

Date: May 25, 2010

Item No. 20

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

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Proposed amendments**
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Completed by: Chris Rustom

Date: May 21, 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 and currently under consideration by the Task Force (

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As of May 11, 2010

1 PROPOSED ORDINANCE AMENDMENTS

2  
3 ARTICLE I  
4 IN GENERAL

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

11           ~~(4)(5) Any advisory board, commission, committee or other body, created by the~~  
12 ~~initiative Mayor or of a policy body;~~

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;~~

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

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1           (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 notices and agendas for policy bodies shall be posted at least 72 hours in  
19 advance of the 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            ~~(1)(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)~~ (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 least 72 hours in advance; mandates enhanced notice and website posting requirements.

24 <sup>6</sup> Provision consolidated with subsection 67.4(a) above.  
25

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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 or its successor et. seq.) and of  
9 this article. In case of inconsistent requirements under the Brown Act and this article, the  
10 requirement which 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(c)(7)  
16 ~~(d)(5) and 67.3(d)(6)~~, shall establish by resolution or motion the time and place for holding  
17 regular 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 these 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 67.3(e)7(e), 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 or its successor. Reasonable attempts shall be made to contact others  
15 regarding the change in meeting location.

16 ~~(e)(d)~~ Meetings of ~~passive meeting~~ bodies as specified in Section ~~67.3(c)(7)67.3(d)(5)~~  
17 ~~and 67.3(d)(6)67.6(d)(4)~~ of this article shall be preceded by notice delivered personally or by  
18 mail, e-mail, or facsimile ~~as reasonably requested~~ at least 72 hours before the time of such  
19 meeting to each person who has requested, in writing, notice of such meeting. If the ~~advisory~~  
20 body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is  
21 utilized by that ~~advisory~~ body for the conduct of its business, for the time and place for holding

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

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

As of May 11, 2010

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

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As of May 11, 2010

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.

## AMENDMENTS FOR 2010

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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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As of May 11, 2010

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.

24

25

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

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

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 and currently under consideration by the Task Force (

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As of May 11, 2010

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

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

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

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

18           (a) With respect to every item of business to be discussed in closed session pursuant  
19 to Government Code section 54956.9 (a) or its successor, each agenda item for a policy body

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 covered by this Ordinance that involves existing litigation shall identify the court, case number,  
2 and date the case was filed on the written agenda.<sup>22</sup>

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

10  
11 ~~(1) With respect to a closed session held pursuant to Government Code Section~~  
12 ~~54956.7:~~

13 ~~LICENSE/PERMIT DETERMINATION:~~

14 ~~applicant(s)~~

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

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

19  
20 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATOR~~

21 ~~Property:~~

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

AMENDMENTS FOR 2010

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

As of May 11, 2010

1 Person(s) negotiating:

2 Under negotiation:

3 Price: Terms of payment: Both:

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

11  
12 (3) With respect to every item of business to be discussed in closed session pursuant  
13 to Government Code Section 54956.9, either:

14  
15 ~~CONFERENCE WITH LEGAL COUNSEL~~

16 Existing litigation:  
17 Unspecified to protect service of process  
18 Unspecified to protect settlement posture

19 or:  
20 ~~CONFERENCE WITH LEGAL COUNSEL~~

21 Anticipated litigation:  
22 As defendant As plaintiff

23  
24  
25



## AMENDMENTS FOR 2010

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As of May 11, 2010

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

14  
15       ~~(4) With respect to every item of business to be discussed in closed session pursuant~~  
16 ~~to Government Code Section 54957, either:~~

17  
18 ~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

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

20 ~~or:~~

21 ~~PUBLIC EMPLOYEE APPOINTMENT/HIRING~~

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

23

24

25

AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~PUBLIC EMPLOYEE PERFORMANCE EVALUATION~~

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

3 ~~or:~~

4 PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE

5 Number of employees affected:

6 or:

7

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

10

11 CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING (

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

13 Organization(s) representing:

14 Police officers, firefighters and airport police

15 Transit Workers

16 Nurses

17 Miscellaneous Employees

18 Anticipated issue(s) under negotiation:

19 Wages

20 Hours

21 Benefits

22 Working Conditions

23

24

25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 Other (specify if known)

2 All

3

4 Where renegotiating a memorandum of understanding or negotiating a successor  
5 memorandum of ~~under standing~~understanding, the name of the memorandum of ~~under-~~  
6 ~~standing~~understanding:

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

17

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

19 ~~(a) All closed sessions of any policy body covered by this Ordinance shall be either~~  
20 ~~audio recorded or audio and video recorded in their entirety and all such recordings shall be~~  
21 ~~retained for at least TEN years, or permanently where technologically and economically~~

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.

24

25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~feasible. Closed session recordings shall be made available whenever all rationales for~~  
2 ~~closing the session are no longer applicable. Recordings of closed sessions of a policy body~~  
3 ~~covered by this Ordinance, wherein the justification for the closed session is due to~~  
4 ~~"anticipated litigation" shall be released to the public in accordance with any of the following~~  
5 ~~provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the~~  
6 ~~statute of limitations for the anticipated litigation if no litigation is filed; as soon as the~~  
7 ~~controversy leading to anticipated litigation is settled or concluded.<sup>24</sup>~~

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

### 16 SECTION 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

17 (a) Agendas of meetings, meeting packets, or documents created by a department,  
18 and or any other documents on file with the clerk or secretary of the policy body, when  
19 intended for distribution to all, or a majority of all, of the members of a policy body in  
20 connection with a matter anticipated for discussion or consideration at a public meeting shall

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).

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 be made available to the public for inspection and copying at the office of the policy body at  
2 least 48 hours before the hearing. ~~To the extent possible, such documents shall also be made~~  
3 ~~available through the policy body's Internet site. However, this disclosure need not include an~~  
4 ~~material exempt from public disclosure under this ordinance. Unless demonstrably unfeasible~~  
5 these materials shall be made available on the policy body's web site, at least 48 hours prior  
6 to the meeting. Public review copies of the agenda and all related documents that constitute  
7 the meeting packet shall be made available at the meeting to the public in sufficient quantities  
8 commensurate with the anticipated number of people attending the hearing. The materials  
9 that are distributed at the hearing shall be clearly legible of such a quality that a person with  
10 20/20 vision would have no difficulty reading them.<sup>27</sup> Nothing in this subsection effects the  
11 requirements for disclosure under Sec. 67.12(b)(3), 67.12(b)(5) and 67.25(e)(8).

12 (b) If any document subject to adoption, approval or award by a policy body not  
13 otherwise covered by Section 67.25(e)(8) is not available at least 48 hours before the meeting  
14 at which that document is scheduled to be adopted, approved or awarded and a member of  
15 the policy body requests that the matter be continued, the policy body must continue the item  
16 to a time not less than 48 hours after the document was made available. Nothing in this  
17 subsection shall prohibit the policy body from amending a document at a meeting.<sup>28</sup>

18 (b) ~~Records which are subject to disclosure under subdivision (a) and which are~~  
19 ~~intended for distribution to a policy body prior to commencement of a public meeting shall be~~

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~made available for public inspection and copying upon request prior to commencement of~~  
2 ~~such meeting, whether or not actually distributed to or received by the body at the time of the~~  
3 ~~request.~~<sup>29</sup>

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

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

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

21 \_\_\_\_\_  
22 <sup>29</sup> Moved into subsection (a) above.

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

3 (a) With the California Attorney General, district attorney, agency counsel, security  
4 consultant, sheriff, or chief of police, or their respective deputies, on matters posing a threat to  
5 the security of public buildings or a threat to the public's right of access to public  
6 services or public facilities.<sup>32</sup>

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

19 (c) Notwithstanding section (b), an Executive Compensation Committee established  
20 pursuant to a Memorandum of Understanding with the Municipal Executives Association may  
21 meet in closed session when evaluating the performance of an individual officer or employee

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

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

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As of May 11, 2010

1 subject to that Memorandum of Understanding or when establishing performance goals for  
2 such an officer or employee where the setting of such goals requires discussion of that  
3 individual's individual's performance.

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

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

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

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

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

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## AMENDMENTS FOR 2010

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*As of May 11, 2010*

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

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

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

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

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

18           (1) Real Property Negotiations: Approval given to a policy body's body's negotiator  
19 concerning real estate negotiations pursuant to Government Code Section 54956.8 or its  
20 successor shall be reported as soon as the agreement is final. If its own approval renders the  
21 agreement final, the policy body shall report that approval, the substance of the agreement  
22 and the vote thereon in open session immediately. If final approval rests with another party to

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As of May 11, 2010

1 the negotiations, the body shall disclose the fact of that approval, the substance of the  
2 agreement and the ~~body's~~body's vote or votes thereon upon inquiry by any person, as soon  
3 as the other party or its agent has informed the body of its approval. If notwithstanding the  
4 final approval there are conditions precedent to the final consummation of the transaction, or  
5 there are multiple contiguous or closely located properties that are being considered for  
6 acquisition, the document referred to in subdivision (b) of this section need not be disclosed  
7 until the condition has been satisfied or the agreement has been reached with respect to all  
8 the properties, or both.

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

18 (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement  
19 which would preclude the release of the text of the settlement itself and any related  
20 documentation communicated to or received from the adverse party or parties. Any written  
21 settlement agreement and any documents attached to or referenced in the settlement  
22 agreement shall be made publicly available at least 10 calendar days before the meeting of  
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As of May 11, 2010

1 the policy body at which the settlement is to be approved to the extent that the settlement  
2 would commit the City or a department thereof to adopting, modifying, or discontinuing an  
3 existing policy, practice or program or ~~otherwise acting other than to pay an amount of money~~  
4 ~~less than \$50,000 or more.~~<sup>34</sup> The agenda for any meeting in which a settlement subject to this  
5 section is discussed shall identify the names of the parties, the case number, the court, and  
6 the material terms of the settlement. Where the disclosure of documents in a litigation matter  
7 that has been settled could be detrimental to the ~~city's~~City's interest in pending litigation  
8 arising from the same facts or incident and involving a party not a party to or otherwise aware  
9 of the settlement, the documents required to be disclosed by subdivision (b) of this section  
10 need not be disclosed until the other case is settled or otherwise finally concluded.

11 (4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the ( (

12 resignation of a public employee in closed session pursuant to Government Code Section  
13 54957 or its successor shall be reported immediately in a manner that names the employee,  
14 the action taken and position affected and, in the case of dismissal for a violation of law or of  
15 the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this  
16 ordinance includes any termination of employment at the will of the employer rather than of  
17 the employee, however characterized. The proposed terms of any separation agreement shall  
18 be immediately disclosed as soon as presented to the body, and its final terms shall be  
19 immediately disclosed upon approval by the body.

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

## AMENDMENTS FOR 2010

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

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

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

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

22  
23 <sup>35</sup> Moved from former 67.8-1(b).

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As of May 11, 2010

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

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

3           (1) For each closed session, each public body shall maintain a record of the date and  
4 time of the closed session, the justification for the closed session and the subject matter  
5 discussed in closed session, as well as ~~and shall include~~ all minutes, recordings or other  
6 records related to the closed session.

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

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

19  
20           **SECTION 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**<sup>37</sup>

21  
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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As of May 11, 2010

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

11 (b) ~~Each board and commission~~ All policy bodies enumerated in the Charter shall  
12 provide sign language interpreters, assisted listening devices, or note-takers, or other needed  
13 accommodations for persons with disabilities at each ~~regular~~ meeting, provided that a request  
14 for such services is communicated to the secretary or clerk of the board or commission, at  
15 ~~least 48 hours before the meeting, except for Monday meetings, for which the deadline shall~~  
16 ~~be 4 p.m. of the last business day of the preceding week.~~ When requests for such services are  
17 made by a member or members of the public at least 72 hours prior to the meeting, - the  
18 policy body shall comply with the request. If the request is made less than 72 hours before  
19 the meeting the policy body should attempt to comply with the request, if possible.  
20  
21

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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.  
25

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As of May 11, 2010

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

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

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



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As of May 11, 2010

1 or its committees to deliberate or vote upon any matter presented to them. ~~In any calendar~~  
2 ~~year in which the costs to the City for providing translator services under this subsection~~  
3 ~~exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the~~  
4 ~~provisions of this subsection.~~

5 (f) Boards and Commissions and other bodies enumerated in the Charter shall, by  
6 2012~~0~~ broadcast all meetings held in City Hall on the San Francisco Government TV channel  
7 (or its successor) or the City's website via real-time audio streaming and/ or real-time  
8 audio/video streaming on the Internet. All other policy bodies are encouraged to broadcast  
9 their meetings similarly as feasible.<sup>38</sup>

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

14  
15 **SECTION 67.14. ~~TAPE-RECORDING, FILMING AND STILL PHOTOGRAPHY.~~**<sup>39</sup>

16 (a) Any person attending an open and public meeting of a policy body or passive  
17 meeting body shall have the right to record the proceedings with an audio, ~~or~~ video and/or  
18 digital recorder ~~or a still or motion picture camera, or to broadcast the proceedings, in the~~  
19 absence of a reasonable finding of the policy body that the recording or broadcast cannot

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

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

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As of May 11, 2010

1 continue without such noise, illumination or obstruction of view as to constitute a persistent  
2 disruption of the proceedings.

