ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: September 16, 2016

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director
Jessica Blome, Deputy Director

Re: **AGENDA ITEM 5– Discussion and possible action on the Sunshine Ordinance Task Force's referral for enforcement against Steve Kawa**
Ethics Complaint 04-160718

Summary This item provides background and recommendations regarding the Commission's authority to enforce the Sunshine Ordinance where willful violations of the Records Retention and Destruction Ordinance are alleged.

Action Requested For informational purposes as Commission considers whether to take enforcement action in the matter identified above.

On June 30, 2016, the Sunshine Ordinance Task Force (Task Force) referred its May 4, 2016, Order and Determination (the Order) regarding Steve Kawa to the Ethics Commission for enforcement. See Attachment 1 for a copy of the Order. The Task Force is authorized to refer matters to any municipal office with enforcement power whenever it concludes that a person has violated any provision of the Sunshine Ordinance. *See* Sunshine Ord. § 67.30(c). The Ethics Commission must now determine whether and to what extent enforcement action by the Commission is appropriate against Mr. Kawa.

Background

The Task Force has determined that Mr. Kawa willfully violated two provisions of the Sunshine Ordinance related to the retention and production of the electronic calendar he uses as Chief of Staff to the Mayor. Before the Task Force issued its final Order in May, however, the City Attorney sent a formal letter to the Task Force urging the Task Force to abandon its initial determination that Mr. Kawa willfully violated the law. See Attachment 1, p. 21 for a copy of the City Attorney's March 30, 2016, letter. On September 15, 2016, the City Attorney sent a letter to the Commission urging the Commission to overturn the Task Force's findings and conclusions, as articulated in the Order. See Attachment 2 for a copy of the City Attorney's September 15 letter. Staff has reviewed the Task Force's Order, both of the City Attorney's letters, the original complaint against Mr. Kawa, the Sunshine Ordinance provisions at issue, and all supporting documents so that Staff may assist the Commission in considering this

matter and possible action. Based on this review, Staff has concluded that while Mr. Kawa may have violated the Mayor's Office Records and Document Retention and Disposal Schedule by deleting his calendar entries, neither the Task Force nor the Ethics Commission has jurisdiction under the law to enforce records retention violations through the provisions of the Sunshine Ordinance.

Complainant's Allegations

In his December 3, 2015, email to the Task Force, Complainant Michael Petrelis alleges that on November 18, 2015, he made an Immediate Disclosure Request to the Mayor's Office for "the calendar of Mr. Kawa for the period of July/August/September 2015." In response to his request, the Mayor's Office provided Mr. Petrelis with a calendar for that time period that included no information about meetings held during the time period. In its December 15, 2015, response to the Task Force, the Mayor's Office explained that Mr. Kawa "regularly maintains his calendar retrospectively for only two weeks at any given time. Accordingly, at the time we received Mr. Petrelis' request on November 18, calendar entries for the months of July, August, and September had already been removed" pursuant to the Mayor's Office Records and Document Retention and Disposal Schedule, which is attached to Attachment 1 at page 15.

After several hearings, the Task Force concluded that Mr. Kawa:

(1) willfully violated Section 67.29-7 of the Sunshine Ordinance by failing to "maintain and preserve Mr. Kawa's calendar in a professional and businesslike manner." Order, p. 8; and

(2) willfully violated Section 67.21 of the Sunshine Ordinance by failing to respond to a request for records in a complete manner. According to the Task Force, "this violation was willful under Section 67.34" of the Sunshine Ordinance, which characterizes the willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance as "official misconduct." *See* Order, p. 7, 8.

Ethics Commission's Authority

The Sunshine Ordinance provides for Ethics Commission enforcement power over provisions of that law in two circumstances:

(1) To "handle" complaints involving allegations of willful violations of the Sunshine Ordinance, Brown Act, or Public Records Act by elected officials and department heads under Section 67.34; and

(2) If enforcement action is not taken by a city or state official 40 days after a complaint is filed under Section 67.35(d).

Mr. Kawa is not an elected official or department head, so the Ethics Commission is not required to handle his complaint under Section 67.34. However, the Task Force issued its Order more than 40 days ago—on May 4, 2016—and no city or state official to our knowledge has taken enforcement action. The Commission, therefore, has jurisdiction to do so now under Section 67.35(d) if it determines that Mr. Kawa violated the Sunshine Ordinance.

Summary of the Sunshine Ordinance and Records Retention Laws

"Elected officials, commissions, boards, councils and other agencies of the City and County exist 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." Sunshine Ord., § 67.1(b).

To provide consistency throughout City government about what records should be made public and when, the San Francisco Sunshine Ordinance sets forth a robust set of rules designed to give San Franciscans as much access to government decision-making as possible. For example, all meetings of any policy body must be open and public (§ 67.5), preliminary drafts of memoranda must be disclosed to the public when review is requested in some circumstances (§ 67.24(a)(1)), and pre-litigation claims against the City must be made public (§ 67.24(b)). The Sunshine Ordinance, in other words, requires open meetings and governs when and whether *retained* public records must be disclosed to the public. If a dispute arises over whether a record must be made public, any person may file a "petition" with the Task Force for "a determination whether the record requested is public," and the Task Force may in turn request enforcement of the Sunshine Ordinance by any agency with enforcement power (including the Ethics Commission). Sunshine Ord. §§ 67.21, 67.30.

In addition to public disclosure requirements, San Francisco has enacted a separate Record Retention and Destruction Ordinance (RRDO). The RRDO is set forth in Chapter 8 of the Administrative Code, whereas the Sunshine Ordinance is set forth at Chapter 67. The RRDO requires city departments to retain records, as defined in Chapter 8, that have been made or received by the department in connection with the transaction of public business or that may have been retained by the department as evidence of the department's activities. The RRDO also authorizes city departments to classify and destroy public records according to an internal "schedule for the systematic retention and destruction" of records. RRDO § 8.3. Current records and storage records may be destroyed according to each department's record retention policy. *Id.*; § 8.4. Permanent records and essential records may not. *Id.*; § 8.4, 8.9.

The RRDO is silent regarding civil enforcement; however, Section 6200 of the California Government Code makes clear that any officer who willfully destroys, removes, defaces, alters, or falsifies a public record is "punishable by imprisonment" under Section 1170(h) of the California Penal Code and may be sentenced to jail for two, three, or four years. The Attorney General and District Attorney have jurisdiction over enforcement of the California Penal Code.

Discussion and Analysis

The Sunshine Ordinance incorporates the California Public Records Act definition for public record at § 67.20(b). The CPRA defines a public record as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov. Code § 6252(d). The Task Force asserts that Mr. Kawa's calendar is a public record because it memorializes meetings made "in connection with the transaction of public business." Attach. 1, p. 6. The City Attorney agrees that Mr. Kawa's calendar is a public record in its March 30 letter, but then argues that Mr. Kawa's calendar is not a "city record" in its September 15, 2016 letter. *See* Attach. 1, p. 23 ("The Order correctly notes that the Public Records Act defines "record very broadly." . . . "Thus, an employee's individual calendar maintained on the City's network is a public record and must be disclosed on request, with non-work related activities redacted, *if the calendar has been retained*."); *Cf* Attach 3, p. 2 ("Mr. Kawa's individual calendar is not such a

record" (referring to an Attorney General Opinion interpreting the term "city record"). Regardless, Staff agrees that Mr. Kawa's individual calendar is a public record.

Every person in city government "***with custody*** of any public record" must permit the record to be inspected and examined by the public. Sunshine Ord. § 67.21 (emphasis added). By the time Mr. Petrelis made his request to the Mayor's Office for copies of Mr. Kawa's electronic calendar, Mr. Kawa had already deleted it and therefore did not have custody of the requested record. Whether Mr. Kawa's deletion constitutes a separate violation of the Mayor's Record Retention and Disposal Schedule (and ultimately the Record Retention and Destruction Ordinance) is irrelevant to this body's inquiry unless the Sunshine Ordinance itself required Mr. Kawa to retain his electronic calendar. It didn't.

On November 2, 1999, San Francisco voters approved several changes to the Sunshine Ordinance in what is now commonly known as the "Prop G amendments." The City and County of San Francisco Voter Information Pamphlet for the November 2, 1999 election is available at http://sfpl.org/pdf/main/gic/elections/November2_1999short.pdf. Among the myriad changes, voters required the retention of certain records in two instances. First, Section 67.29-5 required the Mayor, City Attorney, Treasurer, Assessor-Recorder, District Attorney, Public Defender, Sheriff, every member of the Board of Supervisors, and every Department Head to "keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official. . ." Mr. Kawa is the Mayor's Chief of Staff, so he is not required to keep a daily calendar under Section 67.29-5. The Task Force agrees. Order, p. 4 (finding that Mr. Kawa's calendar is "substantially similar" [but not the same as] to a "Prop G"—or Section 67.29-5—calendar).

Second, Section 67.29-7 required the "Mayor and all Department Heads to maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance." Mr. Kawa is neither the Mayor nor a department head. Moreover, calendars are not expressly enumerated as a "document" or "correspondence," presumably because Section 67.29-5 already requires the Mayor and department heads to keep and retain daily calendars.[1]

Because nothing in the Sunshine Ordinance required Mr. Kawa to keep or retain an electronic calendar, there is no provision that could have been violated, and therefore no basis to assess a penalty for failing to produce it to Mr. Petrelis. Indeed, the Commission's authority for enforcing the Sunshine Ordinance does not contain any enforcement tools designed to address the unlawful destruction of records, such as administrative penalties for past non-compliance or some form of disciplinary action. Rather, the statutory scheme provides for enforcement to be pursued by the Attorney General or District Attorney if they were to determine that Mr. Kawa willfully destroyed records in violation of the RRDO or the California Public Records Act.

[1] Presumably voters understood the distinction between 67.29-5's calendar requirement and 67.29-7's document and correspondence requirement, as both provisions were added by 1999's Proposition G.

Recommendation

In its Order, the Task Force chose to incorporate RRDO into the Sunshine Ordinance as a practical matter. Attach. 1, p. 6. As noted by the Task Force, Section 67.21's disclosure requirements "would have little effect if City officials or employees could simply destroy public records before they were ever subject to a citizen's request." Attach. 1, p. 6. However, while the Ethics Commission could also make a policy decision in that regard,[2] Staff urges against doing so within the context of an enforcement matter. In addition, the policy implications of such a shift should be carefully considered. For example, the public has a right to access public records and public information, but the City also has a right to destroy certain records, as is evidenced by the adoption, publication, and use of records retention schedules.

Nothing in the Sunshine Ordinance or other law gives the Commission enforcement authority over the actions taken by Mr. Kawa. In sum, because the Sunshine Ordinance does not incorporate the Records Retention and Destruction Ordinance, the Commission has no basis for punishing Mr. Kawa for potential violations of the Records Retention and Destruction Ordinance. Consequently, Staff recommends that the Commission find that the Sunshine Ordinance does not require Mr. Kawa to retain his electronic calendar and that Mr. Kawa did not violate the Sunshine Ordinance by failing to produce his electronic calendar to Mr. Petrelis. Staff has attached a proposed order for the Commission's consideration.

[2] According to Chapter Two(II)(E)(1) of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance (Sunshine Regulations), if the Commission chooses to enforce the Sunshine Ordinance against Mr. Kawa, the Commission may:

1. Enjoin Mr. Kawa to comply with the Sunshine Ordinance,
2. Compel Mr. Kawa to produce withheld records,
3. Order the Executive Director to post on the Ethics Commission's website the Commission's finding that Mr. Kawa violated the Sunshine Ordinance, or
4. Order the Executive Director to issue a warning letter to Mr. Kawa and inform the Mayor's Office of Mr. Kawa's violations.

Item 5 -- Attachment 1

SUNSHINE ORDINANCE TASK FORCE

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June 30, 2016

LeeAnn Pelham, Executive Director
Ethics Commission
25 Van Ness Avenue Suite 220
San Francisco, CA 94102

Re: Referral to the Ethics Commission for Enforcement
Michael Petrelis v. Steve Kawa, Mayor's Office (Task Force File No. 15163)

Dear Ms. Pelham,

The Sunshine Ordinance Task Force (Task Force) hereby refers the subject complaint to the Ethics Commission (Commission) for enforcement. This referral is made pursuant to San Francisco Administrative Code (Admin. Code), section 67.30 (c), which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

In this case, the Task Force finds Steve Kawa, Chief of Staff, Mayor's Office, in violation of Admin. Code Sections 67.21 and 67.29-7, and further finds the violation of Admin. Code Section 67.21 as a willful failure to discharge his duties under the Sunshine Ordinance pursuant to Admin. Code Section 67.34. Attached to this referral letter are the following documents:

- May 4, 2016 Order of Determination
- December 3, 2015 Complaint
- December 15, 2015 Response
- February 22, 2016 Amended Memorandum from Deputy City Attorney Nicholas Colla
- Supplemental Material from the Complainant
- Supplemental Material from the Respondent
- March 30, 2016 Memorandum from Deputy City Attorney Buck Delventhal

Agendas, minutes, and audio recordings of the March 2, April 6, and May 4, 2016 Task Force meetings are available on the Task Force website at:

http://www.sfbos.org/index.aspx?page=4464

The Order of Determination describes the complaint, the procedural history at the Task Force, and the Task Force's reasoning and findings.

Please note that Mr. Kawa was aware of the proceedings before the Task Force and was sent notices of Task Force hearings as follows:

- December 29, 2015 - Sent notice for the January 11, 2016 Education Outreach and Training Committee meeting
- February 11, 2016 - Sent notice of the March 2, 2016 Task Force meeting
- March 24, 2016 - Sent notice of the April 6, 2016 Task Force meeting
- April 15, 2016 - Sent notice of the May 4, 2016 Task Force meeting

The Task Force takes this matter very seriously and believes strongly that while the law does not currently require the Mayor's Chief of Staff to maintain an electronic calendar of meetings and events, but if he chooses to do so, that calendar should be retained as a public record for at least two years and be made available on request.

The Sunshine Ordinance requires that "the Mayor and all Department Heads shall maintain and preserve in a professional business-like manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this Ordinance." (Ordinance § 67.29-7.)

Central to the question of whether the Sunshine Ordinance was violated is the question of whether Mr. Kawa's calendar should have been destroyed in the first place. Chapter 8 of the City's Administrative Code ("Admin. Code") establishes the City's framework for retaining and destroying records. "Records," for purposes of this framework, include "such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County." (Admin. Code § 8.1.)

The question, then, is whether the daily calendar of a high-level City official falls within the definition of a "record" set forth in Admin. Code § 8.1. The Task Force believes that there is little doubt on the question: it does.

Based on the testimony and evidence presented at the hearings and the Task Force's interpretation of the Ordinance and other applicable laws, the Task Force finds that the intentional destruction of Mr. Kawa's calendar violated Sections 67.21 and 67.29-7 of the Sunshine Ordinance. For the reasons explained below, the Task Force finds the violation of Section 67.21 to be willful under Section 67.34 and refers the matter to the Ethics Commission for enforcement.

The Task Force members spent a lot of time on this matter, especially former Member Mark Rumold, who drafted and revised the Order of Determination enclosed here.

The motion to refer this matter to the Ethics Commission for enforcement was passed at the May 4, 2016 Task Force meeting by the following vote:

Ayes: 6 - Wolf, Eldon, Hinze, Fischer, Hyland, Washburn
Noes: 1 - Pilpel
Absent: 2 - Chopra, Haines

Thank you for your careful attention to this matter. You may contact Task Force Administrator Victor Young at sotf@sfgov.org or (415) 554-7724 with any questions.

Sincerely,

Chris Hyland
Acting Chair

Attachments

c: Sunshine Ordinance Task Force Members
Mark Rumold, Former Sunshine Ordinance Task Force Member
Nicholas Colla, Deputy City Attorney
Michael Petrelis, Complainant
Steve Kawa, Mayor's Chief of Staff, Respondent
Carl Nicita, Mayor's Office, Respondent
Kirsten Macaulay, Mayor's Office, Respondent
Mayor Edwin Lee, Mayor’s Office, Respondent

SUNSHINE ORDINANCE TASK FORCE

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ORDER OF DETERMINATION

June 30, 2016

DATE DECISION ISSUED
May 4, 2016

CASE TITLE - Michael Petrelis v. Steve Kawa, Mayor's Office (Task Force File No. 15163)

FACTS OF THE CASE

On December 3, 2015 Michael Petrelis (Complainant) made a complaint alleging that Steve Kawa and the Mayor's Office violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to completely comply with a request for the calendar of Chief of Staff Steve Kawa.

HEARING ON THE COMPLAINT

On March 2, 2016 the Sunshine Ordinance Task Force (Task Force) heard the matter.

Michael Petrelis (Complainant) provided an overview of the complaint and requested that the Task Force find violations. There were no speakers in support of the Complainant. Kirsten Macaulay and Carl Nicita, Mayor's Office (Respondent), presented the department's position. Ms. Macaulay stated that the Office of the City Attorney approved the Mayor's Records Retention Policy and is aware of the public records request regarding Mr. Kawa's calendar and the subsequent complaint. Mr. Nicita stated that he will stop deleting Mr. Kawa's calendar every two weeks. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant provided a rebuttal.

Task Force Member Mark Rumold volunteered to draft a proposed Order of Determination for future consideration by the Task Force concerning violations of Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.29-7, and 67.34. The Task Force acknowledged that the Respondent is working to comply with Mr. Petrelis' requests. The Task Force recommended that calendars should be kept for a minimum of two years.

The Task Force continued the matter to the call of the chair and requested a copy of Mr. Kawa's current calendar and the previous version of the Mayor's Records Retention Policy and requested that Mr. Kawa attend the next Task Force meeting.

Mr. Kawa and the Mayor's Office were provided a draft of this Order of Determination prior to the Task Force's subsequent meeting on April 6, 2016. The City Attorney's Office provided a written response (the "Memo") to the Task Force's draft Order of Determination on March 30, 2016.

Neither Mr. Kawa nor any representative from the City Attorney's office attended the April 6, 2016 Task Force meeting, however Mr. Kawa did send a representative and provided an example of his current calendar for the Task Force. To address issues raised by the City Attorney's Memo, Member Rumold requested the opportunity to revise the draft Order of Determination and the matter was continued again.

The final version of the Order of Determination was considered at the May 4, 2016 Task Force meeting.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The question before the Task Force is whether the intentional destruction[1] of the calendar of the Mayor's Chief of Staff, Steve Kawa, violated provisions of the Sunshine Ordinance, Admin. Code § 67.1 *et seq.* (the "Ordinance"); and, if so, whether any violation was "willful." (Ordinance § 67.34.)

Based on the testimony and evidence presented at the hearings and the Task Force's interpretation of the Ordinance and other applicable laws, the Task Force finds that the intentional destruction of Mr. Kawa's calendar violated Sections 67.21 and 67.29-7 of the Sunshine Ordinance. For the reasons explained below, the Task Force finds the violation of Section 67.21 to be willful under Section 67.34 and refers the matter to the Ethics Commission for enforcement.

* * * * *

Section 67.21 of the Sunshine Ordinance requires that "[e]very person having custody of any public record or public information … shall … permit the public record, or any segregable portion of a record, to be inspected and examined by any person[.]" (Ordinance § 67.21)

Public records subject to disclosure are defined very broadly, to include nearly every record in an agency's possession. (*Commission on Peace Officer Standards and Training v. Superior Ct.* (2007) 42 Cal.4th 278, 288, fn. 3; Cal. Gov. Code § 6252 (e); Ordinance § 67.20 (b) [adopting definition].)

[1] Mr. Kawa's assistant, Carl Nicita, told the Task Force that since 2013, and based on specific instructions received from Mr. Kawa, he had deleted events from Mr. Kawa's calendar that had occurred approximately two weeks in the past. (Audio Recording of March 2, 2016 Task Force Meeting ["Task Force Meeting"] at 2:38:30-2:39:00, available at http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=95&clip_id=24861.)

Yet Section 67.21's disclosure requirements — indeed, the very heart of the Sunshine Ordinance — would have little effect if City officials or employees could simply destroy public records before they were ever subject to a citizen's request.

To guard against this, the Sunshine Ordinance requires that "the Mayor and all Department Heads shall maintain and preserve in a professional business-like manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memoranda, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance." (Ordinance § 67.29-7.)

Central to the question of whether the Sunshine Ordinance was violated is the question of whether Mr. Kawa's calendar should have been destroyed in the first place. Chapter 8 of the City's Administrative Code ("Admin. Code") establishes the City's framework for retaining and destroying records. "Records," for purposes of this framework, include "such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County." (Admin. Code § 8.1.)

The question, then, is whether the daily calendar of a high-level City official falls within the definition of a "record" set forth in Admin. Code § 8.1. The Task Force believes that there is little doubt on the question: it does.

Calendars — and, more precisely, calendar entries for high-level city officials — are made "in connection with the transaction of public business." Indeed, the day-to-day activities of City officials with sufficient rank or authority within City government are, by definition, carried out in "connection with the transaction of public business." Calendars of these high-ranking officials may thus be retained both for "evidence of the department's activities" and "for the information contained therein." (Admin. Code § 8.1.) That is, Mr. Kawa's daily calendar reflects not only on *his* daily activities, but on the activities of the Mayor's Office as a whole. In contrast, a lower-level staff employee's calendar might reflect the conduct of the public's business, but it is less likely to reflect broadly on departmental activities. Mr. Kawa's calendar was also retained for its informational content: one purpose of retention was to allow for follow-up meetings to be scheduled. (See, *e.g.*, March 2, 2016 Task Force Meeting at 2:04:55-05:12 [stating that retaining calendar for "two weeks was adequate time to schedule follow up meetings"].)

