

Date: April 6, 2010

Item No. 1

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

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Proposed amendments to Articles I through IV**
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Completed by: Chris Rustom

Date: April 1, 2010

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

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

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

AMENDMENTS FOR 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

Note: Additions are double-underline, deletions are ~~double-strikethrough~~.

PROPOSED ORDINANCE AMENDMENTS

ARTICLE I  
IN GENERAL

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

8 (e) Public officials who attempt to conduct the public's business in secret should be  
9 held accountable for their actions. Only a strong Open Government and Sunshine Ordinance,  
10 enforced by a strong Sunshine Commission<sup>1</sup>~~Sunshine Ordinance Task Force~~, can protect the  
11 public's interest in open government.

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

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

19  
20  
21 <sup>1</sup> 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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1    **SECTION 67.2. CITATION.**

2    This ~~Chapter~~chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord.  
3    265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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**ARTICLE II  
PUBLIC ACCESS TO MEETINGS**

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- 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

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1    **SECTION 67.3. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

21 \_\_\_\_\_  
22 <sup>2</sup> 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           ~~(D) Proceedings of the Department of Social Services Child Welfare Placement and~~  
2 ~~Review Committee or similar committees which exist to consider confidential information and~~  
3 ~~make decisions regarding Department of Social Services clients.~~

4           ~~(cd)~~ "Policy body" shall mean:<sup>3</sup>

5           (1) The Board of Supervisors;

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

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

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

11           ~~(5)(4)~~ Any board, commission, committee or other body, standing committee of a policy  
12 body composed of members of the policy body, irrespective of its composition.;

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

19           ~~(7)(6)~~ Any advisory board, commission, committee, or council created by a federal,  
20 state, or local grant whose members are appointed by ~~city~~ City officials, employees or agents.

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22  
23 <sup>3</sup> See above; expanded categories of policy bodies.



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1 (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G,  
2 11/2/99)

3 (ed) "Passive meeting body" shall mean.<sup>4</sup>

4 (1) Advisory committees created by the initiative of a member of a policy body, ~~the~~  
5 ~~Mayor~~ the Mayor, ~~or a department head~~, or someone operating with the department head's  
6 authority other than the Mayor;

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

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

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

20

21 <sup>4</sup> Revised 67.3(c) and (d) to: clarify ambiguity regarding "advisory" committees and bodies;  
22 make clear that where body is tasked with changing or implementing new policy – they are  
23 policy bodies; all bodies created by Mayor (except ones that include City employees to meet  
24 with residents) are now "Policy Bodies."  
25

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

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

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

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

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

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

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

### 3        **SECTION 67.4. PASSIVE MEETINGS BODIES: CONDUCT OF BUSINESS.**

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

7        ~~(4)(b)~~ (b) Such gatherings must ~~need not~~ be formally noticed. Notice of the time, place  
8        and nature of the meeting shall be posted with a contact person's name and contact  
9        information, at least 72 hours prior to the scheduled meeting ~~except on the City's website~~  
10       ~~whenever possible, although and the time, place and nature of the gathering shall be posted~~  
11       at the main library and on the City's website and be disclosed by mail, e-mail, or fax upon  
12       inquiry by a member of the public, ~~and any.~~ If an agenda actually is prepared in advance for  
13       the gathering, it shall be accessible to such inquirers as a public record provided upon request,  
14       and as practicable posted with the notice.<sup>5</sup>

15       (2) ~~Such gatherings need not be conducted in any particular space for the~~  
16       ~~accommodation of members of the public, although members of the public shall be permitted~~  
17       ~~to observe on a space available basis consistent with legal and practical restrictions on~~  
18       ~~occupancy.~~<sup>6</sup>

19       (3)(c) Such gatherings of a ~~business nature~~ need not provide opportunities for  
20       comment by members of the public, although the person presiding may, ~~in at his or her~~

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

24 <sup>6</sup> Provision consolidated with subsection 67.4(a) above.  
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1 ~~discretion,~~ entertain such questions or comments from ~~spectators~~ members of the public as  
2 may be relevant to ~~the business of the gathering.~~

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

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

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

15 ~~(e)(b)~~ To the extent not inconsistent with state or federal law, a policy body shall  
16 include in any contract with an entity that owns, operates or manages any property in which  
17 the City has or will have an ownership interest, including a mortgage, and on which the entity  
18 performs a government function related to the furtherance of health, safety or welfare, a  
19 requirement that any meeting of the governing board of the entity to address any matter  
20 relating to the property or its government related activities on the property, or performance  
21 under the contract or grant, be conducted as provided under this section ~~in subdivision (a) of~~

22 \_\_\_\_\_

23 <sup>7</sup> Removed as unnecessary.

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1 ~~this section~~. Records made available to the governing board relating to such matters shall be  
2 likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per  
3 page, or at a higher actual cost as demonstrated in writing to such governing board.<sup>8</sup>(Added  
4 by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

## 6 **SECTION 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

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

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

## 13 **SECTION 67.6. POLICY BODIES; ~~CONDUCT OF BUSINESS~~; TIME AND PLACE FOR** 14 **MEETINGS.**

15 (a) Each policy body, except for ~~advisory bodies~~ specified in Section 67.3(d)(5) and  
16 67.3(d)(6), shall establish by resolution or motion the time and place for holding regular  
17 meetings.

18 (b) ~~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 residing on property owned by the~~  
21 ~~City, or to meet with residents of another jurisdiction to discuss actions of the policy body that~~

22  
23 <sup>8</sup> Task Force recommends moving this entire section to new 67.24 [not yet moved].  
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1 ~~affect those residents, all meetings of its policy bodies shall be held within the City and County~~  
2 ~~of San Francisco.~~<sup>9</sup>

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

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

16 (e)(d) Meetings of ~~passive meeting~~ bodies as specified in Section 67.3(d)(5) and  
17 67.3(d)(6) ~~67.6(d)(4)~~ of this article shall be preceded by notice delivered ~~personally or by mail,~~  
18 e-mail, or facsimile ~~as reasonably requested~~ at least 72 hours before the time of such meeting  
19 to each person who has requested, in writing, notice of such meeting. If the ~~advisory~~ body  
20 elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by  
21 that ~~advisory~~ body for the conduct of its business, for the time and place for holding such

22 <sup>9</sup> Moved to new 67.6(f).

23 <sup>10</sup> Moved from former 67.6(g).

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1 regular meetings. ~~In such case, no notice of regular meetings, other than the posting of an~~  
2 ~~agenda pursuant to Section 67.7 of this article in the place used by the policy body which it~~  
3 ~~advises, is required.~~

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

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

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

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

17 (gh) The initial meeting of a policy body shall be considered a regular meeting and  
18 notice of the time and location of the meeting shall be given at least 10 calendar days prior to  
19

20 <sup>11</sup> Revised to provide consistency for accepted methods of delivery of notice; to allow shorter  
21 advance time to provide special meeting notice to accommodate policy bodies because of  
22 increased use of electronic/instantaneous notice.  
23 <sup>12</sup> Moved and amended from former 67.6(b).  
24 <sup>13</sup> Moved to new 67.6(b).  
25 <sup>14</sup> Revised to provide more consistency for posting notice.



# 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

Note: Additions are double-underline, deletions are ~~double-strikethrough~~.

1 said initial meeting being held, and delivered personally or by mail, e-mail, or facsimile as  
2 requested.<sup>15</sup> (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## 3 4 **SECTION 67.7. AGENDA REQUIREMENTS; REGULAR FOR MEETINGS OF POLICY** 5 **BODIES.**

6 (a) At least 72 hours before a ~~regular meeting~~, a policy body shall post an agenda  
7 containing a meaningful description of each item of business to be transacted or discussed at  
8 the meeting. Agendas shall specify for whether each item of business ~~the proposed is~~ subject  
9 to possible action or a statement the item is for discussion only. If a specific action is  
10 proposed or contemplated it shall be included in the agenda item. ~~In addition, a policy body~~  
11 ~~shall post a current agenda on its Internet website at least 72 hours before a regular meeting,~~  
12 ~~and a link to the agenda on a "central master calendar" available on the City's website where~~  
13 ~~the date, time and location of all City policy body meetings shall be listed.~~<sup>16</sup>

14 (b) A description is meaningful if it is ~~suf-ficiently~~ sufficiently clear and specific to  
15 alert a person of average intelligence and education whose interests are affected by the item  
16 that he or she may have reason to attend the meeting or seek more information on the item.  
17 The description ~~should~~ shall be brief, concise and written in plain, easily understood English.  
18 It shall refer to any explanatory documents that have been provided to the policy body in  
19 connection with an agenda item, such as correspondence or reports, and such documents  
20 shall be posted adjacent to the agenda or, if such documents are of more than one page in

21  
22 <sup>15</sup> Added to correct omission in Ordinance, providing notice of initial meetings.

23 <sup>16</sup> Revised to clarify language and to provide for a central master calendar to provide  
24 accessible and consistent access to meeting information.  
25

## AMENDMENTS FOR 2010

*Approved 6/10/2008 by the Task Force*

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1 length, made available for public inspection and copying at a location indicated on the agenda  
2 during normal office hours.

3 (c) The agenda shall specify the time and location of the regular meeting, and shall  
4 be posted, at the main public library, and in the branch libraries in a locations that is are freely  
5 accessible to members of the public. The requirement that a policy body posts copies of its  
6 agendas at the branch libraries is satisfied if the branch library has a computer upon which  
7 members of the public can access the City's website to search for agendas of meetings of  
8 City policy bodies. The agenda shall also be posted outside the meeting room as soon as  
9 practicable but no later than the start of the meeting.<sup>17</sup>

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

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

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

20

21

22 <sup>17</sup> Revised to require posting of agendas at branch libraries, achieved through access to  
23 computers and master calendar provision; provides for posting agendas outside of meeting  
24 room.

24

25

## AMENDMENTS FOR 2010

*Approved 6/10/2008 by the Task Force*

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

8           (3)     The item was on an agenda posted pursuant to subdivision (a) for a prior  
9 meeting of the body occurring not more than five calendar days prior to the date action is  
10 taken on the item, and at the prior meeting the item was continued to the meeting at which  
11 action is being taken. In addition, notice of the continuation shall be posted with the agenda of  
12 the prior meeting specifying that a particular agenda item was continued to that meeting.<sup>18</sup>

13           (f)     Each board and commission enumerated in the Charter shall ensure that  
14 ~~agendas for regular and special meetings are made available to speech and hearing impaired~~  
15 ~~persons through telecommunications devices for the deaf, telecommunications relay services~~  
16 ~~or equivalent systems, and, upon request, to sight impaired persons through Braille or~~  
17 enlarged type and other material related to meetings are accessible to persons with  
18 disabilities. Upon request, materials shall be made available in alternative formats. Requests  
19 should be made to the secretary or clerk of the board or commission at least 48 hours prior to  
20 the meeting. Requests for material in alternative formats made less than 48 hours prior to the  
21 meeting shall be met when possible. All policy bodies and passive meeting bodies shall

22 \_\_\_\_\_  
23 <sup>18</sup> Revised to provide adequate information on the continued agenda item.

AMENDMENTS FOR 2010

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Approved 3/3/2010 by the Compliance and Amendments Committee

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1 comply with the guidelines and recommendations of the Mayor's Office of Disabilities  
2 Accessible Public Event Checklist.<sup>19</sup>

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

5  
6 KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE  
7 (Chapter 67 of the San Francisco Administrative Code)

8  
9 ~~Government's~~Government's duty is to serve the public, reaching its decisions in full  
10 view of the public. Commissions, boards, councils and other agencies of the City and County  
11 exist to conduct the people's business. This ordinance assures that deliberations are  
12 conducted before the people and that City operations are open to the people's review.

13  
14 FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE  
15 ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT  
16 THE SUNSHINE COMMISSIONS~~SUNSHINE ORDINANCE TASK FORCE~~.

17  
18 (h) Each agenda of a policy body covered by this ~~Sunshine Ordinance~~ shall include  
19 the address, area code and phone number, fax number, e-mail address, and a contact  
20 ~~person's name~~person for the Sunshine Commission ~~Sunshine Ordinance Task Force~~.

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

## AMENDMENTS FOR 2010

*Approved 6/10/2008 by the Task Force*

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*Approved 3/3/2010 by the Compliance and Amendments Committee*

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1 Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each  
2 agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord.  
3 185-96, App. 5/8/96; Proposition G, 11/2/99)

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

### 13 **Section 67.7-1. PUBLIC NOTICE REQUIREMENTS.**

14 (a)~~(1)~~ Any public notice that is mailed, posted, or published by a City department,  
15 board, agency, or commission to residents residing within a specific area to inform those  
16 residents of a matter that may impact their property or that neighborhood area, shall be brief,  
17 concise and written in plain, easily understood English.

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

21 \_\_\_\_\_  
22 <sup>20</sup> Added to provide members of the public with ability to weigh in on matters before the body,  
23 especially those who cannot attend meetings; consistent with the minutes requirements of  
24 former Section 67.16.

AMENDMENTS FOR 2010

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Approved 3/3/2010 by the Compliance and Amendments Committee

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1            ~~(c)(3)(e)~~        If the notice informs the public of a public meeting or hearing, then the  
2 notice shall state that persons who are unable to attend the public meeting or hearing may  
3 submit to the City, by the time the proceeding begins, written comments regarding the subject  
4 of the meeting or hearing, that these comments will be made a part of the official public  
5 record, and that the comments will be brought to the attention of the person or persons  
6 conducting the public meeting or hearing. The notice should also state the name, and  
7 address, fax and e-mail address of the person or persons to whom those written comments  
8 should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G,  
9 11/2/99)

11        **SECTION 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**<sup>21</sup>

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

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

19            ~~(a)(b) In addition to the brief general description of items to be discussed or acted upon~~  
20 ~~in open and public session, the agenda posted pursuant to Government Code Section~~

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

24        <sup>22</sup> Moved from former 67.8-1(b).

