

Date: May 14, 2009

Item No. 5

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

## SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee

AGENDA PACKET CONTENTS LIST\*

Presentation

Completed by: Chris Rustom

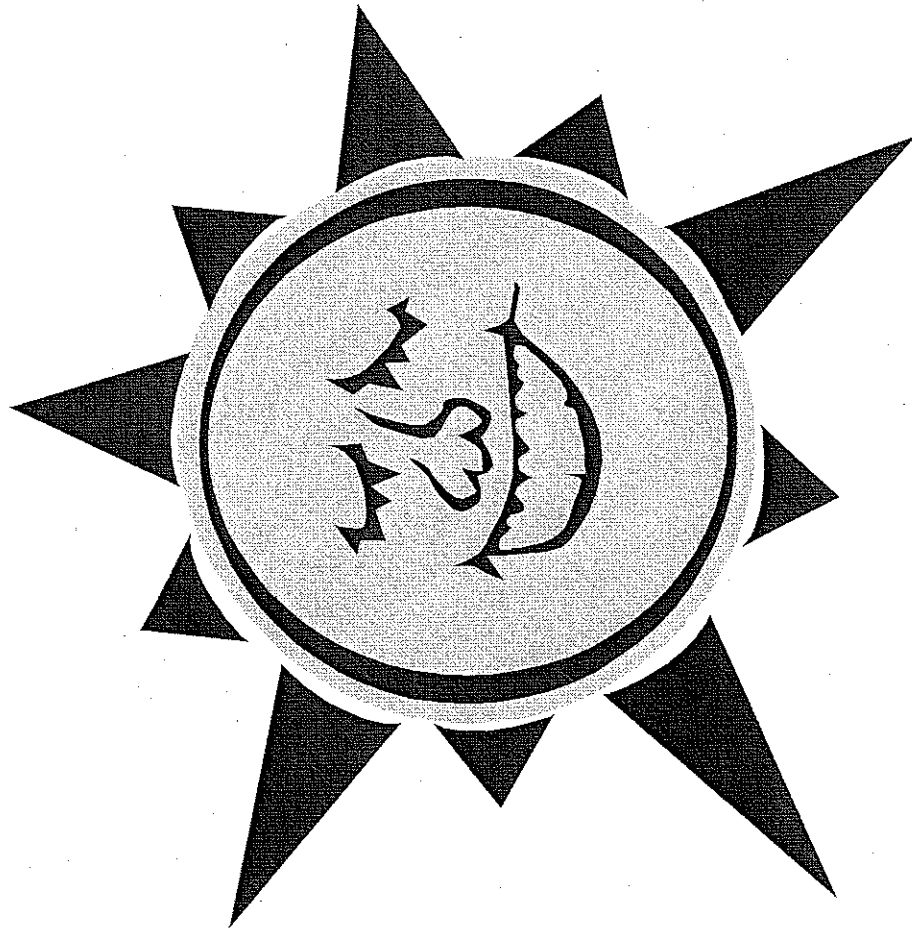
Date: May 11, 2009

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

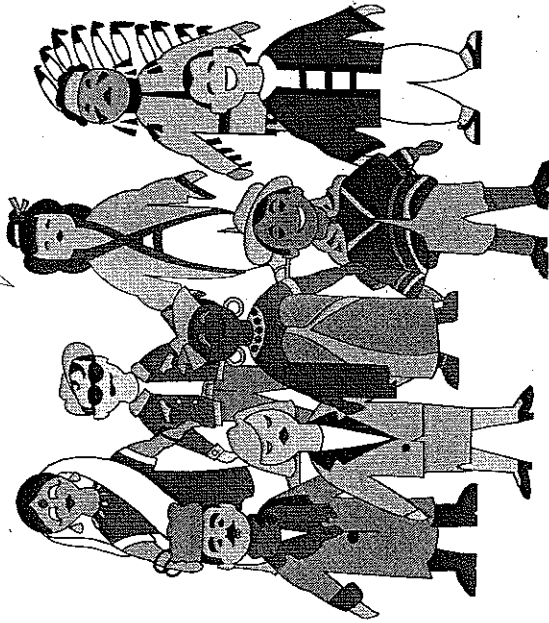
~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* 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.

