

## Proposed Changes to the Sunshine Ordinance 2016

### ARTICLE I - IN GENERAL

#### 67.1 Findings and Purpose

- (c) “and new information technologies” added.
- (e) Sunshine Task Force is changed to Sunshine Commission here and throughout.

### ARTICLE II PUBLIC ACCESS TO MEETINGS

#### 67.3 Definitions

- (b) Meetings of Policy Bodies clarified.
- (c) Passive Meeting Bodies clarified.
- (d) Policy Body redefined, clarifiedpat.
- (e) Posting of Notice and Agenda requirements for Policy Bodies and Passive Meeting Bodies.
- (1-2) Establishes a centralized location for notices and agendas on the City’s website for posting all meeting dates, times and places. Requires such postings 3 business days in advance of any meeting.
- (3) Agendas for policy bodies must be posted on the bodies’ website 3 business days in advance of a meeting.
- (4) Agendas for passive bodies must be posted at the Main Library 3 business days in advance.
- (5) Notices and agendas must be posted outside the room where the meeting is to take place as soon as practicable, but no later than 1 hour before a meeting.

#### 67.4 Passive Meeting Bodies: Conduct of Business

- (a) Accessibility clarified. Locations must have sufficient capacity, facilities, furniture and equipment.
- (b) Notice requirements: Mandatory on City website 3 business days prior; email, fax response on request. Agenda (if any) posted with Notice, available on request.
- (c) Chair may provide for public comment.
- (e) Closed sessions not permitted.
- (f) Meetings involving City property or interest requirements.

#### 67.5 Meetings To Be Open and Public; Application of Brown Act

#### 67.6 Policy Bodies - Time and Place for Meetings

- (b) Requirement for meetings to be held in SF [Moved to (f)].
- (b) Notice requirements for cancelled/rescheduled meetings.
- (c) Time and Place for regularly held meetings bylaw requirement. Notice required 3 business days in advance.
- (d) Notice of Meetings: 3 business days in advance.
- (e) Special Meeting Notice requirements: 3 business days in advance, 10 days for different location.
- (f) Meetings held within SF only. [Moved from 67.6 (b)]
- (g) Initial Meetings: Notice requirements. [Cancelled/rescheduled meetings moved to 67.6 (b)].

#### 67.7 Agenda Requirements for Meetings of Policy Bodies

- (a) 72-hour requirement changed to 3 business days. Proposed actions must be included in agenda.

(e) Continued items to be posted with prior agendas.

(f) Agendas available in alternative formats when requested 2 business days prior to meeting and must comply with the of the Mayor's Office of Disabilities Accessible Public Event Checklist.

(i) Pre-Meeting Public Comments to Be Circulated to Policy Body Members Prior to Meeting Adds that each policy body's agenda shall state that members of the public may submit written statements and/or comments regarding any item on such body's' meeting agenda, which statements or comments shall be promptly circulated to members of the policy body and shall become a public record, whether or not the authors are present when the item at issue is discussed. The policy body may review and consider those statements or comments if received before or during the discussion of the item. Additionally, written statements submitted up to 10 days following a policy body meeting will be incorporated into the public record of the meeting

#### **67.7-1 Public Notice Requirements**

#### **67.8 Agenda Disclosures: Closed Sessions**

(a) Agendas to disclose nature of item. Existing litigated items shall disclose court, case number, and date the case was filed. Increased closed session agenda requirements by adding that each agenda item for a closed session of a policy body covered by this Ordinance that involves existing litigation shall identify the court, case number, and date the case was filed on the written agenda.

(b) (1-2-3) See 67.10

#### **67.8-4 Additional Requirements for Closed Sessions [Moved to 67.12(e)]**

#### **67.9 Agendas and Related Materials: Public Records**

(a) Agendas, meeting packets, and any public records (e.g., presentations], created by a department or any other records on file with the clerk or secretary of the policy body, when intended for distribution to all, or a majority 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 for inspection and copying at the office of the policy body at least 48 hours before the meeting. Unless demonstrably unfeasible these materials shall also be made available on the policy body's web site.