## AMENDMENTS FOR 2010

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*Approved 3/3/2010 by the Compliance and Amendments Committee*

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1 ~~54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any~~  
2 ~~call and notice delivered to the local media and posted pursuant to Government Code Section~~  
3 ~~54956 shall specify and disclose the nature of any closed sessions by providing all of the~~  
4 ~~following information:~~ With respect to every item of business to be discussed in closed session  
5 pursuant to Government Code section 54957:  
6

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

9 ~~LICENSE/PERMIT DETERMINATION:~~

10 ~~applicant(s)~~

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

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

15  
16 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATOR~~

17 ~~Property:~~

18 ~~Person(s) negotiating:~~

19 ~~Under negotiation:~~

20 ~~Price: Terms of payment: Both:~~

21

22

23

24

25

AMENDMENTS FOR 2010

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Approved 3/3/2010 by the Compliance and Amendments Committee

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

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

10  
11 ~~CONFERENCE WITH LEGAL COUNSEL~~

12 ~~Existing litigation:~~

13 ~~Unspecified to protect service of process~~

14 ~~Unspecified to protect settlement posture~~

15 ~~or:~~

16 ~~CONFERENCE WITH LEGAL COUNSEL~~

17 ~~Anticipated litigation:~~

18 ~~As defendant As plaintiff~~

19  
20           ~~The space under "Existing litigation" shall be used to specifically identify a case under~~  
21 ~~discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the~~  
22 ~~case name, court, and case number, unless the identification would jeopardize the City's~~  
23



AMENDMENTS FOR 2010

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1 ~~ability to effectuate service of process upon one or more unserved parties, in which instance~~  
2 ~~the space in the next succeeding line shall be checked, or unless the identification would~~  
3 ~~jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in~~  
4 ~~which instance the space in the next succeeding line shall be checked. If the closed session is~~  
5 ~~called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be~~  
6 ~~checked under "Anticipated litigation" to indicate the City's anticipated position as defendant~~  
7 ~~or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed,~~  
8 ~~space may be saved by entering the number of separate instances in the "As defendant" or~~  
9 ~~"As plaintiff" spaces or both as appropriate.~~

10  
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25

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

~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

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

~~or:~~

~~PUBLIC EMPLOYEE APPOINTMENT/HIRING~~

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

~~PUBLIC EMPLOYEE PERFORMANCE EVALUATION~~

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

~~or:~~

~~PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE~~

AMENDMENTS FOR 2010

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1 Number of employees affected:

2 of:

3

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

6

7 CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

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

9 Organization(s) representing:

10 Police officers, firefighters and airport police

11 Transit Workers

12 Nurses

13 Miscellaneous Employees

14 Anticipated issue(s) under negotiation:

15 Wages

16 Hours

17 Benefits

18 Working Conditions

19 Other (specify if known)

20 All

21

22

23

24

25

AMENDMENTS FOR 2010

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1 Where renegotiating a memorandum of understanding or negotiating a successor  
2 memorandum of ~~under standing~~understanding, the name of the memorandum of ~~under-~~  
3 ~~standing~~understanding:

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

14  
15 **~~SECTION 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.~~<sup>23</sup>**

16 (a) ~~All closed sessions of any policy body covered by this Ordinance shall be either~~  
17 ~~audio recorded or audio and video recorded in their entirety and all such recordings shall be~~  
18 ~~retained for at least TEN years, or permanently where technologically and economically~~  
19 ~~feasible. Closed session recordings shall be made available whenever all rationales for~~  
20 ~~closing the session are no longer applicable. Recordings of closed sessions of a policy body~~  
21 ~~covered by this Ordinance, wherein the justification for the closed session is due to~~

22 \_\_\_\_\_  
23 <sup>23</sup> The provisions of this section have been moved in order to streamline and consolidate like  
24 provision on the Ordinance.  
25

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1 ~~"anticipated litigation" shall be released to the public in accordance with any of the following~~  
2 ~~provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the~~  
3 ~~statute of limitations for the anticipated litigation if no litigation is filed; as soon as the~~  
4 ~~controversy leading to anticipated litigation is settled or concluded.~~<sup>24</sup>

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

12  
13 **SECTION 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**

14 (a) ~~Agendas of meetings, meeting packets, or documents created by a department,~~  
15 ~~and or any other documents on file with the clerk or secretary of the policy body, when~~  
16 ~~intended for distribution to all, or a majority of all, of the members of a policy body in~~  
17 ~~connection with a matter anticipated for discussion or consideration at a public meeting shall~~  
18 ~~be made available to the public for inspection and copying at the office of the policy body at~~  
19 ~~least 48 hours before the hearing. To the extent possible, such documents shall also be made~~  
20 ~~available through the policy body's Internet site. However, this disclosure need not include an~~

21  
22 <sup>24</sup> Revised and moved to new 67.14(b), (c),

23 <sup>25</sup> Moved to new 67.8(a).

24 <sup>26</sup> Moved to new 67.12(e).

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1 ~~material exempt from public disclosure under this ordinance.~~ Unless demonstrably unfeasible  
2 these materials shall be made available on the policy body's web site, at least 48 hours prior  
3 to the meeting. Public review copies of the agenda and all related documents that constitute  
4 the meeting packet shall be made available at the meeting to the public in sufficient quantities  
5 commensurate with the anticipated number of people attending the hearing. The materials  
6 that are distributed at the hearing shall be clearly legible of such a quality that a person with  
7 20/20 vision would have no difficulty reading them.<sup>27</sup>

8 (b) If any document subject to adoption, approval or award by a policy body is not  
9 available at least 48 hours before the meeting at which that document is scheduled to be  
10 adopted, approved or awarded and a member of the policy body requests that the matter be  
11 continued, the policy body must continue the item to a time not less than 48 hours after the  
12 document was made available. Nothing in this subsection shall prohibit the policy body from  
13 amending a document at a meeting.<sup>28</sup>

14 (b) ~~Records which are subject to disclosure under subdivision (a) and which are~~  
15 ~~intended for distribution to a policy body prior to commencement of a public meeting shall be~~  
16 ~~made available for public inspection and copying upon request prior to commencement of~~  
17 ~~such meeting, whether or not actually distributed to or received by the body at the time of the~~  
18 ~~request.~~<sup>29</sup>

20 <sup>27</sup> Revised 67.9(a) requires that agenda packets be made available for public inspection 48  
21 hours before a meeting and, where practicable, posted on a website.

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

25 <sup>29</sup> Moved into subsection (a) above.

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1           ~~(c)~~—Records which are subject to disclosure under subdivision (a) and which are  
2 distributed during a public meeting but prior to commencement of their discussion shall be  
3 made available for public inspection prior to commencement of, and during, their discussion.<sup>30</sup>

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

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

### 18 SECTION 67.10. CLOSED SESSIONS: PERMITTED TOPICS.

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

20           (a) With the California Attorney General, district attorney, agency counsel, security  
21 consultant, sheriff, or chief of police, or their respective deputies, on matters posing a threat to

22 <sup>30</sup> Moved into subsection (a) above.

23 <sup>31</sup> Moved to new 67.29(f).

## AMENDMENTS FOR 2010

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1 the security of public buildings or a threat to the ~~public~~public's right of access to public  
2 services or public facilities.<sup>32</sup>

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

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

21  
22 \_\_\_\_\_  
<sup>32</sup> Revised to be consistent with the Brown Act.

23 <sup>33</sup> Revision to clarify public employee's right to a public hearing.

## AMENDMENTS FOR 2010

*Approved 6/10/2008 by the Task Force*

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*Approved 3/3/2010 by the Compliance and Amendments Committee*

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

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

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

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

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

20 (1) Such closed sessions shall be for the purpose of reviewing the City's City's position  
21 and instructing its designated representatives and may take place solely prior to and during  
22 active consultations and discussions between the City's City's designated representatives and  
23  
24  
25



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1 the representatives of employee organizations or the unrepresented employees. A policy body  
2 shall not discuss compensation or other contractual matters in closed session with one or  
3 more employees directly interested in the outcome of the negotiations.

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

9

### 10 **SECTION 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**

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

20 In the case of an item added to the agenda as a matter of urgent necessity, the  
21 statement shall be made prior to the determination of urgency and with the same disclosures  
22 and specifications as if the item had been included in the agenda pursuant to Section 67.8 of

23

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1 this article. Nothing in this section shall require or authorize a disclosure of information  
2 prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by  
3 Proposition G, 11/2/99)

### 5 **SECTION 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

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

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

15 (1) Real Property Negotiations: Approval given to a policy ~~body~~body's negotiator  
16 concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be  
17 reported as soon as the agreement is final. If its own approval renders the agreement final,  
18 the policy body shall report that approval, the substance of the agreement and the vote  
19 thereon in open session immediately. If final approval rests with another party to the  
20 negotiations, the body shall disclose the fact of that approval, the substance of the agreement  
21 and the ~~body~~body's vote or votes thereon upon inquiry by any person, as soon as the other  
22 party or its agent has informed the body of its approval. If notwithstanding the final approval

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1 there are conditions precedent to the final consummation of the transaction, or there are  
2 multiple contiguous or closely located properties that are being considered for acquisition, the  
3 document referred to in subdivision (b) of this section need not be disclosed until the condition  
4 has been satisfied or the agreement has been reached with respect to all the properties, or  
5 both.

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

15 (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement  
16 which would preclude the release of the text of the settlement itself and any related  
17 documentation communicated to or received from the adverse party or parties. Any written  
18 settlement agreement and any documents attached to or referenced in the settlement  
19 agreement shall be made publicly available at least 10 calendar days before the meeting of  
20 the policy body at which the settlement is to be approved to the extent that the settlement  
21 would commit the City or a department thereof to adopting, modifying, or discontinuing an  
22 existing policy, practice or program or ~~otherwise acting other than to pay an amount of money~~

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1 ~~less than \$50,000 or more.~~<sup>34</sup> The agenda for any meeting in which a settlement subject to this  
2 section is discussed shall identify the names of the parties, the case number, the court, and  
3 the material terms of the settlement. Where the disclosure of documents in a litigation matter  
4 that has been settled could be detrimental to the ~~city's~~City's interest in pending litigation  
5 arising from the same facts or incident and involving a party not a party to or otherwise aware  
6 of the settlement, the documents required to be disclosed by subdivision (b) of this section  
7 need not be disclosed until the other case is settled or otherwise finally concluded.

8 (4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the  
9 resignation of a public employee in closed session pursuant to Government Code Section  
10 54957 shall be reported immediately in a manner that names the employee, the action taken  
11 and position affected and, in the case of dismissal for a violation of law or of the policy of the  
12 City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any  
13 termination of employment at the will of the employer rather than of the employee, however  
14 characterized. The proposed terms of any separation agreement shall be immediately  
15 disclosed as soon as presented to the body, and its final terms shall be immediately disclosed  
16 upon approval by the body.

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

20 (c) Reports required to be made immediately may be made orally or in writing, but shall  
21 be supported by copies of any contracts, settlement agreements, or other documents related  
22

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23 <sup>34</sup> Revised to clarify. No substantive change intended.

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1 to the transaction that were finally approved or adopted in the closed session and that  
2 embody the information required to be disclosed immediately shall be provided to any person  
3 who has made a written request regarding that item following the posting of the agenda, or  
4 who has made a standing request for all such documentation as part of a request for notice of  
5 meetings pursuant to Government Code Sections 54954.1 or 54956.

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

11 (e) For each agenda item of a policy body covered by this Ordinance that involves  
12 anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time  
13 requested and to any member of the public whether such anticipated litigation developed into  
14 litigation and shall identify the court, case number, and date the case was filed.<sup>35</sup> (Added by  
15 Proposition G, 11/2/99) [Moved from 67.8-1 (b)]

16 (f) Review of Closed Session Justifications<sup>36</sup>

17 No later than 30 calendar days following the effective date of this subsection,

18 (1) For each closed session, each public body shall maintain a record of the date and  
19 time of the closed session, the justification for the closed session and the subject matter  
20

21 <sup>35</sup> Moved from former 67.8-1(b).

22 <sup>36</sup> New 67.12(f) provides a requirement for Policy Bodies to track and routinely review records  
23 of closed sessions to determine when those materials may be released to the public when  
24 justification for closed session no longer exists.  
25

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1 discussed in closed session, as well as ~~and shall include~~ all minutes, recordings or other  
2 records related to the closed session.

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

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

### 16 **SECTION 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**<sup>37</sup>

17 (a) No policy body shall conduct any meeting, conference or other function in any  
18 facility or in a manner that excludes persons on the basis of actual or presumed class identity  
19 or characteristics, or which is inaccessible to persons with ~~physical~~ disabilities, or where  
20 members of the public may not be present without making a payment or purchase. Whenever

21 \_\_\_\_\_  
22 <sup>37</sup> Revised 67.13 – developed in consultation with Mayor's Office on Disability to provide for  
23 enhanced accommodations and time frames for requesting accommodations; applied to all  
24 policy bodies and not just boards and commissions enumerated in Charter.

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1 the Board of Supervisors, a board or commission enumerated in the Charter, or any  
2 committee thereof anticipates that the number of persons attending the meeting will exceed  
3 the legal capacity of the meeting room, any public address system used to amplify sound in  
4 the meeting room shall be extended by supplementary speakers to permit the overflow  
5 audience to listen to the proceedings in an adjacent room or passageway, unless such  
6 supplementary speakers would disrupt the operation of a City office.

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

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

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

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

20 (f) Boards and Commissions and other bodies enumerated in the Charter shall, by  
21 2012 ~~20~~ broadcast all meetings held in City Hall on the San Francisco Government TV channel  
22 (or its successor) or the City's website via real-time audio streaming and/ or real-time



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1 ~~audio/video streaming on the Internet.~~ All other policy bodies are encouraged to broadcast  
2 their meetings similarly as feasible.<sup>38</sup>

3 (g) All policy bodies and passive meeting bodies shall comply with the guidelines  
4 and recommendations of the Mayor's Office of Disabilities Accessible Public Event Checklist.

