

From: D Fadness [mailto:drfadness@sbcglobal.net]
Sent: Wednesday, August 30, 2006 9:08 PM
To: Sunshine_Reform_Task_Force@sanjoseca.gov
Cc: Ed Rast
Subject: Sunshine Ordinance comments
Importance: High

Dear Chairman Rast and Committee members:

I attach (virus-free) a cover letter and two documents containing comments for your consideration in developing a Sunshine Ordinance for our city.

Thank you for your volunteer efforts on behalf of San Joseans.

Dave Fadness
(408) 578-6428

P.S. Please notify me ASAP if you cannot accept attachments.

council. As such, it is unlikely that even the most flagrant violations of the Brown Act or any sunshine ordinance you may propose will ever be prosecuted. An elected attorney would also serve ordinary citizens who may have legitimate claims against the city.

Other cities do this. We should too. If we don't, we can keep piling rules upon well-meaning rules without success. The Brown Act is a classic example of what can happen when excellent laws are not enforced.

Thank you for this opportunity to suggest ideas and for your volunteer service in this critically important work for our city.

Sincerely yours,

David Fadness

Incl: (2)

cc: Ed Rast (personal email)

Enforcement Ideas for the Sunshine Ordinance

Submitted by: David Fadness, 4/10/06

1. All members of the city council and all elected, appointed, and/or otherwise employed administrative city staff must sign a notarized affidavit attesting to having read and understood the Sunshine Ordinance. Affidavits must be renewed for every revision in the ordinance and for every new term in office. Signed affidavits must be maintained in the City Clerk's office during the term of office or employment and for at least four years thereafter.

2. An eleven-member Sunshine Ordinance Task Force (TF) shall be appointed by the city council for two-year staggered terms, with a three term limit. No member is eligible for reappointment until two years after vacating or fulfillment of a three-term limit. Members of the Task Force shall serve without compensation.

Members may be dismissed for cause by majority vote of the TF, a quorum being present at a noticed meeting, but not by the City Council. In case of a vacancy, the TF Chair shall request and the City Council shall act within 60 days to appoint a replacement representing the same member category. In no case shall failure to appoint TF members result in an inability to meet a quorum.

There shall be no alternate TF members.

3. One Sunshine Ordinance TF member shall be appointed by the city council from two nominees for each seat recommended by each of the following entities:

- Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government, nominated by the League of Women Voters and/or the Civil Grand Jury.
- One member shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists.
- One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media.
- One member shall be appointed from individuals whose names have been submitted by the San Jose Chamber of Commerce.
- One member shall be appointed from attorneys whose names have been submitted by the local chapter of the Bar Association, giving preference to candidates with knowledge in First Amendment, Brown Act, and related public meeting law.
- One member shall be appointed from individuals whose names have been submitted by an organized local taxpayer organization.
- One shall be a member of the public experienced in consumer advocacy, nominated by the League of Women Voters and/or the Civil Grand Jury.
- One member shall be appointed from faculty members whose names have been submitted by San Jose State University.

The Clerk of the City Council or his/her designee and the City Attorney Council or his/her designee shall serve as staff to and attend all meetings of the TF.

All nominees must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Care must be exercised to avoid appointments that may result in conflicts of interest.

4. The TF shall select and hire on retainer an attorney from the private sector. This attorney shall have experience in First Amendment, Brown Act, and related public meeting law. He/she will serve at the pleasure of the TF, being hired or terminated by a majority vote of the TF, a quorum being present at a noticed meeting.

5. The City Council shall annually fund the TF attorney's retainer fees for an amount not to exceed 2080 hours at prevailing rates established by the local Bar Association. Fees in excess of this allocation shall be budgeted in advance, approved by a 2/3+ majority of the TF, a quorum being present at a noticed meeting, and be recommended for approval to the City Council. Any such request shall be considered by the City Council at its next duly noticed public meeting and may be denied for cause only by a 2/3+ majority vote of the Council.

6. Any member of the public (including TF members themselves) may report any suspected willful, purposive, flagrant, and/or knowing offense or pattern of repeated violations of the Sunshine Ordinance to the TF. Any such reports to one TF or more member shall be shared with the TF at a noticed regular meeting.

7. The plaintiff's identity will be kept confidential unless confidentiality is formally waived.

8. The TF will assess at a noticed regular meeting any and all reports of suspected violations, voting after due deliberation whether to accept or reject the claim. The TF may subpoena testimony and/or records supporting its examination.

9. If the TF accepts as valid a complaint, after due deliberation at a noticed regular meeting, the TF may upon a majority vote call upon its attorney to evaluate the possibility of Sunshine Ordinance violation. Unless agreed to in advance by the TF, a maximum fee of 8 hours shall be allowed for each consultation/report.

10. If the TF attorney finds that a probable violation of the Sunshine Ordinance has been committed, the TF may upon a 2/3 vote at a noticed regular meeting file a formal complaint with the District Attorney. Unless agreed to in advance by the TF, a maximum fee of 8 hours shall be allowed for each filing with the District Attorney.

11. A finding of guilt by the District Attorney shall at minimum be punishable by immediate removal from office and/or employment and forfeiture of all pay and benefits. If found guilty, a defendant who has been on administrative leave during examination of guilt shall reimburse the City all pay and benefits paid while on leave. A convicted violator shall thereafter not be allowed to hold elective office in the City of San Jose or be eligible for employment by the City or any of its vendors.

12. There must be specified degrees of punishment—including jail—for flagrant and willful violators. (I don't know what the law allows.)

Comments (in red) submitted by David Fadness, 3/10/06

Proposed
SAN JOSE SUNSHINE ORDINANCE
San Jose Mercury-News
March 2006

CHAPTER 26.1: GENERAL

26.1.1 Findings and Purpose.

26.1.2. Construction.

26.1.3 Definitions.

26.1.4 Citation.

SEC. 26.1.1 FINDINGS AND PURPOSE.

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

(a) Elected officials, councils, commissions, boards, committees and other agencies of the City exist to serve the public and to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(b) In order to ensure that the public interest is served by the decisions and actions of the City government, the government's conduct of the people's business must be subject to public scrutiny.

(c) Members of the public must be provided with a meaningful opportunity to participate in the decisions that affect them, and to understand how and why those decisions are made.

(d) In order to ensure public participation in and scrutiny of the decisions and conduct of the City government, records and information pertaining to the conduct of the people's business must be readily available to the public, unless specifically exempt from disclosure under this Title.

