CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

SUNSHINE REFORM TASK FORCE

Phase II Report and Recommendations

Open Government

June 2008

Attachment A

Phase II Report of the Sunshine Reform Task Force

to the San José City Council

August 13th, 2008

Sunshine Reform Task Force

June 9, 2008

Mayor Chuck Reed
San José City Council Members
San José City Hall
200 East Santa Clara Street, 17th Floor
San Jose CA 95113

Dear Mayor Reed and San Jose City Council Members:

The Sunshine Reform Task Force is pleased to submit to you its **Phase II Report and Recommendations** for a San Jose open government ordinance. This report contains only those recommendations that a majority of the Task Force voted to include.

These Phase II ordinance recommendations are organized according to the following topics: public records, administration and accountability, and ethics and conduct. In addition, the Task Force is submitting recommendations regarding the City's use of technology in relation to public records access. These latter recommendations are intended to provide guidance, but not to be part of the ordinance.

During the summer of 2007, the Task Force began working in sub-committees. Each of these four sub-committees was assigned one of the four topics mentioned above. The sub-committees reviewed relevant City ordinances, policies, and practices, as well as open government ordinances that have been enacted by five other local governments in the Bay area. Both the subcommittees and the Task Force as a whole also received input from City staff, the public, employee unions and other organizations regarding such significant issues as disclosure of law enforcement reports and employee disciplinary records.

I am deeply grateful for the hard work and thousands of volunteer hours of my colleagues on the Task Force. I believe also that I can speak for all the Task Force members in offering our thanks to those staff members from the City Manager's Office, Attorney's Office, City Clerk's Office, and the Redevelopment Agency who provided logistical and organizational support and answered the many questions that helped us come to the recommendations we are forwarding to the Council.

Finally, we want to thank the City Council for providing us with the opportunity to be of service to the City and its residents.

We look forward to the Council discussion on these important recommendations that we hope to be instrumental in increasing transparency in local government and the pubic decisions that affect San Jose.

Sincerely,

Ed Rast

Ed Rast, Chair

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Introduction

Background
In May 2006, the Sunshine Reform Task Force (SRTF) began working on recommendations for an open government ordinance to build on the existing culture of integrity, transparency and accountability in San Jose City government. The Task Force determined the need to take a phased approach to the complex body of work and developed its recommendations in two parallel tracks. The Task Force as a whole completed the Phase I Recommendations on the topics of Public Information, Public Meetings and Closed Session. The Phase II recommendations, which are contained in the body of this report, were drafted in subcommittees and then debated and approved by the entire Task Force.

The four Phase II subcommittees addressed: 1) Ethics and Conduct, 2) Technology, 3) Administration and Accountability, and 4) Public Records. From August 2007 through March 2008, the subcommittees formulated their Phase II recommendations and reviewed them with the entire Task Force. During their work the subcommittees reviewed Open Government policies of other jurisdictions and considered feedback from the City organization and the public. The Task Force determined that the Technology recommendations should serve as guidelines to the organization and not be part of any Open Government Ordinance. The Task Force completed its Phase II recommendations in April 2008.

From April through May 2008, staff convened an inter-departmental team to consider any policy or implementation barriers to the SRTF Phase II recommendations, and summarized its preliminary findings and recommendations in the memorandum that accompanies this report.

Public Participation
Public Participation in the Task Force's work was encouraged through several venues during its entire tenure. A public call for reform proposals was issued during the summer of 2006 and the submitted proposals were evaluated along with those received from City Council. The Task Force heard public testimony at its meetings to support meaningful public participation at each stage of the process. The Sunshine Reform Task Force web page, accessible through a link on the City's home web page, included live broadcasts and videos of meetings, agendas, reports, captioned transcripts, and meeting minutes.

Implementation
The Task Force considered the financial and administrative challenges of its recommendations and recognizes the potential for unintended consequences. The City Council may choose to implement some of the provisions on a pilot basis to allow a more complete review of their effectiveness and impacts on City resources and processes. Nevertheless, we urge the City Council to implement these provisions as soon as possible.

SUNSHINE REFORM TASK FORCE PURPOSE AND INTENT STATEMENT

The following *Purpose and Intent* statement was approved by the Task Force for inclusion in any ordinance resulting from its recommendations:

The City Council and the People of the City of San Jose find and declare that:

A. The City of San Jose's duty is to serve the public, reaching its decisions in full view of the public. The City of San Jose is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner.

B. Elected officials, commissions, boards, councils and other agencies of the City exist to conduct the people's business.

C. As government evolves, so must the laws designed to ensure that the process remains visible and open.

D. The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy.

E. The public has the right to an open and public process in all matters regarding the people's business.

F. The provisions of this Open Government Ordinance supersede any provisions of the San Jose Municipal Code that may be inconsistent with the Open Government Ordinance. Whenever a conflict in the San Jose Municipal Code is identified, the provision that would result in greater public access to public information will apply. Whenever a conflict in State law is identified, and the State law permits a local agency to legislate greater access, the provision that would result in greater public access to public information will apply. Wherever exceptions to open government provisions are specified in this Ordinance, those exceptions should be narrowly construed.

G. This Open Government Ordinance is intended to be readable and understandable by the public without having to have an attorney interpret the ordinance.

H. The provisions of this Open Government Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, will not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

I. This statement of purpose and intent should be considered and applied by the Open Government Officer and Open Government Commission in making decisions about the application of the Open Government Ordinance.

Section 5 Public Records

5.1 Public Information That Must Be Disclosed

5.1.1 Law Enforcement Information

5.1.1.010 Reports Prepared By Law Enforcement

All reports prepared by Law Enforcement, including "Police Report," "Domestic Violence Supplemental," "Property Report," "Force Response Report," "Traffic Collision Report" and "Juvenile Contact Report" (collectively referred to as "Police Reports") are public records subject to disclosure, unless a general or specific exemption listed herein applies.

5.1.1.020 General Exemptions

A. Information may be redacted from any Police Report if necessary to:

1. Protect the safety of any person;
2. Ensure the successful completion of the investigation or a related investigation;
3. Prevent the disclosure of legitimate law enforcement techniques that require confidentiality in order to be effective; or,
4. Prevent an unwarranted invasion of personal privacy.