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Good Day,  
Sunshine



# San Francisco Sunshine Ordinance Task Force

554-7724

# State and Local Sunshine Laws

- Brown Act  
*(State open meeting law)*
- California Public Records Act  
*(State public records law)*
- Sunshine Ordinance  
*(S.F. open meeting and public records law)*
- “Nonprofit” Sunshine Ordinance  
*(S.F. law granting access to records of some nonprofits)*

# **Brown Act**

## **Regulating meetings of legislative bodies**

- Open meetings
- Notices & agendas
- Closed sessions
- Public comment

# Public Records Act

## Regulating access to public records

- Exemptions for documents privileged under the Evidence Code, other state and federal law
- Documents may be withheld under the balancing test and deliberative process privilege
- E-Mails that are “records” must be retained

# San Francisco Sunshine Ordinance

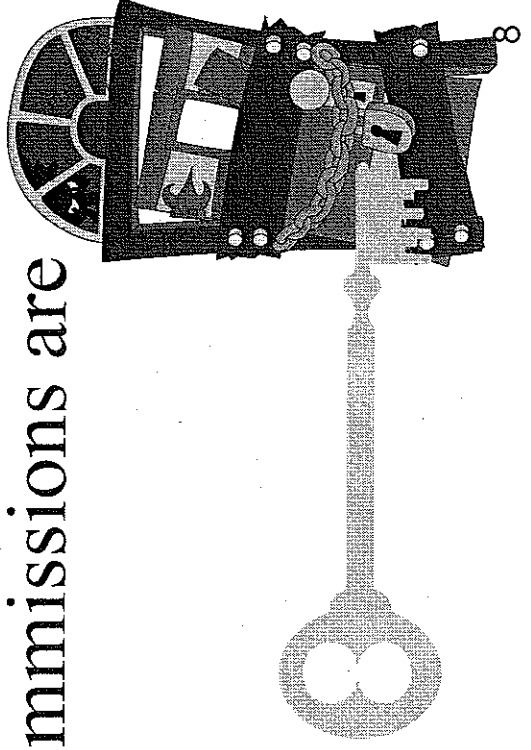
- Enacted in 1993, amended by the voters in 1999.
- Provides access to “passive meetings.”
- Allows the public to address meetings.
- Required 24 hour response time.



# Public Meetings

# The Purpose of Open Meeting Laws

- Commissions, boards, and committees exist to conduct the people's business.
- These laws ensure that the deliberations and actions of boards and commissions are conducted openly.



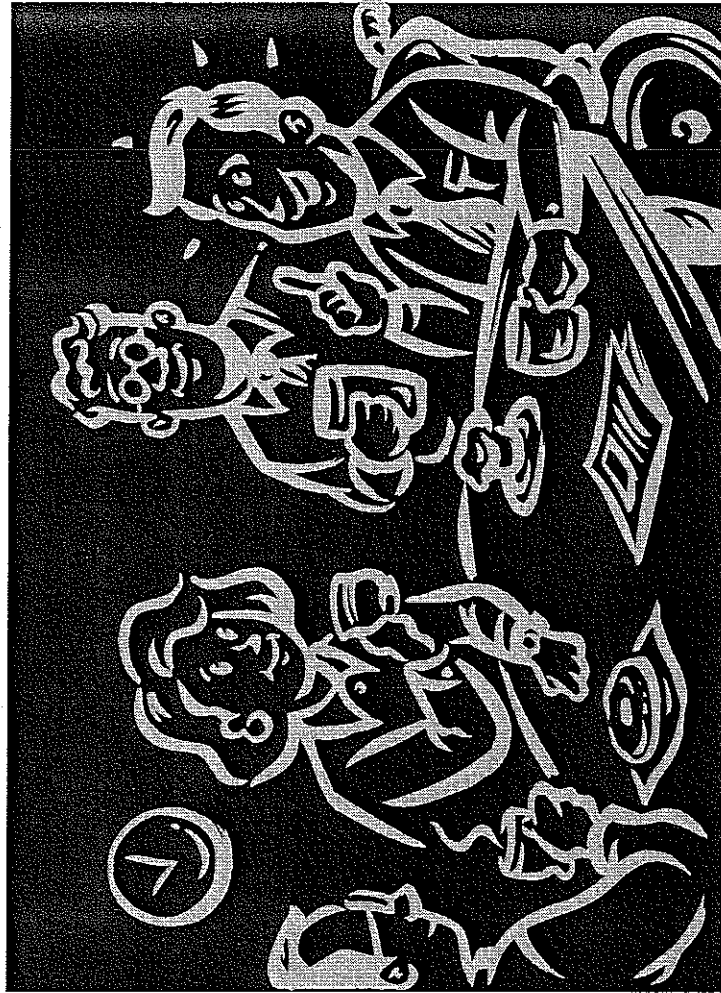
## **Public Meeting Laws Apply to:**

- A commission, committee, board or other body created by charter, ordinance, resolution or formal action of a legislative body.
- Any board, commission, task force, subcommittee or other body created by a policy body.
- Any such body created by a federal, state or local grant whose members are appointed by City officials, employees or agents.