5 Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96,  
6 App. 12/20/96; Proposition G, 11/2/99)

7

8 **SECTION 67.14. ~~TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.~~**<sup>39</sup>

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

15 (b) All Policy Bodies ~~Each board and commission enumerated in the Charter shall~~  
16 audio record each regular and special meeting, including closed sessions. Each such audio  
17 recording, and any other ~~audio or video~~ recording of a meeting of ~~any other policy body~~ made  
18 at the direction of the policy body, shall be a public record subject to inspection pursuant to  
19 the California Public Records Act (Government Code Section 6250 et seq.). These recordings

20

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

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

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1 shall be kept indefinitely by the City, and shall not be erased or destroyed unless the  
2 recordings are being transferred into a different format for archival or accessibility  
3 requirements. ~~and shall not be erased or destroyed.~~ Inspection of any such recording shall  
4 be provided without charge on an appropriate play back device made available by the City;  
5 copies of any such recordings shall be provided upon request and payment for the actual cost  
6 of the medium on which the copy is recorded. Requests shall be made through the  
7 department, board, commission, task force, or committee whose meeting is recorded.  
8 Requests shall be completed in the order of receipt and no additional charges shall be  
9 assessed for expedited service.

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

17 ~~(d) Within six months of the enactment of this provision, all policy bodies shall be~~  
18 ~~required to digitally record their meetings by 2010. Any such digital recordings that are made~~  
19 ~~shall be posted on the policy bodies' website within three days. If real time captioning is~~  
20 ~~provided at a meeting, if separable, it shall also be posted on the web site. The City~~

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23 <sup>40</sup> Moved from former 67.8-1(a).

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1 ~~Administrator shall assist policy bodies in carrying out their duties under this subsection.~~

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

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

19  
20  
21 **SECTION 67.15. PUBLIC TESTIMONY.**  
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23  
24  
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1           (a)     Every agenda for regular and special meetings shall provide an opportunity for  
2 members of the public to directly address a policy body on any items of interest to the public  
3 that ~~is~~are within the policy body's subject matter jurisdiction, provided that no action shall be  
4 taken on any item not appearing on the agenda unless the action is otherwise authorized by  
5 Section 67.7(e) of this article. This provision shall apply to all meetings of the Board of  
6 Supervisors and its committees. However, in the case of a meeting of the Board of  
7 Supervisors, the agenda need not provide an opportunity for members of the public to  
8 address the Board on any item that has already been considered by a committee, composed  
9 exclusively of members of the Board, at a public meeting wherein all interested members of  
10 the public were afforded the opportunity to address the committee on the item, before or  
11 during the committee's consideration of the item, unless the item has been substantially  
12 changed since the committee heard the item, as determined by the policy bodyBoard.<sup>41</sup>

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

22 \_\_\_\_\_  
23 <sup>41</sup> Moved to subsection (b) below for consistency. No substantive change intended.

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1 by the policy body.<sup>42</sup> However, nothing in this subsection is intended to exempt Board of  
2 Supervisors committees from the general public comment requirements under subsection (a).

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

5 (c)(ed) Time and Order of Public Speakers

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

8 (1) ~~regulations limiting the total amount of time allocated for public testimony on~~  
9 ~~particular issues and for each individual speaker. Each policy body shall adopt a rule~~  
10 ~~providing that each person wishing to speak on an item before the body at a regular or special~~  
11 ~~meeting shall be permitted to be heard once for up to a minimum of three minutes per agenda~~  
12 ~~item.~~<sup>43</sup>

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

21 <sup>42</sup> Moved from subsection (a) above for consistency. No substantive change intended.

22 <sup>43</sup> Revised to provide a minimum of three minutes public testimony in normal course.

23 <sup>44</sup> Clarifies circumstances and method by which chair may set public comment to less than  
24 three minutes but no less than two minutes.

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1 (3). The Chair, May Allow a Designated Speaker(s)<sup>45</sup>

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

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

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

18 (4) Rules for the Order of Speakers.<sup>46</sup>

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

22 \_\_\_\_\_  
<sup>45</sup> Creates new procedure for designated public speaker(s).

23 <sup>46</sup> Provides additional guidance and limitations on order of speakers.

## 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

Note: Additions are double-underline, deletions are ~~double-strikethrough~~.

1           (A) Speaker cards, when available and submitted, shall be used in the order  
2 of submission to designate the order of speakers, except that the chair may alternate  
3 "pro" and "con" speakers if they are designated on the forms.

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

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

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

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

19          (f) ~~(fg)~~ Members of the public shall have access to all audio-visual equipment  
20 used by a department or policy body for presentations made to that policy body  
21 consistent with time limits provided in subsection (c). To the extent feasible, pPrior  
22 notification in the agenda or public notice that a presentation will be made using

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force

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Approved 3/3/2010 by the Compliance and Amendments Committee

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1 audio/visual equipment or technology shall be provided, listing the specific equipment.<sup>47</sup>  
2 (~~Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99~~)  
3

4 **SECTION 67.16. MINUTES.**

5 (a) ~~The clerk or secretary of each board and commission enumerated in the~~  
6 ~~Charter~~all policy bodies shall record the minutes for each regular and special meeting of the  
7 ~~board or commission~~those bodies.<sup>48</sup>

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

21 \_\_\_\_\_

22 <sup>47</sup> Explicitly provides public access to equipment used by city employees.

23 <sup>48</sup> Revised to provide that minimum minute requirements apply to all Policy Bodies.



## AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force

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Approved 3/3/2010 by the Compliance and Amendments Committee

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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.<sup>49</sup>

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 ten business working days after the meeting. The officially adopted minutes  
6 shall be available for inspection and copying upon request no later than ten business working  
7 days after the meeting at which the minutes are adopted. Upon request, minutes required to  
8 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.<sup>50</sup> (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 \_\_\_\_\_  
21 <sup>49</sup> Provides increased information must be provided in the minutes to allow more information  
for public review, tracking and historical research purposes.

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

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force

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Approved 3/3/2010 by the Compliance and Amendments Committee

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

9

10 **SECTION 67.18. SUPERVISOR OF PUBLIC FORUMS**<sup>52</sup>

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

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

21 <sup>51</sup> Revised to alleviate allegations of favoritism and provide equal opportunity for comment to  
22 body members.

23 <sup>52</sup> New 67.18 creates new Supervisor of Public Forums, consistent with existing provisions for  
24 Supervisor of Public Records.

24

25

## 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*

Note: Additions are double-underline, deletions are ~~double-strikethrough~~.

1 taking into account prior rulings, if any, of the Sunshine Commission on the issue. This  
2 determination shall be in writing. Upon determination by the Supervisor of Public Forums that  
3 a violation has occurred, the Supervisor of Public Forum shall immediately order the policy  
4 body or passive meeting body to correct such violation as soon as possible, but no later than  
5 at its next meeting. If the policy body or passive meeting body fails to comply with any such  
6 order, the Supervisor of Public Forums shall notify the San Francisco Ethics Commission,  
7 Board of Supervisors, District Attorney, or the ~~State-California~~ Attorney General who shall take  
8 whatever measures they deem necessary and appropriate to insure compliance with the  
9 provision of this Ordinance. The Supervisor of Public Forums shall copy the Sunshine  
10 Commission on all determinations or actions on petitions ~~correspondence pertaining to its~~  
11 ~~duties~~ under this subsection.

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AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

ARTICLE III  
PUBLIC INFORMATION AND PUBLIC RECORDS

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- Sec. 67.2019. Definitions.
- Sec. 67.2120. Process for Gaining Access to Public Records Information;  
Administrative Appeals.
- Sec. 67.21 Immediacy of Response; Immediate Disclosure
- Sec. 67.22 Production on Incremental or "Rolling Basis"
- Sec. 67.2223. Release of Oral Public Information.
- Sec. 67.2324. Public Review File - Policy Body Communications.
- Sec. 67.2425. Public Information that Must Be Disclosed.
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27 Prohibited Basis for Withholding
- Sec. 67.2728. Justification of Withholding.
- Sec. 67.2829. Fees for Duplication.
- Sec. 67.30 Minimum Standards; Electronic Records; Computer Systems; Web  
Posting
- Sec. 67.29-1.33-4 Records and Correspondence Shall be Maintained and Shall Survive
- Sec 67.31 Tenure and Transition of Officials.
- ~~Sec. 67.29-5.33-3~~ Calendars of Certain Officials.
- Sec 67.32
- ~~Sec. 67.2933~~ Index to Records.
- Sec 67.33.
- ~~Sec. 67.29-4.33-2~~ Lobbyist On Behalf of the City.
- Sec 67.34

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1 Sec. ~~67.29-6-33-4~~ Sources of Outside Funding.

2 Sec 67.35

3 ~~Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.~~

4

5 **SECTION 67.2019. DEFINITIONS.**

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

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

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

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

16

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

18 **RECORDS INFORMATION; ADMINISTRATIVE APPEALS.**

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

24

25

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

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

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

18 (c) A custodian of records shall ensure that, as soon as possible but no later than  
19 10 calendar days following the receipt of the request, a department, policy body or custodian  
20 of records shall comply with the request by doing the following:<sup>3</sup>

21 \_\_\_\_\_  
22 <sup>1</sup> Language regarding cost of copies moved to new 67.29(b) to clarify and streamline ordinance.

23 <sup>2</sup> 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.

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

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- 1           (1) If the requester seeks a copy of public records, one copy thereof shall be provided  
2           upon payment of a reasonable copying charge, not to exceed the actual cost of  
3           physical duplication or ten cents per page, whichever is less;
- 4           (2) If the requester seeks to inspect public records, a reasonable opportunity for the  
5           requester to review the records shall be provided during normal and reasonable  
6           business hours, without unreasonable delay and without requiring an appointment,  
7           or at another time convenient to both the requester and the custodian of records. In  
8           no event shall the custodian of records be required to set the records aside for  
9           review for longer than 14 days, unless agreed to between the requester and the  
10           custodian of records.
- 11           (3) If the department, policy body or custodian of records believes the record or  
12           information requested is, in whole or in part, exempt from disclosure, the  
13           withholding or redaction shall be justified in writing pursuant to Section 67.28 of this  
14           Ordinance.
- 15           (4) An oral request for information shall be treated as a written request. Oral requests  
16           that are not fulfilled by an employee immediately shall be documented as to date,  
17           time, place and requester by the department, or policy body, or custodian of records  
18           in order to maintain a public record of the public request.
- 19           (e)(d) A custodian of ~~a~~ public records shall assist a requester in identifying the  
20           existence, form, and nature of any records or information maintained by, available to, or in the  
21           custody of the ~~department or policy body, custodian,~~ whether or not the contents of those  
22           records are exempt from disclosure and shall, when requested to do so, provide in writing  
23           within seven days following receipt of a request, a statement as to the existence, ~~quantity~~  
24           amount or count, form, and nature of records, and physical or electronic location of records  
25           relating to a particular subject ~~matter or questions~~ with enough specificity to enable a

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

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

15 (d)(f) If the custodian refuses, fails to comply, or incompletely complies with a request  
16 described in (b), the person making the request may petition the supervisor Supervisor of  
17 Public records Records for a determination whether the record requested is disclosable  
18 public in whole or in part. The Supervisor of Public Records shall inform the petitioner, as  
19 soon as possible but no later than 10 calendar days after a petition is filed and within 10 days  
20 of its determination, of its determination whether the record requested, or any part of the  
21 record requested, is public. Where requested by the petition, and where otherwise desirable,  
22 this In reaching this determination, the Supervisor of Public Records shall conduct an

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

<sup>5</sup> Provision moved from existing 67.25.



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1 independent review, taking into account prior rulings, if any, of the Sunshine Commission on  
2 the issue. This determination shall be in writing. Upon the determination by the Supervisor of  
3 Public Records that the record is publiclydisclosable, in whole or in part, the Supervisor of  
4 Public Records shall immediately order the custodian of the public record to comply with the  
5 person's request. If the custodian refuses or fails to comply with any such order within five  
6 days, the Supervisor of Public Records shall notify the ~~district attorney or the attorney general~~  
7 San Francisco Ethics Commission, Board of Supervisors, District Attorney, or the State  
8 California Attorney General who shall take whatever measures ~~she or he deems~~ they deem  
9 necessary and appropriate to insure compliance with the provisions of this ordinance.  
10 Ordinance. The Supervisor of Public Records shall copy the Sunshine Commission on all  
11 determinations of actions on petitions under this subsection, all correspondence pertaining to  
12 its duties under this subsection to the Sunshine Commission's public review file.<sup>6</sup>

13 (e)(g) If the custodian refuses, fails to comply, or incompletely complies with a request  
14 described in subsection (b) above or if a petition is denied or not acted on by the supervisor  
15 Supervisor of public Public recordsRecords, the person making the request may petition the  
16 ~~Sunshine Task Force~~ Sunshine Commission for a determination whether the record requested  
17 is publiclydisclosable, in whole or in part. ~~The Task Force shall inform the petitioner, as soon~~  
18 ~~as possible and within 2 days after its next meeting but in no case later than 45 days from~~  
19 ~~when a petition in writing is received, of its determination whether the record requested, or~~  
20 ~~any part of the record requested, is public. Where requested by the petition, and where~~  
21 ~~otherwise desirable, this determination shall be in writing. Upon the determination that the~~  
22 ~~record is public, the Sunshine Task Force shall immediately order the custodian of the public~~  
23 ~~record to comply with the person's request. If the custodian refuses or fails to comply with any~~

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

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1 such order within 5 days, the Sunshine Task Force shall the district attorney or the attorney  
2 general who may take whatever measures she or he deems necessary to insure compliance  
3 with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office  
4 shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties  
5 under this provision. Where requested by the petition, the Sunshine Task Force may conduct  
6 a public hearing concerning the records request denial. An authorized representative of the  
7 custodian of the public records requested shall attend any hearing and explain the basis for its  
8 decision to withhold the records requested.<sup>7</sup>

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

17 (g) — In any court proceeding pursuant to this article there shall be a presumption that  
18 the record sought is public, and the burden shall be upon the custodian to prove with  
19 specificity the exemption which applies.<sup>9</sup>

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

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

<sup>9</sup> Provisions dealing with actions in Superior Court have been moved to Article IV, "Public  
Enforcement Provisions."

