

Date: March 17, 2011

Item No. 1
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	Chair Knee's submissions	Page 4
<input checked="" type="checkbox"/>	Member Johnson's submissions	Page 8
<input checked="" type="checkbox"/>	Proposed amendments	Page 10
<input type="checkbox"/>		
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Completed by: Chris Rustom

Date: _____

***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.

LIST OF MAJOR SUNSHINE ISSUES AND PROPOSED SOLUTIONS
Respectfully submitted by Richard Knee, Sunshine Ordinance Task Force Chair

1. “Task Force” or “Commission”?

It is possible that the latter name would garner a bit more respect for our body from City officials and employees, and from citizens. But that cannot be guaranteed. Broadening our authority, and clarifying the sunshine-related duties and responsibilities of City officials and employees is much more urgent and would be much more effective in helping us to do our job.

Furthermore, a name change would give voters that much more to pore through when weighing a ballot initiative.

Recommendation: Leave it alone this time around.

2. Complaint respondents’ absence from Task Force and committee meetings.

The Ordinance requires respondents to complaints dealing with public records access to send knowledgeable representatives to hearings of the Task Force and its committees (Sec. 67.21(e)). In the spirit of Sec. 67.1(e), the Task Force has expanded its interpretation of that requirement to include respondents to complaints alleging open-meeting violations as well. However, entities with enforcement/penalization authority, especially the Ethics Commission, insist on going by the letter of the law on this particular issue.

Moreover, respondents to public records-related complaints too often flout Sec. 67.21(e), even though the letter of that provision clearly pertains to them.

The Ordinance must be amended to require that respondents to complaints alleging any and all sunshine-related violations be required to send knowledgeable representatives to hearings of the Task Force and its committees. The consensus seems to be that this would be most easily accomplished by revising the relevant language in 67.21(e). This might not be the case, because that section is part of Ordinance Article III, which deals specifically with public records. I believe there are other options:

- Add or append a section in Article II, which deals with open meetings.
- Add or append a section in Article IV, which deals with implementation and enforcement of the requirements in the Ordinance.

Recommendations:

1) *Leave 67.21(e) as is and add 67.18, under Article II, to state:*

“SEC. 67.18. PUBLIC-MEETING COMPLAINTS; HEARINGS.

“Where requested by petition, the Sunshine Ordinance Task Force may conduct a public hearing into a complaint that a policy body, an advisory body or a passive meeting body violated any of the foregoing sections in Article II of this Ordinance or any provision in the Ralph M. Brown Act

that apply to the specific body. An authorized representative of that body shall attend every hearing on the matter and explain the basis for the body's conduct therein."

2) Create a new Section 67.30(d) to state: "The Sunshine Ordinance Task Force is authorized to (1) issue subpoenas to compel testimony and evidence from parties-in-interest to complaints filed with the Task Force, and (2) place under oath, during testimony, any party-in-interest to and any person claiming knowledge regarding a complaint filed with the Task Force."

3. Electronic records withholding and reformatting.

Officials and employees of numerous City entities routinely provide Portable Data File (PDF) copies of documents, even when asked to provide the documents in their native format. They argue that the original documents contain metadata that include information that is exempt or barred from disclosure. The Task Force has consistently held that that reasoning is invalid, notwithstanding advice to the contrary from the City Attorney's Office. The Sunshine Ordinance and the Public Records Act both make clear that all City records are public, and that when a document includes both disclosable and non-disclosable data, the disclosable portion(s) must be provided upon request.

Recommendation: Add language to Sec. 67.21(l) to stipulate that requesters have the right to view and receive copies of electronic documents in any format in which they were produced or used: "Members of the public have the right to view and receive copies of electronic documents in any format in which the documents were produced or used in the conduct of the City's business. Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Metadata contained in an electronic document are officially deemed part of the public record and shall be treated as such; when such metadata include both disclosable and non-disclosable portions, the entity responding to an electronic-record request shall edit out the non-disclosable portion(s) and shall include the disclosable portion(s) in the record provided to the requester, unless such editing is provably impossible. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law."

4. Meeting minutes.

"Action" minutes, while easy to take and produce, and easy to review for the policy body whose meetings they are intended to summarize, create extra work for members of the public who want details of what has transpired at the meeting, especially to learn the bases for decisions the body has made. The availability of audio-recordings is only a partial remedy; in fact, it is no remedy for the hard-of-hearing. In addition, there is no clear instruction on whether written comments submitted to a body should be included in the text of the minutes or appended as footnotes. I expect that the possible remedies I suggest immediately below will meet vigorous opposition from the Clerk of the Board of Supervisors.

Recommendation: Amend Sec. 67.16 to state: “The clerk or secretary of each ~~board and commission enumerated in the charter~~ City policy and advisory body shall record the minutes for each regular and special meeting of the ~~board or commission~~ body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll-call vote on each matter considered at the meeting, the time the ~~board or commission~~ body began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person’s statement during the public comment period for each agenda item, and the time the meeting was adjourned. The minutes shall also list the time that discussion of each matter started, and shall include a summary of the position statements that members make on each matter considered at the meeting. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the body of the minutes. If those comments pertain to a matter that has been discussed at the meeting, they shall be placed in the section of the minutes dealing with that item. ...

OR

“The clerk or secretary of each ~~board and commission enumerated in the charter~~ City policy and advisory body shall record the minutes for each regular and special meeting of the ~~board or commission~~ body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll-call vote on each matter considered at the meeting, the time the ~~board or commission~~ body began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person’s statement during the public comment period for each agenda item, and the time the meeting was adjourned. The minutes shall also list the time that discussion of each matter started. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the body of the minutes. If those comments pertain to a matter that has been discussed at the meeting, they shall be placed in the section of the minutes dealing with that item. When minutes are taken and posted in “action” rather than in complete format, hearing-challenged persons may request a transcript of the audio-recording of a public meeting or any portion thereof. ...

5. Fines and penalties for violations.

Ethics Commission members and staff aides have complained that they do not know what fines or penalties to impose for sunshine-law violations, because the Ordinance provides no guidance.

Recommendation: Amend Sec. 67.34 to state: “The willful failure of any elected official, department head, or other managerial ~~e~~ City employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. ~~Complaints involving allegations of~~ When issuing a finding of a willful violations of this ~~o~~ Ordinance, the Brown Act or the Public Records Act by an elected officials, ~~or~~ department

heads or other managerial employee of the City and County of San Francisco, the Sunshine Ordinance Task Force may refer the matter to shall be handled by the Ethics Commission, the Board of Supervisors, the District Attorney and/or the State Attorney General, with a recommendation that a fine and/or other penalty(ies) be imposed on the violator, such fine or other penalty(ies) to depend on the nature and severity of the violation, and on how many previous violations are on the person's record of conduct.

"The fine imposed shall range between five hundred dollars (\$500) and five thousand dollars (\$5,000) for each violation. Other penalties may include a letter of reprimand or censure to be placed in the violator's file, and/or demotion or dismissal."

6. Disagreements with the City Attorney, including the Deputy City Attorney assigned to the Task Force.

It has been suggested that the Task Force be authorized to spend up to \$50,000 per fiscal year (July-June) to hire an outside attorney when members strongly believe that the Ethics Commission, Board of Supervisors, DA and/or state AG are failing to take sufficient, decisive action on a violation or are otherwise subverting City or state sunshine law. This raises a question of whether a board, commission, department or agency may sue another entity within the same government. An outside attorney queried on the subject mentioned to me that federal agencies do, in fact, sue one another, though he did not know whether this does or could occur at the state or local level. There is also a political question – whether this type of empowerment would generate enough heat to weaken the chances that our reform package would pass.

Recommendation: Do NOT add this type of provision without obtaining legal and political analyses.

7. Disclosability of responses to Requests for Qualifications, Bids etc. preparatory to hiring outside contractors.

The language in Sec. 67.24(e)(1) is not broad enough in the types of request responses covered. It should clarify that responses to all types of requests preparatory to awarding of contracts are covered. I would NOT change the actual disclosability requirements; drafters of the current Ordinance recognized that requiring disclosure of request responses too early in the process can undermine the competitive nature thereof.

Recommendation: Amend Sec. 67.24(e)(1) to state: "Contracts, contractors' bids, responses to requests for any and all types of documents issued preparatory to the awarding of contracts – including but not limited to proposals, bids, qualifications and quotes – and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. ..."

MEMO

To: Chris Rustom, SOTF Administrator
Sunshine Ordinance Task Force Members

From: Hope Johnson, SOTF Member, Seat 10

Date: March 10, 2011

Re: SOTF Amendments for Special Meeting on March 17, 2011
(Top Five Issues for Ballot)

On March 6, 2011, SOTF Chair Knee requested SOTF members forward to our Administrator a list detailing the top five Sunshine Ordinance amendments to present to voters. Following is my list of potential amendments for discussion at the special meeting scheduled for March 17, 2011.

1. Requirement for respondent to appear at SOTF hearings for alleged violations of public meeting requirements

Sec. 67.21(e) requires an appearance only for public information allegations. Although the TF has used the section for violations of public meeting requirements, the Ethics Commission has rejected that use (see, for example, Member Cauthen's complaint against the Library Commission). An amendment could be added to (1) Article II requiring an appearance for public meeting violations that mirrors 67.21(e) or (2) the new sections on hearings and enforcement proposed during the work with former Member Craven-Green (see, for example, new sections 67.39 and 67.40).

2. Update definitions

Several terms remain undefined in the current ordinance. Ethics Commission has issued at least one report stating the terms "file" and "complaint" are difficult to address because they are not defined within the ordinance (see Member Cauthen's complaint against the Library Commission). Amendments could be added to the most appropriate Articles, depending on the TF's final adoption or rejection of the proposed work with former Member Craven-Green.

3. Revise Sec. 67.24(e) on Contracts, bids, and Proposals to include an RFQ

The Stow Lake vendor case demonstrated the City, especially Rec & Park, frequently now use a Request for Qualifications (RFQ) as a complete substitute for a Request for Proposals (RFP). Because this was not the standard practice when the ordinance was written, the current requirements assume an RFQ will precede an RFP. The amendments proposed during the work with former Member Craven-Green (see new section 67.25(e)) are an excellent beginning but may need revisions based on (1) the City Attorney's June 25, 2010 memo discussing potential conflicts with law (for example, the proposed section references a "RFQuote" which is not a term used by the City) and/or (2) there are some contracts where standard practice is the use of only an RFQ (for example, contracts for office supplies or a court reporter service).

4. Broadcast requirement

New Sec. 67.13(f) proposed during the work with former Member Craven-Green would require bodies enumerated in the Charter are broadcast by 2012. I suggest the same amendment with a revised deadline of 2014 and the addition of specific bodies not in the Charter such as the Sunshine Ordinance Task Force and the Rent Board. A broadcasting requirement would ensure budget revisions to include broadcasting rather than waiting for "a better revenue time."

5. Change the name of the Task Force to the Sunshine Commission

This revision is already included throughout the ordinance from the proposals completed with former Member Craven-Green. I think this is an important amendment because the term "commission" has a formal connotation that the term "task force" does not evoke. The same can be said for referring to Task Force members as "commissioners" rather than "members" during our quasi-judicial hearings. There is consensus among TF members of a need to increase respect for compliance with the Sunshine Ordinance and our hearings, and the name change would be a good beginning.

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~striketthrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

Note: Track change mode in use. As of June 1, 2010

PROPOSED ORDINANCE AMENDMENTS

ARTICLE I IN GENERAL

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3
4
5 Sec. 67.1. Findings and Purpose.

6 Sec. 67.2. Citation.
7

8 SECTION 67.1 FINDINGS AND PURPOSE.

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

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

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

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

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

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

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

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

17

18 **SECTION 67.2. CITATION.**

19 This ~~Chapter~~chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord.
20 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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

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ARTICLE II
PUBLIC ACCESS TO MEETINGS

- Sec. 67.3. Definitions.
- Sec. 67.4. Passive Meeting Bodies, Conduct of Business.
- Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
- Sec. 67.6. Policy Bodies; Conduct of Business; Time and Place For Meetings.
- Sec. 67.7. Agenda Requirements for Meetings of Policy Bodies; ~~Regular Meetings.~~
- Sec. 67.7-1. Public Notice Requirements.
- Sec. 67.8. Agenda Disclosures: Closed Sessions.
- ~~Sec. 67.8-1. Additional Requirements for Closed Sessions~~
- Sec. 67.9. Agendas and Related Materials: Public Records.
- Sec. 67.10. Closed Sessions: Permitted Topics.
- Sec. 67.11. Statement of Reasons For Closed Sessions.
- Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
- Sec. 67.13. Barriers to Attendance Prohibited.
- Sec. 67.14. ~~Tape~~ Recording, Filming and Still Photography.
- Sec. 67.15. Public Testimony.
- Sec. 67.16. Minutes.
- Sec. 67.17. Public Comment By Members of Policy Bodies.
- Sec. 67.18 Supervisor of Public Forums

SECTION 67.3. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

17 (E) When a majority of members attend a meeting of another policy body to observe
18 or publically comment on a matter specifically noticed before that policy body.

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

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.

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1 | ~~(c)~~(d) "Policy body" shall mean:³

2 | (1) The Board of Supervisors;

3 | (2) Any other board, ~~or commission, or other body~~ enumerated in the Charter;

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

6 | ~~(5)~~(4) Any board, commission, committee or other body, standing committee of a policy
7 | body composed of members of the policy body, irrespective of its composition.;

8 | ~~(4)~~(5) Any advisory board, commission, committee or other body, created by the
9 | ~~initiative Mayor or of a~~ policy body;

10 | (6) "Policy body" shall not include a committee ~~which~~ that consists solely of
11 | employees of the City and County of San Francisco, unless such committee was established
12 | by Charter or by ordinance or resolution of the Board of Supervisors. Policy body" shall not
13 | ~~include a committee which that consists solely of employees of the City and County of San~~
14 | ~~Francisco, unless such committee was established by Charter or by ordinance or resolution of~~
15 | ~~the Board of Supervisors.~~

16 | ~~(7)~~(6) Any advisory board, commission, committee, or council created by a federal,
17 | state, or local grant whose members are appointed by ~~city~~City officials, employees or agents.
18 | (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G,
19 | 11/2/99)

20 | (d) ~~(e)~~ "Passive meeting body" shall mean:⁴

21 | ³ See above; expanded categories of policy bodies.