Mr. Kawa claimed that the deletion of his daily calendar was justified based on the Mayor's Office's Records and Document Retention and Disposal Schedule ("Mayor's Retention Schedule" or the "Schedule"). The Mayor's Retention Schedule, implemented pursuant to Chapter 8 of the Admin. Code, describes four categories of records, prescribing different retention requirements for each. Relevant here, only records falling within "Category 4" of the Schedule do not require retention. The Schedule provides some limited guidance for the types of documents that fall within Category 4, including "documents and materials generated for the use and convenience of the person generating them." (Mayor's Retention Schedule at p. 2 [P136].) According to Mr. Kawa's representatives, his calendar was a record of this type.

The Task Force finds that argument unpersuasive. As a threshold matter, Category 4 of the Schedule only applies to "documents and other materials that are *not* defined as 'records' pursuant to the Administrative Code Section 8.1." (*Id.* [emphasis added].) As explained above, the daily calendar of a high-level city official, like Mr. Kawa, is a "record" for purposes of Admin. Code Section 8.1. It thus falls outside Category 4 at the outset.

And, even if Mr. Kawa had doubt concerning the applicable retention period, the Mayor's Retention Schedule provided guidance for resolving that doubt. Section B governs "Records Not Addressed in the Record Retention Policy." (Mayor's Retention Policy at p. 2 [P136].) It states: "Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time *provided that they have been retained for periods prescribed for records for substantially similar records*." (*Id.*) One "record category" in the schedule is particularly relevant here — the "calendar" category, which sets forth a two-year retention period for "Prop G Calendar[s]." (*Id.* at p. 5 [P139].) Although the Task Force does not suggest that Mr. Kawa was required to maintain a Prop G Calendar, that record category was unquestionably the most "substantially similar" to Mr. Kawa's calendar, and should have guided his retention decision.

**The City Attorney's office suggests looking to the Prop G calendar is a "false analogy" because the Prop G calendar is a "retrospective calendar," the purpose of which is "to document meetings and events that the public official has attended, so as to inform the public." In contrast, the City Attorney argues, the purpose of "a staffer's individual calendar is not to serve an historical function or to inform the public, but rather is to allow the staffer prospectively to keep track of or schedule upcoming meetings, task, deadlines, or events." The City Attorney's conclusion, however, is contradicted by the testimony the Task Force received. According to the testimony, Mr. Kawa's calendar had both prospective and retrospective purposes. As described above, Mr. Kawa's calendar does not merely reflect his activities, but the activities of the Mayor's Office as a whole. Indeed, his calendar is likely not kept solely for his own purposes, but to inform others within the Mayor's Office of his meetings and their locations. All this underscores the similarity between Mr. Kawa's calendar and those of the officials required to keep and disclose a calendar under Prop G. Under these circumstances, a calendar of a high-ranking city official like Mr. Kawa is more "substantially similar" to a Prop G calendar than to an "administrative file."

The City Attorney suggests that interpreting the Mayor's Record Retention schedule in this way would "undermine the City's decision, made through its legislative process, regarding which officials and employees are — and are not — subject to" the Prop G requirement. Memo at 5. That suggestion is plainly incorrect. The Task Force's determination does not require Mr. Kawa to *create* a calendar, let alone satisfy the specific requirements for meetings required by Prop G. *See* Ordinance § 67.25(b)-(e). All this decision requires is that if a high-ranking city official, like Mr. Kawa, chooses to *create* a calendar, that calendar must also be *retained* as a "record" subject to the City's retention policies.

Thus, for the reasons described above, for many (if not all) high-level City officials that maintain a daily calendar, those calendars are "records" within the meaning of the City's retention mandate

and, accordingly, are required to be retained.[2] That conclusion, in turn, informs our decision concerning violations of the Sunshine Ordinance — specifically, the compliance of the Mayor's Office with Ordinance § 67.29-7 and Mr. Kawa's compliance with Ordinance § 67.21.

First, Ordinance § 67.29-7, as described above, requires the Mayor and all Department Heads to "maintain and preserve in a professional and businesslike manner all documents." Section 67.29-7's requirement that the Mayor "maintain and preserve" records signals the voter's intention that Ordinance § 69.29-7 was directed at City record preservation activities and obligations. We believe that, under all but the most crabbed definitions, "maintain[ing] and preserv[ing]" records in a "professional and businesslike" manner includes compliance with relevant, governing law.

The City Attorney's office argues that Ordinance § 69.29-7 only "speaks to *how* the Mayor and department heads must maintain records" not to "*what* records must be maintained." Memo at 7 (emphasis in original). Our decision here is not to the contrary. We do not believe, nor do we decide, that § 69.29-7 dictates what records must be maintained — only that regulations governing record maintenance must be followed. This speaks directly to "how" the records must be maintained: in compliance with governing law and regulations. And, in this case, we believe that those regulations were not followed. Consequently, Ordinance § 69.29-7 was violated.

Second, we also conclude that Ordinance § 67.21 was violated because Mr. Kawa, the custodian of the record, failed to "permit the public record … to be inspected and examined" when requested. The City Attorney argues that Ordinance § 67.21 only imposes a "present-tense disclosure requirement" and does not dictate what records are subject to City retention requirements. Memo at 7. Again, we do not disagree: this order only determines that, when the City's record retention rules are violated *and* a requester seeks access to records that would have existed, but for the improper destruction of records, that Ordinance § 67.21 is violated. Mr. Kawa *should* have had the records requested by Mr. Petrelis and allowed him to inspect the records. Accordingly, we find that failure to violate § 67.21.[3]

* * * * *

[2] A previous version of this Order of Determination concluded that the destruction of Mr. Kawa's calendar also violated the State's record retention requirements. (Cal. Gov. Code § 34090.) Because the Task Force concludes that Admin. Code § 8.1 was violated, the Task Force does not need to address whether the destruction also violated state law. The City Attorney's office suggests, without citation, that the "City's records retention law … does not expand upon the scope of records that state law requires the City to retain." This is a curious position, given that Admin. Code § 8.1 predates Cal. Gov. Code § 34090 and does not use the same language as the state laws to describe city records that must be maintained. *Compare* Admin. Code § 8.1 *with* Cal. Gov. Code § 34090. Whatever the requirements of Gov. Code § 34090, the Task Force believes that Admin. Code § 8.1 required the retention of the record requested here.

[3] Mr. Petrelis' request was styled as an Immediate Disclosure Request, which imposes stringent deadlines for City responses. (*See* Ordinance § 67.25.) Here, the Mayor's Office responded to Mr. Petrelis' request by the close of business the following day, invoking a ten-day extension to finalize its response. Although there is some question about why an extension was necessary in this case, we believe the Mayor's Office substantially complied with the requirements of Ordinance § 67.25.

Having concluded that the intentional destruction of Mr. Kawa's calendar violated Sections 67.21 and 67.29-7 of the Ordinance, we now turn to whether those violations were "willful." The Ordinance provides: "The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission." (Ordinance § 67.34.)

The term "willful" is not defined in the Ordinance.[4] In the past, the Task Force has occasionally referred matters to the Ethics Commission where we have found the city official's violation of the Ordinance to be particularly egregious, flagrant, or repeated. "Although the term 'willful' has no single, uniformly applicable definition, it refers generally to intentional conduct undertaken with knowledge or consciousness of its probable results." (*Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829.) An oft-repeated definition of "willful" conduct is this: "That the person knows what he is doing, intends to do what he is doing, and is a free agent." (*Davis v. Morris* (1940) 37 Cal.App.2d 269, 274.)

Applying that definition, we conclude the violation of Ordinance § 67.29-7 was not willful. Section 67.29-7 imposes obligations on the "Mayor and Department Heads" only. Although we find that Ordinance § 67.29-7 was violated, we have received no evidence that the Mayor knew of, or played any role in, the destruction of Mr. Kawa's calendar. (See, *e.g., Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 729 ["Unlike negligence, which implies a failure to use ordinary care, and even gross negligence, which connotes such a lack of care as may be presumed to indicate a passive and indifferent attitude toward results, willful misconduct is not marked by a mere absence of care. Rather, it involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences."].) Accordingly, we find that Ordinance § 67.29-7 was not violated willfully.

We do believe, however, that the violation of § 67.21 was willful. Section 67.21 requires that any custodian of a public record "*shall* … permit the public record, or any segregable portion of a record, to be inspected and examined by any person." (emphasis added). The intentional destruction of Mr. Kawa's calendar necessarily prevented the public's ability to inspect or examine the document. *See Patarak*, 91 Cal.App.4th at 829 (willful action is "intentional conduct with knowledge or consciousness of its probable results").

We have not received, in our view, a credible explanation for the calendar's destruction. Mr. Kawa's assistant stated that he destroyed the calendar based on specific instructions he received from Mr. Kawa, Task Force Meeting at 2:38:45 – March 2, 2016, and that destroying the calendar was done for "general organization and housekeeping" purposes. Task Force Meeting at 2:03:35. The explanation is perplexing. Even assuming there is some organizational or housekeeping benefit in having a "clean" calendar of past events (which, in itself, is difficult to understand), it is not at all clear why an electronic calendar — one that presumably has different settings and views that can be manipulated for users to "hide" past events — would require Mr. Kawa (or his assistant) to manually purge entries from the calendar.

[4] We believe it is clear that Mr. Kawa is a "managerial city employee" subject to Ordinance § 67.34.

Nor does it appear from the testimony provided that Mr. Kawa received legal advice (or sought legal advice) from the City Attorney prior to deleting his calendar.[5] Finally, the *only* category of record that Mr. Kawa's representative was instructed to regularly destroy was his calendar. That destruction occurred with the knowledge that Mr. Petrelis had previously requested the calendars of other city officials, including Mr. Kawa. Audio of Apr. 6, 2016 Task Force Meeting at 2:32:30 – 2:34:10.

Legitimate concerns exist about the integrity of public officials in this city. *See, e.g., 3 charged in San Francisco public corruption case,* AP (Jan. 22, 2016) ("'All I can tell you is that we have been investigating irregularities in local government for quite some time,' Gascón said, noting the investigation was continuing.")[6] Actions like Mr. Kawa's, that subvert laws designed to hold government officials accountable, do little to assuage those concerns. "Openness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*Sierra Club v. Superior Ct.* (2013) 57 Cal.4th 157, 164). We find that Mr. Kawa's actions intentionally obstructed that "essential" public access here.

Accordingly, we conclude that Mr. Kawa's destruction of his calendar constituted a "willful failure" to discharge the "duties imposed by the Sunshine Ordinance," and we refer the matter to the Ethics Commission for its review. *See* Ordinance § 67.34.[7]

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[5] Under repeated questioning at the hearing on this matter, Mr. Kawa's representatives stated that the City Attorney was "aware of" and helped draft Mr. Kawa's response to the public records request, but had not advised that the calendars could be destroyed in advance of Mr. Kawa doing so. Task Force Meeting at 2:36:30-45. But the fact that the City Attorney helped respond to the request does not suggest that Mr. Kawa sought advice prior to deleting his calendar, despite ample opportunity to do so. *See* Task Force Meeting at 2:36:03-24 (describing annual discussion concerning Mayor's Retention Schedule with City Attorney).

[6] *Available at* http://bigstory.ap.org/article/0a3280463e9040bab4bd816c04957a7f/3-charged-san-francisco-public-corruption-case.

[7] The City Attorney suggests that the Task Force cannot find a "willful" violation here because the Ethics Commission's "Regulations for Handling Violations of the Sunshine Ordinance" assigns a different definition to the term — one requiring "knowledge" that the actions were taken in violation of the Ordinance. The Task Force is not aware of any authority, and the City Attorney has provided none, that suggests the Ethics Commission's interpretation of the Sunshine Ordinance controls the Task Force's own interpretation of the Ordinance. And, under any circumstances, the Task Force believes the Ethics Commission's definition of "willful" is unduly narrow. That definition extends only to an "action or failure to act *with knowledge* that such act or failure to act was a violation of the Sunshine Ordinance." Regulations, Section II(U) (emphasis added). Although the Task Force agrees that such knowing action would constitute a "willful" violation, the Task Force believes that the definition must also extend to violations that are (1) egregious, flagrant, or repeated, *and* (2) carried out with, at least, a reckless disregard for the requirements of the Ordinance. As a practical matter, under the Ethics Commission's current definition, we find it unlikely that a willful violation will ever occur. It seems improbable that a City official will ever publicly admit to their knowledge of the Ordinance's requirements and their deliberate disregarded of those requirements. Rather, City officials are likely to suggest their actions were the product of ignorance of the law's requirements. Accordingly, and rather than render the

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Mayor's Office violated Administrative Code (Sunshine Ordinance), Section 67.29-7, for failure to maintain and preserve Mr. Kawa's calendar in a professional and businesslike manner. The Task Force further finds Mr. Kawa violated Administrative Code (Sunshine Ordinance), Section 67.21, for failure to respond to a request for records in a complete manner and that this violation was willful under Section 67.34.

The motion to find a violation of Administrative Code, section 67.21, for failure to respond to a public records request in a timely and / or complete manner was passed at the May 4, 2016 Task Force meeting by the following vote:

Ayes: 7 - Wolf, Eldon, Pilpel, Hinze, Fischer, Hyland, Washburn
Noes: 0
Absent: 2 - Chopra, Haines

The motion to find a violation of Administrative Code Section 67.29-7 for failure to maintain records in a professional and businesslike manner, find that the violation of Administrative Code Section 67.21 was a willful failure to discharge duties imposed by the Sunshine Ordinance under Administrative Code Section 67.34, adopt this Order of Determination, authorize the Chair to make typographical and other non-substantive changes, and authorize and direct the Chair to refer this matter to the Ethics Commission for enforcement was passed at the May 4, 2016 Task Force meeting by the following vote:

Ayes: 6 - Wolf, Eldon, Hinze, Fischer, Hyland, Washburn
Noes: 1 - Pilpel
Absent: 2 - Chopra, Haines

Chris Hyland
Acting Chair

c: Sunshine Ordinance Task Force Members
Mark Rumold, Former Sunshine Ordinance Task Force Member
Nicholas Colla, Deputy City Attorney
Michael Petrelis, Complainant
Steve Kawa, Mayor's Chief of Staff, Respondent
Carl Nicita, Mayor's Office, Respondent
Kirsten Macaulay, Mayor's Office, Respondent
Mayor Edwin Lee, Mayor’s Office, Respondent

Ordinance's "willful" violation a dead letter, we believe the Ethics Commission should amend their definition to encompass such reckless actions.

From: mpetrelis@aol.com
To: SOTF, (BOS)
Subject: Complaint against Mayoral aide Steve Kawa
Date: Thursday, December 03, 2015 1:43:42 PM
Attachments: STEVE KAWA - RD (1).pdf

Dear Victor Young,

I wish to lodge a complaint against Mr. Steve Kawa, the top aide in Mayor Ed Lee's office, for failure to produce his calendar for the period specified.

The attachment is the blank calendar that was received last week and is my no stretch of the imagination compliant with sunshine law.

Please process this complaint accordingly.

Regards,
Michael Petrelis

-----Original Message-----
From: MayorSunshineRequests, MYR (MYR) (MYR) <mayorsunshinerequests@sfgov.org>
To: 'mpetrelis@aol.com' <mpetrelis@aol.com>; MayorSunshineRequests, MYR (MYR) (MYR) <mayorsunshinerequests@sfgov.org>
Sent: Tue, Dec 1, 2015 4:18 pm
Subject: RE: Kirsten reply needed. - Re: Steve Kawa's work calendar for Jul/Aug/Sep 2015

Dear Mr. Petrelis,

Thank you for your emails. We have provided electronic copies of all records in the possession of the Mayor's Office for the time period that you requested responsive to your request. Thank you.

Kirsten Macaulay
Office of Mayor Edwin M. Lee

From: mpetrelis@aol.com [mailto:mpetrelis@aol.com]
Sent: Tuesday, December 01, 2015 3:20 PM
To: mpetrelis@aol.com; MayorSunshineRequests, MYR (MYR)
Subject: Kirsten reply needed. - Re: Steve Kawa's work calendar for Jul/Aug/Sep 2015

Hello Kirsten,

About a week ago, I sent you this followup message but have not heard back from you.

I have not received the requested calendar from Steve Kawa. There are no entries on the

doc you sent.

Where is the calendar with meeting dates, persons in attendance, topics discussed?

A reply is needed.

Regards,
Michael

-----Original Message-----
From: mpetrelis <mpetrelis@aol.com>
To: mayorsunshinerequests <mayorsunshinerequests@sfgov.org>
Sent: Wed, Nov 25, 2015 10:23 am
Subject: Re: Steve Kawa's work calendar for Jul/Aug/Sep 2015

I've received a calendar that is totally blank.

Did you mean to send me such an incomplete calendar?

Lemme know when to expect an authentic calendar for Steve Kawa.

-----Original Message-----
From: MayorSunshineRequests, MYR (MYR) (MYR) <mayorsunshinerequests@sfgov.org>
To: MayorSunshineRequests, MYR (MYR) (MYR) <mayorsunshinerequests@sfgov.org>; 'mpetrelis@aol.com' <mpetrelis@aol.com>
Sent: Mon, Nov 23, 2015 3:25 pm
Subject: RE: Steve Kawa's work calendar for Jul/Aug/Sep 2015

Requestor: Michael Petrelis
Email: mpetrelis@aol.com

Re: Public Records Request dated November 18, 2015

Dear Mr. Petrelis:

This letter responds to your Public Records Request sent and received on November 18, 2015 by the Mayor's Office via email. In your request, you ask for the following from the Mayor's Office:

1. "Electronic copy of your chief of staff Steve Kawa's calendar, for the period of July/August/September 2015."

Response:

Attached please find electronic copies of all records in the possession of the Mayor's Office responsive to your request.

If you have any questions regarding your request or would like to send another sunshine request, please do not hesitate to contact the Mayor's Office at mayorsunshinerequests@sfgov.org.

Sincerely,
Kirsten Macaulay
Mayor's Office of Communications

From: MayorSunshineRequests, MYR (MYR)
Sent: Thursday, November 19, 2015 4:50 PM
To: 'mpetrelis@aol.com'; MayorSunshineRequests, MYR (MYR)
Subject: RE: Steve Kawa's work calendar for Jul/Aug/Sep 2015

Dear Mr. Petrelis:

Although your request was sent as an Immediate Disclosure Request under San Francisco Administrative Code Section 67.25(a), it will require staff to conduct a review of files in order to find responsive records and is not "simple, routine and readily answerable." For this reason, we are not treating your request as one appropriately filed as an "immediate disclosure" request subject to Section 67.25, but as one which is subject to the normally applicable response time.

We will be able to complete your request very soon. Thank you!

Kirsten Macaulay
Office of Mayor Edwin M. Lee

From: mpetrelis@aol.com [mailto:mpetrelis@aol.com]
Sent: Wednesday, November 18, 2015 11:37 AM
To: MayorSunshineRequests, MYR (MYR)
Subject: IDR: Steve Kawa's work calendar for Jul/Aug/Sep 2015

Dear Mayor Ed Lee,

This is an immediate disclosure request for an electronic copy of your chief of staff Steve Kawa's calendar, for the period of July/August/September 2015.

If you have any questions, send them to me via email.

I look forward to receiving responsive public records.

Best,
Michael Petrelis

Office of the Mayor
City & County of San Francisco

Edwin M. Lee

MAYOR'S OFFICE
RECORDS AND DOCUMENT RETENTION AND DISPOSAL SCHEDULE

The Mayor's Office Record Retention and Destruction Policy is adopted pursuant to Section 8.1 of the San Francisco Administrative Code, which requires each Department Head to maintain records and create a records retention and destruction schedule.

This policy covers the records and documents, regardless of physical form or characteristics, which have been made or received by the Mayor's Office in connection with the transaction of public business.

PART I POLICY AND PROCEDURES:

A. RETENTION POLICY

The Mayor's Office shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, to comply with contractual or legal requirements, or for records which would be essential to the continuity of government and the protection of rights and interests of individuals in an event of a major disaster, or for other purposes as set forth below. For record retention and destruction purposes, the term' "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part H. The records of the Mayor's Office shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- Permanent Records: Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed or placed on an optical imaging system and special measures are followed, Administrative Code Section 8.4. Once these measures are followed, the original paper records must be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the Mayor's Office.

- Essential Records: Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals, in an event of a major disaster be preserved against possible destruction by fire, earthquake, flood, enemy attack or other cause, Administrative Code Section 8.9.

Category 2: Current Records. Current records are records that for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Current records shall be retained as follows:

- Where retention period specified by law. Where federal, state or local law prescribes a definite period of time for retaining certain records, the Mayor's Office will retain the records for the period specified by law.