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1           ~~(h) On at least an annual basis, and as otherwise requested by the Sunshine Task~~  
2 ~~Force, the supervisor of public records shall prepare a tally and report of every petition~~  
3 ~~brought before it for access to records since the time of its last tally and report. The report~~  
4 ~~shall at least identify for each petition the record or records sought, the custodian of those~~  
5 ~~records, the ruling of the supervisor of public records, whether any ruling was overturned by a~~  
6 ~~court and whether orders given to custodians of public records were followed. The report~~  
7 ~~shall also summarize any court actions during that period regarding petitions the Supervisor~~  
8 ~~has decided. At the request of the Sunshine Ordinance Task Force, the report shall also~~  
9 ~~include copies of all rulings made by the supervisor of public records and all opinions issued.~~<sup>10</sup>

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

17           ~~(j) Notwithstanding the provisions of this section, the City Attorney may defend the~~  
18 ~~City or a City Employee in litigation under this ordinance that is actually filed in court to any~~  
19 ~~extent required by the City Charter or California Law.~~<sup>11</sup>

20           ~~(k)(h) Release of documentary public information records, whether for inspection of the~~  
21 ~~original or by providing a copy, shall be governed by the California Public Records Act~~  
22 ~~(Government Code Section 6250 et seq.) in particular to the extent not addressed by this~~  
23

24 <sup>10</sup> Provisions regarding reports by the Supervisor of Records have been moved to Article IV,  
"Role of City Attorney."

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

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1 ~~ordinance~~Ordinance and in accordance with the enhanced disclosure requirements provided ( (

2 in this ~~ordinance~~Ordinance.

3 (f)(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

5 ~~requested~~the information is held by the department or policy body, any format that has been

6 used by the department or policy body to create copies for its own use or for provision to other

7 agencies, or which is available to or easily generated by the departmentdepartment or policy

8 body, its officers or employees, including disk, tape, printout or monitor at a charge no greater

9 than the cost of the media on which it is duplicated. Inspection of ~~documentary public~~

10 ~~records~~information on a computer monitor need not be allowed where the information sought

11 is necessarily and ~~unseparably~~inseparably intertwined with information not subject to

12 disclosure under this ~~ordinance~~Ordinance. Nothing in this section shall require a department

13 to ~~create a new computer program or reprogram a computer system application to that would~~

14 respond to a request for information or take any action to release information where the

15 ~~release of that information would violate a licensing agreement or copyright law that would~~

16 jeopardize or compromise the security or integrity of the original record or of any proprietary

17 software in which it is maintained.<sup>12</sup> (Added by Ord. 265-93, App. 8/18/93; amended by Ord.

18 253-96, App. 6/19/96; Proposition G, 11/2/99)

19

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

21 (a) ~~It is the policy of the City and County of San Francisco to utilize computer~~

22 ~~technology in order to reduce the cost of public records management, including the costs of~~

23 \_\_\_\_\_

24 <sup>12</sup> Provision amended to be consistent with existing law and clarify that an electronic record

25 shall be provided in any format specified by the requester when the record exists or has

existed in that format.

<sup>13</sup> Provision moved to new 67.30 in order to clarify and streamline Ordinance.

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1 ~~collecting, maintaining, and disclosing records subject to disclosure to members of the public~~  
2 ~~under this section. To the extent that it is technologically and economically feasible,~~  
3 ~~departments that use computer systems to collect and store public records shall program and~~  
4 ~~design these systems to ensure convenient, efficient, and economical public access to~~  
5 ~~records and shall make public records easily accessible over public networks such as the~~  
6 ~~Internet.~~

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

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

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

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

18

19 **SECTION 67.21. IMMEDIACY OF RESPONSE; IMMEDIATE DISCLOSURE REQUEST**<sup>14</sup>

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

23

24

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

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1 (c)(b) Notwithstanding the 10-day period for response to a request permitted in section  
2 67.204(c) of this Ordinance, a written request for information described in any category of  
3 non-exempt public information shall be satisfied no later than the close of business on the day  
4 following the day of the request. This deadline shall apply only if the words "Immediate  
5 Disclosure Request" are placed across the top of the request and on the envelope, subject  
6 line, or cover sheet in which the request is transmitted, and only if the request is received by 4  
7 PM. Immediate Disclosure Requests are appropriate for records that which are readily  
8 identifiable and maintained by the department or policy body in its active files. Requests to  
9 inspect or for copies of documents which that must be gathered from multiple sources or  
10 offices, or document maintained in a remote storage facility are not appropriate for Immediate  
11 Disclosure Requests.

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

19  
20 **SECTION 67.22. PRODUCTION ON INCREMENTAL OR "ROLLING" BASIS<sup>15</sup>**

21 In response to a request under this Ordinance, the department, policy body, or  
22 custodian of records shall produce any and all responsive public records as soon as  
23 reasonably possible, and where requested, on an incremental or "rolling" basis such that  
24

25 <sup>15</sup> Revised and new provisions on deadlines for responses, based on former 67.25, in order to clarify and streamline Ordinance.

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1 responsive records are provided as soon as possible by the end of the same business day  
2 that they are reviewed and collected. This section is intended to prohibit the withholding of  
3 public records that are responsive to a request until all potentially responsive documents have  
4 been reviewed and collected. Failure to comply with this provision is a violation of this  
5 Ordinance. ~~Each custodian of a public record shall keep notes of the time and personnel~~  
6 ~~used to comply with records request under this section.~~

7  
8 **SECTION 67.2223. RELEASE OF ORAL PUBLIC INFORMATION.**

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

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

20 (b) The role of the person or persons so designated shall be to provide information  
21 on as timely and responsive a basis as possible to those members of the public who are not  
22 requesting information from a specific person. Each public employee has a duty to respond to  
23 inquiries from the public. This section shall not be interpreted to curtail existing informal  
24 contacts between employees and members of the public when these contacts are occasional,  
25

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1 acceptable to the employee and the department, not disruptive of the employee's ~~his or her~~  
2 operational duties and confined to requests for accurate information not confidential by law.

3 (c) ~~No employee shall be required to respond to an inquiry or inquiries from an~~  
4 ~~individual if~~ if it would take ~~an~~ the employee more than fifteen minutes to obtain the information  
5 responsive to ~~the~~ an inquiry or inquiries., the employee shall notify the requester of the  
6 procedures for obtaining records under sections 67.21 and 67.23 of this Ordinance, and  
7 provide an appropriate form for that request if available.

8 (d) Notwithstanding any other provisions of this ordinance, public employees shall  
9 not be discouraged from or disciplined for disclosing any information that is public information  
10 or a public record to any journalist or any member of the public. Any public employee who is  
11 disciplined for disclosing public information or a public record shall have a cause of action  
12 against the City and the supervisor imposing the discipline.<sup>16</sup> (Added by Ord. 265-93, App.  
13 8/18/93; amended by Proposition G, 11/2/99)

14 (d)(e) Public employees shall not be discouraged from or disciplined for the expression  
15 of their personal opinions on any matter of public concern while not on duty, so long as the  
16 opinion (1) is not represented as that of the department and does not misrepresent the  
17 department position; and (2) does not disrupt coworker relations, impair discipline or control  
18 by superiors, erode a close working relationship premised on personal loyalty and  
19 confidentiality, interfere with the employee's performance of his or her duties or obstruct the  
20 routine operation of the office in a manner that outweighs the employee's interests in  
21 expressing that opinion. In adopting this subdivision, the voters of the City and County of San  
22 Francisco Board of Supervisors ~~intends~~ merely to restate and affirm court decisions  
23 recognizing the First Amendment rights enjoyed by public employees. Nothing in this section  
24

25 \_\_\_\_\_  
<sup>16</sup> Moved up from former 67.22(e).



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1 shall be construed to provide rights to City employees beyond those recognized by courts,  
2 now or in the future, under the First Amendment, or to create any new private cause of action  
3 or defense to disciplinary action.

4 ~~(e) Notwithstanding any other provisions of this ordinance, public employees shall~~  
5 ~~not be discouraged from or disciplined for disclosing any information that is public information~~  
6 ~~or a public record to any journalist or any member of the public. Any public employee who is~~  
7 ~~disciplined for disclosing public information or a public record shall have a cause of action~~  
8 ~~against the City and the supervisor imposing the discipline.<sup>17</sup> (Added by Ord. 265-93, App.~~  
9 ~~8/18/93; amended by Proposition G, 11/2/99)~~

10  
11 **SECTION 67.2324. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.**

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

22 (b) ~~Communications, as described in subsection (a), sent or received in the last~~  
23 ~~three business days shall be maintained in chronological order in the office of the department~~  
24 ~~head or at a place nearby, clearly designated to the public. After documents have been on file~~

25  

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<sup>17</sup> Moved to new 67.23(d).

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1 for two full days, they may be removed, and, in the discretion of the board or commission,  
2 placed in a monthly chronological file.<sup>18</sup> The identity and contact information of the sender of  
3 any letter or communication shall be presumed to be public information unless confidentiality  
4 is specifically requested by the sender or otherwise required by law.<sup>19</sup>

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

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

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

15 (a) Drafts and Memoranda.

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

22  
23  
24 <sup>18</sup> Removed as duplicative of subsection (a) above.

25 <sup>19</sup> Added to make clear that identities will be disclosed unless confidentiality specifically requested.

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1 section is not intended to alter or extend the requirements under any document retention  
2 policy adopted by a policy body or department.<sup>20</sup>

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.~~<sup>21</sup>

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 (iii) Advice on compliance with, analysis of, an opinion concerning liability or duties  
22 under, or any communication otherwise concerning the California Public Records Act, the  
23

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

<sup>21</sup> Moved to new 67.25(e)(8) in order to clarify and streamline Ordinance.

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1 Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics  
2 ~~code~~Ethics Code, or this Ordinance.

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

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

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

- 13 (i) Sex, age and ethnic group;
- 14 (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- 15 (iii) Years of employment in the private and/or public sector;
- 16 (iv) Whether currently employed in the same position for another public agency.
- 17 (v) Other non-identifying particulars as to experience, credentials, aptitudes, training  
18 or education entered in or attached to a standard employment application form used for the  
19 position in question.

20 (2) The professional biography, curriculum vitae or job application of any applicant,  
21 whether successful or not, for a position as a department head, or member of a city  
22 commission, task force or other policy body~~City commissioners~~; provided that the home  
23 address, home telephone number, social security number, age, and marital status of the  
24 applicant shall be redacted.<sup>22</sup>

25 \_\_\_\_\_  
<sup>22</sup> Expanded disclosure requirements for applicants to high-level positions in the City.

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1           ~~(2)~~(3) The professional biography, ~~or~~ curriculum vitae or job application of any  
2 employee, provided that the home address, home telephone number, social security number,  
3 age, and marital status of the employee shall be redacted.<sup>23</sup>

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

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

8           ~~(5)~~(6) Any memorandum of understanding between the City or department and a  
9 recognized employee organization.

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

15           ~~(7)~~(8) ~~The All records regarding confirmed employee of any confirmed misconduct, of~~  
16 ~~a public employee involving personal dishonesty, misappropriation of public funds, resources~~  
17 ~~or benefits, unlawful discrimination against another on the basis of status, abuse of authority,~~  
18 ~~or violence, and or allegations of misconduct that are of a substantial nature, as distinct from~~  
19 ~~the baseless or trivial, and there is reasonable cause to believe that complaint is well founded,~~  
20 including records of any discipline or warnings imposed for such misconduct. Any  
21 investigation ~~and~~ report regarding allegations of employee misconduct – whether or not the  
22 investigation is conducted by or at the direction of an attorney – shall be released upon

23  
24  
25 <sup>23</sup> Revised to clarify existing requirements.

<sup>24</sup> Revised to clarify existing requirements.

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1 conclusion of that investigation where the allegations have been found to be substantial, even  
2 if there is no ultimate finding of misconduct, no discipline imposed, or warning issued.<sup>25</sup>

3 (d) Law Enforcement Information.

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

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

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

20 (3) The identity of a confidential source;

21 (4) Secret investigative techniques or procedures;

22 (5) Information whose disclosure would endanger law enforcement personnel; or  
23

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

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

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

6 (e) Requests, Contracts, Bids and Proposals

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

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

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

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

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

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

20        ~~(3)(6)~~ During the course of negotiations for:

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



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

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

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

22 (8) Contracts, leases or other business subject to approval by a policy body:  
23 Draft versions of an agreement being negotiated by representatives of the City with another  
24 party need not be disclosed immediately upon creation but must be preserved and made  
25 available ~~along~~alone with the version of the agreement to be presented to the policy body for

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1 public review at least 10 days prior to the presentation of the agreement for approval by a  
2 policy body, unless the body finds that and articulates how the public interest would be  
3 unavoidably and substantially harmed by compliance with this 10 day rule, provided that  
4 policy body as used in this subdivision does not include committees. In the case of  
5 negotiations for a contract, lease or other business agreement in which an agency of the City  
6 is offering to provide facilities or services in direct competition with other public or private  
7 entities that are not required by law to make their competing proposals public or do not in fact  
8 make their proposals public, the policy body may postpone public access to the final draft  
9 agreement until it is presented to it for approval.<sup>27</sup>

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

16 (g) ~~Neither the City nor any office, employee, or agent thereof may assert California~~  
17 ~~Public Records Act Section 6255 or any similar provision as the basis for withholding any~~  
18 ~~documents or information requested under this ordinance.~~<sup>28</sup>

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

24 <sup>27</sup> Moved from former 67.24(a)(2).