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

17 (c) Closed session recordings, made pursuant to Section 67.14(b), shall be made  
18 available whenever all rationales for closing the session are no longer applicable. Recordings  
19 of closed sessions of bodies covered by this Ordinance wherein the justification for the closed  
20 session is "anticipated litigation" shall be released to the public in accordance with any of the  
21 following provisions: two years after the meeting if no litigation is filed; upon expiration of the  
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23  
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1 statute of limitations for the anticipated litigation if no litigation is filed; as soon as the  
2 controversy leading to anticipated litigation is settled or concluded.<sup>40</sup>

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

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

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

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

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1 modify the duties created by any other provision of this article, including but not limited to the  
2 requirements for recording closed sessions as stated in subsection (c)~~Section 67.8-4~~ and for  
3 recording meetings of policy bodies~~boards and commissions enumerated in the Charter~~ as  
4 stated in subsection (b) above.

### 7 **SECTION 67.15. PUBLIC TESTIMONY.**

8 (a) Every agenda for regular and special meetings shall provide an opportunity for  
9 members of the public to directly address a policy body on any items of interest to the public  
10 that ~~is~~ are within the policy body's subject matter jurisdiction, provided that no action shall be  
11 taken on any item not appearing on the agenda unless the action is otherwise authorized by ( (

12 Section 67.7(e) of this article: This provision shall apply to all meetings of the Board of  
13 Supervisors and its committees. However, in the case of a meeting of the Board of  
14 Supervisors, the agenda need not provide an opportunity for members of the public to  
15 address the Board on any item that has already been considered by a committee, composed  
16 exclusively of members of the Board, at a public meeting wherein all interested members of  
17 the public were afforded the opportunity to address the committee on the item, before or  
18 during the committee's consideration of the item, unless the item has been substantially  
19 changed since the committee heard the item, as determined by the policy bodyBoard.<sup>41</sup>

20 (b) Every agenda for ~~special~~special meetings at which action is proposed to be  
21 taken on an item shall provide an opportunity for each member of the public to directly  
22

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

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1 address the body concerning that item prior to action thereupon. However, in the case of a  
2 meeting of the Board of Supervisors, the agenda need not provide an opportunity for  
3 members of the public to address the policy body on any item that has already been  
4 considered by a committee, composed exclusively of members of the policy body, at a public  
5 meeting wherein all interested members of the public were afforded the opportunity to address  
6 the committee on the item, before or during the committee's consideration of the item, unless  
7 the item has been substantially changed since the committee heard the item, as determined  
8 by the policy body.<sup>42</sup> However, nothing in this subsection is intended to exempt Board of  
9 Supervisors committees from the general public comment requirements under subsection (a).

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

12 (c)(~~ed~~) Time and Order of Public Speakers

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

15 (1) ~~regulations limiting the total amount of time allocated for public testimony on~~  
16 ~~particular issues and for each individual speaker.~~ Each policy body shall adopt a rule  
17 providing that each person wishing to speak on an item before the body at a regular or special  
18 meeting shall be permitted to be heard at least once for up to a minimum of three minutes per  
19 agenda item and allow any member of the public present to yield or defer their time to another  
20 member of the public that is present.<sup>43</sup>

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

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

## AMENDMENTS FOR 2010

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

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

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As of May 11, 2010

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

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

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

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

20  
21  
22 <sup>44</sup> Clarifies circumstances and method by which chair may set public comment to less than  
three minutes but no less than two minutes.

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

AMENDMENTS FOR 2010

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

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

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

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

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

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

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

19 ( d )(de) A policy body shall not abridge, reproach or prohibit public criticism of the  
20 policy, procedures, programs or services of the City, or of any other aspect of its proposals or  
21 activities, or of the acts or omissions of the body, on the basis that the performance of one or  
22

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

24  
25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 more public employees is implicated, or on any basis other than reasonable time constraints  
2 adopted in regulations pursuant to subdivision (c) of this section.

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

7 ~~(f) (fg)~~ Members of the public shall have access to all audio-visual equipment  
8 used by a department or policy body for presentations made to that policy body  
9 consistent with time limits provided in subsection (c). To the extent feasible, pPrior  
10 notification in the agenda or public notice that a presentation will be made using  
11 audio/visual equipment or technology shall be provided, listing the specific equipment.<sup>47</sup>

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

### 14 SECTION 67.16. MINUTES.

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

18 (b) ~~The minutes shall state the time the meeting was called to order, the names of~~  
19 ~~the members attending the meeting,~~ time of each member's arrival if after commencement of  
20 the meeting and the time of each member's departure if prior to the adjournment of the

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

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As of May 11, 2010

1 meeting, the roll call vote on each matter considered at the meeting, the time the board or  
2 commission began and ended any closed session, the names of the members and the  
3 names, and titles where applicable, of any other persons attending any closed session, a list  
4 of those members of the public who spoke on each matter if the speakers identified  
5 themselves, whether such speakers supported or opposed the matter, a brief summary of  
6 each person's statement during the public comment period for each agenda item, and the  
7 time the meeting was adjourned. Any person ~~speaking during a public comment period may~~  
8 supply submit a brief written summary comments of their comments which that shall, if no  
9 more than 150 words, be included in the body of the minutes or attached to the minutes and  
10 noted in the item. The minutes shall also include the text of any resolution adopted by or  
11 modified by a policy body within the body of the minutes or as an attachment.<sup>49</sup>

12 (c) The draft minutes and any attachments thereto from of each meeting shall be  
13 posted on the policy body's website and be available for inspection and copying upon request  
14 no later than 10 business working days after the meeting. The officially adopted minutes shall  
15 be available for inspection and copying upon request no later than ten business working days  
16 after the meeting at which the minutes are adopted. Upon request, minutes required to be  
17 produced by this section shall be made available in Braille ~~or increased type size~~ alternative  
18 formats for persons with disabilities. If real time captioning is provided at a meeting, if  
19 separable, it shall also be posted on the web site. The City Administrator shall assist policy

20  
21  
22 <sup>49</sup> Provides increased information must be provided in the minutes to allow more information  
23 for public review, tracking and historical research purposes.

AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~bodies in carrying out their duties under this subsection.~~<sup>50</sup> (Added by Ord. 265-93, App.  
2 8/18/93; amended by Proposition G, 11/2/99)

3

4 **SECTION 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.**

5 Every member of a policy body retains the full constitutional rights of a citizen to  
6 comment publicly on the wisdom or propriety of government actions, including those of the  
7 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or  
8 deprive members of their rights as elected or appointed officials for expressing their  
9 judgments or opinions, including those which deal with the perceived inconsistency of non-  
10 public discussions, communications or actions with the requirements of state or federal law or  
11 of this ordinance. Every member of a policy body shall be allowed to speak freely on any  
12 issue before the body subject only to time limits, which ~~may~~ shall be imposed on all members  
13 equally.<sup>51</sup> The release of specific factual information made confidential by state or federal law  
14 including, but not limited to, the privilege for confidential attorney-client communications, may  
15 be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor  
16 seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93;  
17 amended by Proposition G, 11/2/99)

18

19

20

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

### 1 SECTION 67.18. SUPERVISOR OF PUBLIC FORUMS<sup>52</sup>

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

6 (b) Any person may petition the Supervisor of Public Forums for a determination  
7 whether a body is a policy body or passive meeting body or whether a policy body or passive  
8 meeting body has violated any provision of Article II, Public Access to Meetings, of this  
9 Ordinance. The Supervisor of Public Forums shall inform the petitioner, as soon as possible  
10 and within 10 calendar days, of its determination on whether a violation occurred. In reaching  
11 this determination, the Supervisor of Public Records shall conduct an independent review,  
12 taking into account prior rulings, if any, of the Sunshine Commission on the issue. This  
13 determination shall be in writing. Upon determination by the Supervisor of Public Forums that  
14 a violation has occurred, the Supervisor of Public Forum shall immediately order the policy  
15 body or passive meeting body to correct such violation as soon as possible, but no later than  
16 at its next meeting. If the policy body or passive meeting body fails to comply with any such  
17 order, the Supervisor of Public Forums shall notify the San Francisco Ethics Commission,  
18 Board of Supervisors, District Attorney, or the ~~State~~-California Attorney General who shall take  
19 whatever measures they deem necessary and appropriate to ensure compliance with the  
20 provision of this Ordinance. The Supervisor of Public Forums shall copy the Sunshine

21  
22 \_\_\_\_\_  
23 <sup>52</sup> New 67.18 creates new Supervisor of Public Forums, consistent with existing provisions for  
24 Supervisor of Public Records.  
25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 Commission on all determinations or actions on petitions ~~correspondence pertaining to its~~  
2 duties under this subsection.

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AMENDMENTS FOR 2010

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As of May 11, 2010

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**ARTICLE III  
PUBLIC INFORMATION AND PUBLIC RECORDS**

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- Sec. 67.~~20~~19. Definitions.
- Sec. 67.~~21~~20. Process for Gaining Access to Public ~~Records~~Information;  
Administrative Appeals.
- Sec. 67.21 Immediacy of Response; Immediate Disclosure
- Sec. 67.22 Production on Incremental or "Rolling Basis"
- Sec. 67.~~22~~23. Release of Oral Public Information.
- Sec. 67.~~23~~24. Public Review File - Policy Body Communications.
- Sec. 67.~~24~~25. Public Information that Must Be Disclosed.
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27 Prohibited Basis for Withholding
- Sec. 67.~~27~~28. Justification of Withholding.
- Sec. 67.~~28~~29. Fees for Duplication.
- Sec. 67.30 Minimum Standards; Electronic Records; Computer Systems; Web  
Posting
- Sec. 67.~~29~~ ~~1.33-1~~ 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. 67.29~~33 Index to Records.
- Sec 67.33.

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As of May 11, 2010

1 ~~Sec. 67.29-4.33-2~~ Lobbyist On Behalf of the City.

2 Sec 67.34

3 ~~Sec. 67.29-6.33-4~~ Sources of Outside Funding.

4 Sec 67.35

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

6

7 **SECTION 67.2019. DEFINITIONS.**

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

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

10 (b) "Public Information" shall mean the content of "public records" as defined in the  
11 California Public Records Act (Government Code Section 6252 or its successor), whether ( (

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

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

18

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

20 **RECORDSINFORMATION; ADMINISTRATIVE APPEALS.**

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

23

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

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

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

19  
20 <sup>1</sup> Language regarding cost of copies moved to new 67.29(b) to clarify and streamline  
21 ordinance.

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

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As of May 11, 2010

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

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

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

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

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

21  
22 \_\_\_\_\_  
23 <sup>3</sup> Provisions broken out to clarify existing law and revised to provide reasonable timeframes  
24 for in person review of documents and require tracking of oral requests.  
25



## AMENDMENTS FOR 2010

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As of May 11, 2010

1           (4) An oral request for information shall be treated as a written request. Oral requests  
2           that are not fulfilled by an employee immediately shall be documented as to date,  
3           time, place and requester by the department, ~~or~~ policy body, or custodian of records  
4           in order to maintain a public record of the public request.