# What is a Meeting?

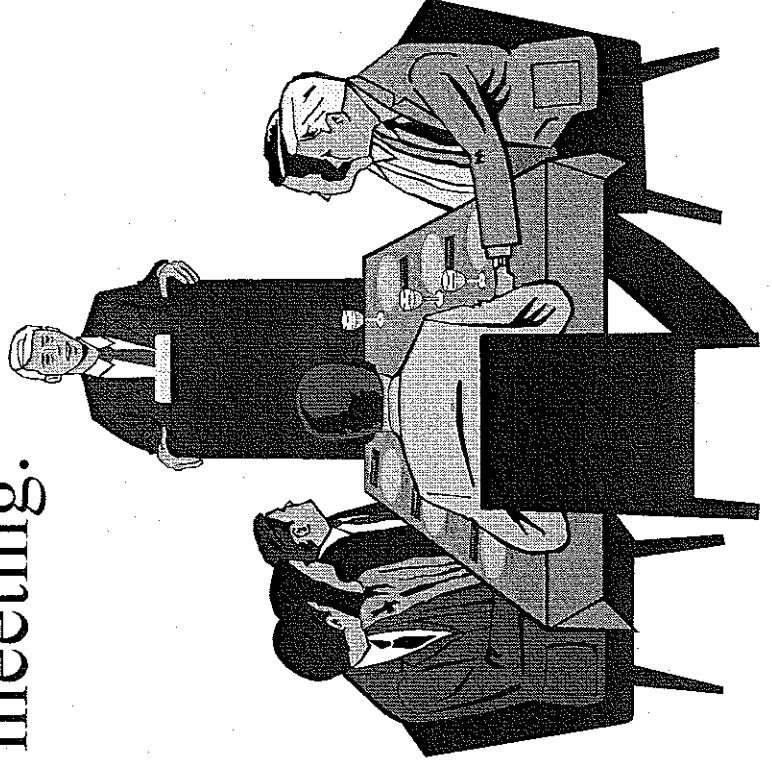
- A meeting occurs whenever a majority of the members of a policy body come together at the same time and place.
- A meeting occurs even where no action is taken.
- A gathering for discussions, presentations or working meals are meetings.

# Are Social Occasions Meetings?



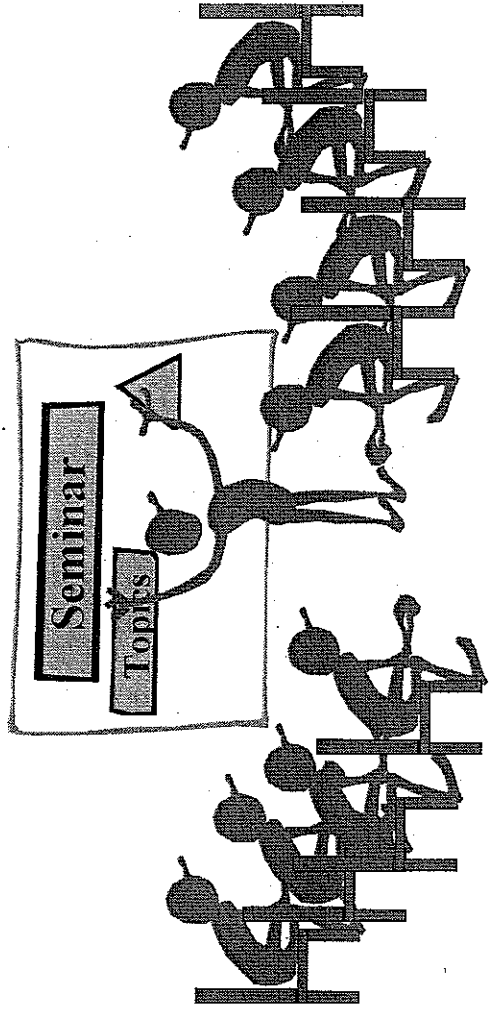
# Meal Gatherings

- A “meal gathering” of a commission before, during or after a meeting is considered to be part of that meeting.

