

Tucker, Sheila

From: Dan Pulcrano [dp@boulevards.com]
Sent: Wednesday, September 20, 2006 9:31 PM
To: Tucker, Sheila
Cc: "" <bbfischler@aol.com>,""D. D. S. Karl Hoffower (; "" <davezenker@welve2ski.com>,""David Roberson" <daver@rhrc.net>,"Ed Rast" <edrast.sanjose@gmail.com>,""; "" <edrast@ix.netcom.com>,""; "" <jcosby@sanjose.org>,""; Margie Matthews; "" <nwilliams@orloffwilliams.com>,""; "" <sgoldberg@mercurynews.com>,""; "" <zakiyasfire@yahoo.com>,"Bob Brownstein" <bbrownstein@atwork.org>,"Chaudhry; Rabia" <Rabia.Chaudhry@sanjoseca.gov>,""; Cogan, Jim; Cortese, Dave; Darlene Bright; David Parker; Fatima Silva; Jeff Bedolla; Krya Kazantzis; Le, Maria; Mark Schlosberg; Morrow, Crystal; Pete Constant; Richard Konda; Sanjeev Bery; Scott Soper; Diamond, Sandi; Lee, Sandra; Manheim, Tom; McFadden, Dan; Price, Lee; Terrazas, Eva
Subject: Re: Sunshine Reform Task Force Meeting
Attachments: Public Meetings 9-20 Draft.pdf



Public Meetings
9-20 Draft.pdf...

Sheila,

The attached draft was submitted to the chair and vice chair as public comment and contains comments to the staff draft for review by the Task Force.

Please post and distribute as required.

Thank you,

Dan

Chapter _____

Draft “Master” Sunshine Ordinance

Part 1	<u>Purpose and Definitions</u>
Part 2	Public Meetings
	2.1 Meetings to be Open and Public
	2.2 Time and Place for Meetings
	2.3 Notice and Agenda Requirements
	2.4 Public Outreach Notice Requirements
	2.5 Emergency Meetings
	2.7 Barriers to Attendance Prohibited
	2.8 Recording and Photography
	2.9 Public Testimony and Written Statements
	2.10 Minutes
	2.11 Public Comment by Members of Policy Bodies
	2.12 Required Disclosures
	2.13 Senior Staff Meetings Open to Public
Part 3	Closed Sessions
Part 4	Public Information and Outreach
Part 5	Public Records
Part 6	Technology
Part 7	Enforcement
Part 8	Ethics and Conduct

Part 1

Purpose and Definitions

1.1 Purpose

[Purpose to come later. The definitions have been moved into this part because they will apply to all of the provisions of the ordinance, not just the open meetings provisions.]

1.2. Definitions

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

1.2.010 Agenda packet

“Agenda packet” means agendas of meetings and any other documents that have been or are intended to be distributed to all or a majority of the members of a

policy body or an ancillary body in connection with a matter anticipated for discussion or consideration at a public meeting. The agenda packet must include, without limitation, the following:

- A. Any contract, agreement, letter of intent, or memorandum of understanding, including any amendment or modification thereto, that may be entered into by the City as the result of action by the policy body.
- B. To the extent in they exist at the time the agenda is posted, any memoranda prepared by a member of the policy body, City staff, or Council staff pertaining to a matter to be considered by the policy body at the meeting.
- C. The report of any outside consultant, advisor, contractor, or attorney that will or may be considered by the policy body in taking action on any item on the agenda for the meeting.

However, the agenda packet need not include any material exempt from public disclosure under this Chapter.¹

1.2.020 Ancillary body²

“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, a policy body, or a Department head, that meets regularly to advise on to provide advice on fiscal, economic or policy issues.³
- B. Any group assigned by a policy body, ~~or~~ the Mayor, a City Councilmember, or a Department head to meet with residents or community groups to obtain information that would result in a report or

¹ A fundamental concern of neighborhood associations and the public generally has been the fact that documents vital to understanding proposed actions are not available until just before or even at the meeting at which the action will be taken. The City Council and other City bodies have frequently been criticized for not providing such documents in advance, and members of the City Council themselves have complained about this problem. Having agenda packets available well in advance of meetings is critical, as is ensuring that agenda packets include the necessary documents. Agenda packets are defined here, and the section regarding making them public prior to meetings is included below.

² For ease of use, the definitions should be arranged alphabetically.