- Where no retention period specified by law. Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be specified in the attached Record Retention and Destruction Schedule. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not defined as "records" pursuant to the Administrative Code Section 8.1 need not be retained unless retention is otherwise specified by local law or required by this policy. Documents and other materials (including originals and duplicates) that are not required for retention, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include documents and materials generated for the use and convenience of the person generating them, draft documents which have been superseded by subsequent versions and duplicate copies of records that are no longer needed. Specific examples include telephone message slips, notes from ongoing projects, preliminary drafts that have been superseded by subsequent versions, routine e-mails that do not contain information required to be retained under this policy, miscellaneous correspondence not requiring follow-up or departmental action, notepads and chronological files.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when document's business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION POLICY

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for periods prescribed for records for substantially similar records.

C. STORAGE OF RECORDS

Active records may be stored in the Mayor's Office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Mayor's Office space or equipment include active administrative files, personnel files, contracts and grants, and civil grand jury reports. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Mayor's Office space or equipment, may be sent to the City's off-site storage facility or

maintained in the Mayor's Office storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Mayor's Office but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code Section 8.7.

E. DESTRUCTION OF RECORDS

It shall be the policy of the Mayor's Office that once the requisite retention period for a record has passed; the record shall be destroyed unless there are particular circumstances that dictate that the record be retained.

F. RECORDS RELATING TO PENDING CLAIMS AND LITIGATIONS

The retention periods set forth in the attached record retention schedule shall not apply to materials that are otherwise eligible for destruction, but which may be relevant to a pending claim or litigation against the City. Once the Mayor's Office becomes aware of the existence of a claim against the office, the Mayor's Office should retain all documents and other materials related to the claim until such time as the claim or subsequent litigation has been resolved. Where the Mayor's Office has reason to believe that one or more other departments also have records relating to the claim or litigation, those departments should also be notified of the need to retain such records.

APPROVALS

This Record Retention and Destruction Policy and attached Schedule are hereby approved:

Steve Kawa
Chief of Staff
Office of the Mayor

1/27/14
Date

Approved as to Records of Legal Significance:

for
Dennis J. Herrera
City Attorney

2/13/14
Date

Approved as to Records Relating to Financial Matters:

Ben Rosenfield
Controller

2-18-14
Date

Approved as to Records Relating to Payroll Matters:

Jay Huish
Executive Director
Retirement System

2/28/2014
Date

DIVISION	RECORD CATEGORY	TYPE OF RECORD	RETENTION CATEGORY	RETENTION PERIOD			REMARKS
				Total	On site	Off site	
Administration	Administration	Accident-injury report	2	7 years	2 years	5 years	29 CFR 1904.6
Administration	Administration	Administrative files	4	Current year	Current year	N/A	
Administration	Administration	Audit reports	4	Current year	Current year	N/A	
Administration	Administration	Conflict of interest form 700	2	7years	2 years	5 years	GC Sec.81009(e)
Administration	Administration	Discrimination and harassment complaints	2	During employee tenure and 5 fiscal years post tenure	During employee tenure and 5 fiscal years post tenure	N/A	
Administration	Administration	Family Medical Leave Act Records	2	3 fiscal years	3 fiscal years	N/A	3 year minimum required by Fair Labor Standards A
Administration	Administration	Medical information	2	During employee tenure and 5 fiscal years post tenure	During employee tenure and 5 fiscal years post tenure	N/A	
Administration	Administration	Payroll Reports/Timecards and related documents	2	2 fiscal years	2 fiscal years	N/A	Secure Permission from SFERS
Administration	Administration	Personnel files	2	During employee tenure and 5 fiscal years post tenure	During employee tenure and 5 fiscal years post tenure	N/A	
Administration	Administration	Travel request (copy)	4	Current year	Current year	N/A	
Administration	Administration	Worker's Compensation Record	2	During employee tenure and 5 fiscal years post tenure	During employee tenure and 5 fiscal years post tenure	N/A	
Administration	Contracts/Grants	Contracts & Grants	2	Term of agreement plus 4 years	Term of agreement plus 4 years	N/A	
Administration	Contracts	Draft Contracts	4	Until approval	Until approval	N/A	Administrative CC Sec. 67.24 (a) (2)
Administration	Correspondences	General Correspondences	4	N/A	N/A	N/A	
Administration	Financial	Check Payments	2	2 fiscal years	2 fiscal years	N/A	
Administration	Financial	Office expenditure documents	2	2 fiscal years	2 fiscal years	N/A	
Administration	Financial	Payables (Invoices/Vendors)	2	2 fiscal years	2 fiscal years	N/A	
Administration	Financial	Purchase Orders (copy)	2	2 fiscal years	2 fiscal years	N/A	
Administration	Financial	Receipt/Deposits	2	2 fiscal years	2 fiscal years	N/A	
Administration	Financial	Work Orders	2	2 fiscal years	2 fiscal years	N/A	
Administration	Policies	Policies/Procedures	2	Later of 2 years or until superseded	Later of 2 years or until superseded	N/A	
Administration	RFA, RFQ	RFA, RFQ	2	Later of 2 years of no current use	Later of 2 years of no current use	N/A	
Scheduling	Calendar	Prop G Calendar	2	2 years	2years	N/A	
Public Policy	Public Policy and	Budget Files	2	2 fiscal years	2 fiscal years	N/A	

and Finance	Finance						
Public Policy and Finance	Reports	Grand Jury Reports (copy)	1	Permanently	Permanently	N/A	
Government Affairs	Legislative	Electronic Legislation (copies as approved to form)	4	Current year	Current year	N/A	
Government Affairs	Legislative	Electronic Legislative Drafts	4	Current year	Current year	N/A	

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BURK E. DELVENTHAL
Deputy City Attorney

Direct Dial: (415) 554-4650
Email: buck.delventhal@sfgov.org

March 30, 2016

Honorable Members of the Sunshine Ordinance Task Force
c/o Clerk of the Board of Supervisors
Attn: Victor Young, Administrator
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102

Re: **Proposed Order of Determination in Michael Petrelis v. Steve Kawa and the Mayor's Office (File No. 15163)**

Dear Honorable Task Force Members:

This letter responds to the Proposed Order of Determination (the "Order") in the above-entitled case. If adopted, the Order would reach three principal legal conclusions. It would conclude that Mr. Kawa and the Mayor's Office violated its record retention policy by periodically deleting Mr. Kawa's individual calendar. Consequently, the Order would conclude, Mr. Kawa and the Mayor's Office violated two sections of the Sunshine Ordinance – Section 67.29-7, which requires the Mayor, among others, to "maintain and preserve" records "in a professional and businesslike manner," and Section 67.21, which requires a custodian of a public record to permit its inspection and copying.[1] The Order further would conclude that Mr. Kawa's purported violation of Section 67.21 was a "willful failure" to "discharge the duties imposed by the Sunshine Ordinance," warranting referral of that violation to the Ethics Commission under Section 67.34.

We understand that the Task Force will be considering the Order at its April 6, 2016, meeting. While this case involves Mr. Kawa and the Mayor's Office specifically, it has broad ramifications for City government generally. Accordingly, this letter presents the analysis of the City Attorney's Office on the legal issues the Order addresses. Also, the Order presumes what this Office's legal advice would be regarding the destruction of an employee's individual calendar (as opposed to the calendar the Sunshine Ordinance requires elected officials and department heads to maintain). This letter avoids leaving our advice on the main legal issues the Order addresses subject to speculation.

As we explain below, each of the three principal conclusions of the Order is legally erroneous: Mr. Kawa and the Mayor's Office did not violate records retention law, and did not violate the Sunshine Ordinance; and Mr. Kawa did not willfully violate Section 67.21. Accordingly, it is advisable that the Task Force not adopt the Order.

[1] The Order concludes, in its footnote 3, that "the Mayor's Office substantially complied with the requirements of § 67.25" of the Sunshine Ordinance, regarding immediate disclosure requests. Accordingly, we do not address Section 67.25.

I. "WILLFUL" VIOLATION OF THE SUNSHINE ORDINANCE

We begin where the Order ends, with referral of the purported violation of Section 67.21 to the Ethics Commission, on the theory that it is a "willful" violation. This referral is not proper under the Sunshine Ordinance because it misuses the legal standard employed to define a "willful" violation.

The Charter vests in the Ethics Commission the power to issue regulations governing the Sunshine Ordinance. (S.F. Charter, § 15.102 ["the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"].) Under this Charter authority, the Ethics Commission has adopted "Regulations for Handling Violations of the Sunshine Ordinance."[2] These regulations define a "willful" violation as "an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance." (Regulations, Section II(U).)

There is no evidence in the record that Mr. Kawa knew that the practice of periodically deleting his individual calendar violated the Sunshine Ordinance, and the Order makes no such finding. Indeed, as explained in Sections II and III, below, this practice does not violate either records retention laws or the Sunshine Ordinance.

But rather than apply – or even acknowledge – the Ethics Commission's definition of "willful" violation, the Order instead applies a different definition of "willful" conduct: "intentional conduct undertaken with knowledge or consciousness of its probable results," citing *Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829. *Patarak* addresses whether a landlord's violations of the Mobilehome Residency Law ("MRL") (Cal. Civ. Code §§ 798 et seq.) were "willful" and therefore subject to penalties under the MRL. We have no quarrel with the holding in *Patarak*; the term "willful" has different meanings in different legal contexts. But that is the point the Order misses. The Order applies a definition of "willful" that is correct in the *Patarak* context of assessing penalties under the MRL, but is incorrect for determining a "willful" violation of the Sunshine Ordinance.

As we explain below, there has been no violation of Section 67.21 of the Sunshine Ordinance in this case. But even if there had been such a violation, because there is no evidence in the record that Mr. Kawa destroyed his calendar knowing he was violating records retention law or the Sunshine Ordinance, there is no basis to conclude that it was "willful" within the meaning of Section 67.34 – as "willful" is defined by the very commission authorized to define that term, and to which the Task Force would refer this case if it adopts the Order.

II. RECORDS RETENTION REQUIREMENTS

The Order concludes that the periodic deletion of Mr. Kawa's individual calendar violated the law governing records retention, and that this violation translates into a violation of Sections 67.29-7 and 67.21 of the Sunshine Ordinance. Because the purported Sunshine Ordinance violations presume, and depend on, a records retention law violation, we first address that issue.

Many City employees who are not elected officials or department heads – probably the vast majority of professional, technical, and supervisorial employees at all ranks in the City's

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[2] These Regulations are on the Ethics Commission's website and are available at http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf

bureaucracy, as well as many other City employees – keep a daily calendar for their own convenience (we generally refer to those calendars in this letter as "individual calendars"). Those individual calendars often will include both work entries and personal entries, such as a doctor's appointment, family commitments, or lunch plans. Employees create such calendars to keep track of upcoming activities, tasks, and deadlines, and to avoid scheduling conflicts. Sometimes employees also create those calendars to assist their colleagues in knowing their whereabouts. They do not create their calendars to preserve an historical record, and the entries on such calendars have no legal significance or consequence. Indeed, neither state law nor City law requires employees (as opposed to elected officials and department heads) – whether Mr. Kawa or others – to prepare, much less to keep, an individual calendar.

The Order correctly notes that the Public Records Act defines "record" very broadly. (Cal. Gov. Code §§ 6252(e), (g) (definitions of "public records" and "writing").) Thus, an employee's individual calendar maintained on the City's network is a public record and must be disclosed on request, with non-work-related entries redacted, *if the calendar has been retained.* But the universe of public records that state or City law requires the City to retain is much smaller than the universe of public records that, if in the City's custody, must be disclosed under the Public Records Act and the Sunshine Ordinance. For example, as a general rule, employees may immediately dispose of phone message slips, notes of meetings, research notes prepared for the use of the employee creating them, and the large majority of e-mail communications employees send and receive, even though such records would generally qualify as "public records" under the Public Records Act. Similarly, if employees make notes to themselves about a meeting to attend or task to perform days later, the employees need not retain those notes. An employee's individual calendar, which is nothing more than a compilation of such notes, likewise need not be retained.

State law requires local agencies to retain certain records. (*E.g.,* Cal. Gov. Code §§ 6200, 34090 et seq.) The City's records retention law (Sections 8.1 through 8.9 of the Administrative Code) does not expand upon the scope of records that state law requires the City to retain. Rather, City law requires each department head to adopt a record retention schedule classifying documents subject to retention under state law into different categories. The Office of the Mayor's record retention schedule, like those of many other City departments, includes "Category 4: No Retention Required." Category 4 documents do not constitute "records" within the meaning of state records retention law, so they need not be retained. As the Mayor's records retention policy explains, Category 4 records are "not necessary to the functioning or continuity of the Department" and "have no legal significance." Examples of such documents are ones "generated for the use and convenience of the person generating them," including telephone message slips, notes from ongoing projects, and miscellaneous correspondence.

The Office of the Mayor's record retention schedule does not list employee calendars under any of the four categories. The records retention policy states that documents "not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for periods prescribed" for substantially similar records. The Mayor's Office correctly regards staff work calendars as "substantially similar" to "administrative files" and "general correspondence" listed in Category 4 on its schedule. As this letter has explained, retention of them is "not necessary to the functioning or continuity of the Department," they "have no legal significance," and they are "generated for the use and convenience of the person generating them." Nevertheless, the Order concludes that employee individual calendars must be retained. This erroneous conclusion stems from two analytical errors in the Order.

First, the Order states that a department head calendar (often referred to as the "Prop G calendar," named for November 1999's Proposition G) is the record most "substantially similar" to Mr. Kawa's calendar, and therefore the two-year retention period for Prop G calendars should apply to his individual calendar. This is a false analogy. The Prop G calendar, which all elected officials and department heads must maintain in accordance with Section 67.29-5 of the Sunshine Ordinance, is a retrospective calendar. Its purpose is to create an historical record: to document meetings and events that the public official has attended, so as to inform the public. As Section 67.29-5 states, the Mayor and other officials subject to the requirement[3] "shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official...." The Prop G calendar must be made "available to any requester three business days subsequent to the calendar entry date." By contrast, the purpose of a staffer's individual calendar is not to serve an historical function or to inform the public, but rather is to allow the staffer prospectively to keep track of or schedule upcoming meetings, tasks, deadlines, or events. It is not created to document or publicize the staffer's comings and goings. The Prop G calendar analogy improperly compares apples and oranges.

The analogy is concerning for another reason. The voters first imposed the Prop G calendar requirement on elected officials other than members of the Board of Supervisors, and on department heads; and last year, the City enacted an ordinance subjecting members of the Board to the requirement. (Ord. No. 118-15.) The City's legislators – the voters, in the first instance, and the Board and Mayor, in the second – have determined which officials are subject to the Prop G calendar requirement. They have also determined which City officials and employees are *not* bound by the requirement – the Chief of Staff to the Mayor being one among many. To interpret the City's record retention law or the Office of the Mayor's record retention schedule to create a calendar requirement for Mr. Kawa similar to the Prop G calendar requirement would undermine the City's decision, made through its legislative processes, regarding which officials and employees are – and are not – subject to such requirements.

Second, the Order points to a California Attorney General Opinion that defined a record under state records retention law as one that is kept "because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference." (64 Cal. Op. Att'y Gen. 317 (1981); 1981 WL126747.) But the Order misconstrues this opinion, which, read properly, fortifies the conclusion that an employee's individual calendar need not be retained.

The Attorney General had been asked, "Where the city clerk makes an authorized tape recording of a city council meeting to facilitate the preparation of the minutes: (a) does the public have the right to inspect the tape or (b) receive copies of the tape and (c) when may such tape be destroyed?" (1981 WL 126747, at 1.) After concluding that such a tape was a public record subject to inspection and copying, the Attorney General addressed the retention question, concluding, "the tape recording may be destroyed at any time if the purpose for which it was made and retained was solely *to facilitate the preparation of the minutes of the meeting* but if the tape was made or retained for the additional purpose of *preserving its informational content for public reference* it may not be lawfully destroyed except as expressly authorized by state law." (*Id.* (emphasis added).) An employee's individual calendar, like the city clerk's tape recording in the Attorney General opinion, is made solely for the convenience of the employee, and is not made for the purpose of "preserving its informational content for public reference."

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[3] The Chief of Staff to the Mayor, and chiefs of staff to other elected officials and department heads, are not subject to the Prop G calendar requirement.

Relying on this Attorney General opinion, the Order mistakenly reasons that employees' individual calendars are subject to a two-year retention requirement under state law, because "calendar entries are added in order to establish and document future appointments, meetings, and the like, thus 'creating content for future reference.'" This takes the "future reference" terminology from the Attorney General opinion out of context. Following the Order's reasoning, the city clerk's tape recording would have to be considered to be created for future reference, because the clerk would make and keep the tape to assist the clerk in preparing meeting minutes in the future, i.e., after the meeting. Yet the Attorney General concluded that if the tape would be used simply to facilitate preparing the minutes, and not used to "preserve its informational content *for public reference* (emphasis added)," the tape need not be preserved. The opinion's "future reference" standard means – as the opinion states – for "public reference" in the future. An employee's individual calendar is not created for public reference in the future.

III. THE SUNSHINE ORDINANCE

As we explain above, deletion of an employee's individual calendar does not violate City or state law. But the Order would conclude otherwise, and would go further to erroneously find Sunshine Ordinance violations based on the purported records retention violation. Accordingly, we address the purported Sunshine Ordinance violations below.

A. Section 67.29-7

The Order would conclude that a records retention violation also violates Section 67.29-7 of the Sunshine Ordinance, which provides in relevant part:

> (a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum [sic], invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

The Order reads the requirement to maintain and preserve records "in a businesslike manner" as incorporating into the Sunshine Ordinance, by implication, records retention law and departmental record retention schedules, thereby making a violation of either an automatic Sunshine Ordinance violation. This reading of the term "businesslike" effectively rewrites Section 67.29-7 in the guise of interpreting it. A court would very likely reject this reading.

Proposition G added Section 67.29-7 to the Sunshine Ordinance. If the drafters of Proposition G had intended to fold records retention laws wholesale into the Sunshine Ordinance, so that voters would understand that a records retention violation automatically would become a Sunshine Ordinance violation, there would have been a much easier way to do so – by stating so directly. Courts look with suspicion on expansive claims about a law's meaning based on interpretation of a general and ambiguous term, when the legislative body could have easily written the law to directly state the desired meaning. (*People v. Johnson* (2015) 60 Cal.4th 966, 991 ("If the Legislature had intended such a meaning, it could easily have said so"); *County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 572 (citing numerous cases).)

Further, the drafters of Proposition G knew how to cross-reference records retention laws in the Sunshine Ordinance when they wanted to do so. Section 67.29-1, entitled "Records Survive Transition of Officials," states:

> All documents, prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents *shall be maintained consistent with the records retention policies of the City and County of San Francisco.*

(Emphasis added.) Thus, in the context of a City official leaving his or her position, Section 67.29-1 makes clear that originals of documents must be retained in accordance with the applicable records retention policy. Section 67.29-7(a) contains no such cross-reference. Courts recognize that the presence of a term in one part of a law, in contrast to its omission in another part of the law, raises an inference that the omission was intentional. (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 ("When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful").) The inference is particularly strong where the two parts of the same law were adopted at the same time and bear a close relationship to one another, as is true of Sections 67.29-1 and 67.29-7(a). (*E.g., People v. Giordano* (2007) 42 Cal.4th 644, 670.)

In requiring that records be "maintained and preserved in a professional and businesslike manner," Section 67.29-7(a) speaks to *how* the Mayor and department heads must maintain records. The records should be reasonably organized, filed, and stored so that staff may promptly locate and produce records in response to a public records request. Neither Section 67.29-7(a) nor the Sunshine Ordinance as a whole speaks generally to *what* records must be maintained. Indeed, read literally, Section 67.29-7(a) would mean that departments must retain "all documents and correspondence," which would conflict with records retention laws and lead to the absurd conclusion that the City must retain mountains of records that do not fall under the scope of records retention law.

B. Section 67.21

The Order also would conclude that the periodic deletion of Mr. Kawa's individual calendar violates Section 67.21 of the Sunshine Ordinance, reasoning that "because Mr. Kawa *should* have had the records requested by Mr. Petrelis" (emphasis in original), he violated Section 67.21 for "failing to 'permit the public record' to be inspected." The plain text of Section 67.21 contradicts this strained reading. As Section 67.21 states:

> (a) Every person *having custody* of any public record or public information, as defined herein, … shall … permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge ….

(Emphasis added.) If a record does not exist at the time of the public records request, one does not "hav[e] custody" of it. The City's obligation under this provision as well as under subsection (b) of Section 67.21, to comply with "a request for inspection or copying," presupposes the existence of a record at the time the City receives the request. If, at that time, there are no responsive records, the City complies with the Sunshine Ordinance by notifying the requester that there are no responsive records.

Section 67.21 imposes on the City a duty to allow members of the public to inspect and/or copy within 10 days of the request public records that are in the custody of a department. Thus, a

department would violate Section 67.21 if it had records responsive to a request but refused (without a lawful basis) to allow inspection or copying of the records. A department would also violate Section 67.21 if it received a public records request and then proceeded to destroy a responsive record to avoid producing it – even if the department could have destroyed the record earlier under its records retention policy. But neither of those scenarios is present here. The Mayor's Office did not refuse to "permit the public record to be inspected" as stated in the Order. Nor did it destroy Mr. Kawa's individual calendar after receiving Mr. Petrelis's request. Rather, the record did not exist at the time of the request.

