

Chapter \_\_\_\_\_

Draft "Master" Sunshine Ordinance

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Public Meetings

2.1. Definitions:

The following definitions used in this chapter have the meanings set forth below.

2.1.010 —City.

—"City" means the City of San Jose, California.

2.1.020 —City staff.

—"City staff" means all employees of Charter appointees.

2.1.030 Council staff.

—“Council staff” means all employees of the City Council and the Mayor.

2.1.040 Policy body.

—“Policy body” means:

A. The City Council, Board of the City Redevelopment Agency and commissions, committees, boards or other bodies of the City Council or City Redevelopment Agency, whether permanent or temporary, decisionmakingdecision making or advisory, created by charter, ordinance, resolution or other formal action of the City Council or- Board of the City Redevelopment Agency.<sup>1</sup>

B. Committees comprised of City council staff that constitute a quorum of the City Council.<sup>2</sup>

2.1.050 Ancillary body.

“Ancillary body” means:

A. Committees or other bodies created by the Mayor, a City Councilmember, the Mayor’s Chief of Staff or the Mayor’s Budget and Policy Director that meets regularly to advise on fiscal, economic or policy issues.<sup>3</sup>

B. Any group assigned by a policy body or the Mayor to meet with residents or community groups to obtain information that would result in a report or recommendation from the group back to the policy body or the Mayor for action by the policy body or the Mayor.<sup>4</sup>

<sup>1</sup> This definition tracks the language of the Brown Act but modifies it to be specific to San Jose and what staff understands to be the intent of the Sunshine Reform Task Force (SRTF). (Government Code Section 54952(b).)

<sup>2</sup> Staff understands that the intent of the SRTF was to omit from the definition of policy body any group comprised solely of City employees.

<sup>3</sup> The City Manager and department heads are omitted from this version and Council members added - there was no discussion of the SRTF’s intent about these persons.

<sup>4</sup> Department heads are omitted from this version. Please also recall Bob Brownstein’s concern about this definition [need to review meeting to articulate his concerns].

C. To the extent not inconsistent with state or federal law, any entity that owns, operates or manages any property in which the City or City Redevelopment Agency has or will have an ownership interest, including a mortgage, and on which property the entity performs a governmental function or service.<sup>5</sup>

D. Ancillary body does not include any meeting committee or body consisting solely of City staff.<sup>6</sup>

2.1.060 Meetings.

“Meeting” means:

**2.1 Definition of Meetings**<sup>7</sup>

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

~~A. "City" shall mean the City of San José, California.~~

~~B. "Meeting" shall mean any of the following:~~

~~C. A. A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate City business; any matter that is within the jurisdiction of the City; A meal gathering of a policy body before, during or after a meeting of the policy body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion. Such meetings shall not be conducted in restaurants or other locations where public access is possible only by making a purchase or some other payment.~~<sup>8</sup>

B. Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members

<sup>5</sup> Staff is not clear about the SRTF’s intent about what types of entities are intended to be captured with the following definition: “any entity that is the recipient of a majority of any city-collected tax or assessment.”

<sup>6</sup> Section 2.3(A)(3) in the Dan Pulcrano draft about “social, recreational or ceremonial occasions” has been omitted because such occasions are better addressed in the definition of meetings (see below). Section 2.3(A)(4) in the Dan Pulcrano draft has been omitted because staff understands that the intent of the SRTF was to omit from the definition of ancillary body any group comprised solely of City employees.