³ Department head, such as the City Manager, City Auditor, and City Attorney, are responsible for much of the policy formation and virtually all of the actual policy implementation and operations of the City. It is important that meetings of bodies they may establish to provide input on policy formation and implementation are open the public. Presumably, the omission of bodies created by a policy body was inadvertent. The revised language is closer to the San Francisco ordinance.

recommendation from the group ~~back to the policy body or the Mayor for action by the policy body or the Mayor~~ to the City.⁴

- 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. To the extent not inconsistent with state or federal law, any contract with or grant to such an entity must include a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government-related activities, or performance under the contract or grant, be conducted as provided in accordance with the provisions of this Chapter governing ancillary bodies. Records made available to the governing board of any such entity relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.⁵
- D. Ancillary body does not include any committee or body ~~consisting solely of City staff~~ that consists solely of City staff, and that is not reviewing, developing, modifying or creating City policies.⁶

1.2.030 City

“City” means the City of San José, California.

1.2.040 City staff

“City staff” means all employees of ~~Charter appointees~~ Department Heads.

1.2.050 Council staff

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

1.2.060 Department head

Department head means the official with primary responsibility for the operations of any department, division, office, or agency of the City.⁷

⁴ City Councilmembers and department heads should be included. For example, Councilmembers may establish neighborhood groups to provide input on City policy, practices, or reforms. Meetings of such bodies should be open to the public, to the extent practical. The language is also revised to make it simpler, and to make the definition applicable even if the group reports back to someone other than the official or policy body that created it.

⁵ This provision needs to include a requirement that contracts with or grants to private entities that perform government functions abide by the ordinance; they may not be required to do so in the absence of a contractual duty.

⁶ The definition of “ancillary body” should include staff committees that are involved in policy formation.

1.2.050 Policy body

“Policy body” means:

- A. The City Council, the Board of the City Redevelopment Agency, the City Financing Authority, and ~~all commissions, committees, boards~~ or other bodies of the City Council or the City Redevelopment Agency, whether permanent or temporary, decision making or advisory, ~~created by charter, ordinance, resolution or other formal action of the City Council or Board of the City Redevelopment Agency.~~⁸
- B. All boards and commissions enumerated in the City Charter.
- C. All commissions, boards, committees, or other bodies created by charter, ordinance, resolution or other formal action of the City Council, the Board of the City Redevelopment Agency, or the City Financing Authority.
- D. Committees comprised of City council staff that constitute a quorum of the City Council.⁹
- E. A board or other multimember body that governs a private corporation, limited liability company, or other entity that either:¹⁰
 - 1. Is created in order to exercise authority of the City government delegated by a policy body to the private corporation, limited liability company, or other entity; or

⁷ As discussed below, department heads perform vital functions in the formation and execution of City policy, so any bodies they create need to be included in the ordinance. The term is defined here. The substantive requirements are included below.

⁸ Staff revised this definition to tracks the language of the Brown Act. However, the Brown Act already applies to the City. There is no point in using the ordinance to duplicate what is already in the Brown Act. The ordinance is intended to both expand the application of open government to more meetings and records, and to make the requirements of openness stronger and more effective than existing law. Moreover, this definition is ambiguous, and appears to be too narrow. It is restricted to boards, committees “of the City Council or City Redevelopment Agency.” Most City boards and commissions are not made up of members of the City Council or Redevelopment Agency. For example, the definition proposed by staff would omit the Planning Commission, and apparently every other board and commission listed on the City’s “Boards and Commissions” web page. It would also omit other bodies established under the San Jose Charter, e.g. the Council Salary Setting Commission. Finally, it would omit the City Financing Authority, which is responsible for City bonds, an area of key fiscal concern.

⁹ This provision needs to be clarified.

¹⁰ City staff omitted this provision, which ensures that meetings of nominally private entities, such as non-profits contracted by the City to provide certain City programs. Such arrangements are quite common now. This provision is consistent with the Brown Act—see section 54952(c)—and the San Francisco ordinance.

2. Exists exclusively or primarily to exercise authority of the City government delegated by a policy body to the private corporation, limited liability company, or other entity; or
3. Receives funds from the City and has on its governing body a member of a policy body of the City appointed to that governing body by the policy body of the City.

1.2.060 Meetings

“Meeting” means:

- A. A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate 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.
- B. A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of the members of the policy body has become involved in such gatherings.¹¹
- C. Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members 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.
- D. Meeting does not include:
 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.

