⁸

24 ³⁷ Moved from former 67.29-7(a) and expanded to provide City Attorney oversight of
25 preservation of public information from specified high-level offices.

³⁸ Moved from former 67.29-7(b).

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1 (c) In every contract, agreement or permit between the City and any outside entity
2 that authorizes that entity to demand funds or fees from citizens, the City shall ensure that
3 accurate records of every transaction are maintained and preserved in a professional and
4 businesslike manner, and are available to the public as public records under the provisions of
5 this ordinance. Failure of an entity to comply with these provisions shall be grounds for
6 terminating the contract or for imposing a financial penalty equal to one-half of the fees
7 derived under the agreement or permit during the duration of the failure. Failure of any
8 Department to enforce or otherwise comply with this provision shall be a violation of this
9 ordinance. This paragraph shall apply to every agreement allowing an entity to tow or
10 impound vehicles in the City or to collect any fee from any persons in any pretrial diversion
11 program.³⁹

12
13 ~~SECTION 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.~~⁴⁰

14 ~~Each department of the City and County of San Francisco shall maintain on a World~~
15 ~~Wide Web site, or on a comparable, readily accessible location on the Internet, information~~
16 ~~that it is required to make publicly available. Each department is encouraged to make publicly~~
17 ~~available through its World Wide Web site, as much information and as many documents as~~
18 ~~possible concerning its activities. At a minimum, within six months after enactment of this~~
19 ~~provision, each department shall post on its World Wide Web site all meeting notices required~~
20 ~~under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for~~
21 ~~the last three years. Notices and agendas shall be posted no later than the time that the~~
22 ~~department otherwise distributes this information to the public, allowing reasonable time for~~
23 ~~posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48~~

24
25 ³⁹ Moved from former 67.29-7(c).

⁴⁰ Moved to new 67.30.

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1 ~~hours after they have been approved. Each department shall make reasonable efforts to~~
2 ~~ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at~~
3 ~~least a weekly basis. The City and County shall also make available on its World Wide Web~~
4 ~~site, or on a comparable, readily accessible location on the Internet, a current copy of the City~~
5 ~~Charter and all City Codes. (Added by Proposition G, 11/2/99)~~

6
7 **SECTION 67.29-3**

8 ~~Any future agreements between the city and an advertising space provider shall be~~
9 ~~public records and shall include as a basis for the termination of the contract any action by, or~~
10 ~~permitted by, the space provider to remove or deface or otherwise interfere with an~~
11 ~~advertisement without first notifying the advertiser and the city and obtaining the advertiser's~~
12 ~~consent. In the event advertisements are defaced or vandalized, the space provider shall~~
13 ~~provide written notice to the city and the advertiser and shall allow the advertiser the option of~~
14 ~~replacing the defaced or vandalized material. Any request by any city official or by any space~~
15 ~~provider to remove or alter any advertising must be in writing and shall be a public record.⁴¹~~

16 ~~(Added by Proposition G, 11/2/99)~~

17
18 **SECTION 67.29-433-2. LOBBYIST ON BEHALF OF THE CITY.**

19 (a) Any lobbyist who contracts for economic consideration with the City and County of
20 San Francisco to represent the City and County in matters before any local, regional, state, or
21 federal administrative or legislative body shall file a public records report of their activities on a
22 quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by
23 the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify
24 all financial expenditures by the lobbyist, the individual or entity to whom each expenditure

25 _____
⁴¹ Removed, as unnecessary and unrelated to Sunshine Ordinance.

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1 was made, the date the expenditure was made, and specifically identify the local, state,
2 regional or national legislative or administrative action the lobbyist supported or opposed in
3 making the expenditure. The failure to file a quarterly report with the required disclosures shall
4 be a violation of this Ordinance.

5 (b) No person shall be deemed a lobbyist under section (a), unless that person
6 receives or becomes entitled to receive at least \$300 total compensation in any month for
7 influencing legislative or administrative action on behalf of the City and County of San
8 Francisco or has at least 25 separate contacts with local, state, regional or national officials
9 for the purpose of influencing legislative or administrative action within any two consecutive
10 months. No business or organization shall be deemed as a lobbyist under section (a) unless it
11 compensates its employees or members for their lobbying activities on behalf of the City and
12 County of San Francisco, and the compensated employees or members have at least 25
13 separate contacts with local, state, regional or national officials for the purpose of influencing
14 legislative or administrative action within any two consecutive months. "Total compensation"
15 shall be calculated by combining all compensation received from the City and County of San
16 Francisco during the month for lobbying activities on matters at the local, state, regional or
17 national level. "Total number of contacts" shall be calculated by combining all contacts made
18 during the two-month period on behalf of the City and County of San Francisco for all lobbying
19 activities on matters at the local, state, regional or national level.