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

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

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

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1 the California Public Records Act or this Ordinance, the department, policy body~~City Attorney~~  
2 or custodian of records may inform the requester of the nature and extent of the exempt and  
3 non-exempt information and inquire as to the requester's purpose for seeking it, in order to  
4 suggest alternative sources for the information which may involve less redaction or, if  
5 necessary, to otherwise prepare a response to the request.<sup>5</sup>

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

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

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As of May 11, 2010

1 District Attorney, or the ~~State-California~~ Attorney General who shall take whatever measures  
2 ~~she or he deems~~ they deem necessary and appropriate to ~~insure~~ ensure compliance with the  
3 provisions of this ~~ordinance.~~ Ordinance. The Supervisor of Public Records shall copy the  
4 Sunshine Commission on all determinations of actions on petitions under this subsection. ~~all~~  
5 ~~correspondence pertaining to its duties under this subsection to the Sunshine Commission's~~  
6 public review file.<sup>6</sup>

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

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

AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall~~  
2 ~~provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties~~  
3 ~~under this provision. Where requested by the petition, the Sunshine Task Force may conduct~~  
4 ~~a public hearing concerning the records request denial. An authorized representative of the~~  
5 ~~custodian of the public records requested shall attend any hearing and explain the basis for its~~  
6 ~~decision to withhold the records requested.<sup>7</sup>~~

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

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

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

AMENDMENTS FOR 2010

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

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

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As of May 11, 2010

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

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

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

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

23 <sup>10</sup> Provisions regarding reports by the Supervisor of Records have been moved to Article IV,  
24 "Role of City Attorney."  
25

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

4           (k)(h) Release of ~~documentary public information~~records, whether for inspection of the  
5 original or by providing a copy, shall be governed by the California Public Records Act  
6 (Government Code Section 6250 or its successor et seq.) ~~in particular to the extent not~~  
7 addressed by this ~~ordinance~~Ordinance and in accordance with the enhanced disclosure  
8 requirements provided in this ~~ordinance~~Ordinance.

9           (l)(i) Inspection and copying of ~~documentary public information~~records stored in  
10 electronic form shall be made available to the person requesting the information in any form in  
11 which requested the information is held by the department or policy body, any format that has  
12 been used by the department or policy body to create copies for its own use or for provision to  
13 other agencies, or which is available to or easily generated by the departmentdepartment or  
14 policy body, its officers or employees, including but not limited to disk, tape, printout or  
15 monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection  
16 of ~~documentary public information~~records on a computer monitor need not be allowed where  
17 the information sought is necessarily and ~~unseparably~~inseparably intertwined with information  
18 not subject to disclosure under this ~~ordinance~~Ordinance. Nothing in this section shall require  
19 a department to create a new computer program or reprogram a computersystem application  
20 to that would respond to a request for information or take any action to release information  
21 ~~where the release of that information would violate a licensing agreement or copyright law that~~

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 would jeopardize or compromise the security or integrity of the original record or of any  
2 proprietary software in which it is maintained.<sup>12</sup> (Added by Ord. 265-93, App. 8/18/93;  
3 amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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

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

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

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

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

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1           ~~(3) Implementing a system that permits making records available through the largest~~  
2 ~~non-profit, non-proprietary public computer network, consistent with the requirement for~~  
3 ~~security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App.~~  
4 ~~6/19/96; Proposition G, 11/2/99)~~

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

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

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

17           (c)(b) Notwithstanding the 10-calendar-day period for response to a request permitted  
18 in section 67.204(c) of this Ordinance, a written request for immediate access to information  
19 described in any category of non-exempt public information shall be satisfied no later than the  
20 close of business on the day following the day of the request. This deadline shall apply only if  
21 the words "Immediate Disclosure Request" are placed across the top of the request and on

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



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As of May 11, 2010

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

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

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

### 20 **SECTION 67.2223. RELEASE OF ORAL PUBLIC INFORMATION.**

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

## AMENDMENTS FOR 2010

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

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

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

21 (c) ~~No employee shall be required to respond to an inquiry or inquiries from an~~  
22 ~~individual if~~ if it would take ~~an~~ the employee more than fifteen minutes to obtain the information  
23  
24  
25

AMENDMENTS FOR 2010

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As of May 11, 2010

1 responsive to ~~the an~~ inquiry or inquiries, the employee shall notify the requester of the  
2 procedures for obtaining records under sections 67.21 and 67.23 of this Ordinance, and  
3 provide an appropriate form for that request if available.

4 (d) 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>16</sup> (Added by Ord. 265-93, App.  
9 8/18/93; amended by Proposition G, 11/2/99)

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

21 \_\_\_\_\_  
22

23 <sup>16</sup> Moved up from former 67.22(e).  
24  
25

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As of May 11, 2010

1 now or in the future, under the First Amendment, or to create any new private cause of action  
2 or defense to disciplinary action.

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

9

### 10 SECTION 67.2324. PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS.

11 (a) The clerk of the Board of Supervisors and the clerk of each ~~board and~~ ( (

12 ~~commission enumerated in the Charter~~ policy body shall maintain a file, accessible to any

13 person during normal office hours, at the office of the policy body or at a place nearby clearly

14 designated to the public containing in a chronological order a copy of any letter, memorandum

15 or other communication which the clerk has distributed to or received from a quorum of the

16 policy body concerning a matter calendared by the body within the previous 30 days or likely

17 to be calendared within the next 30 days, irrespective of subject matter, origin or recipient,

18 except commercial solicitations, periodical publications or communications exempt from

19 disclosure under the California Public Records Act (Government Code Section 6250 or its

20 successor et seq.) and not deemed disclosable under Section 67.24 of this article.

21

22

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

24

25

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As of May 11, 2010

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

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

### 12 13 **SECTION 67.2425. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

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

18           (a) Drafts and Memoranda.

19           (1) ~~Except as provided in subparagraph (2), no~~No preliminary or draft document  
20 and no inter or intra-agency memoranda, or department memorandum, whether in printed or

21  
22 <sup>18</sup> Removed as duplicative of subsection (a) above.

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

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As of May 11, 2010

1 electronic form, shall be exempt from disclosure under Government Code Section 6254 or its  
2 successor, subdivision (a) or any other provision. ~~If such a document is not normally kept on~~  
3 ~~file and would otherwise be disposed of, its factual content is not exempt under subdivision~~  
4 ~~(a). Only the recommendation of the author may, in such circumstances, be withheld as~~  
5 ~~exempt. This section is not intended to alter or extend the requirements under any document~~  
6 retention policy adopted by a policy body or department.<sup>20</sup>

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

18 (b) Litigation and Attorney-Client Material.

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

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

24 <sup>21</sup> Moved to new 67.25(e)(8) in order to clarify and streamline Ordinance.  
25

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As of May 11, 2010

- 1 (i) A pre-litigation claim against the City;
- 2 (ii) A record ~~previously~~-received or created by a ~~department~~-policy body or  
3 department in the ordinary course of business that was not ~~attorney/client~~attorney-client  
4 privileged ~~when~~-at the time it was ~~previously~~-received or created;
- 5 (iii) Advice on compliance with, analysis of, an opinion concerning liability or duties  
6 under, or any communication otherwise concerning the California Public Records Act, the  
7 Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ~~ethics~~  
8 ~~code~~Ethics Code, or this Ordinance.
- 9 (2) Unless otherwise ~~privileged~~ prevented under an express provision of California  
10 law, when litigation is finally adjudicated or otherwise settled, records of all communications  
11 between the policy body or department~~department~~ and the adverse party shall be subject to  
12 disclosure, including the text and terms of any settlement.
- 13 (c) Personnel Information. None of the following shall be exempt from disclosure  
14 under Government Code Section 6254, subdivision (c) or its successor, or any other provision  
15 of California Law where disclosure is not forbidden:
- 16 (1) The job pool characteristics and employment and education histories of all  
17 successful job applicants, including at a minimum the following information as to each  
18 successful job applicant:
- 19 (i) Sex, age and ethnic group;
- 20 (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- 21 (iii) Years of employment in the private and/or public sector;
- 22 (iv) Whether currently employed in the same position for another public agency.
- 23
- 24
- 25

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As of May 11, 2010

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

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

9 ~~(2)(3)~~ The professional biography, ~~or~~ curriculum vitae or job application of any  
10 employee, provided that the home address, home telephone number, social security number,  
11 age, and marital status of the employee shall be redacted.<sup>23</sup>

12 ~~(3)(4)~~ The job description of every employment classification.

13 ~~(4)(5)~~ The exact employment classification, gross salary and City-paid benefits  
14 available to every each employee identified by name, as well as salary actually earned,  
15 including all overtime, compensatory time, and paid leave time.<sup>24</sup>

16 ~~(5)(6)~~ Any memorandum of understanding between the City or department and a  
17 recognized employee organization.

18 ~~(6)(7)~~ The amount, basis, and recipient of any performance-based increase in  
19 compensation, benefits, or both, or any other bonus, awarded to any employee, ~~which.~~ To the  
20 extent the performance-based award is granted by a policy body, the details of that award

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

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

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



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1 shall be announced during the open session of a ~~policy body~~policy body at which the award is  
2 approved.

3 ~~(7)(8) The~~ All records regarding confirmed employee of any confirmed misconduct, of  
4 a public employee involving personal dishonesty, misappropriation of public funds, resources  
5 or benefits, unlawful discrimination against another on the basis of status, abuse of authority,  
6 or violence, and or allegations of misconduct that are of a substantial nature, as distinct from  
7 the baseless or trivial, and there is reasonable cause to believe that complaint is well founded,  
8 including records of any discipline or warnings imposed for such misconduct. Any  
9 investigation ~~and~~ report regarding allegations of employee misconduct – whether or not the  
10 investigation is conducted by or at the direction of an attorney – shall be released upon  
11 conclusion of that investigation where the allegations have been found to be substantial, even  
12 if there is no ultimate finding of misconduct, no discipline imposed, or warning issued.<sup>25</sup>

### 13 (d) Law Enforcement Information.

14 The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the  
15 press and other members of the public in allowing access to local records pertaining to  
16 investigations, arrests, and other law enforcement activity. However, no provision of this  
17 ordinance Ordinance is intended to abrogate or interfere with the constitutional and statutory  
18 power and duties of the District Attorney and Sheriff as interpreted under Government Code  
19 section 25303 or its successor, or other applicable state law or judicial decision. Records  
20 pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to

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

## AMENDMENTS FOR 2010

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1 the public once the District Attorney or court determines that a prosecution will not be sought  
2 against the subject involved, or once the statute of limitations for filing charges has expired,  
3 whichever occurs first. Notwithstanding the occurrence of any such event, individual items of  
4 information in the following categories may be segregated and withheld if, on the particular  
5 facts, the public interest in nondisclosure clearly and substantially outweighs the public  
6 interest in disclosure:

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

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

11 (3) The identity of a confidential source;

12 (4) Secret investigative techniques or procedures;

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

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

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

19 (e) Requests, Contracts, Bids and Proposals

20  
21  
22 <sup>26</sup> After consultation with departments and members of the public, the disclosure requirements  
23 for requests and contracts generally have been revised to improve clarity and provide  
24 enhanced disclosure to facilitate public review and comment on the contracting process.  
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 and currently under consideration by the Task Force

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As of May 11, 2010

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

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

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

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

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

15 ~~(3)~~(6) During the course of negotiations for:

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

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

22 (iii) any franchise agreements;  
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## AMENDMENTS FOR 2010

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

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

18 (8) Contracts, leases or other business subject to approval by a policy body:  
19 Draft versions of an agreement being negotiated by representatives of the City with another  
20 party need not be disclosed immediately upon creation but must be preserved and made  
21 available ~~along with~~ with the version of the agreement to be presented to the policy body for  
22 public review at least 10 days prior to the presentation of the agreement for approval by a  
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As of May 11, 2010

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

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

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

18 (h) ~~Neither the City nor any office, employee, or agent thereof may assert an~~  
19 ~~exemption for withholding for any document or information based on a "deliberative process"~~  
20  
21

22 \_\_\_\_\_  
<sup>27</sup> Moved from former 67.24(a)(2).