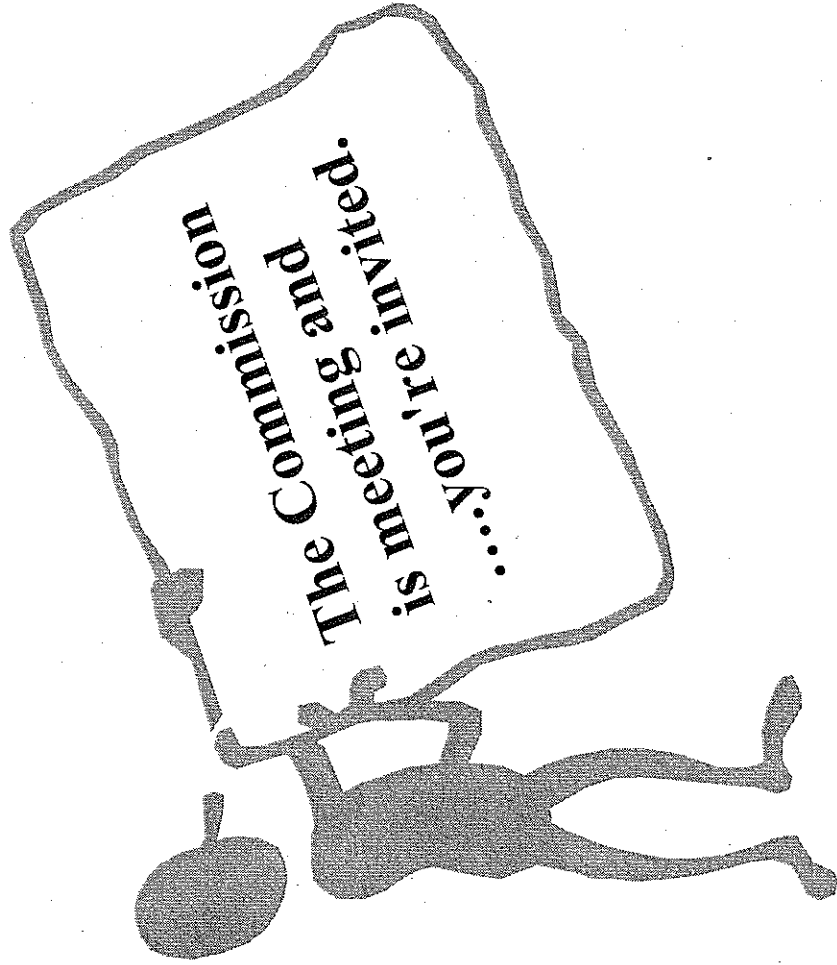


# Retreats

- A retreat is a meeting, subject to all meeting requirements.
- Except in extremely limited circumstances, retreats must be held in San Francisco.



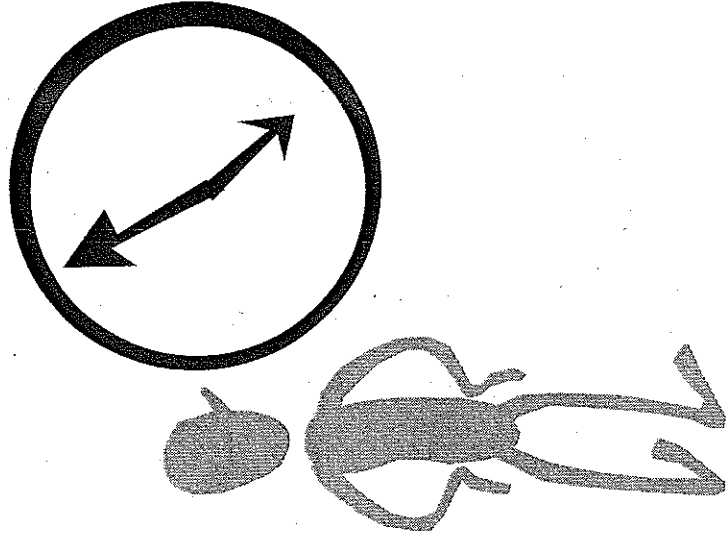
# What is Proper Notice of a Meeting?



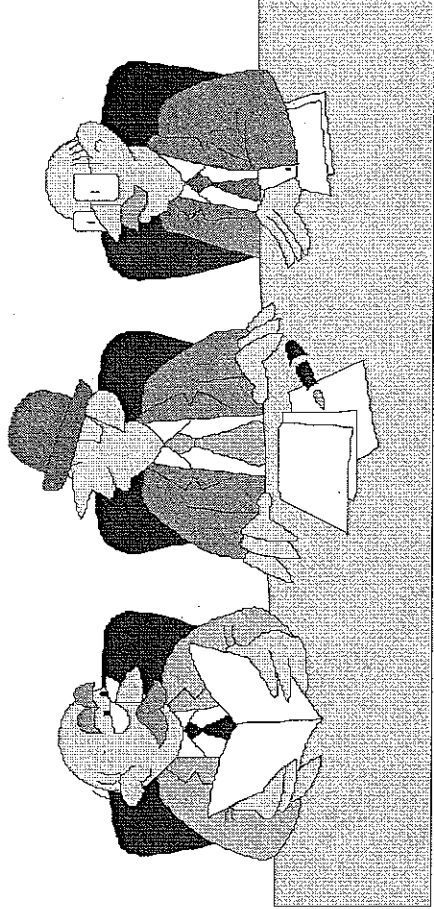


# Regular and Special Meetings

A notice and agenda is required 72 hours before the meeting.