20 (c) Funds of the City and County of San Francisco, including organizational dues, shall
21 not be used to support any lobbying efforts to restrict public access to records, information, or
22 meetings, except where such effort is solely for the purpose of protecting the identity and
23 privacy rights of private citizens. (Added by Proposition G, 11/2/99)

24

25

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1 **SECTION 67.29-533-3. CALENDARS OF CERTAIN ELECTED OFFICIALS, DEPARTMENT**
2 **HEADS** ⁴²

3 The Mayor, The City Attorney, ~~the members~~ Members of the Board of Supervisors, and
4 ~~every Department Head~~ all elected officials and Department and Agency Heads of the City
5 and County of San Francisco who are subject to this Ordinance shall keep the following
6 publicly accessible calendars.

7 (a) ~~A shall keep or cause to be kept a daily calendar wherein is recorded~~ recording
8 the time and place of each meeting or event attended by that ~~official~~ person, with the sole
9 exclusion of purely personal or social events;

10 (i) ~~at~~ At which no city business is discussed; and

11 (ii) ~~that~~ That do not take place at City ~~Offices~~ offices or at the offices or
12 residences of people who do substantial business with or are otherwise
13 substantially financially affected by actions of the ~~city~~ City.

14 (b) ~~For meetings not otherwise publicly recorded, the calendar shall include a~~
15 ~~general statement of issues discussed with a group – the name of the group, including the~~
16 ~~name of a contact person, and a general statement or summary of matters to be discussed~~
17 shall be included on the calendar.

18 (c) For meetings with an individual – the individual's name and his or her business
19 or other affiliation, and a general statement or summary of matters discussed shall be
20 included on the calendar, unless disclosing the individual's name or other identifying

21
22 _____
23 ⁴² Provision revised to expand category of officials who must maintain calendars with certain
24 minimum information and clarify that Ordinance established a minimum of what information
25 must be maintained on specific officials' calendars and must be released within a specific,
expedited timeframe. Revisions also clarify that this provision does not exempt from
disclosure any other calendar or calendaring information that is maintained on City systems
by City employees or officials.

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1 information would violate a need for confidentiality imposed by law or on the facts of a
2 particular circumstance.

3 (d) Such calendars shall be public records and shall be available to any
4 requester three business days subsequent to the calendar entry date posted to the
5 Department or Elected Official's web site at the state of each business day.

6 (e) Each public official subject to this section is encouraged to post his or her
7 calendar in as far in advance as is practicable. (Added by Proposition G, 11/2/99)

8
9 **SECTION 67.29-633-4. SOURCES OF OUTSIDE FUNDING.**

10 No official or employee or agent of the ~~city~~ City shall accept, allow to be collected, or
11 direct or influence the spending of, any money, or any goods or services worth more than one
12 hundred dollars in aggregate, for the purpose of carrying out or assisting any City function
13 unless the amount and source of all such funds is disclosed as a public record and made
14 available on the website for the department to which the funds are directed. When such funds
15 are provided or managed by an entity, and not an individual, that entity must agree in writing
16 to abide by the disclosure requirement of this ordinance Ordinance. The disclosure shall
17 include the names of all individuals or organizations contributing such money and a statement
18 as to any financial interest the contributor has involving the City. (Added by Proposition G,
19 11/2/99)

20
21 **~~SECTION 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.~~**

22 (a) ~~The Mayor and all Department Heads shall maintain, and preserve, in a~~
23 ~~professional and businesslike manner all documents and correspondence, including but not~~
24
25

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1 limited to letters, e mails, drafts, memorandum, invoices, reports and proposals and shall
2 disclose all such records in accordance with this ordinance.⁴³

3 (b) — The Department of Elections shall keep and preserve all records and invoices
4 relating to the design and printing of ballots and other election materials and shall keep and
5 preserve records documenting who had custody of ballots from the time ballots are cast until
6 ballots are received and certified by the Department of Elections.⁴⁴

7 (c) — In any contract, agreement or permit between the City and any outside entity
8 that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that
9 accurate records of each transaction are maintained in a professional and businesslike
10 manner and are available to the public as public records under the provisions of this
11 ordinance. Failure of an entity to comply with these provisions shall be grounds for
12 terminating the contract or for imposing a financial penalty equal to one half of the fees
13 derived under the agreement or permit during the period of time when the failure was in effect.
14 Failure of any Department Head under this provision shall be a violation of this ordinance.
15 This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in
16 the City and shall apply to any agreement allowing an entity to collect any fee from any
17 persons in any pretrial diversion program.⁴⁵ (Added by Proposition G, 11/2/99)

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⁴³ Moved to new 67.33(a) and expanded.