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

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1 exemption, either as provided by California Public Records Act Section 6255 or any other  
2 provision of law that does not prohibit disclosure.<sup>29</sup>

3 (i) ~~Neither the City, nor any office, employee, or agent thereof, may assert an~~  
4 ~~exemption for withholding for any document or information based on a finding or showing that~~  
5 ~~the public interest in withholding the information outweighs the public interest in disclosure.~~<sup>30</sup>

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

### 11 12 **Section 67.25. IMMEDIACY OF RESPONSE.**<sup>31</sup>

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

21  
22 <sup>29</sup> Moved to new 67.27.

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

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

AMENDMENTS FOR 2010

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

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

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

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

22 \_\_\_\_\_  
23 <sup>32</sup> Moved to new section 67.20(e)



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### **SECTION 67.26. WITHHOLDING KEPT TO A MINIMUM.**

All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of this Ordinance or the California Public Records Act ~~or of some other statute~~. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section ~~67.27~~67.28 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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

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

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

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

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

### 15 16 **SECTION 67.2728. JUSTIFICATION OF WITHHOLDING.**

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

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

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

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

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

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

### 14 15 **SECTION 67.2829. FEES FOR DUPLICATION.**

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

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

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As of May 11, 2010

1 right to inspect any record required to be disclosed by that Act, whether or not distributed to a  
2 policy body.

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

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

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

18 ~~(f) A policy body may charge a duplication fee of one cent per page for a copy of a~~  
19 ~~public record prepared for consideration at a public meeting, unless a special fee has been~~  
20 ~~established pursuant to the procedure set forth in Section 67.29(d). Neither this section nor~~  
21 ~~the California Public Records Act (Government Code sections 6250 et seq.) shall be~~  
22 ~~construed to limit or delay the public's right to inspect any record required to be disclosed by~~

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1 ~~that act, whether or not distributed to a policy body.~~<sup>34</sup> ~~(Added by Ord. 265-93, App. 8/18/93;~~  
2 ~~amended by Proposition G, 11/2/99)~~

### 3 4 **SECTION 67.30. MINIMUM STANDARDS; ELECTRONIC RECORDS; COMPUTER** 5 **SYSTEMS; WEB POSTINGS.**<sup>35</sup>

#### 6 **(a) Inspection and Copying of ~~Documentary~~ Public Information Stored in** 7 **Electronic Form.**

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

12 (1) Inspection and copying of documentary public information stored in  
13 electronic format shall be made available to the person requesting the information in  
14 any format in which the information is held by the department or policy body, any  
15 format that has been used by the department or policy body to create copies for its own  
16 use or for provisions to other agencies, or which is easily generated by the department  
17 or policy body, its officers or employees, including but not limited to any word  
18 processing, spreadsheet, database, raw text, raw data or other software programs  
19 used by or reasonably available to the department or policy body.

20  
21  
22 <sup>34</sup> Moved from former 67.9(d).

23 <sup>35</sup> New section combines former sections 67.21-1, and clarifies standards for computer  
24 systems and copies or access for electronic records.  
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1           (2) Copies of any public information stored in electronic form shall be made  
2 available in an industry standard format, including but not limited to, CD-ROM, DVD,  
3 disk, tape, or printout at a charge no greater than the cost of the medium on which it is  
4 duplicated. Where requested and reasonably practicable, copies shall be provided via  
5 electronic mail or other form of electronic transmission to the requestor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1            (5)(6) The City and County shall also make available on its website, or on a  
2            comparable, readily accessible location on the Internet, a current copy of the City  
3            Charter and all City Codes.

4  
5            ~~SECTION 67.21-131. POLICY REGARDING USE AND PURCHASE OF COMPUTER~~  
6            ~~SYSTEMS.~~

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

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

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

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

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As of May 11, 2010

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

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

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

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

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

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

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

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

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

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

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

### 12 13 **SECTION 67.2933. INDEX TO RECORDS.**

14       The City and County shall prepare a public records index that identifies the types of  
15 information and documents maintained by City and County departments, agencies, boards,  
16 commissions, and elected officers. The index shall be for the use of City officials, staff and  
17 the general public, and shall be organized to permit a general understanding of the types of  
18 information maintained, by which officials and departments, for which purposes and for what  
19 periods of retention, and under what manner of organization for accessing, e.g. by reference  
20 to a name, a date, a proceeding or project, or some other referencing system. The index  
21 need not be in such detail as to identify files or records concerning a specific person,  
22 transaction or other event, but shall clearly indicate where and how records of that type are

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As of May 11, 2010

1 kept. Any such master index shall be reviewed by appropriate staff for accuracy and  
2 presented for formal adoption to the administrative official or policy body responsible for the  
3 indexed records. The City Administrator shall be responsible for the preparation of this  
4 records index. The City Administrator shall report on the progress of the index to the  
5 ~~Sunshine Ordinance Task Force~~ Sunshine Commission on at least a semi-annual basis until  
6 the index is completed. Each department, agency, commission and public official shall  
7 cooperate with the City Administrator to identify the types of records it maintains, including  
8 those documents created by the entity and those documents received in the ordinary course  
9 of business and the types of requests that are regularly received. Each department, agency,  
10 commission and public official is encouraged to solicit and encourage public participation to  
11 develop a meaningful records index. The index shall clearly and meaningfully describe, with  
12 as much specificity as practicable, the individual types of records that are prepared or  
13 maintained by each department, agency, commission or public official of the City and County.  
14 The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any  
15 changes in the department, agency, commission or public official's practices or procedures  
16 affecting the accuracy of the information provided to the City Administrator shall be recorded  
17 by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of  
18 the index. The index shall be continuously maintained on the City's World Wide Website and  
19 made available at public libraries within the City and County of San Francisco. (Added by Ord.  
20 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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As of May 11, 2010

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

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

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

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

24 <sup>38</sup> Moved from former 67.29-7(b).  
25

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As of May 11, 2010

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

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

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

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

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



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

### 9 ~~SECTION 67.29-3~~

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

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

### 20 ~~SECTION 67.29-433-2. LOBBYIST ON BEHALF OF THE CITY.~~

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

## AMENDMENTS FOR 2010

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

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

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

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

### 8 9 **SECTION 67.29-533-332. CALENDARS OF CERTAIN ELECTED OFFICIALS,** 10 **DEPARTMENT HEADS**<sup>42</sup>

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

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

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

19  
20 <sup>42</sup> Provision revised to expand category of officials who must maintain calendars with certain  
21 minimum information and clarify that Ordinance established a minimum of what information  
22 must be maintained on specific officials' calendars and must be released within a specific,  
23 expedited timeframe. Revisions also clarify that this provision does not exempt from  
24 disclosure any other calendar or calendaring information that is maintained on City systems  
25 by City employees or officials.

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

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

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

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

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

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

3  
4 **SECTION 67.29-633-4. SOURCES OF OUTSIDE FUNDING.**

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

15  
16 ~~SECTION 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.~~

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

21  
22  
23 <sup>43</sup> Moved to new 67.33(a) and expanded.

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

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

22 \_\_\_\_\_  
<sup>44</sup> Moved to new 67.33(b).

23 <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. ~~67.34.35~~ Responsibility for Administration.

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

8 Sec. ~~67.33.37~~ ~~Department Head~~ 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 67.3034. THE SUNSHINE ORDINANCE TASK FORCE COMMISSION**

20 (a) There is hereby established a ~~task force to be known as the Sunshine~~  
21 Ordinance Task Force Sunshine Commission consisting of eleven voting members appointed  
22 by the Board of Supervisors. All members must have experience and/or demonstrated  
23  
24  
25

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

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



## AMENDMENTS FOR 2010

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Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force  
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As of May 11, 2010

1 ~~serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be~~  
2 ~~maintained between the work of this attorney on behalf of the Task Force and any person or~~  
3 ~~Office that the Task Force determines may have a conflict of interest with regard to the~~  
4 ~~matters being handled by the attorney.~~<sup>2</sup>

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

12 (c) The task force Commission shall advise the Board of Supervisors ~~and provide~~  
13 ~~information to other City departments , the office of the Mayor and other City departments on~~  
14 ~~appropriate ways in which to implement this chapter. The task force Commission shall~~  
15 ~~develop appropriate goals to ensure practical and timely implementation of this chapter. The~~  
16 ~~task force Commission shall propose to the Board of Supervisors amendments to this chapter~~  
17 ~~and solicit advice from City officials, employees and members of the public on ways to~~  
18 ~~improve the Ordinance. The task force Commission shall report to the Board of Supervisors~~  
19 ~~at least once annually on any practical or policy problems encountered in the administration of~~  
20 ~~this chapter. The Task Force Commission shall receive and review the annual reports of the~~  
21 ~~Supervisor(s) of Public Records and Public Forums, and may request additional reports or~~

22 \_\_\_\_\_  
23 <sup>2</sup> References to City Attorney moved to new 67.38, "Role of City Attorney."  
24  
25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 information as it deems necessary. The ~~Task Force~~ Commission ~~shall~~ may make referrals to  
2 a municipal office or any other appropriate body or official, including the Ethics Commission,  
3 District Attorney and the ~~State~~ California Attorney General with enforcement power under this  
4 Ordinance or under the California Public Records Act and the Brown Act whenever it  
5 concludes that any person has violated any provisions of this Ordinance or the Acts. The  
6 ~~Task Force~~ Commission shall, from time to time as it sees fit, issue public reports evaluating  
7 compliance with this ordinance and related California laws by the City or any  
8 ~~Department~~ department, ~~Office~~ office, or ~~Official~~ official thereof.<sup>3</sup>

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

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

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

### 21 **SECTION 67.3435. RESPONSIBILITY FOR ADMINISTRATION.**

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

## AMENDMENTS FOR 2010

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1           The Mayor shall administer and coordinate the implementation of the provisions of this  
2 chapter for departments under his or her control. ~~The Mayor shall administer and coordinate~~  
3 ~~the implementation of the provisions of this chapter~~ and for departments under the control of  
4 boards and commissions appointed by the Mayor. Elected officers shall administer and  
5 coordinate the implementation of the provisions of this chapter for departments under their  
6 respective control. The Board of Supervisors shall provide sufficient staff, facilities, equipment  
7 and any other resources to enable the Sunshine Commission to fulfill its duties under this  
8 Ordinance.<sup>4</sup> ~~The Clerk of the Board of Supervisors shall provide a full time staff at least one~~  
9 full time staff person, who shall be the Administrator of the Commission, to perform  
10 administrative duties for the Sunshine Ordinance Task Force Commission including and to  
11 assist assisting any person in gaining access to public meetings or public information. The  
12 Administrator of the Commission and shall have no other duties.<sup>5</sup> ~~The Clerk of the Board of~~  
13 ~~Supervisors shall provide that staff person with whatever facilities and equipment are~~  
14 ~~necessary to perform said duties.~~ (Added by Ord. 265-93, App. 8/18/93; amended by Ord.  
15 287-96, App. 7/12/96; Proposition G, 11/2/99)

### 16 17 **SECTION 67.3236. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE** 18 **REQUIRED.**

19           (a) It is the policy of the City and County of San Francisco to ensure opportunities for  
20 informed civic participation embodied in this Ordinance to all local, state, regional and federal

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

### 1 **SECTION 67.3337. DEPARTMENT HEAD OPEN GOVERNMENT DECLARATION.**

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

### 12 13 **SECTION 67.38. ROLE OF CITY ATTORNEY'S OFFICE; ADVICE SHALL BE PUBLIC** 14 **INFORMATION.**<sup>6</sup>

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

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

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 the Commission determines may have a conflict of interest with regard to the matters being  
2 handled by the attorney.