(b) If any document or other written instrument subject to adoption, approval or award by a policy body is not available at least 48 hours before the meeting at which that document is scheduled to be adopted, approved or awarded and a member of the policy body requests that the matter be continued, the policy body must continue the item to a time not less than 48 hours after the document was made available.

(d) Materials meant to be distributed to members of a policy body shall be available on request to the public.

#### **67.10 Closed Sessions: Permitted Topics**

(b) If a City employee subject to appointment, employment, evaluation of performance, or dismissal of a City employee requests a public hearing it shall be public.

#### **67.11 Statement of Reasons for Closed Sessions**

#### **67.12 Disclosure of Closed Session Discussions and Actions**

(e) Anticipated litigation: for each agenda item of a policy body 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.

(f) (2) Policy Bodies Must Review Prior Closed Sessions Quarterly and Determine if Previously Withheld Records Can Be Disclosed

At least quarterly, a public body shall review the records of prior closed sessions. The review shall determine whether any part of the minutes, recordings or other records withheld from public access have become accessible to the public. If the public body determines that any part of the previously withheld materials records are accessible, it shall do so, and identify in the policy body's minutes past closed session materials records that are now accessible.

**67.13 Barriers to Attendance Prohibited**

(b) Accommodations for persons with disabilities shall be provided when requested 72 hours in advance.

(e) Translations shall be provided if requested 48 hours in advance. Monday or Tuesday meetings requests must be made by noon of the last day of the week before the meeting.

(f) Policy Bodies Meeting in City Hall Must Broadcast Its Meetings on SFGOV TV or Real-time Stream

Each policy body that meets in City Hall shall broadcast on SFGOV TV or the City's website via real-time audio streaming and/or real-time audio/video streaming. All other policy bodies are encouraged to broadcast their meetings similarly as feasible.

(g) Meetings shall comply with the guidelines of the Mayor's Office of Disabilities Accessible Public Event Checklist.

**67.14 Recording, Filming and Still Photography**

(b) All policy bodies shall audio record each meeting, including special meetings and closed sessions. All recordings shall be kept indefinitely by the City. Copies shall be available at cost of the material, no expedited fees are allowed.

(c) Recordings of Closed Sessions Shall Be Made Available Whenever the Statutory Basis No Longer Applicable

Closed session recordings, made pursuant to subdivision (b) shall be made available whenever all the statutory bases for closing the session are no longer applicable. Audio Recordings recordings of closed sessions of policy bodies wherein the legal basis for the closed session is "anticipated litigation" shall be fully accessible to the public upon the first to occur of (1): two years after the recorded session if no litigation is filed, (2) upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed; and (3) as soon as the controversy leading to anticipated litigation is settled or concluded.

(d) Recordings of meetings may not be destroyed unless the recordings are being transferred into a different format for public access retrieval or archival requirements.

**67.15 Public Testimony**

(b) Moved from (a).

(c) Standardized rules for time and order of public speakers.

(1) Minimum of Three-Minute Public Comment Set for Each Agenda Item on a Policy Body's Agenda

Each person wishing to speak on an agenda item of a policy body meeting shall be permitted to be heard at least once for up to a minimum of three minutes per agenda item.

(2) The chair may limit time to 2 minutes if there are a large number of speakers. The chair may add additional time to accommodate a translator or a disability.

(3) Policy Body Chairpersons May Permit Organizations a "Designated Speaker" to Express 15-Minute Opposing View of Members of the Public in Response to City Agency Presentations During an Agenda Item If a City agency makes a presentation that is longer than 15 minutes, at the discretion of the Chair, a member of a policy body may request, and the Chair may allow an extended time for a designated speaker of an organization or group to express an

opposing view on behalf of a group of members of the public with respect to any item which is agendaized for adoption or discussion by such policy body

(B) The “designated speaker” must file a Request to Authorize a Designated Speaker prior to the commencement of an item guaranteeing that at least six (6) members of the public, present and prepared to speak, have designated their allotted speaking time.