B. Information in a Police Report may not be redacted under the privacy exemption of 5.1.1.020(A)(4) if:

1. That information was given to the police by the person who is making the request; or
2. The information pertains to the actions of a police officer in the official conduct of his or her duties; or
3. The information is required to be made public pursuant to Government Code Section 6254(f) or any other provision of State or federal law.

C. Redactions pursuant to this section must

1. Be limited to that information necessary to further the purpose of the exemption;
2. Use numerical or alphabetic designations as substitutes for names omitted, to the extent practical; and

3. Be justified in writing by reference to the pertinent exemption(s).

5.1.1.030 Specific Exemptions

A. Unless otherwise authorized by state or federal law, the following Police Reports are exempt in their entirety from disclosure:

1. A "Juvenile Contact Report."

2. A "Domestic Violence Supplemental" unless and until such report is filed with the Superior Court, in which case it should be obtained through the Court.

3. Police Reports where a person is charged with Section 220, 261, 261.5, 262, 264, 264.1, 273.5, 286, 288, 288.5, 288a or 289 of the Penal Code or an attempt to violate any of these code sections, unless disclosure would further the investigation or protect public safety.

4. Accident Reports and supplements as defined by Vehicle Code Sections 20012 and 20014.

B. Unless a report prepared by Law Enforcement is requested by a person entitled to the information under state or federal law, the following information must be redacted from any Police Report:

1. The name of any victim of any crime defined by Sections 422.6, 422.7 (hate crimes), 422.75, or 646.9 (stalking) of the Penal Code, as well as by Penal Code sections listed in 5.1.1.030(A)(3).

2. The name of any witness, juvenile or adult, unless the witness consents.

3. For any person other than an arrestee, residence address, residence telephone number or electronic email address, driver's license number, California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

4. For an arrestee, residence address, residence telephone number or electronic email address, driver's license number, California Identification Card number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

5. The name of a juvenile arrestee or suspect, unless and until the juvenile is charged and prosecuted as an adult, provided that the first name and initial letter of the last name must be substituted in the Police Report.

6. The name of any person who has been accused of a crime if that person has not been arrested or charged in connection with that crime, unless the information furthers the investigation or protects public safety.

7. Any other information that is prohibited from disclosure by state or federal law.

C. Beginning 60 days after the date of an initial Police Report, the Police Report must not be disclosed in response to a request based on a specific member of the public, specific address or other information that could be used to identify a specific member of the public or specific address. In the event the Police Report is disclosed, the appropriate information should be redacted according to the general and specific exemptions described-above.

5.1.1.040 Statistical Reports Prepared by the San Jose Police Department

The San Jose Police Department must produce:

A. A quarterly report on all stops conducted by San Jose police officers, including all traffic stops and pedestrian stops in which a person was questioned, photographed, frisked, patted down, detained, issued a citation or arrested.

For each stop, the report will include the race and ethnicity of the person stopped, some geographic designation of the location of the stop, the reason for the stop, whether a citation was issued, whether a vehicle was searched and whether consent was granted for the search, and whether an arrest occurred.

B. A quarterly report on the San Jose Department's use of force in arrests, including the race and ethnicity of the person arrested, some geographic designation of the location of the arrest, the reason for use of force by category (for example, refusal to comply with police orders, threatening behavior or language, engaged in use of force against another person, etc.) whether a warning was given prior to use of force, the type of force used by category (for example, firearms, tasers, batons, pepper spray, hands and feet, etc), and the injuries sustained by the arrested party and officer, if any.

C. The type and frequency of police statistical reports must be reviewed annually. The first annual review will take place 12 months after adoption of the public records section of the Open Government Ordinance. The review will be implemented by the Open Government Commission. In the event the Open Government Commission has not been operating for at least 6 months, the review will be implemented by the City Council.

5.1.1.050 Statistical Reports Prepared by the Independent Police Auditor

The Independent Police Auditor must maintain a report, kept separate from the personnel records of the Police Department, which reports the number and substance of citizen complaints against the Police Department or its officers, the number and types of cases in which discipline is imposed, and the nature of the discipline imposed. This record must be maintained in a format which assures that the names and other identifying information of individual officers

involved is not disclosed directly or indirectly. However, a unique numerical or alphabetical designation should be assigned to each officer who is the subject of one or more complaints, so that the public can determine whether multiple complaints have been directed at a single officer and the nature of those complaints.

5.1.1.060 Statistical Reports Prepared by the San Jose Fire Department

A. The San Jose Fire Department must produce and post on its web site a quarterly report on the following performance measures:

1. Citywide, the number of:

   a. Fires;

   b. Fire injuries;

   c. Fire fatalities; and

   d. Emergency medical responses.

2. Citywide, and by Fire Station, the percentage of time the initial responding unit arrives within 8 minutes after a 9-1-1 call is received;

3. By Fire Station, the number of:

   a. Fire emergency responses;

   b. Medical responses;

   c. Hazardous Materials Incident Team responses;

   d. Other emergency responses; and

   e. Non-emergency service calls;

4. Citywide, the percentage of fires contained in

   a. The room of origin; and

   b. The structure of origin;

5. Citywide, the percentage of fires where the cause was determined (and broken out by causal factors);

6. Citywide, the percentage of arson cases referred for prosecution;

7. Citywide, the percentage of:

   a. State-mandated fire inspections;

b. Permitted (non-mandated) fire inspections; and

c. Hazardous materials inspections.

8. Citywide, the average cost of calls per service.

B. The type and frequency of fire statistical reports must be reviewed annually. The first annual review will take place 12 months after adoption of the Public Records section of the Open Government Ordinance. The review will be implemented by the Open Government Commission, unless the Commission has not been operating for at least 6 months, in which case the review will be implemented by the City Council.

5.1.2 Other Public Information

5.1.2.010 Advice from the City Attorney's Office

Upon request, the City Attorney will release a summary document that explains any written interpretation of the California Public Records Act, the Ralph M. Brown Act or any provision of this Open Government Ordinance. This provision does not require the disclosure of the actual advice give to any client, does not require the release of the specific information that the City is alleging it should not have to release, and does not require the release of any information that the City alleges could cause substantial harm to the public.