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

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

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

17 (e) Every year on September 30, and as otherwise requested by the Sunshine  
18 Commission, the Supervisor of Public Records and Supervisor of Public Forums shall prepare  
19 a tally and report of every petition brought before it for access to records and public forum  
20 questions since the time of its last tally and report. The report shall at least identify for each  
21 petition the record or records sought, the custodian of those records, the public forum  
22 question presented, the ruling of the Supervisor of Public Records and Supervisor of Public

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As of May 11, 2010

1 Forums, whether any ruling was overturned by a court and whether each order given to a  
2 custodian of public records and/or any employee, official, department, agency, or policy body  
3 was complied with. The report shall also summarize any court actions during that period  
4 regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have  
5 decided as well as court actions regarding or implicating the Sunshine Ordinance. The report  
6 shall also include copies of all rulings made by the Supervisor of Public Records and  
7 Supervisor of Public Forums and all opinions issued.<sup>7</sup>

### 8 9 **SECTION 67.39. HEARINGS AND ORDERS OF DETERMINATION.**<sup>8</sup>

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

18 (b) To the extent not prohibited by State law the Commission may subpoena  
19 witnesses, compel their attendance and testimony, administer oaths and affirmation, take

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

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

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As of May 11, 2010

1 evidence and require by subpoena the production of any books, papers, records or other  
2 items material to the performance of the Commission's duties or exercise of its powers.<sup>9</sup>

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

### 11 SECTION 67.40. ADMINISTRATIVE ENFORCEMENT PROVISIONS.<sup>11</sup>

12 (a) Upon issuance of an Order of Determination finding that a record should be  
13 released or other action should be taken by an employee, official, department, agency, policy  
14 body or custodian of public records, the Sunshine Commission shall immediately order the  
15 person or entity to comply with the Order of Determination. If the person or entity fails to  
16 comply with any such Order within 5 business days after issuance, the Sunshine Commission  
17 may refer the matter to the San Francisco Ethics Commission, Board of Supervisors, District  
18

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

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

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



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As of May 11, 2010

1 Attorney or the ~~State~~ California Attorney General or other appropriate enforcement body who  
2 may take whatever measures they deem necessary to insure compliance with the Order of  
3 Determination.<sup>12</sup>

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

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

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

16 (2) The amount of expenditure for outside counsel to prosecute these cases  
17 shall not exceed \$50,000 per fiscal year or such greater amount authorized by the Board of

18 \_\_\_\_\_  
19 <sup>12</sup> Revises list of bodies to whom referrals can be made to in order to clarify and make  
20 Ordinance consistent.

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

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

25 <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.

AMENDMENTS FOR 2010

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1 Supervisors ("litigation fund"). The Commission shall include it in its bylaws selection criteria  
2 criteria for selection and oversight of appointed counsel and expenditures.

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

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

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

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

19 ~~The willful failure of any elected official, department head, or other managerial city~~  
20 ~~employee to person, office or entity to discharge any duties imposed by the Sunshine~~

21 \_\_\_\_\_  
22 <sup>16</sup> Provision moved from former 67.21(f).

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

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As of May 11, 2010

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

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

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

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

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

22 <sup>19</sup> New provision specifies procedures by which referrals from the Commission shall be  
23 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 2010

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

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

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

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

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

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

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

22

23

24

25

AMENDMENTS FOR 2010

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As of May 11, 2010

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

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

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

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

19  
20 <sup>20</sup> New provision incorporates existing language from Articles II and III in order to clarify and  
21 streamline Ordinance.

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

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

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

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

7           (ii) Within 45 calendar days of receipt of the demand, the policy body shall cure or  
8 correct the challenged action and inform the complainant in writing of its actions  
9 to cure or correct or inform the complainant in writing of its decision not to cure  
10 or correct the challenged action.

11           (iii) If the policy body takes no action within the 45-calendar-day period, the inaction (  
12 shall be deemed a decision not to cure or correct the challenged action.

13           (iv) The complainant who receives notice of the policy body's decision not to cure or  
14 correct the challenged action, or if the policy body takes no action within the 45-  
15 calendar-day period, may file a complaint with the Sunshine Commission. If the  
16 Sunshine Commission finds that the policy body violated the Ordinance, the  
17 complainant may commence an action pursuant to subsection (b). The Sunshine  
18 Commission shall not have authority to void an action of a policy body, but filing  
19 a complaint and exhausting the Commission's complaint and hearing  
20 procedures is a prerequisite to filing an action under subsection (b).

21  
22 \_\_\_\_\_  
23 Ordinance through procedures that are consistent with the procedural requirements of the  
24 Brown Act. (

AMENDMENTS FOR 2010

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

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

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

As of May 11, 2010

1 (be) A court shall award costs and reasonable attorneys' fees to the plaintiff ~~who if~~  
2 that person or entity is the prevailing party in an action brought to enforce this Ordinance.

3 (ef) If a court finds that an action filed pursuant to this section is frivolous, the City  
4 and County may assert its rights to be paid its reasonable attorneys' fees and costs.

5 (dg) Any person may institute proceedings for enforcement and penalties under this  
6 ~~act in any court of competent jurisdiction or~~Ordinance before the Ethics Commission if  
7 ~~enforcement action is not taken by a city or state official 40 days after a complaint is filed~~60  
8 calendar days after an Order of Determination was issued by the Sunshine Commission, the  
9 City department, entity, official, body or employee has not complied with the Order of  
10 Determination issued by the Sunshine Commission.<sup>23</sup> The Ethics Commission shall apply the  
11 same procedures and standards, and conduct such proceedings in the same manner and  
12 under the same rules as it would have conducted them upon a referral from the Sunshine  
13 Commission for enforcement of such Order of Determination pursuant to and in accordance  
14 with Section 67.42, except that the Sunshine Commission shall not be considered a  
15 "complainant of record" as provided in Section 67.42(a)(i).

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

17  
18  
19 **SECTION 67.3644. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

20 The provisions of this Sunshine Ordinance supersede other local laws, including by not  
21 limited to the Charter. Whenever a conflict in local law is identified, the requirement which

22 \_\_\_\_\_  
23 <sup>23</sup> Provides a longer time period within which respondents must comply with Orders of  
24 Determination before a complainant can go directly to the Ethics Commission.  
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 and currently under consideration by the Task Force*

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

As of May 11, 2010

1 would result in greater or more expedited public access to public information and meetings  
2 shall apply. (Added by Proposition G, 11/2/99)

3

### 4 **SECTION 67.3745. SEVERABILITY.**

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

10

### 11 **SECTION 67A.1. PROHIBITING THE USE OF CELL PHONES, PAGERS AND SIMILAR** 12 **SOUND-PRODUCING ELECTRICAL DEVICES AT AND DURING PUBLIC MEETINGS.**

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

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UPDATED Sunshine Ordinance Review Survey

1. Using the list of provisions provided, please identify which provision(s) of the Ordinance have caused you difficulty. Include the Admin Code number of each; a description of the problem(s) it has caused; and how it could be amended or eliminated to achieve remedy.

Admin Code Sec.	Description of Problem	Amended or eliminated to achieve remedy (describe amendment)
67.3(b)(1)-(4) Office of the City Attorney	<p><b>Definition of Meeting</b></p> <p>This subsection provides that a meeting occurs whenever there is "[a] congregation of a majority of the members of a policy body at the same time and place." This is a broad definition that sometimes must be interpreted nonliterally to avoid absurd results. For instance, if a majority of commission members ride the elevator together, the literal reading of this subsection would render that event a meeting. Compare the Brown Act, which defines a "meeting" to include a congregation of the majority of the members of a body at the same time and place "to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." (Cal. Gov. Code §54952.2(a).)</p>	<p>Consider reviewing to determine whether any purpose is served by using language that differs from the Brown Act. Where there is none, amend to conform to the Brown Act.</p>
Section 67.3(b)(1) Office of the City Attorney	<p>This subsection provides that a meeting occurs whenever there is "[a] congregation of a majority of the members of a policy body at the same time and place." This is a broad definition that sometimes must be interpreted nonliterally to avoid absurd results. For instance, if a majority of commission members ride the elevator together, the literal reading of this subsection would render that event a meeting. Compare the Brown Act, which defines a "meeting" to include a congregation of the majority of the members of a body at the same time and place "to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." (Cal. Gov. Code §54952.2(a).)</p>	<p>Consider conforming the current definition to that used in the Brown Act.</p>
Section 67.3(b)(4)(C-1) Office of the City Attorney	<p><b>Definition of Meeting – Standing Committees</b></p> <p>This subsection allows a majority of a policy body to attend a standing committee meeting as observers without transforming the committee meeting into a meeting of the full policy body. The subsection was added to the Ordinance by the Board of Supervisors in 1988 but not included – apparently by mistake – in Proposition G.</p>	<p>Consider renumbering the subsection to indicate more clearly that it remains part of the Ordinance.</p>
67.3(d) (c) (1) Municipal Transit Authority (MTA)	<p>Definitions: Passive Meeting Body</p>	<p>This section defines passive meeting bodies and how they are created. The section should be amended include advisory bodies that are created by City Charter.</p>

<p>Sections 67.3(c)(1)-(5) and 67.4(a)(6) Office of the City Attorney</p> <p>Section 67.3(c)(2) Office of the City Attorney</p>	<p>Dual Definitions of Passive Meeting Body</p> <p>Both of these subsections define "passive meeting" bodies, but with different wording. Combining the definition of and rules for passive meeting bodies into one section would promote the internal consistency of the Ordinance, assist departments in complying with its requirements, and avoid confusion.</p> <p>Definition of Passive Meeting Body – Group Meeting to Advise City Officials</p> <p>This subsection includes in the definition of "passive meeting body" "[a]ny group that meets to discuss with or advise the Mayor any Department Head on fiscal, economic, or policy issues." This subsection is worded so broadly that it may conflict with the constitutional rights to privacy, to association, to petition government, and to engage in anonymous political speech.</p>	<p>Consider deleting Section 67.4(a)(5) or combining it with Section 67.3(c).</p> <p>Amend this section to refine the text to ameliorate this potential conflict with constitutional rights.</p>
<p>67.6(e) Commission on the Environment</p> <p>Section 67.6(e) Office of the City Attorney</p>	<p>67.6(e) references 67.6(d)(4) which does not exist</p> <p>Incorrect Reference to Passive Meeting Bodies Instead of Advisory Bodies</p> <p>Under Section 67.4(a)(1), gatherings of passive meeting bodies need not be formally noticed, except on the City's website whenever possible. But Section 67.6(e) states that meetings of passive meeting bodies as specified in Section 67.6(d)(4) shall be preceded by 72 hours notice. Thus, this subsection contradicts other provisions of the Ordinance. (Note also that the reference to Section 67.6(d)(4) is erroneous because no such section exists.) The legislative history in fact suggests that the reference to "passive meeting bodies" is mistaken and that the drafters meant to refer to "advisory bodies." But changing this subsection to apply to advisory bodies also does not make sense. Advisory bodies may be constituted as either policy bodies or passive meeting bodies. Other provisions of the Ordinance provide the notice and agenda requirements for both bodies. The provisions of this section would either contradict or repeat the requirements set forth elsewhere in the Ordinance.</p> <p>Policy Body's First Meeting</p> <p>The inaugural meeting of a policy body does not neatly qualify as either a regular or special meeting under either State or local law. Different rules apply to regular and special meetings (the former must allow general public comment, but not the latter; the former may add agenda items in some circumstances, but not the latter). newly created policy body does not yet have a regular meeting</p>	<p>Should this be a reference to 67.3(d)(4)?</p> <p>Consider deleting Section 67.6(e)</p> <p>Consider designating the inaugural meeting of a new policy body as a regular meeting, possibly with a requirement that the body provide notice greater than 72 hours.</p>