(C) The chair may determine the consent of 6 speakers by a show of hands.

(4) Rules for evenhanded order of speakers.

(A) Speaker cards shall be called in order of submission, except the chair may alternate “pro” and “con” speakers if they are indicated.

(B) Those who have not submitted speakers’ cards may form a line to speak and shall be called upon in the order of appearance at the front of the line. The chair may allow disabled or frail speakers out of turn.

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

(F) The public shall have access to all audio-visual equipment used by a department or policy body for presentations. Prior notification in the agenda or public notice that a presentation will be made using audio/visual equipment or technology shall be provided and list the equipment.

#### **67.16 Minutes**

(b) Minutes shall include the time of arrival after commencement of the meeting and the time of each member’s departure if prior to the adjournment of the meeting. The length of time for each item shall be recorded. Any person may submit written comments to be attached to the minutes and noted in the item. If no more than one hundred fifty (150) words, the comments shall be included in the body of the minutes in the section dealing with that item or matter. The minutes shall also include the text of any resolution adopted by or modified by a policy body within the body of the minutes or as an attachment.

(c) Draft minutes shall be available within 5 business days after a meeting on the body’s website. Adopted minutes shall be available within 5 business days after the adoption.

#### **67.17 Public Comment by Members of Policy Bodies**

Every member of a policy body shall be allowed to speak freely on any issue before the body subject only to time limits, which shall be imposed on all members equally.

#### **67.18 Prohibiting Disruptive Use of Cell Phones, Pagers and Similar Sound-Producing Electrical Devices at and During Public Meetings**

Moved from 67.A.1

#### **67.19 Supervisor of Public Forums**

The City Attorney’s office shall establish a Supervisor of Public Forums position, which may be combined with the existing Supervisor of Public Records position mandated by Section 67.38(e). The Supervisor of Public Forums will issue written determinations when requested regarding whether a body is a policy body or passive meeting body or whether a policy body or passive meeting body has violated any provision of Article II [Public Access to Meetings] or the Brown Act.

### **ARTICLE III - PUBLIC INFORMATION AND PUBLIC RECORDS**

#### **67.20 Definitions**

(c) Public records shall include all stored, archived or back-up copies of original public records, irrespective of the media on which or the form in which copied.

#### **67.21 Process for Gaining Access to Public Information: Administrative Appeals**

(a) Every City Dept. to designate one employee as custodian of public records, who shall have written procedures and forms to streamline requests and assist public records or information requestors. Dept. heads shall ensure sufficient staff to respond to public records requests by the statutory deadline.

(b) Requests may be oral, email, fax or other means. Time for response moved to (c).

(c) Dept. shall comply with requests within 7 days: a copy at .10 per page or at cost, whichever is less. Provide an opportunity for the requestor to review records. If withholding or redaction is required the justification shall be in writing. Oral requests must be treated as written requests.

(g) Requestor may petition the Sunshine Commission to require respondent to disclose public documents within three days if they disagree with any withholding.

(e-k) Struck portions are moved to new section [67.39 Hearings and Orders of Determination].

(i) Inspection and copying to be available in any format in which documents were created or in which it is held.

~~67.21(h-j)~~ Moved to [67.38 Role of the City Attorney]

(j) Members of the public have the right to view and receive searchable copies of electronic documents in any format in which the documents were produced or used in the conduct of the City's business.

**67.21.1 Policy Regarding Use and Purchase of Computer Systems** [Moved to 67.31]

**67.22 Immediacy of Response: Immediate Disclosure Request** [Moved from 67.25]

**67.23 Production on Incremental or "Rolling Basis"** [Moved from 67.25]

**67.2422 Release of Oral Public Information**

(b) Every employee in the department has a duty to respond to public inquiries.

(d) Notwithstanding any other provisions of this Ordinance, City 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.

