

**CITY OF MANHATTAN BEACH
AD HOC OPEN GOVERNMENT SUBCOMMITTEE MEETING
THURSDAY, AUGUST 30, 201, 6:30 P.M.
CITY COUNCIL CHAMBERS, CITY HALL
1400 HIGHLAND AVENUE
MANHATTAN BEACH, CA 90266**

AGENDA

***WELCOME . . .** By your presence, you are participating in the process of representative government. To encourage that participation, the subcommittee encourages and has specified time for public comments on its agenda at which time members of the public may address the subcommittee on matters relating to the open government process. The subcommittee consists of two members of the City Council (Mayor Pro Tem Lesser and Councilmember Howorth) who have been asked by the City Council to develop recommendations with respect to open government. The subcommittee's recommendations will be considered by the City Council at a future City Council meeting.*

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.citymb.info (contact 310-802-5056), at the Los Angeles County Library located at 1320 Highland Avenue, the Police Department located at 420 15th Street and are also on file in the Office of the City Clerk for public inspection. Any person who has any question concerning any agenda item may call the City Clerk's office to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Office of the City Clerk at (310) 802-5056 (voice) or (310) 546-3501 (TDD).

A. CALL TO ORDER

B. PLEDGE TO FLAG

C. ROLL CALL

D. AUDIENCE PARTICIPATION

E. GENERAL BUSINESS

08/30/12-1. Approval of Action Minutes of the July 19, 2012, Ad Hoc Open Government Subcommittee Meeting.

08/30/12-2. Discussion and Direction Regarding Public Records Act Protocol.
Presented by Legal Counsel Roxanne Diaz

08/30/12-3. Discussion and Direction Regarding the Suspension of the Brown Act and Reaffirming the City's Commitment to Open Government and the Brown Act.
Presented by Legal Counsel Roxanne Diaz

08/30/12-4. Discussion and Direction on Current and Other Potential Open Government Initiatives.
Presented by Management Analyst Clay Curtin

08/30/12-5. Overview and Discussion of Sunshine Ordinances.
Presented by Legal Counsel Roxanne Diaz

F. ADJOURNMENT

**CITY OF MANHATTAN BEACH
ACTION MINUTES OF THE
AD HOC OPEN GOVERNMENT SUBCOMMITTEE MEETING
July 19, 2012
6:30 p.m.**

The Ad Hoc Open Government Subcommittee Meeting of the City Council of the City of Manhattan Beach, California, was held the 1^{9th} day of July, 2012, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City. A full video of this Ad Hoc Open Government Subcommittee Meeting can be accessed online at www.citymb.info.

A. Call Meeting to Order

B. Roll Call

Present: Councilmember Howorth and Mayor Pro Tem Lesser.
Absent: None.
Staff: David N. Carmany, City Manager
Roxanne Diaz Legal Counsel
Liza Tamura, City Clerk
Clay Curtin, Management Analyst

C. Audience Participation

Bill Victor
Gary McCauley
Ed Caprielian
Phil Reimert
Viet Ngo
Gerry O'Connor

D. General Business

07/19/12-1 Approval of the Minutes of the March 1, 2012, Ad Hoc Open Government Subcommittee Meeting

The following individuals spoke:

Ed Caprielian
Viet Ngo
Bill Victor
Gerry O'Connor

Motion by Councilmember Howorth to receive and file the minutes. Approved.

07/19/12-2 *Update Regarding Completed Open Government Initiatives*

The following individuals spoke:

Ed Caprielian
Gerry O'Connor
Bill Victor
Travis Grady
Viet Ngo

07/19/12-3 *Update Regarding Implementation of Granicus Modules*

Mayor Pro Tem Lesser and Councilmember Howorth held a discussion with staff about the Granicus Modules.

Mayor Pro Tem Lesser and Councilmember Howorth directed Staff to print a third copy of Agenda Packet to be placed in the lobby during City Council meetings for public review.

The following individuals spoke:

Travis Grady
Ed Caprielian
Gerry O'Connor
Travis Grady

07/19/12-4 *Update Regarding Website Redesign and the Information Systems Master Plan*

The following individuals spoke:

Bill Victor
Gerry O'Connor
Viet Ngo

07319/12-5 *Discussion and Direction Regarding Public Records Protocol*

The following individuals spoke:

Ed Caprielian
Bill Victor
Gerry O'Connor

Mayor Pro Tem Lesser and Councilmember Howorth directed staff to bring this item back on a future subcommittee agenda.

E. Adjournment



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Mayor Pro Tem Lesser and Council Member Howorth
Open Government Ad Hoc Committee

THROUGH: Quinn Barrow, City Attorney

FROM: Roxanne Diaz, Esq.

DATE: August 30, 2012

SUBJECT: Discussion and Direction Regarding Public Records Protocol

RECOMMENDATION:

It is recommended that the Open Government Ad Hoc Committee discuss the Public Records Act Protocol and provide comments and/or direction to Staff.

BACKGROUND:

In March 2011, the City Council entered into a settlement agreement with Richard McKee with regard to the lawsuit he filed seeking relief “for alleged violations of the Brown Act and the California Public Records Act.”¹ As part of the settlement agreement, the City agreed to “develop and adopt a protocol for responding to requests for public records which complies with the Public Records Act.”² While the settlement agreement delegated to the City Manager the authority to develop and adopt a Public Records Act protocol, Staff believes it would be appropriate for the Open Government Ad Hoc Committee to provide its input on the protocol prior to implementation.

DISCUSSION:

The California Public Records Act codified at Government Code Section 6250 et. seq., is a California statute that affords the public the right to obtain a copy of and the right to inspect most government records retained by State and local agencies. The fundamental principal is that records of a state or local agency (as defined by the Public Records Act) shall be disclosed to the public upon request, unless there is a legal basis not to do so.

The Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. Accordingly, the proposed Public Records Act Protocol (“Protocol”) is a formal written policy affirming the public’s right to access records as well as set forth the procedures by which such records will be made available to the public. The Protocol also describes the process for City Staff to follow when responding to requests for public records. The Protocol is summarized below.

¹ Recital C of the Settlement Agreement and Release dated March 15, 2011

² Section 1(a)(iv) of the Settlement Agreement and Release dated March 15, 2011.

Procedures for Making Public Records Act Requests.

The Protocol provides that requests for public records should be made on a “Request for Public Records Form” (“PRA Form”) and be submitted to the City Clerk’s Office. If a request for public records, however, is not placed on the PRA Form, the City cannot deny the request. The Protocol recognizes that public records requests come in variety of ways such as email, phone requests, fax, letter and in person. In cases where the requestor does not complete the PRA Form, the PRA Form shall be filled out by City Staff. The central reason for the PRA Form is to reduce any misunderstandings between the requestor and City Staff as to what records are sought. The PRA Form also serves as the basis for tracking requests to ensure that Staff responds to records requests in a timely manner and with greater efficiency.

Under the Public Records Act and as reflected in the Protocol, persons making requests should specify the records to be copied or inspected with sufficient detail to allow the city to identify the responsive public records. If City Staff determines that the request is unfocused or not clear, it is the role of the Staff to make a reasonable effort to obtain information from the requestor to clarify the request or otherwise assist the requestor in identifying records that may be responsive to a request. This is more fully discussed in Section IV.C. of the Protocol.

Last, the Protocol recognizes that the public has the right to not only request a copy of a public record, but that the public may also request to “inspect” a public record. Accordingly, the Protocol provides that public records are open to inspection during regular City business hours. The City, however, does not maintain a centralized system for all City records. Therefore the Protocol provides that requests for inspection of specifically identified and readily available public records should be handled as soon as possible, ideally on the day they are requested. However, some requests may require the City to locate, review and assemble records before fulfilling the request. Therefore in such cases it is likely that inspection will not be contemporaneous with the request.

Procedures for Processing Public Records Act Requests.

The Protocol centralizes the processing and handling of public records requests in the Office of the City Clerk. Under the Protocol, the City Clerk’s office is responsible for accepting public records requests as well as transmitting responses and responsive public records to persons making a request. The Public Records Act provides that a local agency has 10 calendar days from receipt of the public records request to notify the requestor “whether the request, in whole or in party, seeks copies of discloseable public records in the possession of the [city]. . . .” Accordingly, the Protocol provides that the process for handling records requests shall be implemented within the ten days after receipt of a request. The process is summarized below:

1. Upon receipt of a public records request, the City Clerk’s Office enters the request into the “Public Records Act Request Log.”
2. The City Clerk’s Office forwards the request to the appropriate City department for processing.
3. The designated department employee(s) reviews the request and its files to determine whether the department has the requested public records in its possession.

4. If the department determines it has responsive public records, the department is required to contact the City Clerk to provide an estimated amount of time needed to prepare the records and an estimate of the copying charges if possible.
5. If the department determines that it does not maintain any responsive records, the department must immediately notify the city clerk.
6. After receipt of the information from the department, the City Clerk responds to the requestor by advising the requestor in writing whether the request, in whole or in part, seeks copies of discloseable public records in the possession of the City. The City Clerk shall also provide an estimated date as to when the records will be made available and the estimated copying charges, if available.

Although the Act prescribes the time for responding to a records request, the law does not provide a specific time-frame in which a local agency is required to disclose the records. The Act provides that copies of records must be provided “promptly.” That said, the Protocol requires the department to provide the City Clerk with the estimated amount of time needed by the department to prepare the records (i.e. search for, gather, review and copy the records). The expectation is that the department will forward the responsive records to the City Clerk within this time-frame so that the City Clerk can make those records available to the requestor upon the payment of the fees to cover the costs of duplication.

If a request for public records is denied in whole or in part, the requestor must be notified in writing.

CONCLUSION:

In conclusion, it is recommended that the Open Government Ad Hoc Committee discuss the Public Records Act Protocol and provide comments and/or direction to Staff

Attachments: A. Public Records Act Protocol
B. Public Records Request Log

CITY OF MANHATTAN BEACH
PUBLIC RECORDS ACT PROTOCOL

I. INTRODUCTION/PURPOSE

The California Public Records Act (“Act”) is the State law that establishes and guides the public’s right to access records concerning the conduct of the people’s business. The purpose of this protocol (known as the “Public Records Act Protocol”) is to affirm in writing the public’s right to access City Public Records and to set forth the procedures by which such Public Records will be made available to the public in accordance with the Act. City Staff receives requests for Public Records frequently. Responding promptly and appropriately to public records requests is an important aspect of the City’s open government process.

II. GENERAL RESPONSIBILITIES

The City Clerk’s Office shall be responsible for accepting Public Records requests from members of the public and transmitting responsive records to the person making a Public Records request. Each department shall be responsible for providing the City Clerk with Public Records under the Department’s control.

III. DEFINITIONS

- A. City Clerk shall mean the City Clerk of the City of Manhattan Beach or her designee.
- B. Public Records includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by the City of Manhattan Beach regardless of physical form and characteristics.
- C. Writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.

IV. PROCEDURES FOR MAKING PUBLIC RECORDS ACT REQUESTS

- A. Public Records Act requests can come in different forms: (i) letter requests; (ii) email requests; (iii) fax requests; (iv) phone requests; and (v) requests made in person.

- B. Requests to be Submitted to the City Clerk's Office. Requests for Public Records should be made on the Request for Public Records Form ("Form") and should be submitted to the City Clerk's Office. Written requests reduce any misunderstandings between the requestor and City Staff, which allows City Staff to respond to records requests in a timely manner and with greater efficiency. However, the City will not deny a request for Public Records solely because it is not submitted in writing.
1. If the Form is not completed by the person making the request, the Form should be prepared by City Staff and if applicable, City Staff should attach the letter, email, or other writing prepared by the requestor. If a request is received by phone or made in person and the person making the request is unable or unwilling to complete the Form, the Form should be prepared by City Staff. A notation should be made on the Form stating the manner by which the request was received.
 2. Requests for inspection and/or copies of specifically identified and readily available Public Records such as limited sections of City regulatory documents, specific sections of the Zoning Code, and specifically identified resolutions, do not require completion of the Form, and such requests should be handled as soon as possible and copies provided expeditiously, ideally on the day they are requested.
 3. If City Staff must search and examine files or collect records from a variety of departments, or the request requires research as to the existence of the requested Public Records and/or their location, a Form should be completed.
- C. Requests Should Identify the Public Records. The person making the request should, in writing, specify the Public Records to be inspected/copied with sufficient detail to enable the City to identify the particular Public Records. If the request seems ambiguous or unfocused, City staff should make a reasonable effort to obtain additional clarifying information from the requestor that will help identify the Public Record(s). Pursuant to Government Code Section 6253.1, City staff shall do all of the following, to the extent reasonable under the circumstances:
1. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
 2. Describe the information technology and physical location in which the records exist.

3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
- D. Right to Inspect Public Records. Public Records are open to inspection at all times during regular City business hours. The Public Records Act provides that every person has a right to inspect any public record, except as otherwise provided in the Act. Upon receipt of a written or oral request for inspection of Public Records, the City shall make the records promptly available to the requestor. However, the City does not maintain a centralized system for all City records. Therefore, some requests to inspect records may require that the City locate, review and assemble records before fulfilling the request.
 - E. Any department that receives a request for a copy of Public Records shall time stamp the request and promptly forward the request to the City Clerk's Office.

V. PROCEDURES FOR HANDLING PUBLIC RECORDS ACT REQUESTS.

The City Clerk, upon a request to inspect or obtain a copy of Public Records, shall, within ten (10) days, determine whether the request, in whole or in part, seeks disclosable Public Records in the possession of the City. The ten (10) day time period shall be calculated from the date the request is received during regular City Hall business hours. The following procedures shall be followed within the ten days after receipt of a request.

- A. Upon receipt of a request, the Clerk's Office shall immediately enter the request into the "Public Records Act Request Log" maintained by the City Clerk's Office. The City Clerk shall then forward the request to the appropriate Department Head or department designee.
- B. Upon receipt of the Public Records request by the Department Head or designee, the department shall promptly begin reviewing the request and department files to determine if the department has the requested Public Records in its possession. The Department Head or designee may note his or her calendar with the last date to respond to the request as required under Government 6253(c). The department shall contact the City Clerk to provide an estimated amount of time needed to prepare the records (i.e. search for, gather, review and copy the records), and an estimate as to the duplication charges (if possible). If the request seeks a voluminous amount of Public Records, the department shall contact the City Clerk's office prior to preparing the records. If the department has determined that it does not maintain any Public Records responsive to the request, the department shall immediately notify the City Clerk.
- C. Upon receipt of the information from the department, the City Clerk shall respond to the person requesting Public Records by advising the

requestor in writing as to whether the request, in whole or in part, seeks copies of disclosable Public Records in the possession of the City, and if so, the estimated date and time when the records will be made available and the estimated duplication charge (if available). This determination shall be communicated to the requestor within the 10 day time period. The City is required to make the Public Records promptly available to any person upon payment of fees covering the direct costs of duplication, or a statutory fee if applicable.

- D. Requests that are related to pending or potential litigation shall be coordinated with the City Attorney's office. Questions regarding the Public Records Act or regarding whether or not any Public Record is subject to disclosure shall promptly be forwarded to the City Attorney's Office for review.
- E. In unusual circumstances, the 10 day period for determining whether the request, in whole or in part, seeks copies of disclosable Public Records in the possession of the City, may be extended by written notice from the City Clerk or City Attorney to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be made in the manner set forth in Government Code Section 6253. No notice shall specify a date that would result in an extension for more than 14 days. The written determination shall include the estimated date and time when the Public Records shall be made available.
- F. If a request for Public Records seeks the production of records or documents that are not in existence at the time the request is made, the City is not obligated to create a document in order to respond to the request.
- G. A determination that a Public Record is exempt from disclosure under the Public Records Act shall be made in consultation with the City Attorney's office.

VI. TRANSMITTAL OF RECORDS

- A. Unless otherwise directed by the City Clerk, the department shall forward the Public Records and the final cost of duplication to the City Clerk within the time period estimated by the department.
- B. The City Clerk's office shall then make the Public Records available to the requestor upon payment of fees covering the direct costs of duplication or a statutory fee, if applicable.

VII. GENERAL

- A. Each Department shall designate a person or persons, who will be responsible for responding to Public Records Act requests and coordinating the response with other City Departments, when appropriate.
- B. If a request for Public Records is denied in whole or in part, the denial shall be in writing and shall contain the names and titles or positions of each person responsible for the denial as required by Government Code Section 6253(d) and 6255(b).
- C. Nothing in this Public Records Act Protocol shall be construed to permit the City to delay or obstruct the inspection or copying of Public Records, nor shall the Public Records Act Protocol be construed as limiting the City's rights under the Public Records Act and applicable case law.