5.1.2.020 Drafts and Memoranda

Once a proposal, initiative or other contemplated or suggested action is made public, or presented for action by any City body, agency or official, all related preliminary drafts, notes or memoranda, whether in printed or electronic form, will be subject to disclosure if they have been retained as of the time the request is made. This section does not require the retention of preliminary drafts, notes or memoranda that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice.

5.1.2.030 Litigation Material

Notwithstanding any exemptions or privileges otherwise provided by law, the following are public records subject to disclosure under this Open Government Ordinance:

A. A pre-litigation claim against the City;

B. A record previously received or created by a department in the ordinary course of business that was not protected by the attorney-client privilege when it was received or created; and

C. When a lawsuit is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party including the text and terms of any settlement.

5.1.2.040 Personnel Information

A. None of the following will be exempt from disclosure under Government Code Section 6254(c), or any other provision of California law where disclosure is not forbidden:

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

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

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

   (c) Whether currently employed in the same position for another public agency;

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

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

3. The job description of every employment classification.

4. The total compensation, by category, paid to an employee, including salary and City-paid benefits.
5. Any memorandum of understanding between the City or department and a recognized employee organization.

6. The amount, basis and recipient of any performance-based increase in compensation, benefits or both, or any bonus, awarded to any employee.

B. Misconduct of City Officials

1. The term “City Official” means the Mayor and Members of the City Council; any appointees of the City Council, Mayoral or Council unclassified staff members, Redevelopment Agency Board Member, the City Manager and his or her Assistant City Manager, Deputy City Managers, and heads of offices under the City Manager, the Executive Director of the Redevelopment Agency and his or her Assistant and Deputies, City department heads and Redevelopment Agency division heads.

2. The term “misconduct” includes dishonesty, misuse of City property or City funds, any violation of conflict of interest policies, the City’s Gift policy or Discrimination and Harassment policy, inexcusable neglect of duty, fraud in securing employment and unlawful political activity.

3. Where there is reasonable cause to believe the complaint is well-founded, records of misconduct by a City Official, including any investigation and discipline, if any form of discipline is imposed, are subject to disclosure. Information that falls within the protection of any privileges or rights provided under the law may be redacted.

4. Nothing in this section may be construed as limiting access to other disciplinary records as permitted by the California Public Records Act.

C. Log of Disciplinary Actions

1. A log of disciplinary actions taken when a Notice of Discipline is issued for regular classified civil service employees must be maintained, updated as frequently as possible and available for inspection. The log must include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee), type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San Jose Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information must not be included in the log.

2. Nothing in this section may be construed as limiting access to other disciplinary records as permitted by the California Public Records Act.

5.1.2.050 Contracts with the City and Redevelopment Agency

A. Solicitation for Contracts

1. All correspondence regarding a solicitation for contracts with the City or Redevelopment Agency, including responses to Requests for Proposals, become the exclusive property of the City or Agency and are public records under the California Public Records Act. All documents that are sent to the City and Agency are subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement as set forth in the California Public Records Act.

2. Therefore, any proposal which contains language purporting to render all or significant portions of the proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Subsection 4.

3. All formal bid responses become public upon bid opening and must be made available immediately after bid opening.

4. The City or Agency will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to a solicitation will be subject to public disclosure. If a proposer believes that there are portion(s) of the proposal which are exempt from disclosure under the California Public Records Act, the proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

5. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City or Agency may not be in a position to establish that the information a proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the City or Agency will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

6. After the notice of an intent to award a City or Agency contract has been announced, the names of the evaluators and collective summaries of the evaluations or ratings must be made available if requested; under no circumstances are the individual evaluations or ratings (also known as “score sheets”) subject to disclosure.

B. When the City or Agency has negotiated the following types of agreement without a competitive process: (1) personal, professional or other contractual services for $500,000 or more; (2) a lease or permit having (a) total anticipated revenue or expense to the City or Agency of $500,000 or more; or (b) a term of ten years or more; or (3) any franchise agreement, then after the negotiations have been concluded all documents exchanged and related to the position of the parties, including draft contracts, must be made available for public inspection and copying upon request. This subsection does not require the retention of draft contracts that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice. Upon completion of negotiations, the executed contract, including the dollar amount of the contract, must be made available for inspection and copying.

C. San Jose Municipal Code Section 4.04.080 provides:

1. The City Manager must file a quarterly report with the City Council which describes all contracts having a value of One Hundred Thousand Dollars or more that were entered into and executed by the City Manager, City Attorney, City Clerk, and City Auditor, in the preceding calendar quarter. The report must identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.

2. The City Attorney, City Clerk, and City Auditor must provide to the City Manager the information necessary to enable the preparation and filing of quarterly reports.

D. Contracts over $100,000 that are not entered into by the Council Appointees listed in Municipal Code Section 4.04.080 are reported to the City Council when they are requested to be approved.

E. All contracts, except for Purchase Orders, regardless of amount or who approved it are filed and open to public inspection at the City Clerk's Office.

5.1.2.060 Budget and Other Financial Information

A. Proposed or final budgets, including the line item budget, for the City or any of its departments, programs or projects are subject to disclosure and should be made available in electronic form.

B. All bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee, the purpose for which the payment was made and who approved the payment are subject to disclosure, except that any information that is protected by privilege or other right provided under the law may be redacted.

5.1.2.070 Balancing Test

A. Except as provided in this section, no record may be withheld on the basis that the public interest in withholding the information outweighs the public interest in disclosure, or that disclosure would reveal or interfere with the deliberative process of any City body, agency, department, official or employee.

B. Except as otherwise provided in this Open Government Ordinance or by state or federal law, the following specific categories of information may be withheld or redacted, if on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record:

1. Personal information provided to the City by a private individual, with the reasonable expectation that the information will remain confidential. "Personal information" means: name; passport, social security, driver's license, or other government-issued identification number; physical description; home address; home telephone number; personal email address; financial, credit card, or debit card account number; or other information that would make the individual who submitted it readily identifiable.

2. Identifying information regarding a City employee who: (a) provides information in the course of an investigation of the conduct of any City body, agency, department, official, or employee; and (b) is not a subject of the investigation. "Identifying information" means: names, unique job titles or other information that would make the employee readily identifiable. Numerical or alphabetic designations will, to the extent possible, be substituted for names omitted from any record provided to the public.