# May a Commission Discuss or Act on an Item Not Listed on the Agenda?



# **The answer is.....NO!**

With a few exceptions:

- Commission members may respond to public's statements or questions.
- Under limited emergency circumstances.

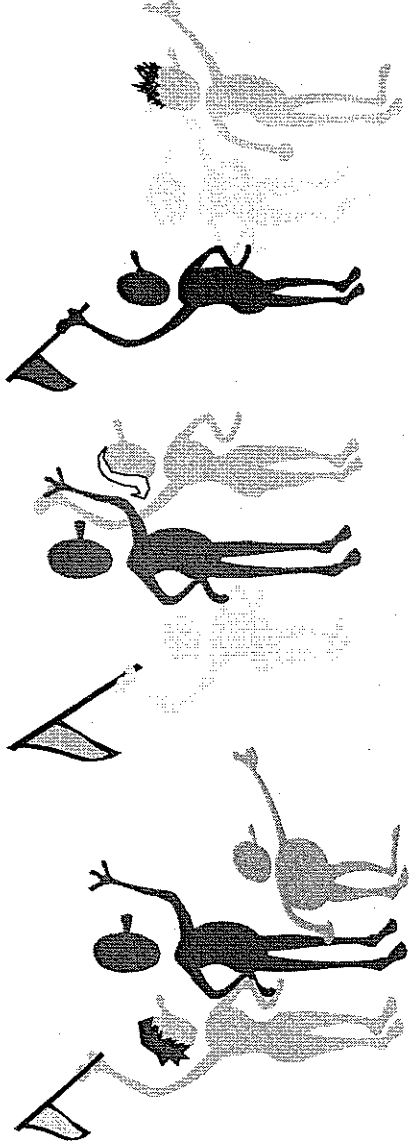
# **When May a Commission Hold a Session Closed to the Public?**

# Closed Sessions

- Personnel Matters -- Very Limited
- Pending or Threatened Litigation
- Real Estate Negotiations