22 | ⁴ Revised 67.3(c) and (d) to: clarify ambiguity regarding "advisory" committees and bodies;
23 | make clear that where body is tasked with changing or implementing new policy – they are
24 | policy bodies; all bodies created by Mayor (except ones that include City employees to meet
25 | 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, the Mayor, or~~ a department head, or someone operating with the department head's
3 authority other than the Mayor;

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

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

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

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

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1 ~~or procedures relating to the public health, safety, or welfare or relating to services for the~~
2 ~~homeless;~~

3 (e) "Posting" shall mean the following, with respect to posting of notice and agendas
4 of meetings of policy or passive meeting bodies:

5 (i) All notices and agendas for policy ~~meeting~~ bodies shall be posted at least 72
6 hours in advance of the meeting on a centralized location on the City's website, where
7 the date, time and place of each meeting is listed;

8 (ii) All notices and agendas, if created, for passive meeting bodies shall be posted
9 at least 72 hours in advance of the meeting on a centralized location on the City's
10 website, where the date, time and place of each meeting is listed;

11 (iii) All notices and agendas for policy bodies shall be posted at least 72 hours in
12 advance of the meeting on the policy body's website;

13 (iv) All notices and/or agendas for policy or passive meeting bodies shall be posted
14 at least 72 two hours in advance of the meeting at the main Library; and;

15 (v) All notices and/or agendas shall be physically posted outside the meeting room
16 as soon as practicable, but no later than the start of each meeting.

17 18 **SECTION 67.4. PASSIVE MEETINGS BODIES: CONDUCT OF BUSINESS.**

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

22 (1)(b) Such gatherings must need ~~not~~ be formally noticed. Notice of the time, place
23 and nature of the meeting shall be posted with a contact person's name and contact

AMENDMENTS FOR 2010

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Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

Note: Track change mode in use. As of June 1, 2010

1 information, at least 72 hours prior to the scheduled meeting except on the City's website
2 whenever possible, although ~~and the time, place and nature of the gathering shall be posted~~
3 ~~at the main library and on the City's website and be disclosed~~ by mail, e-mail, or fax upon
4 inquiry by a member of the public, and any. If an agenda actually is prepared in advance for
5 the gathering, it shall be accessible to such inquirers as a public record provided upon request,
6 and as practicable posted with the notice.⁵

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

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

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

17 (5) Gatherings subject to this subsection include the following: advisory committees
18 created by the initiative of a member of a policy body, the Mayor, the City Administrator, an
19 elective officer, or a department head, or someone operating with the department head's
20 authority.

21
22 ⁵ Revised 67.4(b), passive meeting bodies are now required to formally notice meetings at
23 least 72 hours in advance; mandates enhanced notice and website posting requirements.

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

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1 ~~(5) — Gatherings subject to this subsection include the following: advisory committees~~
2 ~~or other multimember bodies created in writing or by the initiative of, or otherwise primarily~~
3 ~~formed or existing to serve as a non-governmental advisor to, a member of a policy body, the~~
4 ~~Mayor, the City Administrator, a department head, or any an elective officer, or a department~~
5 ~~head, or someone operating with the department head's authority, other than the Mayor and~~
6 ~~social, recreational or ceremonial occasions sponsored or organized by or for a policy body to~~
7 ~~which a majority of the body has been invited. This subsection shall not apply to a committee~~
8 ~~which consists solely of employees of the City and County of San Francisco.⁷~~

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

11 ~~(e)(b)~~ To the extent not inconsistent with state or federal law, a policy body shall
12 include in any contract with an entity that owns, operates or manages any property in which
13 the City has or will have an ownership interest, including a mortgage, and on which the entity
14 performs a government function related to the furtherance of health, safety or welfare, a
15 requirement that any meeting of the governing board of the entity to address any matter
16 relating to the property or its government related activities on the property, or performance
17 under the contract or grant, be conducted as provided under this section ~~in subsection (a) of~~
18 ~~this section~~. Records made available to the governing board relating to such matters shall be
19 likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per
20 page, or at a higher actual cost as demonstrated in writing to such governing board. ⁸(Added
21 by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

22
23 ⁷ ~~Removed as unnecessary.~~

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

AMENDMENTS FOR 2010

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1

2 SECTION 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

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

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

8

9 SECTION 67.6. POLICY BODIES; ~~CONDUCT OF BUSINESS~~; TIME AND PLACE FOR 10 MEETINGS.

11 (a) Each policy body, except for advisory ~~bodies~~ specified in Section
12 67.3(c)(7)(d)(5) and 67.3(d)(6), shall establish by resolution or motion the time and place for
13 holding regular meetings.

14 (b) ~~Unless otherwise required by state or federal law or necessary to inspect real~~
15 ~~property or personal property which cannot be conveniently brought within the territory of the~~
16 ~~City and County of San Francisco or to meet with residents residing on property owned by the~~
17 ~~City, or to meet with residents of another jurisdiction to discuss actions of the policy body that~~
18 ~~affect those residents, all meetings of its policy bodies shall be held within the City and County~~
19 ~~of San Francisco.~~⁹

20 (c)(b) If a regular meeting would otherwise fall on a holiday, it shall instead be held on
21 the next business day, unless otherwise rescheduled in advance. If a meeting must be
22 canceled, continued or rescheduled for any reason, notice of such change shall be provided

23

⁹ Moved to new 67.6(f).

24

25

AMENDMENTS FOR 2010

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1 to the public as soon as is reasonably possible, including posting of a cancellation notice in
2 the same manner as described in section 67.3(e)(7)(c), and mailed notice if sufficient time
3 permits.¹⁰

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

11 (e)(d) Meetings of ~~passive meeting bodies as specified in Section 67.3(c)(7)67.3(d)(5)~~
12 ~~and 67.3(d)(6) 67.6(d)(4) of this article shall be preceded by notice delivered personally or by~~
13 ~~mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such~~
14 meeting to each person who has requested, in writing, notice of such meeting. If the advisory
15 body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is
16 utilized by that advisory body for the conduct of its business, for the time and place for holding
17 such regular meetings. ~~In such case, no notice of regular meetings, other than the posting of~~
18 ~~an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it~~
19 ~~advises, is required.~~

20 (f)(e) Special meetings of any policy body, including advisory bodies identified in
21 subsection 67.3(c)(7)(d)(5) and 67.3(d)(6) that choose to establish regular meetings times,
22 may be called at any time by the presiding officer thereof or by a majority of the members

23 _____
24 ¹⁰ Moved from former 67.6(g).
25

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

18 (f) Unless otherwise required by state or federal law or necessary to inspect real
19 property or personal property which cannot be conveniently brought within the territory of the
20 City and County of San Francisco or to meet with residents of property owned by the City, or
21 to meet with residents of another jurisdiction to discuss actions of the policy body that affect

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

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1 those residents, all meetings of its policy bodies shall be held within the City and County of
2 San Francisco.¹²

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

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

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

16 **SECTION 67.7. AGENDA REQUIREMENTS; REGULAR FOR MEETINGS OF POLICY** 17 **BODIES.**

18 (a) At least 72 hours before a regular meeting, a policy body shall post an agenda
19 containing a meaningful description of each item of business to be transacted or discussed at
20 the meeting. Agendas shall specify for whether each item of business the proposed is subject
21 to possible action or ~~a statement the item is for discussion only.~~ If a specific action is

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

23 ¹³ Moved to new 67.6(b).

24 ¹⁴ Added to correct omission in Ordinance, providing notice of initial meetings.

AMENDMENTS FOR 2010

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1 proposed or contemplated it shall be included in the agenda item. ~~In addition, a policy body~~
2 ~~shall post a current agenda on its Internet website at least 72 hours before a regular meeting,~~
3 ~~and a link to the agenda on a "central master calendar" available on the City's website where~~
4 ~~the date, time and location of all City policy body meetings shall be listed.~~¹⁵

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

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

21 ¹⁵ Revised to clarify language and to provide for a central master calendar to provide
22 accessible and consistent access to meeting information.

23 ¹⁶ ~~Revised to require posting of agendas at branch libraries, achieved through access to~~
24 ~~computers and master calendar provision; provides for posting agendas outside of meeting~~
25 ~~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, or (ii) ~~or~~ relates to a purely commendatory action, and (B) that the need for
16 such action came to the attention of the body subsequent to the agenda being posted as
17 specified 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.¹⁷

23 _____
24 ¹⁷ Revised to provide adequate information on the continued agenda item.
25
26

AMENDMENTS FOR 2010

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1 (f) Each board and commission enumerated in the Charter shall ensure that
2 ~~agendas for regular and special meetings are made available to speech and hearing impaired~~
3 ~~persons through telecommunications devices for the deaf, telecommunications relay services~~
4 ~~or equivalent systems, and, upon request, to sight impaired persons through Braille or~~
5 enlarged type and other material related to meetings are accessible to persons with
6 disabilities. Upon request, materials shall be made available in alternative formats. Requests
7 should be made to the secretary or clerk of the board or commission at least 48 hours prior to
8 the meeting. Requests for material in alternative formats made less than 48 hours prior to the
9 meeting shall be met when possible. All policy bodies and passive meeting bodies shall
10 comply with the guidelines and recommendations of the Mayor's Office of Disabilities
11 Accessible Public Event Checklist.¹⁸

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

14
15 KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

16 (Chapter 67 of the San Francisco Administrative Code)

17
18 ~~Government's~~Government's duty is to serve the public, reaching its decisions in full
19 view of the public. Commissions, boards, councils and other agencies of the City and County

20
21
22 ¹⁸ Revised after consultation with Mayor's Office on Disability to provide that for all board and
23 commissions in Charter agendas and all materials related to meetings shall be made available
24 in alternative formats for persons with disabilities, when requested, at least 48 hours in
25 advance of meetings.

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1 exist to conduct the people's business. This ordinance assures that deliberations are
2 conducted before the people and that City operations are open to the people's review.

3
4 FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE
5 ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT
6 THE SUNSHINE COMMISSIONSUNSHINE ORDINANCE TASK FORCE.

7
8 (h) Each agenda of a policy body covered by this ~~Sunshine Ordinance~~ shall include
9 the address, area code and phone number, fax number, e-mail address, and a contact
10 ~~person's name~~person for the Sunshine Commission ~~Sunshine Ordinance Task Force~~.

11 Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each
12 agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord.
13 185-96, App. 5/8/96; Proposition G, 11/2/99)

14 (i) Each agenda of a policy body shall state that members of the public may submit
15 statements and/or comments regarding any item on those bodies' meeting agendas; those
16 statements or comments shall promptly be circulated to members of the policy body and shall
17 become a public record, regardless of whether their authors are present when the item at
18 issue is discussed. The policy body may review and consider those statements or comments
19 if received before or during the discussion of the item. Statements or comments received
20 within ten business days after the meeting shall be included in the public record with a

AMENDMENTS FOR 2010

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1 notation as to when they were received.¹⁹ (Added by Ord. 185-96, App. 5/8/96; amended by
2 Proposition G, 11/2/99)

3

4 **Section 67.7-1. PUBLIC NOTICE REQUIREMENTS.**

5 (a)~~(1)~~ Any public notice that is mailed, posted_± or published by a City department,
6 board, agency_± or commission to residents residing within a specific area to inform those
7 residents of a matter that may impact their property or that neighborhood area, shall be brief,
8 concise and written in plain, easily understood English.

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

12 (c)~~(3)~~(c) If the notice informs the public of a public meeting or hearing, then the
13 notice shall state that persons who are unable to attend the public meeting or hearing may
14 submit to the City, by the time the proceeding begins, written comments regarding the subject
15 of the meeting or hearing, that these comments will be made a part of the official public
16 record, and that the comments will be brought to the attention of the person or persons
17 conducting the public meeting or hearing. The notice should also state the name_± and
18 address, fax and e-mail address of the person or persons to whom those written comments
19 should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G,
20 11/2/99)

21

22 _____
23 ¹⁹ Added to provide members of the public with ability to weigh in on matters before the body,
24 especially those who cannot attend meetings; consistent with the minutes requirements of
25 former Section 67.16.

AMENDMENTS FOR 2010

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1 **SECTION 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**²⁰

2 In addition to meeting requirements for closed session agendas provided in the Brown
3 Act, Government Code Section 54954.5 or its successor, any agenda shall specify and
4 disclose the nature of any closed session by providing all of the following information:

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

9 ~~(a)(b) In addition to the brief general description of items to be discussed or acted upon~~
10 ~~in open and public session, the agenda posted pursuant to Government Code Section~~
11 ~~54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any~~
12 ~~call and notice delivered to the local media and posted pursuant to Government Code Section~~
13 ~~54956 shall specify and disclose the nature of any closed sessions by providing all of the~~
14 ~~following information:~~ With respect to every item of business to be discussed in closed session
15 pursuant to Government Code section 54957 or its successor:

16
17 ~~(1) With respect to a closed session held pursuant to Government Code Section~~
18 ~~54956.7:~~

19 ~~LICENSE/PERMIT DETERMINATION:~~
20 ~~applicant(s)~~

21 _____

22 ²⁰ Revised 67.8 to generally streamline and make Ordinance consistent with the current
23 Brown Act and to focus on the provisions of the Sunshine Ordinance that exceed
24 requirements under Brown Act. No substantive changes intended.

25 ²¹ Moved from former 67.8-1(b).