(e) Members of the public should not need to engage in prolonged or burdensome efforts, or to retain the services of an attorney, in order to obtain meaningful access to public meetings or public records and information. Rather, it is the duty of every official and employee of the City government to ensure prompt and meaningful access to public meetings and public records, and to assist the public in obtaining such access.

(f) Honesty, integrity, and openness in the exercise of government authority are fundamental prerequisites to an effective and efficient municipal government that serves the needs and interests of its citizens.

SEC. 26.1.2 CONSTRUCTION.

(a) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

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(b) The provisions of this ordinance requiring or promoting public access to meetings, records, or information relating to the conduct of the people's business shall be broadly construed. The provisions of this Title that limit, restrict, or provide exceptions to the public's right of access shall be narrowly construed.

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(c) Under the California Public Records Act, Government Code section 6254, any local government agency may open its records concerning the administration of the agency to public inspection, the exemptions in the Public Records Act notwithstanding, unless disclosure is otherwise prohibited by law. Under the Ralph M. Brown Act, Government Code section 54953.7, legislative bodies of local agencies may impose requirements upon themselves and upon the appointed legislative bodies they create which allow greater access to their meetings than prescribed by the minimal standards set forth in that Act. It is the intent of the City Council and the People of the City of San Jose to invoke this statutory authority, and to provide for greater access to public records and public meetings than is currently provided for under State law, as set forth in this Title.

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SEC. 26.1.3. DEFINITIONS.

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

(a) "Agenda packet" shall mean agendas of meetings and any other documents that have been or are intended to be distributed in advance 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 ~~should~~ shall include in clear language a detailed description of any proposal that will be presented to the body for consideration. The agenda item shall include, without limitation, the following:

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(1) 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;

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(2) Any memoranda prepared by City staff pertaining to a matter to be considered by the policy body at the meeting;

(3) 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 Title.

(b) "Ancillary body" shall mean:

(1) Advisory committees or other multimember bodies created by or at the initiative of a member or members of a policy body, the Mayor, the City Manager, a member of a policy body, a City department head, or any elected official(s) of the City.

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(2) Advisory committees or other multimember bodies primarily formed or existing to serve as a non-governmental advisor to a member or members of a policy body, the Mayor, the City Manager, a member of a policy body, a department head, or any elective official(s) of the City.

(3) Any group that meets to discuss with or advise the Mayor, the City Manager, a City department head, or any elected official(s) of the City on fiscal, economic, or policy issues.

(4) Social, recreational, or ceremonial gatherings sponsored or organized by or for a City policy body to which a majority of the body has been invited.

(5) "Ancillary body" shall not include a committee that consists solely of employees of the City created at the initiative of a member or members of a policy body, the Mayor, the City Manager, a department head, or an elected City official.

(6) Notwithstanding paragraph (4) above, "ancillary body" shall include a committee that consists solely of employees of the City created at the initiative of a member or members of a policy body, the Mayor, or a

department head, when that committee is reviewing, developing, modifying, or creating city policies or procedures.

(c) "Brown Act" shall mean the Ralph M. Brown Act, Government Code §§ 54950 *et seq.*

(d) "Charter" shall mean the charter of the City of San Jose, as amended from time to time.

(e) "City" shall mean the City of San Jose, including all departments of the City.

(f) "Confirmed misconduct" shall mean a complaint, charge, or finding of misconduct that has been determined by the City official, consultant, or other person charged with investigating the misconduct to be well-founded, or that has resulted in discipline or dismissal.

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(g) "Custodian of a public record" shall mean any member or members of a public or ancillary body, and any other official or employee of the City having custody of or control over any public information or public record.

(h) "Department" shall mean any department, division or agency of the City.

(i) "Department head" shall mean the official with primary responsibility for the operations of any department, division or agency of the City.

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(j) "Dismissal" shall mean any action resulting in termination of employment at the will of the employer rather than of the employee, however characterized.

(k) "Master calendar" shall mean a calendar on the City's public access website that includes the date, time, and location of every meeting conducted by the City or any department, official, policy body, or ancillary body of the City, notice of which is required to be given to the public pursuant to this Title, under any other provision of the San Jose Municipal Code, or under state or federal law, or which are otherwise open to the public, including but not limited to all meetings as defined in subsection (m) below.

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(l) "Mayor" shall mean the Mayor of the City of San Jose.

(m) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) 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 members has become involved in such gatherings; or

(3) Any use of personal intermediaries or communications that could permit a majority of the members of a policy body to become aware of any item that is within the subject matter jurisdiction of the City, and of the views or positions of other members with respect thereto, and to reach a consensus thereon.

(4) This subsection does not apply to statements by a member of a policy body to a representative of the media regarding any item that is within the subject matter jurisdiction of the City, if the statement is intended for dissemination to the public.

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(5) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member or members of a policy body and another person that do not convey the views or positions of other members upon the subject matter of the contact or conversation.

(B) 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,

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provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City.

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion, other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body.

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(n) "Policy body" shall mean:

(1) The City Council, the San Jose Redevelopment Agency, the San Jose Financing Authority, and the San Jose Public Facilities Financing Corporation.

(2) Any other board or commission enumerated in the City charter.

(3) Any board, commission, committee, or other body created by ordinance or resolution of the City Council, or of which the City Council serves as the Board.

(4) Any advisory board, commission, committee or body, created by the initiative of a City policy body.

(5) Any standing committee of a City policy body, irrespective of its composition.

(6) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents.

(7) A board or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) 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

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(B) 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

(C) 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.

"Policy body" shall not include a committee which consists solely of employees of the City, unless such committee was established by charter, ordinance, or resolution of the City Council.

(o) "Public access website" shall mean a portion of the City's Internet World Wide Web site devoted to providing information on public access to meetings, records, and information, including without limitation a master calendar of meetings, and all other information required to be provided through a public access website pursuant to this Title.

(p) "Public information" shall mean the content of public records" as defined herein, whether provided in documentary form or in an oral communication. "Public Information" shall not include computer software, but shall include information stored in electronic form using computer software, and any code, symbols, or data added to an electronic file or record to make it readable or usable to a person who is being provided public information in electronic form.

(q) "Public record" shall mean any record containing information relating to the conduct of the public's business prepared, owned, used, acquired or retained by any member of a policy or ancillary body, or any other official or employee of the City, or by any department, division or agency of the City, regardless of physical form or characteristics. Records in the possession or custody of entities other than the City, including without limitation physical or electronic storage facilities operated by third parties, are public records under this Title if they are subject to the control of the City.