Section 67.21 does not speak to which records are subject to retention requirements; rather, it imposes a present-tense disclosure requirement. Indeed, as one court explained, nothing in the Public Records Act – upon which Section 67.21(a) and (b) are modeled – purports to govern the destruction of records: "[The Public Records A]ct itself does not undertake to prescribe what type of information a public agency may gather, nor to designate the type of records such an agency may keep, nor to provide a method of correcting such records. Its sole function is to provide for disclosure." (*Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.) In finding a violation of Section 67.21, the Order mistakenly conflates these two distinct legal requirements.

IV. CONCLUSION

The three principal legal conclusions of the Order are fundamentally flawed. The Order would determine that a "willful" violation has occurred by relying on an inapplicable definition; it would erroneously conclude that a record created solely for an employee's personal convenience – where there is no other requirement that the record be created or maintained – must be retained; and it would compound that error by transforming a purported violation of records retention law or a department's records retention policy into a Sunshine Ordinance violation. The Task Force would be well advised not to adopt the Order.

Respectfully submitted,

DENNIS J. HERRERA
City Attorney

BURK E. DELVENTHAL
Deputy City Attorney

cc: Steve Kawa
Michael Petrelis (via email)

Office of the Mayor
City & County of San Francisco

Edwin M. Lee

December 15, 2015

SENT VIA ELECTRONIC MAIL

Honorable Members of the Sunshine Ordinance Task Force
C/O: Clerk of the Board of Supervisors
Attn: Victor Young, Administrator
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102

Re: Mediation of SOTF Complaint No. 15163 (Petrelis v. Mayor's Office)

Honorable Members of the Sunshine Ordinance Task Force:

This letter responds to ***Mediation of Complaint Filed with SOTF - Complaint No. 15163*** sent to the Mayor's Office via electronic mail on Wednesday, December 9, 2015.

The complaint pertains to a public records request that Michael Petrelis sent to the Mayor's Office on November 18, 2015. The request asked for an "electronic copy of your chief of staff Steve Kawa's calendar, for the period of July/August/September 2015."

On November 23, 2015, our office timely responded to Mr. Petrelis' request by providing a print-out of Mr. Kawa's electronic calendar from Microsoft Outlook for the months of July, August, and September of 2015. Because the print-out did not contain any calendar entries, Mr. Petrelis alleges that the Mayor's Office failed to provide a complete response in violation of Section 67.21 of the Sunshine Ordinance. Mr. Kawa, however, regularly maintains his calendar retrospectively for only two weeks at any given time. Accordingly, at the time we received Mr. Petrelis' request on November 18, calendar entries for the months of July, August and September had already been removed. That is why the documents we provided to Mr. Petrelis were blank; there were no responsive records to produce. Mr. Kawa's two-week calendaring practice is consistent with the Mayor's Office Records and Document Retention and Disposal Schedule, which does not have a retention requirement for staffers' calendars and provides that "materials generated for the use and convenience of the person generating them," which describes Mr. Kawa's calendar, need not be retained. (See Section A, Category 4). As we explained to Mr. Petrelis, we do not have any other records responsive to his request. Accordingly, there has been no violation of Section 67.21.

We hope you find this information useful and will determine that there is no ground for sustaining this complaint. If you have any questions about this matter, please do not hesitate to contact me at mayorsunshinerequests@sfgov.org or Kirsten.Macaulay@sfgov.org.

Sincerely,

Kirsten Macaulay
Mayor's Office of Communications

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

AMENDED MEMORANDUM

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet
Deputy City Attorney

DATE: February 22, 2016

RE: Complaint No. 15163 – Michael Petrelis v. Steve Kawa & Mayor's Office

COMPLAINT:

Complainant Michael Petrelis ("Complainant") alleges that Steve Kawa and the Mayor's Office ("Mayor") violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to "completely comply with request for the calendar of Chief of Staff, Steve Kawa."

COMPLAINANT FILES COMPLAINT:

On December 3, 2015, Complainant filed this complaint against the Mayor, alleging a violation of section 67.21 of the Ordinance.

JURISDICTION

The Mayor's Office is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. The mayor does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for obtaining public records.
- Section 67.25 governs responding to an Immediate Disclosure Request ("IDR").

APPLICABLE CASE LAW:

None

BACKGROUND:

Complainant's Allegations

In his December 3, 2015 email to the Task Force administrator, Complainant alleges that on November 18, 2015, he made an IDR via email for the calendar of Steve Kawa, top aide to the Mayor, for the period of July/August/September 2015. He further alleges that, in response to his request, the Mayor provided him a calendar for that time period that included no information about meetings held during the time period. Complainant further alleges that "the blank calendar that was received last week [ ] is by no stretch of the imagination compliant with sunshine law."

The Mayor's Response

In a December 15, 2015 letter to the Task Force, the Mayor responded as follows:

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 2
RE: Complaint No. 15163 – Petrelis v. Mayor

On November 23, 2015, our office timely responded to Mr. Petrelis' request by providing a print-out of Mr. Kawa's electronic calendar from Microsoft Outlook for the months of July, August, and September of 2015. Because the print-out did not contain any calendar entries, Mr. Petrelis alleges that the Mayor's Office failed to provide a complete response in violation of Section 67.21 of the Sunshine Ordinance. Mr. Kawa, however, regularly maintains his calendar retrospectively for only two weeks at any given time. Accordingly, at the time we received Mr. Petrelis' request on November 18, calendar entries for the months of July, August and September had already been removed. That is why the documents we provided to Mr. Petrelis were blank; there were no responsive records to produce. Mr. Kawa's two-week calendaring practice is consistent with the Mayor's Office Records and Document Retention and Disposal Schedule, which does not have a retention requirement for staffers' calendars and provides that "materials generated for the use and convenience of the person generating them," which describes Mr. Kawa's calendar, need not be retained. (See Section A, Category 4). As we explained to Mr. Petrelis, we do not have any other records responsive to his request. Accordingly, there has been no violation of Section 67.21.

Complainant's Response to Mayor

In an email sent to the Task Force Administrator on January 31, 2016, Complainant requested that the administrator add to his complaint information that had been provided by Sunshine advocate Patrick Monette-Shaw, concerning a complaint brought by George Wooding against the Recreation and Park Department. Monette-Shaw essentially argued that, under California Government Code §6253.1(a) and §6253.1(3), the Mayor is required to assist Complainant in reasonably describing identifiable records and to provide suggestions to overcome denying access to records or information sought. Therefore, if the Mayor failed to direct Complainant to San Francisco's Department of Technology, where the records may exist on back-up tapes, they may have violated those requirements.

In addition, Monette-Shaw also noted that Government Code §34090 requires that, unless otherwise provided by law, with approval of a legislative body by resolution and the written consent the City Attorney, heads of City departments may destroy City records after a document is no longer required, but §34090 does not authorize destruction of records less than two years old. He therefore concluded that, "[b]ecause the [records the Mayor] deleted are capable of recovery, they should be treated as public records that should still be produced."

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Kawa personally delete his electronic calendar entries on a rolling basis 2 weeks after an appointment has been completed?
- If not, who handles this task and exactly how is it performed?
- Is any physical copy of the calendar printed out that maintains the deleted entries?
- If not, how would Kawa reconstruct his meeting schedule at a later date, if that became necessary?

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 3
RE: Complaint No. 15163 – Petrelis v. Mayor

- Can the calendar records deleted from Kawa's computer be recovered by the Department of Technology from City servers?
- Were any of the records at issue erased by the Mayor after receiving the records request?
- Is this a policy of the Mayor's Office generally with regard to staff calendars, or is it particular to Kawa?
- Does Kawa or the Mayor any have other records responsive to the request that were not produced?
- Why was it necessary to take additional time to respond to the IDR, if the only responsive record was a blank calendar for which entries had already been removed?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did the Mayor violate Section 67.21 by not producing complete calendar entries in response to the records request?
- Did the Mayor violate Section 67.25 by not producing records in a timely manner?
- Did the Mayor violated Section 67.29-7, which requires that he "maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and [ ] disclose all such records in accordance with this ordinance"?
- Does Section 67.29-7 impose an independent standard for maintaining and preserving records, or does it incorporate legal requirements imposed elsewhere, such as under local Administrative Code section 8.1 and California Govt. Code § 34090?
- If section 67.29-7 does incorporate the standards of Admin. Code section 8.1, do the calendars at issue qualify as documents that "[have] been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, [or] for the information contained therein", so as to qualify as a record subject to records retention requirements?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **[TRUE OR NOT TRUE].**

* * *

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 4
RE: Complaint No. 15163 – Petrelis v. Mayor

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED (in pertinent part)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. ***Such request may be delivered to the office of the custodian by the requester 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 or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

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

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records 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 5 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.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above 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 Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 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. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public,

the Sunshine 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 5 days, the Sunshine 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 Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine 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.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. 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.

(g) 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.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance 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 least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access 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.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary 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 easily 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. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably 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 where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.25. IMMEDIACY OF RESPONSE.
(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information 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. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
(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 warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following 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 article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt 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.
(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County 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 as soon as 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 article.

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.
(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 7
RE: Complaint No. 15163 – Petrelis v. Mayor

ADMINISTRATIVE CODE CHAPTER 8: DOCUMENTS, RECORDS AND PUBLICATIONS

SEC. 8.1. "RECORDS" DEFINED.
"Records," as used in this Chapter, shall mean such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet
Deputy City Attorney

DATE: January 8, 2016

RE: Complaint No. 15163 – Michael Petrelis v. Steve Kawa & Mayor's Office

COMPLAINT:

Complainant Michael Petrelis ("Complainant") alleges that Steve Kawa and the Mayor's Office ("Mayor") violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to "completely comply with request for the calendar of Chief of Staff, Steve Kawa."

COMPLAINANT FILES COMPLAINT:

On December 3, 2015, Complainant filed this complaint against the Mayor, alleging a violation of section 67.21 of the Ordinance.

JURISDICTION

The Mayor's Office is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. The mayor does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for obtaining public records.
- Section 67.25 governs responding to an Immediate Disclosure Request ("IDR").

APPLICABLE CASE LAW:

None

BACKGROUND:

Complainant's Allegations

In his December 3, 2015 email to the Task Force administrator, Complainant alleges that on November 18, 2015, he made an IDR via email for the calendar of Steve Kawa, top aide to the Mayor, for the period of July/August/September 2015. He further alleges that, in response to his request, the Mayor provided him a calendar for that time period that included no information about meetings held during the time period. Complainant further alleges that "the blank calendar that was received last week [ ] is by no stretch of the imagination compliant with sunshine law."

The Mayor's Response

In a December 15, 2015 letter to the Task Force, the Mayor responded as follows:

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: January 8, 2016
PAGE: 2
RE: Complaint No. 15163 – Petrelis v. Mayor

On November 23, 2015, our office timely responded to Mr. Petrelis' request by providing a print-out of Mr. Kawa's electronic calendar from Microsoft Outlook for the months of July, August, and September of 2015. Because the print-out did not contain any calendar entries, Mr. Petrelis alleges that the Mayor's Office failed to provide a complete response in violation of Section 67.21 of the Sunshine Ordinance. Mr. Kawa, however, regularly maintains his calendar retrospectively for only two weeks at any given time. Accordingly, at the time we received Mr. Petrelis' request on November 18, calendar entries for the months of July, August and September had already been removed. That is why the documents we provided to Mr. Petrelis were blank; there were no responsive records to produce. Mr. Kawa's two-week calendaring practice is consistent with the Mayor's Office Records and Document Retention and Disposal Schedule, which does not have a retention requirement for staffers' calendars and provides that "materials generated for the use and convenience of the person generating them," which describes Mr. Kawa's calendar, need not be retained. (See Section A, Category 4). As we explained to Mr. Petrelis, we do not have any other records responsive to his request. Accordingly, there has been no violation of Section 67.21.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Kawa personally delete his electronic calendar entries on a rolling basis 2 weeks after an appointment has been completed?
- Is any physical copy of the calendar printed out that maintains the deleted entries?
- If not, how would Kawa reconstruct his meeting schedule at a later date, if that became necessary?
- If not, who handles this task and exactly how is it performed?
- Is this a policy of the Mayor's Office generally, or particular to Kawa?
- Does Kawa or the Mayor any have other records responsive to the request that were not produced?
- Why was it necessary to take additional time to respond to the IDR, if the only responsive record was a blank calendar for which entries had already been removed?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did the Mayor violate Section 67.21 by not producing complete calendar entries in response to the records request?
- Did the Mayor violate Section 67.25 by not producing records in a timely manner?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: January 8, 2016
PAGE: 3
RE: Complaint No. 15163 – Petrelis v. Mayor

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

* * *

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: January 8, 2016
PAGE: 4
RE: Complaint No. 15163 – Petrelis v. Mayor

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED (in pertinent part)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. ***Such request may be delivered to the office of the custodian by the requester 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 or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

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

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records 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 5 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.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above 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 Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 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. Where requested by the petition, and where otherwise

desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine 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 5 days, the Sunshine 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 Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine 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.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. 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.

(g) 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.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance 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 least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access 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.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: January 8, 2016
PAGE: 6
RE: Complaint No. 15163 – Petrelis v. Mayor

(l) Inspection and copying of documentary 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 easily 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. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably 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 where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.25. IMMEDIACY OF RESPONSE.
(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information 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. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
(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 warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following 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 article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt 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.
(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County 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 as soon as 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 article.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

AMENDED MEMORANDUM

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet
Deputy City Attorney

DATE: February 22, 2016

RE: Complaint No. 15163 – Michael Petrelis v. Steve Kawa & Mayor's Office

COMPLAINT:

Complainant Michael Petrelis ("Complainant") alleges that Steve Kawa and the Mayor's Office ("Mayor") violated Administrative Code (Sunshine Ordinance), Section 67.21, by failing to "completely comply with request for the calendar of Chief of Staff, Steve Kawa."

COMPLAINANT FILES COMPLAINT:

On December 3, 2015, Complainant filed this complaint against the Mayor, alleging a violation of section 67.21 of the Ordinance.

JURISDICTION

The Mayor's Office is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. The mayor does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S)

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for obtaining public records.
- Section 67.25 governs responding to an Immediate Disclosure Request ("IDR").

APPLICABLE CASE LAW:

None

BACKGROUND:

Complainant's Allegations

In his December 3, 2015 email to the Task Force administrator, Complainant alleges that on November 18, 2015, he made an IDR via email for the calendar of Steve Kawa, top aide to the Mayor, for the period of July/August/September 2015. He further alleges that, in response to his request, the Mayor provided him a calendar for that time period that included no information about meetings held during the time period. Complainant further alleges that "the blank calendar that was received last week [ ] is by no stretch of the imagination compliant with sunshine law."

The Mayor's Response

In a December 15, 2015 letter to the Task Force, the Mayor responded as follows:

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 2
RE: Complaint No. 15163 – Petrelis v. Mayor

On November 23, 2015, our office timely responded to Mr. Petrelis' request by providing a print-out of Mr. Kawa's electronic calendar from Microsoft Outlook for the months of July, August, and September of 2015. Because the print-out did not contain any calendar entries, Mr. Petrelis alleges that the Mayor's Office failed to provide a complete response in violation of Section 67.21 of the Sunshine Ordinance. Mr. Kawa, however, regularly maintains his calendar retrospectively for only two weeks at any given time. Accordingly, at the time we received Mr. Petrelis' request on November 18, calendar entries for the months of July, August and September had already been removed. That is why the documents we provided to Mr. Petrelis were blank; there were no responsive records to produce. Mr. Kawa's two-week calendaring practice is consistent with the Mayor's Office Records and Document Retention and Disposal Schedule, which does not have a retention requirement for staffers' calendars and provides that "materials generated for the use and convenience of the person generating them," which describes Mr. Kawa's calendar, need not be retained. (See Section A, Category 4). As we explained to Mr. Petrelis, we do not have any other records responsive to his request. Accordingly, there has been no violation of Section 67.21.

Complainant's Response to Mayor

In an email sent to the Task Force Administrator on January 31, 2016, Complainant requested that the administrator add to his complaint information that had been provided by Sunshine advocate Patrick Monette-Shaw, concerning a complaint brought by George Wooding against the Recreation and Park Department. Monette-Shaw essentially argued that, under California Government Code §6253.1(a) and §6253.1(3), the Mayor is required to assist Complainant in reasonably describing identifiable records and to provide suggestions to overcome denying access to records or information sought. Therefore, if the Mayor failed to direct Complainant to San Francisco's Department of Technology, where the records may exist on back-up tapes, they may have violated those requirements.

In addition, Monette-Shaw also noted that Government Code §34090 requires that, unless otherwise provided by law, with approval of a legislative body by resolution and the written consent the City Attorney, heads of City departments may destroy City records after a document is no longer required, but §34090 does not authorize destruction of records less than two years old. He therefore concluded that, "[b]ecause the [records the Mayor] deleted are capable of recovery, they should be treated as public records that should still be produced."

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Kawa personally delete his electronic calendar entries on a rolling basis 2 weeks after an appointment has been completed?
- If not, who handles this task and exactly how is it performed?
- Is any physical copy of the calendar printed out that maintains the deleted entries?
- If not, how would Kawa reconstruct his meeting schedule at a later date, if that became necessary?

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 3
RE: Complaint No. 15163 – Petrelis v. Mayor

- Can the calendar records deleted from Kawa's computer be recovered by the Department of Technology from City servers?
- Were any of the records at issue erased by the Mayor after receiving the records request?
- Is this a policy of the Mayor's Office generally with regard to staff calendars, or is it particular to Kawa?
- Does Kawa or the Mayor any have other records responsive to the request that were not produced?
- Why was it necessary to take additional time to respond to the IDR, if the only responsive record was a blank calendar for which entries had already been removed?

LEGAL ISSUES/LEGAL DETERMINATIONS

- Did the Mayor violate Section 67.21 by not producing complete calendar entries in response to the records request?
- Did the Mayor violate Section 67.25 by not producing records in a timely manner?
- Did the Mayor violated Section 67.29-7, which requires that he "maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and [ ] disclose all such records in accordance with this ordinance"?
- Does Section 67.29-7 impose an independent standard for maintaining and preserving records, or does it incorporate legal requirements imposed elsewhere, such as under local Administrative Code section 8.1 and California Govt. Code § 34090?
- If section 67.29-7 does incorporate the standards of Admin. Code section 8.1, do the calendars at issue qualify as documents that "[have] been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, [or] for the information contained therein", so as to qualify as a record subject to records retention requirements?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE [**TRUE OR NOT TRUE**].

* * *

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 4
RE: Complaint No. 15163 – Petrelis v. Mayor

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED (in pertinent part)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. ***Such request may be delivered to the office of the custodian by the requester 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 or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

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

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records 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 5 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.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above 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 Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 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. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public,

the Sunshine 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 5 days, the Sunshine 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 Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine 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.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. 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.

(g) 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.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance 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 least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access 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.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary 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 easily 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. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably 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 where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.25. IMMEDIACY OF RESPONSE.
(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information 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. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
(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 warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following 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 article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt 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.
(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County 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 as soon as 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 article.

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.
(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Sunshine Ordinance Task Force

FROM: Jerry Threet, DCA
DATE: February 22, 2016
PAGE: 7
RE: Complaint No. 15163 – Petrelis v. Mayor

ADMINISTRATIVE CODE CHAPTER 8: DOCUMENTS, RECORDS AND PUBLICATIONS

SEC. 8.1. "RECORDS" DEFINED.
"Records," as used in this Chapter, shall mean such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County.

Young, Victor

From: mpetrelis@aol.com
Sent: Sunday, January 31, 2016 11:18 AM
To: SOTF, (BOS); Macaulay, Kirsten (MYR); Nicita, Carl (MYR); Kawa, Steve (MYR); Threet, Jerry (CAT); Ausberry, Andrea; Calvillo, Angela (BOS)
Subject: Fwd: Mayor's 2-week deletion-of-files policy under SOTF review

Dear Victor Young,

This note from open govt watchdog Patrick Monette-Shaw contains important information regarding my complaint against the Mayor's Office over records' retention policies. I ask that you share this with members of the task force. Thanks.

- -

Donate to the Govt Access Project & help put politicians' calendars online!

-----Original Message-----
From: pmonette-shaw <Pmonette-shaw@earthlink.net>
To: mpetrelis <mpetrelis@aol.com>
Sent: Sat, Jan 23, 2016 1:23 pm
Subject: Re: Mayor's 2-week deletion-of-files policy under SOTF review

Hi Michael

Well, in addition to the SOTF's EOT letter, let me add this, if it i snot too late for you to use somehow going forward perhaps on March 16 at your next hearing. You may want to introduce in March Government Code 34090 (see below).

In George Wooding's 2011 SOTF complaint (# 11-049) against RPD, I located for him at the time, and he included in his Sunshine Complaint, the following language:

In addition to the Task Force's August 8 ***Findings of Fact and Conclusions of Law*** that the records I requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252, I offer the following for consideration:

- Under California Government Code §6253.1(a) and §6253.1(3), RPD is required to assist me in reasonably describing identifiable records and to provide suggestions to overcome denying access to records or information sought.

