



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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**AGENDA TITLE:** Continued Discussion on Closed Session Reporting

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**RECOMMENDED MOTION:** If the City Council desires to consider the release of confidential closed session information it could consider the following motions:

- 1) Does the Council wish to disclose actions taken and the councilmember's votes thereon, if any, during the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?
  - 2) Does the Council wish to disclose documents, if any, considered during the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?
  - 3) Does the Council wish to disclose actions taken and councilmember's votes thereon, if any, on the disclosure of confidential information from the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?
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### SUMMARY

At the regularly scheduled meeting held on July 7, 2009 the City Council received a report on the provisions of the Brown Act related to closed session reporting and the release of confidential closed session information. The purpose of this report is to respond to questions raised by the Council on the 7<sup>th</sup> and to allow for the Council's continued consideration of this matter.

### DISCUSSION

The City Council met in closed session on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties (AP#: 064-086-01, 064-034-01, 065-033-02, 065-013-02, 065-031-01, 065-012-01, 064-031-01, 065-011-01).

At the July 7<sup>th</sup> City Council meeting the Council was presented with "A Petition for Open Government" circulated by Sausalito Environmental Action (SEA) asking

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that the Council "...establish by resolution a policy of public transparency and accountability." The petition states that the Council "... should disclose to the fullest extent votes and deliberations made in closed session after the need for confidentiality has ended, excluding legally restricted subjects such as personnel matters." The petition also asks that the Council release certain confidential closed session information related to the Sausalito Marine property acquisition discussions.

### **Brown Act Requirements:**

The staff report presented to the City Council on July 7<sup>th</sup> sets forth the requirements of the Brown Act related to closed session reporting and the release of confidential closed session information. The Council has requested additional information regarding these requirements. Attached is a memorandum prepared by Michael Colantuono, Colantuono & Levin, PC, addressing these issues. (Attachment No. 1). Michael Colantuono will be attending the Council meeting on the 21<sup>st</sup> and will be available to address any questions that the Council may have regarding this memorandum.

### **Sunshine Regulations**

The Brown Act and the California Public Records Act provide guarantees regarding access to public meetings and documents. Some local jurisdictions have adopted additional regulations know commonly as "Sunshine Ordinances" expanding access to public meetings and documents. Attached for the Council's consideration are examples of such regulations adopted by other jurisdictions. Specifically:

- San Francisco Sunshine Ordinance (Attachment No. 2)
- Oakland Sunshine Ordinance (Attachment No. 3)
- San Jose Rules of Conduct Resolution (Attachment No. 4)

### **San Francisco Sunshine Ordinance**

The stated purpose for the adoption of the San Francisco Ordinance is as follows:

"Sec. 67.1 Findings And Purpose.

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

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

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to

decide what the people should know about the operations of local government.

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

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

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

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

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process."

The San Francisco regulations regarding closed session are set forth at Section 67-10 through 67-12. With respect to the disclosure of closed session discussions and actions Section 67-12 of the San Francisco regulations provides that:

- after every closed session "... a public policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege"
- the body votes in open session on whether or not to disclose closed session information
- with respect to reporting actions taken in closed session regarding real estate negotiations the San Francisco regulations contain

language that is very similar to the provisions set forth in Section 54957.1(b) of the Brown Act.

### **Oakland Sunshine Ordinance**

The stated purpose for the adoption of the Oakland Ordinance is as follows

“The Oakland City Council finds and declares:

(A) A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.

(B) Commissions, boards, councils, advisory bodies and other agencies of the City exist to conduct the people's business. This Ordinance is intended to assure that their deliberations and that the City's operations are open to the public.

(C) This Ordinance is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the City of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.”

The Oakland provisions regarding closed session are set forth in Sections 2.20.100 through 2.20.130. The provisions regarding closed session reporting and the release of closed session information are very similar to those of the San Francisco regulations. Section 2.20.130 governs the disclosure of closed session discussions and actions and includes the following:

- After closed session and in addition to disclosures required under Section 54957.1 of the Brown Act “... a local body shall reconvene into open session prior to adjournment and shall disclose publicly all portions of its discussion which are not confidential.”
- The local body can vote in open session to disclose any other information which a majority deems to be in the public interest
- With respect to reporting actions taken in closed session regarding real estate negotiations the Oakland regulations contain language that is very similar to the provisions set forth in Section 54957.1(b) of the Brown Act.

### **San Jose Rules of Conduct Resolution**

The City of San Jose has undertaken a very thorough process regarding the adoption of Sunshine regulations. A Sunshine Reform Task Force was formed that has made recommendations to the San Jose City Council. The City has not yet adopted a Sunshine Ordinance but it has adopted a Resolution establishing certain Rules of Conduct. These Rules include provisions regarding closed

session which are set forth in Rule 1.5 and govern the following areas: Agenda Disclosure (Rule 1.5(a)), Topics (Rule 1.5(b)), Statement of Reasons for Closed Sessions (c), Approval in Open Session of Certain Closed Session Discussions (Rule 1.5 (d)), and Disclosure of Closed Session Discussions and Actions (Rule 1.5(e)).

### **Other Marin County Jurisdictions**

As reported on July 7<sup>th</sup>, in response to an email inquiry asking whether or not the jurisdiction had a policy on closed session reporting the County of Marin, Belvedere, Corte Madera, Fairfax, Larkspur, Novato, Ross, San Anselmo, San Rafael, and Tiburon all responded that they comply with the Brown Act and do not have any additional reporting requirements.

### **FISCAL IMPACT**

None.

### **STAFF RECOMMENDATIONS**


If the City Council desires to consider the release of confidential closed session information it could consider the following motions:

- 1) Does the Council wish to disclose actions taken and the councilmember's votes thereon, if any, during the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?
- 2) Does the Council wish to disclose documents, if any, considered during the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?
- 3) Does the Council wish to disclose actions taken and councilmember's votes thereon, if any, on the disclosure of confidential information from the closed session meetings held on February 6, 2009, February 10, 2009, February 13, 2009 and February 18, 2009 to discuss the acquisition of the Sausalito Marine Properties?

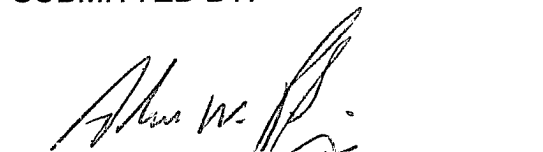
### **ATTACHMENTS:**

1. Memorandum prepared by Michael Colantuono, Esq.
2. San Francisco Sunshine Ordinance
3. Oakland Sunshine Ordinance
4. San Jose Rules of Conduct Resolution

PREPARED BY:

  
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Mary Anne Wagner, City Attorney

SUBMITTED BY:

  
\_\_\_\_\_  
Adam W. Politzer, City Manager

**ATTACHMENT NO. 1**  
**COLANTUONO & LEVIN MEMO**

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## MEMORANDUM

TO: Mayor Jonathan Leone and Members of the City Council  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965-1933

FILE NO: 49037.0003

FROM: Michael G. Colantuono, Esq.

DATE: July 16, 2009

RE: Brown Act Issues Surrounding the Sausalito Marine Closed Session Item

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*Introduction.* As requested, I write to express our opinion on these questions:

1. When is an "agreement final" pursuant to Government Code Section 54957.1, subdivision (a) which defines reportable actions as (1) "an agreement concluding real estate negotiations ... after the agreement is final." Does this reporting requirement apply to direction given to staff in closed session to participate in the sale and how much to bid? In other words should the Council have announced the vote during the meeting at which the closed session was held – or afterward? Or was there no "final agreement" and thus no requirement under the Brown Act to report out an action.
2. How does the Council determine how to release closed session information in accordance with Government Code Section 54963; does this take place in open or closed session – or, is it up to the Council to decide? How does the Council determine what information to release with respect to documents? If the Council is authorized to do it in closed session can they instead decide to do it in open session?
3. If the Council votes to release confidential closed session information what can be discussed in open session? For example if the Council votes to release the "vote" can each Council member comment on why they voted the way they did and the information on which that vote was based?
4. Confirmation that once the information is disclosed it is a matter of public record.



*Summary of Conclusions.* In brief, we conclude as follows:

1. No information is required to be reported out of a closed session held for purposes of acquiring real estate until a legally enforceable purchase agreement is agreed upon. As no agreement has been reached, no disclosure is yet required.

2. The Council may determine to release otherwise confidential information based on such information and discussion as it deems prudent under the circumstances. As there is no express authority in the Brown for such a discussion to take place in closed session, it should occur in open session unless it is germane to another topic for which a closed session is justified – such as the underlying real estate negotiations or the initiation of an eminent domain lawsuit. Even where the Council may have such a discussion in closed session, it may choose to conduct that discussion in open session, as the City is always permitted to make more disclosure than the Brown Act requires. However, open session discussion of whether to disclose confidential information is a delicate matter, as confidential information cannot be released until the Council decides to do so and a conversation about the release of confidential information which does not specify what that information is may be somewhat artificial and difficult.

3. The scope of the information to be disclosed by the City turns on two things: what information is confidential (such as facts known to Councilmembers only because they were disclosed in closed session) and how much of that information the Council opts to make public. The reasons a Councilmember voted one way or another in closed session are his or her own thoughts and determinations are not, in the abstract, confidential if the Councilmember does not wish them to be so. The facts on which those determinations and thoughts are based, of course, may be confidential. Thus, the practical answer to this question is this – the Councilmembers may make as much disclosure of confidential information as the entire Council allows. In determining what to allow, the Council should consider the purposes of closed session confidentiality in the context of real estate negotiations – to help the City get good deals for its money by not telling a seller how much the City will pay. Given that the amount the City bid at the trustee's sale was publicly disclosed at that sale, there would seem to be little reason to protect that figure, although how much the City might spend on a future effort to acquire the property, and other conditions of a purchase agreement, may still warrant confidentiality. This will require a business judgment of the City Council.