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(r) "Public Records Act" shall mean the California Public Records Act, Government Code §§ 6250 *et seq.*

(s) "Sunshine Ordinance Task Force" or "Task Force" shall be defined as set forth in section 26.4.1.

(t) "Supervisor of records" shall mean the City Attorney.

To the extent they are not defined in this section, terms used in this Title that are also used in the Brown Act or the Public Records Act shall be defined as they are in the Brown Act and the Public Records Act. In the event of any conflict in the definitions applied by the Brown Act and the Public Records Act, the definition which would result in greater or more expedited public access shall apply.

SEC. 26.1.4. CITATION.

This Title may be cited as the San Jose Sunshine Ordinance.

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CHAPTER 26.2: ACCESS TO MEETINGS

26.2.1. Meetings of Policy Bodies to Be Open and Public; Application of Brown Act.

26.2.2. Regular Meetings of Policy Bodies.

26.2.3. Meetings of Ancillary Bodies; Application of Sunshine Ordinance by Contract.

26.2.4. Emergency Meetings.

26.2.5. Closed Sessions: Permitted Topics.

26.2.6. Agenda Disclosures: Closed Sessions.

26.2.7. Disclosure of Closed Session Discussions and Actions.

26.2.8. Agendas and Related Materials: Public Records.

26.2.9. Public Access Website

26.2.10. Tape Recording, Filming and Still Photography.

26.2.11. Public Testimony.

26.2.12. Minutes.

SEC. 26.2.1. MEETINGS OF POLICY BODIES TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, except as provided in this Title. To the extent not addressed by this Title, and subject to the enhanced requirements for public access provided in this Title, meetings of policy bodies shall be governed by the Brown Act. In case of inconsistent requirements or definitions under the Brown Act and this Title, the requirement which would result in greater or more expedited public access shall apply.

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SEC. 26.2.2. REGULAR MEETINGS OF POLICY BODIES.

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(a) Each policy body, except for advisory boards, commissions, or committees that will not meet regularly, shall establish by resolution or motion the time and place for holding regular meetings.

(b) At least ten days before any regular meeting, a policy body shall post an agenda for the meeting. The agenda shall identify the policy body conducting the meeting, and shall specify the time and location of the meeting. The agenda shall also contain a meaningful description in clear language 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.

(c) A description of an agenda item 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. It shall identify any and all documents that have been or are intended to be provided to all or a majority of the members of the policy body in connection with an agenda item.

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(d) Agendas shall be posted in a location that is freely accessible to members of the public. Agendas shall, at a minimum, be posted on a bulletin board at City Hall that is available to all members of the public during regular business hours, and on the City's public access website.

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(e) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, requesting additional information, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

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(f) Subsection (e) notwithstanding, a policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster, or work force disruption poses an imminent 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 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 (b).

(3) The item was on an agenda posted pursuant to subdivision (b) for a prior meeting of the body occurring not more than 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.

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(g) Prior to taking action on any agenda item, each member of a policy body shall disclose the identity of any lobbyist (as defined in section 12.12.190), any local government lobbyist (as defined in section 12.02.060), any person doing business with the City (as defined in section 12.02.090), any advocacy group, and any other person who has communicated with the member of the policy body regarding the agenda item. The disclosure required by this subsection may be made orally at the meeting of the public body, or in writing. If made in writing, the disclosure shall be made available to the public at the beginning of each meeting, and shall be posted on the City's public access website prior to the meeting.

(h) 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 that is 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.

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(i) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following:

(1) A notice stating as follows:

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Title 26 of the San Jose Municipal Code)

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE.

(2) The address, area code and phone number, fax number, and e-mail address for the Sunshine Ordinance Task Force.

(3) The Internet address of the City's public access website.

SEC. 26.2.3. MEETINGS OF ANCILLARY BODIES; APPLICATION OF SUNSHINE ORDINANCE BY CONTRACT.

(a) All meetings and gatherings of ancillary bodies shall be accessible to members of the public 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:

(1) Notice of such gatherings shall be posted in a location that is freely accessible to members of the public and be provided on the City's public access website whenever possible, as soon as the meeting or gathering is scheduled. The notice shall include the time, place, and nature of the meeting or gathering. In addition, the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public.

(2) Any agenda prepared for a meeting or gathering of an ancillary body shall be posted in a location that is freely accessible to members of the public and on the City's public access website as soon as it is completed, and shall be provided to any person who requests it, as a public record.

(3) Meeting and gathering of ancillary bodies need not be conducted in any particular space for the accommodation of members of the public, but members of the public shall be permitted to observe to the extent space is available, consistent with legal and practical restrictions on occupancy.

(4) Meetings or gatherings 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.

(b) In addition to the foregoing, meetings of ancillary bodies specified in Section 26.2.1(b)(6) of this article shall be conducted in accordance with the following requirements.

(1) Notice of such meetings shall be posted at least 72 hours before the time of such meeting in a location that is freely accessible to members of the public and on the City's public access website. In addition, notice of such meetings shall be provided by mail, e-mail, or facsimile as reasonably requested, to each person who has made a written request for notice of such meetings.

(2) If the committee body elects to hold regular meetings, it shall provide by bylaws, motion, or whatever other rule is utilized by that committee 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 in a location that is freely accessible to members of the public and on the City's public access website.

(c) Ancillary bodies may hold closed sessions as permitted by this Title.

(d) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that 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 activities on the property, or performance under the contract or grant, be conducted in accordance with this section. In addition, the policy

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A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, except to consider the retention of an independent contract attorney or law firm to represent the City in litigation that the City has not yet initiated.

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(4) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations, when a policy body has authority over such matters.

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(i) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives, and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees.

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(ii) A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(5) In addition to the closed sessions authorized by subsection (a)(5), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

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(6) With its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

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(i) Such closed sessions shall be for the purpose of reviewing the City's position with respect to the price or terms of payment and instructing its negotiator regarding such terms only. No discussion of any other aspects of the purchase, sale, exchange, or lease of real property may take place in closed session. In particular, any consideration or discussion of plans or proposals for the development of real property must take place in an open and public session.

(ii) Prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern, any plans or proposals pertaining to development of the property or properties in question, the City's negotiators, and the person or persons with whom its negotiators may negotiate.