- VIII. ATTACHMENT: Public Records Request Transmittal Form
 Sample of Public Records Act Request Log

APPROVED:

City Manager

PUBLIC RECORDS ACT REQUESTS -TRACKING LOG 2012

DATE OF REQUEST	DATE RECEIVED	REQUESTOR	SUBJECT	ACTION TAKEN	APPROX. STAFF COSTS INCURRED
1/5/2012	1/5/2012	Rob Stone LA Times	Contracts for trash hauling services for 2010 and 2011	Response provided on 1/13/12. Ms. Sewell paid and picked up copies on 1/16/12. Completed.	
1/11/2011	1/11/2012	Employee Association	Request copy of audio recordings of the December 19, 2011 City Council Meeting and the January 3, 2012 City Council Meeting	Requestor paid for audio cd on 1/12/12. Completed.	
1/26/2012	1/30/2012	Joe Smith	Request copy of job descriptions and job requirements for City		
1/30/2012	1/30/2012	Tara Adams	Copy of claim filed with Southern California Edison for fire last fall	1/31/12 notified requestor of total copy charges. Payment made and documents mailed on 2/01/12.	
2/3/2012	2/4/2012	Christopher Smith	Public Correspondence on dog beach		



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Mayor Pro Tem Lesser and Council Member Howorth
Open Government Ad Hoc Committee

THROUGH: Quinn Barrow, City Attorney

FROM: Roxanne Diaz, Esq.

DATE: August 30, 2012

SUBJECT: Discussion and Direction Regarding the Suspension of the Brown Act and Reaffirming the City's Commitment to Open Government and the Brown Act

RECOMMENDATION:

It is recommended that the Open Government Ad Hoc Committee discuss the suspension of certain provisions of the Brown Act and reaffirm the City's commitment to open government and continued compliance with the Brown Act.

BACKGROUND:

As part of the 2012-13 State Budget, adopted on June 27, 2012, the Legislature suspended certain state mandates, which include certain provisions of the Brown Act, for fiscal years 2012 —2015. Notwithstanding the suspension, the City has continued to comply with the suspended provisions of the Brown Act.

DISCUSSION:

AB 1464, which was adopted on June 27, 2012 as part of the 2012-13 State Budget, contains a schedule of reimbursable state mandates that are suspended during the 2012-2013 budget year. The Brown Act is included on the schedule of suspended state mandates, but AB 1464 does not explain the nature or the extent of the suspension. In our opinion, the following provisions of the Brown Act are suspended:

- Preparation and posting at least 72 hours before a regular meeting of an agenda that contains a brief general description of each item of business to be transacted or discussed at the meeting. (See Gov. Code Section 54954.2(a).)
- Inclusion on the agenda of a brief general description of all items to be discussed in closed session. (See Gov. Code Section 54954.2(a).)
- Disclosure of each item to be discussed in closed session in an open meeting, prior to any closed session. (See Gov. Code Section 54957.7 (a).)

- Report in open session prior to adjournment on the actions and votes taken in closed session regarding certain subject matters. (See Gov. Code Sections 54957.1 (a)(1)-(4), (6); 54957.7 (b).)
- Provide copies to the public of certain closed session documents. (See Gov. Code Section 54957.1 (b)-(c).)

Our conclusion is based on an express reference in AB 1464 to two prior decisions of the Commission on State Mandates in which the Commission determined that these requirements of the Brown Act impose reimbursable mandates on local governments. By referencing the Commission's decisions, the Legislature appears to have intended to suspend only these same requirements. The remainder of the Brown Act therefore remains in effect and meetings of local legislative bodies must continue to be open and public.

Senate Bill 1006, which was enacted the same day as AB 1464, amended Section 17581 of the Government Code by adding the following language: "All state-mandated local programs suspended in the Budget Act for the 2012-13 fiscal year shall also be suspended in the 2013-14 and 2014-15 fiscal years." The suspension of these certain Brown Act provisions will therefore last 3 years.

This suspension is not unprecedented. These same Brown Act requirements were suspended in 1990, at which time most cities reported they would continue to comply with all requirements of the Brown Act regardless of the suspension. Most cities today are likely to likewise judge that the consequences of non-compliance outweigh any benefits. Recently, the League of California Cities Board of Directors adopted a resolution urging cities to comply with all of the requirements of the Brown Act despite the State's decision, for fiscal reasons, to suspend requirements for certain portions of the Act.

As the Ad Hoc Committee is aware, the suspended provisions are central to the Brown Act and noncompliance with those provisions would unquestionably degrade transparency. Further, notwithstanding the lack of legal consequences, noncompliance may suggest that a city does not prioritize open government. For these reasons, the City of Manhattan Beach has continued to comply with all requirements of the Brown Act and staff will continue to do so in spite of the suspended provisions. Staff also notes that many city councils throughout California are not only continuing their compliance with the Brown Act but are also adopting resolutions affirming their city's commitment to the Brown Act despite the suspended provisions.

There are minor costs associated with complying with the suspended mandates. Also, the City will no longer be eligible for reimbursement for such costs during fiscal years 2012-2015.

CONCLUSION:

It is recommended that the Open Government Ad Hoc Committee discuss and provide direction regarding the suspension of certain provisions of the Brown Act and reaffirm the City's continued compliance with the Brown Act.

Ref. #	Effectiveness Area	Implementation Timeline	City Council Approval Date	DESCRIPTION	How will this be accomplished	Project Lead	Admin. Challenges	Legal Challenges	\$\$\$ Impact	Current Status
1	Public Forums, Hearings, and Meetings	Short	1/3/2012	Send out reserved meeting notices as soon as a meeting is set, with the agenda to follow (e.g. color coded posting boards)	E-Notify, City Website	City Clerk	Scheduling of limited staff, unbudgeted expenses	None: exceeds legal minimum requirements		Implemented.
2	Public Forums, Hearings, and Meetings	Medium		Explore concept and limits of the use of special meetings (policy)	City Council Policy	City Attorney		City Attorney is Reviewing		Staff is researching.
3	Public Forums, Hearings, and Meetings	Short	1/3/2012	Train City Council and Staff on types of meetings (regular, special, emergency, etc)	1-page handout	City Attorney	None	None		Proposed Training Scheduled for Sept/Oct 2012.
4	Public Forums, Hearings, and Meetings	Short	1/3/2012	Include a schedule of upcoming meetings on each agenda	Modify the current Agenda Template	City Clerk	None	None		Implemented.
5	Public Forums, Hearings, and Meetings	Medium	6/5/2012	Provide for meeting broadcasting capabilities at the Police/Fire Conference Room, Joslyn Center, Library	Purchase of necessary equipment, additional I.S. Division staff required	I.S. Manager	Scheduling of limited staff, unbudgeted expenses	None	Cost of I.S. staff	City Council approved funding and implementation as part of the FY2012-2013 budget.
6	Public Forums, Hearings, and Meetings	Medium		Provide for interim recording of meetings held outside City Council Chambers	Small investment for equipment, and ongoing staffing	I.S. Manager	Scheduling of limited staff, unbudgeted expense	None	Cost of I.S. staff	Implemented. Selected City Council meetings will be recorded via camcorder and then converted to Granicus archive.
7	Public Forums, Hearings, and Meetings	Short	1/3/2012	Timely completion and posting of City Council, Subcommittee, and Commission meeting minutes	Staff will develop an administrative policy setting the desired turnaround time for meeting minutes and distribute to all departments responsible for commissions or development of minutes	City Clerk	Staffing, day to day operations interrupt this activity	None		Implemented.
8	Public Forums, Hearings, and Meetings	Short		Policy on the format of minutes (action vs. summary)	City Council Policy	City Clerk	Staffing, day to day operations interrupt this activity			Staff is researching. Action minutes along with individual speaker timestamps will be possible with the Granicus implementation by 9/4/12.
9	Knowledge Acquisition and Information Accessibility	Medium		Agenda Structure and Process	Survey other cities,	City Manager / City Clerk				Staff is researching.
10	Public Forums, Hearings, and Meetings	Longterm		Sticking to the Agenda						
11	Public Forums, Hearings, and Meetings	Short		Evaluate the policy on time limits for audience participation (currently policy of 3-min individual and 15-min cumulative is set by City Council resolution)	City Council Policy	City Clerk	None	City Attorney will review		Implemented. City Council approved (6/4/12) change to audience participation time limit policy by eliminating the cumulative time limit of 15 minutes.
12	Public Forums, Hearings, and Meetings	Short		Evaluate the order/placement of audience participation on the agenda; review other cities' audience participation models	City Council Policy	City Clerk	None			Implemented. See Item #11
13	Public Forums, Hearings, and Meetings	Short		Consent Calendar content (include routine items only)	Mayor and City Manager currently work together to set the agenda	City Manager	None			Staff is researching.
14	Public Forums, Hearings, and Meetings	Short	1/3/2012	Pulling of Consent items: City Council should pull 1 st with staff introduction of the item included: clarifying questions and statements that could be addressed quickly vs. pulling an item.	City Council Policy	City Clerk	None			Implemented.
15	Public Forums, Hearings, and Meetings	Short		Follow-up of items that need to be agendized for a future meeting: ensuring that items are brought back	Staff will make a list of items requested to be agendized during each City Council meeting and the list will be discussed at the first Dept Head meeting immediately following City Council meetings and items will be placed on the upcoming agenda list	City Manager / City Clerk	None	None		Staff is researching.
16	Knowledge Acquisition and Information Accessibility	Short	1/3/2012	Councilmembers provide oral report of conferences/travel (first meeting after the event – per AB1234) and written reports with attachments (cover page or outline plus supplemental materials) available for public review	Staff will develop a 1-page cover sheet for use by Councilmembers. They will have the ability to attach supplemental materials. This will be kept on file in the City Clerk's office for public review.	City Attorney	None	City Councilmembers will still be required to provide an oral report of their conferences / travel at the first meeting following a trip (per AB1234)		The City Attorney has finalized the 1-page form that will be used. Implementation is pending subcommittee review.
17	Knowledge Acquisition and Information Accessibility	Short		City Manager to report on conferences/travel of senior staff	Staff will develop a 1-page cover sheet for use by senior staff. They will have the ability to attach supplemental materials. This will be provided to the City Manager within 1-week of the event. City Manager will provide a brief oral summary of senior staff travel at the next City Council meeting under the City Manager's report.	City Manager		None		The City Attorney has finalized the 1-page form that will be used. Implementation is pending subcommittee review.
18	Public Forums, Hearings, and Meetings	Short		Staff Reports: how to or not to include the public/stakeholders	The City could adopt an administrative policy outlining staff report procedures	City Manger				Staff is researching

Ref. #	Effectiveness Area	Implementation Timeline	City Council Approval Date	DESCRIPTION	How will this be accomplished	Project Lead	Admin. Challenges	Legal Challenges	\$\$\$ Impact	Current Status
19	Knowledge Acquisition and Information Accessibility	Medium		Public Records Requests	Staff will develop an administrative policy setting Public Records Act procedures ensuring compliance with the law and timely response to all requests	City Clerk / City Attorney				Draft Administrative Policy awaiting subcommittee review.
20	Knowledge Acquisition and Information Accessibility	Medium		Provide written guidelines to staff and the public regarding the California Public Records Act and the Brown Act in accordance with the McKee settlement	Written guidelines in the form of a handout will be provided to staff and available for review by the public in the City Clerk's office	City Attorney	None	None		City Attorney is reviewing this.
21	Public Forums, Hearings, and Meetings	Medium		Electronic Community Discussion Board	Staff will bring options to the subcommittee and City Council for consideration	City Manager		City Attorney will review	Cost of I.S. staff	Staff is researching.
22	Public Forums, Hearings, and Meetings	Short	1/3/2012	Evaluation of Meeting Management Software/Technology Tools to aid in meeting operation and audience participation	Staff will bring to City Council options for enhancing current meeting management software.	City Clerk / I.S. Manager	unbudgeted expense, training of staff for new software; additional /dedicated I.S. staff support during City meetings	None	Cost of I.S. staff	Estimated completion by 9/4/12
23	Public Forums, Hearings, and Meetings	Medium	1/3/2012	Voting Touch Device	(included as part of meeting management software/technology)	City Clerk / I.S. Manager	unbudgeted expense, training of staff for new software modules; additional / dedicated I.S. & Clerk staff support during City meetings	None	Cost of I.S. staff	Estimated completion by 9/4/12
24	Public Forums, Hearings, and Meetings	Medium	1/3/2012	Public Timer	Implement solution related to Granicus	City Clerk / I.S. Manager	Granicus software configuration and training of staff	None		Staff is researching.
25	Public Forums, Hearings, and Meetings	Longterm	1/3/2012	Electronic Agenda Packets	Staff will bring to City Council options for implementation of an electronic agenda packet.	City Clerk / I.S. Manager	unbudgeted expense, training of staff for new software and/or procedures; additional I.S. staff support	None		Implementation to follow the Granicus deployment of 9/4/12 (See items #22-24)
26	Public Forums, Hearings, and Meetings	Longterm		Quarterly Work Plan updates at City Council meetings and ongoing updates posted to the City website	Modify the current Work Plan website page to a chart form that will be updated on an ongoing basis. An agenda item for "Work Plan Status Update" will be added to the City Council Agenda for the second regular meeting of each month: July, October, January, April.	City Manager	None	None		The Work Plan has been replaced by the Strategic Plan. The City Council conducts Strategic Planning sessions every 6 months (Jan. & July) with Monthly Strategic Plan Updates placed on the City Council's agenda.
27	Public Forums, Hearings, and Meetings	Short	1/3/2012	Scheduling of Annual Work Plan Meetings	A Work Plan meeting to set the coming year's goals typically occurs in January of each year so that items requiring budgetary consideration will be vetted and presented during the budget process.	City Manager	None	None		See Item #26.
28	Open Government Consensus and Commitment Building	Medium		City Council and Staff Training	Review current training offerings, budgets, and opportunities provided to City Council and staff	City Manager / Human Resources Director		None		Staff is researching.



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Mayor Pro Tem Lesser and Council Member Howorth
Open Government Ad Hoc Committee

THROUGH: Quinn Barrow, City Attorney

FROM: Roxanne Diaz, Esq.

DATE: August 30, 2012

SUBJECT: Overview and Discussion of Sunshine Ordinances

RECOMMENDATION:

It is recommended that Legal Counsel provide an overview of what is a “Sunshine Ordinance” and the Ad Hoc Open Government discuss and provide comments.

BACKGROUND:

To protect transparency in government, every state in the United States has some type of law mandating that government business be conducted in open to which the public has access. These types of laws are sometimes referred to as “sunshine laws.”

In California, the Brown Act is California’s sunshine law. Passed in 1952, the Brown Act’s key provision remains unchanged 60 years after its adoption—it is a requirement that “all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” The remaining provisions of the Brown Act flow from this single sentence such as requirements for agenda posting, adequate agenda descriptions, distribution of written material, etc. The provisions work together to ensure transparency in government.

Merriam-Webster’s dictionary defines “transparency” as “fine or sheer enough to be seen through.” In the context of open government, transparency means that citizens must be able to “see through” the workings of local government. The Brown Act, the Public Records Act and to some extent the Political Reform Act ensure that the workings of local government are transparent and provide for a means for the public to participate in government.

A “sunshine ordinance” is not the same as a “sunshine law” although both have the same purpose. A sunshine ordinance takes a sunshine law and expands upon it or enhances it to create new local laws regarding meetings and sometime public records. This report provides a general overview of “sunshine ordinances” that have been adopted by various cities in California.

DISCUSSION:

As stated above, the Brown Act was created to ensure that local government business, such as meetings, are conducted in a public forum. The Public Records Act ensures that members of the public have timely access to public records. Both of these laws set the standards that cities and counties are required to follow. Sunshine ordinances are intended to supplement or enhance the provisions of the Brown Act and the Public Records Act. Of the 530 cities and counties in California, there are only a handful of public entities that have adopted their own sunshine ordinance and they are as follows: Alameda, Benicia, Berkeley, Contra Costa County, Gilroy, Milpitas, Oakland, Richmond, Riverside, San Bernardino County, San Francisco, San Jose and Vallejo.

A sunshine ordinance is not the type of ordinance that is “one size fits all.” While there may be a common theme among the ordinances, the ordinances are all different in scope and application. An ordinance for one city may not be the right type of ordinance for another city. For example, the sunshine provisions for the City of Riverside are located in the City’s Charter and are about one page long whereas the sunshine ordinance for the City of Alameda is 28 pages long and City of San Francisco is 39 pages long. The process for adoption is also not simple and it takes time to review and analyze the various provisions and its impact to the organization. While such ordinances are advanced to provide the public with greater opportunities to access public meetings and information, these ordinances also create special and additional obligations on city employees to ensure that these opportunities are satisfied.

Topics Addressed by Sunshine Ordinances

Based upon a general review of several sunshine ordinances, there are three aspects of open government that these ordinances generally address. They include the following: (1) the agenda process; (2) conduct of meetings; and (3) public records. Numerous sections of the various sunshine ordinances reviewed are simply a restatement of or repeat the provisions of the Brown Act. That is, the language recited in the sunshine ordinance does not enact any new or unique provision. Below is a general overview of the more prevalent provisions that are included in sunshine ordinances.