  Although the *Order of Determination* noted that under Sunshine Ordinance Section 67.21(c) RPD had failed to tell me the records requested might have been available from the Commonwealth Club, the *Order of Determination* did not go far enough. The *Order* should have also noted that RPD failed to direct me to San Francisco's Department of Technology, where the records may exist on back-up tapes.

- Government Code §34090 indicates that unless otherwise provided by law, with ***approval of a legislative body by resolution*** and the *written consent the City Attorney*, heads of City departments may destroy City records after a document is no longer required, but §34090 does not authorize destruction of records less than two years old. Further, §34090.7 provides that only **duplicates** of City records less than two years old may be destroyed if no longer required.

- There is nothing in Government Code §6200 and §6201 that seems to authorize deletion of City e-mails than two years old when no duplicates exist.

Because the e-mails RPD deleted are capable of recovery, they should be treated as public records that should still be produced.

George case was seminal as far as setting a precedent at SOTF.

I would almost think that if the two-year rule applies to e-mails, it should also apply to calendars, wouldn't you think?

Patrick

On 1/23/2016 8:39 AM, mpetrelis@aol.com wrote:

What did the Sunshine Ordinance Task Force's committee for education and outreach decide regarding my complaint against Mayor Ed Lee's staff routinely destroying public
files? Read the letter from the SOTF:

http://mpetrelis.blogspot.com/2016/01/mayors-2-week-deletion-of-files-policy.html

Hit reply to unsubscribe.

- -

Donate to the Govt Access Project &
help put politicians' calendars online!

June 29, 2015 - July 05, 2015

June 2015

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July 2015

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Monday, June 29	**Tuesday, June 30**
Wednesday, July 01	**Thursday, July 02**
Friday, July 03	

July 06, 2015 - July 12, 2015

July 2015

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August 2015

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Monday, July 06

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Thursday, July 09

Friday, July 10

July 13, 2015 - July 19, 2015

July 2015

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August 2015

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Monday, July 13

Tuesday, July 14

Wednesday, July 15

Thursday, July 16

Friday, July 17

July 20, 2015 - July 26, 2015

July 2015

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August 2015

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Monday, July 20

Tuesday, July 21

Wednesday, July 22

Thursday, July 23

Friday, July 24

July 27, 2015 - August 02, 2015

July 2015

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August 2015

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Monday, July 27

Tuesday, July 28

Wednesday, July 29

Thursday, July 30

Friday, July 31

August 03, 2015 - August 09, 2015

August 2015

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September 2015

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Monday, August 03

Tuesday, August 04

Wednesday, August 05

Thursday, August 06

Friday, August 07

August 10, 2015 - August 16, 2015

August 2015

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September 2015

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Monday, August 10

Tuesday, August 11

Wednesday, August 12

Thursday, August 13

Friday, August 14

August 17, 2015 - August 23, 2015

August 2015

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September 2015

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Monday, August 17

Tuesday, August 18

Wednesday, August 19

Thursday, August 20

Friday, August 21

August 24, 2015 - August 30, 2015

August 2015

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September 2015

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Monday, August 24

Tuesday, August 25

Wednesday, August 26

Thursday, August 27

Friday, August 28

August 31, 2015 - September 06, 2015

August 2015

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September 2015

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Monday, August 31

Tuesday, September 01

Wednesday, September 02

Thursday, September 03

Friday, September 04

September 07, 2015 - September 13, 2015

September 2015

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Monday, September 07

Labor Day

Tuesday, September 08

Wednesday, September 09

Thursday, September 10

Friday, September 11

September 14, 2015 - September 20, 2015

September 2015

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Monday, September 14

Tuesday, September 15

Wednesday, September 16

Thursday, September 17

Friday, September 18

September 21, 2015 - September 27, 2015

September 2015

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Monday, September 21

Tuesday, September 22

Wednesday, September 23

Thursday, September 24

Friday, September 25

September 28, 2015 - October 04, 2015

September 2015

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October 2015

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Monday, September 28

Tuesday, September 29

Wednesday, September 30

Thursday, October 01

Friday, October 02

June 29, 2015 - July 05, 2015

June 2015

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July 2015

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Monday, June 29

Tuesday, June 30

Wednesday, July 01

Thursday, July 02

Friday, July 03

July 06, 2015 - July 12, 2015

July 2015

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August 2015

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Monday, July 06

Tuesday, July 07

Wednesday, July 08

Thursday, July 09

Friday, July 10

July 13, 2015 - July 19, 2015

July 2015

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August 2015

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Monday, July 13

Tuesday, July 14

Wednesday, July 15

Thursday, July 16

Friday, July 17

February 15, 2016 - February 21, 2016

February 2016

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March 2016

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Monday, February 15

- [redacted] Out of the Office
- [redacted] Out of the Office
- President's Day

Tuesday, February 16

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:45am - 10:30am Police Reform Meeting - Kawa, Steve (MYR)
- 10:00am - 11:00am Memorial Service For Hadley Roff ([Delancey Street Foundation, 600 The Embarcadero]) - Kawa, Steve (MYR)
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 1:30pm - 2:00pm Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)
- 2:00pm - 2:15pm 2-2:15 P.M. Meeting re: Family Homelessness (Steve's Office) - Kawa, Steve (MYR)
- 2:30pm - 2:45pm 2:30 -2:45 P.M. Meeting re: Personnel (Steve's Office) - Kawa, Steve (MYR)
- 2:45pm - 3:00pm 2:45-3 P.M. Meeting re: Scheduling (Steve's
- 3:30pm - 4:00pm Meeting re: Families and Education (Steve's
- 4:00pm - 4:30pm Meeting re: Personnel - Kelly, Naomi (ADM)

Wednesday, February 17

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 10:30am Meeting re: Labor (Steve's Office) - Kawa, Steve (MYR)
- 10:30am - 11:00am Meeting re: Budget (Steve's Office) - Kawa, Steve (MYR)
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 1:30pm - 2:00pm Meeting re: Homelessness ([City Hall, Room 200, Steve's Office]) - Kawa, Steve (MYR)
- 2:00pm - 2:15pm 2-2:15 P.M. Meeting re: California High Speed
- 2:15pm - 3:00pm Update on Homelessness (Steve's conference
- 2:30pm - 3:00pm Meeting re: Planning
- 4:00pm - 4:30pm Meeting with Jason Elliott re: Check-in (Steve's

Thursday, February 18

- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 9:30am - 10:00am Review of records retention policy @ senior staff check-in (Room 201) - Nicita, Carl (MYR)
- 10:00am - 10:30am Meeting re: Communications (Steve's Office) -
- 10:30am - 11:00am Meeting re: Public Safety (Steve's Office) -
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 2:00pm - 2:30pm Meeting re: Housing - Kawa, Steve (MYR)
- 2:30pm - 3:00pm Meeting re: Port
- 3:30pm - 4:00pm Meeting re: Transportation
- 4:00pm - 4:30pm Meeting with Police Chief
- 5:00pm - 5:30pm Meeting with Jason Elliott re: Check-in (Steve's
- 5:30pm - 6:30pm Meeting re SB50 Debrief - Kawa, Steve (MYR)

Friday, February 19

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:00am - 9:30am FYI: Public Safety Meeting
- 9:45am - 10:00am 9:45 -10 A.M. Call re: Environment - Kawa, Steve (MYR)
- 10:30am - 11:00am Meeting re: Public Safety
- 11:30am - 12:00pm Meeting re: Gov't Affairs & Commissions (Steve's Office) - Kawa, Steve (MYR)
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 2:30pm - 4:30pm Appointment - Kawa, Steve (MYR)
- 5:30pm - 7:30pm FYI: Monique Moyer Farewell Party - Kawa, Steve (MYR)

Saturday, February 20

- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

Sunday, February 21

- 12:00am [redacted] Out of the Office
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

February 22, 2016 - February 28, 2016

February 2016

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March 2016

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Monday, February 22

- [redacted] Out of the Office
- [redacted] Out of the Office (Sick)
- 10:45am - 11:00am 10:45-11 A.M. Meeting with Staff re: Public Safety Press Conference
- 11:00am - 11:30am 11 A.M. Press Event re: Public Safety ([City Hall, International Room])
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 1:30pm - 2:30pm Good Government Agenda/ Accountability with Kate, Steve, Christine, Jason (Steves conference room) - Howard,
- 2:30pm - 3:00pm Steve Kawa Bi-weekly Meeting (Room 200) - Rich, Ken (ECN)
- 4:00pm - 4:30pm Meeting with Police Chief and City Attorney - Kawa, Steve (MYR)
- 5:00pm - 5:30pm Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)

Tuesday, February 23

- [redacted] Out of the Office
- 9:30am - 9:45am 9:30-9:45 A.M. Meeting re: Transbay
- 10:00am - 10:15am 10-10:15 A.M. Meeting with Philip Mangano re: Homelessness
- 10:30am - 11:00am Meeting with Jennifer Friedenbach re:
- 11:15am - 11:45am Meeting re: Health Policy (Steve's Office) -
- 12:00pm - 1:00pm Steve's Time
- 1:15pm - 2:00pm 1:15-2 P.M. Lunch Meeting - Kawa, Steve (MYR)
- 2:00pm - 2:30pm Meeting re: 30VN (Steve Kawa's Office) - Kelly,
- 2:30pm - 3:00pm Meeting re: Scheduling (Steve's Office) - Kawa,
- 3:00pm - 3:30pm Meeting re: Personnel ([City Hall, Room 200,
- 3:30pm - 4:00pm Meeting re: DHR (Steve's Office) - Kawa, Steve
- 4:00pm - 4:30pm Meeting with Superior Court Judges re: School
- 5:00pm - 5:30pm Meeting with Jason Elliott re: Check-in (Steve's

Wednesday, February 24

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:40am - 10:10am 9:40-10:10 A.M. Meeting with Kate Howard re: Budget (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 12:00pm Steve Time - Sunshine & Ethics Training (Steve's Office) - Kawa, Steve (MYR)
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 2:00pm - 3:00pm Meeting re: Budget (Steve's conference room) - Howard, Kate (MYR)
- 4:00pm - 4:30pm Meeting with Police Chief
- 5:00pm - 5:30pm Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)

Thursday, February 25

- [redacted] Out of the Office
- [redacted] Out of the Office
- 9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 10:30am Meeting re: JPD ([City Hall, Steve's Conference Room]) - Kawa, Steve (MYR)
- 10:30am - 11:00am Meeting re: Film SF (Steve's Office) - Kawa, Steve (MYR)
- 11:30am - 12:00pm Meeting re: Economic Development ([Steve's Office]) - Kawa, Steve (MYR)
- 12:00pm - 1:30pm Lunch/Steve Time
- 2:00pm - 2:30pm Meeting re: OLSE (Steve's Office) - Kawa, Steve
- 3:00pm - 3:30pm Meeting with Jason Elliott re: Check-in (Steve's
- 3:30pm - 4:00pm Meeting re: SFPUC
- 4:00pm - 4:30pm Meeting re: Communications (Steve's Office) -

Friday, February 26

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 9:15am - 10:30am 9:15-10:30 A.M. Municipal Financial Advisory Committee Meeting (City Hall, Room 201) - Liao, Jay (CON)
- 9:30am - 11:00am FYI: 9:30-11A.M. Main Library's Learning Spaces Hands-On Tour with Breakfast ([The Mix, 100 Larkin St., 2 FL])
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
- 1:30pm - 2:00pm Meeting re: Gov't Affairs & Commissions (Steve's Office) - Kawa, Steve (MYR)
- 2:30pm - 3:00pm Meeting re: Evictions Data Analysis (Steve's Office) - Kawa, Steve (MYR)
- 3:15pm - 3:30pm Meeting re: Housing Accelerator Fund (Steve's Office) - Kawa, Steve (MYR)

Saturday, February 27

- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

Sunday, February 28

- [redacted] Out of the Office
- 12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

February 29, 2016 - March 6, 2016

February 2016

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March 2016

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Monday, February 29

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:45am - 10:00am **9:45 A.M. Meeting with Todd Rufo re: Update** (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 10:30am **Meeting re: RPD** ([City Hall, Room 200, Steve's Conference Room]) - Kawa, Steve (MYR)
- 11:00am - 12:00pm **Meeting re: Dignity Fund** (City hall, Room 288) - Howard, Kate (MYR)
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)
- 3:30pm - 4:00pm **Meeting re: Development**
- 4:30pm - 5:00pm **Meeting re: DEM** ([City Hall, Room 200, Steve's Conference Room]) - Kawa, Steve (MYR)
- 5:00pm - 5:30pm **Meeting with Jason Elliott re: Check-in** (Steve's Office) - Kawa, Steve (MYR)

Tuesday, March 1

- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:45am - 10:30am **Meeting re: Budget** (Steve's Office) - Kawa, Steve (MYR)
- 10:30am - 11:00am **Meeting re: DOSW** (Steve's Office) - Kawa, Steve (MYR)
- 11:15am - 11:45am **Meeting re: SFO** (STEVE KAWA'S OFFICE) - John
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)
- 2:00pm - 2:30pm **Meeting re: Housing** (Steve's Office) - Kawa, Steve
- 2:30pm - 3:00pm **Meeting re: DPH** (Mayor's Office) - Kawa, Steve
- 3:00pm - 3:15pm **Meeting re: Scheduling** (Steve's Office) - Kawa,
- 3:30pm - 4:00pm **Meeting re: Families and Education** (Steve's
- 4:00pm - 4:30pm **Meeting with Jason Elliott re: Check-in** (Steve's

Wednesday, March 2

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 9:45am - 10:00am **9:45-10 A.M. Meeting with Carl Nicita re: Check in** (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 10:15am **Meeting re: Personnel** (Steve's Office) - Kawa, Steve (MYR)
- 11:00am - 12:00pm **Meeting re: Real Estate** (Steve Kawa's Office) - Kelly, Naomi (ADM)
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)
- 2:00pm - 3:00pm **Meeting re: Transportation/Infrastructure** (Room 201)
- 3:30pm - 4:00pm **Meeting with Jason Elliott re: Check-in** (Steve's
- 4:00pm - 4:30pm **Meeting re: Planning**
- 5:00pm - 5:30pm **Meeting re: Transportation** (Mayor's Office) -

Thursday, March 3

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 9:00am - 10:00am **Call with SF Storm Incident Management Team** - Chin, Thomas (ECD)
- 10:00am - 10:30am **Meeting re: Personnel** (Steve's Office)
- 10:30am - 11:00am **Meeting re: the Haight** (Steve's Office) - Kawa, Steve (MYR)
- 11:00am - 11:15am **Meeting re: Protocol** (Steve's Office) - Kawa, Steve (MYR)
- 12:00pm - 1:20pm **Lunch/Steve Time** - Kawa, Steve (MYR)
- 1:25pm - 1:30pm **Call re: Film SF[redacted]**
- 1:30pm - 2:00pm **Meeting with Jason Elliott re: Check-in** (Steve's Office) - Kawa, Steve (MYR)

Friday, March 4

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am Acting Mayor - Supervisor Katy Tang
- 9:45am - 10:00am **9:45-10 A.M. Meeting with Carl Nicita re: Check in** (Steve's Office) - Kawa, Steve (MYR)
- 10:00am - 10:30am **Meeting re: Personnel** (Steve's Office) - Kawa,
- 10:30am - 11:00am **Meeting re: Communications** (Steve's Office) -
- 11:00am - 11:30am **FYI: 10:50-11:30 A.M. Irish Flag Raising**
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)
- 1:30pm - 2:00pm **Meeting re: Gov't Affairs & Commissions** (Steve's
- 2:00pm - 2:30pm **Bi-Weekly Meeting re: HR** (Steve's Office) - Kawa,
- 2:30pm - 3:00pm **Meeting re: Personnel**

Saturday, March 5

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am Acting Mayor - Supervisor Katy Tang
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)

Sunday, March 6

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00pm - 1:30pm **Lunch/Steve Time** - Kawa, Steve (MYR)

March 7, 2016 - March 13, 2016

March 2016

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April 2016

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Monday, March 7

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

9:45am - 10:15am 9:45 A.M. Meeting re: Navigation Center (Steve's Conference Room) - Kawa, Steve (MYR)

11:30am - 12:00pm Commissioner Swearing-In Ceremony (Mayor's Balcony)

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

2:00pm - 2:30pm Meeting re: Caltrain (Steve's Office) - Kawa, Steve (MYR)

2:30pm - 3:00pm Meeting re: Development (Room 200) - Rich, Ken (ECN)

3:00pm - 3:30pm South Beach Marina Apartments and Bayside

3:30pm - 4:00pm Meeting with Jason Elliott re: Check-in (Steve's

Tuesday, March 8

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:00am - 10:30am Meeting re: Budget (Steve's Office) - Kawa, Steve (MYR)

11:30am - 1:00pm Lunch/Steve Time - Kawa, Steve (MYR)

1:00pm - 2:00pm Follow up meeting on Homelessness department

2:00pm - 3:00pm FYI: Question Time at the Board ([City Hall, Board

2:00pm - 3:00pm SF Storm Incident Management Team - Chin,

2:30pm - 3:00pm Meeting re: Scheduling (Steve's Office) - Kawa,

3:00pm - 4:00pm Meeting re: Gun Violence Prevention - Kawa,

4:00pm - 4:30pm Meeting with Jason Elliott re: Check-in (Steve's

Wednesday, March 9

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:00am - 10:30am Meeting re: South Beach Marina

10:30am - 11:00am Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

2:00pm - 3:00pm Meeting re: SFGH Foundation (City Hall, Room 200 1 Dr. Carlton B. Goodlett Place San Francisco 94102) - Trish Fisher

4:00pm - 4:30pm Meeting with Police Chief

Thursday, March 10

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

9:00am - 10:00am SF Storm Incident Management Team - Chin, Thomas (ECD)

9:45am - 10:00am 9:45-10 A.M. Meeting re: Personnel

10:00am - 10:30am Meeting with Labor Council re: OLSE

11:30am - 2:00pm School Appointment - Kawa, Steve (MYR)

2:15pm - 2:30pm 2:15-2:30 P.M. Meeting with Jason Elliott re:

3:00pm - 3:30pm Meeting re: City Jobs (Steve's Office) - Kawa, Steve

3:30pm - 4:00pm Meeting re: Police Department ([Steve's Office]) -

4:00pm - 4:30pm Meeting re: Communications (Steve's Office) -

4:30pm - 5:00pm Meeting re: Arts Alliance (Steve's Conference

Friday, March 11

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:00am - 10:30am Meeting re: Transportation/Infrastructure (Steve's Office) - Kawa, Steve (MYR)

10:30am - 11:00am Meeting with Ethics Commission re: budget

11:00am - 11:30am Meeting with Staff re: Personnel

11:30am - 12:00pm FYI: Mayor Signing Ceremony for Tobacco

12:00pm - 1:15pm Lunch/Steve Time

1:15pm - 1:30pm 1:15P.M. Meeting re: Personnel (Steve's Office) -

1:30pm - 2:00pm Meeting re: Gov't Affairs & Commissions (Steve's

Saturday, March 12

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

Sunday, March 13

- 12:00am Tom Hui Out of the Office
- Anne Kronenberg Out of the Office
- 12:00am Jocelyn Kane Out of the Office
- Todd Rufo Out of the Office
- 12:00am Miguel Gamino Out of the Office

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

March 14, 2016 - March 20, 2016

March 2016

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April 2016

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Monday, March 14

- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

10:00am - 10:15am 15-Minute Meeting re: Port (Steve's Office) - Kawa, Steve (MYR)

10:30am - 11:00am Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

1:30pm - 2:00pm Meeting re: Ethics Budget Proposals (Steve's Office) - Kawa, Steve (MYR)

3:00pm - 3:30pm Meeting re: Homeless Department (City Hall, Room 200 - Steve's Office) - Dodge, Sam (HSA)

Tuesday, March 15

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:00am - 10:30am Meeting re: Budget (Steve's Office) - Kawa, Steve (MYR)

10:30am - 11:00am Meeting with Jason Elliott re: Check-in (Steve's

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

2:00pm - 2:30pm Mtg re: Safe Injection Sites (City Hall, Room 200) -

2:30pm - 3:00pm Meeting re: Scheduling (Steve's Office) - Kawa,

3:30pm - 4:00pm Meeting re: Families and Education (Steve's

Wednesday, March 16

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:00am - 11:30am Meeting re: Personnel (Steve's Office) - Kawa, Steve (MYR)

11:30am - 1:00pm Lunch/Steve Time - Kawa, Steve (MYR)

2:00pm - 2:30pm Meeting with Jason Elliott re: Check-in (Steve's Office) - Kawa, Steve (MYR)

3:30pm - 4:00pm Meeting re: Civic Center Hotel (Steve's Office) - Kawa, Steve (MYR)

Thursday, March 17

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- St. Patrick's Day

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)

10:30am - 11:30am Baby Shower (City Hall Room 200) - Nicita, Carl (MYR)

11:30am - 1:00pm Lunch/Steve Time - Kawa, Steve (MYR)

1:00pm - 1:30pm Meeting re: Dignity Fund (Steve's conference room) - Howard, Kate (MYR)

2:30pm - 3:00pm Meeting re: Communications (Steve's Office) - Kawa, Steve (MYR)

Friday, March 18

- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check

10:00am - 11:30am Meeting re: Departments (Room 201) - Nicita,

11:30am - 12:00pm Meeting with Supervisor Farrell (Steve's Office)