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(b) Authority to take final action with respect to any subject matter that may be addressed in a closed session held pursuant to this section may not be delegated to an ancillary body.

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(c) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least five years, or permanently where technologically and economically feasible. Closed session recordings shall be made available to the public as soon as the purposes for closing the session are no longer applicable.

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(d) Recordings of closed sessions held to discuss "anticipated litigation" shall be released to the public upon the earlier of: (1) expiration of the statute of limitations for the anticipated litigation if no litigation is filed; or (2) settlement or resolution of the controversy that was the basis for the anticipated litigation.

SEC. 26.2.6. AGENDA DISCLOSURES: CLOSED SESSIONS.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda for any meeting of a policy body, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall provide all of the following information:

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(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

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LICENSE/PERMIT DETERMINATION:

Applicant(s):

The space shall be used to specify the number of persons whose applications are to be reviewed, and the type of license or permit being sought or renewed.

(2) With respect to every item of business to be discussed in closed session pursuant to subsection 26.2.5(a)(6) of this Title or Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation: Price Terms of payment

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

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(3) With respect to every item of business to be discussed in closed session pursuant to subdivision 26.2.5(a)(3) of this Title or Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process:

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: As defendant As plaintiff

The space under "Existing litigation" shall be used to identify a case under discussion pursuant to subdivision 26.2.5(a)(3)(i) of this Title or Government Code Section 54956.9(a), including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivisions 26.2.5(a)(3)(ii)-(iv) of this Title or subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

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(4) With respect to every item of business to be discussed in closed session pursuant to subdivision 26.2.5(a)(1) of this Title or Government Code Section 54957(a):

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with.

(5) With respect to every item of business to be discussed in closed session pursuant to subdivision 26.2.5(a)(2) of this Title or Government Code Section 54957(b), either:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISCIPLINE OR DISMISSAL

Number of employees affected:

(6) With respect to every item of business to be discussed in closed session pursuant to subdivisions 26.2.5(a)(4) and 26.2.5(a)(5) of this Title or Government Code Section 54957.6, the following information, completing multiple categories as appropriate:

CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

Anticipated issue(s) under negotiation:

Wages:

Hours:

Benefits:

Working Conditions:

Other (specify if known): _____

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding: _____

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(b) In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted together with the agenda within the time periods required by this Title and by Government Code Sections 54954.2 and 54956, and provided with any mailed or delivered notices required by this Title or Government Code Sections 54954.1 or 54956.

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(c) Each agenda item that involves existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

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SEC. 26.2.7. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.

(a) After every closed session, a policy body or ancillary body may, in its discretion and in the public interest, disclose to the public any portion of its discussion that is not required to be kept confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open

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session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session, and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the negotiation of the agreement is final. The written agreement and any documents attached to or referenced in the agreement shall be made publicly available at least 15 days before the meeting at which the policy body will decide whether to approve the agreement. If, notwithstanding the conclusion of negotiations, there are conditions precedent to the final consummation of the transaction, the document agreement and related documents need not be disclosed until the conditions have been satisfied, except as otherwise provided pursuant to sections _____ of the Public Contracts Code.

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(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against, and the factual circumstances giving rise to any complaint, cross-claim, petition or other litigation initiative by the City.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 15 days before the meeting at which the policy body will decide whether to approve the settlement, to the extent that the settlement would commit the City or a department thereof to adopting any policy, practice or program, modifying or discontinuing an existing policy, practice or program, or otherwise acting in any way other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number and court (if any), and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled would harm the city's interests in pending litigation arising from the same facts or incident and involving a person not a party to or otherwise aware of the settlement, the records required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or for confirmed misconduct, the reason for dismissal. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 days before the meeting at which a policy body will decide whether to approve the agreement.

(c) In addition, a policy body shall publicly report the vote or abstention of every member present on any topic listed in subdivision (b) of this section, if the vote results in a final decision to reject a proposed action or agreement.

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(d) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item

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following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(e) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted, and on the City's public access website.

SEC. 26.2.8. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) Agenda packets shall be provided by personal delivery, facsimile, e-mail, or mail to all members of a policy body. Agenda packets shall be sent to the members of the policy body no later than the time at which the agenda is required to be posted or the time the agenda is actually posted, whichever is earlier.

(b) Agenda packets shall be made available to the public for inspection and copying upon request, at the time that the agenda for the meeting is required to be posted, or at the time the agenda is actually posted, whichever is earlier. Agenda packets shall be made available for public inspection and copying whether or not actually distributed to or received by the policy body at the time of the request.

(c) In addition to any other means of making them available, agenda packets shall be posted on the City's public access website, at the time that the agenda for the meeting is required to be posted, or at the time the agenda is actually posted, whichever is earlier.

(d) No document intended for distribution to all or a majority of the members of a public body 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. (If substantive new information becomes available that has not been disclosed to the public, will the policy body be required to continue their hearing to another date? Will the body be allowed to act even if, had it been disclosed, that information could have influenced public opinion? Last-minute revelations are an ongoing source of concern. Important new info can be introduced by officials and by members of the public (including applicants, etc.).)

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(e) If not included in the agenda packet, any memorandum prepared by or on behalf of any member of a policy body and distributed to one or more other members of the policy body, pertaining to any item on an agenda for a meeting of the policy body, shall be made available to the public for inspection and copying upon request, and posted on the public access website, no later than 72 hours before the meeting at which the agenda item will be addressed.

(f) A policy body may charge a duplication fee for a copy of a public record prepared for consideration at a public meeting. The fee shall not exceed the actual cost of duplication up to ten cents (\$.10) per page, or a higher actual cost of duplication established pursuant to the procedure set forth in Section 26.3.8(d).

(g) To the extent that agenda packets are prepared for meetings of ancillary bodies, the requirements of this section shall apply.

SEC. 26.2.9. PUBLIC ACCESS WEBSITE

(a) The City shall create and maintain a public access website and make provision at city hall for public viewing at no charge for those who may not have web access.

(b) The public access website will include, at a minimum, the following:

(1) A list of all policy bodies, with the time and place of regular meetings of such bodies.

(2) The master calendar, containing the date, time, and location of every meeting conducted by the City or any department, official, policy body, or ancillary body of the City, notice of which is required to be given to the public pursuant to this Title, under any other provision of the San Jose Municipal Code, or

under state or federal law, or which are otherwise open to the public, including but not limited to all meetings as defined in Section 26.1.3(m) .