4. Yes, once the Council authorizes the release of information and it is released to any non-City party, it must be made available to others as well

These conclusions are based on the facts regarding this issue that you have relayed to me. Please let me know if those facts are incorrect or materially incomplete, as different facts might require me to alter my advice to the City. To protect the City's confidential information until the Council decides whether and how much of it to disclose, I have communicated the facts on which this opinion is based in a memo of today's date to your City Attorney.

*Discussion.* The Brown Act (Government Code §§ 54950 *et seq.*) is California's "sunshine" law for local governments and reflects an overarching state policy that the people must be informed so they can effectively participate in their local government affairs. It is for this reason that Brown Act requires local government business to be conducted at open and public meetings. That said, the Act does authorize closed sessions to be held with regard to certain matters, including real estate negotiations.

Authority to discuss real estate negotiations in closed session is provided by Government Code § 54956.8:

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

This closed session exception serves important public policy considerations in that it preserves the City's confidential bargaining position which, if disclosed, would enable the other party to a transaction to insist on the highest price the City would be willing to pay in every case.

The City Council's closed sessions to discuss whether to acquire the Sausalito Marine Properties and, if so, how much to authorize its negotiators to offer for the properties, were authorized by Government Code § 54956.8. The City Council also properly acted when it did not make a public report about the actions it took in closed session because no "final agreement" for the acquisition of those properties has yet been reached. Government Code § 54957.1(a)(1) governs closed session reporting and states, in relevant part:

Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported *after the agreement is final*, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval. (Emphasis added.)

The reference to a “final” agreement and the specification that an “approval” may make an agreement final is a plain reference to contract law principles of offer and acceptance: a final contract enforceable at law exists when one party makes a firm offer, capable of acceptance (*i.e.*, not contingent or otherwise conditioned on things not within the power of the party to whom the offer is made) and the other party actually and unconditionally accepts it. *See* Civil Code §§ 1549 (contract defined), 1550 (essential elements of contract), 1565 et seq. (consent to a contract).

When the City Council voted to authorize its negotiators to submit a bid for the Sausalito Marine Properties, § 54956.7(a)(1) did not require the City Council to make a public report of its actions for two reasons. First, the City Council’s bid did not finalize the purchase of the Sausalito Marine Properties. It was merely authorization to make a bid which, as it happened, was not successful. Secondly, final approval of this transaction rested with another party and not the City. To trigger the disclosure duty of § 54957.1(a)(1), the trustee had to accept the City’s bid. If § 54957.1(a)(1) were to be read otherwise, it would hamper the City’s ability to compete for property by, among other things, alerting competitors as to how much the City was prepared to spend.

Turning to the second issue, the City Council must be mindful of Government Code § 54963 which prohibits the disclosure of confidential information obtained in closed session. This section defines “confidential information” as “a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session [under the Brown Act].” This section would therefore prohibit the release of how the City Council voted on the Sausalito Marine bid. This prohibition is not absolute, and, in fact, § 549639(a) authorize the City Council to release confidential information. Given the goal of the Brown Act to ensure public scrutiny of and information about government, it may be best to authorize such disclosures when the public purposes which justified confidentiality in the first instance no longer prevail – as here where the fact and amount of the City’s bid on the Sausalito marine Properties is known publicly.

The next issue becomes whether the Brown Act authorizes the City Council to deliberate and vote on the release of confidential information in closed session. Neither the Brown Act nor case law expressly addresses this issue. Under the Brown Act, however, no matter may be discussed in closed session except with express statutory authorization. *E.g.*, *Shapiro v. San Diego City Council*, (2002) 96 Cal.App.4<sup>th</sup> 904 (statutory exceptions authorizing closed sessions of local legislative bodies are construed narrowly). By itself, § 54963 does not authorize a closed session discussion. Thus, unless discussion of whether to release closed session confidences is within the scope of a topic for which a closed session is authorized, the discussion must occur in open session.

Two bases for closed session discussion appear to justify closed session discussion of whether to release closed session confidences regarding the City’s efforts to acquire the Sausalito Marine Properties: § 54956.8 (real property negotiations) and § 54956.9 (initiating litigation, as in an eminent domain action). The City Council is still considering acquiring the Sausalito

Marine Properties and it is uncertain whether the City will pursue acquisition through a voluntary sale and purchase agreement or via an eminent domain action or, as is commonly the case, both in succession. In either case, how and why the City Council voted in deciding to authorize its negotiators to bid on the Sausalito Marine Properties might be worthy of continued confidentiality if necessary to protect the City's position in further negotiations or litigation.

That the City Council may discuss these matters in closed session does not mean that it must. Government Code Section 54963 expressly empowers the Council to authorize release closed session confidences and the purposes of the Brown Act suggest it should do so when the justifications for confidentiality (*i.e.*, maintaining the City's bargaining position) no longer pertain. Whether the vote and which Councilmember voted how have meaningful impact on future bargaining is a determination for the Council.

No law limits the Council's authority to disclose otherwise confidential information, although it is plain that no individual Councilmember may do so. § 54963(a) ("No person shall disclose confidential information that has been acquired by being present in a closed session ... unless the legislative body authorizes disclosure of the confidential information"). Thus, whether and how much information to disclose is entrusted to the sound judgment of the City Council itself. Prudence would seem to dictate protecting information that the current owner of the Sausalito Marine Properties or any competing buyer for that land might use to impair the City's ability to acquire the site for a fair price. The transparency in government goals of the Brown Act counsels in favor of disclosure of any information the Council concludes would not assist the land owner or a competing buyer.

The Brown Act protects from disclosure only "confidential information acquired by being present in a closed session." It defines "confidential information" as "a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter." As the basis for the closed sessions in issue here was real property negotiations, any information pertinent to that issue – how many Councilmembers favor acquisition, how much each thought the City should pay, concerns any of them had about the value of the property, its environmental condition, reasons for and against acquisition at all or at any particular price, would all seem to be confidential information that may not be disclosed without authorization from the Council as a whole. An individual Councilmember's thought processes, however, are not "confidential information acquired by being present in a closed session" and a Councilmember may disclose his or her views on this subject without Council authorization, provided that the facts obtained in closed session or the views expressed by others in closed session are not disclosed. While this distinction has legal meaning, it may have little practical meaning to a Councilmember who wants to disclose not only the abstract reasons for his or her views, but also the facts which may those reasons and views persuasive to him or her and, he or she may hope, to the City's residents.

Once information is disclosed to any non-City official or employee under § 54963, it must be made equally available to the public generally. Neither the Brown Act nor the Public

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Records Act permits the City to pick and choose which members of the public are entitled to non-confidential information. 98 Ops. Cal. Atty. Gen. 1011 (1999) (all who do not have an official role in advising the city council on closed session topics must be excluded from closed session); § 6254.5 (“whenever a state or local agency discloses a public record which is otherwise exempt from the chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in [the Public Records Act].”) Accordingly, once the City discloses confidential information from the Council’s closed sessions on City efforts to acquire the Sausalito Marine Properties, that information will be a matter of public record available to all.

*Conclusion.* I will be available to discuss these opinions with you at your Council meeting on July 21<sup>st</sup>. If I can provide further or advice or assistance in the meantime, please let me know. Thank you for the opportunity to assist.

c: Adam Politzer, City Manager  
Mary Wagner, City Attorney

**ATTACHMENT NO. 2**  
**SAN FRANCISCO SUNSHINE ORDINANCE**

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## Provisions of the Sunshine Ordinance - Section 67

### Article I: In General

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

### Article II: Public Access to Meetings

Sec. 67.3. Definitions.

Sec. 67.4. Passive Meetings.

Sec. 67.5. Meetings to Be Open and Public; Application of Brown Act.

Sec. 67.6. Conduct of Business; Time and Place for Meetings.

Sec. 67.7. Agenda Requirements; 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. Video and Audio Recording, Filming and Still Photography.

Sec. 67.15. Public Testimony.

Sec. 67.16. Minutes.

Sec. 67.17. Public Comment by Members of Policy Bodies.

### Article III: Public Information and Public Records

Sec. 67.20. Definitions.

Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

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

Sec. 67.22. Release of Oral Public Information.

Sec. 67.23. Public Review File--Policy Body Communications.

Sec. 67.24. Public Information that Must Be Disclosed.

Sec. 67.25. Immediacy of Response.

Sec. 67.26. Withholding Kept to a Minimum.

Sec. 67.27. Justification of Withholding.

Sec. 67.28. Fees for Duplication.

Sec. 67.29. Index to Records.

Sec. 67.29-1. Records Survive Transition of Officials.

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Sec. 67.29-3.

Sec. 67.29-4. Lobbyist On Behalf of the City.

Sec. 67.29-5. Calendars of Certain Officials.

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Sec. 67.29-6. Sources of Outside Funding.

Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

Article IV: Policy Implementation

Sec. 67.30. The Sunshine Ordinance Task Force.

Sec. 67.31. Responsibility for Administration.

Sec. 67.32. Provision of Services to other Agencies; Sunshine Required.

Sec. 67.33. Department Head Declaration.

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

Sec. 67.35. Enforcement Provisions.

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

Sec. 67.37. Severability.

Sec. 67A.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

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

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

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

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

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

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

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a



person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.2. Citation.

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

Sec. 67.3. Definitions.

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

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

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

(1) A congregation of a majority of the members of a policy body at the same time and place;

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

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

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

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

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

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

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

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(c) "Passive meeting body" shall mean:

- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.
- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;
- (5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents.  
(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Sec. 67.4. Passive Meetings.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

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

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

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business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

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

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

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

Sec. 67.5. Meetings To Be Open And Public; Application Of Brown Act.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.6. Conduct Of Business; Time And Place For Meetings.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

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

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to

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meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

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

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.7. Agenda Requirements; Regular Meetings.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed

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action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

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

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

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

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

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

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

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

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

KNOW YOUR RIGHTS UNDER  
THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

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

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION

ON YOUR RIGHTS UNDER THE SUNSHINE  
ORDINANCE OR TO REPORT A VIOLATION  
OF THE ORDINANCE, CONTACT THE  
SUNSHINE ORDINANCE TASK FORCE.

