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MEMORANDUM

TO: Mayor Edwin M. Lee
Members of the Board of Supervisors
All Department Heads

CC: Members of the Ethics Commission
Members of the Sunshine Ordinance Task Force

FROM: Jon Givner
Deputy City Attorney JG

DATE: August 7, 2015

RE: Public Calendar Requirements for Elected Officials and Department Heads

The Sunshine Ordinance, as amended by the voters in 1999, requires the Mayor and all City department heads to keep and maintain daily calendars. (S.F. Admin. Code § 67.29-5.) These calendars are public records subject to disclosure upon request. The Board of Supervisors (the "Board") may amend the voter-approved sections of the Sunshine Ordinance to impose greater disclosure obligations on City officials, but the Board may not adopt a law that contradicts the voter-approved measure or reduces the obligations that the measure places on City officials.

Last month, the Board adopted Ordinance No. 118-15, which imposes new requirements for daily calendars and extends calendar requirements to members of the Board. This ordinance does not decrease the existing requirement to prepare and maintain daily calendars, but it adds new duties for the Mayor, members of the Board, and department heads. The new ordinance becomes effective on August 14, 2015. This memorandum provides an overview of the new daily calendar requirements. For advice about specific entries in the daily calendar, please contact the City Attorney's Office.

Who must keep a daily calendar?

The Mayor, each member of the Board, and every department head—whether elected or appointed—must prepare and keep a daily calendar.

What meetings and events must be listed on the daily calendar?

Generally, the daily calendar must include every meeting or event that the official attended in person, by teleconference, or by other electronic means, such as Skype. There are two types of exceptions to this rule:

- The calendar need not include purely personal or social events, provided that (1) no City business is discussed, and (2) the event does not take place at City offices or at the office or residence of a person who does substantial business with the City or is substantially financially affected by City actions. This exception applies to all officials who must keep and maintain a daily calendar.

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- Consistent with the general exception described above, the ordinance provides more specific exceptions for members of the Board. Board members' calendars need not include (1) meetings or events where City business is discussed only incidentally; (2) unplanned, casual conversations with residents; (3) campaign-related meetings, events, and appearances; or (4) meetings or events where all attendees are members of the Board, legislative aides, or employees of the Office of the Clerk of the Board.

What information must be included with each daily calendar entry?

For each entry, the daily calendar must include:

- The time of the meeting or event;
- The place of the meeting or event;
- Names of attendees and the organizations they represent, as specified below; and
- A general statement of the issues discussed, as long as the information is not confidential or privileged as a matter of law. If a recording of the meeting or event is available to the public (for example, a public meeting of the Board), then the official is not required to include a statement of issues discussed.

What information must the daily calendar include regarding attendees?

For meetings with more than ten attendees, names of the attendees and the organizations they represent need not appear on the daily calendar. For meetings with ten or fewer attendees, the calendar must include names of the individuals present and the organizations they represent, if known to the official. The calendar need not include names of individuals and organizations at meetings where:

- Disclosure would reveal confidential information protected by other laws, such as (1) the identity of a confidential whistleblower, (2) personnel information; (3) the identity of a person petitioning the government where the individual has reasonably sought and been assured confidentiality, and (4) the identity of union members or representatives at a meeting to discuss matters within the scope of representation;
- City business is discussed only incidentally;
- The meeting is an unplanned, casual conversation with residents;
- The meeting is campaign-related; or
- All attendees are employees or officers in the official's City department.

When calculating how many people attended a meeting, all attendees other than the official preparing the calendar entry should be counted.

What if the official doesn't know the names or identities of people who attended a meeting with ten or fewer attendees?

The official must make a good faith effort to identify the individuals at the meeting and the organizations they represent. The official can meet this obligation by asking attendees to

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identify themselves at the meeting, circulating a sign-in sheet, or asking the person who organized the meeting to prepare a list. While the official should ask all attendees to identify themselves, the official need not require disclosure unless the official knows that the attendees fall into one of the following categories:

- Lobbyists, campaign consultants, or permit consultants registered with the Ethics Commission;
- Employees or representatives of an entity that has received a grant from or entered into a contract with any City department within the previous 12 months; or
- Sponsors for a development project for which the Planning Commission or another City agency has certified an environmental impact report and that has estimated construction costs exceeding \$1,000,000.

A sample sign-in sheet is attached to this memorandum.

What should the official do when attendees do not sign in or disclose their identities?

If the official knows the identities of attendees or the organizations they represent, the official should include that information on the daily calendar as long as this disclosure would not reveal confidential information, as described above.

Does the official have to prepare a daily calendar before a meeting or event occurs?

No. Officials must complete the required entries within three business days *after* the meeting or event takes place.

How long must an official keep a copy of the daily calendar?

An official must keep a copy of the daily calendar for two years after the date of the meeting or event, unless the department's record retention policy mandates a longer retention period.