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(3) Agendas for all regular meetings of all policy bodies, posted in accordance with the requirements of this Title, and maintained in an on-line archive for at least five (5) years following the date of the meeting to which they pertain.

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(4) Minutes for all regular and emergency meetings of all policy bodies, posted in accordance with the requirements of this Title, and maintained in an on-line archive for at least five (5) years following the date of the meeting to which they pertain.

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(5) Agenda packets for all regular meetings of all policy bodies, posted in accordance with the requirements of this Title, and maintained in an on-line archive for at least five (5) years following the date of the meeting to which they pertain.

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(6) A list of all ancillary bodies, with the time and place of regular meetings of such bodies, if established.

(7) A copy of the San Jose Sunshine Ordinance.

(8) Information on how to obtain a free copy of the Sunshine Ordinance. The City will provide a copy of the San Jose Sunshine Ordinance, the California Public Records Act, and the Brown Act to any requestor, free of charge, except for postage if delivery by mail is requested.

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(9) Any other information required by this Title to be posted on the public access website.

SEC. 26.2.10. TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY.

(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. Such recording may be restricted only based on a reasonable finding of a majority of the policy body that the recording or broadcast cannot continue without noise, illumination, or obstruction of view that will constitute a persistent disruption of the proceedings.

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(b) The City Council and each policy body enumerated in the charter shall record each regular and emergency meeting, by audio recording or audio-video recording. Any audio or audio-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. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

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SEC. 26.2.11. PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, before or during the legislative body's consideration of the item. However, no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 26.2.3(f) of this Title.

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(b) In the case of a meeting of the City Council, the agenda need not provide an opportunity for members of the public to address the City Council on any item that has already been considered by a committee, composed exclusively of members of the City Council, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed or new information has been introduced since the committee heard the item, as determined by the City Council.

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(c) Every agenda for emergency 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 a policy body concerning that item before action is taken. However, by vote of a majority of the members of the policy board present, the to-

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tal amount of time for public comment may be limited to not less than 30 minutes, based on a reasonable finding of the policy board that urgent action is required.

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(d) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) through (c) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt in advance 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 up to three minutes, at a minimum. Policy bodies may adopt rules which provide more time for each speaker. In addition, policy bodies may permit more time for each speaker at particular meetings, or on particular topics. However, time limits shall be applied uniformly to all members of the public wishing to testify.

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(e) 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 City of the policy 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 this section.

(f) To facilitate public input, any agenda changes or continuances and deferrals 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.

(g) Every member of a policy or ancillary body retains all constitutional and other legal 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.

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SEC. 26.2.12. MINUTES.

(a) The clerk, secretary, or other designated official of each policy body shall record the minutes for each regular and emergency meeting of the body. The minutes shall, at a minimum, 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 written summary of their comments which shall, if no more than 150 words, be included in the minutes.

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(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, and shall be posted on the public access website, no later than ten working days after the meeting at which the minutes are adopted.

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CHAPTER 26.3: PUBLIC INFORMATION AND PUBLIC RECORDS

26.3.1. Release of Public Records; Administrative Appeals.

26.3.2. Release of Oral Public Information.

26.3.3. Public Information That Must Be Disclosed.

- 26.3.4. Public Review File--Policy Body Communications.
- 26.3.5. Immediacy of Response.
- 26.3.6. Withholding Kept to a Minimum.
- 26.3.7. Justification of Withholding.
- 26.3.8. Fees for Duplication.
- 26.3.9. Index to Records.
- 26.3.10. Records Survive Transition of Officials.
- 26.3.11. Policy Regarding Purchase and Use of Computer Systems.

SEC. 26.3.1. RELEASE OF PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Public records are open to inspection at all times during the office hours of each City department, and every person has a right to inspect any public record not exempt from disclosure pursuant to this Title or expressly prohibited to be disclosed by law. Every custodian of a public record shall, as soon as reasonably possible and without requiring an appointment, permit any public record, or any segregable portion of a public record, to be inspected and examined by any person.

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(b) Every person has a right to copy public records not exempt from disclosure pursuant to this Title or expressly prohibited to be disclosed by law. Every custodian of a public record shall, as soon as possible following receipt of a request to copy a public record, comply with such a request. If a person asks the custodian of a public record to provide a copy a public record, the custodian shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents (\$.10) per page. If a person asks the custodian of a public record to permit the requestor to make their own copy using equipment provided by the requestor (including without limitation a portable scanner or copier), the custodian shall permit the requestor to make copies at no charge and shall provide reasonable accommodation for the requestor's copying activity, if the copying can be performed by the requestor without severe disruption of the other business of the City.

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(c) A request for inspection or copying may be delivered to the office of the custodian by the requestor orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record, is exempt from disclosure under this Title, or is expressly prohibited to be disclosed by law, the custodian shall justify withholding any record by demonstrating, in writing, as soon as possible and within no more than ten calendar days following receipt of a request, that the record in question is exempt under express provisions of this Title or is otherwise expressly prohibited to be disclosed by law.

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(d) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, in the custody of, or available to the custodian, whether or not the contents of those records are exempt from disclosure. A custodian of a public record shall, when requested to do so, provide in writing within ten calendar days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to particular subjects or questions with enough specificity to enable a requester to identify records in order to make a request under this section. A custodian of any public record, when not in possession of the record requested, shall assist a requester in identifying the proper office or staff person.

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(e) Public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or readily generated by the department, its officers or employees, including disk, tape, printout or monitor, at a charge no greater than the cost of the media on which it is duplicated. The City shall ensure that any information exempt from disclosure that is contained in any electronic database or other electronic record is segregated or segregable from all public information to the greatest possible extent. Inspection of public information on a computer monitor need

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not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information, or to release information if doing so would violate a licensing agreement or copyright law.

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(f) If a custodian of a public record refuses or fails to comply, or incompletely complies with a request pursuant to this section, the requester may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall, as soon as possible and within no more than ten calendar days, determine and inform the petitioner whether the record, or any part of the record, is public. If requested by the petition, or if the supervisor of records deems it desirable, this determination shall be in writing. Upon the determination by the supervisor of records that all or part of the record is public, the supervisor of records shall immediately direct the custodian of the public record to comply with the request in whole or in part. If the custodian refuses or fails to comply with any such direction within five calendar days, the supervisor of records shall notify the district attorney or the attorney general, who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

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(g) If the custodian refuses or fails to comply, or incompletely complies with a request pursuant to this section, or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Ordinance Task Force ("Task Force") for a determination of whether the record requested is public. The Task Force shall inform the petitioner, as soon as possible but in no case later than 45 calendar days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. If requested by the petition, or if deemed desirable by the Task Force, this determination shall be in writing. Upon the determination that the record is public, the Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within five calendar days, the Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The City Council and the City Attorney's office shall provide sufficient staff and resources to allow the Task Force to fulfill its duties under this provision. If requested by the petition, the Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

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(h) The administrative remedies provided under this section shall in no way limit the availability of other remedies provided to any person requesting a public record, including without limitation those provided in section 26.4.4. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the Superior Court shall have jurisdiction to order compliance.

(i) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(j) On at least an annual basis, and as otherwise requested by the Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at a minimum identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether orders given to custodians of public records were followed, whether the ruling was overturned by a court. At the request of the Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

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(k) The San Jose City Attorney's office shall act to protect and secure the rights of the persons seeking access to public information and public meetings, and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(l) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City official or employee in litigation under this Title that is filed in court, to any extent required by the City Charter or California law.

SEC. 26.3.2. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies, and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information. (Note: Please carefully avoid institutionalizing "spokespersons" for every city department and office. Specify that the department head or elected official must be his/her own spokesperson—I'd like to hear it "from the man" rather from a hired spin-meister.)

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section does not and shall not be interpreted to curtail direct or informal contacts between other City officials or employees and members of the public.

(c) Unless specifically authorized by a department supervisor, no employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries. A decision not to respond must be announced to both the inquiring individual and their city council representative.

(d) No City official or employee shall be discouraged from, or sanctioned or disciplined for, disclosing any public information or public record to any person. Any official or employee who is sanctioned or disciplined for disclosing public information or a public record shall have a cause of action against the City and the person responsible for imposing the discipline.

SEC. 26.3.3. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

(a) General

(1) To the extent not addressed by this Title, and subject to the enhanced disclosure requirements provided in this Title, release of public information shall be governed by the Public Records Act. In case of inconsistent requirements or definitions under the Public Records Act and this Title, the requirement which would result in greater or more expedited public access shall apply.

(2) The City shall not invoke its legal discretion to withhold public information or public records under Government Code section 6254 of the Public Records Act with respect to any category of information addressed in this section. Instead, the provisions of this section shall govern and shall provide enhanced rights of access to public information and public records.

(3) The categories of information described in this section must be made available to any person upon request, except as otherwise provided in this section, and shall be referred to as "non-exempt" public information.

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), preliminary drafts, notes, or memoranda, whether in printed or electronic form, shall be subject to disclosure, if they have been retained as of the time the request is made. This subsection does not require the retention of preliminary drafts, notes, or memoranda that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or

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practice, provided that the City shall not adopt any policy of disposing of drafts, notes, or memoranda intended solely or primarily to prevent public access to such records.

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(2) Draft versions of an agreement being negotiated by representatives of the City with some other party, and all memoranda and other draft documents relating to such an agreement communicated to the other party, need not be disclosed immediately upon creation, but must be preserved and made available for public review 15 calendar days before the meeting at which a policy body will decide whether to approve the agreement.

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(b) Litigation Material, Attorney-Client Communications, and Attorney Work Product.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Title:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the Public Records Act, the Brown Act, the Political Reform Act, any San Jose governmental ethics ordinance or code, or this Title; or

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(iv) A report of, or records related to, any investigation performed by or at the direction of the City Attorney, or any attorney retained by the City, into misconduct by any City official or employee, or any member of a policy or ancillary body, if the investigation results in dismissal, discipline, official sanction, or a finding of confirmed misconduct.

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(2) Unless otherwise privileged under California law, records of all communications between the City and the adverse party shall be subject to disclosure, including the text and terms of any settlement. However, settlement agreements and communications relating to the settlement of litigation need not be disclosed until 15 calendar days before the meeting at which a policy body will decide whether to approve the settlement.

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(c) Personnel Information. None of the following shall be exempt from disclosure under any provision of California law that does not expressly prohibit disclosure:

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

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(i) Sex, age and ethnic group;

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

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

(iv) Whether currently employed in the same position for another public agency.

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

(2) The name of every employee.

(3) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, and marital status of the employee may be redacted.

(4) The job classification of every employee, and a description of every employment classification.

(5) The compensation and benefits paid or otherwise provided by the City to every employee, including without limitation base compensation, overtime compensation, bonuses, disability income, retirement income, and all compensation paid to any City employee by a private party pursuant to any ordinance, regulation, or contractual obligation imposed by the City.

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(6) Any contract or other record specifying terms of employment of any individual city official or employee.

(7) Any memorandum of understanding between the City or department and a recognized employee organization.

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(8) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(9) The record of any confirmed misconduct of a City official or employee, and of any sanction or discipline imposed for such misconduct.

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(d) Law Enforcement Information.

(1) The San Jose Police Department shall make available to any person, upon request, any police report, arrest report, or incident report. However, unless the report is requested by a person entitled to the following information under state or federal law, the following information shall be removed from the report before it is released:

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(i) With respect to the victim of any crime, the address or telephone number of the victim, except in response to a request made pursuant to Government Code section 6254(f)(3);

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(ii) With respect to the victim of any crime any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code, the name of the victim may be withheld at the victim's request, to the extent permitted by Government Code section 6254(f)(2);

(iii) With respect to any person other than an arrestee or suspect, any driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

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(iv) With respect to any person, including an arrestee or suspect, any social security number, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

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(v) The names of juvenile witnesses;

(vi) The name of any juvenile arrestee or suspect, unless and until it has been determined that the juvenile will be charged and prosecuted as an adult, provided that the first name and initial letter of the last name of any juvenile arrestee or suspect shall remain on the report in any event;

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(vii) The identity of any confidential source.

Numerical or alphabetic designations should, to the extent practicable, be substituted for names omitted from any report.

(2) All other records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or a court determines that a prosecution will not be sought against the subject involved, once a final judgment of conviction or acquittal has been entered, or once the statute of limitations for filing charges has expired, whichever occurs first. However, subdivision (j) of this section notwithstanding, the following individual items of information in the following categories may

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be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

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(i) With respect to the victim of any crime, the address or telephone number of the victim, except in response to a request made pursuant to Government Code section 6254(f)(3);

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(ii) With respect to the victim of any crime any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code, the name of the victim may be withheld at the victim's request, to the extent permitted by Government Code section 6254(f)(2);

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(iii) With respect to any person other than an arrestee or suspect, any driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

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(iv) With respect to any person, including an arrestee or suspect, any social security number, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number, if contained in the report;

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(v) The names of juvenile witnesses;

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(vi) The name of any juvenile arrestee or suspect, unless the juvenile has been charged and prosecuted as an adult, provided that the first name and initial letter of the last name of any juvenile arrestee or suspect shall remain on the report in any event;

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(vii) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

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(viii) The identity of a confidential source;

(ix) Secret investigative techniques or procedures;

(x) Information whose disclosure would endanger law enforcement personnel; or

(xi) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

Numerical or alphabetic designations should, to the extent practicable, be substituted for names omitted from any report.

(3) The San Jose Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the Police Department, which reports the number and substance of citizen complaints against the Police Department or its officers, the number and types of cases in which discipline is imposed, and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly. However, a unique numerical or alphabetical designation shall be assigned to each officer who is the subject of one or more complaints, so that the public can determine whether multiple complaints have been directed at a single officer, and the nature of those complaints.

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(e) Code Enforcement and Civil Law Enforcement

(1) Reports relating to the enforcement of any provision of California law or of the San Jose Municipal Code intended to protect public health, safety, or welfare, including without limitation building and health codes, by any employee of the City other than an employee of the San Jose Police Department, shall be made available to any person upon request, upon conclusion of the inspection or investigation that is the subject of the report.

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(2) To the extent it is contained in such reports, the following information may be removed before the report is made available to the public:

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(i) Any driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings or checking account number, or credit card number;

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(ii) The identity of a confidential source.

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(f) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals, and all other records of communications between the department and persons or firms submitting bids or responses to requests for proposals or otherwise seeking contracts shall be open to inspection for at least 15 calendar days before any contract is awarded or any bid is finally accepted and approved.

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(2) All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request.

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(3) Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

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(4) During the course of negotiations for:

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(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

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(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. The final contract, including the dollar amount of said contract, shall be made available for inspection and copying upon the conclusions of negotiations, and at least 15 calendar days prior to the meeting at which a policy body will decide whether to approve the contract.

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(5) At the end of each fiscal year, each City department shall provide to the City Council a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Title.

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(g) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

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(h) Appointment Calendars and Telephone Records. The Mayor, each member of the City Council, City Manager, City Auditor, City Attorney, and every department head shall keep or cause to be kept a daily appointment calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly noticed, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. In addition, phone records for each telephone provided by the City to the Mayor, each member of the City Council, City Manager, City Auditor, City Attorney, and every department head, shall be made available to the public upon request.

(i) Lobbying and Campaign Reports. All statements of economic interest, contribution reports, campaign statements, annual disclosure statements, pertaining to any lobbying or campaign activity, the receipt of any gifts, or any actual or potential conflict of interest, required to be filed with or submitted to the City or any policy or ancillary body of the City pursuant to the Political Reform Act, any other provision of California law, or the San Jose Municipal Code, shall be made available to the public upon request.

(j) Neither the City nor any policy body, department, official, employee, or agent thereof may assert Government Code section 6255 or any similar provision as the basis for withholding any record or information requested under this ordinance.

(k) Neither the City nor any policy body, department, official, employee, or agent thereof may assert as a basis for withholding for any record or information a "deliberative process" privilege or exemption, under Government Code section 6255 or any other provision of law that does not prohibit disclosure.

(l) Neither the City, nor any policy body, department, official, employee, or agent thereof, may assert as a basis for withholding for any record or information a claim or showing that the public interest in withholding the information outweighs the public interest in disclosure. Records or information may be withheld only based on an express provision of this Title providing for withholding of the specific type of information in question, on an express and specific exemption provided by Public Records Act that is not forbidden or modified by this ordinance, or on an express prohibition against disclosure imposed by California or Federal law.

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SEC. 26.3.4. PUBLIC REVIEW FILE--POLICY BODY COMMUNICATIONS.

(a) The clerk of the City Council and the clerk or other designated representative of each policy body shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 calendar days, or likely to be calendared within the next 30 calendar days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the Public Records Act and not subject to disclosure under the preceding section of this Title. The records described in this subsection shall be subject to public access after 30 calendar days as well, but need not be maintained in the file required by this subsection.

(b) The clerk of the City Council and the clerk or other designated representative of each policy body listed in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other written or electronic communication received by any member of the City Council or other policy body listed in the charter regarding any item on the agenda of a meeting of the City Council or policy body within the previous 30 calendar days, except communications exempt from disclosure under the Public Records Act and not subject to disclosure under the preceding section of this Title. The records described in this subsection shall be subject to public access after 30 calendar days as well, but need not be maintained in the file required by this subsection.

(b) The clerk of the City Council shall maintain a list of the name, address, and telephone number of the custodian of all such communications sent or received by any policy body. The list shall be posted on the

City's public access website, and shall also be available to any person upon request to the clerk of the City Council.

SEC. 26.3.5. IMMEDIACY OF RESPONSE.

(a) The maximum deadlines provided in this Title are appropriate for extensive or demanding requests, of for requests that seek information not within the categories defined by this Title as non-exempt public information, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

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(b) Notwithstanding the period for response to a request permitted in Government Code section 6256 and in this Title, a written request for information in any category of non-exempt public information specified in this Title shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted.

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(b) If the voluminous nature of the information requested, its location in a remote storage facility, or the need to consult with another interested department requires an extension, the requester shall be notified as required by the close of business on the business day following the request. A response must then be provided within ten days of the receipt of the request.

(c) The person seeking the information need not state his or her reason for making the request, or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this Title, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt public information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

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(d) Notwithstanding any provisions of California law or this Title, in response to a request for information describing any category of non-exempt public information, when so requested, the City shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis, such that responsive records are produced to the extent possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Title.

SEC. 26.3.6. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure based on an express provision of this Title, on an express and specific exemption provided by Public Records Act that is not forbidden or modified by this ordinance, or on an express prohibition against disclosure imposed by California or Federal law. Information that is exempt from disclosure shall be masked, deleted, or otherwise segregated in order that the nonexempt portion of a requested record may be released. Any omission of information will be identified by footnote or other clear reference to the appropriate justification for withholding.

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SEC. 26.3.7. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under any provision of this Title shall site the specific provision of this Title authorizing non-disclosure, together with any further explanation or justification required by that provision.

(b) A withholding under a specific permissive exemption in the Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted or otherwise modified by this Title, shall cite the provision of the Public Records Act upon which the withholding is based.

(c) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority upon which the withholding is based.

(d) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or the City's or any other public agency's litigation experience, supporting that position.

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(e) When a record being requested contains information, most of which is exempt from disclosure under the Public Records Act and this Title, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

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(f) Neither the City nor any official or employee of the City may assert in any proceeding seeking judicial review of a decision to withhold information any basis for withholding that was not cited in response to the request for information.

SEC. 26.3.8. FEES FOR DUPLICATION.

(a) The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request, or otherwise making public records available for review or copying.

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(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage or delivery costs.

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(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed 10 cents per page may be charged, plus any postage or delivery costs.

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(d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent (\$0.10) presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

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(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting.

SEC. 26.3.9. INDEX TO RECORDS.

(a) The City shall prepare a public records index that identifies the types of information and documents maintained by City policy boards, departments, and elected officers. The index shall be for the use of City officials, staff, and the general public, and shall be organized to permit a general understanding of the types of records maintained, by which officials and departments records are maintained, the purposes and periods for which records are retained, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction, or other event, but shall clearly indicate where and how records of that type are kept.

(b) The City Manager shall be responsible for the preparation of this records index. The City Manager shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Manager to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests

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that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records.

(c) The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Manager shall be recorded by the City Manager on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's public access website, and made available at public libraries within the City.

SEC. 26.3.10. RECORDS SURVIVE TRANSITION OF OFFICIALS.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city official, by the City Manager, City Auditor, City Clerk, and by the head of any City department are the property of the City of San Jose. The originals of these documents shall be maintained consistent with the records retention policies of the City.

SEC. 26.3.11. POLICY REGARDING PURCHASE AND USE OF COMPUTER SYSTEMS.

(a) It is the policy of the City to use computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this Title. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records, and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems or software, or upgrading existing systems or software, shall maintain the following goals as a means to achieve the policies of this section:

- (1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
- (2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.
- (3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

SEC. 26.3.12. POLICY REGARDING USE OF CITY FUNDS.

Funds of the City of San Jose, including organizational dues, shall not be used to support any efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

CHAPTER 26.4: IMPLEMENTATION

- 26.4.1. The Sunshine Ordinance Task Force.
- 26.4.2. Responsibility for Administration.
- 26.4.3. Willful Noncompliance Shall Be Official Misconduct.
- 26.4.4. Enforcement.

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26.4.5. Sunshine Ordinance Supersedes Other Local Laws.

26.4.6. Severability.

SEC. 26.4.1. THE SUNSHINE ORDINANCE TASK FORCE.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force ("Task Force") consisting of eleven voting members appointed by the City Council. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government and be residents of the City of San Jose. Care must be exercised to avoid appointments that may result in conflicts of interest (members of city staff, public employee unions, etc.).

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Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters, one or more organized taxpayer organizations. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government nominated by the League of Women Voters and/or Civil Grand Jury. Two One members shall be a members of the public experienced in consumer advocacy nominated by the League of Women Voters and/or Civil Grand Jury. Two members must be business representatives, nominated by the Silicon Valley Chamber of Commerce. The Mayor or his or her designee, and the Clerk of the City Council or his or her designee, shall serve as non-voting members of the Task Force. Members of the Task Force shall serve without compensation. There shall be no alternate members.

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(b) The City Attorney(*) shall serve as legal advisor to the Task Force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force, and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or department that the City Attorney or the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

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(* If this attorney will work exclusively for the Task Force, why does he/she have to be an employee of the City Attorney? Unless and until the City Attorney is elected by and to serve the people of San Jose, I'd prefer that the Task Force have an attorney hired from the private sector. To avoid imposing a debilitating structural handicap, the Task Force must have a direct say in the selection of their attorney. If done as written in (b) above, the Task Force will likely get a rookie or the dregs of the City Attorney's office; at best, conflicts of interest will always be a concern.)

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(c) The term of each appointive member of the Task Force shall be two years, unless earlier removed by the City Council. (The reasons for which a member may be removed by the council must be severely limited and fully defined in the ordinance.) In the event of such removal, or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in the manner described herein for the initial members. The council shall be required to appoint replacement members, by category, in timely fashion so that a quorum will always be available for Task Force meetings. Terms of service shall be staggered to provide continuity. Members may not serve more than three consecutive terms. The Task Force shall elect a chair and vice-chair from among its appointive voting members. Their term of office as chair shall be one year.

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(An initial term should be devised so that staggering will result after the first year; for example, 1/3 serve for 1 year, 1/3 for 2 years, and 1/3 for three years, thereafter all members serve for two years.)

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(c) The Task Force shall advise the City Council and provide information to other City departments on appropriate ways in which to implement this chapter. The Task Force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The Task Force shall propose to the City Council

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complaint is filed. If action is taken by a city or state official to enforce only part of a complaint, an action may be brought pursuant to this section to obtain the rest of the relief or sanction sought in the complaint.

(c) In any court proceeding pursuant to this Title there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) In any action brought for enforcement or penalties under this Title, discovery may be obtained of public records that are in dispute or the contents of closed sessions, in accordance with the California Code of Civil Procedure and subject to evidentiary privileges established in the California Evidence Code, in the discretion of the Superior Court. If any disputed public records or the contents of any closed session are required to be provided in discovery, an appropriate protective order shall be entered into by the parties or imposed by the Superior Court, providing that such information shall be kept confidential and shall not be publicly disclosed until and to the extent that the information is determined to be subject to public disclosure by the Superior Court.

(e) A court shall award costs and attorneys' fees to any plaintiff who is the prevailing party in an action brought to enforce this Title. A plaintiff shall be a prevailing party if the action results in the enforcement of any right or obligation of disclosure, whether or not all of the relief sought in the action is obtained. Any award of attorneys' fees under this subdivision shall be an obligation of the City, and shall not be the personal obligation of any official or employee of the City.

(f) If a court finds that an action filed pursuant to this section is frivolous, the City and County may be awarded reasonable attorneys' fees and costs.

(The steps between a finding by the Task Force and an enforcement action must be clearly defined in the ordinance. Could the Task Force itself require its chair to "...institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court or in any court of competent jurisdiction"? If not, why? If so, we should make it clear—up front.)

SEC. 26.4.5. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

The provisions of this Title supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access shall apply.

SEC. 26.4.6. SEVERABILITY.

The provisions of this Title are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Title, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

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