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

Sec. 67.7-1. Public Notice Requirements.

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

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

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

Sec. 67.8. Agenda Disclosures: Closed Sessions.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

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

LICENSE/PERMIT DETERMINATION:  
applicant(s)

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

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

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: Terms of payment: Both:

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

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

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture  
or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation:

As defendant As plaintiff

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

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

or:

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PUBLIC EMPLOYEE APPOINTMENT/HIRING

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

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

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

CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

Police officers, firefighters and airport police

Transit Workers

Nurses

Miscellaneous Employees

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

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

Sec. 67.8-1. Additional Requirements for Closed Sessions.

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

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closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

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

Sec. 67.9. Agendas And Related Materials: Public Records.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

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

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

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

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

Sec. 67.10. Closed Sessions: Permitted Topics.

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

(a) With the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

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

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

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

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

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

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

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

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

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(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99) Sec. 67.11. Statement Of Reasons For Closed Sessions.

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

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

Sec. 67.12. Disclosure Of Closed Session Discussions And Actions.

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

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

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

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

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar 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. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

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

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

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such

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documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

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

Sec. 67.13. Barriers To Attendance Prohibited.

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

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

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

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

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation

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services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

Sec. 67.14. Video and Audio Recording, Filming And Still Photography.

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

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site ([www.sfgov.org](http://www.sfgov.org)) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above. (Added by Ord. 80-08, App. 5/13/08)

Sec. 67.15. Public Testimony.

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

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

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

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

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

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)  
Sec. 67.16. Minutes.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or

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

Sec. 67.17. Public Comment By Members Of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.20. Definitions.

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

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

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

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

Sec. 67.21. Process For Gaining Access To Public Records; Administrative Appeals.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt

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from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person

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for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

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

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

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

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

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.21-1. Policy Regarding Use And Purchase Of Computer Systems.

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(a) 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 section. To the extent that it is technologically and economically feasible, departments 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 and shall make public records easily accessible over public networks such as the Internet.

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

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

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

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

Sec. 67.22. Release Of Oral Public Information.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

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

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty

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and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

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

Sec. 67.23. Public Review File--Policy Body Communications.

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

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

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

Sec. 67.24. Public Information That Must Be Disclosed.

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

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author

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may, in such circumstances, be withheld as exempt.

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

(b) Litigation Material.

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

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

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

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

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) 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:

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

(i) Sex, age and ethnic group;

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

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

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

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

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

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- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

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

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

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

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or

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other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

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

(3) During the course of negotiations for:

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

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

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying

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as provided for elsewhere in this Article.

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

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

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

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. 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. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

Sec. 67.25. Immediacy Of Response.

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

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

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

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

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.26. Withholding Kept To A Minimum.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of 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 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)

Sec. 67.27. Justification Of Withholding.

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

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

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

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

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

Sec. 67.28. Fees For Duplication.

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

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

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

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

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.29. Index To Records.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in

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making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.29-1. Records Survive Transition Of Officials.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco. (Added by Proposition G, 11/2/99)

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

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

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

Sec. 67.29-4. Lobbyist On Behalf Of The City.

(a) Any lobbyist who contracts for economic consideration with the City and County of

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

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

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

#### Sec. 67.29-5. Calendars Of Certain Officials.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

#### Sec. 67.29-6. Sources Of Outside Funding.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than

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one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 11/2/99)

Sec. 67.29-7. Correspondence And Records Shall Be Maintained.

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

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

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

Sec. 67.30. The Sunshine Ordinance Task Force.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the

task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

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

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

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

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

Sec. 67.31. Responsibility For Administration.

The Mayor shall administer and coordinate the implementation of the provisions of this

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chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.32. Provision Of Services To Other Agencies; Sunshine Required.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

Sec. 67.33. Department Head Declaration.

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

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Sec. 67.34. Willful Failure Shall Be Official Misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission. (Added by Proposition G, 11/2/99)

Sec. 67.35. Enforcement Provisions.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

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

(d) 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. (Added by Proposition G, 11/2/99)

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Sec. 67.37. Severability.

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

Sec. 67a.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the

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beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155. App. 12/22/2000)

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**ATTACHMENT NO. 3**  
**OAKLAND SUNSHINE ORDINANCE**

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Title 2 ADMINISTRATION AND PERSONNEL

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**Chapter 2.20 PUBLIC MEETINGS AND PUBLIC RECORDS**

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## **Article I In General**

### **2.20.010 Findings and purpose.**

The Oakland City Council finds and declares:

A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.

B. Commissions, boards, councils, advisory bodies and other agencies of the city exist to conduct the people's business. This chapter is intended to assure that their deliberations and that the city's operations are open to the public.

C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city. (Ord. 12483 (part), 2003; Ord. 11957 § 00.1, 1997)

### **2.20.020 Citation.**

This chapter may be cited as the Oakland Sunshine Ordinance. (Ord. 12483 (part), 2003; Ord. 11957 § 00.2, 1997)

## **Article II Public Access to Meetings**

### **2.20.030 Definitions.**

Words or phrases in this chapter shall be defined pursuant to the Ralph M. Brown Act, Government Code Section 54950 et seq. and the Public Records Act, Government Section 6250 et seq., unless otherwise specified as follows:

A. "Agenda" means the agenda of a local body which has scheduled the meeting. The agenda shall meet the requirements of Government Code Section 54954.2, except that the timing requirements of this chapter shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code Section 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations

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or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material. A description of an item on the agenda is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.

B. "Agenda-related materials" means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include:

1. The written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this chapter; and

2. Written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 2.20.070 or Section 2.20.080.

C. "Agenda subscriber" means any person or organization who requests in writing, on an annual basis, the receipt of an agenda or agenda-related materials as specified in Section 2.20.090 of this chapter.

D. "City" means the city of Oakland.

E. "Local body" means:

1. The Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;

2. Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;

3. Any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a twelve (12) month period; and,

4. Any standing committee of any body specified in subsections (E)(1)(2) or (3).

"Local body" shall not mean any congregation or gathering which consists solely of employees of the city of Oakland, the Oakland Redevelopment Agency, or the Port of Oakland.

F. "Meeting" means any of the following:

1. A congregation of a majority of the members of any local body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

2. Any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a local body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and,

3. Any meal or social gathering of a majority of the members of a local body immediately before, during, or after a meeting of a local body.

4. "Meeting" shall not include any of the following:

a. Individual contacts or conversations between a member of a local body and any other person;

b. The attendance of a majority of members of a local body at a conference, or at any open a publicized meeting or gathering organized by a person or organization other than the local body, to address a topic of local community concern and, provided that a majority of the members of a local body refrains from discussing among themselves, other than as a part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of that local body;

c. The attendance of a majority of the members of any local body at a purely social, recreational, educational or ceremonial occasion provided that a majority of the members of any local body refrains from discussing any business within the subject matter jurisdiction of the local body; and

d. The attendance of a majority of the members of a local body at a standing committee, provided that the members of the local body who are not members of the standing committee do not participate personally or through representatives.

G. "Notice" means the posting of an agenda in a location that is freely accessible to the public twenty-four (24) hours a day and as additionally specified in Section 2.20.070 and 2.20.080.

H. "On-line" means accessible by computer without charge to the user.

I. "Software or hardware impairment" means the city is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including, but not limited to, a computer virus), electrical outage affecting the city's computer network, or unanticipated system or equipment failure. "Software or hardware impairment" may also include situations when the city is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the city

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shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.

J. "Standing committee" means any number of members of a local body which totals less than a quorum and which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the local body. (Ord. 12668 § 3, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.3, 1997)

#### **2.20.040 Conduct of meetings for additional bodies covered by the chapter.**

A. To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).

B. To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the city, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the property or the public function or service is discussed or considered subject to the following conditions:

1. Such meetings need not be formally noticed, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the meeting be made available upon request;
2. Such meetings need not be conducted in any particular location to accommodate spectators, although spectators shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy;
3. Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,
4. The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act. (Ord. 12483 (part), 2003; Ord. 11957 § 00.4, 1997)

#### **2.20.050 Meetings to be open and public: Application of Brown Act.**

All meetings of local bodies specified in Sections 2.20.030(E) and Section 2.20.040(A) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this ordinance, in which case this ordinance shall be applicable. (Ord. 12483 (part), 2003; Ord. 11957 § 00.5, 1997)

#### **2.20.060 Conduct of business: Time and place for meetings.**

A. Every local body specified in Section 2.20.030(E) shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible local bodies specified in Section 2.20.030 (E)(1) and (2) shall conduct their regular meetings on weekday evenings.

B. Regular and special meetings of legislative bodies specified in Section 2.20.030(E) shall be held within the city of Oakland except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;
2. Inspect real or personal property which cannot be conveniently brought to Oakland, provided that the topic of the meeting is limited to items directly related to the real or personal property;
3. Participate in meetings or discussions of multi-agency significance that are outside Oakland.

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However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body specified in this chapter; or

4. Meet outside the city of Oakland with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the city of Oakland, the Oakland Redevelopment Agency or the Port of Oakland, and over which issue the other federal or state agency has jurisdiction.

C. If a regular meeting for any local body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least five days in advance.

D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding officer of the local body or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

E. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority. (Ord. 12483 (part), 2003; Ord. 12463 § 2, 2003; Ord. 11957 § 00.6, 1997)

### **2.20.070 Notice and agenda requirements: Special meetings.**

A. Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;

2. Filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and,

3. Delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Local bodies specified in Section 2.20.030(E)(1) shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.