25 ⁴⁴ Moved to new 67.33(b).

⁴⁵ Moved to new 67.33(c).

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ARTICLE IV
POLICY IMPLEMENTATION

1
2
3
4
5 Sec. ~~67.30.34~~ The Sunshine Ordinance Task Force Sunshine Commission

6 Sec. ~~67.34.35~~ Responsibility for Administration.

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

8 Sec. ~~67.33.37~~ Department Head Declaration.

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

10 Sec. 67.39 Hearing and Orders of Determination

11 Sec. 67.40 Administrative Enforcement Provisions

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

13 Sec. 67.42 Referrals and Enforcement by the Ethics Commission

14 Sec. ~~67.35.43~~ Public Enforcement Provisions.

15 Sec. ~~67.36.44~~ Sunshine Ordinance Supersedes Other Local Laws.

16 Sec. ~~67.37.45~~ Severability.

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

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

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

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

22
23
24 ¹ Revisions to reflect name change to New American Media; by adding the words "when
25 possible," removes absolute requirement that the Commission at all times include a voting
member who has an ADA-defined disability; and clarifies existing provisions.

² References to City Attorney moved to new 67.38, "Role of City Attorney."

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

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

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1 compliance with this ordinance and related California laws by the City or any
2 ~~Department~~department, ~~Office~~office, or ~~Official~~official thereof.³

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

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

9 ~~(d)~~~~(e)~~ In addition to the powers specified above, the Task Force COMMISSION shall
10 possess such powers as the Board of Supervisors may confer upon it by ordinance or as the
11 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 67.3135. 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.⁴ ~~The Clerk of the Board of Supervisors shall provide a full-time staff at least one~~

24 _____
25 ³ Clarified and makes consistent with other parts of Ordinance the bodies to which referrals
may be made by the Commission.

⁴ Language moved from former 67.21(e) in order to clarify and streamline Ordinance.

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

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

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

24 _____
25 ⁵ Adds language specifying that requirements to provide the Commission with certain
resources are minimum requirements, and that the Commission Administrator is to have no
duties besides those performed on the Commission's behalf.

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1 any such agency and institution at which City officers, agents or representatives are present in
2 their official capacities shall be open to the public, and this provision cannot be waived by any
3 City officer, agent or representative.

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

10
11 **SECTION 67.3337. DEPARTMENT HEAD OPEN GOVERNMENT DECLARATION.**

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

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1 SECTION 67.38. ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC
2 INFORMATION.⁶

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
24
25 ⁶ New section incorporates language moved from Articles II and III to clarify and streamline ordinance.

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

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

17
18 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**⁸

19 (a) The COMMISSION shall conduct administrative hearings on complaints of
20 alleged violations this Ordinance, the California Public Records Act, or the Brown Act. The
21 COMMISSION may issue Orders of Determination following the hearing on a particular
22 complaint. If the COMMISSION determines on the basis of substantial evidence presented

23 ⁷ Provision moved from former 67.21(h) and expanded to cover new Supervisor of Public
24 Forums and relevant open government legal decisions.

25 ⁸ New section incorporates language moved from Articles II and III in order to clarify and
streamline the Ordinance and revises language to specify levels of evidence necessary to
sustain findings of violation and Orders of Determination.

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1 during the hearing that a violation of the Ordinance, the California Public Records Act or the
2 Brown Act has occurred, it shall issue an Order of Determination with written findings of fact
3 and law. The Order of Determination shall issue to the Complainant and the Respondent and
4 shall be posted on the Commission's website.