3. Information regarding: (a) actual or potential threats to the security of public facilities, essential public services, or public access to public facilities or essential public services, and planned or actual responses to such threats, or (b) other information the disclosure of which would create a serious risk of death or injury, serious economic harm, or harm to public facilities or essential public services that cannot reasonably be prevented through means other than nondisclosure.

4. Records prepared for use in connection with a closed session of a body subject to the Ralph M. Brown Act, to the extent that they consist of information that may properly be discussed in closed session. Such records will be subject to disclosure to the same extent and pursuant to the same process as recordings or minutes of closed session.

C. If the City determines that the public interest is served by not disclosing the information, the City Attorney must provide, in writing, a detailed justification. The person requesting the public information may appeal the City Attorney's determination to the Open Government Commission.

5.1.2.080 Code Enforcement

A. The following information is public and subject to disclosure:

1. Case number;
2. Name of the subject of the complaint;
3. Address of the property;
4. Substance of the complaint;
5. Notices of violation;
6. Compliance orders;
7. Administrative citations;
8. Warning notices;
9. Other documents submitted to the Appeals Hearing Board to support enforcement;
10. Resolutions of the Appeals Hearing Board;
11. Recordings of the Appeals Hearing Board proceedings; and
12. Any documents submitted to the Court for an inspection warrant or other legal action, unless the documents are filed with the Court under seal or there is a Court order preventing disclosure of the documents or information contained in them.

B. The name or other identifying information of the complainant in Code Enforcement complaints is confidential and must be redacted from any document unless the complainant agrees to disclose his or her identity.

C. Investigative files are not public until after the case has been closed. However, any information within the investigative file that would identify the complaining party's identity, information that would disclose legitimate law enforcement techniques that require confidentiality in order to be effective and information protected by other exemptions will be redacted.

5.2 Process for Disclosure

5.2.1 Immediacy of Response

A. The deadlines listed in this section are appropriate for extensive or demanding requests but should not be used to delay fulfilling simple or routine requests.

B. If a request for any public information is presented to a City employee who is not responsible for responding to the request, it must be forwarded, by the end of the business day on which it was received, to the City employee responsible for responding to the request or to the employee's supervisor if that employee is out of the office that day.

C. By the end of the business day on which the City employee responsible for responding to the request receives it, he or she must acknowledge receipt of the request to the requestor.

D. For simple or routine requests, by the end of the next business day after the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor, the City employee responsible for responding to the request must provide a response and the requested public information.

E. For extensive or demanding requests, no later than 3 business days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor, the City employee responsible for responding to the request must provide a response, which will include either the requested public information or an estimate as to when the requested public information will be available. The requested information must be provided within 10 calendar days of the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. This deadline may be extended by mutual agreement between the City and the requestor.

F. If the City believes that the requested public information or a portion of the requested public information is exempt, the City employee responsible for responding to the request must so determine and report to the requestor within 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. The response must also include the public information, if any, that the City believes is not exempt. This deadline may be extended by mutual agreement between the City and the requestor.

G. In unusual circumstances, the City employee responsible for responding to the request may notify the requestor in writing that an extension of the 10-day period for an additional period no longer than 14 calendar days is necessary. The City employee responsible for responding to the request who seeks an extension must notify the requestor as soon as possible but no later than 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. This deadline may be extended by mutual agreement between the City

and the requestor. "Unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

1. The need to search for and collect the requested records from storage facilities that are separate from the office processing the request.

2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

3. The need for consultation, which must be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

4. The need to write programming language or extract data that would not otherwise be extracted.

H. In order to comply promptly with requests that involve multiple documents, the City employee responsible for responding to the request will, upon request, release documents as they become available, where such an approach is both practical and pertinent. This section is intended to prohibit the unnecessary withholding of public information that is responsive to a request for public records until all potentially responsive documents have been reviewed and collected.

5.2.2 Justification of Withholding

If the City believes that the requested public information or a portion of the requested public information is exempt, the City employee or attorney responsible for responding to the request must explain, in writing, when responding to the request the basis for withholding the information by citing the specific statutory or case authority.

5.2.3 Withholding Kept to a Minimum

A. Information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained.

B. The work of responding to a request for public information and making public information available must be considered part of the regular work duties of the City employee and no fee will be charged to the requestor to cover the personnel costs of responding to a request for public information, except to the extent otherwise allowed in this ordinance or in other state or federal laws.

C. To the extent that it is technologically and economically possible, forms and computer systems used by the City relating to the conduct of the public's business should be designed to ensure convenient, efficient and economical access to public information, including making public information easily accessible over public networks such as the Internet. Specifically, forms and computer systems should be designed to:

1. Segregate exempt information from non-exempt information.

2. Reproduce electronic copies of public information in a format that is generally recognized as an industry standard format.

5.2.4 Fees for Duplication

A. Before any fees are incurred, the City employee responsible for responding to the request must notify the requestor of the estimated cost to respond and the requestor must agree to pay the estimated cost.

B. The fee for photocopying any public information in response to any request to the City is .10 per page for the first 50 pages. After the first 50 pages, the fee will be set at a standard level of cost recovery as adopted by the City Council during the annual fee-setting process. That level is currently .20 per page.

C. A fee of $__ per hour will be charged for responding to any request for public information that either (1) is produced only at otherwise regularly scheduled intervals, if the interim production of the report cannot be achieved without a substantial burden on City staff; or (2) requires the City to write programming language or extract data that would not otherwise be extracted. For purposes of computing charges under Section 5.2.4(B), any limitations contained in Section 5.2.3(B) do not apply.

5.3 <u>Effective Date</u>

This section will become effective six months after the City Council approves these recommendations.

Section 6 Technology

Note: The recommendations contained in the Technology Sction are intended to serve as guidelines to the City organization and not to be part of a City ordinance.

6.0 Intent

The Sunshine Reform Task Force (SRTF) recommends that technology be used to support, improve and further open government, transparency and access to public records.

6.1 Systems and Infrastructure

6.1.1 Electronic Document and Web Content Management Systems

The SRTF supports the speedy funding and deployment of an Electronic Document Management System and a Web Content Management System to better manage documents and Web content. Electronic management and retrieval of documents are necessary to support open government reforms and will give the community and staff faster access to critical information while reducing document printing, storage and retrieval costs.