Posting:

- Berkeley has an agenda committee that meets 15 days prior to each council meeting which sets the agenda. Once the agenda is set, no item can be added without going through an additional process. The agenda packet is then required to be distributed 11 days prior to a regular meeting and no additional item may be placed on that agenda without going through an additional process.
- Vallejo does not have any special requirements and posts 3 days in advance.
- Alameda requires regular meeting agendas to be posted 12 days in advance of the council meeting and 7 days in advance of special meetings (with an exception for urgent matters).
- Benicia requires regular meeting agenda to be posted 6 days in advance of the council meeting and reports can be supplemented within 72 hours of the meeting.

Minutes:

- Benicia requires that minutes contain certain specified information and that draft minutes be available no later than 5 business days prior to meeting at which they are to be adopted.

- Alameda requires that minutes contain certain specified information and that draft minutes be available no later than 10 working days after the meeting.

Closed Session:

- Benicia requires that an announcement be made regarding the reasons for going into closed session and requires that the body explain and cite the statutory or case authority under which the closed session is held.
- Alameda requires that the agenda contain additional information regarding the closed session and that minutes be taken at the closed session by the City Clerk.
- Vallejo requires that an announcement be made regarding the reasons for going into closed session and requires that the body explain and cite the legal authority under which the closed session is held.
- Milpitas requires that for existing litigation items that the agenda identify the date the case was filed on the written agenda in addition to the court and case number.

Public Records:

In general, most of the ordinances reviewed eliminate a number of the statutory exemptions regarding public records. The more common theme relates to how quickly the public entity must respond to public records requests.

- Benicia requires requests be satisfied within 5 business days of receiving the request.
- Alameda provides that certain records are to be made available within 3 business days.
- Vallejo requires that if a request is received before noon, that the request be satisfied no later than the close of business that same day if the request is marked “immediate disclosure request.”

As stated previously, in general, sunshine ordinances create additional requirements that are undertaken by city employees to ensure that the ordinance provision is satisfied. It should be pointed out that in addition to a number of other policy considerations, compliance with sunshine ordinances is not without some additional cost to the local entity. For example, recent newspaper and other internet articles chronicle that San Francisco has expended \$3 million dollars towards satisfying the provisions of the Brown Act, with almost \$1million towards it own local sunshine ordinance. The City of Berkeley has stated that compliance with a proposed ordinance will cost \$1.5 to \$2 million dollars annually.

The above is a cursory summary of provisions common among the sunshine ordinances. I have included samples of several ordinances to provide the Ad Hoc Committee with a sense of the variety of ordinances that have been adopted throughout California. I also include a summary chart prepared by the City of Encinitas in 2009. This chart lists the applicable law, the practice of the City of Encinitas as it relates to the law, and a reference to ordinances that exceed state law. Encinitas reviewed 6 city ordinances and noted that many of the sunshine provisions adopted by those cities were restatements of existing law and thus the chart only included references to where a particular city actually adopted a provision that was unique.

CONCLUSION:

In conclusion, sunshine ordinances are adopted to enhance existing state law requirements. Legal counsel will be available to answer any questions.

Attachments:

- A. Sunshine Ordinance Adopted by City of Berkeley in February 2011
- B. Sunshine Ordinance Adopted by the City of Alameda
- C. Sunshine Ordinance Adopted by the City of Vallejo
- D. Sunshine Ordinance Proposed by Residents in the City of Berkeley
- E. Sunshine Ordinance Comparison Table Drafted by the City of Encinitas in June 2009

City of Berkeley - Exhibit A

Chapter 2.06

Chapter 2.06

OPEN GOVERNMENT

Sections:

Article I. General Provisions

- 2.06.010 Findings and purpose.
- 2.06.020 Definitions.
- 2.06.030 Severability.
- 2.06.040 Implementation.
- 2.06.050 No private cause of action.

Article II. City Council Agenda Process

- 2.06.060 City Council agenda process.
- 2.06.070 Agenda Packet distribution.

Article III. Conduct of City Council Meetings

- 2.06.080 Number of meetings--Start time--Public hearings.
- 2.06.090 Reports regarding regional bodies.
- 2.06.100 Broadcast of meetings.
- 2.06.110 Disclosure of ex parte contacts.
- 2.06.120 Closed sessions and litigation.
- 2.06.130 Presentation tools for the public.

Article IV. Public Records

- 2.06.140 Records available through the City's website.
- 2.06.150 Contributions to the City.
- 2.06.160 Large document borrowing.
- 2.06.170 Technology standards.
- 2.06.180 Posting of documents.

Article V. Oversight

- 2.06.190 Open Government Commission--Duties.

Article I. General Provisions

Section 2.06.010 Findings and purpose.

A. Democracy in our representative form of government requires that the public have an opportunity to understand the government's activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.

B. To the extent these goals are sometimes in tension with each other in a given case, the government's obligation is to balance them responsibly, under the circumstances, in such a way that it is able to function and carry out its mission of ensuring the public's health, safety and general welfare in a fiscally and environmentally sustainable manner.

C. Accordingly, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.020 Definitions.

The following words and phrases shall have the meanings specified below.

A. "Agenda" means a document that informs the public about a Meeting, published in advance of the Meeting which at a minimum (1) identifies the Legislative Body conducting the Meeting, (2) specifies the time and

location of the Meeting, and (3) lists each item of business to be discussed or transacted and describes the proposed action for each such item.

B. "Agenda Packet" means the Agenda of a particular Meeting with all its relevant Supporting Documents.

C. "Closed Session" means a Meeting that begins with a public comment period, followed by a session that excludes the public as permitted by state law, and ends with an open session at which a public report is made as and to the extent required by state law.

D. "Legislative Body" shall have the meaning set forth in Government Code sections 54950 through 54960, as they may be amended, or any successor sections.

E. "Meeting" shall have the meaning set forth in Government Code sections 54950 through 54960, as they may be amended, or any successor sections.

F. "Supporting Documents" means all documents, regardless of form or medium or author, that are provided to members of a Legislative Body for their use in considering Agenda items for a particular Meeting.

G. "Brown Act" means Government Code sections 54950 et seq., as they may be amended from time to time.

H. "Public Records Act" means Government Code sections 6250 et seq., as they may be amended from time to time. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.030 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof in any circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Council of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.040 Implementation.

The City Manager may promulgate regulations to implement this ordinance. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.050 No private cause of action.

Nothing in this chapter shall limit any person's right to seek a writ of mandate or other available administrative or judicial remedy. (Ord. 7166-NS § 1 (part), 2011)

Article II. City Council Agenda Process

Section 2.06.060 City Council agenda process.

A. The City Council Agenda Committee shall meet 15 days prior to each City Council meeting and shall determine the agenda of that City Council meeting. After the conclusion of the Agenda Committee meeting, an item may be added to the Agenda only by the City Council as a whole at a duly noticed meeting that occurs after the Agenda Committee meeting.

B. The Agenda Committee packet, including a draft agenda and Councilmember and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda Committee meeting.

C. The City Council Agenda Packet shall be distributed no later than 5:00 p.m. 11 days before the scheduled City Council meeting.

D. The powers of the Agenda Committee shall be as set forth in Rules of Procedure adopted by the City Council. The Rules of Procedure may allow for the addition of time-critical items at the Agenda Committee meeting provided they are accompanied by complete reports and statements of financial implications. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.070 Agenda Packet distribution.

A. The Agenda Packet shall consist of the Agenda and all supporting documents for the agenda items.

B. No later than 11 days prior to a regular Meeting, the City Clerk shall:

1. Distribute the Agenda Packet to each member of the City Council;

2. Post the Agenda Packet to the City's website;
 3. Place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library;
 4. Mail copies of the Agenda to any resident of the City of Berkeley who so requests in writing; and
 5. Make copies of the Agenda available free of charge in the City Clerk Department.
- C. Failure to post the Agenda or the Agenda Packet to the City's website shall not be a basis for cancelling a City Council meeting.
- D. The City Clerk may not accept any agenda item or revised agenda item after the established deadlines, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports.
- E. No item may be considered unless it is included in the Agenda Packet except that a correction or supplement to an item already included in the Agenda Packet may be considered, if the City Council, by a two-thirds vote, determines that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of an item. Reports carried over as Old Business need not be reproduced again.
- F. Matters not included on the published Agenda may be discussed and acted upon only if and to the extent authorized by the Brown Act, specifically Government Code section 54954.2(b) as it may be amended from time to time. (Ord. 7166-NS § 1 (part), 2011)

Article III. Conduct of City Council Meetings

Section 2.06.080 Number of meetings--Start time--Public hearings.

- A. The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.
- B. Regular City Council meetings shall begin no later than 7:00 p.m.
- C. Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.090 Reports regarding regional bodies.

Council members who represent the City on regional bodies and commissions shall, promptly after attending meetings of those bodies, provide to the City Council and the public a report that briefly summarizes the discussion and any action on any item that affects the City of Berkeley. Such reports shall state where additional information about the issues summarized may be obtained. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.100 Broadcast of meetings.

- A. All regular and special meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be recorded, televised and video-streamed live as well as archived for replay. The live broadcasts shall be captioned.
- B. It is the intent of the City to broadcast the meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission, in the same manner as specified in paragraph A, as City resources become available.
- C. The broadcast requirements shall not apply if necessary equipment malfunctions or if a public meeting is changed to a location that does not have the technological capacity to accommodate the broadcasting needs. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.110 Disclosure of ex parte contacts.

Whenever a Legislative Body holds a public hearing on a zoning, landmarks, subdivision or other adjudicative matter, following any staff presentation, each member of the Legislative Body shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the secretary to the Legislative Body prior to the Meeting and placed in a file available for public viewing at the Meeting. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.120 Closed sessions and litigation.

A. Before any Closed Session, a Legislative Body shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session.

B. Any member of a Legislative Body attending a Closed Session by teleconferencing is required to state at the beginning and end of the Closed Session that he/she is participating with no other person present and to file a signed statement to that effect under penalty of perjury, except that if a member of a Legislative Body is disabled and needs assistance to participate in a Closed Session, the City shall provide a staff assistant who is authorized to attend the Closed Session. Any specialized attendant or assistant, whom a disabled Council Member needs to have present in order to participate fully in the Closed Session shall be allowed to attend the Closed Session.

C. Immediately following the end of the Closed Session, the Legislative Body shall make a report in open session describing any final action taken as required by state law, as well as any other matter or statement the City Council decides to make. If the Closed Session is not followed the same day by a regular meeting of the Legislative Body, the report shall also be made at the next regular meeting.

D. The location of reports to the public after a Closed Session has ended shall be in a venue that is open to the public, and where practicable, one that supports video transmission, audio, and video-streaming.

E. Any report on final approvals taken in Closed Session shall be posted no later than the end of the following business day to the City's website.

F. When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any settlement shall be subject to disclosure. No attorney representing the City shall solicit or agree to any settlement provision that would restrict disclosure of terms or communications between each party after settlement and any such provision shall be void.

G. When settlements are authorized by the City Council at a Closed Session but are not reported out immediately following the end of the Closed Session, the City Attorney shall prepare an information item for the City Council Agenda promptly upon execution of the settlement, which shall include a copy of any settlement agreement. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.130 Presentation tools for the public.

Members of the public may use City equipment for audio/visual presentations for items on the meeting agenda of the City Council if the presentation is provided to the City Clerk no later than seven (7) days before the meeting, or five (5) days before for items carried over from a meeting that occurred the week immediately prior. Requests for presentation tools are subject to reasonable availability of any equipment that the proposed presentation would require. Presentations from the public shall comply with the time limits set forth in the City Council Rules of Procedure. (Ord. 7166-NS § 1 (part), 2011)

Article IV. Public Records

Section 2.06.140 Records available through the City's website.

A. The following shall be available through the City's website and shall be available in written form in the City Clerk Department:

- City Charter
- Berkeley Municipal Code
- General Plan and Area Plans
- Zoning Ordinance
- Landmarks Preservation Ordinance
- Citizen's Guide to Public Information
- Records Retention Schedule
- City Council Rules of Procedure
- Commissioner's Manual
- Conflict of Interest Code
- Statements of Economic Interest for filers under GC 87200
- Agendas and Minutes of the meetings of all Legislative Bodies
- Index of Regional Bodies on which the City is represented and the City Representatives who serve on them

B. All communications from the City Manager and department heads to other agencies on behalf of the City shall be available through the City's website at the same time they are provided to members of the City Council. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.150 Contributions to the City.

Any gift of funds, goods, or services worth more than \$1000 in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.160 Large document borrowing.

Large published documents produced by or on behalf of the City, such as City Budgets and environmental impact reports or statements prepared pursuant to the California Environmental Quality Act (CEQA) or the National Environmental Protection Act (NEPA), shall be available through the City's website and made available at designated City offices with copies available for borrowing by the public at the Berkeley Central Public Library. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.170 Technology standards.

A. To provide for the accessibility of electronic information on the City's website, the City shall:

1. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d) as it may be amended from time to time.
2. When feasible within resource constraints, use open, non-proprietary, standards-based data formats on public facing information systems. When platform-specific formats must be used, provide an alternate format or a viewer to consume the file types.
3. Make audio and video available for both download and streaming using open, cross-platform, standards-based formats, accessible by a broad range of computer operating systems and portable devices.
4. When feasible within resource constraints, avoid web content types that are not compatible across browsers (such as Flash).
5. Make substantive website changes trackable in an open, cross-platform, standards-based journal format (such as RSS).

B. Nothing in this Section shall require programming a computer to respond to a request for information or to release information that would violate a licensing agreement or copyright law. (Ord. 7166-NS § 1 (part), 2011)

Section 2.06.180 Posting of documents.

All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City's website no later than the close of business the following business day after the meeting for which the documents were submitted. (Ord. 7166-NS § 1 (part), 2011)

Article V. Oversight

Section 2.06.190 Open Government Commission--Duties.

A. There is hereby created the Open Government Commission, which shall have authority for oversight of this Chapter as set forth in this Section. The Open Government Commission shall consist of the members of the Berkeley Fair Campaign Practices Commission established by Berkeley Municipal Code section 2.12.170 who shall be ex officio members of the Open Government Commission.

1. The Open Government Commission shall:
 - a. hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act or the Public Records Act, by the City or any of its legislative bodies, officers or employees;
 - b. consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
 - c. seek advice from the City Attorney concerning those complaints; and
 - d. advise the City Council of its opinion, conclusion or recommendation as to any complaint.

Chapter 2.06

To be considered by the Open Government Commission, complaints shall be submitted in writing using a form provided by the City, and must be submitted to the Secretary of the Commission no less than 14 days prior to the Commission meeting at which it will be considered.

2. In addition, the Commission may advise the City Council concerning the report prepared pursuant to subdivision (C), propose additional legislation or procedures that it deems advisable to ensure the City's compliance with this Ordinance, the Brown Act and the Public Records Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.

B. The power and authority of the Open Government Commission with respect to oversight of this Chapter shall be limited to the functions set forth in this Section, and the Commission shall not have any of the additional authority or powers set forth in Chapter 2.12 with respect to oversight or enforcement of this Chapter.

C. Each year, the City Manager shall prepare and submit to the Open Government Commission a report that contains at least the following information:

1. The number of Public Records Act requests received by the City;
2. The average length of time taken to respond to those requests;
3. The approximate number of pages produced in response to those requests;
4. The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
6. Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, or open and effective government in Berkeley.

D. Notwithstanding anything to the contrary in Section 2.04.075 or Chapter 3.02, the appointment and tenure of members of the Commission shall be governed by Chapter 2.12. (Ord. 7166-NS § 1 (part), 2011)

CITY OF ALAMEDA

EXHIBIT B

ARTICLE VIII. - SUNSHINE ORDINANCE

- 2.90 - INTRODUCTION.
- 2-91 - PUBLIC ACCESS TO MEETINGS.
- 2-92 - PUBLIC INFORMATION.
- 2-93 - ENFORCEMENT PROVISIONS.

2.90 - INTRODUCTION.

This sunshine ordinance has been developed to codify the City of Alameda's public policy concerning participation in the deliberations of the City's legislative bodies and to clarify and supplement the Ralph M. Brown Act and the California Public Records Act and expanding its application and effectiveness to local governments. It is an affirmation of good government; and a continued commitment to open and democratic procedures. It is an effort to expand our citizens' knowledge, participation and trust. As procedures of government change and evolve, so also must the laws designed to guarantee the process remains visible. In addition, this ordinance will establish a mechanism for enforcement.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2.90.1 - Goal.

2-90.2 - Findings.

2.90.1 - Goal.

An informed public is essential to democracy. It is the goal of the ordinance codified in this article to ensure that the citizens of Alameda have timely access to information, opportunities to address the various legislative bodies prior to decisions being made, and easy and timely access to all public records.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-90.2 - Findings.

The Alameda City Council finds as follows:

- a. It is government's duty to serve the public, reaching its decisions in full view of the public, except as provided elsewhere in this article.