5 (b) To the extent not prohibited by State law the COMMISSION may subpoena
6 witnesses, compel their attendance and testimony, administer oaths and affirmation, take
7 evidence and require by subpoena the production of any books, papers, records or other
8 items material to the performance of the COMMISSION'S duties or exercise of its powers.⁹

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

16
17 **SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.¹¹**

18 (a) Upon issuance of an Order of Determination finding that a record should be
19 released or other action should be taken by an employee, official, department, agency, policy
20 body or custodian of public records, the Sunshine Commission shall immediately order the

21 _____
22 ⁹ Based on legal advice provided by DCA Ernest Llorente that Commission as currently
23 appointed and constituted could appropriately have such powers, revision provides subpoena
24 power if necessary to secure sufficient evidence to reach a determination on a complaint.

25 ¹⁰ Expands on provision in former 67.21 requiring attendance at hearings and clarifies that
respondent's representative must have personal knowledge of the facts and legal authority
underlying its response.

¹¹ New section incorporates language from Articles II and III in order to clarify and streamline
Ordinance.

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1 person or entity to comply with the Order of Determination. If the person or entity fails to
2 comply with any such Order within 5 business days after issuance, the Sunshine Commission
3 may refer the matter to the San Francisco Ethics Commission, Board of Supervisors, District
4 Attorney or the State Attorney General or other appropriate enforcement body who may take
5 whatever measures they deem necessary to insure compliance with the Order of
6 Determination.¹²

7 (b) Upon issuing an Order of Determination, the COMMISSION may require the
8 governing entity to which the person or entity that has violated the Ordinance reports, to
9 schedule at the governing entity's next regularly scheduled meeting the Order of
10 Determination for its discussion and response.¹³

11 (c) Upon issuing an Order of Determination, the COMMISSION may require the
12 governing entity or department to which the person or entity that has violated the Ordinance
13 reports, to post the Order of Determination prominently on the entity's or department's website
14 for 60 days.¹⁴

15 (d) (1) Upon finding a serious and willful violation of this Ordinance, the
16 COMMISSION by not less than a two-thirds vote of the voting members may appoint outside
17 counsel to prosecute the violation(s) of the Ordinance by bringing an action in the Civil Courts
18 to the extent permitted by the City Charter.¹⁵

21 ¹² Revises list of bodies to whom referrals can be made to in order to clarify and make
22 Ordinance consistent.

23 ¹³ New provision to require public hearing by Commissions and policy bodies on Orders of
24 Determination issued by Commission.

25 ¹⁴ New provisions providing for public disclosure of Order of Determination issued by
Commission.

¹⁵ New provisions providing for appointment and funding of outside counsel to allow
Commission to enforce serious and willful violations of the Ordinance against respondents
who fail to comply with Orders of Determination.

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

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

8 (e) The administrative remedies provided under this Ordinance shall in no way limit
9 the availability of other administrative remedies provided to any person with respect to any
10 officer or employee of any agency, executive office, department or policy body; nor shall the
11 administrative remedy provided by this section in any way limit the availability of judicial
12 remedies otherwise available to any person. If a custodian of a public record refuses or fails to
13 comply with the request of any person for inspection or copy of a public record or with an
14 Order of Determination under this Ordinance, the Superior Court shall have jurisdiction to
15 order compliance.¹⁶

16 (f) An Order of Determination shall be evidence of a violation of this Ordinance or
17 other applicable open government law in any other administrative or judicial proceeding, and
18 factual findings made during the hearing shall be reviewed for abuse of discretion.¹⁷

19
20 **SECTION 67.3441. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

21 ~~The willful failure of any elected official, department head, or other managerial city~~
22 ~~employee to person, office or entity to discharge any duties imposed by the Sunshine~~
23 ~~Ordinance, the Brown Act or the California Public Records Act shall be deemed official~~

24 ¹⁶ Provision moved from former 67.21(f).

25 ¹⁷ New provision provides specific standard for review of Commission Orders of Determination
in subsequent administrative, municipal, or legal proceedings.

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1 misconduct for purposes of this Ordinance and any other applicable provisions of the City
2 Charter, Ordinances, and State law. If the Commission makes a determination that any
3 person or entity has willfully failed to discharge any such duties, then the Commission shall
4 refer with written findings of law and fact the matter to the Ethics Commission for
5 enforcement. The Commission may also refer the matter by to the Board of Supervisors,
6 District Attorney or the State Attorney General for investigation and enforcement. Complaints
7 involving allegations of willful violations of this ordinance, the Brown Act or the Public Records
8 Act by elected officials or department heads of the City and County of San Francisco shall be
9 handled by the Ethics Commission.¹⁸(Added by Proposition G, 11/2/99)

10
11 **SECTION 67.42. REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION.**¹⁹

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

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

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

22
23 ¹⁸ Clarifies that findings of willful failure to comply with Ordinance may be referred to Ethics
24 Commission, but also other entities for further proceedings.