C. Notwithstanding the requirements of 2.20.070(A) and (B), if a special meeting is called for a Monday, notice shall be deemed timely made if the filing, posting and distribution requirements of subsections (A) and (B) are made no later than 12:00 p.m. (noon) on the preceding Friday.

D. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this section is given at least ten days prior to the special meeting. This ten day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.

E. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

F. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting. (Ord. 12668 § 4, 2005; Ord. 12483 (part), 2003; Ord. 12463 § 3, 2003; Ord. 12106, 1999; Ord. 11957 § 00.7, 1997)

### **2.20.080 Notice and agenda requirements: Regular meetings.**

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A. Ten Day Advance Notice Requirement for Regular Meetings of the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (24) hours a day no later than ten days before the date of the meeting;
2. Filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten days before the date of the meeting; and,
3. Posting a copy of the agenda on-line at the local body's website no later than ten days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

B. Supplemental Agenda and Related Materials Requirements for Regular Meetings of the City Council Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Notwithstanding the notice provisions of 2.20.080(A), the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees, may amend or supplement a posted agenda or agenda-related materials no later than seventy-two (72) hours before a regular meeting and only for the following reasons or under the following conditions:

1. To add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action;
2. To delete or withdraw any item from a posted agenda; however, nothing herein shall limit the ability of a local body to delete or withdraw an item during the meeting as long as the local body permits members of the public to address the deleted or withdrawn item;
3. To provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to the Mayor or staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this section are reports responding to questions or requests raised by members of a local body after posting and filing of the ten day agenda and materials, and analyses or opinions of the item by the Office of the City Attorney, City Auditor, or any member of the City Council;
4. To correct errors or omissions, or to change a stated financial amount, or to clarify or conform the agenda title to accurately reflect the nature of the action to be taken on the agenda item;
5. To consider the recommendations, referrals, minutes, modifications of or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission provided that the item has not been materially changed after the committee considered the item;
6. To place an ordinance on the agenda pursuant to Oakland City Charter Section 216 because the Mayor has caused its reconsideration by the City Council under the Mayor's power to suspend an ordinance receiving five votes; or,
7. To place an item on the agenda to allow the Mayor to cast a vote pursuant to Oakland City Charter Section 200; or
8. To continue an agenda item to the next regular meeting of the local body so long as members of the public are given an opportunity to address the local body on the item at the meeting from which the item is continued.

C. Seventy-two (72) Hour Advance Notice Requirement for Regular Meetings of All Local Bodies Other Than the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Any local body specified in Section 2.20.030(E)(2), (3), and (4), with the exception of standing committees of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission, shall provide notice for any regular meeting in compliance with the Ralph M. Brown Act and shall also file a copy of the agenda and all agenda-related material with the Office of the City Clerk at least seventy-two (72) hours before the time of any regular meeting.

D. Excuse of Sunshine Notice Requirements. If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and,
2. The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

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- a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- b. There is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or,
- c. The item relates to a purely ceremonial or commendatory action. Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.220.030(I) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.

E. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (D) of this section, a local body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the local body that a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or,

2. The matter is urgent. Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:

a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

b. Relates to federal or state legislation; or,

c. Relates to a purely ceremonial or commendatory action.

F. Nothing in this section shall prohibit a local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 2.20.080(E) before or during a meeting.

G. Nothing in this section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.

H. The Mayor, City Administrator and City Attorney in their capacities with the city and Redevelopment Agency must submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and Section 2.20.070. However, the referenced officers may submit additional documents to the legislative body and the legislative body may accept the documents if the legislative body makes a finding by two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the related meeting. This subsection shall not apply to the City Auditor, and the City Council may consider reports from the City Auditor that are presented to the Council after the deadlines specified in this chapter. Nothing in this section or in any other provision of this chapter shall be interpreted to require that the Mayor, City Administrator or City Attorney submit to the City Clerk any documents that are not public records. (Ord. 12668 § 5, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.8, 1997)

### **2.20.090 Agenda-related materials as public records: Agenda subscribers.**

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code 6250 et seq.) and this ordinance, every local body specified in Section 2.20.030(E) shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. Every local body may charge a fee to agenda subscribers and media organizations to cover reasonable mailing costs of the agenda and agenda-related materials. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act or this ordinance.

B. Every local body shall make available for immediate public inspection and copying all documents that have been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this ordinance or under state or federal law.

C. All requests by agenda subscribers to receive agendas or agenda-related materials by mail shall be made in writing and delivered to the Office of the City Clerk or, in the case of the Board of Port Commissioners, to the Secretary of the Board. The City Clerk shall maintain a list of all local bodies and shall immediately forward a copy of the written request to the appropriate local body to ensure

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compliance with the request. Any written request shall be valid for the calendar year in which it is filed, and must be renewed after January 1 of each year.

D. Notwithstanding any other provision of this ordinance, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the local body taken at the meeting for which the agenda or the agenda-related material was not timely received. (Ord. 12483 (part), 2003; Ord. 11957 § 00.9, 1997)

### **2.20.100 Agenda and oral disclosures: Closed sessions.**

A. In addition to the brief general description of agenda items to be discussed or acted upon in open session, the permissive provisions of Government Code Section 54954.5 are mandatory under this ordinance with respect to any closed session item.

B. Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1. (Ord. 12483 (part), 2003; Ord. 11957 § 00.10, 1997)

### **2.20.110 Statement of reasons for closed sessions.**

A. Prior to any closed session, a local body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or Section 2.20.080(E) herein, the statement shall be made in open session concurrent with the findings required pursuant to that section.

C. A local body shall re-state the reasons for closed session before convening a closed session at any meeting and as to any item that has been adjourned or continued from a prior meeting.

D. The public shall have the right to comment on any item of closed session before the closed session convenes.

E. Nothing in this section shall require or authorize a disclosure of information that is confidential under law. (Ord. 12483 (part), 2003; Ord. 11957 § 00.11, 1997)

### **2.20.120 Conduct of closed session.**

A. A local body shall consider in closed session only those matters specified in the statement required in Section 2.20.110.

B. After any initial closed session to consider the sale, lease, gift, purchase, or exchange of any property to which the city, Redevelopment Agency, or Port of Oakland has or will have an ownership or possessory interest, such local bodies shall notice for open session a discussion of the advisability of taking such an action before a final action is taken in the matter. This requirement shall not apply if the local body adopts a finding that holding an open session discussion would prejudice the local body in the proposed proceeding or transaction.

C. With respect to any closed session discussion pertaining to employee salaries and benefits, a local body shall not discuss compensation or other contractual matters with one or more employees having a direct interest in the outcome of the negotiations.

D. The following provisions of the Brown Act apply to the conduct of closed session by local bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54957; and 54957.6.

E. The Offices of the City Attorney, the City Clerk, and the Public Ethics Commission shall provide any person with a copy of the Brown Act or Public Records Act without charge. (Ord. 12483 (part), 2003; Ord. 11957 § 00.12, 1997)

### **2.20.130 Disclosure of closed session discussions and actions.**

A. After every closed session, in addition to the required disclosures pursuant to Government Code Section 54957.1, a local body shall reconvene into open session prior to adjournment and shall disclose publicly all portions of its discussion which are not confidential. The local body may, by motion and vote in open session, elect to disclose any other information which a majority deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding

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officer or such other person, present in the closed session, designated to convey the information.

B. Immediately following the closed session a local body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real property negotiations: Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the local body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the local body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, and, in any event, at the next meeting of said local body after the other party or its agent has informed the local body of its action. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the condition has been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation: Direction or approval given to the local body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the local body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement: If a local body accepts a settlement offer signed by an opposing party, the local body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the local body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A local body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.

C. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

D. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting. Written notice that such a written summary or supporting documentation is available as to every reported document shall be posted the next business day following the meeting in the place where the meeting agendas of the local body are usually posted.

E. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in Section 2.20.130(D) at such time as disclosure is required. (Ord. 12483 (part), 2003; Ord. 11957 § 00.13, 1997)

#### **2.20.140 Barriers to attendance prohibited.**

A. No local body specified in this ordinance shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a local body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system shall be used to permit the overflow audience to listen to the proceedings, unless the speakers would disrupt the operation of a local agency office.

B. Any person attending an open meeting of a local body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings. (Ord. 12483 (part), 2003; Ord. 11957 § 00.14, 1997)

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**2.20.150 Public testimony at regular and special meetings.**

A. Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address a local body on items of interest to the public that are within the local body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2(b). The agenda of local bodies need not provide an opportunity for members of the public to address the local body on any item that has already been considered by a committee, composed exclusively of members of the local body, at a meeting in which members of the public were afforded the opportunity to address the committee before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the local body.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. The presiding officer of any local body may request speakers representing similar views to designate a spokesperson in the interest of time. Nothing shall prohibit a local body from adopting rules for allocating additional time to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the local body's consideration of those items.

C. Every local body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the city that all speakers be entitled to a minimum of two minutes of speaking time per agenda item, subject to the discretion of the presiding officer of the local body. The presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the local body.

D. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law. (Ord. 12483 (part), 2003; Ord. 11957 § 00.15, 1997)

**2.20.160 Minutes and recordings.**

A. All local bodies specified in Section 2.20.030(E)(1) and (2) and their standing committees shall record the minutes for each regular and special meeting convened under the provisions of this ordinance. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the local body began and ended any closed session, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten business days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes are adopted.