¹¹ Again, City staff has restricted the definition of “meeting” to be no more inclusive than the Brown Act. In particular, staff has omitted a key provision, designed to prevent one of the most common devices used to circumvent the Brown Act—a series of meetings involving less than a quorum, to discuss or deliberate on topics that are supposed to be the subject of open meetings. The purpose of this ordinance is to make sure that all **deliberations** are open to the public—not just the final decision, as has too often been the case in San Jose.

2. The attendance of a majority of the members of a policy body at a regional, state 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 do not discuss any item within the subject matter jurisdiction of the ~~policy body~~ City.
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 by or for the policy body itself,¹² provided that a majority of the members do not discuss any item within the subject matter jurisdiction of the ~~policy body~~ City.
4. The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of 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.

Part 2

Public Meetings

2.1 Meetings to be Open and Public: Application of Brown Act

All meetings of any policy body 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, will apply.

2.2 Time and Place for Meetings

2.2.010 Policy Bodies

- A. Each policy body, except for advisory bodies that do not meet regularly, must establish, by whatever rule is required for the conduct of business by that body, the time and place for holding regular meetings. The time and place of regular meetings shall be posted on the City's public

¹² Staff omitted this clause “because members of a policy body are already prohibited in Section [C] 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.” However, section C does not expressly prohibit a policy body from gathering together at a social occasion to discuss City business—as long as it does not attempt to develop a consensus. Moreover, the fact that they are prohibited from reaching a consensus at such a gathering does not make such a gathering a meeting under the Ordinance, which the public would have the right to attend.

access web site.¹³

- 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. Otherwise required by state or federal law or court order.
 - 2. It is necessary to inspect real property or personal property which cannot be brought conveniently within the territory of the City of San José.
 - 3. It is necessary 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.
- 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 must be made to contact others about the change in meeting location.

2.2.020 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. The time and place of regular meetings shall be posted on the City's public access web site.
- 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

¹³ City Staff revised this provision to exempt **policy** bodies that do not meet regularly. However, virtually all policy bodies of the City meet regularly, and to the extent that any do not they should establish regular meetings, for the benefit of the public. In addition, the time and place of regular meetings should be listed on the public access website, so that the public can readily determine when each policy body meets.

legal and practical restrictions on occupancy.

2.3 Notice and Agenda Requirements

2.3.010 Policy Bodies

A. Agenda Posting

1. 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 a place that is freely accessible to members of the public 24 hours per day and on the City's public access website.
2. At least 10 calendar days before a regular meeting, a policy body must post an agenda for the meeting. ~~The agenda must identify the policy body conducting the meeting, specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or 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.~~¹⁴
3. Notice of meetings of policy bodies, and a copy of the agenda for such meetings, must be provided by mail, email, or facsimile to each person who has made a written request for notice of such meetings.

B. Agenda Packets, Staff Reports and Policy Body Memoranda

1. ~~All staff reports and other supporting documents~~ Agenda packets related to the items on the agenda for a regular meeting must be posted on the City's public access website ~~or~~ and available in the Office of the City Clerk, and must be made available for inspection and copying at least 10 calendar days before a regular the meeting. If a document required to be included in the agenda packet cannot feasibly be posted on the City's public access website, a description of that document must be included in the agenda and the document must be made available for inspection and copying in

¹⁴ The stricken text has been moved to the section on agenda requirements. It fits more logically in that section.

the Office of the City Clerk at least 10 calendar days before the meeting.¹⁵

2. For items of business to be transacted or discussed at a regular meeting is for involving an expenditure of \$1 million or more, ~~in which case the staff reports and other supporting documents~~ agenda packets must be posted on the City's public access website and must be made available for inspection and copying in the Office of the City Clerk at least 14 calendar days before ~~a regular~~ the meeting.
3. In the event that any staff reports ~~and or~~ other supporting documents related to any items on the agenda for a regular meeting ~~are~~ is not posted on the City's public access website and made available for inspection in the Office of the City Clerk and copying at least 6 calendar days before the regular meeting, no action may be taken on the item, and the item will be deferred.¹⁶
4. ~~Council~~ Policy body memoranda relating to any item on the agenda for a regular meeting may not be signed by ~~no~~ more than two ~~councilmembers~~ members of the policy body. Policy body memoranda must be posted on the City's public access website and available in the Office of the City Clerk, and made available for inspection and copying 3 calendar days before a regular meeting.
5. Notwithstanding Subdivision B(3) and B(4), 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~~ prior to or at a public meeting must be made available for public inspection immediately, or as soon thereafter as is practicable. ~~No~~ This subdivision does not apply to documents from a member or members of the policy body, City staff, or Council ~~staff may be distributed any later than set forth in the preceding section.~~¹⁷

¹⁵ Agenda packets are crucial to informed public participation in meetings. Every possible effort must be made to include all documents related to an agenda item in the agenda packet, and to make the agenda packets public as far in advance of the meetings as possible. The term "agenda packet" is now defined above.