25 ¹⁹ New provision specifies procedures by which referrals from the Commission shall be
investigated and enforced by the Ethics Commission. Adds new enforcement mechanisms
and penalties that may or must be imposed by the Ethics Commission.

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

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

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

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

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

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

19
20 **SECTION 67.3543. PUBLIC ENFORCEMENT PROVISIONS.**²⁰

21 (a) In any court proceeding pursuant to this Ordinance there shall be a presumption
22 that the information sought is disclosable, that any meeting or portion of a meeting should be
23 open to the public as well as the records of such meeting, and the burden shall be upon the
24 _____

25 ²⁰ New provision incorporates existing language from Articles II and III in order to clarify and streamline Ordinance.

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1 respondent to prove with specificity that they have fully complied with the request and/or that
2 an exemption to disclosure applies.

3 (ab) Any person may ~~institute~~commence proceedings for injunctive relief,
4 declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her
5 right to inspect or to receive a copy of any public record or class of public records under this
6 Ordinance or to enforce his or her right to attend any meeting required under this Ordinance
7 to be open, or to compel such meeting to be open. Filing a complaint with the Sunshine
8 Commission or exhausting the Commission complaint and hearing procedures is not a
9 prerequisite to filing an action under this subsection.²¹

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

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

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

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23 ²¹ Revises and clarifies existing language in Ordinance.

24 ²² New provision creating a right to judicial review of alleged public meeting violations, but only
25 after cure and correct provisions are complied with. Provides method by which members of
public can seek enforcement of enhanced public meeting provisions in the Sunshine
Ordinance through procedures that are consistent with the procedural requirements of the
Brown Act.

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- 1 (ii) Within 45 calendar days of receipt of the demand, the policy body shall cure or
2 correct the challenged action and inform the complainant in writing of its actions
3 to cure or correct or inform the complainant in writing of its decision not to cure
4 or correct the challenged action.
- 5 (iii) If the policy body takes no action within the 45-calendar-day period, the inaction
6 shall be deemed a decision not to cure or correct the challenged action.
- 7 (iv) The complainant who receives notice of the policy body's decision not to cure or
8 correct the challenged action, or if the policy body takes no action within the 45-
9 calendar-day period, may file a complaint with the Sunshine Commission. If the
10 Sunshine Commission finds that the policy body violated the Ordinance, the
11 complainant may commence an action pursuant to subsection (b). The Sunshine
12 Commission shall not have authority to void an action of a policy body, but filing
13 a complaint and exhausting the Commission's complaint and hearing
14 procedures is a prerequisite to filing an action under subsection (b).
- 15 ~~(be)~~ A court shall award costs and reasonable attorneys' fees to the plaintiff ~~who if~~
16 that person or entity is the prevailing party in an action brought to enforce this Ordinance.
- 17 (ef) If a court finds that an action filed pursuant to this section is frivolous, the City
18 and County may assert its rights to be paid its reasonable attorneys' fees and costs.
- 19 (dg) Any person may institute proceedings for enforcement and penalties under this
20 ~~act in any court of competent jurisdiction or Ordinance~~ before the Ethics Commission if
21 ~~enforcement action is not taken by a city or state official 40 days after a complaint is filed~~60
22 calendar days after an Order of Determination was issued by the Sunshine Commission, the
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1 City department, entity, official, body or employee has not complied with the Order of
2 Determination issued by the Sunshine Commission.²³ (Added by Proposition G, 11/2/99)

3
4 **SECTION 67.3644. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

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

9
10 **SECTION 67.3745. SEVERABILITY.**

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

16
17 **SECTION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR**
18 **SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.**

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

25 ²³ Provides a longer time period within which respondents must comply with Orders of
Determination before a complainant can go directly to the Ethics Commission.

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1 devices. The presiding officer may allow an expelled person to return to the public meeting
2 following an agreement by the expelled person to comply with the provisions of this Section. A
3 warning of the provisions of this Section shall be printed on all meeting agendas, and shall be
4 explained at the beginning of each public meeting by the presiding officer. (Added by Ord.
5 286-00, File No. 001155. App. 12/22/2000)

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