B. Every local body specified in Section 2.20.030(E)(1) shall make a visual and audio recording of every open meeting. Local bodies specified in Section 2.20.030(E)(2) and (4) shall audio tape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least four years, provided that if during that four-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the local body. Notwithstanding any other provision of law, every local body specified in Section 2.20.030(E)(1) shall permanently maintain all recordings of all meetings. (Ord. 12483 (part), 2003; Ord. 11957 § 00.16, 1997)

**2.20.170 Public comment by members of local bodies.**

Every member of a local body retains the rights of any citizen to comment publicly on the wisdom or

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propriety of government actions, including those of the local body of which he or she is a member. Local bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or non-disclosure of discussions or actions taken in closed session. The release of specific factual information made confidential by state or federal law, including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this ordinance, may constitute grounds for censure or for an action for injunctive or declaratory relief by the local body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law. (Ord. 12483 (part), 2003; Ord. 11957 § 00.17, 1997)

### **Article III Public Information**

#### **2.20.180 Definitions.**

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

- A. "Agency" means an agency of the city of Oakland.
- B. "Department" means a department of the city of Oakland or a department of the Port Department of the city of Oakland.
- C. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications. (Ord. 12483 (part), 2003; Ord. 11957 § 00.18, 1997)

#### **2.20.190 Release of documentary public information.**

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997)

#### **2.20.200 Release of oral public information.**

Release of oral public information shall be accomplished as follows:

- A. Every Agency director for the city and Redevelopment Agency, and department head for the Port shall designate a person or persons knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The name of every person so designated under this section shall be filed with the City Clerk and posted online.
- B. It shall be the duty of every designated person or persons to provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person. It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- C. Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the agency or department and does not materially misrepresent the agency or department position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. (Ord. 12483 (part), 2003; Ord. 11957 § 00.21, 1997)

#### **2.20.210 Public review file--Policy body communications.**

Every local body specified in Section 2.20.030(E)(1) shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing which the clerk or secretary of such local body has distributed to,

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or sent on behalf of, a quorum of the local body concerning a matter that has been placed on the local body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this chapter. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file. (Ord. 12483 (part), 2003; Ord. 11957 § 00.22, 1997)

### 2.20.220 Non-exempt public information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning contracts, memoranda of understanding or other matters subject to negotiation and pending a local body's approval need not be subject to disclosure until final action has been taken.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

- a. Sex, age and ethnic group;
  - b. Years of graduate and undergraduate study, degree(s) and major or discipline;
  - c. Years of employment in the private and/or public sector;
  - d. Whether currently employed in the same position for another public agency;
  - e. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
2. The professional biography or curriculum vitae of every employee who has provided such information to the city, Redevelopment Agency or the Board of Port Commissioners excluding the home address, home telephone number, social security number, date of birth, and marital status of the employee.
3. The job description of every employment classification.
4. The exact gross salary and paid benefits available to every public employee.
5. Any adopted memorandum of understanding between the city or Board of Port Commissioners and a recognized employee organization.

D. Law Enforcement Information. The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such redacted information may include:

- a. The names of juvenile witnesses or suspects;
- b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- c. The identity of a confidential source;
- d. Secret investigative techniques or procedures;
- e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
- f. Information whose disclosure would endanger the successful completion of an investigation where

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the prospect of enforcement proceedings is likely.

2. The Oakland Police Services Agency shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city, Redevelopment Agency and Board of Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, Redevelopment Agency and the Port Department, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, Redevelopment Agency or Board of Port Commissioners or their standing committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law. (Ord. 12483 (part), 2003; Ord. 11957 § 00.23, 1997)

### **2.20.230 Immediate disclosure request.**

A. Notwithstanding any other provision of law and subject to the requirements of this section, a written request to inspect or obtain copies of public records that is submitted to any department or agency or to any local body shall be satisfied no later than three business days unless the requestor is advised within three business days that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the agency, department or local body;
3. The requested records are stored in a location outside of the agency, department or local body processing the request;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another agency, department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request; or,
6. There is a need to compile data, to write programming language or a computer program or to construct a computer report to extract data.

B. All determinations made pursuant to Section 2.20.230(A)(1)-(6) shall be communicated in writing to the requestor within seven days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination pursuant to 2.20.230(A)(1)-(6) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. All written requests to inspect or copy documents within three business days must state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state "Immediate Disclosure Request" and a number by which the requestor may be contacted.

C. An Immediate Disclosure Request is applicable only to those public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials. All Immediate Disclosure Requests shall describe the records sought in focused and specific language so they can be readily identified.

D. The person seeking the information need not state a reason for making the request or the use to which the information will be put. (Ord. 12483 (part), 2003; Ord. 11957 § 00.24, 1997)

### **2.20.240 Minimum withholding.**

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No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review. (Ord. 12483 (part), 2003; Ord. 11957 § 00.25, 1997)

### **2.20.250 Justification for withholding.**

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

- A. A withholding under a permissive exemption in the California Public Records Act or this ordinance shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position. (Ord. 12483 (part), 2003; Ord. 11957 § 00.26, 1997)

### **2.20.260 Fees for duplication.**

- A. No fee shall be charged for making public records available for inspection.
- B. No fee shall be charged for a single copy of a current meeting agenda.
- C. A fee may be charged for: 1) single or multiple copies of past meeting agenda or any agenda-related materials; 2) multiple copies of a current meeting agenda; and, 3) any other public record copied in response to a specific request.
- D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- E. No charge shall be made for a single copy of a Draft or Final Environmental Impact Report and Environmental Impact Statement.
- F. All fees permitted under this section shall be determined and specified in the city of Oakland Master Fee Schedule, as amended.
- G. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with State law. (Ord. 12483 (part), 2003; Ord. 11957 § 00.27, 1997)

## **Article IV Policy Implementation**

### **2.20.270 City of Oakland Public Ethics Commission.**

- A. Duties: In the implementation of this ordinance, the Public Ethics Commission shall:
  1. Advise the City Council and the Board of Port Commissioners and provide information to other city departments and local bodies on appropriate ways in which to implement this ordinance with a priority on simple, standard procedures.
  2. Assist in citywide training for implementing the ordinance.
  3. Develop and maintain an administrative process for review and enforcement of this ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act.
  4. Propose amendments to the City Council of this ordinance as needed.
  5. Report to the City Council on any practical or policy problems encountered in the administration of this chapter.
- B. Enforcement.
  1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (A)(3) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this chapter.
  2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a local body has violated this ordinance. The costs and fees shall be paid by the local body and shall not become a personal liability of any public officer or employee of the local body.
  3. If the litigation is judged to be frivolous by the court, the defendant local body may assert its right to

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be paid reasonable court costs and attorneys' fees.

C. Mediation.

1. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand immediate mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.

2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.

3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.

D. Cure and Correction.

1. Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this chapter. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this chapter, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendaize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1)-(4), inclusive.

E. Reports or Recommendations From Meetings Alleged To Have Been Held In Violation of this Chapter.

If the sole purpose or nature of an action that is challenged for violation of this chapter is to make or convey an advisory report or recommendation to another local body, such local body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said local body to hear or take action on the item in the absence of such report or recommendation.

F. Limitation of Actions.

No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least seventy-two (72) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the item at least forty-eight (48) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation as specified in Section 2.20.270 (C). (Ord. 12668 § 6, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.28, 1997)

**2.20.280 Responsibility for administration.**

A. The City Manager shall administer and coordinate the implementation of the provisions of this chapter for all local bodies, agencies and departments under his or her authority, responsibility or control.

B. The City Manager shall provide the Public Ethics Commission with staff to permit the Public Ethics Commission to fulfill the functions and duties set forth herein. The City Attorney shall provide the Public Ethics Commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The Office of the City Clerk shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it. The Office of the City Clerk shall retain copies of agenda-related materials filed with it by local bodies specified in Section 2.20.030(E)(2)(3) and (4) for a period of at least sixty (60) days following the meeting for which said agenda-related materials were submitted. (Ord. 12483 (part), 2003; Ord. 11957 § 00.29, 1997)

**2.20.290 Severability.**

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The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Ord. 12483 (part), 2003; Ord. 11957 § 00.30, 1997)

### **2.20.300 Effective date.**

The amendments herein shall become effective on May 1, 2003. (Ord. 12483 (part), 2003; Ord. 11957 § 00.31, 1997)

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**ATTACHMENT NO. 4**  
**SAN JOSE RULES OF CONDUCT RESOLUTION**

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RESOLUTION NO. 74574

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
JOSÉ AMENDING THE RULES FOR THE CONDUCT OF ITS  
MEETINGS, SUPERSEDING RESOLUTION NO. 74312**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** The Council of the City of San José does hereby adopt and establish the following rules for the conduct of its meetings, proceedings, and business.

**RULE 1**

**MEETINGS**

**(a) Regular Meetings**

The regular meetings of the Council are held, without notice, on Tuesday of each calendar week. The meeting commences at 9:30 a.m., for closed session purposes, in the Council Chambers Committee Room in the City Hall of the City of San José, unless the session is publicly posted to begin at 9:00 a.m., and upon completion of closed session is recessed until 1:30 p.m., in the Council Chambers in the City Hall of the City of San José or at such other place as the Council may from time to time prescribe. City Hall is situated at 200 East Santa Clara Street, San José, California, at the south side of East Santa Clara Street, between 4<sup>th</sup> and 6<sup>th</sup> Streets, San José, California. Evening sessions, when scheduled, commence at 7:00 p.m.

**(b) Special Meetings**

A special meeting of the Council may be called at any time by the Mayor, or by a majority of the members of the Council, in accordance with the Ralph M. Brown Act. (California Government Code Sections 54950, et seq.) hereinafter referred to as the "Brown Act."

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**(c) Adjournment: Adjourned Meetings**

The Council may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members will be or are absent from any regular or adjourned regular meeting, the City Clerk may declare the meeting adjourned to a stated time and place and cause a written notice of the adjournment to be given in the same manner as provided for special meetings. Within 24 hours after the time of adjournment, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this Rule, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it must be held at the hour specified for regular meetings.

**(d) Closed Sessions**

The Council may hold closed sessions during a regular or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized (1) by state law; and (2) by the Council consistent with Rule 1.5, to hear or consider in closed session, and may exclude from any such closed session any person or persons which it is authorized by state law to exclude from such closed sessions. Every person who attends closed session will be required to sign a notice acknowledging that he or she understands the potential penalties that exist under California law and/or City Council policy for disclosing confidential information acquired by being present at closed session.