<sup>7</sup> Milpitas, Section 2, I-310-2.10

<sup>8</sup> The second sentence was moved from section 2.1(3)(c) in the Dan Pulcrano draft because it made sense to do so.

of a policy body to develop a collective concurrence as to action to be taken on any item by the members of a policy body is prohibited.<sup>9</sup>

~~1. A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, policy body, if the cumulative result is that a majority of the members of the policy body has become involved in such gatherings; or<sup>10</sup>~~

~~2. Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.<sup>11</sup>~~

~~3.C. \_\_\_\_\_ "Meeting" shall does not include any of the following:<sup>1213</sup>~~

~~1. \_\_\_\_\_ Individual contacts or conversations between a member of a policy body and another person that do not convey to the member of the policy body the views or positions of other members of the policy body upon the subject matter of the contact or conversation and in which the member of the policy body does not solicit or encourage the restatement of the views of the other members of the policy body.~~

~~a. \_\_\_\_\_ members;~~

~~2. \_\_\_\_\_ 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 of a policy body refrains from using the occasion to collectively do not discuss the topic of the gathering or any other business item within the subject matter jurisdiction of the City; policy body.~~

~~\_\_\_\_\_ of~~

~~3. \_\_\_\_\_ 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~~

<sup>9</sup> This new section combines former Sections 2.1(3)(a) and (b) of the Dan Pulcrano draft and tracks the language of the Brown Act which is more clear and concise and encompasses the intent of the SRTF.

<sup>10</sup> This section is now part of Section 2.1.060(B).

<sup>11</sup> This section is now part of Section 2.1.060(B).

<sup>12</sup> This section is now part of Section 2.1.060(B).

<sup>13</sup> This section is now part of Section 2.1.060(B).

itself<sup>14</sup>, provided that a majority of the members refrains from using the occasion to do not discuss any business item 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 policy 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, locations where public access is possible only in consideration of making a purchase or some other payment of value.<sup>15</sup>~~

~~d.4. The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of ~~that~~the policy body, provided that the members of the policy body who are not members of the standing committee attend only as observers, or as members of the public.<sup>16</sup>~~

**2.2 Meetings to be Open and Public: Application of Brown Act 2.2**  
**Definition of Policy Body<sup>17</sup>**

~~"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 City created task forces, advisory bodies appointed by the Mayor or members of the City Council and all City Commissions or Boards. Policy bodies shall not include a committee that consists solely of employees of the City of San José.<sup>18</sup>~~

~~José, except such committees comprised of representatives of a sufficient number of City Council members to constitute a quorum of the City Council or committees which are engaged in the 2.3 Passive Meetings<sup>19</sup> review, development or modification of City policies.~~

**2.3 Ancillary Bodies**

~~A. Ancillary body shall mean (1) Advisory committees created by City Charter, initiative of a member of a policy body, the Mayor, the City Manager, the Mayor's chief of staff, the Budget and Policy~~

<sup>14</sup> This clause is omitted because members of a policy body are already prohibited in Section B from communicating at a social, recreational or ceremonial occasion to develop a collective concurrence as to action to be taken on any item by the members of a policy body.

<sup>15</sup> This sentence was moved up to Section 2.1.060(A).

<sup>16</sup> This sentence was moved up to Section 2.1.060(A).

<sup>17</sup> Milpitas, Section 2, I-310-2.10, (E)

<sup>18</sup> This section is now part of the Definitions section.

<sup>19</sup> San Francisco, Section 67.4

~~Director or a department head. (2) Any group that consists of City employees assigned by a policy body, the Mayor or department head to meet with residents or community groups to obtain information that would result in a report or recommendation from the group back to the policy body, the Mayor or City department for action by the policy body, Mayor or City department; (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. (4) Ancillary body shall not include a committee that consists solely of City employees created by the initiative of a member of a policy body, the Mayor or a City department head to study internal departmental affairs and which is not reviewing, developing, modifying or creating City policies.~~ <sup>20</sup>

~~B. All meetings and gatherings of passive meeting ancillary bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur. Such meetings and gatherings shall be conducted in accordance with the following requirements:~~ <sup>21</sup>

~~Such gatherings need not be formally noticed, except on the City's website. Notice of such meetings and gatherings shall, whenever possible, although be posted to the City's Web site and master calendar as soon as the meeting or gathering is scheduled. In addition, the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public. Notice of such meetings shall be provided by mail, email or facsimile as reasonably requested, to each person who has made a written request for notice of such meetings.~~ <sup>22</sup>