25 <sup>28</sup> Moved to new 67.27.

<sup>29</sup> Moved to new 67.27.

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1 (i) ~~Neither the City, nor any office, employee, or agent thereof, may assert an~~  
2 ~~exemption for withholding for any document or information based on a finding or showing that~~  
3 ~~the public interest in withholding the information outweighs the public interest in disclosure.~~<sup>30</sup>  
4 ~~All withholdings of documents or information must be based on an express provision of this~~  
5 ~~ordinance providing for withholding of the specific type of information in question or on an~~  
6 ~~express and specific exemption provided by California Public Records Act that is not~~  
7 ~~forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95,~~  
8 ~~App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)~~

9  
10 **Section 67.25. IMMEDIACY OF RESPONSE.**<sup>31</sup>

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

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

23  
24  
25 <sup>30</sup> Moved to new 67.27.

<sup>31</sup> Moved to new 67.28.

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1           (c) ~~The person seeking the information need not state his or her reason for making~~ (   
2     ~~the request or the use to which the information will be put, and requesters shall not be~~   
3     ~~routinely asked to make such a disclosure. Where a record being requested contains~~   
4     ~~information most of which is exempt from disclosure under the California Public Records Act~~   
5     ~~and this article, however, the City Attorney or custodian of the record may inform the~~   
6     ~~requester of the nature and extent of the non-exempt information and inquire as to the~~   
7     ~~requester's purpose for seeking it, in order to suggest alternative sources for the information~~   
8     ~~which may involve less redaction or to otherwise prepare a response to the request.~~<sup>32</sup>

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

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

18   
19    **SECTION 67.26. WITHHOLDING KEPT TO A MINIMUM.**

20           All withholdings of documents or information must be based on an express provision of   
21    this ordinance providing for withholding of the specific type of information in question or on an   
22    express and specific exemption provided by California Public Records Act that is not   
23    forbidden by this ordinance. No record shall be withheld from disclosure in its entirety unless   
24

25   

---

 <sup>32</sup> Moved to new section 67.20(e)

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1 all information contained in it is exempt from disclosure under express provisions of this  
2 Ordinance or the California Public Records Act ~~or of some other statute~~. Information that is  
3 exempt from disclosure shall be masked, deleted or otherwise segregated in order that the  
4 nonexempt portion of a requested record may be released, and keyed by footnote or other  
5 clear reference to the appropriate justification for withholding required by section ~~67.27~~67.28  
6 of this article. This work shall be done personally by the attorney or other staff member  
7 conducting the exemption review. The work of responding to a public-records request and  
8 preparing documents for disclosure shall be considered part of the regular work duties of any  
9 city employee, and no fee shall be charged to the requester to cover the personnel costs of  
10 responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by  
11 Proposition G, 11/2/99)

12  
13 **SECTION 67.27. PROHIBITED BASIS FOR WITHHOLDING.**<sup>33</sup>

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

17 (b) 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 "deliberative process"  
19 exemption, either as provided by California Public Records Act Section 6255 or any other  
20 provision of law that does not prohibit disclosure.

21 (c) Neither the City, nor any office, employee, or agent thereof, may assert an  
22 exemption for withholding for any document or information based on a finding or showing that  
23 the public interest in withholding the information outweighs the public interest in disclosure.  
24 All withholdings of documents or information must be based on an express provision of this

25 \_\_\_\_\_  
<sup>33</sup> Moved from former 67.24(g), (h) and (i).

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1 ordinance providing for withholding of the specific type of information in question or on an  
2 express and specific exemption provided by California Public Records Act that is not  
3 forbidden by this ordinance.

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

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

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

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

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

15 (d) When a record being requested contains information, most of which is exempt from  
16 disclosure under this Ordinance or in the California Public Records Act and this Article, the  
17 custodian shall inform the requester of the nature and extent of the nonexempt information  
18 and suggest alternative sources for the information requested, if available. (Added by Ord.  
19 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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

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1 **SECTION 67.2829. FEES FOR DUPLICATION.**

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

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

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

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

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

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

8  
9 **SECTION 67.30. MINIMUM STANDARDS; ELECTRONIC RECORDS; COMPUTER**  
10 **SYSTEMS; WEB POSTINGS.**<sup>35</sup>

11 **(a) Inspection and Copying of Documentary Public Information Stored in**  
12 **Electronic Form.**

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

17 (1) Inspection and copying of documentary public information stored in  
18 electronic format shall be made available to the person requesting the information in  
19 any format in which the information is held by the department or policy body, any  
20 format that has been used by the department or policy body to create copies for its own  
21 use or for provisions to other agencies, or which is easily generated by the department  
22 or policy body, its officers or employees, including but not limited to any word

23  
24 <sup>34</sup> Moved from former 67.9(d).

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



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1 processing, spreadsheet, database, raw text, raw data or other software programs  
2 used by or reasonably available to the department or policy body.

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

8 (3) Where public information stored in electronic form contains information  
9 that is exempt from disclosure pursuant to express provisions of this Ordinance, the  
10 department or policy body shall ensure that exempt information is segregated or  
11 segregable from the disclosable information to allow disclosure or inspection of the  
12 non-exempt information in electronic format pursuant to this section.

13 (4) Inspection of documentary public information in the application in which it  
14 was created shall be allowed by providing reasonable access to a workstation provided  
15 by a department or policy body. However, such inspection need not be allowed where  
16 the information sought is necessarily and inseparably intertwined with information  
17 exempt from disclosure under express provisions of this Ordinance.

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

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

24  
25

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1       **(b) Converting Records to Electronic Format**

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

8  
9       **(c) Minimum Standards for Use, Purchase and Upgrading of Computer**  
10 **Systems.**

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

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

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

- 4           (i) Implementing a computer system in which exempt information is or  
5 can be easily segregated from otherwise disclosable information.
- 6           (ii) Implementing a system that permits reproduction of electronic  
7 copies of records in formats that are generally recognized as  
8 industry standards.
- 9           (iii) Implementing a system that permits making records available  
10 through the largest non-profit, non-proprietary public computer  
11 network, consistent with the requirement for security of  
12 information.

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

### 17 **(d) Minimum Internet and Website Standards**

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

20           (1) Each department and policy body is encouraged to make publicly  
21 available through its website as much information and as many documents as possible  
22 concerning its activities. At a minimum, each department or policy body within six  
23 months or 6 months after creation, shall post on its website all meeting notices required  
24 under this Ordinance, agendas, and the minutes of all previous meetings for the last  
25 three years. Notices and agendas shall be posted no later than the time that the

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1 department or policy body otherwise distributes this information to the public, allowing  
2 reasonable time for posting. Minutes of meetings shall be posted as soon as possible,  
3 but in any event within 48 hours after they have been approved.

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

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

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

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

17 (5)(6) The City and County shall also make available on its website, or on a  
18 comparable, readily accessible location on the Internet, a current copy of the City  
19 Charter and all City Codes.

20  
21 ~~SECTION 67.21 131. POLICY REGARDING USE AND PURCHASE OF COMPUTER~~  
22 ~~SYSTEMS.~~

23 ~~(a) It is the policy of the City and County of San Francisco to utilize computer~~  
24 ~~technology in order to reduce the cost of public records management, including the costs of~~  
25 ~~collecting, maintaining, and disclosing records subject to disclosure to members of the public~~

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1 ~~under this section. To the extent that it is technologically and economically feasible,~~  
2 ~~departments that use computer systems to collect and store public records shall program and~~  
3 ~~design these systems to ensure convenient, efficient, and economical public access to~~  
4 ~~records and shall make public records easily accessible over public networks such as the~~  
5 ~~Internet.~~

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

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

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

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

17  
18 ~~**SECTION 67.29-232. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.**~~

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

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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)~~

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

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

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

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

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

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

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

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

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

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

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

20  
21   **SECTION 67.2933. INDEX TO RECORDS.**

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

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1 information maintained, by which officials and departments, for which purposes and for what  
2 periods of retention, and under what manner of organization for accessing, e.g. by reference  
3 to a name, a date, a proceeding or project, or some other referencing system. The index  
4 need not be in such detail as to identify files or records concerning a specific person,  
5 transaction or other event, but shall clearly indicate where and how records of that type are  
6 kept. Any such master index shall be reviewed by appropriate staff for accuracy and  
7 presented for formal adoption to the administrative official or policy body responsible for the  
8 indexed records. The City Administrator shall be responsible for the preparation of this  
9 records index. The City Administrator shall report on the progress of the index to the  
10 ~~Sunshine Ordinance Task Force~~ Sunshine Commission on at least a semi-annual basis until  
11 the index is completed. Each department, agency, commission and public official shall  
12 cooperate with the City Administrator to identify the types of records it maintains, including  
13 those documents created by the entity and those documents received in the ordinary course  
14 of business and the types of requests that are regularly received. Each department, agency,  
15 commission and public official is encouraged to solicit and encourage public participation to  
16 develop a meaningful records index. The index shall clearly and meaningfully describe, with  
17 as much specificity as practicable, the individual types of records that are prepared or  
18 maintained by each department, agency, commission or public official of the City and County.  
19 The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any  
20 changes in the department, agency, commission or public official's practices or procedures  
21 affecting the accuracy of the information provided to the City Administrator shall be recorded  
22 by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of  
23 the index. The index shall be continuously maintained on the City's World Wide Website and  
24 made available at public libraries within the City and County of San Francisco. (Added by Ord.  
25 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)



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1  
2 **SECTION 67.29-133-131. RECORDS AND CORRESPONDENCE SHALL BE**  
3 **MAINTAINED, AND SHALL SURVIVE TENURE AND TRANSITION OF OFFICIALS.**

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

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

21 (c) In every contract, agreement or permit between the City and any outside entity  
22 that authorizes that entity to demand funds or fees from citizens, the City shall ensure that  
23 accurate records of every transaction are maintained and preserved in a professional and

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

<sup>38</sup> Moved from former 67.29-7(b).

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1 businesslike manner, and are available to the public as public records under the provisions of  
2 this ordinance. Failure of an entity to comply with these provisions shall be grounds for  
3 terminating the contract or for imposing a financial penalty equal to one-half of the fees  
4 derived under the agreement or permit during the duration of the failure. Failure of any  
5 Department to enforce or otherwise comply with this provision shall be a violation of this  
6 ordinance. This paragraph shall apply to every agreement allowing an entity to tow or  
7 impound vehicles in the City or to collect any fee from any persons in any pretrial diversion  
8 program.<sup>39</sup>

9  
10 ~~SECTION 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.~~<sup>40</sup>

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

24  
25 <sup>39</sup> Moved from former 67.29-7(c).

<sup>40</sup> Moved to new 67.30.

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1 ~~site, or on a comparable, readily accessible location on the Internet, a current copy of the City~~  
2 ~~Charter and all City Codes. (Added by Proposition G, 11/2/99)~~

3  
4 **SECTION 67.29-3**

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

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

14  
15 **SECTION 67.29-433-2. LOBBYIST ON BEHALF OF THE CITY.**

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

24  
25 \_\_\_\_\_  
<sup>41</sup> Removed, as unnecessary and unrelated to Sunshine Ordinance.

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1 making the expenditure. The failure to file a quarterly report with the required disclosures shall  
2 be a violation of this Ordinance.

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

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

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1 SECTION ~~67.29-533-332~~. CALENDARS OF CERTAIN ELECTED OFFICIALS,  
2 DEPARTMENT HEADS <sup>42</sup>

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

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

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

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

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

18 (c) For meetings with an individual – the individual's name and his or her business  
19 or other affiliation, and a general statement or summary of matters discussed shall be  
20 included on the calendar, unless disclosing the individual's name or other identifying  
21

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

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

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

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

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

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

17 No official or employee or agent of the city ~~City~~ shall accept, allow to be collected, or  
18 direct or influence the spending of, any money, or any goods or services worth more than one  
19 hundred dollars in aggregate, for the purpose of carrying out or assisting any City function  
20 unless the amount and source of all such funds is disclosed as a public record and made  
21 available on the website for the department to which the funds are directed. When such funds  
22 are provided or managed by an entity, and not an individual, that entity must agree in writing  
23 to abide by the disclosure requirement of this ordinance ~~Ordinance~~. The disclosure shall  
24 include the names of all individuals or organizations contributing such money and a statement  
25

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1 as to any financial interest the contributor has involving the City. (Added by Proposition G,  
2 11/2/99)

3  
4 ~~SECTION 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.~~

5 ~~(a) The Mayor and all Department Heads shall maintain, and preserve, in a~~  
6 ~~professional and businesslike manner all documents and correspondence, including but not~~  
7 ~~limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall~~  
8 ~~disclose all such records in accordance with this ordinance.<sup>43</sup>~~

9 ~~(b) The Department of Elections shall keep and preserve all records and invoices~~  
10 ~~relating to the design and printing of ballots and other election materials and shall keep and~~  
11 ~~preserve records documenting who had custody of ballots from the time ballots are cast until~~  
12 ~~ballots are received and certified by the Department of Elections.<sup>44</sup>~~

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

24 <sup>43</sup> Moved to new 67.33(a) and expanded.

25 <sup>44</sup> Moved to new 67.33(b).

<sup>45</sup> Moved to new 67.33(c).