- b. Elected City officials, commissions, boards, advisory bodies, task forces and other agencies of the City exist to conduct the people's business. This article is intended to assure that the deliberations of these bodies and the City's operations are in full view of the public.
- c. It is the City's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.
- d. The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to a democracy, and with very few exceptions, which this article will clarify, that right supersedes any other policy interest government officials may use to prevent public access to information. In those rare and unusual circumstances where the business of government may be conducted behind closed doors, those circumstances must be carefully and narrowly defined to prevent any abuse.
- e. This article is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the City of Alameda can be fully informed and thereby retain control over the instruments of local government in their city.
- f. In furtherance of these findings, as it is not in the public's interest to have private communications occur between decision-makers and a limited number of individuals, and in order to assure that all citizens have equal access to their government at public meetings, cell phones and other means of electronic communications including email, text, instant imaging, etc., shall be turned off during public meetings.
- g. As adopted, it is the intention of this article that members of the City Council who sit on separate boards and commissions, such as, but not limited to the ARRA and CIC, will adopt these rules and requirements for each of those bodies.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91 - PUBLIC ACCESS TO MEETINGS.

2-91.1 - Definitions.

2-91.2 - Passive Meetings.

2-91.3 - Meetings to be Open and Public; Application of Brown Act.

2-91.4 - Conduct of business; time and place for meetings.

2-91.5 - Agenda Requirements; Regular Meetings.

2-91.6 - Public Notice Requirements.

2-91.7 - Agenda Disclosures; Closed Sessions.

2-91.8 - Additional Requirements for Closed Sessions.

2-91.9 - Agendas and Related Materials; Public Records.

2-91.10 - Closed Sessions; Permitted Topics.

2-91.11 - Statement of Reasons for Closed Sessions.

2-91.12 - Disclosure of Closed Session Discussions and Actions.

2-91.13 - Barriers to Attendance Prohibited.

2-91.14 - Video and Audio Recording, Filming and Still Photography.

2-91.15 - Public Testimony.

2-91.16 - Minutes.

2-91.17 - Public Comment by Members of Policy Bodies.

2-91.1 - Definitions.

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

- a. "City" shall mean the City of Alameda.
- 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.
 - (d) "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) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited;

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

(e) "Policy Body" shall mean:

(1) The Alameda City Council;

(2) Any other board enumerated in the Charter of the City of Alameda;

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

(4) Any 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 of Alameda, unless such committee was established by Charter or by ordinance or resolution of the City Council.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.2 - 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. 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 Manager, 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 of Alameda.

5. Gatherings defined in subdivision 4 may hold closed sessions under circumstances allowed by this article.

- b. Any entity performing a function delegated by the City shall abide by subsection a.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.3 - 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.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.4 - 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 of Alameda 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 of Alameda.
- 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 2-91.1d.4 of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least four (4) weekdays 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 2-91.5 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 seven (7) days before the time of such meeting as specified in the notice, with the exception of any urgent matter beyond the control of the City. 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 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.

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 2-91.5c, and mailed notice if sufficient time permits.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.5 - Agenda Requirements; Regular Meetings.

a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the 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. These time requirements shall apply to posting on the internet.

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 with the agenda or, if such documents are of more than one (1) 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. All agendas shall be posted on the City's website and the City's cable channel and available at the Alameda Public Library. Complete agenda packets for each body shall be posted on the City's website to the extent fiscally and technologically feasible and shall be available for review at the Alameda Public Library and at the City Clerk's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.

e. All documents material to an agenda item must accompany the agenda.

f. 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.

g. 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 (2/3) vote of the body, or, if less than two-thirds (2/3) 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 (5) 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.

h. Each policy body shall ensure that agendas for regular and special meetings are made available upon request 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.

i. 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

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 of Alameda exist to conduct the citizen of Alameda'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 OPEN GOVERNMENT COMMISSION.

j. The Council Agenda will limit ceremonial presentations and proclamations to no more than fifteen (15) minutes. If more time is needed, other arrangements should be made.

k. 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 Open Government Commission. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.6 - 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.

d. The City shall maintain an email notification list in order to allow any individual to sign up to automatically receive meeting agendas, updates on projects, notification of issues that impact entire neighborhoods.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.7 - 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 NEGOTIATORS

Property:

Person(s) negotiating:

Under negotiation:

Price or Terms of payment or 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 (check one):

As defendant (legal action being brought against the City or its agent or official)

As plaintiff (City initiating legal action)

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 (1) 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 (1) instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As plaintiff City Initiating legal action" or "As defendant legal action being initiated against City's spaces or both as appropriate.

4. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

5. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (specify by name)

Discussion will concern: (Specify closed session description used by joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives)

6. 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 DISCIPLINE/DISMISSAL/RELEASE

Number of employees affected:

Employee Actions must always be listed under one of the Public Employee agenda items and must list the affected employee.

7. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH LABOR NEGOTIATORS

Name and title of City's negotiator:

Organization(s) representing:

Executive Management

Police Officers

Police Nonsworn

Firefighters

International Brotherhood of Electrical Workers (IBEW)

Management and Confidential Employees Association

Alameda City Employees Association

Unrepresented Employee: (specify title of unrepresented employee)

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.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.8 - Additional Requirements for Closed Sessions.

a. Minutes of all closed sessions of any policy body covered by this article, with the exception of closed sessions on Charter Officer performance shall be taken by the City Clerk or designee. The City Attorney shall semi-annually make a determination of whether any closed session minutes should continue to be exempt from disclosure, based on whether disclosure would be detrimental to the City, and shall provide a report to Council.

b. Each agenda item for a policy body covered by this article that involves 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 article 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, unless the City Attorney determines that lifting the exemption from disclosure would be detrimental to the City.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.9 - 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 article.

- 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 the direct cost of duplication for a copy of a public record prepared for consideration at a public meeting. There shall be no charge for providing digital versions of documents (for example, PDFs).

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.10 - Closed Sessions; Permitted Topics.

All information is public, though a policy body may, but is not required to, hold closed sessions:

- a. With an applicant and applicant's attorney, if any, when a policy body determines it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, and consistent with the requirements of Government Code Section 54956.7.
- b. With its negotiator prior to the purchase, sale, exchange or lease of real property by or for the City to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.
- c. Based on advice of the City Attorney, 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 the City Attorney, 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.
- d. To discuss a claim for liability or losses consistent with Government Code Section 54956.95.
- e. Based on the advice of the City Attorney, receive, discuss, and take action concerning information

obtained in a closed session of a joint powers agency, consistent with Government Code Section 54956.96.

f. With the Attorney General, district attorney, City Attorney, or chief of police, or their respective deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

g. To consider the appointment, employment, evaluation of performance, discipline, 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.

h. With the City's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation, consistent with Government Code Section 54957.6.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.11 - 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 2-91.7 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 2-91.7 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 2-91.7 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.12 - 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 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, intervener 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. *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, unless the City Attorney determines that disclosure would be detrimental to the City. "Dismissal" within the meaning of this article includes any termination of employment at the will of the employer rather than of the employee, however characterized.

4. *Collective Bargaining.* Any collectively bargained agreement shall be made publicly available at least fifteen (15) calendar days before the meeting of the policy body to which the agreement is to be reported. At a City Council meeting no less than thirty (30) days before the initiation of bargaining of a new or extended collectively bargained agreement, the City Manager shall report the initiation of bargaining and the collectively bargained agreement shall be publicly made available.

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.

e. The City Attorney's office shall prepare and present on the City Council Consent Calendar, a list of documents which have been determined to be public after previously being determined to be unavailable to the public. This list shall be presented at least semi-annually and available on the City's website.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.13 - 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 City Council, a board or commission enumerated in the City Charter or Municipal Code, 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 forty-eight (48) hours before the meeting, except for Monday meetings, for which the deadline shall be 4:00 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 City Charter or Municipal Code 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 City Council 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 Alameda residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the City Clerk 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 unavailability of a translator shall not affect the ability of the City Council 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 City Council shall, as soon as possible thereafter, review the provisions of this subsection.

f. Meetings of public bodies shall adjourn no later than 11:00 p.m., unless the meeting is extended by a majority vote of the body.

1. If the body extends three (3) meetings in a row past 11:00 p.m., the body shall also be required, as a part of the motion to extend the meeting, to increase the number of regular meetings of the council, board or commission in order to accomplish the business before the body before 11:00 p.m.

2. No new items will begin after 10:30 p.m. unless a supermajority of the body votes to allow the items to be heard. Nominations, announcements, and Council communications may continue to be heard after 10:30 p.m. whether or not a supermajority of the body has voted to extend the meeting.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.14 - 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 record 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 via livestreaming, as well as archived in digital form at a centralized location on the City's website within seventy-two (72) hours of the date of the meeting or hearing and for a period of at least ten (10) 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 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection b. above.

1. At a minimum, the City shall provide video coverage of the following meetings:

(a) City Council and all bodies associated with its members including:

- (1) Alameda Reuse and Redevelopment Authority (ARRA),
- (2) Community Improvement Commission (CIC),
- (3) Alameda Public Finance Authority (APFA),

- (4) Housing Authority Board of Commissioners (HABOC);
- (b) Planning Board;
- (c) Transportation Commission (TC);
- (d) Economic Development Commission (EDC);
- (e) Historic Advisory Board (HAB);
- (f) Recreation and Park Commission;
- (g) Open Government Commission.

2. All video of these meetings will be posted on the City's website for easy public access.
3. Meetings that are held in locations where video is not possible, will be recorded in a digital audio format and made available in the same internet archive as videos for the appropriate body.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.15 - Public Testimony.

a. Every agenda for regular meetings shall provide, before undertaking regular business and again at the end of the meeting, an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the 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 2-91.5e of this article. The Council agenda shall provide up to fifteen (15) minutes for this use. However, in the situation of the City Council, the agenda does not have to provide an opportunity for members of the public to address the Council on any item that has been considered by a subcommittee comprised only of Councilmembers at a public meeting, unless the item has been substantially changed since the subcommittee heard the item. The City Council shall have the authority to determine whether the item has been substantially changed.

1. If the number of speakers interested in speaking under "Public Comment/Non-Agended Items" exceeds the 15-minute period, additional time will be made available at the end of the meeting.

2. In the instance where more speakers than can be accommodated within fifteen (15) minutes have signed up to speak, the City Clerk's office will randomly select the order in which speakers will be chosen to speak at the beginning of the meeting.

b. Every agenda for regular or 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 before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have fifteen (15) minutes to present their case. The spokesperson for the proponent(s) shall have five (5) minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.

c. 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 b. of this section.

d. 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.

e. All staff reports, presentations, comments from parties with a direct connection to the agenda item, and council questions will be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues before the board, commission or council.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.16 - 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 one hundred fifty (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 (10) working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten (10) 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.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.17 - 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 article.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92 - PUBLIC INFORMATION.

- 2-92.1 - Release of Documentary Public Information.
- 2-92.2 - Responsibilities of Staff.
- 2-92.3 - Responsibilities of the Mayor.
- 2-92.4 - Notices and Posting of Information.
- 2-92.5 - Public Records Index.
- 2-92.6 - Opinions on Matters of Public Concern.
- 2-92.7 - Public Review File—Policy Body Communications.
- 2-92.8 - Non-Exempt Public Information.
- 2-92.9 - Disclosure Requests.
- 2-92.10 - Immediate Disclosure Request.
- 2-92.11 - Withholding Restrictions.
- 2-92.12 - Justification for Withholding.
- 2-92.13 - Fees for Copying.
- 2-92.14 - Website Information.
- 2-92.15 - Requests Made by Email.
- 2-92.16 - Policy Regarding Purchase and Use of Computer Systems.
- 2-92.17 - Policy Regarding Electronic Formats.

2-92.1 - Release of Documentary Public Information.

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.2 - Responsibilities of Staff.

- a. The City Manager shall ensure that staff is trained regarding their obligations under this article. The City Clerk shall be the City Custodian of Records and the City Manager shall designate a Custodian of Records for the Police Department. The City Clerk shall also designate in each department/office a Departmental Custodian of Records who shall ensure that all department staff who have contact with the public are prepared to provide written and oral information to the public.
- b. The City Clerk "City Custodian of Records" shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The Custodian of Records of the Police Department shall during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The custodians may establish reasonable limits to ensure orderly functioning of the office and protect records from theft or damage.
- c. Every "Custodian of Records" shall, as soon as possible and within ten (10) days following receipt of a request for a Public Record, comply with such request. If a Custodian of Records believes the record requested is exempt from disclosure, he/she shall state in writing the express provisions of law that justify withholding the record.
- d. When a member of the public submits a request for information to any paid or elected agent of the City, that agent shall respond to said request within three (3) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral. Requests submitted in person, via telephone, or via email or through the City website are considered requests.

e. Nothing in this section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communication between members of the public, staff, and members of Legislative Bodies.

f. While not required, a written request is recommended in order to create a paper trail for the convenience and reference of the requestor.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.3 - Responsibilities of the Mayor.

If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video-streaming and transmission capabilities. The event shall be noticed, recorded, free to the public and open to all. The address shall include a report on the previous year's Sunshine complaints, how they were resolved, and a summary of any actions taken or pending related to provisions of this article.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.4 - Notices and Posting of Information.

a. At a minimum, the following shall be posted on the City's website and provided in written form in the City Clerk's Office and at the reference desk of each Alameda public library. These documents must be posted on the City Website for a period of at least four (4) years:

City Charter;

Alameda Municipal Code;

Building Code;

General Plan and Area Plans;

Zoning Ordinance;

Landmarks Preservation Ordinance;

Sunshine Ordinance;

Citizen's Guide to Public Information;

Records Index;

Records Retention Schedule;

Council Rules of Procedure;

Conflict of Interest Code;

Statements of Economic Interest;

Executive Management Work Plans;

Capital Improvement Plans;

Agendas and Minutes of the Meetings of all Legislative Bodies;

Budgets.

- b. At a minimum, within six (6) months after enactment of this article, each Legislative Body shall have posted on the City's website all current meeting Agendas, minutes, and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is updated on at least a weekly basis.
- c. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available at designated City offices with copies available for borrowing by the public at each Alameda public library.
- d. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.
- e. The Open Government Commission shall review public notices to ensure that they conform to the requirements of this article and work to improve publicly accessible information databases to ensure consistency, equity, timing, and extent of noticing for meetings and other matters of public interest.
- f. Right to notice regarding matters that may impact the physical environment shall be equivalent for residential and commercial tenants and property owners.
- g. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for meetings on said projects.
- h. *Online Public Records Repository.* The City shall maintain an online repository of public documents on a publicly accessible website. The repository will allow the public to download any document in the repository in its entirety.
 1. Documents in the repository shall be searchable at a minimum by title, date, author(s), and related City department(s).
 2. Public documents should routinely be published to the public records repository by default. Documents are not required to be added to the repository where it would be cost prohibitive to do so.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.5 - Public Records Index.

- a. The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and Legislative Bodies. The index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what

periods of retention. The index shall be sufficient to aid the public in making a focused inquiry regarding public records. The index shall be posted on the City's website and available in written form in the City Clerk's office and in each Alameda public library.

b. The index shall classify each type of record as either:

1. "Open," meaning accessible to the public without exception and subject to immediate disclosure;
2. "Partially open," meaning possibly containing some exempt content, such that review is required; or
3. "Has been determined exempt" meaning that disclosure of the document may be restricted by State or Federal law. Each classification of a record as "partially open" or "exempt" shall identify the specific legal authority relied upon in assigning that classification.

c. The City Clerk Custodian of Records shall be responsible for preparing and maintaining the index. He/she shall report on the progress of developing the index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of the ordinance codified in this article. In identifying the types of records to be maintained, each department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed index shall be reviewed by the Open Government Commission and submitted for approval by the City Council.

d. The Index shall be periodically reviewed by staff and Open Government Commission for accuracy and completeness.

e. A list of any change in the Index shall be noted on the City's website.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.6 - Opinions on Matters of Public Concern.

Public employees and City board, commission, or committee members 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 is not represented as that of the City, department, board, commission or committee and does not materially misrepresent the City, department, board, commission or committee's position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.7 - Public Review File—Policy Body Communications.

Every commission, board or other official body of the City of Alameda shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related

material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file; provided, that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.8 - Non-Exempt Public Information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

- a. *Drafts and Memoranda.* No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.
- b. *Litigation Material.* Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.
- c. *Personnel Information.* None of the following shall be exempt from disclosure under Government Code Section 6254(c):
 1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
 - (a) Sex, age and ethnic group;
 - (b) Years of graduate and undergraduate study, degree(s) and major or discipline;
 - (c) Years of employment in the private and/or public sector;
 - (d) 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 positioning in question.
 2. The job description of every employment classification.
 3. Any adopted memorandum of understanding between the City and a recognized employee organization.
 4. Individual employee salaries.
- d. *Law Enforcement Information.*

1. The Alameda Police Department and its Custodian of Records shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Redacted law enforcement information may include:

- (a) The names of juvenile witnesses or suspects;
- (b) Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (c) The identity of a confidential source;
- (d) Secret investigative techniques or procedures;
- (e) Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation;
- (f) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely; or
- (g) Any information required by State or federal law is to be kept confidential.