~~If the ancillary body elects to hold regular meetings, it shall provide by bylaws, motion or whatever other rule is utilized by that body for the conduct of its business, for the time and place for holding such regular meetings. The time and place of any such regular meetings shall be posted on the City's public access Web site.~~ <sup>23</sup>

~~1. public, and any agenda actually Any agenda prepared for the meeting or gathering shall be accessible to such inquirers provided to any person who requests it, by paper copy, email or facsimile as reasonably requested, as a public record.~~ <sup>24</sup>

~~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 observe, consistent with legal and practical restrictions on occupancy.~~ <sup>25</sup>

~~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~~

<sup>20</sup> This section is now part of the Definitions section.

<sup>21</sup> This section is now in Section 2.3.020(B).

<sup>22</sup> This section is now in the Notice and Agenda Requirements section.

<sup>23</sup> This section is now in Section 2.3.020(A).

<sup>24</sup> This section is now in the Notice and Agenda Requirements section.

<sup>25</sup> This section is now in Section 2.3.020(B).

questions or comments from spectators as may be relevant to the business of the gathering.<sup>26</sup>

4. Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.<sup>27</sup>

5. Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, Manager, 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 of San Jose. José.<sup>28</sup>

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

C. To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that is the recipient of a majority of any city collected tax or assessment or which owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related property, activities funded by City collected taxes or assessments or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision A of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page page, or at a higher actual cost as demonstrated in writing to such governing board.<sup>29</sup>

**2.4 2.2 Meetings to be Open and Public: Application of Brown Act**<sup>30</sup>

All meetings of any policy body shall must 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 will apply.

<sup>26</sup> This section is now in the Public Testimony section.

<sup>27</sup> This section is unnecessary since it is clear spectators may just observe.

<sup>28</sup> This section is unnecessary since ancillary body is already defined.

<sup>29</sup> The first sentence of this section (with some modification) is in the Definitions section. The second sentence should be in the Public Records section.

<sup>30</sup> Milpitas, Section I-310-2.20

**2.5 2.3 Conduct of Business; Time and Place for Meetings of Policy Bodies<sup>31</sup>**

**2.3.010 Policy Bodies**

- A. ~~Each policy body, except for advisory policy bodies that do specified in Section 2.2 and 2.3 that will not meet regularly, shall must establish, by whatever rule is required for the conduct of business by that body, resolution or motion the time and place for holding regular meetings.~~
- B. ~~If a regular meeting would otherwise fall on a holiday, it will instead be held on the next business day, unless otherwise rescheduled in advance. If a meeting must be canceled, continued or rescheduled for any reason, notice of such change must 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.~~
- C. ~~All regular and special meetings of policy bodies must be held within the City of San José unless:~~
  - 1. ~~Unless otherwise required by state or federal law or court order.~~
  - 2. ~~It is necessary to inspect real property or personal property which cannot be conveniently brought conveniently within the territory of the City of San José.~~
  - 3. ~~It is necessary or to meet with residents residing on property outside of the jurisdiction of the City but 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 Santa Clara of San José.~~
- ~~\_\_\_\_\_ 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. 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 2.7.~~
- 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 Section \_\_\_\_\_. Reasonable attempts shall must be made to contact others regarding about the change in meeting location.

<sup>31</sup> San Francisco, Section 67.6, excludes special meeting provisions.

**2.3.020 Ancillary Bodies:**

A. If an ancillary body elects to hold regular meetings, it must establish, by whatever rule is used by that body for the conduct of its business, the time and place for holding such regular meetings.

B. —All meetings of ancillary bodies must be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur. The meetings need not be conducted in any particular space for the accommodation of members of the public, although members of the public must be permitted to observe, consistent with legal and practical restrictions on occupancy.

