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Sunshine Reform Task Force
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Dear San Jose Sunshine Reform Task Force members:

On behalf of the ACLU of Northern California, I am writing to share our deep appreciation of your efforts to draft proposed sunshine reforms for the City of San Jose. Many precious evenings have been spent on this endeavor, and the San Jose community will benefit greatly as a result.

I am also writing to share our suggestions and recommendations for key principles that an effective San Jose sunshine ordinance should include. These recommendations are the result of our own experiences in seeking records from municipal governments. Some of our recommendations stem directly from experiences with the City of San Jose.

Five recommendations for a San Jose Sunshine Ordinance:

1. The presumption should be that city records are public.

City departments and officials should bear the burden of demonstrating why a record *shouldn't* be public. The public should not bear the burden of having to prove why a document *should be made public*. Exemptions should be narrowly construed with the fullest possible disclosure as the goal.

2. Where its provisions are stronger, the sunshine ordinance should clearly state its supremacy over the California Public Records Act.

The California Public Records Act allows cities to put sunshine laws in place that are tougher than state law. This is important, because the California Public Records Act has loopholes that police departments and other city agencies frequently employ to deny public access to documents.

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3. SJPD incident reports, use of force reports, and other documents should be explicitly classified as public records.

Currently the San Jose Police Department has a practice of denying access to many routinely generated SJPD records. These records include documentation of local incidents involving law-enforcement activity. As a result, it is exceedingly difficult for members of the San Jose public to review police practices.

4. The public should be able to appeal City decisions to the Sunshine Reform Task Force -- or a similar body.

If a member of the public feels that they have been wrongly denied access to a public record, they should be able to appeal that decision to the Sunshine Reform Task Force. The Sunshine Reform Task Force should have the power to compel release of documents.

5. Members of the public should be able to challenge, in court, City decisions to withhold records. If the City loses, it should be required to pay court fees and attorney fees to the plaintiff.

Many San Jose residents do not have the time or resources to challenge local government on their own if they are denied access to public records. By requiring the City of San Jose to reimburse the public for *successful* court challenges, more members of the public will have access to city records. City agencies will also have greater disincentive for improperly denying access.

In addition to the above recommendations, I would like to also share some comments regarding the San Jose Mercury News' suggested model ordinance. While these comments do not reflect an exhaustive review or formal endorsement, there are many elements of the San Jose Mercury News suggested model ordinance that would be a significant step forward for local government transparency.

Should the Sunshine Reform Task Force choose to look closely at the San Jose Mercury News' suggested model ordinance, we would recommend some of the following additions in language. Suggested changes are in *underlined and italicized* format.

San Jose Mercury News suggested model ordinance:

Section 26.3.3 PUBLIC INFORMATION THAT MUST BE DISCLOSED

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

(9) The record of any confirmed misconduct of a City official or employee, and of any sanction or discipline imposed for such misconduct. To the extent California law holds such information confidential for certain City employees, City shall disclose as much information as possible in summary form, only withholding information as necessary if required by state law.

Comment: The additional language above will prevent the City of San Jose from denying public access to an entire record if only portions of that record must remain confidential.

Section 26.3.3 PUBLIC INFORMATION THAT MUST BE DISCLOSED

(d) Law Enforcement Information.

(1) The San Jose Police Department shall make available to any person, upon request, any document routinely generated by police department personnel including police reports, arrest reports, use of force reports, incident reports, 911 call tapes and transcripts, and CAD tapes and transcripts. 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: [...]

Comment: This clarifies and broadens the range of documents that SJPD must release upon request.

(d) Law Enforcement Information.

(2) All other records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the Police Department, 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 [...]

Comment: Law-enforcement agencies sometimes choose not to forward charges on to the District Attorney. Once SJPD has made this determination regarding a subject, any related records should be available for public requests. In such situations there is no need to wait for the district attorney or court to make a determination the prosecution will not be sought.

(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.
The document shall contain summary information about the underlying facts and contain as much information as possible under state law. [...]

Comment: This language will help ensure that the above-mentioned document would contain as much information as possible under state law.

Thank you again for considering our recommendations and suggestions. Government transparency is critical to safeguarding our civil liberties. The more access the San Jose public has to government records, the more likely we are to live in a community where everyone's civil liberties are safeguarded.

Sincerely,

A handwritten signature in black ink that reads "Sanjeev Bery". The signature is written in a cursive style with a large, sweeping flourish at the end.

Sanjeev Bery
San Jose Director
ACLU of Northern California