2. The Alameda Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

e. *Contracts, Bids and Proposals.* Contracts, contract bids, responses to requests for proposals and all other records of communications between the City and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

f. *Budgets and Other Financial Information.* The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the City, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, or their standing committees.

2. 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, legal or other services whose

records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.9 - Disclosure Requests.

a. A Custodian of Records shall make good faith efforts to comply within a shortened timeframe that has been reasonably justified by a records requester by the facts of his or her situation, e.g. the requester needs the documents for a hearing scheduled the next day. A request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than ten (10) business days unless the requestor is advised in writing within three (3) business days that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the department processing the request;
3. The requested records are stored in a location outside of the department;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

b. Additional time shall not be permitted to delay a routine or readily answerable request.

c. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but may be advised that providing such information may help the City assist the person finding all documents responsive to their request.

d. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection a. of this section shall be sent to the requestor if an address has been provided.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.10 - Immediate Disclosure Request.

a. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, and including public records requests, within the past calendar year, or (2) public records that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

b. An immediate disclosure request shall be satisfied no later than three (3) business days unless the requestor is advised in writing within two (2) business days that additional time is needed because of the volume of records sought.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.11 - Withholding Restrictions.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted or withheld information or documents shall be explained in writing.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.12 - Justification for Withholding.

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

- a. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- b. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- c. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.13 - Fees for Copying.

- a. No fee shall be charged for making public records available for inspection.
- b. No fee shall be charged for a single copy of a current meeting agenda.
- c. A fee may be charged for non-digital copies of:
 1. Single or multiple copies of past meeting agendas or any agenda-related materials;
 2. Multiple copies of a current meeting agenda; and
 3. Any other public record copied in response to a specific request.
- d. The City may, rather than making copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- e. All drafts or final environmental impact reports and environmental impact statements shall be posted either on the City's website or on the consultant's website.
- f. In addition to the copies routinely required for City official or staff use, the City shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to twenty (20) copies of documents such as environmental impact reports. These copies will be provided on a first-come, first-serve basis at no cost to members of the public. The City Manager or designee shall determine if and how many extra copies will be required on a case by case basis.
- g. If records requested are available or can be made available in electronic format, they will be provided as such at no cost. Electronic documents will be delivered via email or by posting on the City

website. Requests for documents in their original electronic format will be respected unless cost-prohibitive to fully redact.

h. All fees permitted under this section shall be determined and specified in the City of Alameda master fee schedule, as amended. When the cost of writing a receipt and collecting the fees required under this section would exceed the cost of the copies, the copying fee may be waived. The master fee schedule shall note the maximum amount that may be waived.

i. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with state law.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.14 - Website Information.

Each department shall make an effort to ensure its portion of the City's website is kept current. Each department shall also post public documents that are of interest to a wide number of the public.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.15 - Requests Made by Email.

Records requests made by email must be acknowledged with an e-mail reply to the sender.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.16 - Policy Regarding Purchase and Use of Computer Systems.

a. It is the policy of the City 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 chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.

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 paper reproduction of electronic copies of records.

c. Nothing in this section shall be interpreted to require the City to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.17 - Policy Regarding Electronic Formats.

a. Electronic formats used to represent public documents should be chosen so they are easily accessible to the public.

1. Electronic documents will be published in a machine-processable format so that the public can sort, search, and transform the information to meet their needs. For example, text documents must be delivered such that the text itself is machine-processable and can be searched or processed by text-to-speech software. Documents originally in handwritten form are exempt from this requirement.

2. Except in the case where the City can cite a significant overriding consideration, electronic formats shall be chosen such that they can be viewed on a variety of mainstream computing platforms using freely available software. Electronic formats susceptible to obsolescence and patent licensing restrictions and formats dependent on a single operating system or proprietary software program shall not be used.

Care must be taken with any electronic documents that have redactions. Some document formats retain a history of changes made, so while some content may appear to be deleted from a document it may be recoverable. Staff who perform redactions are responsible for understanding the implications of the document formats they are using and ensuring that redacted information is completely removed from the document.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93 - ENFORCEMENT PROVISIONS.

2-93.1 - Primary Regulatory and Enforcement Body.

2-93.2 - Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance.

2-93.3 - Cure and Correction.

2-93.4 - Responsibility for Administration.

2-93.5 - Department Head Declarations.

2-93.6 - Annual Public Report.

2-93.7 - Sunshine Ordinance Supersedes Other Local Laws.

2-93.8 - Penalties.

2-93.1 - Primary Regulatory and Enforcement Body.

The primary regulatory and enforcement body of the Sunshine Ordinance shall be the Open Government Commission formed pursuant to Section 2-22 (Open Government Commission) of Article II (Boards and Commissions).

(Ord. No. 3036 N.S., § 1, 11-1-2011; Ord. No. 3042, § 4, 1-3-2012)

2-93.2 - Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance.

a. A complainant must file a complaint no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance.

b. Upon filing of an official complaint form (including submittal of all evidence) with the City Clerk's Office, the complainant and the City (as respondent) shall appear at a hearing scheduled no later than thirty (30) business days. During this hearing the Commission will provide the parties with the chance to

present evidence and make arguments. The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing.

c. No complaint will be accepted by the Commission against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.3 - Cure and Correction.

Nothing in this article shall prevent a body from curing or correcting an action. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony. The time limits of the Brown Act shall not be tolled pending any action to cure an alleged violation of the Sunshine Ordinance.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.4 - Responsibility for Administration.

Only the City Council shall be responsible for the administration and coordination of the provisions of the Alameda Sunshine Ordinance, except to the extent that the City Manager carries out the responsibilities described in Section 2-92.2.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.5 - Department Head Declarations.

All City employees or officials who are required to file FPPC Form 700 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 annually. Annual training shall be provided by the Alameda City Attorney's Office with the assistance of the Commission.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.6 - Annual Public Report.

The Commission shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of the Ordinance brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof and the location of all records relevant to each petition. With advance notice to City Clerk's Office, the Commission may also request a tally of records requests for statistical or comparative purposes.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.7 - 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.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.8 - Penalties.

- a. If the Commission finds a violation of Section 2-91, the Commission may order the action of a body null and void and/or may issue an order to cure or correct. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period.
- b. If the Commission finds a violation of Section 2-92, the Commission may order the City to comply. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period.
- c. Fines shall be used for records retention technology, and/or Sunshine Ordinance training and education.
- d. A person who makes more than two (2) complaints in one (1) 12-month period that are determined by the Commission to be unfounded shall be prohibited from making a complaint for the next five (5) years.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

CITY OF VALLEJO

EXHIBIT C

Chapter 2.08 - SUNSHINE ORDINANCE

Sections:

- I. - Introductory Provisions
- II. - Meetings/Closed Sessions
- III. - Access to Public Records
- IV. - Other Provisions

I. - Introductory Provisions

2.08.010 - Findings and purpose.

2.08.020 - Citation of Chapter.

2.08.030 - Definitions.

2.08.010 - Findings and purpose.

The city council finds and declares:

- A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.
- B. The city council, the housing authority, the redevelopment agency, and all special districts, agencies, and authorities of which the city council is the governing body exist to conduct the people's business. This chapter is intended to ensure that their deliberations and the city's operations are open to the public to the full extent permitted by law.
- C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act, Govt. Code, Sections 54950, et seq., and the California Public Records Act, Govt. Code, Sections 6250, et. seq. to assure that the people of the city of Vallejo can be fully informed and thereby retain control over the instruments of local government in their city.

(Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.020 - Citation of Chapter.

This chapter shall be known and may be cited as the Vallejo Sunshine Ordinance.

(Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.030 - Definitions.

Words or phrases in this chapter shall bear the definitions set forth in the Ralph M. Brown Act and the California Public Records Act, unless otherwise specified herein. Whenever in this chapter the following words or phrases are used, they shall be:

- A. "Agenda" means the agenda of the body covered by this chapter which has scheduled a public meeting. The agenda must meet the requirements of Govt. Code, Section 54954.2 and Sections 2.02.230 and 2.02.240. For closed sessions, the agenda must meet the requirements set forth in Govt. Code, Section 54954.5.
- B. "Agenda and related materials" means the agenda, all reports and other written material prepared and forwarded by staff to any body covered by this chapter, and other materials forwarded to the body by the deadline for posting agendas, which provide background information or recommendations concerning the subject matter of any agenda item for any meeting of that body covered by this chapter.
- C. "City" means the city of Vallejo.
- D. "On-line" means accessible via computer or similar device without charge to the user.
- E. "Agenda subscriber" means any individual or group of persons who request, on a regular basis, the receipt of an agenda or an agenda and related materials.
- F. The "policy bodies" covered by this chapter are: the city council, the housing authority, the redevelopment agency, and all special districts, agencies, and authorities of which the city council is the governing body.
- G. "Business day" shall mean any day other than a Saturday, Sunday, or legal holiday and during those regular hours of such days established for the operation of the city department or office, or the unit, section or bureau thereof, having possession, custody, and control of the public records sought to be inspected or obtained under this chapter.

(Ord. 1450 N.C.(2d) § 1 (part), 2000: Ord. 1426 N.C.(2d) § I (part), 1999.)

II. - Meetings/Closed Sessions

- 2.08.040 - Agenda requirements; regular meetings.
- 2.08.050 - Agendas and related materials; public records.
- 2.08.060 - Agenda disclosures; closed sessions.
- 2.08.070 - Statement of reasons for closed sessions.
- 2.08.080 - Disclosure of closed session discussions and actions.

2.08.040 - Agenda requirements; regular meetings.

- A. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of undefined abbreviations or acronyms not in

common usage and terms whose meaning is not known to the general public. It may refer to explanatory documents, including, but not limited to, correspondence or reports, in the related material. The description is adequate 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 about the item.

B. The agenda of bodies covered by this chapter shall be posted in the following locations: (1) city clerk's office, (2) on-line, and (3) an exterior bulletin board outside City Hall which is accessible twenty-four hours a day.

(Ord. 1489 N.C.(2d) § 1, 2002: Ord. 1450 N.C.(2d) § 2 (part), 2000: Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.050 - Agendas and related materials; public records.

Staff material, consisting of agendas, staff reports and other material prepared and forwarded by staff which provide background information and recommendations regarding agenda items, when distributed to all or to a majority of the members of a policy body in connection with a matter which is subject to discussion or consideration at a public meeting shall be made available to the public upon request.

(Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.060 - 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 permissive provisions of Govt. Code, Section 54954.5 pertaining to closed session item descriptions are mandatory under this chapter with respect to closed sessions.

B. Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation to the same extent as if the policy body were subject to the provisions of Govt. Code, Section 54960.1.

(Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.070 - Statement of reasons for closed sessions.

Prior to any closed session, a policy body shall state in open session the general reason or reasons for the closed session, and must cite and explain the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being closed. In the closed session, the body shall consider only those matters covered in its statement. In the case of regular or special meetings, the statement shall also be made in the form of the agenda disclosures and specifications required by Section 2.08.060. In the case of adjourned and continued meetings, the statement shall also be made with the same disclosures and specifications required by Section 2.08.060, as part of the notice provided for the meeting. In the case of an item added to the agenda as a matter of urgency, the statement shall be made in open session 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 2.08.060. Nothing in this section shall require or authorize a disclosure of information which is prohibited by state or federal law.

(Ord. 1426 N.C.(2d) § 1 (part), 1999.)

2.08.080 - Disclosure of closed session discussions and actions.

A. Settlement of Litigation. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least seventy-two hours 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 of fifty-thousand dollars or less.

B. Collective Bargaining Agreements. Any collectively bargained labor agreement with the representative of a city employee organization shall be made publicly available at least seventy-two hours before the meeting of the policy body to which the agreement is to be reported or submitted for approval.

(Ord. 1426 NC. (2d) § 1 (part), 1999.)

III. - Access to Public Records

2.08.090 - Nonexempt public records.

2.08.100 - Immediacy of response.

2.08.110 - Withholding kept to minimum.

2.08.120 - Justification for withholding records.

2.08.090 - Nonexempt public records.

The following policies shall govern specific types of documents and information:

A. Opinion or Communication Regarding Certain Laws. Any opinion or communication in writing to or from a city agency or city officer or employee regarding the *Ralph M. Brown Act, the Political Reform Act of 1974, Govt. Code, Sections 81000, et seq., the California Public Records Act*, or this chapter shall be subject to disclosure, and made available to the public for inspection or copying upon request.

B. Budgets and Other Financial Information. Proposed or adopted budgets for the city or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers and other records of payment obligations as well as records of actual disbursement showing the amount paid, the payee and the purpose for which the payment is made, other than payments for social, forensic or other services whose records are confidential by law, shall not be considered exempt from disclosure under any circumstances. Notes or memoranda, preliminary in nature, whether handwritten or otherwise recorded, shall be excluded with respect to these documents.

C. Litigation Material. When litigation is finally adjudicated or otherwise settled, records of all communications between the city and the adverse party shall be subject to disclosure, including the text and terms of any settlement. Legal counsel for the city shall not solicit any settlement term which would restrict public disclosure after settlement of all terms and communication records between the parties. All such records shall be released as soon as reasonably possible as

determined by counsel handling the litigation.

(Ord. 1426 NC. (2d) § 1 (part), (1999.)

2.08.100 - Immediacy of response.

A. Notwithstanding the ten-day period for response to a request permitted in Government Code, Section 6253(c), a written request for an identifiable, nonexempt public record which is received by a departmental director or designee shall be satisfied no later than the close of business on the day of receipt of such request if the request is received before noon, or by the close of business on the business day following receipt of the request if the request is made during the afternoon. This deadline shall apply only if the words "Immediate Disclosure Request" are written across the top of the request and the envelope in which the request is transmitted. The statutory deadlines 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, the need to redact, delete, or segregate information that is exempt from disclosure by law, or the need to consult with legal counsel or another interested department warrants an extension of the ten days as provided in Government Code Section 6253(c), the requester shall be notified within three business days of the request.

C. The person seeking the record need not state his or her reason for making the request or the use to which the information will be put. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this chapter, the city attorney or custodian of the record may inform the requester of the nature and extent of the nonexempt 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.

(Ord 1426 N C (2d) § 1 (part), 1999.)

2.08.110 - Withholding kept to 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 some other statute. Information that is exempt from disclosure shall be redacted, deleted or otherwise segregated in order that the nonexempt portion of the requested record may be released, and keyed by footnote or other reference to the appropriate justification for withholding required by Section 2.08.120. This work shall be done personally by the attorney or other staff member conducting the exemption review. If that employee's work in redaction exceeds one hour, the requester may be required to pay that extra increment of time at the pro-rata hourly salary rate of the employee. Staff time used to locate or collect records for review or copying shall nor be included as chargeable.

(Ord. 1426 NC. (2d) § 1 (part). 1999.)

2.08.120 - Justification for withholding records.

Any refusal to disclose a public record shall be justified, in writing, when in the opinion of the city attorney such justification is appropriate or desirable, as follows:

A. A withholding under a permissive exemption set forth in the California Public Records Act or in this chapter shall cite the legal authority and, where the exemption is based on the public

interest, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the statutory authority in the California Public Records Act or elsewhere.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. 1426 NC. (2.d) § 1 (part), 1999.)

IV. - Other Provisions

2.08.130 - City attorney's function.

2.08.140 - Willful failure shall be official misconduct; punishment.

2.08.150 - Enforcement provisions.

2.08.160 - Review of ordinance on annual basic.

2.08.130 - City attorney's function.

A. The city attorney may publish legal opinions in response to a request from any person as to whether a record is public. All communications with the city attorney's office with regard to this ordinance, including petitions, requests for opinions, and opinions rendered shall be public records.

B. The city attorney may defend the city, or a city employee in litigation under this chapter that is actually filed in court to any extent required by the City Charter or state law.

(Ord. 1426 N C. (2d) § 1 (part), 1999.)

2.08.140 - Willful failure shall be official misconduct; punishment.

The knowing, willful and deliberate failure of any elected official, departmental director, or other managerial city employee to discharge any duties imposed by the Ralph M. Brown Act, the California Public Records Act, or this chapter shall be deemed official misconduct. An elected official found guilty of such misconduct shall be removed from office in the manner prescribed by law. Any departmental director, or other managerial city employee found guilty of such misconduct shall be subject to disciplinary action, up to and including termination of employment, in the manner prescribed by law.

(Ord. 1426 N C (2d) § 1 (part), 1999.)

2.08.150 - Enforcement provisions.

A. Any person may institute proceedings for injunctive relief, declaratory relief, or for a 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 records or class of public records under this chapter, or to enforce his or her right to attend any meeting required under this chapter 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 chapter.

C. If a court finds that an action filed pursuant to this section is frivolous, the defendant city or policy body covered by this chapter will assert its right to be paid reasonable court costs and attorneys' fees.