E. Meetings of passive meeting ancillary bodies as specified in Section 2.3 of this article shall be preceded by notice delivered personally or by mail, e-mail, email 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. The notice of meeting shall also be posted to the Web site of the city or the advisory body and the time and place of the meeting shall be included in the City's master calendar. If the advisory body or ancillary body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 2.5 of this article in the place used by the policy body which it advises, is required.<sup>32</sup>

Special meetings of any policy body, including advisory bodies identified in Section 2.2 and 2.3, that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered personally or by mail, email or facsimile as reasonably requested at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting of the policy body shall be given at least 10 calendar days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place and a notice is posted at the announced meeting location specifying the

<sup>32</sup> This section is now in the Notice and Agenda Requirements section.

new location.<sup>33</sup>

~~2.4 Notice and Agenda Requirements 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 of San José.~~<sup>34</sup>

~~Each policy body shall designate one or more posting locations for notices and agendas required by this ordinance.~~<sup>35</sup>

~~Notice of the initial meeting of a policy body shall be considered a regular meeting and notice of the time and location of the meeting shall be given at least 10 calendar days prior to said initial meeting being held and delivered personally or by mail, email, or facsimile as reasonably requested at least 72 hours before the time of such meeting as specified in the notice.~~<sup>36</sup>

**2.62.4 Notice and Agenda Requirements; Regular Meetings<sup>37</sup>**

**2.4.010 Policy Bodies**

**A. Agenda Posting:**

1. ~~A.~~ Each policy body must designate posting locations for notices and agendas required by this chapter. At a minimum, each policy body must post notices and agendas at the City Hall bulletin board a place that is freely accessible to members of the public 24 hours per day that is available to all members of the public during regular business hours and on the City’s public access website.

2. ~~B.~~ At least 72 hours ~~ten~~ 104 calendar days before a regular regular meeting, a policy body shall ~~must~~ 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 for the meeting. The agenda shall must identify the policy body conducting the meeting, and shall specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or

<sup>33</sup> This section is now in the Notice and Agenda Requirements section.

<sup>34</sup> This section is already in the Time and Place for Meetings section.

<sup>35</sup> This section is now in the Notice and Agenda Requirements section.

<sup>36</sup> A form of this section is now in the Notice and Agenda Requirements section.

<sup>37</sup> Milpitas, Section I-310-2.30

discussed at the meeting and specify the proposed action for each item or state that the item is for discussion only. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood English and must identify all documents that will be provided to the policy body in connection with an agenda item.

**B. Staff Reports and Council Memorandums**

~~B. **post a current agenda on its Internet website at least 72 hours before a regular meeting.**~~

~~C. **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**~~

- ~~1. C. All staff reports and other supporting documents related to the items on the agenda for a regular meeting must be posted on the City's public access website or available in the Office of the City Clerk<sup>(S1)</sup>, and made available for inspection and copying 104 calendar days before a regular meeting.~~
- ~~2. , unless aFor itemsn item of business to be transacted or discussed is for an expenditure of \$1 million or more, in which case the staff reports and other supporting documents must be posted on the City's public access website and made available for inspection and copying 14 calendar days before a regular meeting.~~
- ~~3. In the event that staff reports and other supporting documents related to items on the agenda for a regular meeting are not posted on the City's public access website and made available for inspection and copying 6 calendar days before the regular meeting, the item will be deferred.~~
- ~~4. Council memos, which may be signed by no more than two councilmembers, must be posted on the City's public access website and made available for inspection and copying 3 calendar days before a regular meeting.~~
- ~~5. Not withstanding Section B.3 and B.4. above, policy bodies may accept staff reports and council memos submitted after the deadline when the conditions described in Section 2.4.010.C.2 are met.~~

6. Documents related to an item on an agenda that are distributed by a member of the public during discussion of the item at a public meeting must be made available for public inspection immediately, or as soon thereafter as is practicable. No documents from City staff or Council may be distributed any later than set forth in the preceding section.

**C. Council Action**

1.           