AMENDMENTS FOR 2010

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

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

5

6 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATOR~~

7 ~~Property:~~

8 ~~Person(s) negotiating:~~

9 ~~Under negotiation:~~

10 ~~Price: Terms of payment: Both:~~

11

12 ~~The space under "Property" shall be used to list an address, including cross streets~~
13 ~~where applicable, or other description or name which permits a reasonably ready identification~~
14 ~~of each parcel or structure subject to negotiation. The space under "Person(s) negotiating"~~
15 ~~shall be used to identify the person or persons with whom negotiations concerning that~~
16 ~~property are in progress. The spaces under "Under negotiation" shall be checked off as~~
17 ~~applicable to indicate which issues are to be discussed.~~

18

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

21

22 ~~CONFERENCE WITH LEGAL COUNSEL~~

23 ~~Existing litigation:~~

24

25

AMENDMENTS FOR 2010

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1 ~~Unspecified to protect service of process~~

2 ~~Unspecified to protect settlement posture~~

3 ~~or:~~

4 ~~CONFERENCE WITH LEGAL COUNSEL~~

5 ~~Anticipated litigation:~~

6 ~~As defendant As plaintiff~~

7

8 ~~The space under "Existing litigation" shall be used to specifically identify a case under~~
9 ~~discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the~~
10 ~~case name, court, and case number, unless the identification would jeopardize the City's~~
11 ~~ability to effectuate service of process upon one or more unserved parties, in which instance~~
12 ~~the space in the next succeeding line shall be checked, or unless the identification would~~
13 ~~jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in~~
14 ~~which instance the space in the next succeeding line shall be checked. If the closed session is~~
15 ~~called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be~~
16 ~~checked under "Anticipated litigation" to indicate the City's anticipated position as defendant~~
17 ~~or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed,~~
18 ~~space may be saved by entering the number of separate instances in the "As defendant" or~~
19 ~~"As plaintiff" spaces or both as appropriate.~~

20

21 ~~(4) With respect to every item of business to be discussed in closed session pursuant~~
22 ~~to Government Code Section 54957, either:~~

23

24

25

32

AMENDMENTS FOR 2010

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1 ~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

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

3 ~~or:~~

4 ~~PUBLIC EMPLOYEE APPOINTMENT/HIRING~~

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

6 ~~PUBLIC EMPLOYEE PERFORMANCE EVALUATION~~

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

8 ~~or:~~

9 ~~PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE~~

10 ~~Number of employees affected:~~

11 ~~or:~~

12

13 ~~(5)(c) With respect to every item of business to be discussed in closed session~~

14 ~~pursuant to Government Code Section 54957.6 or its successor, either:~~

15

16 ~~CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING~~

17 ~~Name and title of ~~City's~~City's negotiator:~~

18 ~~Organization(s) representing:~~

19 ~~Police officers, firefighters and airport police~~

20 ~~Transit Workers~~

21 ~~Nurses~~

22 ~~Miscellaneous Employees~~

23 ~~Anticipated issue(s) under negotiation:~~

24

25

AMENDMENTS FOR 2010

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1 Wages

2 Hours

3 Benefits

4 Working Conditions

5 Other (specify if known)

6 All

7

8 Where renegotiating a memorandum of understanding or negotiating a successor
9 memorandum of ~~under-standing~~understanding, the name of the memorandum of ~~under-~~
10 ~~standing~~understanding:

11 In case of multiple items of business under the same category, lines may be added and
12 the location of information may be reformatted to eliminate unnecessary duplication and
13 space, so long as the relationship of information concerning the same item is reasonably clear
14 to the reader. As an alternative to the inclusion of lengthy lists of names or other information in
15 the agenda, or as a means of adding items to an earlier completed agenda, the agenda may
16 incorporate by reference separately prepared documents containing the required information,
17 so long as copies of those documents are posted adjacent to the agenda within the time
18 periods required by Government Code Sections 54954.2 or its successor and 54956 or its
19 successor and provided with any mailed or delivered notices required by Sections 54954.1 or
20 54956. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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AMENDMENTS FOR 2010

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1 ~~SECTION 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.~~²²

2 ~~(a) All closed sessions of any policy body covered by this Ordinance shall be either~~
3 ~~audio recorded or audio and video recorded in their entirety and all such recordings shall be~~
4 ~~retained for at least TEN years, or permanently where technologically and economically~~
5 ~~feasible. Closed session recordings shall be made available whenever all rationales for~~
6 ~~closing the session are no longer applicable. Recordings of closed sessions of a policy body~~
7 ~~covered by this Ordinance, wherein the justification for the closed session is due to~~
8 ~~"anticipated litigation" shall be released to the public in accordance with any of the following~~
9 ~~provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the~~
10 ~~statute of limitations for the anticipated litigation if no litigation is filed; as soon as the~~
11 ~~controversy leading to anticipated litigation is settled or concluded.~~²³

12 ~~(b) Each agenda item for a policy body covered by this ordinance that involve existing~~
13 ~~litigation shall identify the court, case number, and date the case was filed on the written~~
14 ~~agenda.~~²⁴ ~~For each agenda item for a group covered by this ordinance that involves~~
15 ~~anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time~~
16 ~~requested and to any member of the public whether such anticipated litigation developed into~~
17 ~~litigation and shall identify the court, case number, and date the case was filed.~~²⁵ ~~(Added by~~
18 ~~Proposition G, 11/2/99)~~

20 **SECTION 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**

21 ²² The provisions of this section have been moved in order to streamline and consolidate like
22 provision on the Ordinance.
23 ²³ Revised and moved to new 67.14(b), (c),
24 ²⁴ Moved to new 67.8(a).
25 ²⁵ Moved to new 67.12(e).

AMENDMENTS FOR 2010

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1 (a) Agendas of meetings, meeting packets, or documents created by a department,
2 and or any other documents on file with the clerk or secretary of the policy body, when
3 intended for distribution to all, or a majority of all, of the members of a policy body in
4 connection with a matter anticipated for discussion or consideration at a public meeting shall
5 be made available to the public for inspection and copying at the office of the policy body at
6 least 48 hours before the hearing. To the extent possible, such documents shall also be made
7 available through the policy body's Internet site. However, this disclosure need not include an
8 material exempt from public disclosure under this ordinance. Unless demonstrably unfeasible
9 these materials shall be made available on the policy body's web site, at least 48 hours prior
10 to the meeting. Public review copies of the agenda and all related documents that constitute
11 the meeting packet shall be made available at the meeting to the public in sufficient quantities
12 commensurate with the anticipated number of people attending the hearing. The materials
13 that are distributed at the hearing shall be clearly legible of such a quality that a person with
14 20/20 vision would have no difficulty reading them.²⁶ Nothing in this subsection effects the
15 requirements for disclosure under Sec. 67.12(b)(3), 67.12(b)(5) and 67.25(e)(8).

16 (b) If any document subject to adoption, approval or award by a policy body not
17 otherwise covered by Section 67.25(e)(8) is not available at least 48 hours before the meeting
18 at which that document is scheduled to be adopted, approved or awarded and a member of
19 the policy body requests that the matter be continued, the policy body must continue the item
20 to a time not less than 48 hours after the document was made available. Nothing in this
21 subsection shall prohibit the policy body from amending a document at a meeting and nothing
22

23 ²⁶ 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.
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AMENDMENTS FOR 2010

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1 in this subsection affects the requirements for disclosure under sections 67.12(b)(3),
2 67.12(b)(5) or 67.25(e)(3).²⁷

3 ~~(b) Records which are subject to disclosure under subdivision (a) and which are~~
4 ~~intended for distribution to a policy body prior to commencement of a public meeting shall be~~
5 ~~made available for public inspection and copying upon request prior to commencement of~~
6 ~~such meeting, whether or not actually distributed to or received by the body at the time of the~~
7 ~~request.~~²⁸

8 ~~(c) Records which are subject to disclosure under subdivision (a) and which are~~
9 ~~distributed during a public meeting but prior to commencement of their discussion shall be~~
10 ~~made available for public inspection prior to commencement of, and during, their discussion.~~²⁹

11 ~~(d)~~(c) Records which are Documents which are intended for distribution or are
12 distributed prior to or during subject to disclosure under subdivision (a) and which are
13 distributed during their discussion at a public meeting to members of a policy body shall be
14 made available for public inspection immediately upon request or as soon thereafter as is
15 practicable whether or not actually distributed to or received by the body at the time of the
16 request.

17 ~~(e)(d) A policy body may charge a duplication fee of one cent per page for a copy of a~~
18 ~~public record prepared for consideration at a public meeting, unless a special fee has been~~
19 ~~established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor~~
20 ~~the California Public Records Act (Government Code sections 6250 et seq.) shall be~~

21 ²⁷ New 67.9(b) requires that documents subject to adoption, approval or award by a Policy
22 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.

23 ²⁸ Moved into subsection (a) above.

24 ²⁹ Moved into subsection (a) above.

AMENDMENTS FOR 2010

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1 ~~construed to limit or delay the public's right to inspect any record required to be disclosed by~~
2 ~~that act, whether or not distributed to a policy body.~~³⁰ ~~(Added by Ord. 265-93, App. 8/18/93;~~
3 ~~amended by Proposition G, 11/2/99)~~

4 5 **SECTION 67.10. CLOSED SESSIONS: PERMITTED TOPICS.**

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

7 (a) With the California Attorney General, district attorney, agency counsel, security
8 consultant, sheriff, or chief of police, or their respective deputies, on matters posing a threat to
9 the security of public buildings or a threat to the ~~public's~~public's right of access to public
10 services or public facilities.³¹

11 (b) To consider the appointment, employment, evaluation of performance, or dismissal
12 of a City employee, if the policy body has the authority to appoint, employ, or dismiss the
13 employee, or to hear complaints or charges brought against the employee by another person
14 ~~or employee unless the employee complained of requests a public hearing. The body may~~
15 ~~exclude from any such public meeting, and shall exclude from any such closed meeting,~~
16 ~~during the comments of a complainant, any or all other complainants in the matter. If the~~
17 ~~employee, who is the subject of the discussion, requests a public hearing the hearing shall be~~
18 ~~public.~~³² The term "employee" as used in this section shall not include any elected official,
19 member of a policy body or applicant for such a position, or person providing services to the
20 City as an independent contractor or the employee thereof, including but not limited to

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22 _____
³⁰ Moved to new 67.29(f).

23 ³¹ Revised to be consistent with the Brown Act.

24 ³² Revision to clarify public employee's right to a public hearing.

AMENDMENTS FOR 2010

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1 independent attorneys or law firms providing legal services to the City for a fee rather than a
2 salary.

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

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

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

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

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AMENDMENTS FOR 2010

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

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

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

13 (2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy
14 body subject to Government Code Section 3501 or its successor may hold closed sessions
15 with its designated representatives on mandatory subjects within the scope of representation
16 of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-
17 93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

18 19 **SECTION 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**

20 Prior to any closed session, a policy body shall state the general reason or reasons for
21 the closed session, and shall cite the statutory authority, including the specific section and
22 subdivision, or other legal authority under which the session is being held. In the closed
23 session, the policy body may consider only those matters covered in its statement. In the case
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AMENDMENTS FOR 2010

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1 of regular and special meetings, the statement shall be made in the ~~form of the agenda~~
2 disclosures and specifications required by Section 67.8 of this article. In the case of adjourned
3 and continued meetings, the statement shall be made with the same disclosures and
4 specifications required by Section 67.8 of this article, as part of the notice provided for the
5 meeting.

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

12

13 **SECTION 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

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

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

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AMENDMENTS FOR 2010

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

14 (2) Litigation: Direction or approval given to the ~~body~~"sbody's legal counsel to
15 prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise
16 enter as a party, intervenor or amicus curiae in any form of litigation as the result of a
17 consultation pursuant to Government Code Section 54956.9 or its successor shall be reported
18 in open session as soon as given, or at the first meeting after an adverse party has been
19 served in the matter if immediate disclosure of the City"sCity's intentions would be contrary to
20 the public interest. The report shall identify the adverse party or parties, any co-parties with
21 the City, any existing claim or order to be defended against or any factual circumstances or
22 contractual dispute giving rise to the City"sCity's complaint, petition or other litigation initiative.

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1 (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement
2 which would preclude the release of the text of the settlement itself and any related
3 documentation communicated to or received from the adverse party or parties. Any written
4 settlement agreement and any documents attached to or referenced in the settlement
5 agreement shall be made publicly available at least 10 calendar days before the meeting of
6 the policy body at which the settlement is to be approved to the extent that the settlement
7 would commit the City or a department thereof to adopting, modifying, or discontinuing an
8 existing policy, practice or program or ~~otherwise acting other than to pay an amount of money~~
9 ~~less than \$50,000 or more.~~³³ The agenda for any meeting in which a settlement subject to this
10 section is discussed shall identify the names of the parties, the case number, the court, and
11 the material terms of the settlement. Where the disclosure of documents in a litigation matter
12 that has been settled could be detrimental to the ~~city's~~City's interest in pending litigation
13 arising from the same facts or incident and involving a party not a party to or otherwise aware
14 of the settlement, the documents required to be disclosed by subdivision (b) of this section
15 need not be disclosed until the other case is settled or otherwise finally concluded.

16 (4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the
17 resignation of a public employee in closed session pursuant to Government Code Section
18 54957 or its successor shall be reported immediately in a manner that names the employee,
19 the action taken and position affected and, in the case of dismissal for a violation of law or of
20 the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this
21 ordinance includes any termination of employment at the will of the employer rather than of
22 the employee, however characterized. The proposed terms of any separation agreement shall

23 _____
24 ³³ Revised to clarify. No substantive change intended.
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1 be immediately disclosed as soon as presented to the body, and its final terms shall be
2 immediately disclosed upon approval by the body.