6.1.2 Ticketing Requests for Public Records

The SRTF recommends that when the City Manager's Office, City Clerk's Office, City Attorney's Office, Police Department, Planning Department or the City's Public Information Officer receives a request for public records that requires more than one day to complete, a "ticket" with a unique number be opened to track the request through a program similar in functionality to a Help Desk Ticket System. When the request is fulfilled, the SRTF recommends that the ticket be closed.

6.1.3 Displaying and Recording Votes at Council Meetings

A. The SRTF recommends that the City use its technology to display the specific votes of the Councilmembers and the Mayor to (1) the audience in the Council Chambers; and (2) on the video broadcast of the Council Meeting.

B. The SRTF recommends that the City implement a searchable database of each vote by Councilmembers and Mayor and maintain the records of such votes in a manner accessible to the public via the Web as a permanent archive.

6.1.4 Public Safety and Law Enforcement

A. The SRTF recommends that the City's Law Enforcement agencies pursue development or acquisition of a Records Management System that has the capability to redact information consistent with the recommendations in Section 5 and the California Public Records Act.

B. The SRTF commends the City's Police Department for developing one of the better systems for viewing, by neighborhood, information about calls for service. The SRTF recommends that the City continue to advance its system by clearly labeling crime types (rather than using codes) and providing more comprehensive information about the disposition of the call for service. The SRTF recommends that the system evolve to include the summary field of the report made about the call for service.

6.2 Web site

6.2.1 Navigation and Organization

A. The SRTF recommends that users be able to navigate easily all of the City's web sites to find information. The SRTF supports the City in making technology improvements that will enhance the "searchability" of the City's web sites.

1. The SRTF recommends that the City's web site's search engine include all web sites associated with the City and its Departments.

2. The SRTF recommends that the City's web site's site map be organized so that major content areas are identified.

3. The SRTF recommends that the City and all City Departments employ "breadcrumb trails" at the top of each page so that citizens can more easily find information and see where a page is located in the web site hierarchy. (Example: Home page → Section page → Subsection page.)

B. The SRTF recommends that City web sites be organized in a consistent manner:

1. Front Page

   The SRTF recommends that the City conduct a "usage assessment" to determine how users use the City's web site and the web sites of the City's Departments. The SRTF recommends that the most frequently used functions and most frequently viewed pages be placed on the front page of the City's web site. However, the usage assessment should not delay implementation of any other SRTF recommendations.

2. Header

   a. The SRTF recommends that the City and each Department maintain a consistent header and navigation menu, whenever possible.

   b. The SRTF recommends that each Department's home page link to the home page of the City.

   c. The SRTF recommends that the City's "logo" in the header be "clickable" and return the user to the City's home page.

3. Contact Information

The SRTF recommends that every City Department's home page include, in the same place for each Department, the name of the Department Head, the address and telephone number for the Department, an email contact form or address and a link to obtain a map and directions to the Department's offices.

4. Footer

The SRTF recommends that the City and each Department maintain a consistent footer that includes the City's privacy policy, terms of use and webmaster contact information.

5. Titling

The SRTF recommends that the City and each Department use a consistent scheme for page titles, which includes the name "City of San Jose" and describes, generally, the content on each page. The SRTF recommends that acronyms be avoided unless they are well known to the general public.

6. Links

The SRTF recommends that hypertext links be consistently identified as such, by underlining and use of a consistent color that differentiates them from other text on the page.

7. Software Download

The SRTF recommends that the City and each Department include visible links or icons on each page that contains links to documents in a format other than HTML to enable users to download software readers for the posted files.

8. Other Languages

The SRTF recommends that the City and each Department maintain links to information in other languages when a translation is available.

6.2.2 Web site Content

A. The SRTF recommends that City web sites contain a glossary of acronyms used on the web site.

B. The SRTF recommends that "Alt Tags" be used on graphics to promote accessibility.

C. The SRTF notes that the City has made an effort to present a unified portal for bids and proposals. The SRTF recommends that the City make further efforts to present clearly labeled links to all opportunities for bids and proposals, including, but not limited to, considering redundancy in and consolidation of the various applications.

6.2.3 Interactive Services (including eGovernment)

A. The SRTF recommends that users be able to sign up and subscribe to content areas on the City's web site to enable citizens to receive updates or alerts about issues that interest them. Areas of interest may include departments, council districts, neighborhoods or other subjects.

B. The SRTF recommends that the City standardize the user interface for the approximately 98 different "contact us" forms on the City's web sites.

C. The SRTF also recommends that the City implement a "contact us" form for the public to use to contact via one email all members of the City Council or any City Board, Commission or Committee. The SRTF recommends that the contact form make at least the following disclosures: (1) the form may not necessarily be responded to; (2) if the comment relates to a Council Agenda item it will be included in the Public Record, subject to the City's E-Government Policy, Statement of Purpose, Privacy and Disclosure Statement, Security Statement and Disclaimer Statement; and (3) if the comment is a complaint about an issue in a specific District, the complaint should be directed to that particular Councilmember. Moreover, the SRTF recommends that anyone be able to subscribe to the form-based email to receive comments.

6.3 <u>Procedures and Best Practices</u>

6.3.1 Posting, Archiving, Access and Document Retention Policies

6.3.1.010 Posting Documents (Including Indexes and Policies)

A. The SRTF recommends that every City Department maintain an index, linked from the Department's home page, of every report with supporting documents made to the City Council or a Council Committee.

B. The SRTF recommends that Budgets (Citywide Retention Schedule, Series No. 308) be posted online permanently.

C. The SRTF recommends that the following documents be appraised by a qualified records professional to determine the adequacy of the retention periods as indicated in the current approved retention schedule and that the retention be adjusted as needed according to the results of the appraisal:

1. Community Development Block Grant Program – Approved Grants (Housing Retention Schedule, Series No. 195);

2. Community Development Block Grant Program – Program Audits (Housing Retention Schedule, Series No. 197);

3. Project Development – Loan Underwriting (Housing Retention Schedule, Series No. 209) – $1 million and over;

4. Project Development – Outside Funding (Housing Retention Schedule, Series No. 210) – $1 million and over;

5. List of persons earning the highest 100 salaries, along with their compensation;

6. List of salaries by classification;

7. Reports – Quarterly or Midyear (IPA Retention Schedule, Series No. 182);

8. Newsletters – Quarterly or Mid-year (IPA Retention Schedule, Series No. 183);

9. Police Department Audit – Annual Operational Audit (IPA Retention Schedule, Series No. 185); and

10. Studies – Statistical Analysis Studies and Reports, Surveys (External and Internal) (IPA Retention Schedule, Series No. 186).