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ARTICLE IV  
POLICY IMPLEMENTATION

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

6 Sec. ~~67.31.35~~ Responsibility for Administration.

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

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

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

10 Sec. 67.39 Hearing and Orders of Determination

11 Sec. 67.40 Administrative Enforcement Provisions

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

13 Sec. 67.42 Referrals and Enforcement by the Ethics Commission

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

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

16 Sec. ~~67.37.45~~ Severability.

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

18  
19 **SECTION ~~67.30.34~~. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION**

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



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

22  
23

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

<sup>2</sup> References to City Attorney moved to new 67.38, "Role of City Attorney."

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

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

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

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

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

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

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

16 The Mayor shall administer and coordinate the implementation of the provisions of this  
17 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~  
18 ~~the implementation of the provisions of this chapter and~~ and for departments under the control of  
19 boards and commissions appointed by the Mayor. Elected officers shall administer and  
20 coordinate the implementation of the provisions of this chapter for departments under their  
21 respective control. The Board of Supervisors shall provide sufficient staff, facilities, equipment  
22 and any other resources to enable the Sunshine Commission to fulfill its duties under this  
23 Ordinance.<sup>4</sup> ~~The Clerk of the Board of Supervisors shall provide a full-time staff at least one~~

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

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

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

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

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

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

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

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

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

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

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1 **SECTION 67.38. ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC**  
2 **INFORMATION.**<sup>6</sup>

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

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

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

23  
24  
25 <sup>6</sup> New section incorporates language moved from Articles II and III to clarify and streamline ordinance.

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

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

17  
18 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**<sup>8</sup>

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

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

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

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

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

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

16  
17 **SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.<sup>11</sup>**

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

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

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

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



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

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

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

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

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

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

25 <sup>14</sup> New provisions providing for public disclosure of Order of Determination issued by  
Commission.

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

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

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

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

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

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

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

24 <sup>16</sup> Provision moved from former 67.21(f).

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

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

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

10  
11 **SECTION 67.42. REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION.**<sup>19</sup>

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

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

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

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

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

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

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

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

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

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

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

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

19  
20 **SECTION 67.3543. PUBLIC ENFORCEMENT PROVISIONS.**<sup>20</sup>

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

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

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

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

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

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

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

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

21  
22  
23 <sup>21</sup> Revises and clarifies existing language in Ordinance.

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

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

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  
25

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

1 Determination issued by the Sunshine Commission.<sup>23</sup> 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)

8  
9  
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)

15  
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  
24  
25 <sup>23</sup> Provides a longer time period within which respondents must comply with Orders of  
Determination before a complainant can go directly to the Ethics Commission.

AMENDMENTS FOR 2008

FINALIZED 6/10/2008 by the TASK FORCE

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

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



Below is a summary of the key changes proposed as of March 3, 2010, for the San Francisco Sunshine Ordinance. The proposed amendments were drafted by the Task Force's Compliance and Amendments Committee in open session, with citizens' input.

In the text of the proposed amendments (which are available on the web at <http://sfgov.org/sunshine>), single underlines indicate language proposed as of June, 2008, for addition to the current Ordinance; single strikethroughs indicate language proposed as of June, 2008, for deletion from the current Ordinance; double underlines indicate language proposed since June, 2008, for addition to the current Ordinance; double strikethroughs indicate language proposed since June, 2008, for deletion from the current Ordinance.

In a number of cases, language in the text of the proposed amendments will appear twice, underlined in one part of the package and stricken through in another; this indicates the affected passage is intended for relocation within the Ordinance, rather than for addition or deletion.

\* \* \* \* \*

1. Name of Sunshine Ordinance Task Force would be changed to Sunshine Commission (Art. I, Sec. 67.1(e) and Art. IV, Sec. 67.34). Name change would not by itself change the body's mission, responsibilities, powers, or the method of appointing its members. The purpose of the proposed name change is to fix more firmly in the minds of citizens and City personnel the fact that this is a permanent, not an ad hoc, body.
2. Revised, added and deleted language expands on and clarifies what is and is not a "public meeting" for City policy bodies (Art. II, Sec. 67.3(b). To the list of gatherings that are *not* public meetings (Sec. 67.3(b)(4)), the following are added: (D) Attendance of a majority of members of a policy body at a meeting of a standing committee of the policy body, provided that the members of the policy body who are not members of the committee attend only as observers or as members of the public; and (E) Attendance of a majority of members of a policy body at a meeting of another policy body to observe or publicly comment on a matter specifically noticed before that policy body. Deleted from the list of gatherings that are *not* public meetings is "(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients."
3. Revised, added and deleted language expands on and clarifies what is and is not a "policy body" (Art. II, Sec. 67.3(c)). Added is (4) Any policy body subset (such as a committee) composed of members of the policy body.
4. Revised, added and deleted language expands on and clarifies what is and is not a "passive meeting body" (Art. II, Sec. 67.3(d)). Added are (1) Advisory committees created by someone operating with a department head's authority (committees created by department heads, the Mayor or policy bodies are already included), and (5) A committee consisting solely of City/County employees that review, develop, modify, or create City policies or procedures relating to serving the homeless.

5. Added language clarifies meeting notice and agenda requirements for policy and passive-meeting bodies (Art. II, Sec. 67.3(d)(5)(e)).
6. Revised, added and deleted language increases passive meeting bodies' open-meeting requirements (Art. II, Sec. 67.4), including individual notifications, notice and agenda posting, and site accommodativeness.
7. Special-meeting notice requirements are revised to provide consistency for accepted methods of notice delivery, and to allow shorter advance time because of increased use of electronic/instantaneous notice (Art. II, Sec. 67.6(e)).
8. Provision is added stipulating that an initial meeting of a policy body shall be considered a regular meeting, with 10-day advance notice required (Art II. Sec. 67.6(h)).
9. Added and deleted portions clarify requirements for posting of and wording in agendas (Art. II, Sec. 67.7). Added language in Subsec. (f) mandates providing agendas and related materials in alternative formats to accommodate persons with disabilities. New Subsec. (i) mandates that agendas include notice of citizens' right to submit statements or comments on specific agenda items.
10. Added and revised language expands requirements for distributing and posting agenda packets (Art. II, Sec. 67.9. Subsec. (a) adds requirement that agenda packets be available for public inspection at least 48 hours before a meeting and, where practicable, posted on the web. Subsec. (b) adds a requirement that documents subject to adoption, approval or award by a policy body be available for public inspection at least 48 hours before the meeting at which the action is scheduled. Subsec. (c) adds a requirement that documents distributed or intended for distribution to members of a policy body at a public meeting be made available for public inspection immediately upon request or as soon thereafter as feasible, whether or not the documents are actually distributed to the policy body members at the time of the request.
11. Added language regarding matters authorized for closed hearings (Art. II, Sec. 67.10) stipulates the right of City employees to have items to which they are parties in interest heard in public (Subsec. (b)).
12. New provision (Art. II, Sec. 67.12(f)) would require policy bodies to track and routinely review records of closed sessions to determine when those materials may be released to the public, once justification for keeping the matter closed no longer exists.
13. Added language expands and increases requirements for accommodating the ability of persons with disabilities and those needing translation to attend and participate in public meetings (Art. II, Sec. 67.13); mandate would extend to all policy bodies, not just those enumerated in the City Charter.
14. New provision (Art II. Sec. 67.13(f)) would require that by 2012, all policy bodies enumerated in the City Charter broadcast all meetings in City Hall on the San Francisco

Government TV (SFGOV-TV) channel or its successor, or on the City's website via real-time audio and/or video streaming, and would encourage all other policy bodies to do same as feasible.

15. Revisions (Art. II, Sec. 67.14) would require that in light of new technology, meeting recordings be kept indefinitely; would clarify how much the City may charge for making copies; and would require all policy bodies to digitally record meetings and post the recordings on their websites within three days, starting no later than six months after the revisions receive voter approval.

16. Added language extends to the Board of Supervisors and its committees the requirement to allow members of the public to address public bodies on any items within their subject matter jurisdiction (Art. II, Sec. 67.15(a)). However, as the Ordinance currently stipulates, Board agendas need not provide an opportunity for public comment on items already considered by Board committees when the committees have heard public comment on those items (Art. II, Sec. 67.15(b)).

17. Revised and added language sets a minimum three-minute time limit per speaker, per agenda item at public meetings; clarifies circumstances permitting public body chairs to make other arrangements such as reducing the time limit to two minutes per speaker, establishing time limits for pro and con sides of an issue, and allowing for designated speakers; and provides for use of audio-visual equipment by members of the public addressing policy bodies (Art. II, Sec. 67.15(c)).

18. Added language increases the information that must be provided in meeting minutes, and establishes requirements for posting of draft minutes on policy bodies' websites and of any real-time captioning provided at meetings (Art. II, Sec. 67.16).

19. New section (Art. II, Sec. 67.18) establishes position of Supervisor of Public Forums to decide whether specific bodies are in the "policy" or "passive meeting" category, and to determine, upon request, whether bodies of either type have complied with the open-meeting provisions in the Sunshine Ordinance and the Ralph M. Brown Act. City Attorney would be permitted to combine the Supervisor of Public Forums and Supervisor of Public Records positions.

20. Added, deleted and revised language clarifies City agencies' responsibilities in handling public records requests (Art. III, Sec. 20). Subsec. (a) expands to all departments a requirement to appoint a Custodian of Public Records, who shall develop procedures and printed forms to expedite the request and response process. Subsec. (c) clarifies response timelines. Subsec. (d) is revised to clarify existing requirements, and is expanded to require City personnel to identify locations where electronic records are maintained and to forward requests to other entities that have or might have information responsive to requests. Subsec. (f) adds a requirement that when asked to determine whether or not a record or part of a record is disclosable, the Supervisor of Public Records conduct an independent review of the case at hand and take Sunshine Commission rulings into account. This subsec. also clarifies and expands entities to which the Supervisor of Records may refer orders on petitions and requires that the Sunshine Commission

be kept informed of all correspondence regarding petitions. Subsec. (i) clarifies that members of the public have the right of access to electronic records in any format in which the records exist or have existed, and limits copying fees to the cost of material(s) (i.e. CD, tape, USB drive, print material, etc.) on which requested electronic records are provided.

21. Revised and added language clarifies timelines and procedural requirements for responding to record requests, including Immediate Disclosure Requests and requests for voluminous records (Art. III, Sec. 67.21).

22. Revised and added language clarifies timelines and procedural requirements for providing records on a "rolling basis" (Art. III, Sec. 67.22).

23. Added language specifies that the identity and contact information of persons who send communications to City entities are assumed to be public information unless they specifically request or the law requires that the information be withheld (Art. III, Sec. 67.24(b)).

24. Added language clarifies existing legal requirements regarding drafts and intra-agency memoranda under the Ordinance and expanded disclosure requirement for drafts not normally kept, consistent with existing California Public Records Act case law (Art. III, Sec. 67.25(a)).

25. Added language expands disclosable personnel information to include professional biographies, curriculum vitae and job applications of all applicants for department helms and City policy bodies, with home addresses and telephone numbers, Social Security numbers, age and marital status redacted (Art. III, Sec. 67.25(c)(2)).

26. Revised and added language regarding information on allegations of City employee misconduct brings the Ordinance into conformance with the California Public Records Act and clarifies that reports conducted or requested by public agencies on allegations of City employee misconduct are public records subject to release at the conclusion of an investigation (Art. III, Sec. 67.25(c)(5)).

27. New provisions require that all City requests for bids, proposals, quotes, information and qualifications of potential contractors be posted on the City's website, be kept in a central repository and be available for public inspection; and encourage the City to post on its website all responses to such requests (Art. III, Sec. 67.25(e)(1) and (2)).

28. Requirements for disclosing information when contracts are awarded are increased (Art. III, Sec. 67.25(e)(3)). Dollar amount of any contract is added to information that must be included, and there is a new mandate that the successful request for bid/proposal and the contract be posted on the City's website within five days after awarding of a contract.

29. New provision mandates immediate public availability of information on completed evaluations/responses to City requests for bids/proposals (Art. III, Sec. 67.25(e)(4)). Information is to include forms, score sheets and other documents used in evaluation process, and the names and job titles of evaluators, along with their individual ratings, comments and score sheets.

30. Revised and added language changes guidelines for City departments' listing of sole-source contracts awarded during a fiscal year (Art. III, Sec. 67.25(e)(7)). Reports would be due every July 15, and departments would be required to post their lists to the City's website, keep the lists in a central repository, and make them available for public inspection and copying.

31. Added language establishes requirement that all withholdings of documents or information be based on an express provision of the Ordinance or on an express exemption in the California Public Records Act the use of which is not barred by the Ordinance (Art. III, Sec. 67.26).

32. New provision requires written justifications for withholding information to include a description of the information's nature and volume, and the specific justification application to each piece of withheld information (Art. III, Sec. 67.28(e)).

33. New provision would require transfer of paper records to electronic format upon request, when technologically feasible (Art. III, Sec. 67.30(b)).

34. Provision regarding information on agreements between the City and advertising space providers would be deleted (Art. III, Sec. 67.29-3). Members of the Task Force have consensed that the provision is unnecessary.

35. Requirement for keeping appointment calendars open to public inspection would be expanded to include members of the Board of Supervisors and all City agency/department heads (Art. III, Sec. 67.32). Subsec. (b) and (c) specify the types of information regarding officials' meetings with groups and individuals that must be disclosed and that are exempt from disclosure.

36. Added language expands the communications relationship between the Sunshine Ordinance Task Force/Commission (Art. IV, Sec. 34(c)). Besides advising the Board of Supervisors on appropriate ways to implement the Ordinance, the Task Force/Commission would now advise the Mayor and City department heads as well. The subsection would also require the Task Force/Commission to solicit the advice of City personnel and the public on ways to improve the Ordinance. The Task Force has already been doing this; the new language is intended to ensure that the Task Force/Commission would continue the practice. The subsection would also make discretionary, rather than mandatory, the Task Force/Commission's referral of sunshine-law violations to entities with enforcement and penalization power, and would specifically identify those entities: the City Ethics Commission, the District Attorney and the California Attorney General.