(Ord 1426 N C. (2d) § 1 (part), 1999.)

2.08.160 - Review of ordinance on annual basic.

During November of each year, beginning in November 2000, the city council shall review this ordinance to determine its effectiveness and the necessity for its continued operation. The city manager shall report to the city council on the operation of this chapter, and make any recommendations deemed appropriate, including proposals to amend the chapter. Upon conclusion of its review, the city council may take any action it deems appropriate concerning this chapter. Nothing herein shall preclude the council from taking action on the chapter at times other than upon conclusion of the annual review.

(Ord 1426 N.C.(2d) § 1 (part), 1999.)

Exhibit D

CITY of BERKELEY SUNSHINE ORDINANCE

Creating this Chapter of the Berkeley Municipal Code to be known as the Berkeley Sunshine Ordinance

Establishing Local Standards to Ensure
Public Access to Public Meetings and
Public Records

Berkeley Sunshine Ordinance Chapter 1.30

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Introduction

Section 1.30.010 Title of Chapter.

This Chapter of the Berkeley Municipal Code shall be known as the Berkeley Sunshine Ordinance.

Section 1.30.020 Findings.

A. Democracy in our representative form of government requires thoughtful and meaningful public participation. To fulfill this requirement, the people must have timely access to the same information on issues as is available to our elected officials and City staff, the opportunity to comment in open meetings on these issues before decisions are made, and prompt access to all public records.

B. Because these requirements are not currently being met, a deficit of trust in government has occurred and is growing. State laws like the Brown Act and California Public Records Act help, but do not go far enough. Too many requests for public records are denied. Not enough time is given to the public and decision-makers to read and understand essential reports and testimony regarding issues. Inadequate information leads to escalating misunderstandings and a lack of civility in interactions between City staff, elected and appointed officials, and the public. Important actions are announced rather than arrived at in open meetings. The public has been denied access to open meetings too many times. Speaking rules at meetings constantly change. Important regional government decisions that greatly affect the quality of life and economic well-being of our residents and businesses are made without their knowledge.

C. Despite requests, our City government has not demonstrated interest in finding solutions that will correct these problems. Today, the only redress available to people is through expensive private lawsuits or referenda that are wasteful and costly for both City and citizens.

D. We have the opportunity to lessen environmental impacts by reducing the mounting use of paper while also reducing operating expenses through greater reliance on electronic systems. In today's atmosphere of rapidly changing technology we are in urgent need of a careful guide into a future that ensures governmental transparency and provides more and quicker access to information at significantly less expense.

Section 1.30.030 Purpose.

The purpose of this Chapter is to codify the City's policy regarding public participation in the deliberations of the City's Legislative Bodies, to ensure public access to Public Records, to declare the intent to expand such participation and access beyond that required by current City law and practice and to the maximum extent permitted by State and Federal law, and to establish a mechanism for the enforcement of the rights set forth in this Ordinance.

Section 1.30.040 Applicability.

The provisions of this Ordinance supersede other Berkeley ordinances that address the same issues to

the extent they are inconsistent with this Ordinance.

Section 1.30.050 Definitions.

The words and phrases defined in this Section shall, for the purpose of this Ordinance, have the meanings specified below.

A. "Agenda" means a document that informs the public about a Meeting, published in advance of the Meeting which at a minimum (1) identifies the Legislative Body conducting the Meeting, (2) specifies the time and location of the Meeting, (3) lists each item of business to be discussed or transacted and describes the proposed action for each such item, and (4) lists all relevant Supporting Documents for each such item.

B. "Agenda Packet" means the Agenda of a particular Meeting with all its relevant Supporting Documents.

C. "City" means the City of Berkeley, California.

D. "City Council" means all members of the principal Legislative Body of the City as described in the City's Charter.

E. "Closed Session" means a Meeting that begins with a public comment period, followed by a session that excludes the public under the requirements of State and Federal law, and ends with an open session at which a public report is made regarding that part of the Meeting that excluded the public.

F. "Commission" means the Sunshine Commission established in Section 1.30.380.

G. "Community Newspaper" means a newspaper that is published at least forty-five (45) times per year, distributes at least ten thousand (10,000) copies of each issue in the City of Berkeley, and devotes at least fifty (50) percent of its news coverage to Berkeley issues on a regular basis. If no newspaper meeting this definition exists, the Sunshine Commission shall determine what constitutes a Community Newspaper.

H. "The Custodian of Records" means the City Manager.

I. "A Custodian of Records" means a person or persons appointed or approved by the City Manager to be in charge of the records of any department or other entity subject to this Ordinance.

J. "Deadline" means the time and/or date by which an action is required to be completed. Unless otherwise specified, the time period allowed for an action shall be computed in calendar days. When computing a Deadline forward from a Meeting or other event, the first day counted shall be the day after the Meeting or event, and if City offices are closed on the last day counted, the following work day shall be the Deadline. When computing a Deadline backward from a Meeting or other event, the first day counted shall be the day before the Meeting or event, and if City offices are closed on the last day counted, the preceding work day shall be the Deadline.

K. "Legislative Body" means any of the following: All governing bodies of the City, including but

not limited to, the City Council, Rent Stabilization Board, Library Board of Trustees, Redevelopment Agency, Housing Authority, and all City commissions, committees, and boards including private corporations or entities such as the Energy Services Corporation or similar bodies, or other bodies as defined in California Government Code Section 54950 - 54963 and its successor Sections.

L. "Legislative Committee or Subcommittees" means a temporary, informal committee or subcommittee of less than a Quorum of members of the Legislative Body, which meet at least two times with members of other Legislative Bodies and/or Staff about a particular issue for the express purpose of formulating recommendations regarding that issue to the Legislative Body.

M. "Lobbyist" means a person or entity that receives compensation for influencing legislative or administrative action or that compensates its employees or members for their lobbying activities.

1. "City Lobbyist" means a person or entity that is designated to represent the City before any person, office, Legislative Body, or other entity.
2. "Special Interest Lobbyist" means a person or entity that is paid by and represents any non-City agency, organization, or entity seeking to influence City policy.

N. "Meeting" means a gathering of a Quorum or more of the members of a Legislative Body at a specified time and place, including by teleconferencing or other technology, to hear, discuss, deliberate, or act on any matter that is within the subject matter jurisdiction of the Legislative Body, as defined in California Government Code Section 54950 – 54563 as of the effective date of this Ordinance and their successor Sections.

O. "Minor Correction" means a correction that consists only of a change in spelling or grammar with no significant change in meaning.

P. "Public Records" means any writing containing information relating to the conduct of the public's business regardless of its physical form or characteristics, which is prepared, owned, used, or retained by any State or local agency.

Q. "Quorum" means a majority of the total authorized membership of a Legislative Body, but may be more than a majority if expressly required by this or another ordinance.

R. "Staff" means the City Manager, department heads, employees of all entities in the City Charter, directors and employees of Legislative Bodies, employees and volunteers in the offices of elected officials, and contractors.

S. "Supporting Documents" means all Public Records, regardless of form or medium or author, which are provided to members of a Legislative Body for their use in considering Agenda items for a particular Meeting, along with all communications that have been timely received for that Meeting.

Mee

tings

Section 1.30.060 Meetings to be Open.

A. All Meetings of Legislative Bodies and Legislative Committees and Subcommittees shall be open and public, except as required in Section 1.30.180 regarding Closed Sessions or by applicable State or Federal law. No payment shall be required from those desiring to attend a Meeting. –

B. No decision shall be made by a Legislative Body in other than open and noticed Meetings, except as specified by State or Federal law. Any use of direct communication, personal intermediaries, or technological devices that is employed by a Quorum of a Legislative Body to develop a collective concurrence as to action to be taken on an item by the members of that Legislative Body is prohibited. No Staff member or member of a Legislative Body shall lobby or privately brief a majority of the members of that same Legislative Body, either as a whole or serially, to propose, oppose, or otherwise discuss any recommendation or Agenda item pending or to be submitted to such Legislative Body.

C. To ensure that business is conducted in the open, Legislative Bodies shall meet continuously during discussion of each Agenda item, except as shall be necessary for the person retained to provide captioning services for the Meeting.

D. When an item is continued to a future Meeting of a Legislative Body, each member of the body shall, at that subsequent Meeting, disclose the content of any intervening conversations with other members of the body, Lobbyists, and Staff pertaining to the held-over item that took place during the continuance, and as provided for in 1.30.170.

Section 1.30.070 Time, Place, and Frequency of Meetings.

A. Each Legislative Body shall establish a time for regular Meetings when a significant portion of the public is able to attend. Meetings shall be held in a place that is of sufficient size for those attending, is accessible for the physically disabled, provides for adequate amplification, and where possible, has video transmission capability, audio, and video-streaming.

B. All Meetings shall be held in the City of Berkeley, unless the City Council finds, in advance of a Meeting, that the City's interest is likely to suffer if the Meeting is held within the city limits. –

C. If a Meeting is likely to be attended by a large number of members of the public, the Agenda scheduling process for each Legislative Body shall provide for holding the Meeting in a venue large enough to accommodate the numbers anticipated to attend and that meets the requirements of this Section.

D. Where a Legislative Body determines that the regular Meeting location does not meet the requirements of Subsection A above, the Legislative Body shall, by its own motion, either cancel or change the location of the Meeting provided that prominent and timely notices are posted at the original

site.

E. A meal or other gathering of a Quorum of a Legislative Body immediately before or during a Meeting of the Legislative Body is part of that Meeting and the public shall be permitted to hear and observe the gathering.

F. A sufficient number of regular Meetings of Legislative Bodies shall be held throughout the calendar year to ensure the City's business is completed in a public and timely manner in accordance with the provisions of this Ordinance.

Section 1.30.080 Submitting Items for the Regular Meeting Agendas.

A. Each Legislative Body shall establish a process for placing items, including presentations, on its own regular Meeting Agendas and designate a contact person responsible for receiving proposed Agenda items and Supporting Documents. Applicable procedures shall appear on the City's website and on each Agenda.

B. Any procedure for setting the Agenda by a Legislative Body shall provide for public participation with timely notice in compliance with this Ordinance.

C. With the exception of appeals from a quasi-judicial decision, any member of the public may place an item under the purview of a Legislative Body on the Agenda of that body by presenting the item to the designated Agenda contact person, with one hundred (100) or more signatures of Berkeley residents for an elected Legislative Body or fifty (50) or more signatures of Berkeley residents for a non-elected Legislative Body. Items submitted by the public shall be placed on the Action Calendar and cannot be moved to the Consent Calendar. Once such an item has been acted upon by the Legislative Body, subsequent items that are substantially the same may not be submitted for a period of one year, except on a showing of significantly changed circumstances.

D. All proposed Agenda items submitted in accordance with the Deadlines specified in Subsection E below shall appear on a regular Agenda of the Legislative Body that takes into consideration the timeliness of the item.

E. Deadlines for submission of Agenda items and related Supporting Documents for regular Meetings of Legislative Bodies shall be as follows:

1. Except for old business and citizens' petitions for recalls, initiatives, and referenda that have been certified as having qualified for the ballot, all items to be considered for placement on the regular Meeting Agenda of a Legislative Body shall be furnished to the Agenda contact person no later than 12:00 noon, twenty (20) or more days prior to the Meeting for which the items shall appear on the Agenda.
2. Information regarding all items submitted for an Agenda shall be available to the public no later than 5:00 PM, twenty (20) or more days prior to the Meeting for which the items shall

appear on the Agenda. This information shall be in the form of a list that includes the sponsor's name, title, and proposed action for each item. The information shall be posted on the City's website and placed in written form in the office of the Agenda contact person and shall include the date, time, and place of any Meeting at which the draft Agenda will be discussed and the final Agenda determined.

3. All Supporting Documents for Agenda items shall be submitted to the Agenda contact person no later than noon, fifteen (15) days prior to the Meeting for which the items shall appear on the Agenda.
4. The Agenda contact person shall not accept any new or revised item or revised Supporting Document for inclusion on the Agenda of a regular Meeting after the established Deadline.
5. Draft Agendas shall be finalized by noon, twelve (12) days prior to a Meeting.

Section 1.30.090 Agenda Content

A. Every Agenda shall contain statements regarding disability-related accommodations and a statement regarding the right of all persons to address the Legislative Body or Committee/Subcommittee in accordance with the requirements of this Ordinance.

B. Agenda items shall be written in easily understood language without undefined abbreviations or acronyms and should at a minimum provide the following information: an accurate description of the subject matter, recommended action, fiscal impact, the website, and other locations at which Supporting Documents and related documents can be found, and contact information.

C. When items are withdrawn from the Agenda of a Legislative Body before publication of the final Agenda, the Agenda shall state the reason for withdrawal. Notice of such withdrawals shall also be posted on the City's website as soon as possible.

Section 1.30.100 Documents Submitted by Members of the Public, Addressed to a Member or Members of a Legislative Body or to the Secretary of the Legislative Body for Distribution.

A. Documents that are received at least twelve (12) days before a regular Meeting shall be included in the Agenda Packet to be issued eleven (11) days in advance of the Meeting and shall be posted as described in Section 1.30.260.

B. Documents received after the twelfth (12th) day and through the fifth (5th) day prior to a regular Meeting shall be included in Supplemental Agenda Communications Packet #1, placed in a viewing binder available to the public, and made available as described in Section 1.30.260.

C. Documents received after the fifth (5th) day and prior to 12:00 noon on the day of the regular Meeting shall be included in Supplemental Agenda Communications Packet #2 which shall promptly be posted on the City's website and made available to the public in the appropriate department office. Copies shall be available at the Meeting.

D. Documents received after 12:00 noon on the day of the regular Meeting, including during the Meeting, shall be included in Supplemental Agenda Communications Packet #3. When a document is submitted by a member of the public at the Meeting, it shall be distributed to members of the Legislative Body immediately upon submission, if thirty (30) copies have been provided: twenty (20) for the Legislative Body and Staff, plus ten (10) copies for the public. If fewer than thirty (30) copies have been provided, the document shall be placed in Communication Packet #3. All such documents shall be available for review by members of the public by 3:00 PM, two (2) business days following the Meeting.

Section 1.30.110 Draft Agendas for Regular Meetings of Legislative Bodies.

A. On the fourteenth (14th) day prior to the regular Meeting, the Agenda contact person shall post a draft Agenda for that Meeting, as described in Section 1.30.260.

B. The draft Agenda for a regular Meeting shall contain a prominent notification that the Agenda is subject to change up until noon of the twelfth (12th) day prior to the subject Meeting.

C. The Agenda contact person shall maintain a record indicating the location, date, and time of posting of each draft Agenda.

Section 1.30.120 Final Agendas for Regular Meetings of Legislative Bodies/Legislative Committees or Subcommittees.

A. On the eleventh (11th) day prior to the Meeting of a Legislative Body to which it applies, the final Agenda and links to obtain Supporting Documents in the Agenda Packet shall be posted as described in Section 1.20.260.

B. Seventy-two (72) hours prior to the meeting to which it applies, the Agenda of a Legislative Committee or Subcommittee shall be posted as described in Section 1.30.260.

C. Each Agenda contact person shall maintain a record indicating the location, date, and time of such posting.

Section 1.30.130 Distribution of Final Agendas and Agenda Packets for Regular Meetings of Legislative Bodies.

No later than eleven (11) days prior to a regular Meeting, the Agenda contact person shall distribute the Agenda Packet to each member of the Legislative Body, and if requested, to members of the press. A copy shall also be placed in a viewing binder in the office of the Agenda contact person and in each Berkeley public library. Copies of the Agenda shall be mailed to any person who has requested it in writing.

Section 1.30.140 Action Requirements for Legislative Bodies.

A. No ordinance, resolution, or motion of a Legislative Body shall be deemed approved without receiving at least the number of affirmative votes equal to that of a Quorum for that body, except as may be specified by other provisions of this Ordinance.

B. No discussion or action by the Legislative Body shall be taken on any item not appearing on the

Agenda. However, the Legislative Body may refer such a matter to Staff or request that the matter be placed on a subsequent Agenda.

C. No Agenda item shall be considered at the Meeting if the item's Supporting Documents are not included in an Agenda Packet that is timely received in accord with Section 1.30.100.

D. With the exception of Minor Corrections, no change to Agenda items or their Supporting Documents may be made once the final Agenda has been published as specified above.

E. Staff may not make oral reports to Legislative Bodies in lieu of written reports, but shall be available at Meetings to answer questions.

Section 1.30.150 Legislative Body Meeting Agenda Sequence.

A. Each Legislative Body shall set its own Meeting Agenda sequence of business. This sequence may be amended from time to time by a majority vote of the body after holding a noticed public hearing.