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

1:30pm - 2:00pm Meeting re: Gov't Affairs & Commissions (Steve's

2:00pm - 2:15pm Meeting re: transportation (Steve's Office) - Kawa,

2:30pm - 3:00pm Bi-Weekly Meeting re: DHR (Steve's Office) -

3:00pm - 3:30pm Meeting re CCSF (Steve's Office (City Hall, Room

4:30pm - 6:00pm Baby Shower (City Hall Room 305) - Whitehouse,

Saturday, March 19

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

Sunday, March 20

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)

March 21, 2016 - March 27, 2016

March 2016

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April 2016

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Monday, March 21

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office

11:00am - 11:30am Transportation/Infrastructure check-in (Steve Confrence room) - Howard, Kate (MYR)
11:30am - 12:00pm Briefing with Staff re: Homelessness announcement
12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
1:30pm - 2:00pm Call re: Civic Center Hotel - Kawa, Steve (MYR)
2:00pm - 2:30pm Update on Guardians of the City (Steve's Office
2:30pm - 3:00pm Meeting re: Development (Room 200) - Rich, Ken
3:30pm - 4:00pm Meeting re: Police Commission - Kawa, Steve

Tuesday, March 22

- Anne Kronenberg Out of the Office
- Jaci Fong Out of the Office
- Chief Suhr Out of the Office
- 12:00am Chief Allen Nance Out of the Office

9:35am - 10:00am Meeting re: Budget (Steve's Office) - Kawa, Steve (MYR)
10:00am - 11:00am Meeting re: Transportation/Infrastructure
10:30am - 11:30am Brussels Policy Group Conference Call -
12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
1:30pm - 2:00pm Meeting re: Housing (Steve's Office) - Kawa, Steve
2:30pm - 3:00pm Meeting re: Planning
3:30pm - 4:00pm Meeting re: Warriors - Kawa, Steve (MYR)
5:00pm - 5:30pm Meeting with Jason Elliott re: Check-in (Steve's
6:00pm - 8:00pm Appointment

Wednesday, March 23

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check in (Steve's Office) - Kawa, Steve (MYR)
10:00am - 10:30am Meeting re: Health Policy (Steve's Office) - Kawa, Steve (MYR)
11:00am - 11:30am Smart Cities Challenge Meeting (Steve Conference Room)
11:30am - 12:00pm Meeting with Jason Elliott re: Check in (Steve's Office) - Kawa, Steve (MYR)
12:00pm - 1:30pm Lunch/Steve Time - Kawa, Steve (MYR)
2:00pm - 2:30pm Meeting re: Scheduling (Steve's Office) - Kawa,
3:00pm - 3:30pm Meeting re: Government Affairs (Steve's office) -
4:00pm - 4:30pm Meeting re: Port - Kawa, Steve (MYR)

Thursday, March 24

- Anne Kronenberg Out of the Office
- Jaci Fong Out of the Office
- Chief Suhr Out of the Office
- 12:00am Diana Oliva-Aroche Out of the Office
- 12:00am Harlan Kelly out of the office
- 12:00am Naomi Kelly Out of the Office

9:45am - 10:00am 9:45-10 A.M. Meeting with Carl Nicita re: Check
10:00am - 11:00am Meeting with African American Collaborative
12:00pm - 1:00pm Lunch Meeting
2:00pm - 2:30pm Meeting re: Economic Development ([Steve's
2:30pm - 3:00pm Meeting re: Dignity Fund (Steve's Office) - Kawa,
3:30pm - 4:00pm Meeting with Supervisor Scott Wiener (Steve's
4:00pm - 4:30pm Meeting re: Communications (Steve's Office) -
4:30pm - 5:00pm Call with Laphonza Butler

Friday, March 25

- [redacted] Out of the Office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] out of the office
- [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the office
- 12:00am [redacted] Out of the Office
- 12:00am [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office

Saturday, March 26

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] out of the office
- [redacted] Out of the Office

More Items...

Sunday, March 27

- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] Out of the Office
- [redacted] out of the office
- [redacted] Out of the Office

More Items...

March 28, 2016

Monday

March 2016

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April 2016

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MONDAY

28

- ← From Mar 1 [redacted]t of the Office To Apr 4 →
- ← From Mar 14 [redacted]Out of the Office
- ← From Mar 24 [redacted]Out of the Office To Apr 9 →
- ← From Mar 24 [redacted]ut of the office To Apr 3 →
- ← From Mar 24 [redacted]Out of the Office To Apr 3 →
- ← From Mar 25 [redacted]Out of the Office To Apr 3 →
- ← From Mar 25 [redacted]Out of the office To Mar 31 →
- ← From Mar 25 [redacted]Out of the Office To Mar 30 →
- ← From Mar 27 [redacted]Out of the Office To Apr 3 →
- [redacted]Out of the Office To Apr 1

9 AM

Morning Check-in; Steve's Office; Kawa, Steve (MYR)

10

Strategic Directions for DataSF
City hall, room 201
Tucker, John (MYR)

11

12 PM

Lunch/Steve Time
Kawa, Steve (MYR)

1

1:30-1:45 P.M. Meeting re: Personnel

2

Follow up re: POA; Steve's Office ; Kawa, Steve (MYR)

3

Meeting re: Development

4

Meeting re: Families and Education; Steve's Office; Kawa, Steve (MYR)

Meeting with Staff re: Personnel

5

Meeting with Jason Elliott re: Check in; Steve's Office; Kawa, Steve (MYR)

7:00pm - 8:00pm Vigil Service for Welton Flynn([Halstead and Grey, 1123 Sutter St])

March 29, 2016

Tuesday

March 2016

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April 2016

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TUESDAY

29

- ← From Mar 1 — [redacted] Out of the Office — To Apr 4 →
- ← From Mar 24 — [redacted] Out of the Office — To Apr 9 →
- ← From Mar 24 — [redacted] out of the office — To Apr 3 →
- ← From Mar 24 — [redacted] Out of the Office — To Apr 3 →
- ← From Mar 25 — [redacted] Out of the Office — To Apr 3 →
- ← From Mar 25 — [redacted] Out of the office — To Mar 31 →
- ← From Mar 25 — [redacted] Out of the Office — To Mar 30 →
- ← From Mar 27 — [redacted] Out of the Office — To Apr 3 →
- ← From Mar 28 — [redacted] Out of the Office — To Apr 1 →
- [redacted] Out of the Office — To Mar 31 →

9 AM

Morning Check-in; Steve's Office; Kawa, Steve (MYR)

10

Funeral Service for Welton Flynn
[St. Mary's Cathedral, Geary/Gough]
Kawa, Steve (MYR)

11

Meeting re: UCSF

Meeting re: Labor; [City Hall, Room 200, Steve's Office] ; Kawa, Steve (MYR)

12 PM

Lunch/Steve Time
Kawa, Steve (MYR)

1

2

2-2:15 P.M. Meeting re: Workforce; Steve's Office; Kawa, Steve (MYR)

Meeting re: Scheduling; Steve's Office; Kawa, Steve (MYR)

3

Meeting re: Personnel; Kawa, Steve (MYR)

4

5

Meeting with Jason Elliott re: Check in; Steve's Office; Kawa, Steve (MYR)

March 30, 2016

Wednesday

March 2016

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April 2016

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WEDNESDAY

30

- ← From Mar 1 — [redacted] Out of the Office — To Apr 4 →
- ← From Mar 24 — [redacted] Out of the Office — To Apr 9 →
- ← From Mar 24 — [redacted] ut of the office — To Apr 3 →
- ← From Mar 24 — [redacted] ut of the Office — To Apr 3 →
- ← From Mar 25 — [redacted] Out of the Office — To Apr 3 →
- ← From Mar 25 — [redacted] ut of the office — To Mar 31 →
- ← From Mar 25 — [redacted] Out of the Office
- ← From Mar 27 — [redacted] Out of the Office — To Apr 3 →
- ← From Mar 28 — [redacted] Out of the Office — To Apr 1 →
- ← From Mar 29 — [redacted] Out of the Office — To Mar 31 →
- [redacted] Kawa, Steve (MYR) — To Apr 1 →

9 AM

Morning Check-in
Steve's Office; Kawa, Steve (MYR)

9:45-10 A.M. Meeting with Carl Nicita re: Check in
Steve's Office; Kawa, Steve (MYR)

10

11

Meeting re: Personnel

Meeting re: Budget
Steve's Office
Kawa, Steve (MYR)

12 PM

Lunch/Steve Time

1

Meeting re: HR
Steve's office ; Whitehouse, Melissa (MYR)

2

Meeting re: Personnel

Meeting re: Personnel

3

3-3:15 P.M. Meeting with Jason Elliott re: Check in
Steve's Office; Kawa, Steve (MYR)

3:15 P.M. Meeting re: Data
Steve's Office; Kawa, Steve (MYR)

4

Meeting with Police Chief

Meeting re: Transportation/Infrastructure
Steve's Conference Room; Kawa, Steve (MYR)

5

Ausberry, Andrea

From: SOTF, (BOS)
Sent: Tuesday, December 29, 2015 1:13 PM
To: 'Daniel Tomasevich'; Lee, Frank (DPW); 'mpetrelis@aol.com'; Macaulay, Kirsten (MYR); Kawa, Steve (MYR); MayorSunshineRequests, MYR (MYR); Banuelos, Briseida (POL); Manfredi, Carlos (POL)
Cc: Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing - Education, Outreach and Training Committee: January 11, 2016, 4:00 p.m.

Good Afternoon:

Notice is hereby given that the Education, Outreach and Training Committee of the Sunshine Ordinance Task Force has scheduled hearings on the following titled complaints, 1) to issue a determination of jurisdiction; 2) to review the merits of the complaint to focus the complaint or otherwise assist the parties to the complaint; and/or 3) to issue a report and/or recommendation to the Sunshine Ordinance Task Force.

Date: January 11, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complaints:

File No. 15095: Complaint filed by Daniel Tomasevich against Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25, for failure to respond to an Immediate Disclosure Request in a timely and/or complete manner.

File No. 15163: Complaint filed by Michael Petrelis against Steve Kawa and the Mayor's Office for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, for failure to completely comply with request for the calendar of Steve Kawa.

File No. 15166: Complaint filed by Michael Petrelis against the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21 for failure to respond to a request for public records, submitted via Twitter, in a timely and/or complete manner.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion of the agenda packet, supplemental/supporting documents must be received by 5:00 pm, **January 6, 2016.**

Young, Victor

From:	SOTF, (BOS)
Sent:	Thursday, February 11, 2016 9:28 AM
To:	'mpetrelis@aol.com'; Macaulay, Kirsten (MYR); Kawa, Steve (MYR); Nicita, Carl (MYR); Lee, Edwin (ADM); 'jerome.roth@mto.com'; Banuelos, Briseida (POL); Woon, Chris (POL)
Cc:	'Jerry Threet'; Calvillo, Angela (BOS)
Subject:	SOTF - Notice of Hearing- Sunshine Ordinance Task Force - March 2, 2016
Attachments:	SOTF - Complaint Procedure 2014-11-05.pdf

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: March 2, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints -

File No. 15163: Complaint filed by Michael Petrelis against Steve Kawa and the Mayor's Office for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, by failing to completely comply with a request for the calendar of Steve Kawa.

File No. 16001: Complaint filed by Michael Petrelis against the Mayor Edwin Lee for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.29-5, by failing to keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended

File No. 16003: Complaint filed by Jerome Roth on behalf of the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement (Panel) against the San Francisco Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a request for public records in a timely and/or complete manner and failing to provide justification for withholding information.

Additional Documentation (evidence supporting/disputing complaint)

For any additional document not yet submitted to the Sunshine Ordinance Task Force to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

Young, Victor

From: SOTF, (BOS)
Sent: Thursday, March 24, 2016 1:25 PM
To: Nicita, Carl (MYR); Kawa, Steve (MYR); Macaulay, Kirsten (MYR); 'mpetrelis@aol.com'
Cc: Colla, Nicholas (CAT); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - April 6, 2016 - File No. 15163
Attachments: SOTF - Complaint Procedure 2014-11-05.pdf; 15163_OD-Draft by Rumold.doc

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: April 6, 2016

Location: City Hall, Room 408

Time: 4:00 p.m.

Complainants: Your attendance is required for this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Complaints -

File No. 15163: Complaint filed by Michael Petrelis against Steve Kawa and the Mayor's Office for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.29-7, and 67.34, by failing to comply with a request for the calendar of Chief of Staff, Steve Kawa.

(On March 2, 2016, the Task Force heard and continued the matter. The Task Force requested a copy of Mr. Kawa's current calendar, a copy of the previous version of the Mayor's Record Retention Policy and requested that Steve Kawa attend the next meeting of the Task Force.)

Please note that a draft Order of Determination by Member Rumold is attached.

Documentation (evidence supporting/disputing complaint)

For a document to be considered, it must be received at least five (5) working days before the hearing (see attached Public Complaint Procedure).

For inclusion in the agenda packet, supplemental/supporting documents must be received by **5:00 pm, March 30, 2016.**

Victor Young
Administrator
Sunshine Ordinance Task Force

Young, Victor

From: SOTF, (BOS)
Sent: Friday, April 15, 2016 9:38 AM
To: 'mpetrelis@aol.com'; Kawa, Steve (MYR); Macaulay, Kirsten (MYR); Nicita, Carl (MYR); Lee, Edwin (ADM); Mccaffrey, Edward (ASR); 'Ray'; 'Shawn Mooney'; Pelham, LeeAnn (ETH); Ethics Commission, (ETH); Blackman, Sue (LIB); Blackman, Sue (LIB); Herrera, Luis (LIB); Profitt, Stephanie (TTX); Chen, Josephine (CPC); 'Bill and Bob Clark'
Cc: Colla, Nicholas (CAT); Calvillo, Angela (BOS)
Subject: SOTF - Notice of Hearing- Sunshine Ordinance Task Force - May 4, 2016
Attachments: SOTF - Complaint Procedure 2014-11-05.pdf

Good Morning,

You are receiving this notice because you are named as a Complainant or Respondent in one of the following complaints scheduled before the Sunshine Ordinance Task Force to: 1) hear the merits of the complaint; 2) issue a determination; and/or 3) consider referrals from a Task Force Committee.

Date: May 4, 2016

Location: City Hall, Room 408

Time: 4:00 p.m. (Please Note 5:30 Special Order for certain complaints listed below)

Complaints -

File No. 15163: Complaint filed by Michael Petrelis against Steve Kawa and the Mayor's Office for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.29-7, and 67.34, by failing to completely respond to a public records for the calendar of Chief of Staff, Steve Kawa.

(On April 6,2016, the Task Force heard and continued the matter. The Task Force requested copies of Mr. Kawa's current calendar, the previous version of the Mayor's Record Retention Policy and requested that Mr. Kawa attend the next Task Force meeting.)

File No. 15139: Complaint filed by Shawn Mooney against the Assessor/Recorder's Office for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, and 67.25, for failure respond to a public records request in a timely and complete manner.

(The Complainant was not satisfied with the progress made by the Assessor/Recorder and requested a new hearing before the Task Force.)

File No. 15142: Complaint filed by William Clark against Jose Cisneros and the Office of the Treasurer and Tax Collector for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, for failure to maintain and make public records available for inspections and examination.

(The Complaint Committee recommended that the SOTF find jurisdiction and that there were no violations of Administrative Code (Sunshine Ordinance), Chapter 67. The Committee requested that the Controller's Office respond to questions prior to scheduling a hearing on this matter.)

SPECIAL ORDER – The hearing on File Nos. 16012, 16013 and 16014 will not begin earlier than 5:30 p.m.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BURK E. DELVENTHAL
Deputy City Attorney

Direct Dial: (415) 554-4650
Email: buck.delventhal@sfgov.org

September 15, 2016

Sent via email to ethics.commission@sfgov.org

Honorable Members, Ethics Commission
c/o LeeAnn Pelham, Executive Director
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: **Show Cause Hearing in the Matter of Sunshine Ordinance Task Force Referral File No. 15163, *Michael Petrelis v. Steve Kawa, Mayor's Office***

Dear Chairperson Renne and Honorable Commission Members:

In this letter we address for your consideration legal issues of Citywide importance raised in the above-entitled case, which was referred to the Ethics Commission ("Commission") by the Sunshine Ordinance Task Force ("Task Force").

Background

Following its hearing of Mr. Petrelis's complaint, the Task Force issued a Proposed Order of Determination ("Proposed Order") concluding that Mr. Kawa had violated records retention law by periodically deleting his individual calendar; that this translated into a violation of two provisions of the Sunshine Ordinance; and that the purported violation of one of those provisions was "willful." Because the Proposed Order was incorrect as a matter of law and also had potentially broad ramifications for City government, this Office addressed a letter to the Task Force analyzing the legal issues. (See March 30, 2016, letter, copy attached, which we understand is part of the record in this case.) The Task Force subsequently issued its Order of Determination ("Final Order"), which modified the Proposed Order without changing its conclusions.

In our March 30 letter we made three main points: (1) the Proposed Order ignored the definition of "willful" in the Commission's regulations that govern this proceeding, and instead applied the Task Force's own definition, (2) the periodic deletion of Mr. Kawa's calendar did not violate state or City laws governing records retention, and (3) the purported violation of records retention law does not equate to a violation of either Section 67.29-7 or 67.21 of the Sunshine Ordinance. In this letter we do not repeat the arguments we made in our March 30 letter; rather, we address the new arguments raised by the Task Force in the Final Order. We elaborate here on the first two points above, but not the third.

"Willful" Violation of the Sunshine Ordinance

The Final Order asserts that the Task Force may supply its own definition of a "willful" violation of the Sunshine Ordinance, and criticizes the Commission's definition as "unduly narrow." (Final Order, 7, n.7.) This assertion of the Task Force's definitional autonomy contradicts the City's highest law, the Charter, which empowers the Commission to issue "regulations relating to carrying out the purposes and provisions of ordinances regarding ... public records." (S.F. Charter § 15.102.) Further, given the context of Section 67.34 of the Sunshine Ordinance – defining a willful violation as "official misconduct" – with the severe

consequences that can accompany such a finding – the Commission's definition, which requires knowledge that an act or failure to act violates the Ordinance, carries out the purpose of Section 67.34.

The Final Order further asserts that the Commission should change its definition of "willful" to cover violations that are "egregious, flagrant, or repeated" and "carried out with … a reckless disregard of the … Ordinance." (Final Order, 7, n.7.)[1] But while the Task Force may take issue with Mr. Kawa's practice of not retaining his individual calendar and whether the Ordinance's calendar requirements extend far enough, there is no basis under existing law to conclude that Mr. Kawa, in periodically deleting his calendar, committed an "egregious" violation with a "reckless disregard" for the Sunshine Ordinance. There are three main reasons Mr. Kawa's conduct does not constitute a willful violation of the Ordinance, even under the Task Force's suggested definition. First, there is no express requirement in the Ordinance (or in any other law) that the Mayor's Chief of Staff retain his individual calendar. Second, even after recent amendments approved by the Board of Supervisors, the "Prop G" calendar requirement, discussed below, does not apply to the Mayor's Chief of Staff or to any other high ranking City employees subordinate to those office holders who are subject to the requirement. Third, the Task Force's finding of a Sunshine Ordinance violation conflicts with the conclusion of this Office as stated in our March 30 letter and in this letter, and is inconsistent with past legal advice.

Records Retention Law

The Final Order substantially revises the Proposed Order's analysis of records retention law by resting its finding of a violation entirely on the City's records retention law (S.F. Admin. Code §§ 8.1-8.9), informed by the Sunshine Ordinance's "Prop G" calendar requirement (S.F. Admin. Code § 67.29-5). We address these two points below.

A. Definition of a "Record" Under the City Records Retention Law

The records retention statute applicable to cities is California Government Code Section 34090, which requires that "city records" be kept for two years. Although Section 34090 has no definition of a "record," the Attorney General has construed that term to mean:

> [A]n objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and *was made or retained for the purpose of preserving its informational content for future reference.*

(64 Cal. Op. Att'y Gen. 317 at *8 (1981) (emphasis added).) Referring to the highlighted language, the Attorney General explained that "the Legislature had in mind those records which are made or retained *as a memorial of their informational content for public reference.*" (*Id.* at *7 (emphasis added).) Mr. Kawa's individual calendar is not such a record. Nor does the law require him to keep a calendar. As a result, there is no sound legal basis to conclude that periodic deletion of his calendar entries violated state records retention law.

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[1] Even if the Commission were to wish to change the scope of its regulation defining "willful," the way for it to do that would be to amend it through the Charter-mandated process rather than through a decision resolving a particular case (S.F. Charter § 4.104(a)(1)), and doing so in the midst of this proceeding, to the detriment of Mr. Kawa, would present a potential due process problem.

The definition of "record" under the City's records retention laws is similar to the state law definition articulated by the Attorney General:

> . . . such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County.

(S.F. Admin. Code § 8.1 ("Section 8.1").) While those portions of Mr. Kawa's individual calendar pertaining to City business were "made in connection with the transaction of public business," the Final Order's conclusions that the Mayor's Office retained the calendar "as evidence of the department's activities" or "for the information contained therein" are incorrect.