	<p>place and therefore its inaugural meeting arguably should be considered a special meeting. But one would normally consider the body's first meeting "regular" for purposes of providing general public comment. Another issue arises under Section 67.6 which requires the meetings of policy bodies held at an "alternate location" to be noticed at least 15 days in advance. It is unclear whether the 15 day notice requirement is intended to apply to a policy body's first meeting since the body does not yet have a regular meeting place that is being changed.</p>	
<p>67.8(3) 67.8-1(b) 67.12(3) MTA</p> <p>Section 67.8 Office of the City Attorney</p> <p>Sections 67.8-1(a) and 67.14(b) Office of the City Attorney</p> <p>Section 67.8-1</p>	<p>Agenda Disclosures; Closed Sessions Additional Requirements for Closed Sessions Disclosure of Closed Session Discussions and Actions</p> <p>Agenda Requirements for Closed Sessions This section establishes specific agenda requirements for the different types of closed sessions. As previously mentioned, it parallels the section in the Brown Act prescribing "safe harbor" agenda descriptions for closed sessions. (Cal. Gov. Code §54954.5.) But the parallel is not exact. There is overlap and duplication, but there are also differences between the requirements of this section and the "safe harbor" provisions of the Brown Act.</p> <p>Requirement to Maintain Meeting Tapes Section 67.14(b) requires boards and commissions enumerated in the Charter to audiorecord meetings and further provides that audio and video recordings of meetings "shall not be erased or destroyed." Section 67.8-1(a) also addresses audio and video recordings of meetings, although that section applies to closed sessions of all policy bodies. Section 67.8-1(a) requires that closed session recordings be "retained for at least TEN years, or permanently where technologically and economically feasible." [Emphasis in original.] Thus, the two sections contain different standards for how long departments must maintain recordings of meetings.</p> <p>Tapes of Closed Sessions for Anticipated Litigation This subsection requires departments to make publicly available, when requested, closed session tapes of meetings pertaining to anticipated litigation two years after the meeting if no litigation has been filed. In some instances, two years may be too short because the statute of limitations applicable to the anticipated litigation may not have expired.</p> <p>Agendas and Related Materials: Public Records This section requires materials intended to be distributed to a policy body be given to others upon request, whether or not the material has been distributed to the policy body. This places staff in a difficult position because it requires them to provide</p>	<p>These three sections discuss notice requirements for settlements or existing litigation; however, each section requires different information to be listed. It may be remedied by requiring consistent information.</p> <p>Consider eliminating all references to required disclosure for closed sessions except where the Brown Act does not require adequate disclosures. As to those situations, the Ordinance could specify the additional disclosure requirements.</p> <p>Consider amending these sections so that the retention standards are the same. The Task Force may also want to consider the practical "life span" of audio and video recordings when setting the retention standards.</p> <p>Consider extending the period of time for which these tapes may be withheld</p>
<p>67.9 (b) MTA</p>	<p>Agendas and Related Materials: Public Records This section requires materials intended to be distributed to a policy body be given to others upon request, whether or not the material has been distributed to the policy body. This places staff in a difficult position because it requires them to provide</p>	<p>This should be remedied to require the distribution of materials to the public when the materials are provided to the policy body.</p>

<p>392</p>	<p>information to the public, including the press, before it has been provided to the governing body of the Department.</p> <p>Closed Session for Threats to Security This subsection authorizes a closed session with the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to security of public buildings or a threat to the public's right of access to public services or public facilities. The Brown Act was amended after September 11, 2001 to address closed sessions for security-related reasons and, as a result, the language of the Brown Act is broader in scope than Section 67.10(a). (Cal. Government Code §54957(a).) The Brown Act provision differs from Section 67.10(a) by, first, allowing the closed session to be held with the agency counsel or a security consultant or security operations manager and, second, allowing consideration of matters posing a threat to the security of essential public services including water, drinking water, wastewater treatment, natural gas service and electric service.</p>	<p>Consider amending this section to conform to Section 54957(a) of the Brown Act.</p>
<p>Section 67.10(a) Office of the City Attorney</p>	<p>Settlement Agreements Available 10 Days Before Meeting to Approve This subsection requires written settlement agreements and documents attached to or referenced in them to be publicly available at least 10 days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program "or otherwise acting other than to pay an amount of money less than \$50,000" [emphasis added]. The term "otherwise acting" is unclear. What other types of settlement agreements is it intended to cover?</p>	<p>Consider either clarifying what other types of settlement agreements are meant to be included, or deleting the phrase "otherwise acting other than to pay an amount of money less than \$50,000" and substituting "or payment of \$50,000 or more."</p>
<p>67.14(b) MTA</p>	<p>Tape Recording, Filming and Still Photography Audiotapes currently kept forever. Because the tape will deteriorate over time and will eventually disintegrate, a reasonable time limit should be established. The MTA receives request to review a tape approximately once a year. Those requests are made within a month of the meeting date.</p>	<p>We suggest at two-year time limit.</p>
<p>67.16 Department of Building Inspection (DBI)</p>	<p>That the City is still requiring meeting minutes when meetings are tape recorded and broadcasted on SFGTV.</p>	<p>Eliminate the requirement to publish minutes due to other mediums that are now available to the public. would save considerable staff time and paper.</p>
<p>Article III Department of Public Works (DPW)</p>	<p>Public Information and Records Requests The Department's experience is that public records requests are used most frequently by contractors and lawyers using it for their business gain or as a shortcut for discovery. We feel that much of the reality of public records requests is that they are less about open government and more about private entity or person using the open government laws to gain a business or litigation advantage. One example of a request that was received was from a law firm</p>	<p>We do not believe that these types of requests, although lawful, are in the spirit of the Sunshine Ordinance. They are not for good government purposes. We respectfully request that the Sunshine Task Force take these issues under consideration with respect to such matters as provisions governing fees. As you are aware, Section 67.28(c) only allows the Department to recover 10¢ per page, well below our costs to produce and copy these requested documents. Perhaps other aspects of the Sunshine Ordinance should be reconsidered as well given the reality that private entities and persons use the open government laws for their business gain or litigation advantage.</p>

<p>Section 67.21 Office of the City Attorney</p>	<p>requesting copies of documents for one of our projects. Our Department identified 21 banker boxes related to their request, containing approximately 2,500 – 5,500 documents each. Since the request was for copies, the Department requested a deposit of \$8,400 before we copied all of the documents. We estimated that there were approximately 4,000 documents per box (21 boxes x 4,000 x .10¢/page). We also invited the requestor to view the documents before they were copied or suggested that they narrow down their request, if they wished. The law firm responded by narrowing their request for copies to sixteen boxes. The Department then requested a deposit of \$6,400 (16 boxes x 4,000 x .10¢/page) prior to photocopying the documents and, once again, invited the requestor to come in to inspect the documents before they were copied. The law firm never provided the deposit and never contacted us to view the documents.</p>	
<p>67.21(a) Library Commission</p>	<p>Electronic Information The provisions of the Sunshine Ordinance and the Public Records Act contain overlapping, but somewhat different, requirements with respect to electronic information.</p> <p>The Public Records Act provides that a person who requests information stored in electronic form has the right to it in any format that has been used by the agency to create copies for its own use or for provision to other agencies. The Act further provides that with respect to requests in different formats, the requestor must bear the cost of programming and computer services necessary to produce a copy when (i) the record is one that is produced only at otherwise regularly scheduled intervals or (ii) production of the information would require data compilation, extraction, or programming.</p> <p>The Ordinance provides that information stored electronically shall be made available in any form "which is available to or easily generated" by the department. Sec. 67.21(f). Section 67.21(i) further provides that "nothing in this section shall require a department to program or reprogram a computer to respond to a request for information ....."</p> <p>Process for Gaining Access to Public Records Responding to drop-in requests - the Sunshine Ordinance requires "inspection and examination during normal times/hours of operation without an appointment." Some members of the public insist on immediate service (1) to inspect and (2) to obtain copies after inspection without regard to other responsibilities of city staff. Sometimes these demands are the result of honest misunderstandings and sometimes these access provisions appear to be used specifically to harass city employees who must juggle many responsibilities.</p>	<p>Consider reviewing the provisions of the Ordinance covering electronic information in light of those of the Public Records Act and amending them to make the Ordinance conform with State law.</p> <p>The Library recognizes that prompt access to public records is an important goal of the Sunshine Ordinance. However "without unreasonable delay," should be clarified so that it is clear that the public does not have a right to insist that the department immediately produce public records which require more than minimal search time to locate, or that staff make instantaneous copies of inspected records, particularly when many pages and files are involved.</p>

3.67.21(b) Library Commission	<p>Process for Gaining Access to Public Records</p> <p>Oral requests - the Sunshine Ordinance recognizes the right to make an ORAL request for public records. While this can be important where a record request is simple and easily satisfied, the Library appreciates that the Task Force has usually required requesters to have made a written request before undertaking an enforcement action, so that the nature and extent of the request is clear.</p>	<p>The Ordinance should require that a request must be placed in writing and the department be allowed the full response period before it may be the basis for a SOTF complaint for "withholding" or "untimely" response.</p>
67.21 67.25 Library Commission	<p>Process for Gaining Access to Public Records</p> <p>Immediacy of Response</p> <p>Multiple Requests for the Same Records - These sections of the Ordinance should clearly state that an individual is NOT entitled to make multiple requests for the same records. Responding to public records requests is an important, but costly obligation for City Departments because the requesting party ordinarily only pays nominal costs if he or she desires copies and nothing if he or she only wishes to inspect records. Therefore some members of the public find it more convenient to make multiple requests for the same materials rather than to keep track of copies of records previously provided to them.</p>	<p>The Ordinance should not permit multiple "bites" of the same "apple." Instead it should clearly state that individuals may update their requests so that they may obtain the most recent responsive records available after a prior request, but that departments do not need to locate and re-produce the same responsive records again and again to the same, or an affiliated, requesting party.</p>
67.21(e) Library Commission	<p>Process for Gaining Access to Public Records</p> <p>SOTF petitions and public hearings. In disputes about record requests, the SOTF should first solicit written explanations from City departments and reserve public hearings for situations where the matter cannot be resolved in writing. SOTF hearings are notoriously long and expensive requiring departments to pay overtime where the City can present its justification in writing. The existing public hearing process more often devolves into an adversarial relationship than it does a reasoned inquiry about how the department responded and whether the departmental response complied with the law. Certainly City employees should never disregard the public's right of access to non-exempt public records. But the Sunshine Ordinance does not do away with the many laws, which allow or require withholding, nor does it require departments to create documents just because members of the public believe that a certain document would be nice to have.</p>	<p>A written explanation would enable the SOTF to exercise its role in a more analytic fashion so that it could become an authority that departments would approach for compliance advice before requests devolve into polarized disputes. The Sunshine Ordinance could easily be amended to limit public hearings to situations where a less formal, written process fails. Alternatively, the SOTF could require complaining parties to consult with the Supervisor of Records before scheduling a public hearing, and limit appeals to the SOTF to situations where departments do not adhere to a Supervisor of Records written determination.</p>
67.23(a) (b)	Public Review File - Policy Body Communications	<p>This section requires a 3-day "Communications Received" file and a 30-day "Communications Received" file to be kept. This is duplicative and since very few members of the public access this file, we recommend the elimination of the 3-day "Communications Received" file and maintaining the 30-day "Communications Received" file.</p>
67.24 Dept on the Status Of Women	Public Information that Must be Disclosed I am not always sure what is open to the public and have to contact our City Attorney with questions.	More examples would clarify the section.
67.24(e) MTA	Public Information that Must be Disclosed Public Information related to Contracts, Bids and Proposals	The relevant materials should be released once a contract has been awarded to avoid giving an unfair advantage to competitors and avoid risk of increased cost to the city.