6.3.1.020 Archiving Documents

A. Email Archive Recommendations

1. The SRTF recommends that the City immediately begin archiving the email of elected officials and non-clerical staff to elected officials that relates to the conduct of the City's business for 10 years.

2. The SRTF recommends that the City pursue a solution to archive, at a minimum, email of all City employees who file the Form 700 – Statement of Economic Interests that relates to the conduct of the City's business for 5 years.

B. The SRTF recommends that the City maintain a permanent electronic archive of documents related to Council Agenda items.

6.3.1.030 Retention Schedules

The SRTF recommends that the City publish an index to City records and associated retention schedules for those records. The SRTF also recommends that changes to any retention schedule be reviewed at an open and public meeting of both the Open Government Commission and the City Council.

6.3.2 Records Manager and Other Staffing Requirements

The SRTF supports the City's efforts to hire a Public Records Manager and encourages the City to do so as quickly as possible.

6.3.3 Privacy

The SRTF recommends that the City follow a privacy policy, which is referenced in the footer of every web page, that ensures that home and email addresses are redacted from any information made public. The SRTF recommends further that Social Security Numbers, if required, be obtained on a document that is maintained separately from any contract that may be made public.

Section 7 Ethics and Conduct

7.1 Intent

The City of San Jose is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

The recommendations of the Sunshine Reform Task Force include tools to increase public access to information, enhance neighborhood and community participation, and ensure government accountability.

We seek to restore and strengthen public confidence in City government and in all individuals elected and appointed to represent the best interests of the community. These policies and procedures are an integral part of a Citywide initiative to assist all segments of San Jose City government to understand and adopt the reforms and model the behavior of an ethical organization. These policies and procedures are intended to complement the Employee Values of integrity, respect, innovation, excellence, collaboration and celebration.

Building on strong leadership from the Mayor and City Council, the ethical culture at City Hall will protect the public's interest and promote integrity, transparency, and accountability. Ethical decision-making should be integral to how City and Council staff conduct the public's business.

7.2 Disclosure

A. In order to ensure equal, full and fair access to all substantive information, a member of a body subject to the Ralph M. Brown Act must disclose any relevant substantive information he or she has received from any source outside the public decision-making process when that matter is under consideration of the body.

B. Lobbyists must file disclosure reports within two business days of engaging in reportable lobbying or fundraising activity. Fundraising activity includes contributions received and solicitations made on behalf of an elected official. These reports must be filed electronically with the City Clerk so that they can be viewed by the public online.

C. The SRTF supports and endorses the Council's direction to the City Attorney on November 20, 2007, to draft a Charter amendment that would allow the Mayor and Councilmembers to abstain from voting on a decision if constituents would reasonably question the integrity of the decision.

7.3 Conflicts of Interest

A. Councilmembers must recuse themselves from the decision-making process when an actual conflict arises. To achieve greater transparency, Councilmembers must also identify and disclose when even the appearance of a conflict might exist.

B. All reports of contributions to the candidate accounts of the Mayor and Councilmembers must be available online.

C. Any individual with a position of responsibility in a campaign, such as Campaign Manager, Treasurer, Strategist or Consultant, whether paid or unpaid, is prohibited from lobbying for compensation and for the purpose of influencing a legislative or administrative action, any elected official of the City of San Jose for whom the individual worked or volunteered for the entire time the elected official is in office.

7.4 Code of Ethics and Ethical Standards

A. Members of the Council, Board of the Redevelopment Agency, Council Committees, City Boards, Commissions and Committees, City Decision-Making Bodies, City Non-governmental partners and City departments must adopt the City's Code of Ethics and sign a verification confirming that the Code of Ethics has been adopted. All elected and appointed officials, employees, vendors and registered lobbyists must sign a certification that they will abide by the City's Code of Ethics. The appropriate link to the City's web site address for the City's Code of Ethics, Council Policy 0-15, must appear in a prominent place on appropriate City materials, whether printed, electronic or posted on the City's web site.

B. Volunteers who participate in the Volunteer San Jose Program must adhere to the Code of Ethics for Volunteers and sign a verification agreeing to do so.

Implementation Suggestion:

Move the location of the "Code of Ethics for Volunteers" on the web site for Volunteers to after the "Volunteer San Jose's Objectives".

C. The following statement about the City's ethical standards must appear in a prominent place on appropriate City materials, whether printed, electronic or posted on the City's web site: "The City of San Jose is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public."

Implementation Suggestions:

1. *As old publications are phased out, include the statement about the City's ethical standards on new versions of publications.*

2. *Employment applications should include the statement about the City's ethical standards.*

7.5 Annual Review and Re-Adoption

The City Council must review and re-adopt the Open Government Ordinance biennially, during the Mayor's review of the City's Code of Ethics, which includes review of any ordinances related to ethics standards, as required by San Jose City Charter Section 607.

7.6 Ethics Education

All City and Council staff must be educated about the Open Government Ordinance as it is implemented and on an ongoing basis. Moreover, the Open Government Ordinance should be an integrated part of performing the public's business and is intended to complement the Employee Values of integrity, respect, innovation, excellence, collaboration and celebration.

Implementation Suggestions:

1. *Identify individuals or departments to implement ethics on a practical level.*

2. *For performance evaluations, ask each manager how he or she integrated ethical conduct into the workplace.*

Section 8 Administration and Accountability

8.1 Purpose and Intent

A. The City Council, Council staff, Council Appointees, Department Heads and City staff should be encouraged to comply voluntarily with the Open Government Ordinance, Ralph M. Brown Act, California Public Records Act and Political Reform Act. Regular education and training about the Open Government Ordinance, Ralph M. Brown Act, California Public Records Act and Political Reform Act is essential to achieve voluntary compliance.

B. The City Manager's Office must provide to the Council regular reports, at least annually, about the City's compliance with the Open Government Ordinance.