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

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

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

19 (e) For each agenda item of a policy body covered by this Ordinance that involves
20 anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time
21 requested and to any member of the public whether such anticipated litigation developed into
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1 litigation and shall identify the court, case number, and date the case was filed.³⁴ (Added by
2 Proposition G, 11/2/99) [Moved from 67.8-1 (b)]

3 (f) Review of Closed Session Justifications³⁵

4 No later than 30 calendar 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, as well as and shall include all minutes, recordings or other
8 records related to the closed session.

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

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

21 _____
22 ³⁴ Moved from former 67.8-1(b).

23 ³⁵ 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
25 justification for closed session no longer exists.

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SECTION 67.13. BARRIERS TO ATTENDANCE PROHIBITED.³⁶

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

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

³⁶ 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 (c) ~~Each board and commission~~ All policy bodies ~~enumerated in the Charter~~ shall
2 ensure that accessible seating for persons with disabilities, including those using wheelchairs,
3 is made available for each regular and special meeting.

4 (d) ~~Each board and commission~~ All policy bodies ~~enumerated in the Charter~~ shall
5 include on the agenda for each regular and special meeting the following statement: "In order
6 to assist the City's efforts to accommodate persons with severe allergies, environmental
7 illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are
8 reminded that other attendees may be sensitive to various chemical based products. Please
9 help the City accommodate these individuals."

10 (e) All Policy Bodies ~~The Board of Supervisors~~ shall seek to provide translators at
11 each of their ~~its~~ regular meetings and all meetings of their ~~its~~ committees for each language
12 requested, where the translation is necessary to enable San Francisco residents ~~members of~~
13 the public with limited English proficiency to participate in the proceedings provided that a
14 request for such translation services is communicated to the policy body ~~Clerk of the Board of~~
15 ~~Supervisors~~ at least 48 hours before the meeting. For meetings on a Monday or a Tuesday,
16 the request must be made by noon of the last business day of the preceding week. The policy
17 body ~~Clerk of the Board of Supervisors~~ shall first solicit volunteers from the ranks of City
18 employees and/or from the community to serve as translators. If volunteers are not available
19 the policy body ~~Clerk of the Board of Supervisors~~ may next solicit translators from non-profit
20 agencies, which may be compensated. If these options do not provide the necessary
21 translation services, the policy body ~~Clerk~~ may employ professional translators. The
22 unavailability of a translator shall not affect the ability of the policy body ~~Board of Supervisors~~
23 or its committees to deliberate or vote upon any matter presented to them. ~~In any calendar~~
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AMENDMENTS FOR 2010

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1 ~~year in which the costs to the City for providing translator services under this subsection~~
2 ~~exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the~~
3 ~~provisions of this subsection.~~

4 (f) Boards and Commissions and other bodies enumerated in the Charter shall, by
5 2012~~9~~ broadcast all meetings held in City Hall on the San Francisco Government TV channel
6 (or its successor) or the City's website via real-time audio streaming and/ or real-time
7 audio/video streaming on the Internet. All other policy bodies are encouraged to broadcast
8 their meetings similarly as feasible.³⁷

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

14 **SECTION 67.14. ~~TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.~~**³⁸

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

21 ³⁷ New 67.13(f) provides that boards and commissions enumerated in the Charter shall
22 broadcast their meetings on SFGTV by 2010 and encourages other policy bodies to do so.

23 ³⁸ Revised 67.14 provides that in light of advances in technology, recordings of meetings shall
24 be kept indefinitely; clarifies costs City can charge for making copies; and requires all policy
25 bodies to digitally record meetings by 2010 and post recordings on their website within 3 days.

AMENDMENTS FOR 2010

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1 (b) All Policy Bodies ~~Each board and commission enumerated in the Charter shall~~
2 audio record each regular and special meeting, including closed sessions. ~~Each such audio~~
3 recording, and any other audio or video recording of a meeting of any other policy body made
4 at the direction of the policy body, shall be a public record subject to inspection pursuant to
5 the California Public Records Act (Government Code Section 6250 or its successor et seq.).
6 These recordings shall be kept indefinitely by the City, and shall not be erased or destroyed
7 unless the recordings are being transferred into a different format for public access, archival
8 or retrievable requirements~~archival or accessibility requirements.~~ ~~and shall not be erased or~~
9 ~~destroyed.~~ Inspection of any such recording shall be provided without charge on an
10 appropriate play back device made available by the City; copies of any such recordings shall
11 be provided upon request and payment for the actual cost of the medium on which the copy is
12 recorded. Requests shall be made through the department, board, commission, task force, or
13 committee whose meeting is recorded. Requests shall be completed in the order of receipt
14 and no additional charges shall be assessed for expedited service.

15 (c) Closed session recordings, made pursuant to Section 67.14(b), shall be made
16 available whenever all rationales for closing the session are no longer applicable. Recordings
17 of closed sessions of bodies covered by this Ordinance wherein the justification for the closed
18 session is "anticipated litigation" shall be released to the public in accordance with any of the
19 following provisions: two years after the meeting if no litigation is filed; upon expiration of the
20 statute of limitations for the anticipated litigation if no litigation is filed; as soon as the
21 controversy leading to anticipated litigation is settled or concluded.³⁹

22
23 _____
24 ³⁹ Moved from former 67.8-1(a).
25

AMENDMENTS FOR 2010

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1 ~~(d) Within six months of the enactment of this provision, a~~All policy bodies shall be
2 required to digitally record their meetings by 2010. Any such digital recordings that are made
3 shall be posted on the policy bodies' website within three days. If real time captioning is
4 provided at a meeting, if separable, it shall also be posted on the web site. The City
5 Administrator shall assist policy bodies in carrying out their duties under this subsection.

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

7 (d)(e) Every City policy body, agency or department shall audio or video record every
8 noticed regular meeting, special meeting, or hearing open to the public held in a City Hall
9 hearing room that is equipped with audio or video recording facilities, except to the extent that
10 such facilities may not be available for technical or other reasons. Each such audio or video
11 recording shall be a public record subject to inspection pursuant to the California Public
12 Records Act (Government Code Section 6250 or its successor et seq.), and shall not be
13 erased or destroyed, unless the recordings are being transferred into a different format for
14 public access retrieval or archival requirements. ~~archival or accessibility requirements~~ The
15 City shall make such audio or video recording available in digital form at a centralized location
16 on the City's web site (www.sfgov.org) within 72 hours of the date of the meeting or hearing
17 and for a period of at least two years after the date of the meeting or hearing. Inspection of
18 any such recording shall also be provided without charge on an appropriate play back device
19 made available by the City. This subsection ~~(d)(e)~~ shall not be construed to limit or in any way
20 modify the duties created by any other provision of this article, including but not limited to the
21 requirements for recording closed sessions as stated in subsection (c)~~Section 67.8-4~~ and for
22 recording meetings of policy bodies~~boards and commissions~~ enumerated in the Charter as
23 stated in subsection (b) above.

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SECTION 67.15. PUBLIC TESTIMONY.

(a) Every agenda for regular and special meetings shall provide an opportunity for members of the public to directly address a policy body on any items of interest to the public that ~~is~~ are within the policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. This provision shall apply to all meetings of the Board of Supervisors and its committees. ~~However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the policy body~~⁴⁰

(b) Every agenda for ~~special meetings~~ at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon. However in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the policy body on any item that has already been considered by a committee, composed exclusively of members of the policy body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on

⁴⁰ Moved to subsection (b) below for consistency. No substantive change intended.

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1 the item, before or during the committee's consideration of the item, unless the item has been
2 substantially changed since the committee heard the item, as determined by the policy body.⁴¹
3 However, nothing in this subsection is intended to exempt Board of Supervisors committees
4 from the general public comment requirements under subsection (a).

5 ~~(c) — However, nothing in this subsection is intended to exempt Board of Supervisors~~
6 ~~committees from the general public comment requirements under subsection (a).~~

7 (c)(d) Time and Order of Public Speakers

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

10 (1) regulations limiting the total amount of time allocated for public testimony on
11 particular issues and for each individual speaker. Each policy body shall adopt a rule
12 providing that each person wishing to speak on an item before the body at a regular or special
13 meeting shall be permitted to be heard at least once for up to a minimum of three minutes per
14 agenda item and allow any member of the public present to yield or defer their time to another
15 member of the public that is present.⁴²

16 (2) If the Chair of a meeting finds that a large number of speakers wish to speak on
17 a particular item, the chair may reduce each individual speaker's time, but may not limit the
18 time to less than two minutes per speaker. The Chair shall announce any modification of the
19 three-minute minimum before public testimony on that item commences. The chair has
20 discretion to provide extra time for those who need accommodation for an interpreter or

23 ⁴¹ Moved from subsection (a) above for consistency. No substantive change intended.

24 ⁴² Revised to provide a minimum of three minutes public testimony in normal course.

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1 because they have a disability. Time limits shall be applied ~~uniformly~~ consistently to members
2 of the public wishing to testify.⁴³

3 (3). The Chair, May Allow a Designated Speaker(s)⁴⁴

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

12 (B). It shall be the responsibility of the designated speaker to file, with the
13 Clerk or Secretary, a Request to Authorize a Designated Speaker prior to the
14 commencement of an item and to guarantee that at least six members of the public,
15 present and prepared to speak, have designated their allotted speaking time to the
16 requester.

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

20 (4) Rules for the Order of Speakers.⁴⁵

21

22 ⁴³ Clarifies circumstances and method by which chair may set public comment to less than
23 three minutes but no less than two minutes.

24 ⁴⁴ Creates new procedure for designated public speaker(s).

25 ⁴⁵ Provides additional guidance and limitations on order of speakers.

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

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

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

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

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

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

22 (f)(g) Members of the public shall have access to all audio-visual equipment used by a
23 department or policy body for presentations made to that policy body consistent with
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25

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1 time limits provided in subsection (c). To the extent feasible, p~~P~~rior notification in the
2 agenda or public notice that a presentation will be made using audio/visual equipment
3 or technology shall be provided, listing the specific equipment.⁴⁶ (~~Added by Ord. 265-~~
4 ~~93, App. 8/18/93; amended by Proposition G, 11/2/99)~~

6 SECTION 67.16. MINUTES.

7 (a) ~~The clerk or secretary of each board and commission enumerated in the~~
8 ~~Charter~~all policy bodies shall record the minutes for each regular and special meeting of the
9 ~~board or commission~~those bodies.⁴⁷

10 (b) ~~The minutes shall state the time the meeting was called to order, the names of~~
11 ~~the members attending the meeting, time of each member's arrival if after commencement of~~
12 ~~the meeting and the time of each member's departure if prior to the adjournment of the~~
13 ~~meeting,~~ the roll call vote on each matter considered at the meeting, the time the board or
14 commission began and ended any closed session, the names of the members and the
15 names, and titles where applicable, of any other persons attending any closed session, a list
16 of those members of the public who spoke on each matter if the speakers identified
17 themselves, whether such speakers supported or opposed the matter, a brief summary of
18 each person's statement during the public comment period for each agenda item, and the
19 time the meeting was adjourned. Any person speaking ~~during a public comment period may~~
20 ~~supply~~ submit a brief written summary comments of their comments which~~that~~ shall, if no
21 more than 150 words, be included in the body of the minutes or attached to the minutes and
22 _____

23 ⁴⁶ Explicitly provides public access to equipment used by city employees.

24 ⁴⁷ Revised to provide that minimum minute requirements apply to all Policy Bodies.

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1 noted in the item. The minutes shall also include the text of any resolution adopted by or
2 modified by a policy body within the body of the minutes or as an attachment.⁴⁸

3 (c) The draft minutes and any attachments thereto from ~~of~~ each meeting shall be
4 posted on the policy body's website and be available for inspection and copying upon request
5 no later than 10 ~~business~~working days after the meeting. The officially adopted minutes shall
6 be available for inspection and copying upon request no later than ten business business
7 ~~working~~ days after the meeting at which the minutes are adopted. Upon request, minutes
8 required to be produced by this section shall be made available in ~~Braille or increased type~~
9 size alternative formats for persons with disabilities. If real-time captioning is provided at a
10 meeting, if separable, it shall also be posted on the web site. The City Administrator shall
11 assist policy bodies in carrying out their duties under this subsection.⁴⁹ (Added by Ord. 265-
12 93, App. 8/18/93; amended by Proposition G, 11/2/99)

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

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

21 ⁴⁸ Provides increased information must be provided in the minutes to allow more information
22 for public review, tracking and historical research purposes.

23 ⁴⁹ Requires posting of draft minutes on policy body website, and in alternative formats where
24 available, as well as posting of any real-time captioning provided at a meeting to improve
25 public access and ability to monitor actions taken in public meetings.

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1 of this ordinance. Every member of a policy body shall be allowed to speak freely on any
2 issue before the body subject only to time limits, which shall may be imposed on all members
3 equally.⁵⁰ The release of specific factual information made confidential by state or federal law
4 including, but not limited to, the privilege for confidential attorney-client communications, may
5 be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor
6 seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93;
7 amended by Proposition G, 11/2/99).

8 9 **SECTION 67.18. SUPERVISOR OF PUBLIC FORUMS**⁵¹

10 (a) Within three months of the enactment of this provision, the City Attorney's office
11 shall establish a Supervisor of Public Forums position, which can at the discretion of the City
12 Attorney be combined with the existing Supervisor of Public Records position mandated by
13 Section 67.204 of the Ordinance.

14 (b) Any person may petition the Supervisor of Public Forums for a determination
15 whether a body is a policy body or passive meeting body or whether a policy body or passive
16 meeting body has violated any provision of Article II, Public Access to Meetings, of this
17 Ordinance. The Supervisor of Public Forums shall inform the petitioner, as soon as possible
18 and within 10 calendar days, of its determination on whether a violation occurred. In reaching
19 this determination, the Supervisor of Public Records shall conduct an independent review,
20 taking into account prior rulings, if any, of the Sunshine Commission on the issue. This

21
22 ⁵⁰ Revised to alleviate allegations of favoritism and provide equal opportunity for comment to
body members.