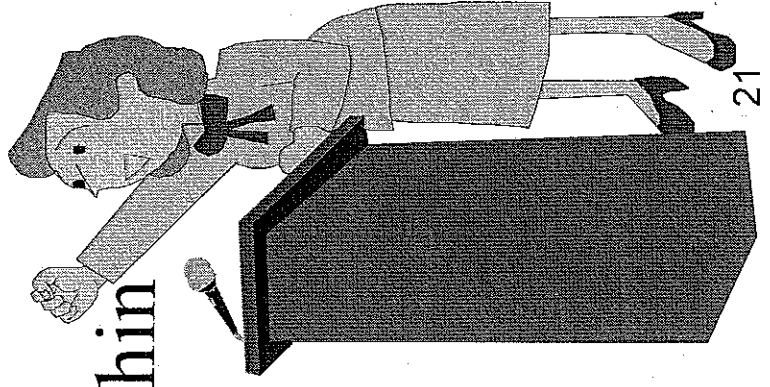


# What Rights Does the Public Have?

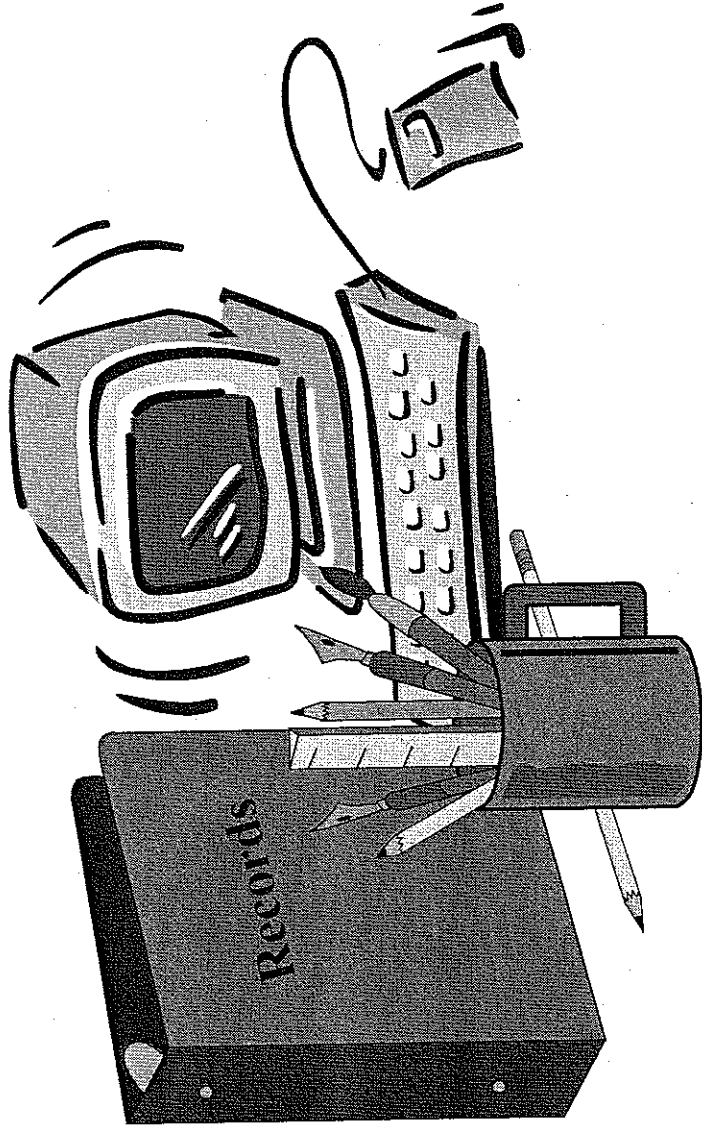


# Public Comment

- The public must be allowed to speak before or during the discussion of any item on the agenda.
- The public may speak on any item within the jurisdiction of the body, even if not on the agenda.
- Rules must apply limits on public comment uniformly.



# Must a Commission Keep a Record of Its Proceedings?





# Record of Proceedings

- Minutes
  - All boards must keep a record of motions and votes.
  - Charter boards and commissions must keep minutes.
- Tape Recordings
  - Charter boards and commissions must record every meeting.
  - Every policy body must record all closed sessions.

# Are Closed Session Tape Recordings Subject to Disclosure?

- Generally, yes -- “whenever all rationales for closing the session are no longer applicable.”
- **Consult the City Attorney’s Office or the Task Force if you have questions**

# Passive Meetings

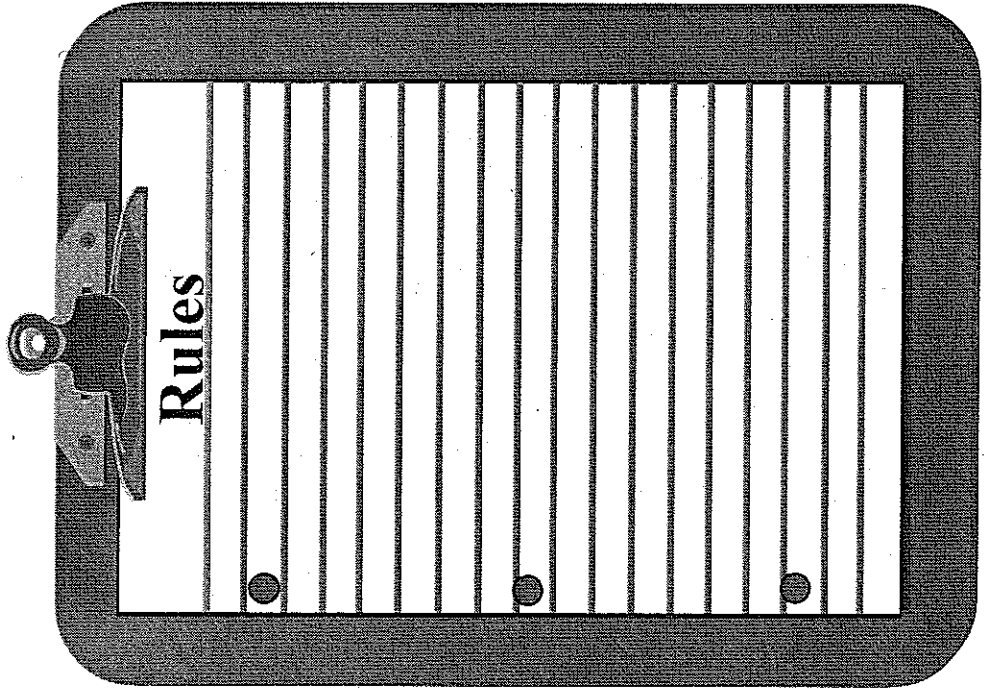
## **Passive Meeting Bodies Include:**

- Advisory committees created by the initiative of or otherwise primarily formed or existing to serve as a non-governmental advisor to a member of a policy body, the Mayor, the City Administrator, department head or other elective officer.