B. However amended, the Meeting Agenda Sequence for every Legislative Body must always satisfy the following:

1. Public comment on each Agenda item and Non-Agenda items shall be as set forth in this Ordinance. At regular Meetings, public comment on Non-Agenda items by up to ten (10) speakers shall occur at the beginning of the Meeting with priority given to individuals with disabilities and special needs, the elderly, and those accompanied by small children. Additional speakers wishing to speak on Non-Agenda items shall be accommodated during the latter part of the Agenda under the same protocol.
2. Ceremonial matters, if any, shall be limited to a maximum of fifteen (15) minutes.
3. Reports on meetings of regional bodies and other agencies as described Section 1.30.210 if any, shall be placed on the Agenda as information items where they are subject to public comment and movement to action for discussion at the request of a single member of the Legislative Body.
4. Decisions regarding appeals, if any, shall not be placed on the Consent Calendar.

C. The order of individual Agenda items shall not be changed during the Meeting, except by a majority vote of the Legislative Body, before which members shall state their reasons for the record.

D. It is the intent of this provision that all Agenda items be completed prior to 11:00 PM. At approximately 10:00 PM, the Legislative Body shall assess what Agenda items remain to be completed and whether any need to be continued to another Meeting. The Meeting may be extended by a two-thirds (2/3) affirmative vote of the members of the Legislative Body. Any motion to extend the Meeting shall include a list of Agenda items to be covered during the extended time and shall specify the order of those items. Speakers on Non-Agenda items shall be heard after Agenda items, even if after 11:00 PM. The Legislative Body shall not adjourn until public comment on Non-Agenda items has been completed.

ion 1.30.160 Public Speech Rights During Meetings.

A. At the beginning of each Meeting of a Legislative Body, the presiding officer shall inform the public that their rights under this Section are posted on the Agenda and at the entrance of the Meeting room.

B. Any person attending a Meeting of a Legislative Body shall be provided an opportunity to speak for three (3) minutes on each Agenda item prior to any action by the body and in the case of a regular Meeting for two (2) minutes on a Non-Agenda item. Up to four (4) speakers on Agenda or Non-Agenda items may combine their time when each of such speakers is present at the Meeting. The provision for public speaking times in this Section may be amended by an affirmative, unanimous vote of the membership of the Sunshine Commission and an affirmative, unanimous vote of the membership of the City Council following a public hearing on the subject.

C. Any person attending a meeting of a Legislative Committee/Subcommittee shall be provided an opportunity to speak for a time as determined by the members of the Legislative Committee/Subcommittee.

D. Legislative Bodies shall not prohibit orderly public criticism of the body either by verbal comment or by holding signs.

E. Speakers have the right to use presentation tools, which shall be provided by the City, if available, and when requested five (5) business days in advance of a Meeting date.

F. The public has the right to alert a Legislative Body or a Legislative Committee/Subcommittee about a violation of this Ordinance or other procedural regulations by the following means:

1. At any time up to and including during the Meeting of a Legislative Body, if a matter is considered to be a violation of this Ordinance or the Legislative Body's procedural requirements, a member of the public may submit a complaint to the secretary of the Legislative Body on a Sunshine Alert form developed by the Commission.
 - a. If the Alert is received before the Meeting, the secretary shall transmit the Alert form to appropriate Staff who shall inform members of the body in question.
 - b. If the Alert is received during the Meeting, the secretary shall submit the Alert to Staff designated to act as Parliamentarian. The Parliamentarian shall announce the substance of the Alert when the item in question is before the body and his/her recommendation as to what action, if any, should be taken.
 - c. The Alert and the action which followed shall be reported to the Commission.
2. Alerts received either before or during a meeting of a Legislative Committee/Subcommittee shall be submitted directly to the Commission with a request for their recommendation as to

how to proceed.

3. The Commission shall prepare a follow-up report on each Alert received and place it on the Agenda for the next Meeting of the appropriate body that satisfies the requirements of Section 1.30.080.

Section 1.30.170 Procedures for Public Hearings.

A. For all public hearings, Staff shall introduce the public hearing by briefly summarizing their submitted report.

B. For Legislative Bodies that hold public hearings on zoning, land use, landmarks, and building code matters, following the Staff summary each member of the Legislative Body shall verbally disclose all *ex parte* contacts concerning the subject-of the hearing. Members shall also submit a report of such contacts in writing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the secretary to the Legislative Body prior to the Meeting and placed in a file available for public viewing at the Meeting.

C. In City Council consideration of whether land use or building code appeals should be dismissed, remanded, or set for public hearing or in holding a public hearing on these matters, the procedure shall be as follows:

1. Applicants, appellants and real parties in interest shall be considered to be the primary speakers.
2. Primary speakers may be represented by others for all or part of their statement times.
3. In some cases the applicant may be an appellant. There may also be cases in which there are multiple appellants and/or real parties in interest. Real parties in interest may either support or oppose the position of the applicant.
4. The intent of this provision is to ensure that primary speakers have equitable treatment and sufficient time to present their cases. The Council shall not lower the time limits for statements given below, but if any party speaks more than the time allocated, then the other party or parties shall be given the same amount of time.

D. In determining whether an appeal should be dismissed, remanded, or set for public hearing, the times for statements shall be as follows:

1. All primary speakers shall have five (5) minutes to make a statement restricted to which of the three (3) options before the Council should be chosen.
2. Public comment shall follow as provided for in this Ordinance.

E. When a public hearing is held by the City Council regarding a land use or building code appeal, the speaking times for primary speakers shall be as follows:

1. The applicant and any primary speaker supporting the applicant's position shall each have

five (5) minutes to present his/her case. Following this, each primary speaker opposing the applicant's position shall have five (5) minutes to present his/her case.

2. Following this, all primary speakers shall each have at least five (5) minutes to rebut the issues raised with the following stipulations: The total time granted to the applicant and primary speakers in favor of the applicant's position shall be equal to the total time granted to primary speakers opposing the applicant's position. Furthermore, the time shall be divided equally between all parties on each side.
3. Members of the public shall then comment.
4. After all public comment has been received, one (1) person representing the applicant, one (1) person representing each appellant (when different from the applicant), and one (1) person representing each, real party in interest are entitled to sit with Staff at the Staff table with opportunity to answer questions and respond to comments made by members of the Staff or the Council.

F. After hearing testimony and public comment, the Legislative Body may close a public hearing or continue it to another specified date. Action following the close of a public hearing shall take place at the next Meeting of the Legislative Body to allow members of the Legislative Body time to consider the testimony and any new information received at the hearing. If it is legally required to take action at the same Meeting following the receipt of testimony, the Legislative Body shall state the reason for doing so before acting upon the subject of the public hearing.

Section 1.30.180 Closed Sessions.

A Legislative Body shall only meet in Closed Session when doing so is specified by State or Federal law. The procedures for Closed Session shall be as follows:

- A. Before any Closed Session, a Legislative Body shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session.
- B. Any member of a Legislative Body attending a Closed Session by teleconferencing is required to state at the beginning and end of the Closed Session that he/she is participating with no other person present and to file a signed statement to that effect under penalty of perjury, except that for the following circumstances. If a member of a Legislative Body is disabled and needs assistance to participate in a Closed Session, the City shall provide a Staff assistant who is authorized to attend the Closed Session. Additionally, any specialized attendant or assistant, whom a disabled Council Member needs to have present in order to participate fully in the Closed Session shall be allowed to attend the Closed Session.
- C. For Closed Sessions on litigation matters, the Agenda shall list the parties involved, the actions being considered, and court case numbers, if assigned.
- D. For Closed Sessions on real property negotiations, the Agenda shall identify the property by

address, parcel number, and proposed purpose. Disclosure of the source(s) of payment for the property must be specified when negotiations are complete.

E. All Closed Sessions of any Legislative Body shall be audio recorded in their entirety and made a part of a record of the Meeting. Closed Session tapes shall be archived in the custody of the City Attorney. These recordings and any other records of the Closed Session shall be made available whenever all rationales for keeping the records confidential are no longer applicable.

1. Recordings of Closed Sessions of a Legislative Body convened due to anticipated litigation shall be released to the public under any of the following circumstances:

- a. Two years after the Meeting if no litigation is filed.
- b. Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed.
- c. As soon as the controversy leading to anticipated litigation is settled or concluded.

F. All agreements for the purchase or sale of real estate, contracts with employees, and agreements with other Legislative Bodies and regional agencies discussed in Closed Session shall not be deemed approved until the vote is taken in an open Meeting. Agreements between the City and other entities regarding land use and transportation issues that have been discussed in Closed Session shall not be deemed approved or rejected until a public hearing has been held and a vote is taken following the hearing. Such items shall be placed on the Agenda of a subsequent regular Meeting in the same manner that any new item is placed on the Agenda of the Legislative Body.

G. Immediately following the end of the Closed Session, the Legislative Body shall make a report in open session describing all matters reached either by consensus or voted upon and the results of such votes, whether approved or not. This shall be followed by a re-vote in full view of the public.

H. The location of reports to the public after a Closed Session has ended shall be in a venue that is open to the public, and where possible, one that supports video transmission, audio, and video-streaming. The report on Closed Session actions shall be posted no later than the end of the following business day to the City's website and to all other places where the Agenda of the Legislative Body in question is posted.

Section 1.30.190 Special Meetings.

A. A presiding officer or three (3) members of a Legislative Body may call a Special Meeting with four (4) calendar days notice, but only for the purpose of considering a single item based on information that has come to light after the Agenda deadline for the last regular Meeting of the Legislative Body, which requires action prior to the next regular Meeting of the Legislative Body and which will do irreparable harm to the City if action is not taken before the next regular Meeting.

B. The reason and timing for the Special Meeting shall be printed on the Agenda for the Special

Meeting. The Agenda along with its Supporting Documents shall be posted and available to the public, as provided for Section 1.30.260 no later than seventy-two (72) hours in advance of the Special Meeting.

C. At the beginning of the Special Meeting, after public comment is received, the Legislative Body shall vote on whether to proceed with the Special Meeting. The Special Meeting shall proceed only if two thirds (2/3) or more of the members are present and a Quorum of the Legislative Body votes affirmatively to proceed. Lacking the vote to proceed, the item on the Agenda will be deferred to the next regular Meeting that satisfies the requirements in Section 1.30.080.

Section 1.30.200 Emergency and Dire Emergency Meetings.

State law defines the circumstances and procedures for noticing and holding two (2) levels of emergency meetings: an Emergency Meeting and a Dire Emergency Meeting. At the beginning of either an Emergency or a Dire Emergency Meeting, a majority of attending members of the City Council shall confirm the nature of the emergency or dire emergency and the business which is to be transacted. The circumstances under which such meetings may be held and the procedures for holding Emergency and Dire Emergency Meetings in the City shall be at a minimum those that were in effect under State law as of the effective date of this Ordinance.

Section 1.30.210 Reporting Requirements for Meetings of Local, Regional, State, and National Agencies, Institutions, and Other Entities.

A. When one or more persons acting as a representative of the City or any of its Legislative Bodies, attends a meeting in person or by use of technology at which an item affecting the City is discussed with another representative of or members of local, regional, state or national agencies, including but not limited to, Legislative Bodies, the University of California, Lawrence Berkeley National Laboratory, the University of California Board of Regents, and other institutions and entities, such representative shall, within five (5) business days following the meeting, provide a written report to be placed on the Agenda of the appropriate Legislative Body or Bodies. The report shall state the name of the person or group, the time, place, and purpose of the meeting, a summary of the discussion of any item that impacts the City, the positions expressed by the Berkeley representative, any action(s) or non-action (s) taken, and the vote(s), if any, of the Berkeley representative.

B. Within six (6) months after the enactment of this Ordinance, Staff, working in consultation with the Commission, shall include on the City's website, up-to-date, organized information on the ongoing activities of regional bodies and the University of California, Lawrence Berkeley National Laboratory, and the University of California Board of Regents, including website links to these agencies, their agendas and minutes, the City representatives' meeting reports, and information about activities of those entities that may be of significant interest to the residents of Berkeley.

Section 1.30.220 Audio or Video Recording and Broadcast of Meetings.

A. All Legislative Bodies shall record their Meetings with an audio recorder. Such recordings shall be permanently retained, be archived on the City's website and available to the public.

B. All regular and Special Meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board held in the venue regularly used shall be audio recorded, televised and video-streamed live and archived for replay on the local government cable channel and on the Internet. Such web broadcasts shall be captioned, with the captioned text displayed on the cable broadcast and as part of the video-stream. The captioner's transcript of the Meeting shall be retained with the video recording.

C. The City shall annually make a good faith effort to add Meetings of the Planning Commission, Board of Library Trustees, Housing Authority, Landmarks Preservation Commission, and Housing Advisory and Appeals Board to those Meetings that are televised and video-streamed.

D. The requirement to cable broadcast and video-stream Meetings shall not apply if necessary equipment malfunctions or if a public Meeting is changed to a location that does not have the technological capacity to accommodate the cable, web broadcast, and captioning. However, an audio recording of the Meeting shall be made, and a written transcript shall be produced.

E. Any person attending a Meeting of a Legislative Body may record the proceedings with an audio, video recorder, a still or motion picture camera, or broadcast the proceedings; unless or until the body makes a finding that the recording creates an unreasonable and persistent disruption of the proceedings.

Section 1.30.230 Meeting Minutes.

A. For Legislative Bodies, the secretary of that body shall prepare the minutes of each Meeting. The minutes shall state the date and place of the Meeting, the time the Meeting was called to order, the names of the members present at the time the Meeting was called to order, the names and times of arrival or departure of any member of the Legislative Body arriving or leaving the Meeting after the call to order and before adjournment, the names of presenters and Staff who provided reports or comments, the names of other persons attending any Closed Session, Closed Session announcements, disclosures of any conflicts of interest and *ex parte* communications, a list of those members of the public who spoke on each matter (and their names, if the speakers identified themselves) a brief summary of each person's statement during the public comment period, the vote by name of each member on each matter considered by the body at the Meeting, and the time the Meeting was adjourned.

B. No later than six (6) business days after a Meeting draft minutes of a Meeting of a Legislative Body shall be posted on the City's website and be available for inspection and copying upon request. The minutes of a Meeting shall be officially adopted within sixty (60) days and available to the public no later than six (6) business days after the Meeting at which they are adopted.

C. For Legislative Committees/Subcommittees, a member or Staff, as designated, shall prepare

minutes of each meeting. The minutes shall state the date, time, and place of the meeting, the names of all those present, a brief description of the discussion, and any action taken. Minutes shall be prepared for adoption at the next subsequent meeting, posted on the City's website and made available to the public in the office of the contact person of the appropriate Legislative Body.

Access to Public Information

For the purposes of this Ordinance, California Government Code Sections 6250 – 6276 (California Public Records Act) as of the effective date of this Ordinance, and their successor Sections, shall apply in addition to those provisions in this Ordinance.

Section 1.30.240 Responsibilities of Staff.

A. In addition to the duties assigned in other Sections of this Ordinance, whenever the City Manager issues an Annual Report on the City, such Report shall contain information on the rights of residents under this Ordinance, how those rights may be exercised, a summary of complaints filed under the Ordinance, and the results of any complaints. Further, the City Manager shall ensure that Staff is trained regarding their obligations under this Ordinance. The City Manager (herein referred to as The Custodian of Records) shall also designate in each department/office a departmental Custodian of Records (herein referred to as A Custodian of Records), who shall ensure that all Staff who have contact with the public are prepared to provide written and oral information to the public.

B. A Custodian of Records shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s).

C. A Custodian of Records shall, as soon as possible and within ten (10) days following receipt of a request for a Public Record, comply with such request. If A Custodian of Records believes the record requested is not a Public Record, he/she shall state in writing the express provisions of law that justify withholding the record.

D. When a member of the public submits a written request for information to any paid or elected agent of the City, that agent shall respond to said request within two (2) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral.

E. Nothing in this Section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communication between members of the public, Staff, and members of Legislative Bodies.

Section 1.30.250 Responsibilities of the Mayor.

If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video-streaming and transmission capabilities. The event shall be noticed, recorded, free to the

public and open to all. The address shall include a report on the previous year's Sunshine complaints, how they were resolved, and a summary of any actions taken or pending related to provisions of this Ordinance.

Section 1.30.260 Notices and Posting of Information.

A. At a minimum, the following shall be posted on the City's website and provided in written form in the City Clerk's Office and at the reference desk of each Berkeley public library:

City Charter
Berkeley Municipal Code
Building Code
General Plan and Area Plans
Zoning Ordinance
Landmarks Preservation Ordinance
Sunshine Ordinance
Citizen's Guide to Public Information
Records Index
Records Retention Schedule
Council Rules of Procedure (when revised to comply with this Ordinance)
Commissioner's Manual (when revised to comply with this Ordinance)
Conflict of Interest Code
Statements of Economic Interest
Appointment Calendars
Agendas and Minutes of the Meetings of all Legislative Bodies

B. Each Legislative Body shall designate one or more physical locations to post notices. Designated posting locations shall be freely accessible to members of the public twenty-four (24) hours per day, visually prominent, and readable from the public right of way. Notices and Agendas shall be posted indicating links as to where Supporting Documents and other Agenda related documents may be found on the City's website. In addition, such documents shall be placed in each Berkeley public library.