	<p>This section requires that the evaluation forms, score sheets and any other documents used in an RFP process to be available for review after the evaluation of an RFP has been completed.</p>	
<p>67.25 Fire Department</p>	<p>Immediacy of Response Misuse of "Immediate Disclosure" Request</p>	<p>Requester must state valid reason why request is immediate, amend 67.25(c)</p>
<p>67.25 DBI</p>	<p>Government Code section 6456.1 referenced in (b) is incorrect.</p>	<p>The correct reference is Government Code section 5243(c).</p>
<p>67.25(a) Library Commission</p>	<p>Immediacy of Response Although the current ordinance suggest that "more extensive or demanding requests are more appropriate for the maximum deadlines," the ordinance has no disincentive for a requester to make every request an immediate disclosure request, whether or not the request is actually "simple, routine or otherwise readily answerable."</p>	<p>Since section 67.25(c) of the ordinance requires records to be produced "as soon as reasonable possible," subsection (a) should be clearly limited to situations where a single document or report is readily identifiable and maintained in active files. The Ordinance should make explicit that immediate disclosure requests are not available for the general subject matter records searches frequently requested, such as "give me all records relating to employee comp time for the past ten years."</p>
<p>Section 67.25 Office of the City Attorney</p>	<p>Immediate Disclosure Requests; Electronic Information (1) Subsection (a) of this Section requires that departments, when they receive written requests marked "Immediate Disclosure Request," respond to the request by the close of business the next day. Subsection (a) states that the "immediate disclosure" requirement applies "[n]otwithstanding the 10-day period . . . permitted in Government Code Section 6256 . . ." Government Code Section 6256 was repealed in 1998. The drafters apparently intended to refer to Government Code Section 6253(c). (2) Subsection (b) provides that the department may, under specified circumstances, notify the requester of the need to extend the time to respond by "10 days as provided in Government Code Section 6456.1 . . ." The reference to Section 6456.1 seems to be a mistaken reference to Section 6256.1, which addressed extensions of time. To further complicate matters, the Legislature repealed Section 6256.1 in 1998 and in its place added Section 6253(c). Former Section 6256.1 permitted an extension of time of not more than "10 working days"; Section 6253(c) permits an extension of not more than "14 days." (3) The Ordinance does not address the issue of a department's duty to respond by the close of business day to a request received after 5:00 p.m. (4) Subsection (b) provides <u>three reasons</u> that warrant the "10-day" extension: the voluminous nature of the information requested, its location in a remote storage facility, or the need to consult with another interested department. The Legislature amended the Public Records Act after 1999, when the voters approved amendments to the Sunshine Ordinance, to provide a <u>fourth reason</u> for an extension: "[T]he need to compile data, to write programming</p>	<p>(1) Consider amending subsection (a) to reference Government Code Section 6253(c) rather than Section 6256.  (2) Consider amending subsection (b) to reference Government Code Section 6253(c), rather than Section 6456.1.  (3) Consider including a provision addressing a department's receipt of an immediate disclosure request after 5:00 p.m.  (4) Consider adding to the reasons for an extension of time for immediate disclosure requests the fourth reason for extensions of time permitted under the Public Records Act: the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. (See, also, the discussion above of Section 67.21 regarding issues relating to electronic information.)</p>

	<p>language or a computer program, or to construct a computer report to extract data." (Cal. Gov. Code §6253(c)(4).)</p>	
<p>67.27 Dept of Status of Women</p>	<p>Justification of Withholding I do not fully understand the components of this section.</p>	<p>Technical assistance provided.</p>
<p>67.29 Dept of Status of Women</p> <p>Section 67.35(d) Office of the City Attorney</p>	<p>Index of Records I would like to have technical assistance provided to make sure that we are meeting the full components of this section.</p> <p>Enforcement Provisions This subsection provides that any person "may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed."</p> <p>This subsection raises two questions. First, this provision seems to preclude a person who believes that a City official or employee has violated the Ordinance from filing a lawsuit or a complaint with the Ethics Commission until 40 days has passed from the time that the complainant "filed" a "complaint." If that is the intent, to what department or agency must the "complaint" be filed? The commission or department in question? The Sunshine Ordinance Task Force? Second, the scope of the Ethics Commission's jurisdiction is unclear. Is its role limited to determining whether the official or employee's actions constitute official misconduct? May it compel the official or employee to take action or refrain from taking action?</p>	<p>Please see my explanation under description of problem.</p> <p>Consider clarifying (a) whether citizens must first pursue a complaint with a City agency before filing a complaint with the Ethics Commission or suing in court for violations of the Ordinance and, if so, (b) with which City agency or agencies the citizen must file the complaint. (c) In addition, consider clarifying the scope of the Ethics Commission's jurisdiction.</p>
<p>Admin Code Section 76.24(c) Police Department</p>	<p>Personnel Information "None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:  State law conflicts with this provision when it comes to dealing with peace officer personnel records, as opposed to records of other city employees.  Under California law, Penal Code Section 832.7 and 832.8, states that peace officer personnel records or information obtained from these records "are confidential and shall not be disclosed."  <b>832.7 Personnel records; confidentiality; discovery; exceptions; complaint disposition notification</b>  (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant</p>	<p>Perhaps Admin Code Sec. 76.24(c) could be amended to read clearer. Here is a suggested revision:  "None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), unless so specified by State law.</p>



	<p>to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.</p> <p>Penal Code Section 832.8 defines a "personnel records" as "any file maintained under an individual's name" that contains "personal data."</p> <p><b>832.8 Personnel records</b></p> <p>As used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:</p> <ul style="list-style-type: none"> <li>(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.</li> <li>(b) Medical history.</li> <li>(c) Election of employee benefits.</li> <li>(d) Employee advancement, appraisal, or discipline.</li> <li>(e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.</li> <li>(f) Any other information the disclosure of which would constitute an unwarranted invasion of privacy</li> </ul> <p>The California State Legislature enacted these sections after deciding that peace officers, due to the nature of their work, are to be afforded greater privacy rights than other employees. It is the position of the San Francisco Police Department that it will protect from disclosure information relating to police officer personnel data, and will not release such information without utilizing the discovery procedures pursuant to Sections 1043 and 1046 of the Evidence Code or by order of the court.</p>
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2. Please identify which provision(s) of the Ordinance have proven useful but which still need improvement. Include the Admin Code number of each; a description of its benefit(s); and how it could be improved.

Admin Code Sec.	Description of Benefit(s)	How it could be improved
67.7 Commission on the Environment	Agenda Requirements, Regular meetings	Add agenda requirements and definitions for special meetings such as off-site, rescheduled, cancelled, etc. Provide more detail as to what the agenda language should contain, time posting requirements for each type of special mtg.

67.7(c) Commission on the Environment	Agenda Requirements, Regular meetings posting	More specificity as to where agendas should be posted -- at the meeting site, Library, web, etc.
67.7(f) Commission on the Environment	Agendas to be provided to speech and hearing impaired persons	Add notification allowance to provide service in this section e.g. notify Secretary within 48 hours of meeting, etc. (without having to go to another section to find the same information) Add section on seriatim meetings - also rules concerning email correspondence for Commission Secretaries and email between Commissioners, etc. What can be discussed and sent by email and not, etc.
Section 67.8-1 and 67.14 Civil Service Commission	Additional Requirements for Closed Sessions Tape Recording, Filming and Still Photography Storage for tapes will eventually reach capacity of office and tapes eventually become brittle.	Add provision for alternative format for tapes and storage.
Section 67.10 Civil Service Commission	Closed Sessions: Permitted Topics There are no provisions requiring Charter Boards and Commissions to establish Rules or a process for employees or affected members of the public to request a closed session on matters where there may be protected privacy rights.	Add a provision that requires Charter Boards and Commissions to establish Rules or a process for employees or affected members of the public to request a closed session particularly where there are matters of privacy (medical, personnel, etc.) and related issues.
67.14 Civil Service Commission	Tape Recording, Filming and Still Photography Able to provide information to members of the public at the Commission meeting who question others recording.	Stock language flyer, which could be handed out at every meeting.
67.15(c) Commission on the Environment	Public Testimony Sets a time for public comment up to three minutes.	To explain whether the three minutes is consecutive for all agenda items throughout the meeting or can be changed for different items on the same agenda--various items may be more controversial and have more public comment. Also, is it disallowed to have more than three minutes? Add that the Chair should announce the # of minutes before each item and if not announced the Secretary sets a default three minutes.
67.16 Commission on the Environment	Minutes Basic description of Action Minutes	Provide description of various formats of Minutes that may be used other than Action Minutes--more people like to read minutes with a basic understanding of what happened at the meeting (such as topics, etc.) The section may be interpreted to mean that only Action Minutes are allowed.
67.21 Police Department	Process for Gaining Information to Public Records This section allows for a request for information to be made "orally or in writing."	In an effort to insure accuracy and clarity, we recommend that this section be amended to require that all requests for information be in writing. This avoids a "he-said, she-said" situation should there be a discrepancy over exactly what information was requested or, more importantly, when the request was made. It is the desire of the department to cooperate fully with the public in processing these requests. It has been the experience of the department, however, that it is easier to process a request that has been made in writing because there is less confusion over what is being requested.
67.25 Fire Department	Immediacy of Response Key individuals who have exclusive access to information are not available to provide documents due to illness, vacation or other leave.	Provide extension for this in 67.25(b)

<p>Police Department</p>	<p>This section is helpful because it provides specific deadlines for when an inquiry must be responded to, and it also describes the manner in which a response should be made (i.e. in writing, with an explanation for why anything is being withheld.</p> <p>Sec. 67.25(a) however, allows for an "immediate disclosure request" to be served on a department requiring a response by the next business day. Because the department has some 2,000 employees, these requests have not always been forwarded to the appropriate departmental personnel in a timely fashion. These requests place a burden on the department greater than civil and criminal discovery requests.</p>	<p>By implementing a more reasonable response time, the ordinance would enhance the departments ability to respond within a required timeframe that is more reasonable than the end of business the following day.</p> <p>Creating such a pressure filled deadline can result in responsive material being overlooked, or more likely, the department responding after the deadline. This immediate deadline raises the expectations of the public and places a tremendous burden on the department. A more reasonable deadline, perhaps five days, would ensure that the public receives information without placing the inquiring party and the department in an adversarial position.</p>
<p>67.29 Library Commission</p>	<p>Index of Records The index to records is part of the City Administrator's on-line records retention policy site. Sometimes members of the public believe that the Sunshine Ordinance requires another more detailed listing of all existing files or even file contents.</p>	<p>The Ordinance should clarify that the index can be found on the City Administrator's site.</p>
<p>67.29-2 Treasure Island Development Authority (TIDA)</p>	<p>Internet Access/MWW Minimum Standards Provides wider access to information as well as encouraged resource-conservation</p>	<p>Provide better definition of status of groups such as citizen advisory panels' notices and agendas under web-posting section.</p>
<p>67.21 (c) Library Commission</p>	<p>Process for Gaining Access to Public Information Similarly is apparently intended to ensure that requesters and departments conduct meaningful dialog to assist a member of the public in finding needed information. However, sometimes members of the public use the "right" to a written statement of all records on a certain subject as a harassment tactic rather than an honest inquiry to enable the requester to target his or her eventual records request.</p>	<p>This provision should be redrafted to emphasize the interactive nature of formulating a reasonable and directed public records request on a narrow subject rather than a public right to have any City department provide a global index of all of its files.</p>
<p>67.27(b) Library Commission</p>	<p>Justification for Withholding Recognizes justifications for withholding set forth in state law. But the state law that requires library user records be kept confidential (Gov't Code Section 6254(j) and 6267 may not adequately cover all of the library user records that now exist, particularly with respect to the information related to use of on-line resources.</p> <p>We understand that laws in other states, such as New York,</p>	<p>The Sunshine Ordinance should be updated to ensure that all records related to a library user's access to and uses of materials remain confidential.</p> <p>In summary, the SOTF has the challenging job of enforcing both the public's right to access information relating to the public's business while protecting information held by City departments that is permitted or required by law to remain confidential from disclosure. The SOTF has the further challenge of protecting public rights without sanctioning careless, frivolous or harassing behavior by the few which misuse the rights afforded by public records laws.</p>

	<p>have more comprehensive definitions of "library circulation material" that should be exempt for disclosure. Library privacy is extraordinarily important to San Franciscans.</p>	<p>But no public benefit is served when departments undertake costly records searches and the requesting party either never returns or comes in to inspect the located and set aside files for brief cursory reviews spread out over a lengthy period. The Library has had important working files only available to staff on a limited basis for as long as three months so that a member of the public could drop in for ten or fifteen minutes every other week to "inspect" requested records. No "right to know" is furthered when a member of the public asks for the same records to be retrieved over and over again. No purpose is furthered when a party knows exactly what he or she wants, but makes a very broad, hide-the-ball "subject matter" request, and then plays "gotcha" when the specific record he or she had in mind is not among the records located. These are the challenges of departments implementing the Sunshine Ordinance.</p>

3. Please identify which provision(s) of the Ordinance have proven useful and should not be revised or eliminated. Include the Admin Code number, and a description of its benefit(s).

Admin Code Sec.	Description of Benefit(s) (not revised or eliminated)
67.7-1 Dept on the Status of Women	Public Notice Requirements Thorough instructions are provided
67.15 67.25 TIDA	Public Testimony Immediacy of Response Provides useful rules for how office staff should handle public records requests and how staff should handle comment at meetings that help staff avoid possible confusion with the public
67.3 – 67.17 Library Commission	Public Access to Meetings Public comment
67.28 Police Department	Fees for Duplication This section is helpful because it allows the department to recoup money in return for the provision of materials. This section should be updated to ensure departments are recouping a fair amount for the material provided.