~~A. The agenda shall contain a meaningful description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the proposed action for each item or a statement the item is for discussion only. City staff shall make a good faith effort to make accompanying staff reports available at this time, and in no event later than 72 hours before a regular meeting.~~

~~D. Documents related to an item on an agenda that are distributed by a member of the public during discussion of the item at a public meeting must be made available for public inspection immediately, or as soon thereafter as is practicable. No documents from City staff or Council may be distributed any later than set forth in the preceding section.~~

~~C. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory identify any and all documents that have been or are intended to be provided to a majority of members of the policy body in connection with an agenda item, such as correspondence or reports, and item Such documents shall be posted 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 or printing at a location indicated on the agenda during normal office hours.~~

~~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.~~

~~hours. In addition, such documents shall be posted to the City's Web site.~~

~~No action or discussion shall be undertaken on any item not~~

~~E. The policy body shall may only discuss or take action on any an item 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, from members of the public at a meeting, to the extent of by asking a question~~

for clarification, providing a ~~reference~~referral to staff or other resources for factual information, or ~~requesting~~making a request of staff to report back to the policy body at a subsequent meeting concerning the matter raised by such testimony.

~~G.2.F.~~ Notwithstanding subdivision (~~E1E~~), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

~~a.~~ Upon a determination by a majority vote of the policy body that an emergency situation exists. An emergency situation is either (a) a work stoppage, crippling activity or other activity that severely impairs public health, safety or both; or (b) a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a policy body to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.

~~b.~~ ~~accident, natural disaster or work force disruption poses a threat to public health and safety.~~

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

~~3.c.~~ The item was on an agenda posted pursuant to ~~subdivision (A) this Section~~ chapter for a prior meeting of the body occurring not more than five ten 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.

#### D. Special Meetings

~~1. G.~~ A presiding officer of a policy body or a majority of members of a policy body may call a special meeting with three calendar days notice by delivering written notice to each member of the

policy body and the local members of the media who have requested written notice of special meetings.

- 2. The notice of special meeting may be delivered personally or by mail, email or facsimile and must specify the time and place of the special meeting and the business to be transacted. No other business will be considered at the special meeting.
- 3. Written notice may be dispensed with as to any member who at or before the time the meeting convenes files with the presiding officer or secretary of the policy body a written waiver of notice. Written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.
- 4. –Each special meeting must be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place, provided that the alternate location is specified in the notice of the special meeting and the notice of the special meeting of the policy body was given at least 10 calendar days before the special meeting. This provision will not apply where the alternative meeting location is located within the same building as the regular meeting place and a notice is posted at the announced meeting location specifying the new location.

**E. Agenda Requirements**

G.1.H.—Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

ORDINANCE (Title \_\_\_\_\_ of the San Jose Municipal Code)

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.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION.

2.

~~H.I. Each agenda of a policy body covered by this Open Government Ordinance shall must include the address, area code and phone number, fax number, ~~e-mail address,~~ email address and contact person for the Open Government Commission and the Internet address of the City's public access Web site. Information on how to obtain a free copy of the Open Government Ordinance shall be included on each agenda.~~

~~Agendas of meetings, meeting packets and any other documents on file with the clerk of the policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public for inspection and copying or printing at the office of the policy body before the hearing and be available to the public in sufficient quantities at the hearing commensurate with the anticipated number of people attending the hearing. To the extent possible, such documents shall also be made available through the policy body's Web site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.<sup>38</sup>~~

~~Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request. Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting prior to commencement of their discussion shall be made available for public inspection prior to commencement of their discussion, and during their discussion.<sup>39</sup>~~

~~H. Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately, or as soon thereafter as is practicable.<sup>40</sup>~~

~~I. A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established. Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.<sup>41</sup>~~

<sup>38</sup> Prevision provision "Agendas of meetings, meeting packets and any other documents on file with the clerk of the policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public for inspection and copying or printing at the office of the policy body before the hearing and be available to the public in sufficient quantities at the hearing commensurate with the anticipated number of people attending the hearing. To the extent possible, such documents shall also be made available through the policy body's Web site. However, this disclosure need not include any material exempt from public disclosure under this ordinance." This section is covered by 2.4.010(C).