¹⁶ The term "agenda packet" is defined to include all documents relating to a topic that are in existence at the time the agenda is posted. This provision makes it clear that if any missing documents are not posted and provided to the public at least 6 calendar days before the meeting, no action may be taken on the agenda item.

¹⁷ The public needs to be able to respond in writing to items on the agenda and materials included in the agenda packet. Hopefully, this will generally happen **before** the meeting, so that copies can be made and provided to others attending the meeting. Therefore, this provision needs to be modified to permit the public to submit documents before the meeting, as well as at the meeting.

7. Except for documents distributed by a member of the public to all or a majority of the members of a policy body in accordance with subdivision (6), no document pertaining to any item on the agenda of a policy body may be discussed, considered, or relied upon by any member of a policy body in discussing or taking action on any agenda item, if it has not been made available to the public in accordance with this section.¹⁸

C. Council Action

1. The policy body may only discuss or take action on an item appearing on the posted agenda, except that members of a policy body may respond to statements or questions from members of the public at a meeting by asking a question for clarification, providing a referral to staff or other resources for factual information, or making a request of staff to report back to the policy body at a subsequent meeting concerning the matter raised by such testimony.
2. Notwithstanding subdivision (1), 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. 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 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 this Chapter.
 - c. The item was on an agenda posted pursuant to this Chapter for a prior meeting of the body occurring not more than ten

¹⁸ This provision ensures that the public disclosure requirements for agenda packets are enforceable, and will not be circumvented by the distribution of documents that are not included in the agenda packet.

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. A presiding officer of a policy body or a majority of members of a policy body may call a special meeting with ~~three~~ 10 calendar days notice, by delivering written notice to each member of the policy body, ~~and members of the media who have requested written notice of special meetings~~ providing notice to the public in accordance with Section 2.3.010(A), and distributing agenda packets, staff memoranda, public body memoranda, and other documents in accordance with Section 2.3.010(A).¹⁹
2. The notice of special meeting may be delivered to each member of the policy body 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

1. Agendas must identify the policy body conducting the

¹⁹ There is no reason that notice of “special” meetings cannot be provided in the same manner as for “regular” meetings. Special meetings are not used to address emergencies; emergencies are addressed in the “emergency meetings” section, added below. (This is the same mechanism used in the Brown Act.) Special meetings may occasionally be necessary, for instance to set a meeting for a date other than that on which the body normally meets, or to hold an extra meeting to address a particular issue. However, unless the notice and agenda requirements for such meetings are the same as for regular meetings, the City can evade the requirements for regular meetings by simply calling special meetings at which sensitive or controversial topics are addressed, with no more notice than is already required under the Brown Act.

meeting, specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or 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 have been or will be provided to the policy body in connection with an agenda item.

2. 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

(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. Each agenda of a policy body covered by this Open Government Ordinance must include the address, area code and phone number, fax number, 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.

2.3.020 Ancillary bodies

- A. As soon any meeting of an ancillary body is scheduled, and 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 posted on the City's public access website, and provided to any person who requests it, by mail, email or facsimile.
- C. Any agenda packet prepared for a meeting of an ancillary body must, to the extent feasible, be posted on the City's public access website, at the same time that the agenda for the meeting is posted.

2.4 Public Outreach Notice Requirements

2.4.010 Contents of Notice

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 their neighborhood area shall~~ must be brief, concise and written in plain, easily-understood English. The notice ~~should~~ must inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity the location ~~of the Web page to~~ on the City's public access website at which related documents have been posted, and a telephone contact and email address for residents who have questions.

2.4.020 Notice of Right to Submit Comments

If the notice informs the public of a public meeting or hearing, then the notice ~~shall~~ must state that persons who ~~are unable to attend the public meeting or hearing~~ wish to do so may submit to the City, by the time the ~~proceeding~~ hearing or meeting begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice ~~should~~ must also state the name and address of the person or persons to whom those written comments should be submitted.