**67.2523 Public Review File: Policy Body Communications** (b) Moved to (a)

~~67.25~~ Immediacy of Response [Moved to 67.22]

~~67.2624~~ Public Information that Must Be Disclosed

(c)(2) The professional biography, curriculum vitae and the job application of any City employee as well as that of any applicant, whether successful or not, for a position as a department head or policy body, provided that the applicant gives informed consent to the disclosure of this information; address, telephone number, Social Security number, age, and marital status shall be redacted.

(c)(8) All records regarding confirmed employee misconduct or allegations of misconduct that are of a substantial nature, as distinct from the baseless or trivial, including records of any discipline or warnings imposed for such misconduct. Any investigation or report regarding allegations of employee misconduct - whether or not the investigation is conducted by or at the direction of an attorney - shall be released upon conclusion of that investigation where the allegations have been found to be substantial, even if there is no ultimate finding of misconduct, no discipline imposed, or warning issued.

(e)(1) Requests for contracts, bids, and proposals to be posted on the city's web site from date of issuance and kept in a central repository.

(e)(2) All City Requests for Bids ("RFB"), Requests for Proposals ("RFP"), Requests for Quotes ("RFQuote"), Requests for Information ("RFI"), and Requests for Qualifications ("RFQ") and

similar requests shall be posted on the City's website from the date of issuance, and also kept in a central repository and shall be made available for public inspections.

(e)(3) Contracts, contractors' bids, responses to RFBs, RFPs and communications between the department and those seeking contracts, including the dollar amount of any contract, shall be open to public inspection immediately after a contract has been awarded. Within five (5) days after a contract has been awarded, the successful RFB or RFP to be posted on the City's website.

(e)(4) Immediately after any review or evaluation or rating of responses to an RFB or RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFB or RFP evaluation or contractor selection process shall be available for public inspection. The names of panel members, scorers, graders or evaluators, along with their respective job titles and employers (if not employed by the City) 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 RFB or RFP is completed.

(e)(7) By July 15<sup>th</sup> annually, a list of new sole source contracts and renewed sole source contracts shall be provided and posted to the City's website and kept in a central repository and shall be made available for public inspection and copying.

(e)(8) Contracts, leases or other business agreements subject to approval by a policy body (other than a committee thereof): Draft versions of an agreement being negotiated by representatives of the City with another party need not be disclosed immediately upon creation but must be preserved and made available along with the version of the agreement to be presented to the policy body for public review at least seven (7) business days prior to the presentation of the agreement for approval by a policy body, unless the body finds and articulates how the public interest would be unavoidably and substantially harmed by strict compliance with this seven (7) business 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.

(g-i) Moved to 67.28

#### **67.2726 Withholding Kept to a Minimum**

All withholdings must be based on an express provision of this Ordinance providing for withholding of the specific type or on an express and specific prohibition or exemption provided by the California Public Records Act.

#### **67.28 Prohibited Basis for Withholding** Moved from 67.26 (g-i)

Neither the City nor any officer, employee, or agent thereof may assert CPRA Section 6255 or any similar provision as the basis for withholding any public records or public information; neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any public record or public information based on a "deliberative process" exemption; 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.

#### **67.2927 Justification of Withholding**

If any public information is withheld, written justification for the withholding shall identify: a general description of the withheld information; the number of documents, pages, or lines of information withheld; and clarify that the specific justification applicable to each piece of withheld information.

**~~67.29-1~~ Records and Correspondence Shall Be maintained, and Shall Survive Tenure and Transition of Officials [Moved to 67.33]**

**~~67.29-2~~ Lobbyists on Behalf of the City [Moved to 67.33-4]**

**~~67.29-2~~ Internet Access/World Wide Web Minimum Standards [Moved to 67.31]**

**67.3028 Fees for Duplication**

**67.3130 Minimum Standards: Electronic Records; Computer Systems; Web Postings**

[Incorporates 67.21-1]

(b) When responding to public record requests, every office, department, agency and policy body shall, if requested, and if necessary technology and equipment are available, transfer records that are otherwise only available in hard copy/paper form into an electronic format. The electronic format shall, as reasonably practicable, be searchable and electronically archivable for delivery via electronic mail or other electronic means.

(d) Every Dept. to maintain a website. Postings in text searchable format. The home page shall contain a link, titled "Records and Sunshine," to a page wherein the name, phone number, and e-mail address of its custodian of records, and its records retention policy.

**67.3229 Index to Records**

**67.3329-1 Records and Correspondence Shall Be maintained, and Shall Survive Tenure and Transition of Officials [Incorporates 67.29.7]**

(a) The City Attorney shall monitor the transition of the Mayor, elected officials, or any department head when he/she leaves office to ensure that public documents are not unlawfully removed or destroyed during the transition.

(b) City officials, elected representatives and employees shall be responsible for retaining complete and accurate records of digital communications, verbatim content, time and date, and names of participants. The use in communications about City business of any media, device or application causing the self-deletion, or otherwise preventing retention, of the contents of such communications shall be deemed a willful violation of this Ordinance.

(d) The City Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots, mechanical or digital vote tabulation equipment and other election materials, and all records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(e) Contracts, agreements or permits that authorize funds or fees from the public, the City shall ensure that accurate records are maintained and are available. Failure 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 duration of the failure. Failure to comply shall be a violation.

**67.29-3 [Concerning Advertisements on City Property Deleted]**

**67.33-429-2 Lobbyists on Behalf of the City**

**67.33-329-5 Searchable Meeting Logs of Elected Officials, Department Heads**

(a) Expands the definition of which City employees must keep a calendar. Every elected official and every department and agency head of the City shall keep a daily log of the time and place of each meeting or event attended, in person or electronic means at which City business is discussed.

(d) Individual meetings: name and business/affiliation, a summary of matters discussed, unless disclosing would violate a need for confidentiality imposed by law or on the facts of a particular circumstance.

(g) Logs shall be also posted on the website at the start of each business day, but each public official subject to this section is encouraged to post his or her log as far in advance as possible.

## **67.33-429-6 Sources of Outside Funding**

### **ARTICLE IV POLICY IMPLEMENTATION**

#### **67.34 The Sunshine Commission**

(a) The Commission shall not be subject to the oversight of any other entity of City government. The Commission shall comprise:

- Seat #1, an attorney nominated by the No. California Chapter of the Society of Professional Journalists.
- Seat #2, an attorney nominated by the First Amendment Coalition.
- Seat #3, a journalist nominated by the No. California Chapter of the Society of Professional Journalists.
- Seat #4, a journalist who is with a racial/ethnic minority-owned news outlet and/or is from a racial/ethnic minority or lesbian/gay/bisexual/transgender/queer community, nominated by the No. California Chapter of the Society of Professional Journalists.
- Seat #5, a journalist nominated by the Media Alliance.
- Seat #6, a journalist nominated by the Pacific Media Workers Guild (The News Guild-CWA).
- Seat #7, a member of the public nominated by the local chapter of the League of Women Voters.
- Seat #8, a member of the public who has experience in information technology, nominated by the Freedom of the Press Foundation.
- Seat #9, a member of the public nominated by the Coalition for San Francisco Neighborhoods.
- Seat #10, a member of the public who has experience in consumer advocacy.
- Seat #11, a member of the public who has a physical handicap as defined by the Federal Americans with Disabilities Act.

The Board of Supervisors shall appoint the community-based nominee(s) unless it finds, by clear and convincing evidence, that a specific nominee is not qualified to serve on the Commission.

The Commission shall appoint a full-time, Commission-dedicated staff including but not limited to an executive director/legal counsel to perform administrative duties supporting the Commission's mission, goals and objectives, and to provide guidance on open-government law and public-meeting procedures and processes, and a clerk to perform clerical duties as directed by the Commission.

The Commission may hire outside counsel on an as-needed, competitive-bid basis.

(b) The terms of the appointive members shall be staggered, with the terms of members in odd-numbered Commission seats starting and ending in odd-numbered years and the terms of members in even-numbered Commission seats starting and ending in even-numbered years.

#### **67.35 Responsibility for Administration**

#### **67.36 Provision of Services to Other Agencies; Sunshine Required.**

#### **67.37 Open Government Declaration**

Annual Sunshine training shall be provided by the City Attorney's Office in consultation with the Sunshine Commission. All materials and training plans shall be approved by the Sunshine Commission annually.



### **67.38 Role of the City Attorney [Moved from 67.21(h-j)]**

(b) All Communications With the City Attorney's Office Regarding the Sunshine Ordinance, California Public Records Act, the Brown Act, and Other Open Government Law, Including Requests for Opinion, Opinions and Advice, Shall Be Fully Disclosable Public Records; The City Attorney Shall Not Have a Policy to Provide Oral Advice in Lieu of Written Advice Notwithstanding the attorney-client privilege and work-product protections that might otherwise be applicable, all written or oral communications with the City Attorney's Office with regard to this Ordinance, and obligations under the California Public Records Act, the Brown Act, and any other applicable open government law, including petitions, requests for opinion, opinions and advice, shall be fully disclosable public records and public information. The City Attorney's Office shall not have a policy to provide oral advice in lieu of written advice to hinder disclosure under this provision

(e) Every year the Supervisor of Public Records and Supervisor of Public Forums shall prepare a tally and report of every petition brought before it for access to records and public forum questions. The report shall identify the record or records sought, the custodian of those records, the public forum question presented, the ruling of the Supervisor of Public Records and Supervisor of Public Forums, whether any ruling was overturned by a court and whether each order was complied with. The report shall also summarize any court actions during that period regarding petitions the Supervisor of Public Records or Supervisor of Public Forums have decided as well as court actions regarding or implicating the Sunshine Ordinance. The report shall also include copies of all rulings made by the Supervisor of Public Records and Supervisor of Public Forums and all opinions issued.

### **67.39 Hearings and Orders of Determination**

(a) The Commission shall conduct administrative hearings on complaints of alleged violations this Ordinance, the California Public Records Act, or the Brown Act. The Commission may issue Orders of Determination following a hearing on a particular complaint. If the Commission determines that a violation of the Ordinance, the California Public Records Act or the Brown Act has occurred, it shall issue an Order of Determination with written findings of fact and law. The Sunshine Commission shall inform the petitioner or complainant, as soon as possible but in no case later than forty-five (45) days after the petition or complaint is filed, of its determination on whether the record requested, or any part of the record requested, is disclosable or there has been a denial of public access to a meeting.

The Order of Determination shall issue to the Complainant and the Respondent and shall be posted on the Sunshine Commission's website.

(b) The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmation, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(c) An authorized representative of the respondent who has personal knowledge of the facts alleged in the complaint shall attend each Commission hearing to explain the response to the request for access to public meetings or public information, as well as provide a detailed written description of the records search conducted, and the statutory or case law basis for any decision to withhold or redact the records requested, or to bar public attendance at and/or participation in the meeting(s).

(d) When requested by petition or complaint, the Commission may conduct a hearing into an allegation that a policy body, advisory body or passive meeting body violated a provision in Article II or in the Brown Act applicable to that body. An authorized knowledgeable representative of that body shall attend every Commission hearing on the complaint and the basis for the body's conduct therein. The same authorized knowledgeable representative shall attend all these proceedings to maintain consistency. Absence of knowledge and/or failure of

attendance by the authorized representative, shall constitute a violation by the head of the body involved.

**67.40 Administrative Enforcement Provisions [Incorporates 67.21(e-g)]**

(a) The Sunshine Commission shall immediately order the person or entity to comply with an Order of Determination. If the entity fails to comply within five (5) business days, the Commission may refer the matter to the San Francisco Ethics Commission, Board of Supervisors, District Attorney or the California Attorney General or other appropriate enforcement body who may take whatever measures they deem necessary to effect compliance with the Order of Determination.

(b) Upon issuing an Order of Determination, the Commission may require the governing entity to which the person or entity that has violated the Ordinance reports or heads, to schedule at the governing entity's next regularly scheduled meeting the Order of Determination for its discussion and response.

(c) Upon issuing an Order of Determination, the Commission may require the governing entity in violation to post the Order of Determination prominently on the entity's website for 60 days or until the matter is concluded, whichever occurs later.

(d) The administrative remedies provided shall in no way limit the availability of other administrative remedies nor limit the availability of judicial remedies otherwise available. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an Order of Determination, the Superior Court of San Francisco shall have jurisdiction to order compliance.

(e) Except as provided herein, an Order of Determination shall be evidence of a violation of this Ordinance or other applicable open government law in any other administrative or judicial proceeding, and factual findings made during the hearing before the Commission shall be reviewed for abuse of discretion.

**67.4134 Willful Failure Shall Be Misconduct**

Expands the respondent to include any City employee or City office.

**67.42 Referrals and Enforcement by the Ethics Commission**

(a) The Ethics Commission is authorized to enforce the Orders of Determination and findings of Official Misconduct. Upon referral the following procedures and standards shall apply.

(1) The Chair or Vice-Chair of the Sunshine Commission and the underlying complainant shall both be considered the "complainant of record" for purposes of Ethics Commission investigations and enforcement of Orders of Determination.

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

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

(4) The Sunshine Commission may, in a referral of a finding of official misconduct, recommend the level of fines to be imposed.

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

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

(b) The Commission's Order of Determination and, as applicable, finding of willful violation constituting official misconduct, shall be evidence of a violation of this Ordinance or other applicable open government law in any Ethics Commission investigation or proceeding.

Factual findings made during Commission hearings and in its orders shall be reviewed only for abuse of discretion.

#### **67.4335 Public Enforcement Provisions**

(a) In any court proceeding to enforce this Ordinance there shall be a presumption that the information sought is disclosable, that any meeting or portion of a meeting should be open to the public as well as the records of such meeting, and the burden shall be upon the respondent to prove with specificity that they have fully complied with the Ordinance or that an exemption to or prohibition of disclosure applies. [Incorporates 67.21(g)]

(b) Exhausting the Commission complaint and hearing procedures is not a prerequisite to filing an action under this subsection.

(c) Actions taken by a policy body in violation of this Ordinance are null and void if any person proceeding in court for injunctive relief, declaratory relief or writ of mandate to obtains a judicial determination. A policy body may cure or correct an action so challenged.

(d) Prior to any action commenced to nullify, a demand on the policy body to cure or correct the action alleged to be in violation of this Ordinance must be made. The demand must be in writing within 30 calendar days, and clearly describe the challenged action of the policy body and the nature of the alleged violation. The policy body has 20 business days to cure or correct the challenged action, or inform the challenger in writing or by inaction that it will not cure or correct.

(4) The challenger may file a complaint with the Sunshine Commission if no action is taken within 45 days. If the Sunshine Commission finds violation the challenger may commence court proceedings. The Sunshine Commission may not void an action of a policy body, but filing a complaint and exhausting the Commission's procedures is a prerequisite to filing an action.

(g) Any person may institute proceedings for enforcement and penalties before the Ethics Commission if 60 calendar days after an Order of Determination if the entity has not complied.

(h) The Ethics Commission shall conduct proceedings in the same manner and under the same rules as a referral from the Sunshine Commission for enforcement. The Sunshine Commission shall not be considered a "complainant of record" in such proceedings.

#### **67.4436 Sunshine Ordinance Supersedes Other Local Laws**

Adds meetings to the provision for public records. When a provision in the Brown Act or the California Public Records Act (CPRA) calls for greater public access and/or transparency than does a relevant provision in the City Charter, the Brown Act or CPRA provision shall prevail.

#### **67.4537 Severability**