<sup>39</sup> This section is covered by 2.4.010(C).

<sup>40</sup> This section is moved up to 2.4.010(D).

<sup>41</sup> A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established. Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body. This section should be in the Public Records section.

**2.4.020 Ancillary bodies.**

- A. At least 3 days before a meeting, an ancillary body must post notice of a meeting on the City's public access website and master calendar as soon as the meeting is scheduled. Notice of meetings of ancillary bodies must be provided by mail, email or facsimile to each person who has made a written request for notice of such meetings. In addition, the time, place and nature of the meeting must be disclosed upon inquiry by a member of the public.
- B. Any agenda prepared for the meeting of an ancillary body must be provided to any person who requests it, by mail, email or facsimile.

**Sections 2.1-2.4 above reviewed by the Task Force and staff. Sections 2.5 – 2.13 below have not been review by the Task Force or staff.**

**2.5<sup>[S2]</sup>7 Public Notice Requirements<sup>42</sup><sub>[S3]</sub>**

- 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~~ easily-understood English.
- B. The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or ~~activity~~ activity the location of the Web page to which related documents have been posted and a telephone contact and email address for residents who have questions.
- C. If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these ~~comments~~ 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.
- D. When notice is given, as provided in this ordinance, by public policy or advisory bodies, members of the public may submit statements and/or comments regarding any item on those bodies' meeting agendas; those statements or comments shall become public record, regardless of whether their authors are present when the item at issue is discussed. Statements or comments shall be subject to review and consideration by those bodies if submitted before or during

<sup>42</sup> San Francisco, Section 67.7-1

the hearing on the item. Statements or comments received within ten business days after the hearing shall go on the public record with a notation as to when it was received.

**2.68 Special Meetings<sup>43</sup>**

- A. Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:
  - 1. posting a copy of the agenda in a location freely accessible to the public at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;
  - 2. filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least 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) 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.
- 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 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

<sup>43</sup> Oakland, Section 2.20.070.

notice of such meeting.

- 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.

**2.79 Barriers to Attendance Prohibited<sup>44</sup>**

- 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 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" or Internet connections 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.

**2.810 Recording and Photography<sup>45</sup>**

- A. Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.
- B. All policy bodies shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. 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

<sup>44</sup> Milpitas, Section I-310-2.120

<sup>45</sup> Milpitas, Section I-310-2.130

of the recording. Requests shall be made through the City Clerk.

**2.914 Public Testimony and Written Statements**<sup>46</sup>

- 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.
- 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.
- C. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for 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 even-handed way, without manipulation in the order of speakers.
- D. A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.
- E. To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.
- F. When notice is given, as provided in this ordinance, by public policy or advisory bodies, members of the public may submit statements and/or comments regarding any item on those bodies' meeting agendas; those statements or comments shall become public record, regardless of whether their authors are present when the item at issue is discussed. Statements or comments shall be subject to review and consideration by those bodies if submitted before or during the hearing on the item. Statements or comments received within ten business days after the hearing shall go on the public record with a notation as to when it was received.
- G. Meetings of ancillary bodies 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

<sup>46</sup> Milpitas, Section I-310-2.140

business of the gathering.

**2.102 Minutes<sup>47</sup>**

A. The clerk or secretary of each ~~board and commission enumerated in the charter~~policy body shall record the minutes for each regular and special meeting of the ~~board or commission~~policy body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

~~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 Braille, increased type size or computer-readable file in a commonly used format.

**2.113 Public Comment by Members of Policy Bodies<sup>48</sup>**

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

**2.124 Conflict Disclosures**

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

<sup>47</sup> San Francisco, Section 67.16

<sup>48</sup> San Francisco, Section 67.17

Council's agenda. Pursuant to Government Code section \_\_\_\_\_, 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.

**2.135 Senior Staff Meetings Open to Public**

One senior City staff meeting per month shall be publicly noticed, made open and accessible to the public. Such meeting shall occur during regular business hours.