23 ⁵¹ New 67.18 creates new Supervisor of Public Forums, consistent with existing provisions for
24 Supervisor of Public Records.
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1 determination shall be in writing. Upon determination by the Supervisor of Public Forums that
2 a violation has occurred, the Supervisor of Public Forum shall immediately order the policy
3 body or passive meeting body to correct such violation as soon as possible, but no later than
4 at its next meeting. If the policy body or passive meeting body fails to comply with any such
5 order, the Supervisor of Public Forums shall notify the San Francisco Ethics Commission,
6 Board of Supervisors, District Attorney, or the California State Attorney General who shall take
7 whatever measures they deem necessary and appropriate to ensure compliance with the
8 provision of this Ordinance. The Supervisor of Public Forums shall copy the Sunshine
9 Commission on all determinations or actions on petitionscorrespondence pertaining to its
10 duties under this subsection.

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ARTICLE III PUBLIC INFORMATION AND PUBLIC RECORDS

- 1
- 2
- 3
- 4 Sec. 67.2019. Definitions.
- 5 | Sec. 67.2420. Process for Gaining Access to Public InformationRecords;
6 Administrative Appeals.
- 7 Sec. 67.21 Immediacy of Response; Immediate Disclosure
- 8 Sec. 67.22 Production on Incremental or "Rolling Basis"
- 9 Sec. 67.2223. Release of Oral Public Information.
- 10 Sec. 67.2324. Public Review File - Policy Body Communications.
- 11 Sec. 67.2425. Public Information that Must Be Disclosed.
- 12 Sec. 67.26. Withholding Kept to a Minimum.
- 13 Sec. 67.27 Prohibited Basis for Withholding
- 14 Sec. 67.2728. Justification of Withholding.
- 15 Sec. 67.2829. Fees for Duplication.
- 16 Sec. 67.30 Minimum Standards; Electronic Records; Computer Systems; Web
17 Posting
- 18 ~~Sec. 67.29-1.33-1~~ Records and Correspondence Shall be Maintained and Shall Survive
- 19 Sec 67.31 Tenure and Transition of Officials.
- 20 ~~Sec. 67.29-5.33-3~~ Calendars of Certain Officials.
- 21 Sec 67.32
- 22 ~~Sec. 67.2933~~ Index to Records.
- 23 Sec 67.33.
- 24
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1 ~~Sec. 67.29.4 33.2~~ Lobbyist On Behalf of the City.

2 Sec 67.34

3 ~~Sec. 67.29.6 33.4~~ Sources of Outside Funding.

4 Sec 67.35

5 ~~Sec. 67.21.1. Policy Regarding Use and Purchase of Computer Systems.~~

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

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

18 (d) Online shall mean.....

19

20 **SECTION 67.2120. PROCESS FOR GAINING ACCESS TO PUBLIC**

21 **RECORDS INFORMATION; ADMINISTRATIVE APPEALS.**

22 (a) Every person having possessioneustody of any public record or public
23 information, as defined herein, ~~(hereinafter referred to as a custodian of a public record)~~ shall,

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1 at normal times and during normal and reasonable hours of operation, without unreasonable
2 delay, and without requiring an appointment, permit the public record, or any segregable
3 portion of a record, to be inspected and examined by any person and shall furnish one copy
4 thereof upon payment of the copying charge. ~~and shall furnish one copy thereof upon~~
5 ~~payment of a reasonable~~ the copying charge, not to exceed the lesser of the actual cost or
6 ten cents per page.¹

7 (a) All City Departments and Policy Bodies that are subject to the provisions of this
8 Ordinance shall also designate an employee within that department or policy body as its
9 custodian of records ("custodian of records"). Each custodian of records shall have written
10 procedures and forms to streamline requests and assist members of the public who request
11 public records and information. The custodian of records shall have identified departmental
12 deputies to fulfill this role when the custodian of records is unavailable.²

13 (b) ~~A custodian request for inspection or copying of a public records may shall, as~~
14 ~~soon as possible and within ten days following receipt of a request for inspection or copy of a~~
15 ~~public record, comply with such request. Such request may be delivered~~ submitted to the
16 office department, policy body or of the custodian of records by the requester orally or in
17 writing by fax, postal or U.S. Mail, hand delivery, or e-mail or other means. ~~If the custodian~~
18 ~~believes the record or information requested is not a public record or is exempt, the custodian~~
19 ~~shall justify withholding any record by demonstrating, in writing as soon as possible and within~~

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

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

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1 ~~ten days following receipt of a request, that the record in question is exempt under express~~
2 ~~provisions of this ordinance.~~

3 (c) A custodian of records shall ensure that, as soon as possible but no later than
4 10 calendar days following the receipt of the request, a department, policy body or custodian
5 of records shall comply with the request by doing the following:³

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

9 (2) If the requester seeks to inspect public records, a reasonable opportunity for the
10 requester to review the records shall be provided during normal and reasonable
11 business hours, without unreasonable delay and without requiring an appointment,
12 or at another time convenient to both the requester and the custodian of records. In
13 no event shall the custodian of records shall be required to set the records aside
14 for review for at least longer than 14 calendar days, unless agreed to between the
15 requester and the custodian of records, but in no event shall the custodian of
16 records be required to set the records aside for longer than 30 calendar days.

17 (3) If the department, policy body or custodian of records believes the record or
18 information requested is, in whole or in part, exempt from disclosure, the
19 withholding or redaction shall be justified in writing pursuant to Section 67.28 of this
20 Ordinance.

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23 ³ Provisions broken out to clarify existing law and revised to provide reasonable timeframes
24 for in person review of documents and require tracking of oral requests.
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1 (4) An oral request for information shall be treated as a written request. Oral requests
2 that are not fulfilled by an employee immediately shall be documented as to date,
3 time, place and requester by the department, ~~or~~ policy body, or custodian of records
4 in order to maintain a public record of the public request.

5 ~~(e)~~(d) A custodian of ~~a public records~~ shall assist a requester in identifying the
6 existence, form, and nature of any records or information maintained by, available to, or in the
7 custody of the department or policy body, custodian, whether or not the contents of those
8 records are exempt from disclosure and shall, when requested to do so, provide in writing
9 within seven days following receipt of a request, a statement as to the existence, quantity
10 amount or count, form, and nature of records, and physical or electronic location of records
11 relating to a particular subject matter ~~or questions~~ with enough specificity to enable a
12 requester to identify records. ~~in order to make a request under (b).~~ A custodian of any public
13 record, when or information is not in ~~within the possession of the record~~
14 requested, custody or control of the department or policy body, the request shall be assist a
15 requester in directing a ~~directed to the request to the proper office~~ department, policy body or
16 staff person, with notification to the requester of that action.⁴

17 ~~(e)~~ The person seeking any records or information under this Ordinance need not
18 state his or her reason for making the request or the use to which the information will be put,
19 and requesters shall not be routinely asked to make such a disclosure. However, where a
20 requested record contains information, the majority of which is exempt from disclosure under
21 the California Public Records Act or this Ordinance, the department, policy body ~~City Attorney~~

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

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1 or custodian of records may inform the requester of the nature and extent of the exempt and
2 non-exempt information and inquire as to the requester's purpose for seeking it, in order to
3 suggest alternative sources for the information which may involve less redaction or, if
4 necessary, to otherwise prepare a response to the request.⁵

5 (d)(f) If the department policy body or the custodian of records~~custodian~~ refuses, fails
6 to comply, or incompletely complies with a request described in (b), the person making the
7 request may petition the supervisor Supervisor of Public~~records~~ Records for a determination
8 whether the record requested is disclosable public~~in whole or in part~~. The S~~supervisor of~~
9 Public R~~ecords~~ shall inform the petitioner, as soon as possible but no later than 10 calendar
10 days after a petition is filed~~and within 10 days of its determination~~, of its determination
11 whether the record requested, or any part of the record requested, is public. Where
12 requested by the petition, and where otherwise desirable, this In reaching this determination,
13 the Supervisor of Public Records may review all relevant documents in camera, and shall
14 conduct an independent review, taking into account prior rulings, if any, of the Sunshine
15 Commission on the issue. This determination shall be in writing. Upon the determination by
16 the S~~supervisor of~~ Public R~~ecords~~ that the record is public~~disclosable, in whole or in part~~, the
17 Supervisor of Public Records shall immediately order the custodian of the public record to
18 comply with the person's request. If the custodian refuses or fails to comply with any such
19 order within five business days, the Supervisor of Public Records shall notify the district
20 attorney or the attorney general San Francisco Ethics Commission, Board of Supervisors,
21 District Attorney, or the California~~State~~ Attorney General who shall take whatever measures
22 she or he deems they deem necessary and appropriate to ensure compliance with the

23 _____
24 ⁵ Provision moved from existing 67.25.
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1 provisions of this ~~ordinance~~. Ordinance. The Supervisor of Public Records shall copy the
2 Sunshine Commission on all determinations of actions on petitions under this subsection. ~~all~~
3 ~~correspondence pertaining to its duties under this subsection to the Sunshine Commission's~~
4 public review file.⁶

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

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

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

*Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force
Note: Track change mode in use. As of June 1, 2010*

1 ~~a public hearing concerning the records request denial. An authorized representative of the~~
2 ~~custodian of the public records requested shall attend any hearing and explain the basis for its~~
3 ~~decision to withhold the records requested.⁷~~

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

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

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

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

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

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

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

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

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

17 (k)(h) ~~Release of documentary public information~~records, whether for inspection of the
18 original or by providing a copy, shall be governed by the California Public Records Act
19 (Government Code Section 6250 or its successor et seq.) in particular to the extent not

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

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

AMENDMENTS FOR 2010

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1 addressed by this ~~ordinance~~Ordinance and in accordance with the enhanced disclosure
2 requirements provided in this ~~ordinance~~Ordinance.

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

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

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

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

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

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

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

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

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

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

22
23 ¹⁴ Revised and new provisions on deadlines for responses, based on former 67.25, in order to
24 clarify and streamline Ordinance.

AMENDMENTS FOR 2010

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

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

11 (c)(b) Notwithstanding the 10 calendar day period for response to a request permitted
12 in section 67.204(c) of this Ordinance, a written request for immediate access to information
13 described in any category of non-exempt public information shall be satisfied no later than the
14 close of business on the day following the day of the request. This deadline shall apply only if
15 the words "Immediate Disclosure Request" are placed across the top of the request and on
16 the envelope, subject line, or cover sheet in which the request is transmitted, and only if the
17 request is received by 4 PM. Immediate Disclosure Requests are appropriate for records
18 thatwhich are readily identifiable and maintained by the department or policy body in its active
19 files. Requests to inspect or for copies of documents thatwhich must be gathered from
20 multiple sources or offices, or documents maintained in a remote storage facility are not
21 appropriate for Immediate Disclosure Requests.

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1 SECTION 67.22. PRODUCTION ON INCREMENTAL OR "ROLLING" BASIS¹⁵

2 In response to a request under this Ordinance, the department, policy body, or
3 custodian of records shall produce any and all responsive public records as soon as
4 reasonably possible, and where requested, on an incremental or "rolling" basis such that
5 responsive records are provided as soon as possible by the end of the same business day
6 that they are reviewed and collected. This section is intended to prohibit the withholding of
7 public records that are responsive to a request until all potentially responsive documents have
8 been reviewed and collected. ~~Failure to comply with this provision is a violation of this~~
9 ~~Ordinance. Each custodian of a public record shall keep notes of the time and personnel~~
10 ~~used to comply with records request under this section.~~

12 SECTION 67.2223. RELEASE OF ORAL PUBLIC INFORMATION.

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

15 (a) . Each public employee has a duty to respond to inquiries from the public. This
16 section shall not be interpreted to curtail existing informal contacts between employees and
17 members of the public when these contacts are occasional, acceptable to the employee and
18 the department, not disruptive of the employee's operational duties and confined to requests
19 for information not confidential by law.

20 (b)(a) Every department, agency and policy body shall at all times during its hours of
21 operation have at least one person knowledgeable about the affairs of the entity's policies

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

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

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

18 (c) ~~No employee shall be required to respond to an inquiry or inquiries from an~~
19 ~~individual if~~ If it would take an ~~the employee more than 15~~ fifteen minutes to obtain the
20 ~~information responsive to the~~an inquiry or inquiries, the employee shall notify the requester of
21 the procedures for obtaining records under sections 67.2021 and 67.2123 of this Ordinance,
22 and provide an appropriate form for that request if available.

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

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

20 ~~(e) Notwithstanding any other provisions of this ordinance, public employees shall~~
21 ~~not be discouraged from or disciplined for disclosing any information that is public information~~
22

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

AMENDMENTS FOR 2010

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1 ~~or a public record to any journalist or any member of the public. Any public employee who is~~
2 ~~disciplined for disclosing public information or a public record shall have a cause of action~~
3 ~~against the City and the supervisor imposing the discipline.~~¹⁷ ~~(Added by Ord. 265-93, App.~~
4 ~~8/18/93; amended by Proposition G, 11/2/99)~~

6 SECTION 67.2324. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.

7 (a) The clerk of the Board of Supervisors and the clerk of each ~~board and~~
8 ~~commission enumerated in the Charter~~ policy body shall maintain a file, accessible to any
9 person during normal office hours, at the office of the policy body or at a place nearby clearly
10 designated to the public containing in a chronological order a copy of any letter, memorandum
11 or other communication ~~that~~which the clerk has received within the previous 30 calendar
12 days~~distributed to or received from a quorum of the policy body concerning a matter~~
13 ~~calendared by the body within the previous 30 days or likely to be calendared within the next~~
14 30 calendar days, irrespective of subject matter, origin or recipient, except commercial
15 solicitations, periodical publications or communications exempt from disclosure under the
16 California Public Records Act (Government Code Section 6250 or its successor et seq.) and
17 not deemed disclosable under Section 67.254 of this article. The public review file shall also
18 be available online.