4. Please discuss any relevant issues that the foregoing does not address.

- The SOTF should encourage every City Department to establish clear written procedures for responding to public records requests that fully conform to the requirements of the Sunshine Ordinance. The Library has found that its adoption of written Procedures for Public Records Requests patterned after procedures adopted by the Board of Supervisors have significantly improved staff's ability to respond quickly and effectively to requests for public records. The Library's written procedures also provide an easily understood guide for members of the public. The SOTF should facilitate, as the Ethics Commission does, 1. a training process for each Department's designated Custodian of Public Records so that they can better advise City department staff how to fully and appropriately comply with the Sunshine Ordinance and 2. a SOTF resource for departmental Custodians of Records to consult with about compliance issues that may arise. The Public Library Administration and the Public Library Commissioners seek to work closely with the members of the Sunshine Ordinance Task Force to promote our shared responsibility to enlighten and inform the citizens of San Francisco. (Library Commission)
- Ordinance has created an order and format for proper issuance of public information. Notice requirements benefit all interested parties. No complaints. (Dept of Admin Services)
- Generally, the Civil Service Commission Department has found the Sunshine Ordinance easy to implement and consistent with the goals and policy of the Commission. Where we have questions, we have been ably assisted by legal counsel provided by the City Attorney's office. (Civil Service Commission)
- Technical assistance should be provided on a quarterly basis to City staff. (Department on the Status of Women)
- The Children and Families Commission finds all aspects of the Sunshine Ordinance useful and unburdensome. (Children & Families Commission)
- It is unfortunate that a City department has not rights against someone requesting the same information over and over again because they do not like the department's answer over their issues. We have seen a lot of staff time wasted on requests where customers were "fishing" for information but there was no real reason for the information being asked. (Department of Building and Inspection)
- The Office of the City Attorney serves several functions under the Sunshine Ordinance -- as legal adviser to City departments, as a City agency responsible for complying with the Ordinance, and as a reviewing administrative body ("Supervisor of Records") responsible for determining whether a record that has been withheld is public. We also publish annually a Good Government Guide, which includes an overview of the public record and public meeting laws applicable to City officials, boards and commissions. In those capacities, we have become aware of various issues involving the interpretation of the Ordinance.

The enclosed document reflects the comments of those deputies in this office who are the most knowledgeable about the Ordinance. These comments identify (1) possible conflicts with other local, state or federal laws that the Task Force may want to address by suggesting amendments to the Ordinance (e.g. conflicts with constitutional protections) and (2) possible corrections of drafting errors, inconsistencies and ambiguities. Our recommendations are limited to these two areas. We do not address policy issues, other than to identify in a few instances policy issues for the Task Force to consider in light of possible conflicts with other laws, inconsistencies and ambiguities.

We have provided comments on specific sections of the Sunshine Ordinance ("Ordinance") below. We begin with a few general comments highlighting a recurring theme in the comments on specific sections. Many of the provisions of the Ordinance duplicate and overlap many of the provisions of the Public Records Act and the Brown Act. The duplication and overlap between two different sets of laws make interpretation of and compliance with both laws difficult, frequently without enhancing the public's right of access to public meetings and records.

To give just two examples:

- Section 67.3 of the Ordinance excludes from the definition of "meeting" the attendance of a majority of the members of a policy body at various gatherings, including regional, statewide and national conferences, meetings organized to address a topic of local community concern, and open and noticed meetings of a standing committee of the policy body. See Sections 67.3(b)(4)(B) and (C-1). But none of the exceptions expressly includes open and noticed meetings of another body of the local agency. The Brown Act includes an exception for attendance at the meetings of another body of the local agency. (Cal. Gov. Code §54952.2(c)(4)). Although it was presumably not the drafters' intent to preclude a majority of the members of a policy body (such as the members of a City commission) from attending a meeting of another City policy body (such as the Board of Supervisors), the absence of this exception in the Ordinance (and its inclusion in the Brown Act) provide an argument for such an intent.
- Section 67.8 establishes specific agenda requirements for the different types of closed sessions. It parallels the section in the Brown Act prescribing "safe harbor" agenda descriptions for closed sessions. (Cal. Gov. Code §54954.5.) But the parallel is not exact. Thus, when preparing agendas for closed sessions, departmental staff (and often the Deputy City Attorney advising

the department) must compare these two closely related provisions and attempt compliance with both. The process is time-consuming and can be confusing for both City officials and the public.

A related issue arises when State law changes. We are frequently called on to construe the Ordinance in light of revisions to State laws adopted after 1999, the year that the voters approved amendments to the Sunshine Ordinance. For example, after September 11, 2001, the Brown Act was amended to broaden a public entity's right to meet in closed session to address security issues. While we do not think that the voters intended to prevent San Francisco from meeting in closed session under this newly added State law amendment, it would be preferable to eliminate differences between the two sets of laws in order to preclude an argument that different language demonstrates an intent that State law not apply.

In light of these concerns, the Task Force may find it useful to compare State law and the Ordinance on the subject matters covered by both and identify in what respects the State law falls short. The Ordinance could then incorporate basic state law and add the requirements necessary to meet those shortcomings. Rather than duplicating the State laws, which already apply to the City, the Ordinance could be streamlined so that it simply adds new provisions that do not exist in State law.

Even if this review and revision were undertaken, the enactment of changes in state law may create uncertainties. Moreover, practical experience implementing the Ordinance may suggest the need for changes. Therefore, the Task Force may want to consider an amendment approved by the voters allowing certain future amendments to the Ordinance through Board of Supervisors approval.

There is recent precedent for such review and refinement. The Ethics Commission undertook an extensive review of the local laws governing conflicts of interest. The Commission found that many of the laws were outdated, confusing and did not adequately address the conduct they were intended to regulate. One problem considered by the Commission was the discrepancies between local and state laws with respect to conflicts.

After undertaking this review, the Ethics Commission proposed a package of amendments, which the voters approved as Proposition E at the November 2003 election. With respect to discrepancies between state and local laws, Proposition E resolved the issue by incorporating the state law, including subsequent amendments. (Campaign and Governmental Conduct Code §3.206.) With respect to providing amendments without voter approval, Proposition E provided that the Board of Supervisors may amend the measure if the Ethics Commission approves the amendment by at least a 4/5 vote of all its members, the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors and a committee of the Board, and the Board approves the amendment by at least a 2/3 vote of all of its members. (Charter §18.115; Campaign and Governmental Conduct Code §3.204.)

Whether the approach proposed by the Ethics Commission is appropriate for the Sunshine Ordinance is a policy question for the Task Force, the Board and, ultimately, the voters to decide. In any event, resolution of these issues could assist in clarifying the interpretation of the Ordinance where it differs from state law. (Office of the City Attorney)

8/5/05

Sunshine Ordinance Task Force



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-7724  
Fax No. 554-7854  
TDD/TTY No. 544-5227

<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE  
SPECIAL MEETING  
DRAFT MINUTES**

Tuesday, May 4, 2010  
5:00 p.m., City Hall, Room 406

**Task Force Members**

Seat 1 (Vacant)	Seat 8 Wolfe
Seat 2 Richard Knee (Chair)	Seat 9 Hanley Chan
Seat 3 Sue Cauthen	Seat 10 Nick Goldman
Seat 4 Suzanne Manneh	Seat 11 Marjorie Ann Williams
Seat 5 Allyson Washburn	
Seat 6 James Knoebber	Ex-officio Angela Calvillo
Seat 7 Doyle Johnson	Ex-officio (Vacant)

**Call to Order** 5:30 P.M.

**Roll Call** Present: Knee, Cauthen, Washburn, Wolfe, Chan, Goldman  
Excused: Manneh, Knoebber, Johnson, Williams

**Deputy City Attorney:** Jerry Threet (not present)

**Clerk:** Chris Rustom

1. Consideration of proposed amendments to Articles I through IV of the Sunshine Ordinance

Members discussed Section 67.23 as a whole and made minor changes. They are:

Change "67.21" to "67.20" in sub-section (a);

"section 67.21" to read "Section 67.21" and adding space after "21" in sub-section (c);

"journalist or any member of the public" in sub-section (d) to read "journalist or other members of the public;" and

"rights enjoyed by public employees" in sub-section (e) to read "rights of public employees"

Approved without objection.

Members then discussed Section 67.23(a) and took public comment: Peter Warfield, Allen Grossman and Kimo Crossman were against the creation of a custodian of records.

Member Wolfe agreed and members discussed the issue further.

Motion to add language that says "Every department and policy body shall at all times during its hours of operation have at least one person knowledgeable about the affairs of the entity, available to provide public information." And delete remaining section ( Knee / Goldman )

Public Comment: Allen Grossman, Kimo Crossman, Peter Warfield, Ray Hartz, Ellen Tseng and Anonymous Tenants spoke in support of the motion.

On the motion:

Ayes: Cauthen, Washburn, Wolfe, Chan, Goldman, Knee

Quorum was lost at 6:32 p.m.

Adjournment:

The meeting was adjourned at 6:33 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force



Sunshine Ordinance Task Force



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San Francisco 94102-4689  
Tel. No. 554-7724  
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TDD/TTY No. 544-5227

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**SUNSHINE ORDINANCE TASK FORCE  
SPECIAL MEETING  
DRAFT MINUTES**

Tuesday, May 11, 2010  
5:00 p.m., City Hall, Room 406

**Task Force Members**

Seat 1	(Vacant)	Seat 8	Wolfe
Seat 2	Richard Knee (Chair)	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Suzanne Manneh	Seat 11	Marjorie Ann Williams
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	LaTonya Stokes
Seat 7	Doyle Johnson	Ex-officio	(Vacant)

**Call to Order** 5:09 P.M.

**Roll Call** Present: Knee, Manneh, Washburn, Knoebber, Johnson, Chan (in at 5:29 p.m.), Goldman  
Excused: Cauthen, Wolfe, Williams

**Deputy City Attorney:** Jerry Threet (not present)

**Clerk:** Chris Rustom

1. Consideration of proposed amendments to Articles I through IV of the Sunshine Ordinance

Chair Knee welcomed LaTonya Stokes to the Task Force. She was appointed to the Clerk of the Board's non-voting ex-officio seat earlier in the day. Chair Knee also welcomed back Member Manneh who was out of the country for a few weeks on assignment for New America Media.

Members were also told by Chair Knee that the clerk has handed out updated copies of the proposed amendments. He also said the minutes recording the changes o the document need to be posted as required by the Ordinance.

Members then discussed Section 67.23.

Motion to replace verbiage in Section 67.23(a) ( Goldman / Washburn )  
The sub-paragraph now reads: "Every department and policy body shall at all times during its hours of operation have at least one person knowledgeable

about the affairs of the entity, available to provide public information.”

Public Comment: Allen Grossman said members do not know where they left off at the last meeting because no minutes were presented. He also said the meeting was illegal because it was not noticed outside the hearing room. He also said the document distributed earlier could not be used because it was not available to the public 72 hours before the meeting. The process is as important as the content, he said. Peter Warfield said the process was a mess and that the proposed amendments lacked tracking documentation. He said the change to Section 67.23 should be repeated because some members of the audience were not in attendance during the last meeting. He also said all employees are custodian of records.

On the motion:

Ayes: Manneh, Washburn, Knoebber, Johnson, Goldman, Knee.

Chair Knee, in response to Mr. Warfield’s comments, repeated the new verbiage for Section 67.23. To Mr. Grossman, Chair Knee said the Ordinance does not require the posting of agendas outside the hearing room. He also said because of a speaker’s comments earlier in the hearing, he was reluctant to continue the meeting. He also instructed the clerk to include all minutes in the next agenda package.

Motion to adjourn meeting ( Washburn / Goldman )

Public comment: Mr. Grossman said the Clerk of the Board needs to be informed why the meeting had to be adjourned. Mr. Warfield said the decision was unfortunate but necessary.

Chair Knee announced that he was going to meet a member of the Board of Supervisors and a legislative aide to see how much lead time they need on the amendments.

Chair Knee also instructed members to review the current Ordinance and see which five sections they want changed, inserted, deleted or improved. He then called for a special meeting on Tuesday May 18, at 5 pm in Rm. 406.

On the motion:

Ayes: Manneh, Washburn, Knoebber, Johnson, Chan, Goldman, Knee

Adjournment:

The meeting was adjourned at 5:45 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force