

DRAFT FOR DISCUSSION

Section 8 Administration and Accountability

8.1 Purpose and Intent

- A. The City and its staff should be encouraged to comply voluntarily with the Sunshine Ordinance ~~voluntarily~~; Regular education and training about the Sunshine Ordinance is essential to achieve voluntary compliance.
- B. The City Manager's Office must provide to the Council regular reports, at least annually, about the City's compliance with the Sunshine Ordinance.

8.2 Open Government Officer

- A. The City will establish the position of Open Government Officer. The Open Government Officer will be a Department Head member of Senior Staff and report to the City Manager.
- B. The Open Government Officer will:
 - 1. Advise the City Manager on education and training for City Staff on the Sunshine Ordinance and other open government laws;
 - 2. Staff the Open Government Committee;
 - 3. In the event a response to a request for a public record is challenged, act as a liaison to the appropriate City Council, Office of a Council Appointee or City Department to access the record requested;
 - 4. Work with the Records Manager to assist the community to access information that can be used to generate routine statistical reports requested by the community;
 - 5. Coordinate reports to the City Council evaluating and monitoring compliance with the Sunshine Ordinance; and
 - 6. Audit the recordings of closed session to determine compliance with the Brown Act.

8.3 Open Government Committee

- A. The City will establish a neutral and independent Open Government Committee comprised of five members of the community or integrate the function of the Committee as described below into an existing Board or Commission as long as

the members meet the following criteria. Each member must have some demonstrated familiarity and experience with open government laws and be a resident of the City of San Jose. The Committee's membership should be representative of the community and all members will be required to undergo a screening process to identify any potential conflicts of interest. Members must not be a paid City employee, a paid employee working on the campaign of a current Councilmember or candidate for City office or a contract lobbyist registered with the City. No member may participate as a candidate in any election for Mayor or Councilmember to public office for the City of San Jose for a period of one year both before and after tenure on the Committee. One member of the Committee will be an attorney licensed to practice law in California. ~~The Committee's membership should be representative of the community and all members will be required to undergo a screening process to identify any potential conflicts of interest.~~ Members will be appointed by no less than two-thirds vote of the City Council.

B. The Open Government Committee will:

1. Advise the City Council about the Sunshine Ordinance;
2. Determine, if questioned or challenged, the categorization of bodies as policy, ancillary or non-governmental;
3. Prepare reports to the City Council evaluating and monitoring compliance with the Sunshine Ordinance;
4. Develop an annual report, based on public input, indicating additional public information, if any, that the City should routinely make available to the public.
45. Review and Investigate—investigate allegations of violations of the Sunshine Ordinance and take enforcement action where appropriate complaints and make a finding and recommendation to the City Council and City Manager;
[based on the Elections Commission; see Section 12.04.070]
5. ~~Develop an annual report, based on public input, indicating additional public information, if any, that the City should routinely make available to the public.~~

C. ~~The Open Government Committee may join a complainant as a plaintiff in a lawsuit filed in Superior Court.~~

8.4 Enforcement Investigations

[based on the Elections Comm'n; see Section 12.04.080]

- A. The City Council will adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the Open Government Committee.
- B. The Committee will have the authority to investigate complaints alleging violations of the Sunshine Ordinance, in accordance with the regulations and procedures adopted by resolution of the City Council.
- C. A complaint filed with the Committee may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation. If requested, a complainant may make a complaint anonymously.
- D. The City Council will retain an independent and neutral evaluator, selected by the Committee, to review and investigate complaints and to make recommendations to the Committee. The City Council will appropriate funds anticipated to be needed to fund the evaluator for a period of two years.
- E. The City Attorney's Office may provide legal advice to the Committee related to noncompliant matters or general interpretations of the San Jose Municipal Code or relevant California State or federal law, but must not participate in investigations or reviews of complaints.

8.5 Subpoena Power

[based on the Elections Comm'n; see Section 12.04.085]

- A. The Committee may subpoena witnesses, compel attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of documents or other items.
- B. The subpoena power will be used only after a finding by the Committee that the information or testimony is essential for a determination and material to its duties or exercise of its powers and that good faith efforts to acquire relevant information have failed.

8.6 Enforcement

8.46.010 Findings

[based on the Elections Comm'n; see Section 12.04.100]

- A. The Committee, by resolution, will issue formal findings based on a preponderance of the evidence from the entire record of the Committee's proceedings.
- B. No finding of violation will be made unless the person alleged to have committed the violation has been notified of the alleged violation and provided a copy of the regulations and procedures of the Committee.

8.6.020 Requests for Public Records

Follow the PRA but substitute legal evaluator/Open Govt Committee for Court.

8.6.030 Public and Closed Session Meetings

- A. Complaints about public and closed session meetings must be made within 90 days of the date of the meeting.
- B. Follow the Brown Act – need to flesh out.

8.6.040 Generally Progressive Penalties

Penalties for ~~failing to comply with violating~~ the Sunshine Ordinance should be progressive. ~~All complaints will be investigated by the Open Government Officer.~~

- A. If the Open Government ~~Officer~~ Committee determines that the complaint arose out of a minor violation based on a misinterpretation of the Sunshine Ordinance, the person or persons who misinterpreted the Sunshine Ordinance must participate in education and training about the Sunshine Ordinance within 30 days of the date the ~~Open Government Officer~~ Committee finds the violation.
- B. If the Open Government ~~Officer~~ Committee finds intentional ~~non-compliance violation of with~~ the Sunshine Ordinance, ~~he or she it~~ will report the findings in a report to the City Manager and the Rules and Open Government Committee.
- C. If the Open Government ~~Officer~~ Committee finds a repeated and willful ~~failure to comply or a policy of non-compliance violation with of~~ the Sunshine Ordinance, ~~he or she may refer the complaint to the Open Government Commission, which may join a complainant as a plaintiff to a lawsuit filed in Superior Court to enforce the Sunshine Ordinance~~ it may [???:]

~~8.4.020~~ — ~~Requests for Public Records~~

~~When any response to a request for public records is challenged by the requestor, the Open Government Officer will investigate the challenge. The Open Government Officer may refer the challenge to the Open Government Committee, which will hold a public hearing to resolve the challenge.~~

~~8.4.030~~ — ~~Public and Closed Session Meetings~~

~~Complaints about public and closed session meetings must be made within 90 days of the date of the meeting.~~