19 (b) ~~Communications, as described in subsection (a), sent or received in the last~~
20 ~~three business days shall be maintained in chronological order in the office of the department~~
21 ~~head or at a place nearby, clearly designated to the public. After documents have been on file~~
22 ~~for two full days, they may be removed, and, in the discretion of the board or commission,~~

23 _____
24 ¹⁷ Moved to new 67.23(d).
25

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1 | placed in a monthly chronological file¹⁸ The identity and contact information of the sender of
2 | any letter or communication shall be presumed to be public information unless confidentiality
3 | is specifically requested by the sender or otherwise required by law.¹⁹

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

9 | **SECTION 67.2425. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

10 | Notwithstanding a department's~~the~~ legal discretion to withhold certain information
11 | information disclosure exemptions otherwise available under the California Public Records
12 | Act, the following policies shall govern specific types of documents and information and shall
13 | provide enhanced rights of public access to information and records:

14 | (a) Drafts and Memoranda.

15 | (1) ~~Except as provided in subparagraph (2), no~~ No preliminary or draft document
16 | and no inter- or intra- agency memoranda, or department memorandum, whether in printed or
17 | electronic form, shall be exempt from disclosure under Government Code Section 6254 or its
18 | successor, subdivision (a) or any other provision. ~~If such a document is not normally kept on~~
19 | ~~file and would otherwise be disposed of, its factual content is not exempt under subdivision~~
20 | ~~(a). Only the recommendation of the author may, in such circumstances, be withheld as~~

22 | ¹⁸ Removed as duplicative of subsection (a) above.

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

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1 ~~exempt.~~ This section is not intended to alter or extend the requirements under any document
2 retention policy adopted by a policy body or department.²⁰

3 ~~(2) Draft versions of an agreement being negotiated by representatives of the City~~
4 ~~with some other party need not be disclosed immediately upon creation but must be~~
5 ~~preserved and made available for public review for 10 days prior to the presentation of the~~
6 ~~agreement for approval by a policy body, unless the body finds that and articulates how the~~
7 ~~public interest would be unavoidably and substantially harmed by compliance with this 10 day~~
8 ~~rule, provided that policy body as used in this subdivision does not include committees. In the~~
9 ~~case of negotiations for a contract, lease or other business agreement in which an agency of~~
10 ~~the City is offering to provide facilities or services in direct competition with other public or~~
11 ~~private entities that are not required by law to make their competing proposals public or do not~~
12 ~~in fact make their proposals public, the policy body may postpone public access to the final~~
13 ~~draft agreement until it is presented to it for approval.~~²¹

14 (b) Litigation and Attorney-Client Material.

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

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

18 (ii) A record ~~previously received or created by a department~~ policy body or
19 department in the ordinary course of business that was not ~~attorney/client~~ attorney-client
20 privileged when at the time it was previously received or created;

21
22 _____
23 ²⁰ Revised to clarify existing legal requirements under Ordinance and expanded disclosure
24 requirement for drafts not normally kept, consistent with existing Public Records Act caselaw.

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

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1 (iii) Advice on compliance with, analysis of, an opinion concerning liability or duties
2 under, or any communication otherwise concerning the California Public Records Act, the
3 Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ~~ethics~~
4 ~~code~~Ethics Code, or this Ordinance.

5 (2) Unless otherwise ~~privileged~~ prevented under an express provision of California
6 law, when litigation is finally adjudicated or otherwise settled, records of all communications
7 between the policy body or department~~department~~ and the adverse party shall be subject to
8 disclosure, including the text and terms of any settlement.

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

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

15 (i) Sex, age and ethnic group;

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

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

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

19 (v) Other non-identifying particulars as to experience, credentials, aptitudes, training

20 or education entered in or attached to a standard employment application form used for the

21 position in question.

22 (2) The professional biography, curriculum vitae or job application of any applicant,
23 whether successful or not, for a position as a department head, or member of a city

24

25

AMENDMENTS FOR 2010

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1 commission, task force or other policy body~~City Commissioners~~; provided that the home
2 address, home telephone number, social security number, age, and marital status of the
3 applicant shall be redacted.²²

4 ~~(2)(3)~~ (3) The professional biography, ~~or curriculum vitae or job application~~ of any
5 employee, provided that the home address, home telephone number, social security number,
6 age, and marital status of the employee shall be redacted.²³

7 ~~(3)(4)~~ (4) The job description of every employment classification.

8 ~~(4)(5)~~ (5) The exact employment classification, gross salary and City-paid benefits
9 available to every each employee identified by name, as well as salary actually earned,
10 including all overtime, compensatory time, and paid leave time.²⁴

11 ~~(5)(6)~~ (6) Any memorandum of understanding between the City or department and a
12 recognized employee organization.

13 ~~(6)(7)~~ (7) The amount, basis, and recipient of any performance-based increase in
14 compensation, benefits, or both, or any other bonus, awarded to any employee, ~~which. To the~~
15 extent the performance-based award is granted by a policy body, the details of that award
16 shall be announced during the open session of a ~~policy body~~ policy body at which the award is
17 approved.

18 ~~(7)(8)~~ (8) ~~The All records regarding confirmed employee of any confirmed-misconduct, of~~
19 ~~a public employee involving personal dishonesty, misappropriation of public funds, resources~~
20 ~~or benefits, unlawful discrimination against another on the basis of status, abuse of authority,~~
21 ~~or violence, and or allegations of misconduct that are of a substantial nature, as distinct from~~

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

23 ²³ Revised to clarify existing requirements.

24 ²⁴ Revised to clarify existing requirements.

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1 | ~~the baseless or trivial, and there is reasonable cause to believe that complaint is well founded,~~
2 | including records of any discipline or warnings imposed for such misconduct. Any
3 | investigation or and report regarding allegations of employee misconduct – whether or not the
4 | investigation is conducted by or at the direction of an attorney – shall be released upon
5 | conclusion of that investigation where the allegations have been found to be substantial, even
6 | if there is no ultimate finding of misconduct, no discipline imposed, or warning issued.²⁵

7 | (d) Law Enforcement Information.

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

21 |
22 | _____
23 | ²⁵ Revised to conform to existing Public Records Act law and expanded to clarify that reports
24 | conducted or requested by public agencies regarding allegations of public employee
25 | misconduct are public records subject to release at conclusion of investigation.

AMENDMENTS FOR 2010

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- 1 (1) The names of juvenile witnesses (whose identities may nevertheless be
- 2 indicated by substituting a number or alphabetical letter for each individual interviewed);
- 3 (2) Personal or otherwise private information related to or unrelated to the
- 4 investigation if disclosure would constitute an unwarranted invasion of privacy;
- 5 (3) The identity of a confidential source;
- 6 (4) Secret investigative techniques or procedures;
- 7 (5) Information whose disclosure would endanger law enforcement personnel; or
- 8 (6) Information whose disclosure would endanger the successful completion of an
- 9 investigation where the prospect of enforcement proceedings is concrete and definite.

10 This subdivision shall not exempt from disclosure any portion of any record of a

11 concluded inspection or enforcement action by an officer or department responsible for

12 regulatory protection of the public health, safety, or welfare.²⁶

13 (e) Requests, Contracts, Bids and Proposals

14 (1) All City Requests for Bids ("RFB"), Requests for Proposals ("RFP"), Requests

15 for Quotes ("RFQuote"), Requests for Information ("RFI"), and Requests for Qualifications

16 ("RFQ") and similar requests shall be posted on the City's website from the date of issuance,

17 and also kept in a central repository and shall be made available for public inspection.

18 (2) All responses to a RFQuote, RFI, and RFQ are public records that shall be

19 made public upon receipt by the City. The City is encouraged to post all responses to

20 RFQuotes, RFIs and RFQs on the City's websites.

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23 ²⁶ After consultation with departments and members of the public, the disclosure requirements

24 for requests and contracts generally have been revised to improve clarity and provide

25 enhanced disclosure to facilitate public review and comment on the contracting process.

AMENDMENTS FOR 2010

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1 ~~(1)~~(3) Contracts, contractors' bids, responses to requests for proposals RFBs, RFPs
2 and all other records of communications between the ~~department~~ Department and persons or
3 firms seeking contracts, including the dollar amount of any contract, shall be open to
4 inspection immediately after a contract has been awarded. Within five days after a contract
5 has been awarded, the successful RFB or RFP and the contract shall also be posted on the
6 City's website. Nothing in this provision requires the disclosure of a private person's or
7 organization's net worth or other proprietary financial data submitted for qualification for a
8 contract or other benefit until and unless that person or organization is awarded the contract
9 or benefit. All bidders and contractors shall be advised that information provided which is
10 covered by this subdivision will be made available to the public upon request.

11 ~~(4)~~ Immediately after any review or evaluation or rating of responses to a RFB or
12 RFP has been completed, evaluation forms and score sheets and any other documents used
13 by persons in the RFB or RFP evaluation or contractor selection process shall be available for
14 public inspection. The names of panel members, scorers, graders or evaluators, along with
15 their job title and employer (if not employed by the City) along with their individual ratings,
16 comments, and score sheets or comments on related documents, shall be made immediately
17 available after the review or evaluation of a RFB or RFP has been completed.

18 ~~(2)~~(5) Notwithstanding the provisions of this subdivision or any other provision of this
19 ordinance, the Director of Public Health may withhold from disclosure proposed and final rates
20 of payment for managed health care contracts if the Director determines that public disclosure
21 would adversely affect the ability of the City to engage in effective negotiations for managed
22 health care contracts. The authority to withhold this information applies only to contracts
23 pursuant to which the City (through the Department of Public Health) either pays for health
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1 care services or receives compensation for providing such services, including mental health
2 and substance abuse services, to covered beneficiaries through a pre-arranged rate of
3 payment. This provision also applies to rates for managed health care contracts for the
4 University of California, San Francisco, if the contract involves beneficiaries who receive
5 services provided jointly by the City and University. This provision shall not authorize the
6 Director to withhold rate information from disclosure for more than three years.

7 ~~(3)~~(6) During the course of negotiations for:

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

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

14 (iii) any franchise agreements, ~~;~~
15 ~~all~~ All documents exchanged and related to the position of the parties, including draft
16 contracts, shall be made available for public inspection and copying upon request. In the
17 event that no records are prepared or exchanged during negotiations in the above-mentioned
18 categories, or the records exchanged do not provide a meaningful representation of the
19 respective positions, the ~~city attorney~~ City Attorney or ~~city~~ City representative familiar with the
20 negotiations shall, upon a written request by a member of the public, prepare written
21 summaries of the respective positions within five working days following the final day of
22 negotiation of any given week. The summaries will be available for public inspection and
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1 copying. The summaries shall not be a substitute for release of the actual documents
2 exchanged between the parties.

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

10 (8) Contracts, leases or other business subject to approval by a policy body:
11 Draft versions of an agreement being negotiated by representatives of the City with another
12 party need not be disclosed immediately upon creation but must be preserved and made
13 available alongalone with the version of the agreement to be presented to the policy body for
14 public review at least 10 days prior to the presentation of the agreement for approval by a
15 policy body, unless the body findsthat and articulates how the public interest would be
16 unavoidably and substantially harmed by compliance with this 10 day rule, provided that
17 policy body as used in this subdivision does not include committees. In the case of
18 negotiations for a contract, lease or other business agreement in which an agency of the City
19 is offering to provide facilities or services in direct competition with other public or private
20 entities that are not required by law to make their competing proposals public or do not in fact
21 make their proposals public, the policy body may postpone public access to the final draft
22 agreement until it is presented to it for approval.²⁷

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24 ²⁷ Moved from former 67.24(a)(2).
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1 (f) Budgets and Other Financial Information. Budgets, whether tentative, proposed
2 or adopted, for the City or any of its departments, programs, projects or other categories, and
3 all bills, claims, invoices, vouchers or other records of payment obligations as well as records
4 of actual disbursements showing the amount paid, the payee and the purpose for which
5 payment is made, other than payments for social or other services whose records are
6 confidential by law, shall not be exempt from disclosure under any circumstances.

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

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

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

17 ~~All withholdings of documents or information must be based on an express provision of this~~
18 ~~ordinance providing for withholding of the specific type of information in question or on an~~
19 ~~express and specific exemption provided by California Public Records Act that is not~~
20 ~~forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95,~~
21 ~~App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)~~

22 ²⁸ Moved to new 67.27.

23 ²⁹ Moved to new 67.27.

24 ³⁰ Moved to new 67.27.

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~~**Section 67.25. IMMEDIACY OF RESPONSE.**~~³¹

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

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

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

³¹ Moved to new 67.28.

AMENDMENTS FOR 2010

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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)~~

13 SECTION 67.26. WITHHOLDING KEPT TO A MINIMUM.

14 All withholdings of documents or information must be based on an express provision of
15 this ordinance providing for withholding of the specific type of information in question or on an
16 express and specific exemption provided by California Public Records Act that is not
17 forbidden by this ordinance. No record shall be withheld from disclosure in its entirety unless
18 all information contained in it is exempt from disclosure under express provisions of this
19 Ordinance or the California Public Records Act or of some other statute. Information that is
20 exempt from disclosure shall be masked, deleted or otherwise segregated in order that the
21 nonexempt portion of a requested record may be released, and keyed by footnote or other

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³² Moved to new section 67.20(e)

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1 clear reference to the appropriate justification for withholding required by section ~~67.27~~67.28
2 of this article. This work shall be done personally by the attorney or other staff member
3 conducting the exemption review. The work of responding to a public-records request and
4 preparing documents for disclosure shall be considered part of the regular work duties of any
5 city employee, and no fee shall be charged to the requester to cover the personnel costs of
6 responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by
7 Proposition G, 11/2/99)

8

9 **SECTION 67.27. PROHIBITED BASIS FOR WITHHOLDING.**³³

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

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

17 (c) Neither the City, nor any office, employee, or agent thereof, may assert an
18 exemption for withholding for any document or information based on a finding or showing that
19 the public interest in withholding the information outweighs the public interest in disclosure.
20 All withholdings of documents or information must be based on an express provision of this
21 ordinance providing for withholding of the specific type of information in question or on an

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

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AMENDMENTS FOR 2010

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1 express and specific exemption provided by California Public Records Act that is not
2 forbidden by this ordinance.