37. Added language clarifies that a mandate for the Board of Supervisors to provide full-time administrative assistance to the Task Force/Commission is a *minimum* requirement; and that the Task Force/Commission's administrative assistant is to have no duties other than his/her work for the Task Force/Commission (Art. IV, Sec. 67.35).

38. Added language would add the University of California's San Francisco campuses to the list of entities that City officials and other representatives are instructed to encourage and work with to adopt policies and procedures to maximize their public transparency and accountability (Art. IV, Sec. 67.36(a)).

39. Added and revised language would change conditions under which the City gives subsidies in money, tax abatements, land or services (Art. IV, Sec. 67.36(b)). Recipient category would be expanded to include any private entity, not just a for-profit entity, and the entity would be required to agree in writing to provide financial projections and then to comply with the agreement.

40. Added language would newly involve the Sunshine Commission in the Sunshine and Ethics Training that all City personnel required to sign an affidavit of financial interest with the Ethics Commission must undergo (Art. IV, Sec. 67.37). The City Attorney's Office, which conducts the training, would now have to do so in consultation with the Sunshine Commission, and all materials and training plans would now have to receive the Sunshine Commission's approval.

41. New provision would empower the Sunshine Commission to issue subpoenas and take under-oath testimony on its own, to the extent allowed by state law (Art. IV, Sec. 67.39(b)). The Task Force must currently obtain Board of Supervisors authorization to issue subpoenas and is not empowered to put testifiers at hearings under oath.

42. Added language clarifies responsibilities of respondent agencies at Sunshine Commission hearings on complaints by members of the public (Art. IV, Sec. 67.39(c)). It specifies that respondent agencies shall send representatives knowledgeable in the matter at hand and in the legal bases for their response. In addition, it specifies that respondent agencies must send representatives in cases alleging open meeting- or public records-related violations. The current Ordinance does not spell out a respondent attendance requirement in open meeting-related cases.

43. Added and revised language would increase the Sunshine Commission's ability to go after scofflaws and would change the list of entities that the Commission could approach for assistance in effecting compliance with the Ordinance.

- When a respondent City agency, policy body, official or employee failed to comply in timely fashion with an Order of Determination calling for remedy of an open meeting or public record violation the Sunshine Commission would be authorized to refer the matter to the City Ethics Commission, the Board of Supervisors, the District Attorney and/or the State Attorney General, who would be empowered to take whatever measures they deemed necessary to ensure compliance with the Order of Determination (Art. IV, Sec. 67.40(a)).
- When issuing an Order of Determination, the Commission would be empowered to require the governing entity to which the violator reports to schedule at its next regular meeting a discussion of and response to the Order of Determination (Art. IV, Sec. 67.40(b)), and to require that the governing entity post the Order of Determination on its own or the violating agency/department's website (Art. IV, Sec. 67.40(c)).
- Upon finding a serious, willful violation of the Ordinance, the Sunshine Commission could, by a two-thirds-majority vote, hire an outside attorney to pursue the matter in court to the extent permitted by the City Charter, with a spending ceiling of \$50,000 unless a greater amount is specified by the Board of Supervisors, and any attorney fees collected

as a result of the lawsuit to go back into the Commission's litigation fund (Art. IV, Sec. 67.40(c)).

- New provision stipulates that an Order of Determination would be evidence of a violation of the Ordinance or other applicable sunshine law in any other administrative or judicial proceeding (Art. IV, Sec. 67.40(f)).

44. Revised and added language clarifies that when the Sunshine Commission finds willful failure to comply with the Ordinance, constituting official misconduct by a City official or employee, the Commission may refer the matter not only to the City Ethics Commission but also to the Board of Supervisors, the District Attorney and/or the State Attorney General (Art. IV, Sec. 67.41).

45. New provisions establish procedures for City Ethics Commission investigations of sunshine violations referred by the Sunshine Commission (Art. IV, Sec. 67.42), including setting a penalty range of \$500 to \$5,000 per violation and empowering the Ethics Commission to impose monetary and other penalties it deems appropriate. Provisions in this section also establish the Sunshine Commission chair or vice-chair and the complainants in referred matters as co-complainants before the Ethics Commission, and authorizes the Sunshine Commission to recommend fine amounts, with any fines collected by the Ethics Commission in cases referred by the Sunshine Commission to go into the Sunshine Commission's litigation fund. The provisions in this section also stipulate the Sunshine Commission Orders of Determination and findings of willful violation constituting official misconduct shall be evidence of a violation of the Ordinance or other applicable sunshine law in any Ethics Commission investigation or other proceeding.

46. New provision would create a right to judicial review of alleged public meeting violations but only after the policy body has cured or corrected its challenged action (Art. IV, Sec. 67.43(c) and (d)). Provision also would establish method by which members of the public may seek enforcement of enhanced public meeting requirements in the Sunshine Ordinance through procedures consistent with the procedural requirements of the Brown Act.

47. Revised language lengthens to 60 days from the current 40 days the amount of time that a City entity, official or employee would have to comply with a Sunshine Commission Order of Determination before a complainant could take his/her complaint directly to the City Ethics Commission (Art. IV, Sec. 67.43(g)). In such an instance, the Sunshine Commission would not be considered a complainant before the Ethics Commission.

48. Added language expands the local legal precedence of the Sunshine Ordinance in sunshine-related matters (Art. IV, Sec. 67.44). The current Ordinance stipulates that the provisions of the Ordinance supersede other local laws, and that whenever a conflict in local law is identified, the requirement resulting in greater or more expedited public access to public information and meetings shall apply. The added language would specify that the City Charter is included in the local laws that the Ordinance would supersede in the event of such a conflict.

###



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cc

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Subject A simple proposal to make SF IDR's work \*a lot\* better - (Adjustment to SO Draft)

*(If you agree with me, please respond-to-all with your concurrence or suggestions otherwise)*

San Francisco has an amazing provision for an Immediate Disclosure Request which requires production of accessible documents by end of next business day. This was particularly viewed as a way to help the News Media (and now bloggers) who were on deadline for stories.

Unfortunately city employees (with city attorney encouragement) have found a way to stymie this by systematically invoking a 10 day extension to "consult with other agencies". This used to occur with the Draft and 6255 Public Interest balancing test exemptions which were used to prevent access to records before the prior revision to Sunshine when they were prohibited.

I would like to suggest that the draft Sunshine Ordinance require that all such consultations occur with due haste, be recorded including time date stamp and be provided as part of the records response.

The value here is that agencies show their good faith need to consult and that they did it quickly. It would strongly discourage misuse of this extension. It would also reveal to the requester other relevant departments to send additional requests to.

**This would not be an Administrative Burden.**

As it turns out, Sunshine already makes discloseable all Sunshine related advice and communications (not limited to correspondence) is discloseable under 67.24 (b) 1 (iii). We are only be adding a requirement to record a verbal discussion. This can be accomplished with many cell phones, any computer with a microphone jack, voicemails on a phone system, a digital recorder from Radio Shack or even a tape cassette player. Or one can just have an interactive text discussion over instant messenger. Skype and other voip tools also have easy ways to record a conversation.

This isn't groundbreaking, Sunshine already requires disclosure of real-time negotiations during some contracts including summaries of verbal representations. And Sunshine already provides for access to Public Information which includes Oral Communication.

67.24 (b) 1

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



## MEMORANDUM

To: Members SOTF Compliance and Amendments Committee.  
From: Allen Grossman  
Dated: March 16, 2010  
Re: Role of Supervisor of Records under Draft §67.21(f).

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At the last C & A Special Meeting, there was considerable discussion of the role and "independence" of the Supervisor of Records under proposed Section 67.21(f), [formerly §67.21(d)], which currently provides, in part -- with proposed changes to §67.21(d) marked:

"(f) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the ~~supervisor~~ Supervisor of records Records for a determination whether the record requested is disclosable public in whole or in part. ..."

Yesterday in response to a records request, I was provided with a copy of the attached Memorandum from DCA Paula Jesson to DCA Paul Zarefsky dated February 23, 2010. Ms. Jesson was about to take several months leave from the City Attorney's office; and her Memorandum was intended to assist the DCAs who acted as the SOR understand what the job consisted of and what is the role of the SOR.

The Memo is quite informative with respect to two issues in the draft with reference to the BOS:

(1) In the second Paragraph, that is captioned "Only Determine if a Record is Public", Ms. Jesson states: "The Supervisor of Records ONLY determines whether the record that was requested was public, not other issues..." The specific text of §67.21(d) is:

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), **the person making the request may petition the *supervisor of records* for a determination whether the record requested is public.**"

The provision almost seems unnecessary as it is almost impossible to find a record anywhere in a city government file that is NOT a "public" record.

In any case, the draft would change the SOR's determination to "whether the record is disclosable, in whole or in part." This would require the SOR to look at the claimed exemptions as well. However, Ms. Jesson also describes other matters that frequently arise when requesting public records that the SOR does not determine, "...such as [1] why the department did not make records that it had available earlier, [2] a statement as to existence, quantity, form and nature of records under SF Admin. Code sec. 67.21(c), [3] whether the requester can be told how many pages were being withheld under a permitted exception, [4] whether a department is required to provide a log

of documents exempt from disclosure, [5] whether a department has conducted an adequate search of its files for records and [6] what record retention requirements apply ...”

Because recourse to the SOR is the simplest and most expeditious resolution of these issues from the point of view of the requester, why not include in §67.21(f) that the BOS should make those determinations as well, when appropriate.

(2) In the fourth paragraph captioned “Supervisor of Records as Neutral Decision Maker”, Ms Jesson states:

**“We keep the Supervisor of Records position neutral by having the designated person not handle a matter if she handled it initially when the request was made to the responding department. When questioned one time about whether my review was "neutral," I have confirmed that it was. If you get a petition that related to a matter that you handled when the department responded to the request, discuss this issue with Buck.”**

First, Ms. Jesson openly admits, what we have known for some time, that the DCAs in the Government Group (headed by Buck Delventhal) routinely violate §67.21(i), which provides:

**“(i) The San Francisco City Attorney’s office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public.”**

Second, she lowers the bar for the SOR’s “neutrality” as a “decision maker” to that of a serious ethical conflict between the “neutrality” of the SOR and the DCA who might be taking on that role. As a result, any DCA in the Government Group can take on the “neutral” role of the SOR -- even one, such as Paul Zarefsky, who regularly advises departments on how to deny access to public records or their formats and whose negative views of the SOTF and the Sunshine Ordinance are known. That he is the SOR on the first two petitions to the SOR since Ms. Jesson left is certainly give me pause, I were the petitioner.

During the course of your March 3, 2010 Special Meeting I suggested that the SOR be “independent” and “unbiased;” that the SOR give due regard to prior rulings of the SOTF when the same issue arises before the SOR; and that the SOR not necessarily adopt a position previously advanced by the City Attorney, particularly if the SOTF had heard and rejected it.

Since the version of “neutral” used by Ms. Jesson does not provide a petitioner any degree of confidence that the SOR will necessarily be an impartial and unbiased “arbiter” between the respondent- city department and the petitioner, the SOTF should adopt a more objective and appropriate “neutral” standard for the SOR position.

As a minimum, the standard should be: “impartial and unbiased, to review any legal issues with an independent mind and to defer to any prior findings or decisions of the SOTF on the same or similar factual or legal issues.” To that minimum, some of these other suggestions could be added:

(1) Have the DCA assigned to the SOTF act as the SOR—there is an ethical wall already in

place between that DCA and the other DCAs in the CA's Office.

(2) Alternatively, create an "ethical wall" between the SOR and the other DCAs in the CA's Office.

(3) Require an in camera inspection of records rather than just considering possible claimed exemptions by the department withholding the records -- this has come up where exemptions are clearly invalid when records have been examined) -- the BOS report to the SOTF to describe the respondent's full search processes and criteria, including what files examined.

(4) If the record requested is being withheld by the City Attorney's Office, require the CA to hire outside counsel to act as the SOR.



DENNIS J. HERRERA  
City Attorney

PAULA JESSON  
Deputy City Attorney

DIRECT DIAL: (415) 554-6762  
E-MAIL: paula.jesson@sfgov.org

**MEMORANDUM  
PRIVILEGED & CONFIDENTIAL**

TO: Paul Zarefsky, Other Government Team Deputies As Needed  
FROM: Paula Jesson  
Deputy City Attorney  
DATE: February 23, 2010  
RE: Interim Supervisor of Records

Authority

The function of the Supervisor of Records is set forth in SF Admin. Code sec. 67.21(d).

Annual Supervisor of Records Reports

I am providing you with hard copies of the last three annual reports to the S.O. Task Force. The appendices have copies of the responses that were sent to petitioners (that you can use for the format, usual language, etc.). The annual reporting period has been October 1 through September 30.

The Eighth and Ninth annual reports are on the concordance of internal city attorney opinions. Today I sent Laurel Turner an email asking her to see that the Tenth is also added.

Only Determine if a Record is Public

The Supervisor of Records ONLY determines whether the record that was requested was public, not other issues such as why the department did not make records that it had available earlier (9<sup>th</sup> report, App. p. 12), a statement as to existence, quantity, form and nature of records under SF Admin. Code sec. 67.21(c) (9<sup>th</sup> report, App. pp. 17 and 43), whether the requester can be told how many pages were being withheld under a permitted exception (9<sup>th</sup> report, App. p. 21), whether a department is required to provide a log of documents exempt from disclosure (9<sup>th</sup> report, App. p. 43), whether a department has conducted an adequate search of its files for records (9<sup>th</sup> report, App. p. 44), and what record retention requirements apply (9<sup>th</sup> report, App. p. 44).

"Immediate Disclosure" and "Rolling Basis" Complaints

For discussions of what is an "immediate disclosure request" and how to respond to complaint that a department has not complied with the "provide on a rolling basis" requirement, see page 10, Tenth Annual Report, Anna Mabbutt petition.