(e) **Attendance**

Section 407 of the San José City Charter requires that a sum, as established by the Council Salary Setting Commission, be deducted from the salary of each member, except the Mayor, for each regular meeting of the Council missed by said member. Attendance, for purposes of Charter Section 407, is deemed to mean being present at any such regular meeting, unless officially excused by the Council for authorized City business, illness or death of a close family member pursuant to provisions of Section 407 of the Charter. Requests to be excused from attendance must be a regular agenda item on the Council's Consent calendar.

(f) **Cancellation**

Any meeting of the Council may be canceled in advance by majority vote of the Council. The Mayor may cancel a meeting in the case of an emergency or when a majority of members have confirmed in writing their unavailability to attend a meeting.

(g) **Chair**

The Mayor presides over all Council meetings. In the Mayor's absence, the Vice Mayor serves as presiding officer. In the absence of both the Mayor and the Vice Mayor, the Mayor has discretion to appoint the Chair for the meeting. In the event the Mayor is unable to appoint the Chair, the Council designates the Chair.

**RULE 1.5**

**CLOSED SESSION MEETINGS**

The Council must adhere to the following provisions which it approved on August 21, 2007:

(a) **Agenda Disclosures**

1. Topics described on closed session agendas must follow the discretionary provisions of the Brown Act at a minimum. The following additional information is required:

A. License/Permit: If the purpose of closed session is to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the type of license or permit at issue must be identified in addition to the number of applicants.

B. Real Property Negotiations: If the purpose of closed session is to meet with the Council's negotiator before the purchase, sale, exchange, or lease of real property or for the Council to grant authority to its negotiator regarding the price and terms of payment for purchase, sale, exchange, or lease, whether the likely value of the property at issue exceeds \$1 million must be disclosed in addition to the street address, parcel number or other unique reference of the property, the name(s) of the negotiator(s) or his or her agent(s) or designee(s) attending closed session, the negotiating parties and whether instructions to the negotiator will concern price, terms of payment, or both.

C. Existing Litigation: If the purpose of closed session is to confer with or receive advice from the Council's legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the Council in the litigation, the amount of money or other relief sought in the lawsuit must be provided in addition to the claimant's name, the names of the parties involved and the case or claim numbers (unless disclosure would jeopardize service of process or existing settlement negotiations).

D. Liability Claims: If the purpose of closed session is to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability, the amount of money or other relief sought in the claim must be provided in addition to the claimant's name and the name of the agency against whom the claim is filed.

E. Public Employment/Appointment: If the purpose of closed session is to consider the appointment or employment of a public employee, the department or agency to

which the appointment will be made, in addition to the title of the position to be filled, must be provided.

F. Public Employee Performance Evaluation: If the purpose of closed session is to consider the evaluation of a public employee, the name of the employee, in addition to the title of the position of the employee being reviewed, must be provided.

G. Public Employee Discipline/Dismissal/Release: If the purpose of closed session is to consider the discipline (which includes potential reduction of compensation) or dismissal of a public employee or to hear complaints or charges brought against the employee by another person unless the employee requests a public session, the number of employees and the agency or department involved must be disclosed.

H. Labor Negotiations: If the purpose of closed session is to meet with the Council's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily-provided scope of representation, the nature of the negotiations, such as the issues to be discussed (i.e. wages/salaries, hours, working conditions, benefits or some combination) as well as the name of the existing contract or memorandum of understanding and information on how to obtain a copy must be provided, in addition to the names of the designated representative(s) or his or her agent(s) or designee(s) attending the closed session and the name of the employee organization representing the employees in question or the position and title of the unrepresented employee(s) who is (are) the subject of the negotiations.

2. Agenda disclosures cannot be misleading. No discussion may take place in closed session that has not been disclosed on the agenda.



**(b) Topics**

1. Closed session discussions about real property negotiations may not address any subjects other than instructions from the City Council to its negotiators regarding price and terms of payment, with an understanding that price includes a discussion on potential use of property. Moreover, closed session discussions about the purchase of real property or any proposed development of property may not include re-budget decisions.

2. Approval given to legal counsel to file a brief as a friend of the court in any form of litigation must be discussed in open session unless the City Attorney advises the Council that, because of potential liability to the City, filing a brief as a friend of the court should be discussed in closed session.

**(c) Statement of Reasons for Closed Sessions**

1. Before any closed session, the Council must meet in open session to (1) state the reason for closed session for each item on the agenda; and (2) cite the statutory authority for closed session for each item on the agenda, including the specific section of the Brown Act or other legal authority. The statement must not be misleading. The Council may discuss only those matters covered in its statement. Moreover, for real property negotiations, the Council must identify in open session the properties at issue, any development plans for the property (within the constraints of the California Environmental Quality Act) and source(s) of payment for the property.

2. If an item is added to the closed session agenda (i) upon a determination by a majority vote of the Council that an emergency situation exists; (ii) upon a determination by a 2/3 vote of the members of the Council present at the meeting, or if less than 2/3 of the members are present, on a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the Council after the agenda was posted; or (iii) the item was posted for a prior meeting of the Council

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occurring not more than five calendar days before the date action is taken on the item and at the prior meeting the item was continued to the meeting at which action is being taken, the Council must state in open session (1) the fact of the addition to the agenda; (2) why the item is being added; (3) the reason for closed session on the item; and (4) the statutory authority for closed session on the item.

3. Emergency situations are limited to (1) a work stoppage, crippling activity or other activity that severely impairs public health, safety or both or (2) a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the Council to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.

4. Only items on the written agenda or added pursuant to Section 2 above may be discussed during closed session. Any action taken on an item that is not described in accordance with this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

**(d) Approval in Open Session of Certain Closed Session Discussions**

1. All proposed agreements for the purchase or sale of real estate must be approved by the Council in open session. For transactions less than \$1 million, the Council must post the item on the agenda at least 10 calendar days before a regular meeting. For transactions \$1 million and more, the Council must post the item on the agenda at least 14 calendar days before a regular meeting.

2. All proposed contracts with represented and unrepresented employees and the Council Appointees must be approved by the Council in open session. For contracts less than \$1 million, the Council must post the item on the agenda at least 10 calendar days before a regular meeting. For contracts \$1 million and more, the Council must post the item on the agenda at least 14 calendar days before a regular meeting.

3. All proposed settlements of litigation or claims that are \$50,000 and more must be approved by the Council in open session. For settlements less than \$1 million, the Council must post the item on the agenda at least 10 calendar days before a regular meeting. For settlements \$1 million and more, the Council must post the item on the agenda at least 14 calendar days before a regular meeting.

(e) **Disclosure of Closed Session Discussions and Actions**

1. After every closed session, the Council must meet in open session to make the following disclosures:

A. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as a friend of the court in any form of litigation must be reported in open session at the public meeting during which the closed session is held. The report must identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but must specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars will, once formally commenced, be disclosed publicly.

B. Approval given to its legal counsel of a settlement of less than \$50,000 of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding must be reported after the settlement is final, as specified below:

(i) If the Council accepts a settlement offer signed by the opposing party, the Council must report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(ii) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, the Council must disclose the fact of that approval, and identify the substance of the agreement.

C. Final agreements reached as to claims of less than \$50,000 must be reported as soon as reached in a manner that identifies the name of the claimant, the name of the person or entity claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

D. Action taken to appoint, employ, discipline, dismiss, accept the resignation of, or otherwise affect the employment status of a Council Appointee in closed session must be reported at the public meeting during which the closed session is held. Any report required by this paragraph must identify the title of the position. The general requirement of this paragraph notwithstanding, the report of discipline, dismissal or the non-renewal of an employment contract will be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

E. Appraisals used in the condemnation of property must be disclosed after the condemnation proceedings have concluded.

F. Formal claims rejected by the Council must be reported in a manner that identifies the name of the claimant, the name of the person or entity claimed against and the substance of the claim.

2. The Council may, upon a determination that disclosure is in the public interest and by motion and majority vote, disclose any portion of its discussion that is not confidential under federal or state law. The disclosure must be made through the Chair of the Council or his or her designee who was present in the closed session.

3. Disclosures may be made orally or in writing, but must be supported by copies of any contracts, settlement agreements, or other documents related to the action that was approved in the closed session. The supporting documents that embody the information

required to be disclosed, except for documents otherwise required to be kept confidential by state or federal law, must be provided to any person who has made a written request about that item or who has made a standing request for all such documentation as part of a request for notice of meetings.

4. A written summary of the disclosures required to be made must be posted by the close of business on the next business day after the open session in the place where the agendas of the Council are posted.

**RULE 2**

**ORDER OF BUSINESS**

The business of the Council, at its meetings, is conducted in accordance with the following order of business.

CLOSED SESSION

CALL TO ORDER AND ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

ORDERS OF THE DAY

CLOSED SESSION REPORT

CEREMONIAL ITEMS

CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

COMMUNITY & ECONOMIC DEVELOPMENT

NEIGHBORHOOD SERVICES

TRANSPORTATION & AVIATION SERVICES

ENVIRONMENTAL & UTILITY SERVICES

PUBLIC SAFETY SERVICES

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS  
OPEN FORUM (to be heard jointly with Redevelopment Agency public discussion)  
GENERAL PLAN HEARINGS  
PUBLIC HEARINGS (for meetings with evening sessions)  
OPEN FORUM (for evening meetings)  
ADJOURNMENT

The order of business may be altered to the extent necessary to comply with the provisions of Rule No. 4 relating to Hearings. Also, departures from the order of business may be authorized from time to time by majority vote of the Council or by the Chair.