4 **SECTION 67.2728. JUSTIFICATION OF WITHHOLDING.**

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

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

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

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

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

19 (e) If any information is withheld under sections (a) – (d) above, the written justification
20 shall identify: a general description of the withheld information; the number of documents,
21 pages, or lines of information withheld; and provide general description of withheld
22 information, and clarify that the specific justification applicable to each piece of withheld
23 information must be provided.

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SECTION 67.2829. FEES FOR DUPLICATION.

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

(b) For documents routinely produced in multiple copies for distribution, e.g., meeting agendas, ~~and agenda packets~~ and other public records prepared for consideration at a public meeting ~~related materials~~, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs. Neither this section nor the California Public Records Act (Government Code sections 6250 or its successor et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that Act, whether or not distributed to a policy body.

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

(d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

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

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

12 13 **SECTION 67.30. MINIMUM STANDARDS; ELECTRONIC RECORDS; COMPUTER** 14 **SYSTEMS; WEB POSTINGS.**³⁵

15 **(a) Inspection and Copying of ~~Documentary~~ Public Information Stored in** 16 **Electronic Form.**

17 Unless prohibited by law, any department or policy body that has information that
18 constitutes and identifiable public record not wholly exempt from disclosure pursuant to an
19 express provision of this Ordinance that is in an electronic format shall make that information
20 available in the native electronic or the specifically requested format as follows:

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22 ³⁴ Moved from former 67.9(d).

23 ³⁵ New section combines former sections 67.21-1, and clarifies standards for computer
24 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 own
5 use or for provisions to other agencies, or which is easily generated by the department
6 or policy body, its officers or employees, including but not limited to any word
7 processing, spreadsheet, database, raw text, raw data or other software programs
8 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.

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1 (5) Nothing in this section shall require a department or policy body to create
2 a new computer program or system to respond to a request for information or to
3 provide access that would jeopardize or compromise the security or integrity of the
4 original record or violate a licensing agreement or copyright law.

5 (6) Nothing in this section shall be construed to permit an agency to make information
6 available only in an electronic format.

7 8 9 **(b) Converting Records to Electronic Format**

10 When responding to Sunshine Ordinance or public record requests, every department
11 and policy body shall, if requested, and if necessary technology and equipment are available,
12 to transfer documents that are otherwise only available in hard copy/paper form into an
13 electronic format. The electronic format shall, as reasonably practicable, be that is searchable
14 and electronically archivable for delivery via electronic mail or other electronic means, and
15 posting on the department or policy body's website as appropriate.³⁶

16 17 **(c) Minimum Standards for Use, Purchase and Upgrading of Computer** 18 **Systems.**

19 (1) It is the policy of the City and County of San Francisco to utilize computer
20 technology in order to reduce the cost of public records management, including the
21 costs of collecting, maintaining, and disclosing records subject to disclosure to
22

23 ³⁶ Creates new provision for transfer of paper records to electronic format to increase public
24 accessibility and utility of public information where reasonable and technologically feasible.
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1 members of the public under this Ordinance. On an ongoing basis, Departments and
2 Policy Bodies that use computer systems to collect and store public records shall
3 program and design these systems to ensure convenient, efficient, and economical
4 public access to records pursuant to subsection (a) above, including providing the
5 ability to redact or extract information specifically exempt from disclosure under this
6 Ordinance from information that is otherwise disclosable and maintained in an
7 electronic format. Departments and Policy Bodies shall also make public records
8 easily accessible over public networks such as the Internet pursuant to subsection (d)
9 below.

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

- 13 (i) Implementing a computer system in which exempt information is or
14 can be easily segregated from otherwise disclosable information.
- 15 (ii) Implementing a system that permits reproduction of electronic
16 copies of records in formats that are generally recognized as
17 industry standards.
- 18 (iii) Implementing a system that permits making records available
19 through the largest non-profit, non-proprietary public computer
20 network, consistent with the requirement for security of
21 information.

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1 (3) A department or policy body shall not enter into a contract for the creation
2 or maintenance of a computer system if that contract impairs the public's ability to
3 inspect or copy public information.

4 **(d) Minimum Internet and Website Standards**

5 Each department and policy body shall maintain a website, or on a comparable, readily
6 accessible location on the Internet, information that it is required to make publicly available.

7 (1) Each department and policy body is encouraged to make publicly
8 available through its website as much information and as many documents as possible
9 concerning its activities. At a minimum, each department or policy body within six
10 months or 6 months after creation, shall post on its website all meeting notices required
11 under this Ordinance, agendas, and the minutes of all previous meetings for the last
12 three years. Notices and agendas shall be posted no later than the time that the
13 department or policy body otherwise distributes this information to the public, allowing
14 reasonable time for posting. Minutes of meetings shall be posted as soon as possible,
15 but in any event within 48 hours after they have been approved.

16 (2) Each department and policy body shall make reasonable efforts to post
17 documents and information on its website in an industry standard, text searchable
18 format.

19 (3) Each department and policy body shall make reasonable efforts to ensure
20 that its website is regularly reviewed for timeliness and updated on at least a weekly
21 basis.

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1 (4) Each department's and policy body's home page shall contain a link,
2 titled "Records and Sunshine," to a page wherein the name, phone number, and e-mail
3 address of its custodian of records, and its records retention policy, and as reasonably
4 practicable post Sunshine Ordinance and public records documents requests and the
5 responses thereto are posted.

6 ~~(5) As reasonably practicable, each department and policy body that digitally~~
7 ~~records its meeting shall post those digital recordings to its website within 48 hours.~~

8 (5)(6) The City and County shall also make available on its website, or on a
9 comparable, readily accessible location on the Internet, a current copy of the City
10 Charter and all City Codes.

11 12 ~~SECTION 67.21 131. POLICY REGARDING USE AND PURCHASE OF COMPUTER~~ 13 ~~SYSTEMS.~~

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

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

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

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

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

13 ~~SECTION 67.29-232. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.~~

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

AMENDMENTS FOR 2010

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1 ~~posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48~~
2 ~~hours after they have been approved. Each department shall make reasonable efforts to~~
3 ~~ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at~~
4 ~~least a weekly basis. The City and County shall also make available on its World Wide Web~~
5 ~~site, or on a comparable, readily accessible location on the Internet, a current copy of the City~~
6 ~~Charter and all City Codes. (Added by Proposition G, 11/2/99)~~

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

11 ~~(1) The agency shall make the information available in any electronic format~~
12 ~~in which it holds the information.~~

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

17 ~~(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the~~
18 ~~cost of producing a copy of the record, including the cost to construct a record, and the cost of~~
19 ~~programming and computer services necessary to produce a copy of the record when either~~
20 ~~of the following applies:~~

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

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1 ~~(2) The request would require data compilation, extraction, or programming~~
2 ~~to produce the record.~~

3 ~~(c) Nothing in this section shall be construed to require the public agency to~~
4 ~~reconstruct a record in an electronic format if the agency no longer has the record available in~~
5 ~~an electronic format.~~

6 ~~(d) If the request is for information in other than electronic format, and the~~
7 ~~information also is in electronic format, the agency may inform the requester that the~~
8 ~~information is available in electronic format.~~

9 ~~(e) Nothing in this section shall be construed to permit an agency to make~~
10 ~~information available only in an electronic format.~~

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

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

17

18 **SECTION 67.2933. INDEX TO RECORDS.**

19 The City and County shall prepare a public records index that identifies the types of
20 information and documents maintained by City and County departments, agencies, boards,
21 commissions, and elected officers. The index shall be for the use of City officials, staff and
22 the general public, and shall be organized to permit a general understanding of the types of
23 information maintained, by which officials and departments, for which purposes and for what
24

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1 periods of retention, and under what manner of organization for accessing, e.g. by reference
2 to a name, a date, a proceeding or project, or some other referencing system. The index
3 need not be in such detail as to identify files or records concerning a specific person,
4 transaction or other event, but shall clearly indicate where and how records of that type are
5 kept. Any such master index shall be reviewed by appropriate staff for accuracy and
6 presented for formal adoption to the administrative official or policy body responsible for the
7 indexed records. The City Administrator shall be responsible for the preparation of this
8 records index. The City Administrator shall report on the progress of the index to the
9 ~~Sunshine Ordinance Task Force~~ Sunshine Commission on at least a semi-annual basis until
10 the index is completed. Each department, agency, commission and public official shall
11 cooperate with the City Administrator to identify the types of records it maintains, including
12 those documents created by the entity and those documents received in the ordinary course
13 of business and the types of requests that are regularly received. Each department, agency,
14 commission and public official is encouraged to solicit and encourage public participation to
15 develop a meaningful records index. The index shall clearly and meaningfully describe, with
16 as much specificity as practicable, the individual types of records that are prepared or
17 maintained by each department, agency, commission or public official of the City and County.
18 The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any
19 changes in the department, agency, commission or public official's practices or procedures
20 affecting the accuracy of the information provided to the City Administrator shall be recorded
21 by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of
22 the index. The index shall be continuously maintained on the City's World Wide Website and
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1 made available at public libraries within the City and County of San Francisco. (Added by Ord.
2 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

3
4 **SECTION 67.29-133-131. RECORDS AND CORRESPONDENCE SHALL BE**
5 **MAINTAINED, AND SHALL SURVIVE TENURE AND TRANSITION OF OFFICIALS.**

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

19 (b) The Department of Elections shall keep and preserve all records and invoices
20 relating to the design and printing of ballots, mechanical or digital vote tabulation equipment

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22
23 ³⁷ Moved from former 67.29-7(a) and expanded to provide City Attorney oversight of
24 preservation of public information from specified high-level offices.
25

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1 and other election materials, and all records documenting who had custody of ballots from the
2 time ballots are cast until ballots are received and certified by the Department of Elections.³⁸

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

14 15 ~~SECTION 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.~~⁴⁰

16 ~~Each department of the City and County of San Francisco shall maintain on a World~~
17 ~~Wide Web site, or on a comparable, readily accessible location on the Internet, information~~
18 ~~that it is required to make publicly available. Each department is encouraged to make publicly~~
19 ~~available through its World Wide Web site, as much information and as many documents as~~
20 ~~possible concerning its activities. At a minimum, within six months after enactment of this~~
21 ~~provision, each department shall post on its World Wide Web site all meeting notices required~~

22 ³⁸ Moved from former 67.29-7(b).

23 ³⁹ Moved from former 67.29-7(c).

24 ⁴⁰ Moved to new 67.30.

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1 ~~under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for~~
2 ~~the last three years. Notices and agendas shall be posted no later than the time that the~~
3 ~~department otherwise distributes this information to the public, allowing reasonable time for~~
4 ~~posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48~~
5 ~~hours after they have been approved. Each department shall make reasonable efforts to~~
6 ~~ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at~~
7 ~~least a weekly basis. The City and County shall also make available on its World Wide Web~~
8 ~~site, or on a comparable, readily accessible location on the Internet, a current copy of the City~~
9 ~~Charter and all City Codes. (Added by Proposition G, 11/2/99)~~

11 **SECTION 67.29-3**

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

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

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

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

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1 (a) Any lobbyist who contracts for economic consideration with the City and County of
2 San Francisco to represent the City and County in matters before any local, regional, state, or
3 federal administrative or legislative body shall file a public records report of their activities on a
4 quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by
5 the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify
6 all financial expenditures by the lobbyist, the individual or entity to whom each expenditure
7 was made, the date the expenditure was made, and specifically identify the local, state,
8 regional or national legislative or administrative action the lobbyist supported or opposed in
9 making the expenditure. The failure to file a quarterly report with the required disclosures shall
10 be a violation of this Ordinance.

11 (b) No person shall be deemed a lobbyist under section (a), unless that person
12 receives or becomes entitled to receive at least \$300 total compensation in any 30-day
13 ~~period~~month for influencing legislative or administrative action on behalf of the City and
14 County of San Francisco or has at least 25 separate contacts with local, state, regional or
15 national officials for the purpose of influencing legislative or administrative action within any
16 two consecutive months. No business or organization shall be deemed as a lobbyist under
17 section (a) unless it compensates its employees or members for their lobbying activities on
18 behalf of the City and County of San Francisco, and the compensated employees or members
19 have at least 25 separate contacts with local, state, regional or national officials for the
20 purpose of influencing legislative or administrative action within any two consecutive months.
21 "Total compensation" shall be calculated by combining all compensation received from the
22 City and County of San Francisco during the month for lobbying activities on matters at the
23 local, state, regional or national level. "Total number of contacts" shall be calculated by

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AMENDMENTS FOR 2010

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1 combining all contacts made during the two-month period on behalf of the City and County of
2 San Francisco for all lobbying activities on matters at the local, state, regional or national level.

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

7
8 **SECTION 67.29-533-332. CALENDARS OF CERTAIN ELECTED OFFICIALS,**
9 **DEPARTMENT HEADS**⁴²

10 The Mayor, ~~the~~ city attorney, ~~the members~~ members of the Board of Supervisors, and
11 every ~~Department Head~~ all elected officials and department and agency heads of the City and
12 County of San Francisco who are subject to this Ordinance shall keep the following publicly
13 accessible calendars.

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

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

18

19

20

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

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

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

8 (c) For meetings with an individual – the individual's name and his or her business
9 or other affiliation, and a general statement or summary of matters discussed shall be
10 included on the calendar, unless disclosing the individual's name or other identifying
11 information would violate a need for confidentiality imposed by law or on the facts of a
12 particular circumstance.