Supervisor of Records as Neutral Decision Maker

We keep the Supervisor of Records position neutral by having the designated person not handle a matter if she handled it initially when the request was made to the responding department. When questioned one time about whether my review was "neutral," I have confirmed that it was (9<sup>th</sup> report, App. p. 18). If you get a petition that related to a matter that you handled when the department responded to the request, discuss this issue with Buck.

**Memorandum  
Privileged & Confidential**

TO: Paul Zarefsky, Other Government Team Deputies As Needed  
DATE: February 23, 2010  
PAGE: 2  
RE: Interim Supervisor of Records

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There is one exception. Where the request is to the City Attorney's Office, the Supervisor of Records has sometimes gotten involved in responding to the initial request.

Record-Keeping

I maintain a table of the petitions received, time received, method (email/letter), petitioner, documents requested, response due, and when completed.

Attached is a copy of the document you should use.

Please maintain this table and keep hard copies of the requests and responses and any interim correspondence that would be useful for the annual report to the Task Force (such as extensions of time).

Please also number each petition in order as they come in, both on the timetable and on the file so that we can keep track.

Sometimes a petition will start as one question and develop into two or more. It doesn't matter how that is shown on the table – just describe it however seems easiest/clearest.

10-Day Response Requirement

The S.O. requires the Supervisor of Records to make a determination within 10 days. We sometimes take longer. The policy is to alert the petitioner when we will need to do so. (Kimo Crossman filed a S.O. Task Force complaint against me as Supervisor of Records because I missed the 10-day deadline. The Task Force denied the complaint, but narrowly – only by one vote.)

Kimo Crossman

[Note: I wrote the following last year but it may no longer be true; recently I've seen few Kimo requests recently.] Because Kimo Crossman filed so many requests, we have let him know that we may not comply with the usual S.O. time requirements. I am providing you with the file from Kimo's task force complaint. See the December 29, 2008 letter from me to the Task Force (at page 2) and the attachments to that letter for the history of the issue and the position we have taken. For a sample of how I have referred to this issue when Kimo complains about late responses, see the 9<sup>th</sup> report, App. p. 48.

If Questions Arise

E-mail me at [REDACTED] We should be checking email fairly often.

Thanks so much. Paula

## MEMORANDUM

To: Members, Sunshine Ordinance Task Force

From: Allen Grossman

Dated: March 23, 2010

Re: Proposed March 3, 2010 Amendment to Sunshine Ordinance

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At your upcoming March 30, 2010 and April 6, 2010 Special Meetings, the latest draft of the Amended Sunshine Ordinance will be reviewed and proposed changes to it considered.

Based on my personal experience and that of others who have been active in seeking records under the current Sunshine Ordinance, I believe that there just several areas in the existing draft that could be made stronger and more definitive.

These are:

(1) The role and "independence" of the Supervisor of Records under proposed Section 67.21(f), [formerly §67.21(d)]. My March 16, 2010 Memorandum regarding this subject sent originally to the Compliance & Amendments Committee members should be in the "package" accompanying the latest draft of the Amendment.

The important point to emphasize is that for a requestor who is denied a public record, petitioning the Supervisor of Records is the most direct, fastest and easiest way to resolve the question whether the record is disclosable. The more independent, impartial and judicious the SOR is, the more effective that path to disclosure will be.

Attached is a marked version of the proposed Section 67.21(f) with the additional changes I would make to achieve that.

(2) The Amendment contemplates more intensive and, likely, lengthier hearings on complaints, given the subpoena and other "trial" aspects, set forth in Section 67.39(b). That will necessarily bring a heavier workload on and possibly require some legal background for the Administrator. For example, maintaining and organizing records that will eventually be "certified" to Ethics, keeping track of subpoenas and witnesses, scheduled appearances, dealing with transcripts of testimony and "exhibits." In effect, the Administrator will become a quasi-paralegal. For that reason, if the amendment is passed, the professional qualifications of the Administrator will be critical.

Attached is a marked version of the proposed Section 67.35 that would add that requirement.

(3) As noted in (2), the "procedural" work of the Commission in more formal hearings on complaints will significantly increase, as will that of the DCA assigned to it. Although it seemed clear under the current Section 67.30(a) that the DCA assigned to the Task Force would serve "solely" as its legal advisor, over time the assigned DCA's time allocated to the Task Force has been progressively reduced by the City Attorney to between 15% and 20% of that of a "full-time lawyer. In the past, the prior DCA declined to provide written opinions when asked to so by the

Task Force; the currently assigned DCA did not attend the crucial recent meeting held solely for an intense review of a major part of the Amendment; and, to my knowledge, he has not been directly involved in any overall fine-tuning of its text. If the Amendment is passed, the Commission will need a full-time lawyer on "staff" to provide consistent legal guidance at all times, to manage the legal aspects of the hearings and to help it in the preparation of the more detailed referrals. In addition, the assigned DCA should be ethically walled off from the other lawyers in the City Attorney's office and should not be permitted to take other assignments from the City Attorney unless the Commission first gives its consent.

Subsection (a) of the attached marked version of proposed Section 67.38 should accomplish that goal.

(4) The Amendment does not deal with a consistent problem involving the City Attorney. Although the current Sunshine Ordinance attempts to level the playing field between the officials and agencies who are advised by the City Attorney on open government matters and the public that seeks access to meetings and public records by prohibiting the City Attorney from "assisting" such officials and agencies in denying the access sought. However, in a variety of ways the City Attorney's office regularly assists the officials and agencies in doing just that.

Subsection (b) of the attached marked version of Section 67.38 (b) is intended to prevent the City Attorney from continuing that practice.

(5) In proposed subsection (d) of Section 67.38, the Amendment seeks to prevent the City Attorney from giving "undisclosable" oral advice on open government matters, as has been suggested by the City Attorney's "Government Team" to avoid the disclosure of such advice through records request by a member of the public. To avoid any doubt as to the purpose of and restrictions imposed under subsection (d), I suggest that the subsection be expanded.

Subsection (d) of the attached marked version of Section 67.38 imposes the greater restrictions.

(6) The changes in the way that the Ethics Commission will enforce the Commission's Orders and its findings of "Official Misconduct" are found in proposed Section 67.42. The history of Ethics' so-called "investigations" and dismissals of SOTF referrals of non-compliance with Orders and SOTF findings of Official Misconduct is well known. It should be noted again that findings of "Official Misconduct" could originate in six instances in the City Charter, in addition to the one found in the Sunshine Ordinance. Some months ago, Ethics' Executive Director submitted to the SOTF an outline of Ethics' proposed "separate" rules governing such referrals and findings. Based on that outline, no substantive changes will be made in Ethics' past approach to enforcing referrals and findings of Official Misconduct; the same m.o. will be recast into a more formal framework. For that reason, the provisions in the Amendment must be drawn in clear and unambiguous terms so that Ethics' cannot undercut these Commission enforcement referrals and Official Misconduct findings. In other words, allow it no "wobble" room.

Attached is a marked version of the proposed Section 67.42 that is intended to accomplish that goal.

67.21(f):

(f) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the ~~supervisor~~ Supervisor of Public Records for a determination whether the record requested is disclosable, public in whole or in part. The Supervisor of Public Records shall inform the petitioner, as soon as possible but no later than 10 calendar days after a petition is filed ~~and within 10 days of its determination~~, ~~of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this~~ In reaching this determination, the Supervisor of Public Records' review shall (1) be conduct an independent and impartial, (2) review, taking into full deference to account prior findings or rulings, if any, of the Sunshine Commission on the same or similar issue and (3) disregard any contrary opinions or other expressed contrary positions of the City Attorney on the same or similar issue. The Supervisor of Records may review in camera any public records, the disclosure of which, in whole or in part, are the subject of the petition. This determination shall be in writing. Upon the determination by the Supervisor of Public Records that the record is publicly disclosable, in whole or in part, the Supervisor of Public Records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within five days, the Supervisor of Public Records shall notify the ~~district attorney or the attorney general~~ San Francisco Ethics Commission, Board of Supervisors, District Attorney, or the State California Attorney General who shall take whatever measures ~~she or he deems~~ they deem necessary and appropriate to insure compliance with the provisions of this ordinance. Ordinance. The Supervisor of Public Records shall copy the Sunshine Commission on all determinations of actions on petitions under this subsection, all correspondence pertaining to its duties under this subsection to the Sunshine Commission's public review file.<sup>1</sup>

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<sup>1</sup> Clarifies and expands entities to which Supervisor of Records can refer orders on petitions to and requires that the Sunshine Commission be kept informed of all correspondence regarding petitions.



**SECTION 67.3435. RESPONSIBILITY FOR ADMINISTRATION.**

(a) ~~The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter and for departments under the control of boards and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control.~~

(b) The Board of Supervisors shall provide sufficient staff, facilities, equipment and any other resources to enable the Sunshine Commission to fulfill its duties under this Ordinance.<sup>1</sup>

(c) ~~The Clerk of the Board of Supervisors shall provide a full-time staff at least one full time staff person, acceptable to the Commission, who shall be the Administrator of the Commission, to perform all administrative duties for the Sunshine Ordinance Task Force Commission, including and to assist assisting any person in gaining access to public meetings or public information. Such staff person shall have professional qualifications and experience appropriate to the position of Administrator. The Administrator of the Commission and shall have no other duties.~~<sup>2</sup> To the extent the Commission deems necessary, upon its request, the Clerk of the Board of Supervisors shall provide additional staff support for the Commission. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

<sup>1</sup> Language moved from former 67.21(e) in order to clarify and streamline Ordinance.

<sup>2</sup> Adds language specifying that requirements to provide the Commission with certain resources are minimum requirements, and that the Commission Administrator is to have no duties besides those performed on the Commission's behalf.

**SECTION 67.38. ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC INFORMATION.<sup>1</sup>**

(a) The City Attorney shall serve as legal advisor to the Commission. At the Commission's shall, at its request, the City Attorney have shall assigned to assign to it, an attorney from the City Attorney's Office or other appropriate City office, acceptable to the Commission, who is experienced and well-informed in public-access law matters. This attorney shall (1) serve the Commission solely and exclusively, (2) as be a its legal advisor and advocate to on its behalf the Commission, (3) serve the Commission on a full-time basis, unless, from time to time, the Commission consents to a specific reduction in the attorney's time for a specific period, (4) and when requested by the Commission, shall provide opinions and other advice on specific legal issues that the Commission deems pertinent and (5) maintain -An an ethical wall will be maintained between the work of this attorney the assigned attorney's services to or on behalf of the Commission and any services to or on behalf of any other person or office, unless that the Commission first determines that such services to such other person or office may have a will not conflict of interest with regard to the any Commission matters that are or may be being handled by the attorney.

(b) The City Attorney's office shall (1) first and foremost act to protect and secure the rights of the people of San Francisco to access public information and public meetings, and shall (2) not act as legal counsel for assist or advise, directly or indirectly, any City employee or any other person- Person having custody of any public information or public records for purposes of denying or limiting access to any public meetings or disclosure of any public information or any public records.

(c) Notwithstanding the attorney-client privilege and work-product protections that might otherwise be applicable, all written or oral communications to, from or with the

<sup>1</sup> New section incorporates language moved from Articles II and III to clarify and streamline ordinance.

City Attorney's Office and all the City Attorney's internal records with regard to this Ordinance, and obligations under the California Public Records Act, the Brown Act, and any other applicable open government law, including petitions, requests for opinion, opinions and advice shall be and constitute fully disclosable public records and public information.

(d) All advice from The-the City Attorney's Office to any one with regard to this Ordinance, and obligations under the California Public Records Act, the Brown Act, and any other applicable open government law shall be written and posted promptly to its website. In furtherance of that requirement, the City Attorney's Office shall not have a formal or informal policy to, nor otherwise, provide oral advice in lieu of written advice to inhibit or avoid disclosure of any public information or public record under this provisionOrdinance.

**CHANGE PROPOSED SUBSECTIONS (D) AND (E) TO (E) AND (F), RESPECTIVELY.**

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**SECTION 67.42. REFERRALS AND ENFORCEMENT BY THE ETHICS COMMISSION.<sup>1</sup>**

(a) The Ethics Commission is authorized to shall enforce the Orders of Determination and findings of Official Misconduct referred to it by of the Sunshine Commission. Upon referral of any Order of Determination to the Ethics Commission, the following procedures and standards shall apply.

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

(ii) Upon the Commission's referral to the Ethics Commission of a finding of Official Misconduct, the Ethics Commission shall follow its own rules that govern its proceedings with respect to such findings referred to it pursuant to the City Charter.

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(iii) Any public officer, employee, agency, policy body or department that willfully fails to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the California Public Records Act shall be deemed to have committed official misconduct. [Already included in new Section 67.41.]

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

(iv) Any agency, policy body or department found to have committed official misconduct under this Ordinance shall be fined at least \$500, and up to \$5,000 depending upon the seriousness of the misconduct. Any such fine shall be paid solely from such agency's, policy body's or department's regular budgeted funds.

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<sup>1</sup> New provision specifies procedures by which referrals from the Commission shall be investigated and enforced by the Ethics Commission. Adds new enforcement mechanisms and penalties that may or must be imposed by the Ethics Commission.

~~(iv) Upon referral~~ The Sunshine Commission may, in a referral of a finding of official-Official misconductMisconduct, recommend the level of fines that may be imposed.

~~(vi) The Ethics Commission may impose any additional penalty authorized by law for official-Official misconductMisconduct, including removal from office.~~

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

~~(b) The Commission's Order of Determination and, as applicable, finding of willful violation constituting official misconduct, shall be conclusive evidence of a violation of this Ordinance or other applicable open government law in any Ethics Commission investigation or proceeding. Factual findings made during by the Commission hearings and specified in its orders-Orders shall be reviewed for abuse of discretion conclusive in any proceeding before the Ethics Commission.~~

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