2.4.030 Right to Submit Comments

When notice is given as provided in this ~~ordinance~~ Section, ~~by public policy or advisory bodies,~~ members of the public may submit statements and/or comments regarding any item on ~~these bodies'~~ the meeting agenda. Those statements or comments shall become part of the 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~~ they were received.

2.5 Special Emergency Meetings

Emergency meetings of a policy body may be held in accordance with Government Code Section 54956.5.²⁰

- ~~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~~

²⁰ The provisions relating to special meetings are already included in Section 2.30101(D). There is no need for this section, which largely duplicates the prior provisions. On the other hand, there is at present no provision in the ordinance for emergency meetings. This provision will allow emergency meetings to be held in the same circumstances in which they are presently allowed under the Brown Act.

~~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 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.~~

2.6 Barriers to Attendance Prohibited

2.6.010 Facilities

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.

2.6.020 Comment

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.

2.8 Recording and Photography

2.8.010 Public's Right to Record

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.

2.8.020 Recording by Policy Body

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

2.9 Public Testimony and Written Statements

2.9.010 Opportunity for Comment at Regular and Special Meetings

Every agenda for a regular or special meetings shall must 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 ___ of this chapter.

2.9.020 Opportunity to Comment Before Action is Taken

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.

2.9.030 Time Limits

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 per item for ~~a maximum of at least~~ three minutes. Speakers addressing matters not on the agenda shall be permitted to be heard once for at least three minutes. More time should be permitted to the extent that the business of the policy body permits it. However, the ~~Chair~~ presiding officer of the meeting ~~has discretion to may,~~ if necessary, reduce the speaking time in situations where there are a large number of persons who wish to speak on a particular agenda item, and may expand the speaking time if the nature of the item or the public interest therein justifies it. Time limits shall be applied uniformly to members of the public wishing to testify. The ~~Chair~~ presiding officer of the policy body shall accept public testimony in a fair and even-handed way, without manipulation in the order of speakers. Policy bodies may adopt

rules allowing more time for each speaker than the minimum required by this section.²¹

2.9.040 No Abridgement of Criticism

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 imposed in accordance with this section.

2.9.050 Changes to Agenda

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.

2.9.060 Right to Submit Statements

~~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 ~~these bodies'~~ a meeting agendas. Those statements or comments shall become a part of the 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.

2.9.070 Comment at Meetings of Ancillary Bodies

~~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 business of the gathering.~~ E. If an ancillary body conducts a meeting after issuing an agenda pursuant to this Chapter, the requirements of this Section shall apply to that meeting.

2.10 Minutes

2.10.010 Recording and Content of Minutes

²¹ This provision needs to make it clear that, while no one is required to speak, those who do want to speak get at least three minutes to do so. Even three minutes is very little time in which to address many of the extremely complex issues that confront the City and the public.

The clerk or secretary of each policy body shall record the minutes for each regular and special meeting of the 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.

2.10.020 Draft Minutes

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille, increased type size or computer-readable file in a commonly used format.

2.11 Public Comment by Members of Policy Bodies

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information ~~made required to be kept~~ 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, unless the disclosure is made for the purpose of bringing the attention of the public or law enforcement officials to a violation of the law, or is made in response to legal process, such as a court order, subpoena, or discovery request in litigation.²²

²² The limitation on disclosure of confidential information needs to be tempered by the recognition that public agencies sometime seek to suppress information about wrongdoing by threatening public officials or employees with legal action. Some provision must be made for "whistle-blowers." In addition, permitting disclosure pursuant to legal process is necessary in order to avoid conflicting legal duties.

2.12 Conflict Required Disclosures

2.12.010 Conflict of Interest

At the beginning of each City Council meeting or upon the arrival of the Mayor or Councilmember, the City Attorney shall ask the Mayor and each member of the City Council to disclose any financial or personal conflict with any item on the City Council's agenda. Pursuant to Government Code section _____, 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.

2.12.020 Material Information²³

Every member of a policy body, and every City official or employee appearing at a meeting of a policy body, has a duty to the policy body and the public to disclose information material to decisions by the policy body on matters under consideration at a meeting. Such information must, at a minimum, be disclosed at the meeting at which action is to be taken on the matter to which it pertains, before any action is taken on the matter. Such information should, to the extent possible, be disclosed in writing in the agenda packet for the meeting.

2.13 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.

²³ This provision addresses a concern raised by Councilman Reed and others, after revelations of the Mayor's secret agreement with NorCal. It is intended to ensure that members of policy bodies who have information material to the body's decision provide that information to the other members of the body and to the public.