13 (d) Such calendars ~~shall be~~ are public records and shall be ~~available to a requester~~
14 ~~three business days subsequent to the calendar entry date~~ be available to any requester three
15 business days subsequent to the calendar entry date. ~~posted to the Department or Elected~~
16 ~~Official's web site at the state of each business day.~~

17 (e) To the fullest extent practicable, the calendars and information required by this
18 section shall be also posted on the department or elected official's website at the start of each
19 business day, but each public official subject to this section is encouraged to post his or her
20 calendar as far in advance as possible. ~~Each public official subject to this section is~~
21 ~~encouraged to post his or her calendar in as far in advance as is practicable. (Added by~~
22 ~~Proposition G, 11/2/99)~~

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1 (f) Nothing in this section shall exempt from disclosure any calendar or calendar
2 information used for official city business that is kept by any employee or official.

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

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

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

17 ~~(a) The Mayor and all Department Heads shall maintain, and preserve, in a~~
18 ~~professional and businesslike manner all documents and correspondence, including but not~~
19 ~~limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall~~
20 ~~disclose all such records in accordance with this ordinance.~~⁴³

21 ~~(b) The Department of Elections shall keep and preserve all records and invoices~~
22 ~~relating to the design and printing of ballots and other election materials and shall keep and~~

23 _____
24 ⁴³ Moved to new 67.33(a) and expanded.
25

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1 ~~preserve records documenting who had custody of ballots from the time ballots are cast until~~
2 ~~ballots are received and certified by the Department of Elections.~~⁴⁴

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

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23 ⁴⁴ Moved to new 67.33(b).

24 ⁴⁵ Moved to new 67.33(c).

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**ARTICLE IV
POLICY IMPLEMENTATION**

- Sec. ~~67.30-34~~ The Sunshine Ordinance Task Force Sunshine Commission
- Sec. ~~67.31-35~~ Responsibility for Administration.
- Sec. ~~67.32-36~~ Provision of Services to Other Agencies; Sunshine Required.
- Sec. ~~67.33-37~~ Department Head Open Government Declaration.
- Sec. 67.38 Role of City Attorney's Office; Advice Shall Be Public Information
- Sec. 67.39 Hearing and Orders of Determination
- Sec. 67.40 Administrative Enforcement Provisions
- Sec. ~~67.34-41~~ Willful Failure Shall be Official Misconduct.
- Sec. 67.42 Referrals and Enforcement by the Ethics Commission
- Sec. ~~67.35-43~~ Public Enforcement Provisions.
- Sec. ~~67.36-44~~ Sunshine Ordinance Supersedes Other Local Laws.
- Sec. ~~67.37-45~~ Severability.
- Sec. 67A.1. Prohibiting the use of Cell Phone, Pagers and Similar Sound-Producing Electrical Devices at and During Public Meetings

SECTION ~~67.30-34~~. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION

(a) There is hereby established a ~~task force to be known as the Sunshine Ordinance Task Force~~ Sunshine Commission consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members

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

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

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1 ~~Office that the Task Force determines may have a conflict of interest with regard to the~~
2 ~~matters being handled by the attorney.~~²

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

10 (c) The ~~task force~~ Commission shall advise the Board of Supervisors and ~~provide~~
11 ~~information to other City departments ,~~ the office of the Mayor and other City departments on
12 appropriate ways in which to implement this chapter. The ~~task force~~ Commission shall
13 develop appropriate goals to ensure practical and timely implementation of this chapter. The
14 ~~task force~~ Commission shall propose to the Board of Supervisors amendments to this chapter
15 and solicit advice from City officials, employees and members of the public on ways to
16 improve the Ordinance. The ~~task force~~ Commission shall report to the Board of Supervisors
17 at least once annually on any practical or policy problems encountered in the administration of
18 this chapter. The ~~Task Force~~ Commission shall receive and review the annual reports of the
19 Supervisor(s) of Public Records and Public Forums, and may request additional reports or
20 information as it deems necessary. The ~~Task Force~~ Commission shall may make referrals to
21 a municipal office or any other appropriate body or official, including the Ethics Commission,
22 District Attorney and the ~~State-California~~ Attorney General with enforcement power under this

23 _____
24 ² References to City Attorney moved to new 67.38, "Role of City Attorney."
25

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1 Ordinance or under the California Public Records Act and the Brown Act whenever it
2 concludes that any person has violated any provisions of this Ordinance or the Acts. The
3 ~~Task Force~~ Commission shall, from time to time as it sees fit, issue public reports evaluating
4 compliance with this ordinance and related California laws by the City or any
5 ~~Department~~department, ~~Office~~office, or ~~Official~~official thereof.³

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

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

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

17

18 **SECTION 67.3435. RESPONSIBILITY FOR ADMINISTRATION.**

19 The Mayor shall administer and coordinate the implementation of the provisions of this
20 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~
21 ~~the implementation of the provisions of this chapter~~ and for departments under the control of

22

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

25

AMENDMENTS FOR 2010

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Note: Track change mode in use. As of June 1, 2010

1 boards and commissions appointed by the Mayor. Elected officers shall administer and
2 coordinate the implementation of the provisions of this chapter for departments under their
3 respective control. The Board of Supervisors shall provide sufficient staff, facilities, equipment
4 and any other resources to enable the Sunshine Commission to fulfill its duties under this
5 Ordinance.⁴ The Clerk of the Board of Supervisors shall provide a full-time staff at least one
6 full time staff person, who shall be the Administrator of the Commission, to perform
7 administrative duties for the ~~Sunshine Ordinance Task Force~~ Commission including and to
8 ~~assist~~ assisting any person in gaining access to public meetings or public information. The
9 Administrator of the Commission and shall have no other duties.⁵ ~~The Clerk of the Board of~~
10 ~~Supervisors shall provide that staff person with whatever facilities and equipment are~~
11 ~~necessary to perform said duties.~~ (Added by Ord. 265-93, App. 8/18/93; amended by Ord.
12 287-96, App. 7/12/96; Proposition G, 11/2/99)

13 14 **SECTION 67.3236. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE** 15 **REQUIRED.**

16 (a) It is the policy of the City and County of San Francisco to ensure opportunities for
17 informed civic participation embodied in this Ordinance to all local, state, regional and federal
18 agencies and institutions with which it maintains continuing legal and political relationships.
19 Officers, agents and other representatives of the City shall continually, consistently and
20 assertively work to seek commitments to enact open meetings, public information and citizen

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

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

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1 comment policies by these agencies and institutions, including but not limited to the Presidio
2 Trust, the San Francisco Unified School District, the San Francisco Community College
3 District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the
4 Treasure Island Development Authority, the San Francisco Redevelopment Authority and the
5 University of California campuses operating within the City. To the extent not expressly
6 prohibited by law, copies of all written communications with the above identified entities and
7 any City employee, officer, agents, ~~or and~~and/or representative, shall be accessible as public
8 records. To the extent not expressly prohibited by law, any meeting of the governing body of
9 any such agency and institution at which City officers, agents or representatives are present in
10 their official capacities shall be open to the public, and this provision cannot be waived by any
11 City officer, agent or representative.

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

20 **SECTION 67.3337. DEPARTMENT HEAD OPEN GOVERNMENT DECLARATION.**

21 All City department heads and all City management employees and all employees or
22 officials who are required to sign an affidavit of financial interest with the Ethics Commission
23 shall sign an annual affidavit or declaration stating under penalty of perjury that they have
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25

AMENDMENTS FOR 2010

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1 read the Sunshine Ordinance and have attended or will attend when next offered, a training
2 session on the Sunshine Ordinance, to be held at least once annually. The affidavit or
3 declarations shall be maintained by the Ethics Commission and shall be available as a public
4 record. Annual training shall be provided by the San Francisco City Attorney's Office in
5 consultation with the ~~with the assistance of the Sunshine Ordinance Task Force Sunshine~~
6 Commission. ~~(Added by Proposition G, 11/2/99)~~ All materials and training plans shall be
7 approved by the Sunshine Commission annually.

8

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

10 **INFORMATION.**⁶

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

20 (b) The City Attorney's office shall act to protect and secure the rights of the people
21 of San Francisco to access public information and public meetings and shall not act as legal

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

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1 counsel for any City employee or any person having custody of any public information for
2 purposes of denying access to public meetings or public information.

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

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

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

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1 shall also include copies of all rulings made by the Supervisor of Public Records and
2 Supervisor of Public Forums and all opinions issued.⁷

4 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**⁸

5 (a) The Sunshine Commission shall conduct administrative hearings on complaints
6 of alleged violations this Ordinance, the California Public Records Act, or the Brown Act. The
7 Commission may issue Orders of Determination following the hearing on a particular
8 complaint. If the Commission determines on the basis of substantial evidence presented
9 during the hearing that a violation of the Ordinance, the California Public Records Act or the
10 Brown Act has occurred, it shall issue an Order of Determination with written findings of fact
11 and law. The Order of Determination shall issue to the Complainant and the Respondent and
12 shall be posted on the Sunshine Commission's website.

13 (b) To the extent not prohibited by State law the Commission may subpoena
14 witnesses, compel their attendance and testimony, administer oaths and affirmation, take
15 evidence and require by subpoena the production of any books, papers, records or other
16 items material to the performance of the Commission's duties or exercise of its powers.⁹

17 (c) An authorized representative of the respondent employee, official, department,
18 agency, policy body, or custodian of public record who has personal knowledge of the matters

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

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

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

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1 alleged in the complaint shall attend each Commission hearing and Commission committee
2 hearing to explain the response to the request for access to public meetings or public
3 information, as well as provide a detailed description of the records search conducted, and the
4 statutory or case law basis for any decision to withhold or redact the records requested, or to
5 bar public attendance at and/or participation in the meeting(s), as applicable.¹⁰

7 **SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.**¹¹

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

17 (b) Upon issuing an Order of Determination, the Commission may require the
18 governing entity to which the person or entity that has violated the Ordinance reports, to

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

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

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

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1 schedule at the governing entity's next regularly scheduled meeting the Order of
2 Determination for its discussion and response.¹³

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

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

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

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

18

19

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

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

24 ¹⁵ New provisions providing for appointment and funding of outside counsel to allow
25 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 (e) The administrative remedies provided under this Ordinance shall in no way limit
2 the availability of other administrative remedies provided to any person with respect to any
3 officer or employee of any agency, executive office, department or policy body; nor shall the
4 administrative remedy provided by this section in any way limit the availability of judicial
5 remedies otherwise available to any person. If a custodian of a public record refuses or fails to
6 comply with the request of any person for inspection or copy of a public record or with an
7 Order of Determination under this Ordinance, the Superior Court shall have jurisdiction to
8 order compliance.¹⁶

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

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

14 ~~The willful failure of any elected official, department head, or other managerial city~~
15 ~~employee to~~person, office or entity to discharge any duties imposed by the Sunshine
16 Ordinance, the Brown Act or the California Public Records Act shall be deemed official
17 misconduct for purposes of this Ordinance and any other applicable provisions of the City
18 Charter, Ordinances, and State law. If the Commission makes a determination that any
19 person or entity has willfully failed to discharge any such duties, then the Commission shall
20 refer with written findings of law and fact the matter to the Ethics Commission for
21 enforcement. The Commission may also refer the matter ~~by~~ to the Board of Supervisors.

22 ¹⁶ Provision moved from former 67.21(f).

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

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1 District Attorney or the ~~State~~ California Attorney General for investigation and enforcement.
2 ~~Complaints involving allegations of willful violations of this ordinance, the Brown Act or the~~
3 ~~Public Records Act by elected officials or department heads of the City and County of San~~
4 ~~Francisco shall be handled by the Ethics Commission.~~¹⁸ (Added by Proposition G, 11/2/99)

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

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

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

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

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

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

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

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

4 ~~(v) Upon referral~~ The Sunshine Commission may, in a referral of a finding of
5 official misconduct, recommend the level of fines that may be imposed.

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

8 (vii) Any such fines imposed by the Ethics Commission under this provision,
9 shall be placed in the Sunshine Commission's litigation fund.

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

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

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

22 _____
23 ²⁰ New provision incorporates existing language from Articles II and III in order to clarify and
24 streamline Ordinance.
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1 ~~(a)~~ Any person may ~~institute~~ commence proceedings for injunctive relief,
2 declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her
3 right to inspect or to receive a copy of any public record or class of public records under this
4 Ordinance or to enforce his or her right to attend any meeting required under this Ordinance
5 to be open, or to compel such meeting to be open. Filing a complaint with the Sunshine
6 Commission or exhausting the Commission complaint and hearing procedures is not a
7 prerequisite to filing an action under this subsection.²¹

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

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

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

20 _____
21 ²¹ Revises and clarifies existing language in Ordinance.

22 ²² New provision creating a right to judicial review of alleged public meeting violations, but only
23 after cure and correct provisions are complied with. Provides method by which members of
24 public can seek enforcement of enhanced public meeting provisions in the Sunshine
25 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
23 City department, entity, official, body or employee has not complied with the Order of
24
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1 Determination issued by the Sunshine Commission.²³ The Ethics Commission shall apply the
2 same procedures and standards, and conduct such proceedings in the same manner and
3 under the same rules as it would have conducted them upon a referral from the Sunshine
4 Commission for enforcement of such Order of Determination pursuant to and in accordance
5 with Section 67.42, except that the Sunshine Commission shall not be considered a
6 “complainant of record” as provided in Section 67.42(a)(i).

7 (Added by Proposition G, 11/2/99)

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

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

16 **SECTION 67.3745. SEVERABILITY.**

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

22 _____
23 ²³ Provides a longer time period within which respondents must comply with Orders of
24 Determination before a complainant can go directly to the Ethics Commission.
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SECTION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.

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