1. Mr. Kawa's Calendar Was Not "Retained by the Department as Evidence of the Department's Activities."

The Final Order asserts that Mr. Kawa's individual calendar, in the words of Section 8.1, "may have been retained by the department as evidence of the department's activities" because, according to the Task Force, "Mr. Kawa's daily calendar reflects not only on *his* daily activities, but on the activities of the Mayor's Office as a whole." (Final Order, 3 (emphasis in original).)

This "activities of the [department] as a whole" interpretation is unprecedented, and it has potentially broad implications for City government. Under the Final Order, the well-established distinction between what is a "record" under the Public Records Act – an extremely broad definition – and the much narrower definition of what is a "record" for purposes of records retention law would be eroded. What the Final Order says of Mr. Kawa's calendar could be said of the individual calendars of many City employees – chiefs of staff, executive assistants, and press aides to countless other public officials; sub-department heads; budget officials, human resources professionals, and others within departments whose work touches on the department as a whole; and other important City employees – all told, a group of employees that would measure at least in the hundreds and possibly in the thousands, and, to make matters worse, an ill-defined group, thus leaving many employees in the dark as to their retention obligations under City law. While the Task Force may believe that would be good City policy as an aspirational matter, that is not what the law requires. Further, what the Final Order says of Mr. Kawa's calendar – and, by extension, the calendars of others – could also be said of his phone message slips, notes of meetings, or emails – and those of many other City employees, as well.

This Office has never embraced such an expansive definition of "records" that must be retained under City law. Rather, we have consistently opined that the sweep of records retention law is much narrower than that which would be encompassed in the Final Order's "activities of the [department] as a whole" standard. As the *Good Government Guide*, available on the City Attorney's website, states, at page 112:

> The *vast majority* of public records in the City's possession do not fall under the definition of 'records' within the meaning of records retention law. Therefore, the City may destroy these records at any time. For example, as a general rule, employees may immediately dispose of phone message slips, notes of meetings, research notes prepared for the personal use of the employee creating them, and the large majority of e-mail communications.

(Emphasis added.) The law does not currently require the Mayor's Chief of Staff, as a general rule, to keep notes of meetings he attends, or of phone message slips relating to the scheduling of meetings, or of email communications concerning what transpired or is expected to transpire at a meeting. To conclude that the law nonetheless requires the Chief of Staff to retain a copy of his calendar entries for meetings would be inconsistent with this general view of records retention obligations under City law.

Indeed, this Office specifically advised, in a 1995 letter to the Office of the Mayor, that individual calendars need not be retained:

> For example, phone message slips, *appointment calendars,* and notes of meetings and conversations are generally prepared for the personal use of the employee creating them, and are not usually intended for use by other employees. Many other documents meet this criterion. Such documents are not subject to record retention and destruction laws and may be destroyed when they are no longer necessary for the employee's use.

(Letter from Deputy City Attorney David Greenburg to Brian McInerney, January 12, 1995 (emphasis added); copy attached.) This letter does not draw any distinction between the individual calendar of the Mayor's Chief of Staff (a position that existed in 1995) and the calendars of others working in the Mayor's Office. Further, there has been no change in the definition of "record" under Section 8.1 since 1995. Rather, the only relevant change in the law has been the later adoption in the Sunshine Ordinance of the so-called Prop G calendar requirement, mandating that certain City officials – but *not* the Mayor's Chief of Staff – keep and make public a certain type of calendar. (S.F. Admin. Code § 67.29-5.)

The Final Order attempts to draw a distinction – nowhere present in Section 8.1 or the Sunshine Ordinance – between "high-level City officials" and "lower-level staff employees," while including in the "City officials" category Mr. Kawa, who is, indisputably, a staff member, not an "official." (Final Order, 3.) The Final Order thus attempts to tease out from these two legal authorities a rule of law not present in either, and in so doing misses the true meaning of Section 8.1.

The Final Order ignores the difference between evidence of what departmental officials and staff of any importance or rank – high, low, or in-between – are doing at any given moment (which, cumulatively, amounts to virtually all records created by a department, and is far beyond the scope of the City's records retention law), and evidence of *the department*'s activities. The latter refers only to records of official actions taken by *a department*, such as when a department head appoints an advisory committee or a subordinate employee, approves a contract, promulgates a new departmental policy or regulation, and the like, or when the department issues a press release, annual report, or other publication, or when the department makes decisions of legal consequence, such as issuing or denying a permit. There are many other examples. They would include official actions taken by sub-department heads when properly authorized. But calendar entries of staff members, even high ranking, influential staff members, are not records of department activities within the meaning of Section 8.1.

2. Mr. Kawa's Calendar Was Not Retained by the Mayor's Office "For the Information Contained Therein."

The Final Order also concludes that Mr. Kawa's individual calendar was, in the words of Section 8.1, "retained by the department ... for the information contained therein" – because, according to the Task Force, "one purpose of retention was to allow for follow-up meetings to be scheduled" and another purpose of the calendar was "to inform others within the Mayor's Office of his meetings and locations." (Final Order, 3, 4.)

This language in Section 8.1 mirrors the State law requirement that the document be "made or retained for the purpose of preserving its informational content for future reference." In interpreting this requirement in the context of a tape recording of a city council meeting to be used to assist in drafting minutes of the meeting, the Attorney General explained:

> If the purpose for which the tape recording of the city council meeting was made and retained is solely to assist the city clerk in the preparation of the minutes of the city council meeting it is not a 'record' [for record retention purposes] .... On the other hand, if the tape recording was made or retained for the additional purpose of *preserving its informational content for public reference* it is a 'record' ....

(64 Ops. Cal. Atty. Gen. 317 at *8 (emphasis added).) The Attorney General opinion makes clear that even if there is a short period of time during which a record is retained *for internal use* – such as for the purpose of preparing meeting minutes – that does not make it a "record" that is being preserved *for public use* – "for its informational content for public reference." Otherwise, just about every phone message slip sitting on an employee's desk would be a "record" subject to retention because for some period of time – perhaps as short as 24 hours or less – that slip is retained for the purpose of following up with the caller. Here, according to the Mayor's Office, Mr. Kawa temporarily retained his individual calendar for two weeks for the purpose of scheduling follow-up meetings. He retained them for short-term internal use, not for public reference. That there was a short time interval during which his calendar served a convenient follow-up function is not sufficient for the calendar to meet Section 8.1's definition of a "record" that the City must retain.

B. The Prop G Calendar

The Final Order also asserts that Mr. Kawa was required to retain his individual calendar because it is "substantially similar" to the Prop G calendar, which is subject to a two-year retention period. (Final Order, 4.) But, as we noted in our March 30 letter, an ordinary calendar is prepared for an employee's convenience in scheduling and following up on meetings. By contrast, the purpose of the Prop G calendar is to create a retrospective record of each meeting or event attended by the official required to keep that calendar, *so that the public may then review that record.*

For those officials who are subject to the Prop G calendar requirement, the Sunshine Ordinance requires not only that the Prop G calendar be created but also that it *be made available to the public,* which implies that it must be retained for a period of time. Creation of the calendar is but a necessary prelude to its public disclosure. The purpose of the requirement is for the public to learn of the past activities of specified City officials. (S.F. Admin. Code § 67.29-5 ("Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date"); *see also* "Digest" of the Ballot Simplification Committee, *Voter Information Pamphlet,* November 2, 1999 Municipal Election,

at 119 ("The Mayor and City department heads would be required to keep, and make public, calendars listing who meets with them and the topic of the meeting").) This makes the Prop G calendar fundamentally different from Mr. Kawa's individual calendar, which was created for internal use, like the individual calendars of numerous other City employees. But the Final Order nevertheless seems to treat it as if it were created for public use.

Just last year, the Board of Supervisors passed, and the Mayor signed, an amendment to the Sunshine Ordinance to expand the Prop G calendar requirement to cover Members of the Board of Supervisors. (Ordinance No. 118-15.) Until then, only the Mayor, other elected officials except for Members of the Board, and department heads, had to keep a Prop G calendar. Even after last year's amendment, neither the Mayor's Chief of Staff nor any other staff member serving a public official is required to keep a Prop G calendar.

The Board of Supervisors or the voters could amend the Sunshine Ordinance again to expand the Prop G calendar requirement to include the Chief of Staff to the Mayor and/or other "high-level" City staffers, however defined. But that has not occurred. Yet, the Final Order, which treats Mr. Kawa's individual calendar as if it were a Prop G calendar by requiring retention, conflicts with the required legislative process. Those whom the Charter entrusts with the City's legislative power – the Board of Supervisors and the voters – have made clear that the Mayor's Chief of Staff is not subject to the Prop G calendar requirement.

In sum, while the Task Force may take issue with Mr. Kawa's practices regarding his individual calendar and believe as a policy matter that the law should require more, the Final Order is not correct under existing law and there is no sound basis to find Mr. Kawa committed a violation of the Ordinance here, much less a willful violation.

Very truly yours,

DENNIS J. HERRERA
City Attorney

BEL

BURK E. DELVENTHAL
Deputy City Attorney

Attachments: (1) March 30, 2016 Letter from Deputy City Attorney Buck Delventhal to Sunshine Ordinance Task Force

(2) January 12, 1995 letter from Deputy City Attorney David Greenburg to Brian McInerney, Office of the Mayor

cc: Steve Kawa, Chief of Staff, Mayor's Office
Michael Petrelis

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

BURK E. DELVENTHAL
Deputy City Attorney

Direct Dial: (415) 554-4650
Email: buck.delventhal@sfgov.org

March 30, 2016

Honorable Members of the Sunshine Ordinance Task Force
c/o Clerk of the Board of Supervisors
Attn: Victor Young, Administrator
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102

Re: **Proposed Order of Determination in Michael Petrelis v. Steve Kawa and the Mayor's Office (File No. 15163)**

Dear Honorable Task Force Members:

This letter responds to the Proposed Order of Determination (the "Order") in the above-entitled case. If adopted, the Order would reach three principal legal conclusions. It would conclude that Mr. Kawa and the Mayor's Office violated its record retention policy by periodically deleting Mr. Kawa's individual calendar. Consequently, the Order would conclude, Mr. Kawa and the Mayor's Office violated two sections of the Sunshine Ordinance – Section 67.29-7, which requires the Mayor, among others, to "maintain and preserve" records "in a professional and businesslike manner," and Section 67.21, which requires a custodian of a public record to permit its inspection and copying.[1] The Order further would conclude that Mr. Kawa's purported violation of Section 67.21 was a "willful failure" to "discharge the duties imposed by the Sunshine Ordinance," warranting referral of that violation to the Ethics Commission under Section 67.34.

We understand that the Task Force will be considering the Order at its April 6, 2016, meeting. While this case involves Mr. Kawa and the Mayor's Office specifically, it has broad ramifications for City government generally. Accordingly, this letter presents the analysis of the City Attorney's Office on the legal issues the Order addresses. Also, the Order presumes what this Office's legal advice would be regarding the destruction of an employee's individual calendar (as opposed to the calendar the Sunshine Ordinance requires elected officials and department heads to maintain). This letter avoids leaving our advice on the main legal issues the Order addresses subject to speculation.

As we explain below, each of the three principal conclusions of the Order is legally erroneous: Mr. Kawa and the Mayor's Office did not violate records retention law, and did not violate the Sunshine Ordinance; and Mr. Kawa did not willfully violate Section 67.21. Accordingly, it is advisable that the Task Force not adopt the Order.

[1] The Order concludes, in its footnote 3, that "the Mayor's Office substantially complied with the requirements of § 67.25" of the Sunshine Ordinance, regarding immediate disclosure requests. Accordingly, we do not address Section 67.25.

I. "WILLFUL" VIOLATION OF THE SUNSHINE ORDINANCE

We begin where the Order ends, with referral of the purported violation of Section 67.21 to the Ethics Commission, on the theory that it is a "willful" violation. This referral is not proper under the Sunshine Ordinance because it misuses the legal standard employed to define a "willful" violation.

The Charter vests in the Ethics Commission the power to issue regulations governing the Sunshine Ordinance. (S.F. Charter, § 15.102 ["the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"].) Under this Charter authority, the Ethics Commission has adopted "Regulations for Handling Violations of the Sunshine Ordinance."[2] These regulations define a "willful" violation as "an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance." (Regulations, Section II(U).)

There is no evidence in the record that Mr. Kawa knew that the practice of periodically deleting his individual calendar violated the Sunshine Ordinance, and the Order makes no such finding. Indeed, as explained in Sections II and III, below, this practice does not violate either records retention laws or the Sunshine Ordinance.

But rather than apply – or even acknowledge – the Ethics Commission's definition of "willful" violation, the Order instead applies a different definition of "willful" conduct: "intentional conduct undertaken with knowledge or consciousness of its probable results," citing *Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829. *Patarak* addresses whether a landlord's violations of the Mobilehome Residency Law ("MRL") (Cal. Civ. Code §§ 798 et seq.) were "willful" and therefore subject to penalties under the MRL. We have no quarrel with the holding in *Patarak*; the term "willful" has different meanings in different legal contexts. But that is the point the Order misses. The Order applies a definition of "willful" that is correct in the *Patarak* context of assessing penalties under the MRL, but is incorrect for determining a "willful" violation of the Sunshine Ordinance.

As we explain below, there has been no violation of Section 67.21 of the Sunshine Ordinance in this case. But even if there had been such a violation, because there is no evidence in the record that Mr. Kawa destroyed his calendar knowing he was violating records retention law or the Sunshine Ordinance, there is no basis to conclude that it was "willful" within the meaning of Section 67.34 – as "willful" is defined by the very commission authorized to define that term, and to which the Task Force would refer this case if it adopts the Order.

II. RECORDS RETENTION REQUIREMENTS

The Order concludes that the periodic deletion of Mr. Kawa's individual calendar violated the law governing records retention, and that this violation translates into a violation of Sections 67.29-7 and 67.21 of the Sunshine Ordinance. Because the purported Sunshine Ordinance violations presume, and depend on, a records retention law violation, we first address that issue.

Many City employees who are not elected officials or department heads – probably the vast majority of professional, technical, and supervisorial employees at all ranks in the City's

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[2] These Regulations are on the Ethics Commission's website and are available at http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf

bureaucracy, as well as many other City employees – keep a daily calendar for their own convenience (we generally refer to those calendars in this letter as "individual calendars"). Those individual calendars often will include both work entries and personal entries, such as a doctor's appointment, family commitments, or lunch plans. Employees create such calendars to keep track of upcoming activities, tasks, and deadlines, and to avoid scheduling conflicts. Sometimes employees also create those calendars to assist their colleagues in knowing their whereabouts. They do not create their calendars to preserve an historical record, and the entries on such calendars have no legal significance or consequence. Indeed, neither state law nor City law requires employees (as opposed to elected officials and department heads) – whether Mr. Kawa or others – to prepare, much less to keep, an individual calendar.

The Order correctly notes that the Public Records Act defines "record" very broadly. (Cal. Gov. Code §§ 6252(e), (g) (definitions of "public records" and "writing").) Thus, an employee's individual calendar maintained on the City's network is a public record and must be disclosed on request, with non-work-related entries redacted, *if the calendar has been retained.* But the universe of public records that state or City law requires the City to retain is much smaller than the universe of public records that, if in the City's custody, must be disclosed under the Public Records Act and the Sunshine Ordinance. For example, as a general rule, employees may immediately dispose of phone message slips, notes of meetings, research notes prepared for the use of the employee creating them, and the large majority of e-mail communications employees send and receive, even though such records would generally qualify as "public records" under the Public Records Act. Similarly, if employees make notes to themselves about a meeting to attend or task to perform days later, the employees need not retain those notes. An employee's individual calendar, which is nothing more than a compilation of such notes, likewise need not be retained.

State law requires local agencies to retain certain records. (*E.g.*, Cal. Gov. Code §§ 6200, 34090 et seq.) The City's records retention law (Sections 8.1 through 8.9 of the Administrative Code) does not expand upon the scope of records that state law requires the City to retain. Rather, City law requires each department head to adopt a record retention schedule classifying documents subject to retention under state law into different categories. The Office of the Mayor's record retention schedule, like those of many other City departments, includes "Category 4: No Retention Required." Category 4 documents do not constitute "records" within the meaning of state records retention law, so they need not be retained. As the Mayor's records retention policy explains, Category 4 records are "not necessary to the functioning or continuity of the Department" and "have no legal significance." Examples of such documents are ones "generated for the use and convenience of the person generating them," including telephone message slips, notes from ongoing projects, and miscellaneous correspondence.

The Office of the Mayor's record retention schedule does not list employee calendars under any of the four categories. The records retention policy states that documents "not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for periods prescribed" for substantially similar records. The Mayor's Office correctly regards staff work calendars as "substantially similar" to "administrative files" and "general correspondence" listed in Category 4 on its schedule. As this letter has explained, retention of them is "not necessary to the functioning or continuity of the Department," they "have no legal significance," and they are "generated for the use and convenience of the person generating them." Nevertheless, the Order concludes that employee individual calendars must be retained. This erroneous conclusion stems from two analytical errors in the Order.

First, the Order states that a department head calendar (often referred to as the "Prop G calendar," named for November 1999's Proposition G) is the record most "substantially similar" to Mr. Kawa's calendar, and therefore the two-year retention period for Prop G calendars should apply to his individual calendar. This is a false analogy. The Prop G calendar, which all elected officials and department heads must maintain in accordance with Section 67.29-5 of the Sunshine Ordinance, is a retrospective calendar. Its purpose is to create an historical record: to document meetings and events that the public official has attended, so as to inform the public. As Section 67.29-5 states, the Mayor and other officials subject to the requirement[3] "shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official…." The Prop G calendar must be made "available to any requester three business days subsequent to the calendar entry date." By contrast, the purpose of a staffer's individual calendar is not to serve an historical function or to inform the public, but rather is to allow the staffer prospectively to keep track of or schedule upcoming meetings, tasks, deadlines, or events. It is not created to document or publicize the staffer's comings and goings. The Prop G calendar analogy improperly compares apples and oranges.

The analogy is concerning for another reason. The voters first imposed the Prop G calendar requirement on elected officials other than members of the Board of Supervisors, and on department heads; and last year, the City enacted an ordinance subjecting members of the Board to the requirement. (Ord. No. 118-15.) The City's legislators – the voters, in the first instance, and the Board and Mayor, in the second – have determined which officials are subject to the Prop G calendar requirement. They have also determined which City officials and employees are *not* bound by the requirement – the Chief of Staff to the Mayor being one among many. To interpret the City's record retention law or the Office of the Mayor's record retention schedule to create a calendar requirement for Mr. Kawa similar to the Prop G calendar requirement would undermine the City's decision, made through its legislative processes, regarding which officials and employees are – and are not – subject to such requirements.

Second, the Order points to a California Attorney General Opinion that defined a record under state records retention law as one that is kept "because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference." (64 Cal. Op. Att'y Gen. 317 (1981); 1981 WL126747.) But the Order misconstrues this opinion, which, read properly, fortifies the conclusion that an employee's individual calendar need not be retained.

The Attorney General had been asked, "Where the city clerk makes an authorized tape recording of a city council meeting to facilitate the preparation of the minutes: (a) does the public have the right to inspect the tape or (b) receive copies of the tape and (c) when may such tape be destroyed?" (1981 WL 126747, at 1.) After concluding that such a tape was a public record subject to inspection and copying, the Attorney General addressed the retention question, concluding, "the tape recording may be destroyed at any time if the purpose for which it was made and retained was solely *to facilitate the preparation of the minutes of the meeting* but if the tape was made or retained for the additional purpose of *preserving its informational content for public reference* it may not be lawfully destroyed except as expressly authorized by state law." (*Id.* (emphasis added).) An employee's individual calendar, like the city clerk's tape recording in the Attorney General opinion, is made solely for the convenience of the employee, and is not made for the purpose of "preserving its informational content for public reference."

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[3] The Chief of Staff to the Mayor, and chiefs of staff to other elected officials and department heads, are not subject to the Prop G calendar requirement.

Relying on this Attorney General opinion, the Order mistakenly reasons that employees' individual calendars are subject to a two-year retention requirement under state law, because "calendar entries are added in order to establish and document future appointments, meetings, and the like, thus 'creating content for future reference.'" This takes the "future reference" terminology from the Attorney General opinion out of context. Following the Order's reasoning, the city clerk's tape recording would have to be considered to be created for future reference, because the clerk would make and keep the tape to assist the clerk in preparing meeting minutes in the future, i.e., after the meeting. Yet the Attorney General concluded that if the tape would be used simply to facilitate preparing the minutes, and not used to "preserve its informational content *for public reference* (emphasis added)," the tape need not be preserved. The opinion's "future reference" standard means – as the opinion states – for "public reference" in the future. An employee's individual calendar is not created for public reference in the future.

III. THE SUNSHINE ORDINANCE

As we explain above, deletion of an employee's individual calendar does not violate City or state law. But the Order would conclude otherwise, and would go further to erroneously find Sunshine Ordinance violations based on the purported records retention violation. Accordingly, we address the purported Sunshine Ordinance violations below.

A. Section 67.29-7

The Order would conclude that a records retention violation also violates Section 67.29-7 of the Sunshine Ordinance, which provides in relevant part:

> (a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum [sic], invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

The Order reads the requirement to maintain and preserve records "in a businesslike manner" as incorporating into the Sunshine Ordinance, by implication, records retention law and departmental record retention schedules, thereby making a violation of either an automatic Sunshine Ordinance violation. This reading of the term "businesslike" effectively rewrites Section 67.29-7 in the guise of interpreting it. A court would very likely reject this reading.