## **Passive Meeting Bodies Include:**

- Committees created by the initiative of a member of a policy body, the Mayor, or a department head, consisting solely of City employees, that is reviewing, developing, modifying, or creating city policies or procedures relating to public health, safety, welfare, or relating to services for the homeless are subject to the passive meeting provisions.

# What are Passive Meeting Rules?



# Passive Meeting Rules

- The gathering must be open to the public.
- No formal notice is required, except on the City's web site "whenever possible."
- The time, place and nature of gathering must be disclosed, upon inquiry by a member of the public.

## Passive Meeting Rules

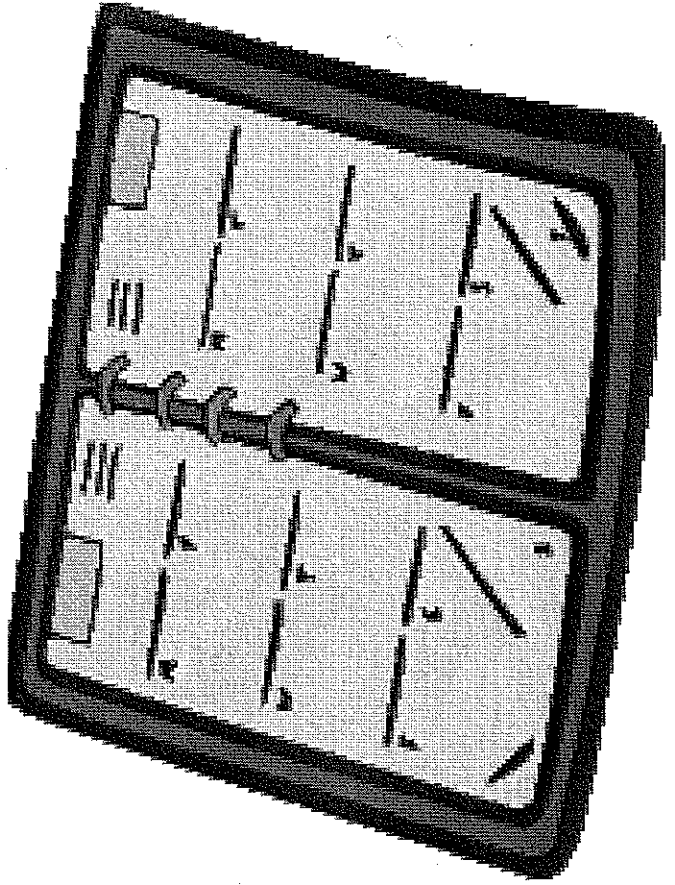
- No agenda need be prepared; however, any agenda that is prepared must be disclosed upon request.
- No public comment is required; however, the presiding officer may take public comment in her discretion.



# Public Records

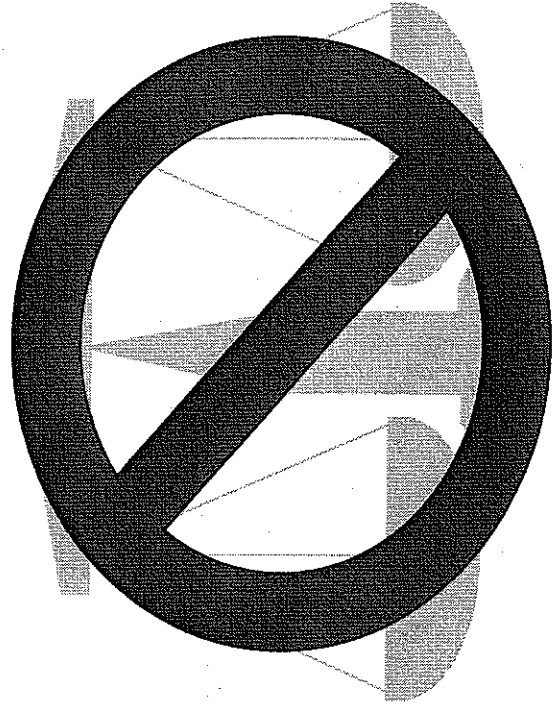
# San Francisco Public Records Laws

- The Mayor, City Attorney and all Department Heads must keep and disclose their calendars.