**RULE 3**

**AGENDA**

**(a) Content**

The City Clerk prepares for each meeting of the Council an agenda specifying the time and place of the meeting and setting forth a brief general description of each item of business to be considered by the Council at that meeting. The agenda for each regular meeting includes all items of business requested to be placed on the agenda by the City Council or the Council Rules and Open Government Committee. Any member of the Council or the Council Appointees (i.e. the City Manager, the City Attorney, the City Clerk, the City Auditor, or the Independent Police Auditor) may submit items to be placed on the agenda to the Rules and Open Government Committee or to the Council as a whole under the Orders of the Day. The City Clerk must refer all written requests from the public for an agenda item to the Administration. The City Clerk must provide a copy of each written request to the Rules and Open Government Committee.

**(b) Draft Agenda**

The City Clerk prepares a draft agenda for the Rules and Open Government Committee on the second Wednesday immediately preceding the date of Council meeting. The Rules and Open Government Committee upon considering such agenda, may add any items of business thereto, and may delete items therefrom, except for items placed on the agenda by an individual Council member, unless such items have been referred to staff or a Committee.

**(c) Time Certain**

Some items may be listed on the agenda for a time certain or not before a certain time. Such listing means that the item is heard as soon as reasonably possible after the specified time, but not before.

**(d) Orders of the Day**

Items may be added to the agenda, under Orders of the Day, by the Chair, or any Councilmember or Council Appointee, if that person determines that there is a necessity to so add. However, no such item may be heard unless the change to the Orders of the Day has been approved by a majority of the Council. The agenda must include a statement under Orders of the Day that items recommended to be added, dropped or deferred are usually approved under Orders of the Day unless the Council directs otherwise.

**(e) Posting**

The agenda for each regular meeting must be posted in accordance with the Brown Act. The City Clerk must maintain a record of such posting in a form approved by the City Attorney.

**(f) Actions**

The Council may not take action on any matter not appearing on the posted agenda unless one of the exceptions listed in the Brown Act is applicable.

**RULE 4**

**HEARINGS AND DISCUSSION ITEMS**

**(a) Time for Consideration**

Hearings and matters noticed or ordered to be held by the Council at 7:00 p.m., or at any other specified time, commence at the time specified for hearing or consideration of such matter, or as soon thereafter as is reasonably possible, and continue until the same have been completed or until other disposition of such matters has been made.

**(b) Continuance of Hearings**

Any hearing being held, noticed or ordered to be held at any meeting of the Council may, by order or notice of continuance, be continued or recontinued to any subsequent meeting of the Council, in the same manner and to the same extent hereinabove set forth for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing must be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

**(c) Public Discussion**

Before any motion is adopted relating to the merits of the matter to be heard, the Chair must inquire if there are any persons present who desire to speak on the matter which is to be heard or to present evidence respecting such matter. Any person desiring to so speak or present evidence must submit a speaker's request card to the City Clerk and upon being



recognized by the Chair, such person may speak or present evidence relevant to the matter being heard. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number. Members of the Council who wish to ask questions of the people or of each other, or who wish to discuss the subject matter of the hearing during the course of the hearing, may do so, but only after being recognized by the Chair. The Chair must conduct the meeting in a manner which affords due process.

All persons interested in the matter which is the subject of the hearing are entitled to submit written evidence which will be part of the record and must be given opportunity to present other evidence relevant to such subject. All evidence presented must be retained by the City as part of the Clerk's record; however, parties displaying models and large exhibits may withdraw them. The City Clerk can request that substitute photographs be submitted to be part of the record. Also, within the time limits which may be set as described below, interested persons must be given reasonable opportunity to present oral arguments for or against any proposed action. However, no person may, during such hearing, speak or present evidence respecting matters not relevant to the matter which is the subject of the hearing.

The Chair may set such time limits as he or she finds reasonable under the circumstances.

**(d) Consideration of Question by Council**

After the conclusion of the public testimony upon the subject of any hearing, the Council may consider what disposition it wishes to make of the question(s) presented to it at said hearing. No member of the public is allowed, without the consent of the Chair, to speak upon the question or subject during or after such discussion and consideration by the Council. While considering any matter presented to them at such hearing, members of the Council may

speaking upon addressing the Chair and being recognized by the Chair. Councilmembers may address other members of the Council only through the Chair.

**(e) Reconsideration**

Any action taken by the City Council is subject to reconsideration if the motion to reconsider is made by a Councilmember who voted with the prevailing side. A motion to reconsider may only be made at the Council meeting where the original vote was taken or at the next Council meeting. Once a majority of the City Council has voted to reconsider an action, the reconsideration can be held immediately or at a later Council meeting as designated by the Council.

**RULE 5**

**MOTIONS**

When a motion is made and seconded, it may be debated by the Council. Members of the Council may speak in debate of a motion only when addressing the Chair and being recognized by the Chair. Whenever the subject of the motion has been discussed and considered and roll call has started, no further discussion or debate may take place except that members of the Council may explain their vote or propose supplemental motions.

**RULE 6**

**VOTING**

All members of the Council who are present at a meeting when a question comes up for a vote, must vote for or against the measure in accordance with City Charter Section 600.

**RULE 6.5**

**ADDITIONAL RULES OF PROCEDURE**

From time to time, the Council may adopt additional rules of procedure for the conduct of its meetings, proceedings and business. Such rules may include, but are not limited to, additional requirements for noticing of Council agenda items, distribution of information related to agenda items and supermajority voting requirements under specified circumstances. An action taken in violation of these additional procedural rules may not be determined to be null and void if the action was in substantial compliance with the rules, or taken in connection with the sale or issuance of notes, bonds, other evidences of indebtedness, or the action taken gave rise to a contractual obligation upon which a party has in good faith relied. The Clerk must maintain a current listing of all such rules.

**RULE 7**

**ROBERT'S RULES OF ORDER**

Except as otherwise provided herein, the Council is governed by the rules of procedure set forth in Robert's Rules of Order, Newly Revised, 9th Edition.

**RULE 8**

**STUDY SESSION**

The Council may meet in a Study Session at such time(s), and at such place(s), as it may deem advisable. The City Manager or any member of the Council may request that the Rules and Open Government Committee set the Study Sessions.

The Mayor or, in the Mayor's absence, the Vice Mayor, presides as the Chair of the Study Session. In the absence of both the Mayor and the Vice Mayor, the Mayor has the discretion

to appoint the Chair for the Study Session. In the event the Mayor is unable to appoint the Chair, the Council must designate the Chair.

Council Members study and consider all matters which may be referred to it by the City Council or the Rules and Open Government Committee; and all recommendations made at the Study Session are reported to the Council for action.

### RULE 9

#### COUNCIL COMMITTEES

(a) Council Committees Established

Five Standing Committees of the City Council are hereby established.

1. Rules and Open Government
2. Transportation and Environment
3. Neighborhood Services and Education
4. Community and Economic Development
5. Public Safety, Finance and Strategic Support

(b) Committee Rules

The rules included in Rule 9(g), Conduct of Committee Business, governs the conduct of all Committee meetings. Each Committee may adopt, by a majority vote of its entire membership, such additional rules, not in conflict with this Rule, as it may deem necessary for the conduct of Committee business.

**(c) Committee Meetings**

Each Committee meets regularly and without notice at a regularly scheduled time to be recommended by the Rules and Open Government Committee, adopted by the Council and posted by the City Clerk.

Each Committee will meet in Room W-118/119 of City Hall unless otherwise noticed.

Each Committee may, by majority vote of its membership, set special meetings or adjourned meetings as it deems necessary, in accordance with the Brown Act.

The Council Committees meet jointly with the Committees of the Redevelopment Agency.

The provisions of Rule 1(b), 1(c) and 1(d) of this Resolution apply to each Committee, except that the word Mayor as used therein means Chairperson, and the word Council as used therein means Committee.

The provisions of the Brown Act apply to the meetings of each Committee.

**(d) Committee Appointments and Duties of Committee Members**

The Mayor appoints the members of each Committee from among the members of the City Council.

The Chairperson and the Vice Chairperson of each Standing Committee are appointed by the Mayor. The Chairperson and Vice Chairperson may be removed in the same manner.

The term for each Committee appointment is one year, from the first day in January to December 31st and until a successor is duly appointed. Should a vacancy occur in any

Committee for whatever reason, appointment to the vacated position is for the unexpired term of the position created by said vacancy.

In the absence of both the Chairperson and Vice Chairperson, the Committee members present may elect the Chair-pro-tem.

It is the duty of a Councilmember to attend every meeting of every Committee of which the Councilmember is a member and the Councilmember is charged with fulfilling the responsibilities of such Committees. Requests to be excused from attendance must be a regular item on the Council's Consent calendar.

**(e) Staff Assignments to the Committees**

Committee staff must deliver to each Committee member, the balance of the Council and to Council Appointees, all papers and documents relating to matters referred to such Committee pursuant to these rules. The City Clerk serves as secretary to Study Sessions and the Rules and Open Government Committee. The City Manager designates a secretary to keep a record of attendance and business transacted for each of the other Committee meetings. Such record must be provided to the City Clerk. The City Clerk must distribute to the Mayor, the Council, and the Council Appointees a copy of the record from each Committee meeting including presentation materials.

**(f) Reports**

The reports from the Committees must be in writing and presented to the City Council. Nothing in this Rule prohibits the introduction of minority reports, together with the majority report.

**(g) Conduct of Committee Business**

Except as otherwise provided in these rules, Committee hearings are conducted as follows:

1. The Chairperson presides at meetings of the Committee. If the Chairperson is absent, the Vice Chairperson assumes the duties of the Chairperson. If both the Chairperson and Vice Chairperson are absent, one of the Committee members present assumes the duties of the Chairperson by vote of all the members present.
2. The Chairperson directs the order of presentation of the arguments for and against matters for consideration by the Committee, and permits questions to be asked by the various members of the Committee, members of the public and the Administration in an orderly fashion and in keeping with proper decorum.
3. Any member of the Committee including the member assuming the duties of the Chairperson may make or second a motion.
4. At the discretion of the Chairperson, any Council Committee, including the Rules and Open Government Committee, may meet with only two Committee members present. Committees with only two members present may not take action on any matter, but may hear the matter and refer it without a recommendation to the City Council.
5. The Committee Chairperson, in consultation with Committee staff, sets the Committee agenda. The Chairperson sets the date for any continued hearing and notifies the Committee secretary of such date.
6. The Committee secretary must post the Committee agenda in accordance with the Brown Act. An agenda for each Committee meeting must be delivered to the Mayor, City Council, and the Council Appointees at least four (4) working days prior to the Committee meeting, and must be posted in conformance with

Rule 3(d). The agenda must be composed of items referred by the Council or Rules and Open Government Committee as well as items within the Committee work plan.