8.2 Open Government Officer

A. The City will establish the position of Open Government Officer, who must be an attorney licensed to practice law in California and have demonstrated familiarity and experience with open government laws. The Open Government Officer will be a member of Senior Staff and report to the City Manager. The appointment of the Open Government Officer must be ratified by the Open Government Commission.

B. The Open Government Officer will:

1. Advise the City Manager on education and training for City Staff on the Open Government Ordinance and other open government laws;

2. Staff the Open Government Commission, including but not limited to providing advice to the Commission, conducting research or investigation at the direction of the Commission, and work with the City Attorney's Office in drafting revisions or amendments to the Open Government Ordinance at the direction of the Commission;

3. Work with the Records Manager to access information that can be used to generate routine statistical reports requested by the public or the Open Government Commission; and

4. Coordinate with the Open Government Commission reports to the City Council evaluating and monitoring compliance with the Open Government Ordinance, investigate complaints of violations of the California Public Records Act, Ralph M. Brown Act or Open Government Ordinance, seek informal resolution of disputes regarding compliance if requested and issue decisions on formal complaints by the public.

8.3 Open Government Commission

A. The City will establish a neutral and independent Open Government Commission comprised of five members of the community or integrate the function of the Commission as described below into an existing Board or Commission as long as the members meet the following criteria. Each member must have some demonstrated familiarity and experience with open government laws and be a resident of the City of San Jose. The Commission's membership should be representative of the community and all members will be required to undergo a screening process to identify any potential conflicts of interest. Members must not be a paid City employee, a paid employee working on the campaign of a current Councilmember or candidate for City office or a contract lobbyist registered with the City. No member may participate as a candidate in any election for Mayor or Councilmember for the City of San Jose for a period of one year both before and after tenure on the Commission. Members will serve up to two four-year terms for a maximum of eight years. Members will be appointed by no less than two-thirds vote of the City Council.

B. The Open Government Commission will:

1. Advise the City Council about the Open Government Ordinance;

2. On an annual basis, (a) make any recommendation for amendments or changes to the Open Government Ordinance to the City Council; and (b) review the independence of the Open Government Officer;

3. Determine, if questioned or challenged, the categorization of a body for the purpose of determining the requirements, if any, for that body's meetings;

4. Develop an annual report, based on public input, indicating additional public information, if any, that the City should routinely make available to the public;

5. Hear appeals from decisions issued by the Open Government Officer on complaints of violations of the California Public Records Act, Ralph M. Brown Act or Open Government Ordinance; and

6. Recommend penalties for violations of the California Public Records Act, Ralph M. Brown Act or Open Government Ordinance where appropriate.

8.4 Investigations

A. The City Council will adopt, by resolution, regulations and procedures for investigations to be conducted by the Open Government Officer.

B. The Open Government Officer will have the authority to investigate complaints alleging violations of the California Public Records Act, Ralph M. Brown Act or Open Government

Ordinance, in accordance with the regulations and procedures adopted by resolution of the City Council.

C. A complaint filed with the Open Government Officer may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant investigation. If requested, a complainant may make a complaint anonymously.

D. The City Attorney's Office may provide legal advice to the Commission related to non-complaint matters or general interpretations of the San Jose Municipal Code or relevant California State or federal law, but must not participate in investigations or reviews of complaints.

8.5 Enforcement

8.5.010 Requests for Public Records

A. Complaints alleging that records or some part of records are being withheld improperly under the California Public Records Act or the Open Government Ordinance may be filed either with the Open Government Officer or with the Superior Court as set forth in Government Code Sections 6258 and 6259.

B. Upon request by a member of the public, the Open Government Officer will seek to resolve informal complaints alleging that records or some part of records are being withheld improperly under the California Public Records Act or the Open Government Ordinance.

C. If a complaint is filed with the Open Government Officer, he or she must notify, in writing, the person or persons against whom the complaint is made and provide a copy of the complaint and the regulations and procedures governing investigations by the Open Government Officer within 2 business days of receiving the complaint.

D. The Open Government Officer must issue a decision on the complaint within 10 days after receiving it.

E. Within 14 days of receiving the Open Government Officer's decision, the City or the complainant may appeal the decision of the Open Government Officer to the Open Government Commission; the complainant may also file an action in the Superior Court as set forth in Government Code Sections 6258 and 6259. The Open Government Officer's decision will be part of the record before either the Open Government Commission or the Superior Court.

F. If the City or the complainant appeals the decision of the Open Government Officer to the Open Government Commission, the Commission must issue a decision on the appeal within 30 days after receiving notice of the appeal. The Open Government Commission may retain an independent and neutral legal evaluator, who will be a practicing lawyer or retired judge, to provide legal advice to the Commission on the appeal.

G. Within 5 days of receiving the Open Government Commission's decision on the appeal, the City may appeal the Open Government Commission's decision to the City Council. The City Council must hear and decide the appeal as soon as possible, considering adequate notice to the public as required under the Open Government Ordinance. Both the Open Government Officer's decision and the Open Government Commission's decision will be part of the record before the City Council.

H. Within 20 days of receiving either the Open Government Commission's decision on the appeal or the City Council's decision on the appeal, the complainant may file a complaint with the Superior Court as set forth in Government Code Sections 6258 and 6259. Both the Open Government Officer's decision and the Open Government Commission's decision will be part of the record before the Superior Court.

I. The Superior Court will award court costs and reasonable attorney fees to the complainant should the complainant prevail in litigation filed pursuant to this section. The costs and fees will be paid by the City and will not become a personal liability of any employee of the City responsible for making the decision to refuse disclosure. If the Superior Court finds that the complainant's case is clearly frivolous, it will award court costs and reasonable attorney fees to the City.

8.5.020 Public and Closed Session Meetings

A. If, through mistake, inadvertence, surprise or excusable neglect, the person(s) responsible for posting agendas for the City Council and Board of the Redevelopment Agency fails to post an agenda or distribute agenda-related materials for a regular public or closed session meeting ten (10) days in advance of the meeting, the Rules and Open Government Committee will have the authority to review the facts and decide whether to waive the 10-day requirement, continue or re-notice agenda items or cancel the meeting. If the 10-day requirement is waived, the Mayor or Chair of the City Council or Board of the Redevelopment Agency will disclose at the beginning of the meeting that the required notice was not met, why notice was not met and why the meeting is being held anyway.