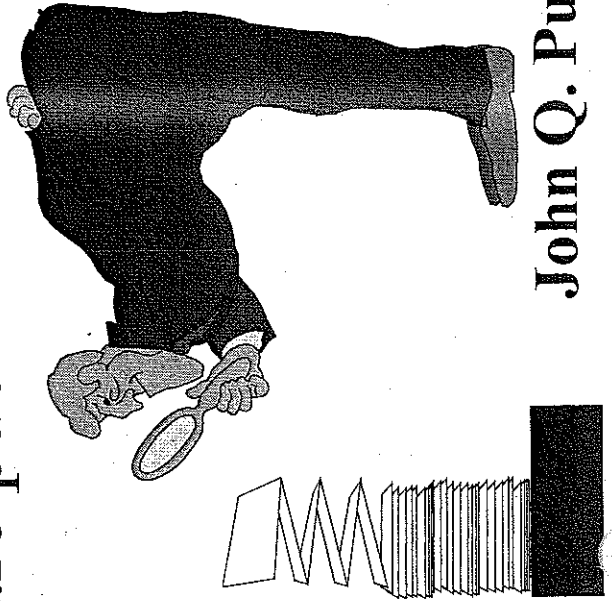
# San Francisco Public Records Laws

- The City may not refuse to provide records under the balancing test or the deliberative process privilege.



# Employee Requirements

- Records relating to confirmed employee misconduct involving dishonesty, misappropriation, discrimination (including discipline imposed) are public.



**John Q. Public**

# "Citizen Assistance" Requirements

Custodian must:

- Assist requester in determining available records. § 67.21 (c)
- If requested, provide written description of available records. § 67.21(c)
- Direct requester to proper person or office. § 67.21(c)
- Inform requester of alternative sources where record contains mostly exempt information. § 67.29(d)

# Production of Records

- "Immediate disclosure" applies to all categories of records. § 67.25(a)

# E-mail

- E-mail that is created or received in connection with the transaction of public business and which is:
  - evidence of a Department's activities, or
  - relates to the legal or financial rights of the City or members of the public**must be retained.**

# Non-Profit Public Access Ordinance



# **Non Profit Public Access Ordinance, SF Adm Code, Chapter 12L**

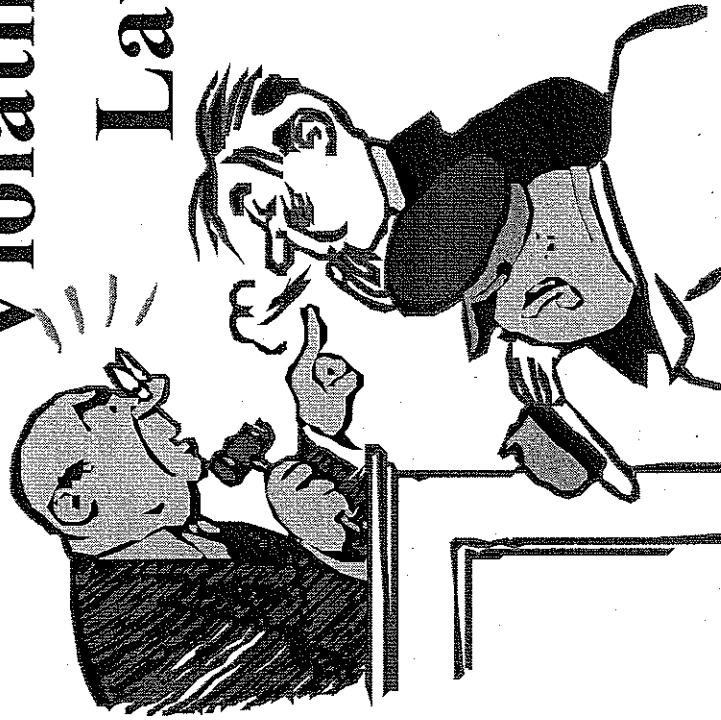
- Applies to non-profits that receive at least \$250,000 per year in funding from the City
- If 12L applies, the non-profit must: 1) have 2 open board meetings a year; 2) allow the public to address the board; 3) post notice of the board meeting; 4) provide copies of certain financial records (such as tax returns, audits and budgets)

# Sunshine Ordinance Task Force

## **Sunshine Ordinance Task Force**

- The Sunshine Task Force is an 11 member body appointed by the Board of Supervisors.
- Members of the public may file complaints with the Task Force alleging violations of the sunshine laws.
- The Task Force may determine if the sunshine laws have been violated.

# Are There Any Penalties for Violating the Sunshine Laws?



# **Penalties Under The Brown Act**

- Willful Violation A Misdemeanor
- Invalidation of Action
- Declaratory and Injunctive Relief
- Attorney Fees and Costs

# **Penalties Under The Sunshine Ordinance**

- Willful violation by managerial city staff or elected officials is Official Misconduct
- Ethics Commission can investigate
- Court Enforcement

**Questions about the Sunshine Ordinance,  
Call the San Francisco Sunshine Ordinance Task Force**

**at**

**554-7724**