7. A report or matter approved by a Committee must be forwarded to Council and appear on the Council agenda at the second Council meeting following the Committee meeting except as follows:
  - (a) If the Committee meets on a Monday, the report may appear on the agenda at the third Council meeting following the Committee meeting.
  - (b) Based on extenuating circumstances, the Chairperson of any Committee can direct that an item be reported at an earlier Council meeting.
8. The Council must vote to accept the Committee Report and to take all actions specified in the Report, other than to approve an ordinance, resolution or contract. Councilmembers who do not concur with a recommendation may request a separate vote or may ask that a 'no' vote be recorded with regard to that recommendation. Staff recommendations that are contained in other materials must be restated in the Committee Report or separately agendized for Council consideration.
9. The Committee may recommend that an ordinance or resolution be introduced or amended or that a contract be awarded. If the ordinance, resolution or contract has been prepared before the date on which it is considered by the City Council, it must be placed under a separate agenda item and acted upon separately from approval of the Committee Report. If the ordinance, resolution or contract is not ready for formal action, the Committee Report may be understood to provide direction to the City Attorney to prepare the necessary documents upon the Council's acceptance of the Committee Report.



10. The assigned staff must keep a record of the meetings and actions taken by the Committee.
11. No Committee action may be taken on any item outside a duly constituted Committee meeting.
12. Council Appointees or their designees, may attend and speak at all Committee meetings, but have no vote therein.
13. The Committees must report on all matters referred to them by the Council without unnecessary delay. If the City Council desires to remove a matter from the jurisdiction of a Committee, it may, at a regular meeting of the City Council, discharge said Committee from further consideration of the matter.
14. Council and Committee referrals or requests for information or direction to the Administration staff must be processed in accordance with the Council Referral procedures in Council Policy No. 0-12.

**(h) Rules and Open Government Committee**

The Rules and Open Government Committee is composed of four members and an alternate member. The Mayor is the Chairperson of the Rules and Open Government Committee and the Vice Mayor is the Vice Chairperson. If one or more members of the Rules Committee cannot attend, the alternate member of the Committee may attend in the absent member's stead. The Rules and Open Government Committee may, if requested by the Council, consider and make recommendations on the operations of the Council, including relationships between the Council and the Council Appointees, appointments to boards and commissions, the operation of Council offices, rules regarding the Council conduct, renovation and construction of Council Chambers and offices, elections and initiatives, and organizational and operational matters pertaining to the offices of Council Appointees. The Rules and Open Government Committee also reviews the Council and Study Session

agendas in advance of the Council or Study Sessions and may add or withdraw items as needed except for those items placed on the agenda by a majority vote of Council. The Rules and Open Government Committee's area of responsibility includes the approval of the Standing Committee's work plan and the City Auditor's work plan. The Rules and Open Government Committee may also refer any item directly to Standing Committees or the Administration for consideration. The Rules and Open Government Committee also considers and makes recommendations to the Council on disputes over Public Records Act requests.

**(i) Division of City Operations**

Except for budget matters, which are considered by the Council as a whole, most matters to come before the Council must go through one of the Standing Committees for a public hearing.

The policy areas or mission statements for Standing Committees are as follows:

**Rules and Open Government Committee**

Council Agenda Setting; Committee Work Plan; City Auditor Work Plan; Commission Appointments (not required to be interviewed by Council); Ensuring accessible, responsive, transparent and accountable government.

**Transportation and Environment**

To provide the community with safe, secure, and efficient surface and air transportation systems that support San José's livability and economic vitality and to provide environmental leadership through policy development, program design and reliable utility services and infrastructure.

**Neighborhood Services and Education**

To serve, foster and strengthen community by providing access to lifelong learning, opportunities to enjoy life, ensuring a diverse range of housing opportunities, preserving healthy neighborhoods.

### **Community and Economic Development**

To manage the growth and change of the City of San José in order to encourage a strong economy, ensure a diverse range of arts cultural and entertainment offerings, and create and preserve healthy neighborhoods.

### **Public Safety, Strategic Support and Finance**

To effectively develop, manage and safeguard the City's fiscal, physical, technological and human resources to enable and enhance the delivery of City services and projects and to provide prevention and emergency response services for crime, fire, medical, hazardous and disaster related situations.

### **(j) Amending Council Committee Rules**

Committees may set their own rules as long as they are consistent with Rule 9. Any rule which conflicts with Rule 9 must be authorized by resolution adopted by the Council.

### **(k) Certain Other Committees Abolished**

All other Standing Committees heretofore established by this Council consisting solely of members of Council, except those mentioned in this Resolution, are hereby abolished. The Mayor or the Council may appoint *ad hoc* committees from time to time.

### **(l) Matters Requiring Public Hearings**

No matter may be referred or assigned to a Committee pursuant to these rules for which a public hearing by the City Council is required by law or where the decision with respect to such matter is delegated to or reposed in a body or individual other than the Council, nor may a Committee initiate on its own motion consideration of any such matter.

**RULE 10**

**PETITIONS AND COMMUNICATIONS**

**(a) General**

Within the established rules for the conduct of the Council's official proceedings, any person or group of persons may personally, or through authorized representatives, present grievances or offer suggestions to the Council for the betterment of municipal affairs at any regular meeting of the Council. Such may be done either by filing with or presenting to the Council written petitions or communications respecting such matter and/or orally speaking thereon.

**(b) Written Petitions on Agenda**

If a written petition has been filed and placed on the agenda pursuant to Rule 3, such petition must be considered by the Council at the time such agenda item is taken up by the Council. Any person or group of persons desiring to speak to the Council respecting the subject matter of such petition will be permitted to do so personally or through authorized representatives, subject to applicable rules, at said time, provided that no person may speak unless the person has submitted a speaker's request card, is recognized by the Chair, and is given permission by the Chair to speak. Any person desiring to so speak may complete a speaker's request card and submit it to the City Clerk. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number on the speaker's request card.

**(c) Petitions or Communications Not on Agenda**

If a person or group of persons wishes to present to the Council, at a Council meeting, a written or oral petition or communication which has not been placed on the Council's agenda pursuant to Rule 3, such will be permitted at the time the Council takes up "open forum" as

shown on the agenda. Any person or group of persons desiring to speak to the Council respecting the subject matter of such petition or communication will be permitted to do so personally or through authorized representatives, subject to applicable rules. Any person desiring to so speak must submit a speaker's request card to the City Clerk. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number on the speaker's request card. However, no person may speak until recognized by the Chair.

The Chair sets such time limits as he or she finds reasonable under the circumstances.

The Council must not take any action on any matter not appearing on the posted agenda unless one of the exceptions in the Brown Act is applicable.

### RULE 11

### DISORDERLY CONDUCT

Pursuant to the provisions of Section 502 of the Charter of the City of San José, the Mayor has the authority to preserve order at all Council meetings, to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council and to determine the order of business under the rules of Council. For the above purposes, the Mayor or, in the Mayor's absence, the Chair of the meeting may command the assistance of any peace officers of the City to enforce all lawful orders of the Mayor or Chair.

Disorderly conduct includes, but is not limited to, each of the following:

1. Willfully disturbing or breaking up, without authority of law, any meeting of the Council; or doing any act or engaging in any conduct, at any Council meeting, without authority of law, with intent to disturb or break up such meeting of the

- Council, which urges the disturbance or breaking up of such meeting, or urges others to commit acts or engage in conduct which will disturb or break up such meeting. Acts or conduct deemed disturbing to the meeting include, but are not limited to, unreasonably loud and prolonged yelling, screaming, clapping or other noise-creating acts which render it impossible or difficult for the Council to conduct or continue with its proceedings;
2. Doing any act or engaging in any conduct, at a meeting of the Council and in the immediate view or hearing and presence of the Council, with intent to disturb the proceedings of the Council or to impair the respect due to the authority of the Mayor, the Chair or Council, which tends to interrupt the proceedings of the Council or impair the respect due to the authority of the Mayor, the Chair or the Council;
  3. Doing any act or engaging in any conduct, at any Council meeting, with intent to cause a riot, which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property. As used herein, "riot" means any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by the immediate power of execution, by two or more persons acting together and without authority of law;
  4. Threatening, at any meeting of the Council, to commit or cause bodily injury upon any member of the Council, or upon any officer or employee of the City, or upon any other person, or to burn or destroy or cause the burning or destruction of any property if the Council fails or refuses to act, or to refrain from acting, in accordance with the wishes of the threatening person;

5. Willfully refusing or failing, at a meeting of the Council, to comply with any rule of the Council or with any reasonable order of the Mayor, the Chair or the Council.

**SECTION 2.** Resolution No. 74312 and all other prior Resolutions inconsistent herewith are hereby superseded.

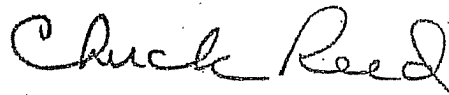
ADOPTED this 9th day of September, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

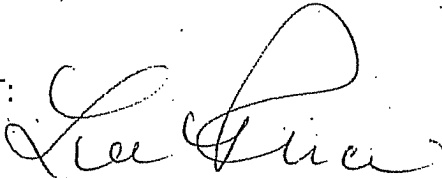
ABSENT: CAMPOS.

DISQUALIFIED: NONE.



\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:



\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk