

Public Meetings
Comparison of Local Ordinances, City of San Jose Practice, Related Reform Referrals
8/30/2006 - Draft

<u>Provision</u>	<u>Comparison of other Ordinances, City of San Jose practice, and Related Council Reform Referrals</u>
<p>2.1 Definition of Meetings (Content from Milpitas Ord, Section 2, I-310-2.10.)</p>	<p>There is not a great deal of difference in how the various ordinances define meetings. The Milpitas and San Francisco ordinances describe meetings in the same way, with the exception of a variation in subsections B(1) and B(4)(d) below. The Oakland and Benicia ordinances provide more clarity and specificity within each subsection compared to the Milpitas and San Francisco ordinances, but the general scope is consistent. (Only variations in the ordinances are noted.)</p> <p>The ordinances also use different terms for "policy body". For example, Oakland uses the term "local body". Here, in the interest of clarity, we use the term "policy body" throughout.</p>
<p>A. "Meeting" shall mean any of the following:</p>	
<p>1. A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate City business.</p>	<p>The Oakland and Benicia ordinances are more specific, clarifying that a meeting is a congregation of a majority of a policy body at which any item within the <u>body's</u> subject matter jurisdiction (as opposed to City business) is heard, discussed, or deliberated. (Oakland Ord., §2.20.020(F)(1); Benicia Ord., §4.04.050(F)(1).)</p> <p>The San Francisco ordinance is more expansive and provides less specificity, stating that a meeting is simply a congregation of a majority of a policy body at the same time and place, without the clarification that it is a congregation of a majority to discuss or deliberate City business. (SF Ord., §67.3(b)(1).)</p> <p><u>Current Practice</u> Consistent with the Brown Act, the City of San Jose defines a meeting to include any congregation of a majority of the members of a policy body at the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the body or the local agency. (Gov't. Code, §54952.2(a).)</p>
<p>2. A series of gatherings, each of which involves less</p>	<p>The Oakland and Benicia ordinances combine this subsection with a variant of the following</p>

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<p>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.</p>	<p>subsection to address serial meetings in one part. San Jose, following the Brown Act, similarly defines a meeting to encompass serial meetings, as described by the Oakland and Benicia ordinances. (Gov't. Code, §54952.2(b).)</p> <p><u>Current Practice</u> The Brown Act specifically prohibits any use of direct communication, intermediaries or technological devices by a majority of the members of a legislative body to develop a collective concurrence as to action to be taken. (Gov. Code § 54952.2). Such a series of separate discussions by individual members of a legislative body regarding matters within their jurisdiction without actually coming together and meeting is referred to as a <i>seriatim</i> meeting. This type of prohibited meeting can result from a series of communications of individual members or groups of members that are less than a quorum which then result in involving a majority of the members of the legislative body.</p>
<p>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 thereon.</p>	<p>The Oakland and Benicia ordinances are more specific as to what conduct is encompassed. They provide that meetings under this subsection are: "Any use of direct communication, personal intermediaries or communications media to cause a majority to become aware of the item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon." (Oakland Ord., §2.20.020(F)(2); Benicia Ord., §4.04.050(F)(2).)</p> <p>In contrast, San Francisco and Milpitas use the more ambiguous language that a meeting exists if these communications simply <u>could</u> permit such a result. (SF Ord., §67.3(b)(3).</p>
<p>4. "Meeting" shall not include any of the following:</p>	
<p>B. 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</p>	<p>Oakland and Benicia exclude from meetings any "individual contacts or conversations between a member of a [policy] body and any other person," without the qualifier that these contacts are covered only if the member does not solicit or encourage conveyance of the views of other members. (Oakland Ord., §2.20.020(F)(4)(a); Benicia Ord., §4.04.050(F)(1).)</p>

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<p>matter of the contact or conversation and in which the member does not solicit or encourage the restatement of views of the other members.</p>	
<p>C. 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.</p>	<p>Oakland and Benicia further state that at conferences, and at social, recreational, educational or ceremonial events, a majority must not discuss business within the <u>body's</u> subject matter jurisdiction (as opposed to the City's subject matter jurisdiction), so as not to trigger the definition of a meeting. (Oakland Ord., §2.20.020(F)(4)(b)-(c); Benicia Ord., §4.04.050(F)(2)-(3).)</p>
<p>D. 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 the policy 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</p>	<p>See above for Oakland and Benicia regarding social, recreational or ceremonial occasions.</p> <p>The language in this subsection comes directly from the San Francisco Ordinance. Oakland and Benicia place the second sentence regarding meal gatherings in the section that defines what constitutes a meeting, which fits more logically than placing it in the section on what does not constitute a meeting. (Oakland Ord., §2.20.020(F)(3); Benicia Ord., §4.04.050(F)(3).)</p>

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purchase or some other payment of value.	
E. The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.	<p>Oakland and Benicia further clarify that the non-committee member must not participate personally or through representatives. (Oakland Ord., §2.20.020(F)(4)(d); Benicia Ord., §4.04.050(F)(4).)</p> <p>San Francisco's ordinance does not include this provision.</p> <p><u>Current Practice</u> This provision is taken from the Brown Act, and thus, also reflects San Jose's practice.</p>
2.2 Definition of Policy Body (Content from Milpitas Ord, Section 2, I-310-2.10(E).)	
"Policy bodies" shall mean the City Council, Redevelopment Agency, standing subcommittees of the City Council, Redevelopment Agency or any Commissions, Panels or ad hoc committees of the City Council, Redevelopment Agency or any Commissions, City created task forces, and all City Commissions or Boards. Policy bodies shall not include a committee that consists solely of employees of the City of San José.	<p>San Francisco also includes any committee or body created by ordinance or resolution of the Board of Supervisors and any advisory board, commission, committee or body "created by the initiative of a policy body." (Section 67.3(d)(3)-(4).) Furthermore, San Francisco includes 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." (Section 67.3(d)(7).) The Milpitas Ordinance is broader than all other ordinances as well as the Brown Act in that it includes ad hoc committees of the City Council, rather than limiting the definition to standing committees.</p> <p>Benicia and Oakland provide more clarity with respect to what Milpitas terms "City created task forces." These ordinances state that a "policy body" includes, in addition to the City Council and Redevelopment Agency, commissions, boards, task forces and committees which are established by City Charter, ordinance, or by motion or resolution of the City Council or Redevelopment Agency. (Oakland Ord., §2.20.030(E)(2); Benicia Ord., §4.04.050(B)(2).)</p> <p>Oakland also provides that "any advisory board, commission or task force created and</p>

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	<p>appointed by the Mayor and which exists for longer than a 12-month period" is included. (Section 2.20.030(E)(3).) Benicia adds to that the same bodies "created as a result of Federal, State or local grants" are "policy bodies". (Section 4.04.050(B)(2).)</p> <p>Contra Costa County takes a more general approach, simply stating that a "policy body" means the Board of Supervisors or "any permanent or temporary board, committee or commission under the authority of the Board of Supervisors." (Section 25-2.202(a).)</p> <p>All ordinances expressly state that committees, congregations or gatherings consisting solely of City employees are not encompassed in the definition of "policy body."</p> <p><u>Current Practice</u> San Jose, defines "policy body" means as: the City Council; Redevelopment Agency Board; boards, commissions, committees or other bodies created by charter, ordinance, resolution or other formal action of a policy body; standing committees of policy bodies; certain entities created by a policy body to exercise lawfully delegated authority; and certain entities which receive funds from the local agency and where the policy body appoints one of its members as a voting member of the board. (Gov't. Code, §54952.)</p>
<p>2.3 Passive Meetings (Content from San Francisco Ord., Sections 67.3(c) and 67.4)</p>	<p>Only the San Francisco, Contra Costa County and Oakland ordinances cover meetings of bodies other than policy bodies, imposing modified notice and other requirements on these other bodies. These ordinances are significantly different from each other in terms of the scope of bodies covered.</p> <p><u>Current Practice</u> There is no similar provision in the Brown Act.</p>
<p>A. "Passive meeting body" shall mean:</p>	<p>Oakland's modified rule apply only to meetings of the governing board of a private entity that owns, operates or manages property in which the City or Redevelopment Agency has or will have an ownership interest and on which property the private entity performs a</p>

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	governmental function or service. (Section 2.20.040(B).) There is no overlap with the San Francisco ordinance.
1. Advisory committees created by the initiative of a member of a policy body, the Mayor, a Department Head.	Contra Costa County is more limited in scope. It allows public access to meetings of "permanent advisory committees," which it defines as "a permanent committee created by the County Administrator, or a department head to advise the County Administrator or a department head." (Sections 25-2.202(d) and 25-2.204(d)(2).)
2. Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues.	See above.
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.	Contra Costa County's provision is substantially the same.
4. "Passive meeting body" shall not include a committee that consists solely of employees of the City created by the initiative of a member of a policy body, the Mayor, or a Department Head.	Consistent with this provision in the San Francisco ordinance, Contra Costa County also excludes committees made up entirely of staff.
5. Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City when such committee is reviewing, developing, modifying, or creating city policies or procedures related to the public health, safety, or welfare or relating to services for the homeless.	Contra Costa County does not provide any exceptions to the exclusion of staff committees.
B. 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.	Contra Costa County's provision is substantially the same, although more succinct. It simply states that these gatherings "shall be accessible upon inquiry or request to the extent possible consistent with the facilities and the purpose of the gathering. Such gatherings need not be noticed formally, conducted in any particular space open to spectators or provide for comment by spectators." (Section 25-2.204(e).) Oakland includes provisions

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	<p>similar to Contra Costa County's. (Oakland Ord., 2.20.040(B)(2)-(3).)</p> <p>Significantly, Contra Costa includes the qualification that such gatherings "may exclude the public if their purpose is to discuss information which is privileged by a specific State or Federal statute." (Section 25-2.204(f).) San Francisco omits this language.</p>
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.	See above. Contra Costa County and Oakland do not specify that the notice must be provided on the City website. It is unclear whether the San Francisco notice requirement is formal or informal and whether it entails such items as timing. Contra Costa County also does not specify that any agenda prepared shall be accessible as a public record. Even without this provision, under state law, the agenda would be 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	Contra Costa County and Oakland include a substantially similar provision.
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 business of the gathering	Contra Costa County and Oakland include a substantially similar provision.
4. Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.	Contra Costa County and Oakland do not address this issue.
5. Gatherings subject to this subsection include the following: advisory committees or other	Contra Costa County is more limited in scope. It allows public access to the following gatherings:

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<p>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.</p>	<p>(1) Meetings of "permanent advisory committees," which it defines as "a permanent committee created by the County Administrator, or a department head to advise the County Administrator or a department head." (Sections 25-2.202(d) and 25-2.204(d)(2).) (2) Social, recreational, or ceremonial occasions sponsored by or for the policy body, to which a majority of the body has been invited.</p> <p>Oakland is also more limited in scope. It allows modified public access to meetings of the governing board of a private entity that owns, operates or manages property in which the City or Redevelopment Agency has or will have an ownership interest and on which property the private entity performs a governmental function or service. (Section 2.20.040(B).)</p>
<p>6. Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.</p>	<p>Contra Costa County and Oakland do not address this issue.</p>
<p>C. To the extent not inconsistent with state or federal law, a policy body shall include in <i>any</i> contract with an entity that owns, operates or manages <i>any</i> 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</p>	<p>Contra Costa County does not address this issue.</p> <p>This provision is similar to that in the Oakland ordinance.</p>

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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	
2.4 Meetings to be Open and Public; Application of Brown Act (Content from Milpitas Ord., Section I-310-2.20 and San Francisco Ord., Section 67.5.)	
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 chapter. In case of inconsistent requirements under the Brown Act and this chapter, the requirement, which would result in greater or more expedited public access, shall apply.	<p>Benicia and Oakland also include a substantially similar provision. (Benicia Ord., §4.08.010; Oakland Ord., §2.20.050.)</p> <p>Contra Costa County, under this heading, includes other kinds of meetings that are to be "open and public" under the rules set forth in its Ordinance, which overlap some rules under the Brown Act. (Section 25-2.204.) Its modified rules are set forth in Section 25-2.205.</p> <p>Current Practice Meetings of policy bodies in San Jose are open and are public and are governed by the Brown Act. (Gov't. Code, §54953(a).)</p>
2.5 Conduct of Business; Time and Place for Meetings (Content from San Francisco Ord., Section 67.6)	
A. Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.	<p>Oakland includes a similar provision. (Section 2.20.060(a).)</p> <p>Benicia limits the applicability of this subsection to "every body established by city council ordinance." (Section 4.08.040(A).)</p> <p>Milpitas and Contra Costa do not include this provision, but they would be governed by the Brown Act.</p> <p>Current Practice The Brown Act requires each policy body, except for advisory bodies <u>and standing</u></p>

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	<p><u>committees</u>, to establish a time and place for holding regular meetings. (Gov't. Code, §54954(a).)</p> <p>Council <u>Resolution 73321</u> Council Rules of Conduct established time and place for Council meetings.</p>
<p>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 of San José 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.</p>	<p>Oakland and Benicia include different criteria for when a meeting may be held outside of city limits. Pursuant to these ordinances, regular and special meetings shall be held within the city, except to do any of the following: comply with state or federal law, or attend a judicial or administrative proceeding to which the policy body is a party; inspect real or personal property which cannot conveniently be brought to the city, provided the topic of the meeting is limited to items directly related to the real or personal property; participate in meetings or discussions of multi-agency significance that are outside the city; meet outside the city 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. (Oakland Ord., §2.20.060(B); Benicia Ord., § 4.08.040(B).)</p> <p>Milpitas and Contra Costa County do not include a similar provision, but they would be governed by the Brown Act.</p> <p><u>Current Practice</u> The Brown Act, which applies to San Jose, includes a substantially similar provision to that in the Oakland and Benicia ordinances. (Gov't. Code, §54954(b).)</p>
<p>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.</p>	<p>Benicia provides that if a regular meeting 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 six days in advance. (Section 4.08.040(D).) Oakland's provision is exactly the same as Benicia's except that Oakland requires five days notice for a special meeting under this subsection. (Section 2.20.060(C).)</p>

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	<p>Milpitas and Contra Costa County do not include a similar provision.</p> <p><u>Current Practice</u> The Brown Act does not include this specific requirement.</p>
<p>D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to 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.</p>	<p>The section to which the San Francisco ordinance refers, Section 67.6(d)(4) does not exist; thus, it is unclear what meetings the Ordinance intends to encompass in this subsection. For that reason, it is also impossible to determine whether the provisions in other ordinances are comparable.</p> <p>Contra Costa County's only reference to notice for "passive access gatherings," as defined in its ordinance, is that such gatherings need not be formally noticed. (Section 25-2.204(e).)</p> <p>Oakland's ordinance also covers some bodies in addition to policy bodies. With respect to the former, those meetings need not be formally noticed, although the time, place and nature of the gathering must be disclosed upon inquiry and any agenda actually prepared must be made available on request. (Section 2.20.040(B)(1).)</p> <p>As previously discussed, the other ordinances and the Brown Act do not include the concept of a passive meeting body.</p>
<p>E. Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article 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</p>	<p>The section to which the San Francisco ordinance refers, Section 67.6(d)(4) does not exist; thus, it is unclear what meetings the ordinance intends to encompass in this subsection. For that reason, it is also impossible to determine whether the provisions in other ordinances are comparable.</p> <p>Contra Costa County's only reference to notice for "passive access gatherings," as defined in its ordinance, is that such gatherings need not be formally noticed. (Section 25-2.204(e).)</p> <p>Oakland's ordinance also covers some bodies in addition to policy bodies. With respect to</p>

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<p>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 2.6 (C) of this article in the place used by the policy body which it advises, is required.</p>	<p>the former, those meetings need not be formally noticed, although the time, place and nature of the gathering must be disclosed upon inquiry and any agenda actually prepared must be made available on request. (Section 2.20.040(B)(1).)</p> <p>As previously discussed, the other ordinances and the Brown Act do not include the concept of a passive meeting body.</p>
<p>F. 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 2.5 (C), and mailed notice if sufficient time permits.</p>	<p>The other ordinances do not include this specific requirement.</p>
<p>2.6 Agenda Requirements; Regular Meetings (Content from Milpitas Ord., Section I-310-2.30)</p>	
<p>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 action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet website at least 72 hours before a regular meeting.</p>	<p>San Francisco's ordinance is identical. (Section 67.7(a).)</p> <p>Oakland requires 10 day advance notice for regular meetings of City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission and their standing committees by posting the agenda in a public location and on the appropriate website and filing the agenda with the City Clerk and Oakland main library. (Section 2.20.080(A).)</p> <p>Contra Costa requires "staff material," consisting of agendas of policy body meetings, staff reports and other material prepared or forwarded by staff which provide background information and recommendations regarding agenda items, to be made available to the public 96 hours before a scheduled meeting. (Section 25-2.206(a).)</p>

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	<p>Benicia requires 6 day advance notice by posting a copy of the agenda in a public location and on the city's website and filing a copy of the agenda with the City Clerk and the Benicia Public Library no later than 5 days before the date of the meeting. (Section 4.08.050(A).)</p> <p><u>Current Practice</u> The Brown Act requires that at least 72 hours before a regular meeting, the legislative body shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting.</p>
B. At least 8 calendar days before a regular City Council meeting, a preliminary agenda shall be posted containing a meaningful description of each item of business to be transacted or discussed at the meeting. These agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, the preliminary agenda shall be posted on the City's Internet website at least 8 calendar days before the regular City Council meeting. City staff shall make a good faith effort to make accompanying staff reports available at this time.	<p>No other ordinances have any similar provision.</p> <p>Reform Referrals (Public Information Reform #4, Government Accountability Reform #11, and Government Accountability Reform #4)</p> <ol style="list-style-type: none"> 1. A detailed accounting of all City contracts and expenditures of \$1 million or more shall be made available to the City Council and public, on-line, no later than 2 weeks prior to being heard. Otherwise, a 2/3 majority vote of the Council would be required to hear an item that was received less than 2 weeks prior to the hearing. 2. City Manager and Department Staff Reports for expenditures of \$1 million or more and "Significant Public Interest" agenda items shall provide the following: (a). a new section entitled, "Policy Alternative Recommendations" that lists all the viable city staff options that have been discussed, but were not recommended by the City Manager or Department staff; (b). a brief description of the reasons the alternative was rejected, (c). a cost-benefit analysis and economic impact report to include, but not limited to, the following: how the expenditure aligns with and affects the City's policy goals, fiscal priorities, long term strategy, and economic development goals and priorities. 3. Require every Staff memo to have a City staff contact for public questions.
C. A description is meaningful if it is sufficiently	San Francisco's ordinance is identical. (Section 67.7(b).)

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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.	No other ordinances have any similar provision.
D. The agenda shall specify the time and location of the regular meeting and shall be posted at locations that are freely accessible to members of the public.	San Francisco's ordinance is identical. (Section 67.7(c).)
E. 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	San Francisco's ordinance is identical. (Section 67.7(d).) Oakland and Benicia provide that 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: (a) the need to take immediate action on the item is

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meeting concerning the matter raised by such testimony.	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. (Oakland Sunshine Ordinance Section 2.20.080(D); Benicia Sunshine Ordinance Section 4.08.050(C).)
F. Notwithstanding subdivision (E), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:	San Francisco's ordinance is identical. (Section 67.7(e).) Oakland and Benicia provide that a local body may take action on items not appearing on a posted agenda only under the circumstances specified below. (Oakland Sunshine Ordinance Section 2.20.080(E); Benicia Sunshine Ordinance Section 4.08.050(D).)
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.	San Francisco's ordinance is identical. (Section 67.7(e)(1).) Oakland and Benicia provide: 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. (Oakland Sunshine Ordinance Section 2.20.080(E)(1); Benicia Sunshine Ordinance Section 4.08.050(D)(1).)
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	San Francisco's ordinance is identical. (Section 67.7(e)(2).) Contra Costa provides that a policy body may, by a 3/4 vote, waive the time limits when, in its judgment, it is essential to do so, providing that the County Administrator, appropriate Department Head or staff member furnishes to the Board of Supervisors or other policy body a written explanation as to why the material could not be provided to the Board or other policy body and the general public within the above time limits. (Section 25-2.206(a).) Oakland and Benicia provide: The matter is urgent and upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-

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<p>posted as specified in subdivision (A).</p>	<p>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. (Oakland Sunshine Ordinance Section 2.20.080(E)(2); Benicia Sunshine Ordinance Section 4.08.050(D)(2).)</p>
<p>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.</p>	<p>San Francisco's ordinance is identical. (Section 67.7(e)(3).)</p> <p>Contra Costa permits 24 hours notice when the agenda item has been added to the agenda at a previous meeting of the policy body not more than seven days prior to the scheduled meeting. (Section 25-2.206(a).)</p>
<p>G. Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:</p> <p>KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE 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 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.</p>	<p>San Francisco's ordinance is substantially identical. (Section 67.7(g).)</p> <p>San Jose does not have an "open government commission".</p>

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H. Each agenda of a policy body covered by this Open Government Ordinance shall include the address, area code and phone number, fax number, e-mail address, and contact person for the Open Government Commission. Information on how to obtain a free copy of the Open Government Ordinance shall be included on each agenda.	San Francisco's ordinance is substantially identical. (Section 67.7(h).)
2.7 Notice Requirements (Content from San Francisco Ord., Section 67.7-1)	Milpitas and San Francisco have virtually the same provisions (Milpitas, Section, I-310-2.30 and San Francisco, Section 67.7-1)
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.	Oakland, Milpitas and Benicia provide similar provisions for public hearing and/or agenda postings. Oakland, Section, 2.20.030 (A); Milpitas, Section, I-310-2.30 (A); Benicia Section 4.08.120 (A).
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.	Milpitas has the same provision (Milpitas, Section 4.08.120 (B).) Benicia provides similar requirements for agendas.
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	Milpitas has the same provision. Milpitas, Section, I-310-2.30 (C)

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<p>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.</p>	
<p>2.8 Special Meetings (Content from Oakland Ord., Section 2.20.070.</p>	
<p>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:</p> <ol style="list-style-type: none"> 1. posting a copy of the agenda in a location freely accessible to the public at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; 	<p>Milpitas has the following provisions: 1. that notices and agendas for regular and special meetings shall include the following notice: KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE 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 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. (Sec 1-310-2.30-3g) 2. In the case of closed session special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section I-310-2.60 (Sec 3.310-2.100).</p> <p>SF has a provision for holding special meetings in alternate places in the case of an emergency. 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. (Sec 67.6d) Additionally, they have a provision that a notice of a special meeting shall be delivered personally, or by mail, e-mail, or facsimile, at least 72 hrs before said meeting. (Sec 67.6.f) Agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf,</p>

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	<p>telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.</p> <p>Benicia has a provision addressing notice and agenda requirements for Special Meetings: posting agenda in a location freely accessible to public at least 72 hrs prior to meeting (Sec 4.08.060). Benicia also has provisions for emergency (dire situations) meetings: legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hr posting requirement (Sec 4.08.030 (1b1)).</p> <p>Contra Costa County does not include provisions that specifically address Special Meetings. Presumably the requirements of the Brown Act would apply.</p> <p><u>Current Practice (2.8.A)</u> Consistent with Council <u>Resolution 73321</u> Council Rules of Conduct. A special meeting of the Council may be called at any time by the Mayor or majority of the Council in accordance with the Brown Act.</p>
<p>2. filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and, 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 48 hours (excluding Saturdays, Sundays and holidays)</p>	<p>Benicia requires filing a copy of the agenda with the Office of the City Clerk 48 hours prior to a special meeting; delivering copy of agenda to local newspapers at least 24 hrs prior; posting agenda on web site 72 hrs prior to meeting. (Sec 4.08.060)</p> <p>San Francisco, Contra Costa and Milpitas do not have this provision.</p>

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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. Policy bodies specified in Section 2.2 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 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 failure shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.	See Benicia Sec 4.08.060-3b; similar wording. Benicia states that all agendas shall be posted on the cities web site and the city's cable channel and available at the Benicia Public Library (Sec 4.08.070) San Francisco, Milpitas, Contra Costa County, do not have this provision.
C. 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 (10) days prior to the special meeting. This ten (10) day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of	See Benicia Sec 4.08.060-3c; similar wording.

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the local body occur.	
D. 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.	See Benicia Sec 4.08.060-3d; similar wording. <u>Current Practice</u> Council <u>Resolution 73321</u> Council Rules of Conduct indicates any meeting of the Council may be cancelled in advance by a majority of 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.
E. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this ordinance if the special meeting is called to consider any of the items that were included in the notice for such regular meeting	See Benicia Sec 4.08.060-3e; similar wording.
2.9 Barriers to Attendance Prohibited (Content from Milpitas Ord., Section I-310-2.120)	
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 City Council, a board or commission, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any	San Francisco has similar wording vis-à-vis physical disabilities. It also contains additional provisions for persons with severe allergies, environmental illnesses, etc; has provisions for providing translators & sign language translators. (Sec. 67.13.a-d) Benicia has similar wording vis-à-vis physical disabilities. (Sec 4.08.080) Contra Costa has similar wording (Sec. 25-2.602) Oakland has similar wording. (Sec 2.20.140)

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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 policy body that meets in City Hall and televises its meetings, shall provide for participation by members of the public via telephone "bridge lines" for public comment on each item in the same manner as if the member of the public were in actual physical attendance at the meeting. Each policy body subject to this provision may develop reasonable procedures for its implementation.	There is no similar provision in the Benicia, San Francisco, Oakland, Contra Costa ordinances.
2.10 Recording and Photography (Content from Milpitas Ord., Section I-310-2.130)	
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.	San Francisco, Benicia, Oakland, and Contra Costa all have provisions to allow recording, photography and broadcast of public proceedings. Reform Referral City Council approved adding to the Taskforce Work Plan a discussion of what is filmed and archived on the City's television station (i.e. Planning, Commission, other committees). May 23- 2006, Council Meeting, Item 3.4, Meeting Synopsis.
B. All policy bodies shall audio record each regular and special meeting. Each such audio recording,	Oakland has this provision (Sec 2.20.160b) Benicia has this provision (Sec 4.08.080)

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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. The audio and/or video record shall be kept indefinitely or as current technology allows. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. Audio records of audio taped meetings shall be provided upon request and payment for the actual cost of the recording. Requests shall be made through the City Clerk.	San Francisco has this provision (Sec 67.14b)
2.11 Public Testimony (Content from Milpitas Ord., Section I-310-2.140)	
A. Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on any item, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section I-310-2.30(e) of this chapter.	San Francisco, Oakland, Milpitas, and Benicia contain similar/same provision.
B. Every agenda for 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.	San Francisco, Oakland, Milpitas, and Benicia contain similar/same provision.
C. Each policy body shall adopt a rule providing	The San Francisco, Oakland, and Milpitas provisions regarding public testimony are

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<p>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 a maximum of three minutes. However, the Chair of the meeting has discretion to reduce the speaking time in situations where there are a large number of persons who wish to speak on a particular agenda item. Time limits shall be applied uniformly to members of the public wishing to testify. The Chair of the policy body shall accept public testimony in a fair and evenhanded way, without manipulation in the order of speakers.</p>	<p>substantially the same as the Brown Act. In these three jurisdictions, the speakers could have either 2 or 3 minutes during public comment for an item and this time limit was required to be applied <u>uniformly</u> for all speakers.</p> <p>In Oakland, the Council could give the speaker additional time if he or she wishes to speak on multiple items.</p> <p>In Milpitas, the Council may reduce the amount of time per speaker from 3 minutes if there are a large number of speakers.</p> <p>In Benicia, the speaker has 5 minutes on any item. If a group had the same views, the group could designate a spokesperson and the spokesperson had 15 minutes to present their side with 5 minutes for rebuttal. A speaker on multiple items may also have up to 10 minutes if speaking on multiple items.</p> <p><u>Current Practice</u> The Council Conduct Resolution gives the Mayor the discretion to set the time limits. Current practice is 2 minutes.</p> <p><u>Reform Referrals (Neighborhood Participation Reform #4)</u> Expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group" or Community Association Designees**" (City Council Policy 6-30) or those subject to an eminent domain action, clarify the speaking time allowed to a representative from an advisory commissions, and create a strategy to address recently identified challenges to public participation for those with disabilities.</p>
<p>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</p>	<p>San Francisco, Oakland, Milpitas, Contra Costa County, and Benicia contain similar/same provision.</p>

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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.	San Francisco and Milpitas have similar/same provision. Oakland, Contra Costa, and Benicia do not have a provision that speaks to this issue.
2.12 Minutes (Content from Milpitas Ord., Section San Francisco, Section 67.16)	
A. 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	In Milpitas and Oakland, the meetings are recorded and draft minutes are available for inspection or copying upon request within 10 working days after the meeting. In Benicia, no time is specified for draft minutes except "within the shortest possible time after the meeting." In Milpitas, the officially adopted minutes are available for inspection or copying 10 business days after the meeting the minutes are adopted. In Oakland and Benicia, the officially adopted minutes are available within 5 business days after the meeting when the minutes are adopted <u>Current Practice</u> The City records, in the minutes, the attendance and business transactions for each item in an action minute format (i.e. summary of action taken). For a complete record of what transpired on any item, the City currently makes available on-line videos of all City council

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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.	meetings, including Council Committees and study sessions. <u>Reform Referral</u> City Council and committee meeting minutes must more accurately reflect the actual meeting discussions and public meeting videos should be immediately available after the meeting on the city web and for off site meetings or technical reasons not later than 3 days after the meeting.
B. 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 increased type size.	San Francisco appears to be the only jurisdictions that would make available, upon request the minutes in Braille or increased type size.
2.13 Public Comment by Members of Policy Bodies (Content from Milpitas Ord., Section San Francisco, Section 67.17)	
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	San Francisco, Oakland, Milpitas, and Contra Costa County have the same provision allowing any member of a policy body to express their views and prohibitions regarding certain privilege information.

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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.	
2.14 Conflict Disclosures (Content from Milpitas Ord. Section I-310-2.180)	
At the beginning of each City Council meeting or upon the arrival of the Mayor or Councilmember, the City Attorney shall ask the Mayor and each member of the City Council to disclose any financial or personal conflict with any item on the City Council's agenda. Pursuant to Government Code section 87105, if the Mayor or a Councilmember discloses that such a personal financial interest is present, he or she shall publicly identify the conflict or potential conflict in detail sufficient to be understood by the public, and shall recuse him or herself from taking action on the item if required to do so by law and leave the meeting room.	<p>Aside from Milpitas, the other jurisdictions do not have a conflict disclosure provision in their sunshine ordinance.</p> <p>State Law requires disclosure at the dais and that the disclosure is recorded in the official minutes.</p> <p><u>Current Practice</u> Councilmember's excuse themselves on dais before item heard. Resolution 72566: Conflict of Interest Code</p> <p><u>Reform Referral (Public Information Reform #9)</u> Any councilmember claiming a conflict of interest on a vote must publicly disclose the basis of the claim by filing a conflict of interest declaration with the City Attorney and City Clerk 24 hours prior to start of the council meeting at which the item will be heard.</p>

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Other Public Meeting Reforms

1. Provide an annual city-wide budget briefing followed by 4 budget hearings throughout San José, in order to encourage greater community contribution to established City priorities. Appropriate consideration shall be made to ensure that meetings are accessible to the residents of San José in relation to the time, date, and location of the hearings **(Neighborhood Participation Reform #2)**
2. Require the City Council and Redevelopment Agency to hold Public Priority Setting Hearings in the beginning of odd years to coincide with City Councilmember appointments to standing committees **(Neighborhood Participation Reform #3)**