Proposition G added Section 67.29-7 to the Sunshine Ordinance. If the drafters of Proposition G had intended to fold records retention laws wholesale into the Sunshine Ordinance, so that voters would understand that a records retention violation automatically would become a Sunshine Ordinance violation, there would have been a much easier way to do so – by stating so directly. Courts look with suspicion on expansive claims about a law's meaning based on interpretation of a general and ambiguous term, when the legislative body could have easily written the law to directly state the desired meaning. (*People v. Johnson* (2015) 60 Cal.4th 966, 991 ("If the Legislature had intended such a meaning, it could easily have said so"); *County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 572 (citing numerous cases).)

Further, the drafters of Proposition G knew how to cross-reference records retention laws in the Sunshine Ordinance when they wanted to do so. Section 67.29-1, entitled "Records Survive Transition of Officials," states:

> All documents, prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents *shall be maintained consistent with the records retention policies of the City and County of San Francisco*.

(Emphasis added.) Thus, in the context of a City official leaving his or her position, Section 67.29-1 makes clear that originals of documents must be retained in accordance with the applicable records retention policy. Section 67.29-7(a) contains no such cross-reference. Courts recognize that the presence of a term in one part of a law, in contrast to its omission in another part of the law, raises an inference that the omission was intentional. (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 ("When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful").) The inference is particularly strong where the two parts of the same law were adopted at the same time and bear a close relationship to one another, as is true of Sections 67.29-1 and 67.29-7(a). (*E.g., People v. Giordano* (2007) 42 Cal.4th 644, 670.)

In requiring that records be "maintained and preserved in a professional and businesslike manner," Section 67.29-7(a) speaks to *how* the Mayor and department heads must maintain records. The records should be reasonably organized, filed, and stored so that staff may promptly locate and produce records in response to a public records request. Neither Section 67.29-7(a) nor the Sunshine Ordinance as a whole speaks generally to *what* records must be maintained. Indeed, read literally, Section 67.29-7(a) would mean that departments must retain "all documents and correspondence," which would conflict with records retention laws and lead to the absurd conclusion that the City must retain mountains of records that do not fall under the scope of records retention law.

B. Section 67.21

The Order also would conclude that the periodic deletion of Mr. Kawa's individual calendar violates Section 67.21 of the Sunshine Ordinance, reasoning that "because Mr. Kawa *should* have had the records requested by Mr. Petrelis" (emphasis in original), he violated Section 67.21 for "failing to 'permit the public record' to be inspected." The plain text of Section 67.21 contradicts this strained reading. As Section 67.21 states:

> (a) Every person *having custody* of any public record or public information, as defined herein, ... shall ... permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge ....

(Emphasis added.) If a record does not exist at the time of the public records request, one does not "hav[e] custody" of it. The City's obligation under this provision as well as under subsection (b) of Section 67.21, to comply with "a request for inspection or copying," presupposes the existence of a record at the time the City receives the request. If, at that time, there are no responsive records, the City complies with the Sunshine Ordinance by notifying the requester that there are no responsive records.

Section 67.21 imposes on the City a duty to allow members of the public to inspect and/or copy within 10 days of the request public records that are in the custody of a department. Thus, a

department would violate Section 67.21 if it had records responsive to a request but refused (without a lawful basis) to allow inspection or copying of the records. A department would also violate Section 67.21 if it received a public records request and then proceeded to destroy a responsive record to avoid producing it – even if the department could have destroyed the record earlier under its records retention policy. But neither of those scenarios is present here. The Mayor's Office did not refuse to "permit the public record to be inspected" as stated in the Order. Nor did it destroy Mr. Kawa's individual calendar after receiving Mr. Petrelis's request. Rather, the record did not exist at the time of the request.

Section 67.21 does not speak to which records are subject to retention requirements; rather, it imposes a present-tense disclosure requirement. Indeed, as one court explained, nothing in the Public Records Act – upon which Section 67.21(a) and (b) are modeled – purports to govern the destruction of records: "[The Public Records A]ct itself does not undertake to prescribe what type of information a public agency may gather, nor to designate the type of records such an agency may keep, nor to provide a method of correcting such records. Its sole function is to provide for disclosure." (*Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.) In finding a violation of Section 67.21, the Order mistakenly conflates these two distinct legal requirements.

IV. CONCLUSION

The three principal legal conclusions of the Order are fundamentally flawed. The Order would determine that a "willful" violation has occurred by relying on an inapplicable definition; it would erroneously conclude that a record created solely for an employee's personal convenience – where there is no other requirement that the record be created or maintained – must be retained; and it would compound that error by transforming a purported violation of records retention law or a department's records retention policy into a Sunshine Ordinance violation. The Task Force would be well advised not to adopt the Order.

Respectfully submitted,

DENNIS J. HERRERA
City Attorney

BURK E. DELVENTHAL
Deputy City Attorney

cc: Steve Kawa
Michael Petrelis (via email)

City and County of San Francisco: **Office of City Attorney**

Louise H. Renne,
City Attorney

DAVID A. GREENBURG
Deputy City Attorney
(415) 554-4258

January 12, 1995

Mr. Brian McInerney
Office of the Mayor
Room 205, City Hall
San Francisco, CA 94102

Dear Mr. McInerney:

You have requested advice from this office regarding a proposed records retention schedule for documents in the Mayor's Office. Our comments on the proposed schedule follow. In addition, we have attached a marked-up copy of the draft which contains additional editorial comments.

As a preliminary matter, the model records retention materials circulated by the Chief Administrative Officer (CAO) in June, 1994 should be viewed as guidance for the preparation of a records retention schedule, and not a complete schedule. The attachments to the CAO's memorandum provided an example of a records retention policy for one particular office.

It is not possible to develop one policy to cover all City departments. In developing a records retention schedule, each department should give careful consideration to the records that department handles, and its particular needs relating to retention and disposal. Moreover, in certain cases, state or federal law may impose specific requirements for the retention of documents.

Initially, it is necessary to note the distinction between those laws which govern the disclosure of public records, and those laws which govern the retention and destruction of public records.

Disclosure of public records is governed by the Public Records Act (Government Code §§6250 et seq.), and, in San Francisco, by the Sunshine Ordinance (Administrative Code Chapter 67). For purposes of disclosure, "public record" is defined very broadly. Government Code section 6252(d) defines "public records as including:

> "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical characteristics . . . ."

However, nothing in the Public Records Act purports to govern the retention or destruction of records. The sole function of the Public Records Act is to provide for disclosure. Los Angeles Police Dep. v. Superior Court (1977) 65 Cal.App.3d 661, 668; 64 Ops. Cal.Atty. 317, 321-322 (1981).

Retention and destruction of public records is governed by a different body of state and local law. Government Code sections 34090 and 26202 govern records destruction by cities and counties, respectively.

Government Code section 34090 states in pertinent part:

"Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the City Attorney, the head of a city department may destroy any city record, document , instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

(a) Records affecting the title to real property or liens thereon.

(b) Court records.

(c) Records required to be kept by statute.

(d) Records less than two years old.

(e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission."

Government Code section 26202 states:

"The board may authorize the destruction or disposition of any record, paper, or document which is more than two years old and which was prepared or received in any manner other than pursuant to a state statute or county charter. The board may authorize the destruction or disposition of any record, paper, or document which is more than two years old, which was prepared or received pursuant to state statute or county charter, and which is not expressly required by law to be filed and preserved if the board determined by four-fifths (4/5) vote that the retention of any such record, paper or document is no longer necessary or required for county purposes. . . ."

Government Code section 6200 makes it a felony for an officer to destroy "any record . . . . filed or deposited in any public office." Chapter 8 of

the San Francisco Administrative Code [1/] establishes local requirements for records retention and destruction.

San Francisco is subject to state law requirements governing records retention and destruction because destruction of records by a charter city is a matter of statewide concern, and not a municipal affair. In re Shaw (1939) 32 Cal.App.2d 84; 64 Ops. Cal.Atty. 317, 327, supra.

Thus, Government Code sections 34090 and 26202 prohibit the destruction of records which are less that two years old, and to the extent that any provisions of Code Chapter 8 may be interpreted as being inconsistent this requirement, the state law will control.

The next question that arises is what constitutes a "record" for purposes of records retention and destruction. Unlike the broad definition discussed above in relation to the Public Records Act, the term "record" is defined more narrowly for purposes of records retention and destruction.

The term "record" is not defined in Government Code sections 6200, 34090 or 26202. However, the California Attorney General has concluded that for purposes of Government Code section 6200, the term "record" is

> ". . . properly defined as a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference." 64 Ops.Cal.Atty.Gen. 317, 326 (1981).

The above definition is consistent with Code section 8.1, which defines "records" as documents or other materials which have

> "been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or persons directly affected by the activities of the City and County.

Based on these authorities, we conclude that City departments are required to retain any documents which meet the definition of "records" quoted from the above Attorney General's Opinion for a period of two years.

[1/] Unless otherwise specified, all code sections mentioned in this letter are in the San Francisco Administrative Code.

Accordingly, the records retention policy for the Mayor's Office should be revised to reflect this requirement. The records retention policy should state which documents in the Mayor's Office constitute "records" for purposes of the policy. Documents which do not fall under the above definitions are not "records," and thus need not be subject to record retention requirements.

For example, phone message slips, appointment calendars, and notes of meetings and conversations are generally prepared for the personal use of the employee creating them, and are not usually intended for use by other employees. Many other documents meet this criterion. Such documents are not subject to record retention and destruction laws and may be destroyed when they are no longer necessary for the employee's use.

We have the following specific comments on the proposed records retention policy.

1. Code section 8.3 requires each department head to classify each department's records in accordance with sections 8.4 and 8.9. The records retention policy should specify that all documents in the possession of the Mayor's Office shall be classified into one of the categories established by sections 8.4 and 8.9.

2. Section 8.4 establishes three categories of records; current records, storage records and permanent records. However, section 8.9 also establishes requirements for preservation of "essential records," defined as those "records which would be essential to the continuity of government and the protection of rights and interests of individuals in the event of a major disaster." The draft records retention schedule fails to address essential records.

3. The draft schedule does not specify minimum time periods during which various classes of records must be retained. Section 8.3 governs the destruction of current and storage records that are more than five years old. Such records may be destroyed if they have served their purpose and are no longer needed for any public business or public purpose, and if destruction of the documents has prior approval of the Controller (for financial documents), the Retirement Board (for payroll checks, time cards and related documents), and the City Attorney (for records of legal significance).

Different rules apply to current or storage records that are less than five years old. Such records may be destroyed if: 1) a definitive description of the records and the retention period applicable to them is set forth in the departmental schedule approved by the CAO for retention and destruction of records; 2) their destruction is not detrimental to the City and destruction of the documents will not defeat any public purpose; and 3) any required approvals from the Controller, Retirement Board, or City Attorney have been obtained.

The draft records retention schedule should be revised to address these requirements. A copy of Section 8 is attached, along with an example of a

schedule listing types of documents, their classification, retention times, and any conditions triggering destruction.

5. The draft retention policy does not address state or federal laws that may govern records retention. Records in the Mayor's Office relating to federal programs or grants may be subject to federal records retention requirements. These requirements should be addressed by the proposed schedule.

Please do not hesitate to contact me if you have any questions concerning this matter.

Very truly yours,

LOUISE H. RENNE
City Attorney

DAVID GREENBURG
Deputy City Attorney

Attachments

8931g

Item 5 - Attachment 3

CHAPTER 67:
THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999

Article

ARTICLE I:
IN GENERAL

SEC. 67.1. FINDINGS AND PURPOSE.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist 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.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) 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.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.2. CITATION.

This Chapter may be cited as the San Francisco Sunshine Ordinance.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

ARTICLE II:
PUBLIC ACCESS TO MEETINGS

SEC. 67.3. DEFINITIONS.

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

(a) "City" shall mean the City and County of San Francisco.

(b) "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 other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

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

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(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, 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; or

(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. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

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

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the Charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

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

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

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

(7) 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Editor's note

**The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.*

SEC. 67.4. PASSIVE MEETINGS.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

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

(b) 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 as provided in Subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who

have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 67.7(c), and mailed notice if sufficient time permits.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description

should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) 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, 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.

(e) Notwithstanding Subdivision (d), the 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 a threat to public health and safety.

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

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

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

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

KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE
(Chapter 67 of the
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION
ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION

OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.
(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.
(Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

SEC. 67.8. 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 posted pursuant to Government Code Section 54954.2, 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 specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:
LICENSE/PERMIT DETERMINATION:
_____ applicant(s)
The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:
CONFERENCE WITH REAL PROPERTY
NEGOTIATOR
Property:
Person(s) negotiating:

Under negotiation:
Price: _____ Terms of payment: _____ Both: _____

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.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL
Existing litigation:
_____ Unspecified to protect service of process
_____ Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL
Anticipated litigation: _____ As defendant _____ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, 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, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to 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.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES
Name, title and agency of law enforcement officer(s) to be conferred with:
or:
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 DISMISSAL
Number of employees affected:
or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:
CONFERENCE WITH NEGOTIATOR
COLLECTIVE BARGAINING
Name and title of City's negotiator:
Organization(s) representing:
_____ Police officers, firefighters and airport police
_____ Transit Workers
_____ Nurses
_____ Miscellaneous Employees
Anticipated issue(s) under negotiation:
_____ Wages
_____ Hours
_____ Benefits
_____ Working Conditions
_____ Other (specify if known)
_____ All
Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

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 adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.

(a) 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 TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance 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.
(Added by Proposition G, 11/2/99)

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

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

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.10. CLOSED SESSIONS: PERMITTED TOPICS.

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent

contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) 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.

(1) 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. 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.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

SEC. 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session,

the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this Article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this Article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this Article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open 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 agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in Subdivision (b) of this Section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(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 as the result of a consultation pursuant to Government Code Section 54956.9 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 or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(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 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting 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, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents 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 pursuant to Government Code Section 54957 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 of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. 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 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) 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 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.

(d) 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may

not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds $20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

SEC. 67.14. VIDEO AND AUDIO 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, in the absence of a reasonable finding of the policy body that the

recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99; Ord. 80-08, File No. 071596)

SEC. 67.15. 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, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, 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 since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) 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 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. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.16. MINUTES.

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

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

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

ARTICLE III:
PUBLIC INFORMATION AND PUBLIC RECORDS

SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

(b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

(c) "Supervisor of Records" shall mean the City Attorney.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375-96, App. 9/30/96; Proposition G, 11/2/99)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester 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 or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

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

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records 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 5 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.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above 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 Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 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. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine 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 5 days, the Sunshine 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 Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine 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.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. 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.

(g) 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.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance 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 least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access 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.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code

Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary 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 easily 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. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably 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 where the release of that information would violate a licensing agreement or copyright law.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize 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 section. 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 shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

SEC. 67.22. 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.

(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 shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) 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.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.23. PUBLIC REVIEW FILE – POLICY BODY COMMUNICATIONS.

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter 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 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two

full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) **Drafts and Memoranda.**

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) **Litigation Material.**

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

(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 previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) **Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(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:

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

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

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

(6) 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.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) **Law Enforcement Information.**

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

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

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

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

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

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) **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 seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. 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. 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.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(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 and County of five hundred thousand dollars ($500,000) or more or having a term of ten years or more; or

(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. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors 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 Article.

(f) **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.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information 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. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(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 warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following 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 article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt 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.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County 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 as soon as 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 Article.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.26. 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 under express provisions of the California Public Records Act or of some other statute. 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, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review. 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.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

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

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, 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.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.28. FEES FOR DUPLICATION.

(a) No fee shall be charged for making public records available for review.

(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 costs.

(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.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in Subdivision (b) and the 10 cent 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.

(e) Video copies of video recorded meetings shall be provided to the public upon request for $10.00 or less per meeting.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

SEC. 67.29. INDEX TO RECORDS.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, 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 information maintained, by which officials and departments, for which purposes and for what periods of retention, 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. Any such master 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. The City Administrator shall be responsible for the preparation of this records index. The City Administrator 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 Administrator 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 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 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 and County. 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 Administrator shall be recorded by the City Administrator 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 World Wide Website and made available at public libraries within the City and County of San Francisco.
(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.29-1. RECORDS SURVIVE TRANSITION OF OFFICIALS.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco.
(Added by Proposition G, 11/2/99)

SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.
(Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall

provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

SEC. 67.29-4. LOBBYIST ON BEHALF OF THE CITY.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least $300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on maters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying 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.

(Added by Proposition G, 11/2/99)

SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.

(a) The Mayor, City Attorney, Treasurer, Assessor-Recorder, District Attorney, Public Defender, Sheriff, every member of the Board of Supervisors, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, either in person or by teleconference or other electronic means, 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 recorded, 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.

(b) For meetings or events with ten or fewer attendees, the calendar shall also identify the individual(s) present and organization(s) represented at the meeting or event if known by the official, unless the official is aware that the information would reveal the identity of a confidential whistleblower, would interfere with an individual's right to petition government where the individual has sought and been assured confidentiality, would disclose the attendance of members or representatives of a labor organization at a meeting to discuss matters within the scope of representation, as that term is defined in California Government Code Section 3504, would reveal personnel information not subject to disclosure, or is otherwise exempt from disclosure under State and local law.

(c) At any meeting or event with ten or fewer attendees, officials subject to subsection (a) of this Section 67.29-5 shall attempt to identify names of attendees present, and the organizations they represent; provided that an official shall not require any attendees to identify themselves, unless the official is aware that those attendees are campaign consultants registered with the Ethics Commission under Campaign and Governmental Conduct Code Article I, Chapter 5; lobbyists registered with the Ethics Commission under Campaign and Governmental Conduct Code Article II, Chapter 2[1]; permit consultants registered with the Ethics Commission under Campaign and Governmental Conduct Code Article III, Chapter 4; Developers of Major Projects, as defined in Campaign and Governmental Conduct Code Section 3.510, if the Major Project is discussed at the meeting or event; and employees or representatives of any entity that has received a grant from or entered a contract with any City department within the previous 12 months. The official has no duty to ascertain whether any attendees fall into these categories. Within three business days after a meeting or event subject to this subsection (c), the official shall update the daily calendar to include the names of the attendees and organizations identified by or known to the official.

(d) For the purpose of calculating the total number of attendees at a meeting or event under subsections (b) and (c), an official shall not include himself or herself.

(e) The obligations imposed under subsections (b) and (c), and the obligations imposed upon members of the Board of Supervisors under subsection (a), shall not apply to meetings or events where City business is discussed only incidentally; to unplanned, casual conversations with residents; to campaign-related meetings, events, and appearances; or to meetings or events where all attendees are employees or officers in the official's City department, which for members of the Board of Supervisors shall mean that all attendees are members of the Board of Supervisors, legislative aides, or employees of the Office of the Clerk of the Board. Officials are not in violation of subsections (b) or (c), and members of the Board of Supervisors are not in violation of subsection (a), if they have made a good faith effort to comply with their obligations thereunder.

(Added by Proposition G, 11/2/99; amended by Ord. 118-15 , File No. 150156, App. 7/15/2015, Eff. 8/14/2015)

CODIFICATION NOTE

1. So in Ord. 118-15.

SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.

No official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City.
(Added by Proposition G, 11/2/99)

SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.
(Added by Proposition G, 11/2/99)

ARTICLE IV:
POLICY IMPLEMENTATION

SEC. 67.30. THE SUNSHINE ORDINANCE TASK FORCE.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. 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 appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. 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. Two members shall be members of the public experienced in consumer advocacy. 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. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City 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 Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. 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 a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors 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 Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and

review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

SEC. 67.32. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting

of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.
(Added by Proposition G, 11/2/99)

SEC. 67.33. DEPARTMENT HEAD DECLARATION.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.
(Added by Proposition G, 11/2/99)

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.
(Added by Proposition G, 11/2/99)

SEC. 67.35. ENFORCEMENT PROVISIONS.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

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

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.
(Added by Proposition G, 11/2/99)

SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.
(Added by Proposition G, 11/2/99)

SEC. 67.37. SEVERABILITY.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, 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.
(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Item 5 - Attachment 4

San Francisco
Ethics Commission

25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013
Includes amendments effective November 22, 2013

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CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

A. "Brown Act" means California Government Code section 54950, et seq.

B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.

C. "California Public Records Act" means California Government Code section 6250, et seq.

D. "City" means the City and County of San Francisco.

E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.

F. "Commission" means the Ethics Commission.

G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.

H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.

I. "Custodian" means a City officer or employee having custody of any public record.

J. “Day” means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. “Deliver” means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. “Elected official” shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. “Executive Director” means the Executive Director of the Commission or the Executive Director's designee.

N. “Exculpatory information” means information tending to show that the Respondent has not committed the alleged violation(s).

O. “Order of Determination” means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. “Public Records” means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. “Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. “Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. “Sunshine Ordinance” means San Francisco Administrative Code section 67.1, et seq.

T. “Task Force” means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. “Willful violation” means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or

b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.

2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.

3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.

4. This Chapter will govern:

a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and

b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.

5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:

a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or

c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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