B. Complaints alleging that a public or closed session meeting has been held or is threatened to be held by members of any body in violation of the requirements of the Ralph M. Brown Act or the Open Government Ordinance may be filed either with the Open Government Officer or with the Superior Court as set forth in Government Code Sections 54960 and 54960.1.

C. If a complaint is filed with the Open Government Officer, he or she must notify, in writing, the person or persons against whom the complaint is made and provide a copy of the complaint and the regulations and procedures governing investigations by the Open Government Officer within 2 business days of receiving the complaint.

D. The Open Government Officer must issue a decision on the complaint within 10 days after receiving it.

E. If the Open Government Officer determines that a member or members of a body held or are threatening to hold a public or closed session meeting in violation of the Open Government Ordinance, he or she will issue a demand that the member or members of the body cure or correct the action challenged.

F. The Open Government Officer's demand must be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Government Code Section 54954.2, in which case the demand must be made within 30 days from the date the action was taken.

G. Within 30 days of receipt of the demand from the Open Government Officer, the member or members of the body must cure or correct the challenged action and inform the Open Government Commission in writing of either (1) its actions to cure or correct or (2) its decision not to cure or correct the challenged action.

H. If the body takes no action within the 30-day period, the inaction will be deemed a decision not to cure or correct the challenged action, and the Open Government Commission may refer the challenged action to the Santa Clara County Office of the District Attorney within 15 days after the 30-day period expires.

I. If the body informs the Open Government Commission in writing of its decision not to cure or correct the challenged action, the Commission may (1) accept the response of the body not to cure or correct the challenged action; or (2) reject the response of the body not to cure or correct the challenged action and refer the challenged action to the Santa Clara County Office of the District Attorney within 15 days of receiving notice of the body's action not to cure or correct the challenged action.

J. If the body informs the Open Government Commission in writing of its actions to cure or correct the challenged action, the Commission may (1) accept the actions to cure or correct the challenged action; or (2) reject the actions to cure or correct the challenged action and refer the challenged action to the Santa Clara County Office of the District Attorney within 15 days of receiving notice of the body's action to cure or correct the challenged action.

8.5.030 Topics Discussed in Closed Session

A. Complaints alleging that a body discussed some topic in closed session in violation of the Ralph M. Brown Act or Open Government Ordinance may be filed with the body or an action may be filed with the Superior Court as set forth in Government Code Sections 54960 and 54960.1.

B. If a complaint is filed with the body, it must make a decision about the complaint within 20 days.

C. If a majority of the body agrees to do so, it will release, in transcript form, the recording of the topic discussed in closed session alleged to be in violation of the Ralph M. Brown Act or Open Government Ordinance.

D. If a majority of the body does not agree to release a transcript of the recording of

the topic discussed in closed session alleged to be in violation of the Ralph M. Brown Act or Open Government Ordinance, the complainant may file an action with the Superior Court as set forth in Government Code Sections 54960 and 54960.1 and may request that the Open Government Commission join the complainant as a plaintiff in the petition.

E. The Superior Court will award court costs and reasonable attorney fees to the complainant should the complainant prevail in litigation filed pursuant to this section. The costs and fees will be paid by the City and will not become a personal liability of any employee of the City responsible for making the decision to refuse disclosure. If the Superior Court finds that the complainant's case is clearly frivolous, it will award court costs and reasonable attorney fees to the City.

8.5.040 Closed Session Recordings

A. After every closed session, for every item discussed in closed session, a body must meet in open session to disclose, among the other information required in the Open Government Ordinance, (1) when the need for confidentiality will expire; if it is the opinion of the body that it cannot in good faith make a specific determination as to when the need for confidentiality will expire, it will so state, and the confidentiality will remain in effect, subject to a request by a member of the public or the body to review that decision; and (2) the reason for confidentiality if the body asserts that confidentiality must be maintained.

B. If a majority of a body entitled to hold closed session determines that the need for confidentiality has expired about a topic discussed in closed session, it may release, in transcript form, the recording of the topic discussed in closed session.

C. The Open Government Officer must review the closed sessions of the City Council, except for the portions protected by the attorney-client privilege and the portions that relate to personnel matters, either by attending the portions of the discussions not protected by the attorney-client privilege or related to personnel matters or by reviewing the portions of the recordings not protected by the attorney-client privilege or related to personnel matters, whichever method is preferred by the City Council.

1. If the Open Government Officer determines that the closed session conformed to the requirements of the Ralph M. Brown Act and the Open Government Ordinance, within 72 hours of the closed session, he or she will issue a public finding so stating.

2. If the Open Government Officer determines that the closed session did not comply with the Ralph M. Brown Act or the Open Government Ordinance, within 72 hours of the closed session, he or she will issue a public finding identifying the specific agenda item during which the violation occurred.
3. The City Council may discuss the Open Government Officer's finding of violation in closed session. The Council must issue a response to the Open Government Officer's finding within 30 days.

4. If the City Council accepts the Open Government Officer's finding of violation, the Council will affirm the Officer's finding in public session and take corrective action as defined in the Ralph M. Brown Act and the Open Government Ordinance.

5. If the City Council rejects the Open Government Officer's finding of violation, the Council will announce its rejection of the Officer's finding in public session.

6. If any member of the public wishes to challenge the City Council's decision, he or she may file a complaint with the Superior Court as set forth in Government Code Sections 54960 and 54960.1. After reviewing the complaint filed in the Superior Court by a member of the public, the Open Government Commission may seek to join the complainant as a plaintiff in the petition or submit a "friend of the court" brief in support of the complaint.

8.5.050 Progressive Penalties

Penalties for violating the Open Government Ordinance should be progressive.

A. If the Open Government Commission determines that the complaint arose out of a minor violation based on a misinterpretation of the Open Government Ordinance, the Commission may recommend to the appropriate Council Appointee that the person or persons who misinterpreted the Open Government Ordinance must participate in education and training about the Open Government Ordinance within 30 days of the date the Commission makes its recommendation.

B. If the Open Government Commission finds intentional or repeated violation of the Open Government Ordinance, it may issue a report, including a recommendation for corrective action, to the appropriate Council Appointee and the Rules and Open Government Committee.

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