C. At a minimum, within six (6) months after enactment of this Ordinance, each Legislative Body shall have posted on the City's website all current Meeting Agendas, minutes, and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is updated on at least a weekly basis.

D. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available at designated City offices with copies available for borrowing by the public at each Berkeley public library.

E. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of

taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.

F. The Commission shall review public notices to ensure that they conform to the requirements of this Ordinance and work to improve publicly accessible information databases to ensure consistency, equity, timing, and extent of noticing for Meetings and other matters of public interest.

G. Right to notice regarding matters that may impact the physical environment shall be equivalent for residential and commercial tenants and property owners.

H. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for Meetings on said projects.

Section 1.30.270 Public Records Index.

A. The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and Legislative Bodies. The Index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what periods of retention. The Index shall be sufficient to aid the public in making a focused inquiry regarding Public Records. The Index shall be posted on the City's website and available in written form in the City Clerk's office and in each Berkeley public library.

B. The Index shall classify each type of record as either: (1) "Open," meaning accessible to the public without exception and subject to immediate disclosure; or (2) "Partially Open," meaning possibly containing some exempt content, such that review is required; or (3) "Closed," meaning that disclosure of the document is prohibited by State or Federal law. Each classification of a record as "Partially Open" or "Closed" shall identify the specific legal authority relied upon in assigning that classification.

C. The Custodian of Records shall be responsible for preparing and maintaining the Index. He/she shall report on the progress of developing the Index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of this Ordinance. In identifying the types of records to be maintained, each department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed Index shall be reviewed by the Commission and submitted for approval by the City Council.

D. The Index shall be periodically reviewed by Staff and Commission for accuracy and completeness.

E. A list of any change in the Index shall be noted on the City's website and posted in each Berkeley public library for a period of at least three (3) months.

Section 1.30.280 Public Review File.

Any document relating to City business sent or received by a member of a Legislative Body shall be part of the Legislative Body's Public Review File, which shall be organized in a manner that facilitates public access to the material. The Public Review File shall be maintained by a designated person for each Legislative Body and be accessible to any person during normal office hours. The City Clerk shall maintain a central registry of locations where Public Review Files can be accessed.

Section 1.30.290 Records of Officials: Appointment Calendars and Statements of Economic Interest.

A. All documents connected with City business that are prepared, received, or maintained by any elected or appointed City official, while in office, or by every department head are the property of the City. The originals of these documents shall be maintained in a professional manner and disclosed consistent with the Records Retention Ordinance and this Ordinance.

B. A calendar shall be maintained by all elected officials, the City Manager, the City Attorney, the Library Director and Trustees, the Rent Stabilization Program Director, and all department heads, listing by date, place, and time, all City-related meetings, appointments they make and meetings and conferences that they attend in person or by technological means. Such calendars shall be Public Records subject to disclosure, except for those parts, if any, specifically exempted by State and Federal law and shall be posted to the City's website prior to the close of business each week.

C. No later than April 15th of each year, the City Clerk shall post on the City's website all current and prior Statement of Economic Interest forms of members of Legislative Bodies, the City Manager, City Attorney, Rent Stabilization Program Director, and department heads.

Section 1.30.300 Contributions to the City.

A. Any gift of funds, goods, or services worth more than one hundred dollars (\$100.00) in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council.

B. A list of such donations by donor, type, and amount shall be part of the Public Review File of the City Council.

C. A record of any gift of any size, distributed to any office or department, shall be part of the Public Review File of that office or department.

Section 1.30.310 Reports of Lobbying.

A. Any City Lobbyist shall file a quarterly report with the City Clerk, which shall be a Public Record. Each quarterly report shall identify all City-related financial expenditures by the Lobbyist, including name of each recipient, date, and the action that the Lobbyist supported or opposed in making

the expenditure. The failure to file a quarterly report with the required disclosures shall be cause for termination of the contract for representation. The City Clerk shall post on the City's website a direct link to the disclosure forms that the City's Lobbyists file with the appropriate State and/or Federal agencies.

B. Special Interest Lobbyists shall file a report with the City Clerk, specifying by City-related issue all the dates, places, and names of the members of the Legislative Body they have contacted and the direct and indirect compensation received from their clients for such matters. This report shall also include, but not be limited to, fundraising activities conducted on behalf of elected City officials, contributions to persons and organizations, and payments received for services as a consultant to any City Legislative Body. No person who qualifies as a Special Interest Lobbyist shall contact any elected official of the City without first registering with the City Clerk and complying with the disclosure requirements of this Section. The City Council may establish a registration fee.

Section 1.30.320 Types of Information Accessible by the Public.

It is the intent of this Ordinance to provide for the disclosure, upon request, of all Public Records in printed or electronic form to the maximum extent permitted by State and Federal law and, wherever permitted, to waive the City's right under State law to withhold disclosure in certain circumstances. Accordingly, disclosure shall be made in all cases where not specifically forbidden by State and Federal law, including but not limited to, the following:

A. Drafts and memoranda or written communications or drafts thereof between Staff, members of Legislative Bodies, and/or third parties shall be subject to disclosure at the time a final recommendation is delivered. Draft versions of an agreement being negotiated between the City and third parties must be preserved and made available for public review beginning fifteen (15) days prior to the presentation of the agreement for approval by a Legislative Body.

B. Litigation records and attorney-client communications shall not be subject to disclosure to the extent that they are protected from disclosure by State and Federal law. Other communications relating to the subject matter of such protected communications are Public Records, including without limitation pre-litigation claims against the City, records received or created by a department in the ordinary course of business that were not subject to the attorney-client privilege at the time of their creation, and amounts paid by or to others in connection with claims by or against the City. When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any settlement shall be subject to disclosure. No attorney representing the City shall solicit or agree to any settlement provision that would restrict disclosure of terms or communications between each party after settlement and any such provision shall be void.

No communication with a legal advisor to the City shall be exempt from disclosure as confidential attorney-client communication to the extent that it concerns an actual or potential conflict of interest,

analyzes a proposed legislative position or administrative action of the City, or reports on the status of negotiations relating to a claim by or against the City.

C. Personnel Records, including but not limited to, those listed below shall be disclosed, except for those portions which are exempt from disclosure under State or Federal law.

1. Job descriptions.
2. Salary, benefits, and overtime pay provided to each current employee by name and position.
3. Pension and benefits provided to each retired employee by name and position.
4. Communications with a recognized employee organization.

D. Law enforcement reports prepared by the Berkeley Police Department are Public Records and must be disclosed, except as barred under State and Federal law, particularly as related to juveniles, domestic violence, and sex-related crimes and as specified below.

1. Identifying information of a victim of a crime of sexual assault shall not be made public without the express written permission of that person.
2. Parts of non-exempt police reports may be redacted to exclude material that would endanger the safety of a person or compromise the completion of an investigation. When such a redaction is made, a written explanation shall be provided.

E. Responses and other financial and qualifying documents relating to contracts, bids, and Requests for Proposals or Qualification shall be open to inspection immediately after the deadline for submittal has closed or the City has decided not to proceed.

F. All records concerning potential environmental impacts generated or received by the City, including but not limited to documents resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), for projects wholly or partially within the City of Berkeley shall be made available to the public in any requested available format in accordance with Section 1.30.370.

Section 1.30.330 Access to Records.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of State or Federal law. If the record requested contains both exempt and non-exempt information, then the exempt information shall be masked, but not removed and the masked portion shall be keyed by footnote or other reference to the justification for withholding the information.

B. Nothing in this Section shall require programming a computer to respond to a request for information or to release information that would violate a licensing agreement or copyright law, provided that the provision in the agreement or legal authority precluding release is quoted and cited to the requestor.

C. The intent of this provision and its requisite open standards are to ensure the accessibility of all City information, which is not specifically exempted from public disclosure by State or Federal law. Technology will change over time; standards, standards bodies, and operating systems are noted here for reference only. To provide accessibility of information in electronic media, the City shall as soon as possible:

1. Use open, non-proprietary, cross-platform, standards-based text, image, audio, video, and other data exchange formats on public-facing computers and information systems.
2. Make an alternate format available when commercial, non-standard, or otherwise platform-listed formats must be used.
3. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration (Section 508, <http://section508.gov>).
4. Avoid binary document formats (such as image-based PDF or OOXML) when ASCII (PDF/A or ISO-8859-1) or other text-based formats are available. Rich-text documents should contain all fonts needed for their viewing. All document formats should be easily and entirely index able for accurate searching.
5. Make audio available for both download and streaming using open, cross-platform, standards-based formats (such as OGG or MP3), which can be accessed from any computer (having Windows, Mac, Linux, Unix operating systems) or portable device (PDA or cell phone).
6. Use open, cross-platform, standards-based image formats such as those published by the ISO and W3C (PNG, JPEG).
7. Make video available for downloading and streaming using open, cross-platform, standards-based formats (such as Theora or MPEG). Make the audio portion of video-streams available separately.
8. Maintain websites and URLs with fixed and logical tree structures that do not change unnecessarily. Once posted, data should remain online.
9. Prohibit the use of tracking technologies (such as cookies, xss, and Google Analytics) in accessing public information.
10. Avoid web content-types that are not compatible across browsers, including older browsers (avoiding Flash and platform or browser-specific HTML, CSS, and Javascript).
11. Make substantive website changes track able by title and synopsis in an open, cross-platform, standards-based journal format (such as RSS or Atom). Update these journals at least once per business day.
12. Index large files and make available by subsection, so that all elements can be downloaded or

viewed on speed or size-limited platforms. Subsections should be no more than ten (10) pages of text and should be identifiable and accessible from their larger parent document. Audio and video files must have separate text indexes so that subsections can be quickly located and navigated to whether streamed or downloaded.

D. Access to non-exempt City information should not require action by Staff. Documents such as Agendas, minutes, bids, and requests for bids, should be digitized or converted to an open digital format (if necessary) and placed online when received. Staff and the public shall access non-exempt data from the same source. Exempt data should continue to be stored on separate internal computer systems.

Section 1.30.340 No Public Interest Balancing Test or Deliberative Process Privilege.

Neither the City nor any officer, employee, agent, or elected or non-elected official may assert California Public Records Act Section 6255 as of the effective date of this Ordinance, and/or its successor Section or any other provision of law that prohibits disclosure as the authority for withholding any information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure or on a claim of "deliberative process" privilege. Any denial of access to information must be based on an express provision of this Ordinance or on a specific exemption provided by State or Federal law.

Section 1.30.350 Process for Obtaining Records.

A. A person seeking access to information need not state his/her identity, reason for making the request or the use to which the information will be put, unless such disclosure is required by State or Federal law. However, for redress under this Ordinance, a person seeking such access is encouraged to make his/her request, in writing.

B. A Custodian of Records shall assist a requester in identifying the existence, form, and nature of the information sought. When requested, this Custodian shall provide within three (3) business days following receipt of the request, a written statement as to the existence, quantity, form, and nature of the records relating to a particular subject or question with enough specificity to enable the requester to identify and request the relevant records.

C. A Custodian of Records shall permit all portions of a Public Record that are not exempt from disclosure to be inspected by any person and shall provide copies thereof upon request.

D. Where the request is for a specific, readily identifiable, and available Public Record, the record shall be provided no later than the close of business on the next business day.

E. Where materials to be released are voluminous or in multiple locations, the materials may be released in stages, as they are gathered, but no later than the tenth (10th) business day following the request.

F. If the information requested involves more than one office or department, then the request shall

be forwarded to the City Manager. The City Manager or his/her designee shall coordinate the timely response to the requester in accordance with this Ordinance.

G. If The Custodian of Records reasonably believes that part or all material requested is not a Public Record, The Custodian shall state in writing the basis for such denial within three (3) business days of receiving the request and shall, to the extent possible, suggest alternate ways of obtaining the desired information. The written explanation shall cite all facts and authority relied upon in denying the request.

H. Where State or Federal law gives the City discretion to withhold a particular Public Record, the City shall waive its right to withhold the record, except as specifically provided for in this Ordinance.

Section 1.30.360 Request for Waiver of Confidentiality.

A. Whenever The Custodian of Records asserts a justification for nondisclosure of a Public Record, an exemption based upon the interests of the individual or entity, he/she shall cooperate with the requester's efforts to communicate with the individual or entity using a blind-mailing process. This process includes the following elements:

1. The requester provides postage-paid envelopes for each of the individuals or entities sought to be contacted, with each envelope containing a letter explaining why the information is being sought and asking the person or entity to contact the requester, and
2. The City maintains confidentiality of the information by affixing all reasonably accessible addresses of involved subjects and mailing the envelopes, after including in each a statement that the subject of the information request must be legally competent to waive his or her privacy interests, but need not do so, and that the City is a disinterested party merely facilitating communication between citizens on matters that may be of public or private interest and is not liable for the result of any such communication. If the subject of the information request is legally competent and signs a privacy waiver for all or part of the information withheld, the City shall promptly release the information.

B. The City shall not be liable for any consequences of fulfilling its obligations under this Section.

Section 1.30.370 Fees for Records.

- A. No fee shall be charged for making Public Records available for review.
- B. No fee shall be charged for documents routinely produced in multiple copies for distribution to the public, e.g. Meeting Agendas.
- C. Fees for documents copied on the order of the requester shall not exceed bulk rates charged by commercial copying services within the City for comparable services.
- D. Copying of Public Records stored in electronic form shall be made available to the public in any medium at a charge no greater than the cost of the medium on which it is duplicated. Inspection of such records shall be at no cost.

E. Large documents that many members of the public are likely to want to study, such as City budgets and environmental review documents, including but not limited to those related to the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available for inspection at designated City offices and each Berkeley public library, where copies shall be made available for borrowing by the public.

Enforcement

Section 1.30.380 Sunshine Commission.

A Sunshine Commission ("the Commission") is established by this Ordinance. The responsibilities of the Commission include:

- A. Ensuring that the City's business is conducted in full view of the public to the maximum extent allowed by State and Federal law and this Ordinance;
- B. Educating members of Legislative Bodies, Staff, and the public on the role of Sunshine in the City of Berkeley; and
- C. Advising the Council and Staff on open government issues and suggest municipal ordinance changes as appropriate.

Section 1.30.390 Commission Membership.

- A. The Commission shall consist of a number equal to the number of City Council members, one each appointed by every member of the City Council.
- B. Each appointee shall be a resident of the City of Berkeley, but may not be an employee or volunteer in any City office, department, an elected official's office, or a contractor, vendor, or the holder of an ownership interest in an entity that is a contractor or vendor of the City. In addition, an appointee shall not have committed an ethics violation that has led to loss of a professional license or been convicted of a felony.
- C. All appointees shall have completed an application form which shall be developed by the City Clerk within ten (10) business days of the effective date of this Ordinance, and modifiable thereafter by the Commission. Such application shall include: i) a listing by the applicant of specific qualifications showing a demonstrated interest in-participatory democracy in local government, ii) a statement signed by the applicant that he/she has read, understands, and supports the Ordinance and pledges to make decisions that are independent of the appointer and to work the number of hours required to ensure the Ordinance is fairly and fully implemented, and iii) a personal statement on why the applicant wants to serve on the Commission. All Commission applications are Public Records.
- D. During the period of initial appointments and thereafter whenever there is a vacancy, the City Clerk shall publish notice of the vacancy in all Community Newspapers and on the City's website. The

City Clerk shall maintain a standing file of individuals who have submitted applications and groups that have requested to be notified of vacancies. When a vacancy arises, the City Clerk shall promptly notify all contacts in the standing file. All applications received by the City Clerk from any source shall be submitted to the Mayor and Council Members for their consideration.

E. There shall be no term limits for Commissioners. Terms shall run concurrently with the appointing Council Member's term. Within sixty (60) days of the effective date of this Ordinance and thereafter after taking office, each Council Member shall appoint a new Commissioner or re-appoint an existing Commissioner, failing which the current Commissioner shall be deemed to be automatically reappointed. Once appointed or re-appointed, no Commissioner may be removed from office except in accordance with Section 1.30.450.

F. Substitute appointments are prohibited.

Section 1.30.400 Commission Vacancies and Removal for Cause.

A. A Commissioner's service shall terminate upon:

1. Death or voluntary resignation.
2. Conviction of a felony.
3. Unexcused absence from three (3) consecutive, properly noticed regular Meetings of the Commission or from 50% or more of all regular Meetings in a six-month reporting period as provided for in the City of Berkeley Commissioners' Manual.
4. Expiration of the term of office of the appointing Council Member.

B. A Commissioner may also be removed for cause by a three quarters (3/4) vote of the whole Commission, which shall occur at a public Meeting noticed in accord with this Ordinance. Such removal shall be reflected in a written finding that the Commissioner in question:

1. Is no longer able or willing to perform the duties of a Commissioner, or
2. Has failed to meet one or more of the conditions described in Section 1.30.390 B and C, or
3. Has participated in and voted on an issue that constitutes a material conflict of interest for the Commissioner, or
4. Has communicated, except in a public Meeting, with members of a Legislative Body regarding the merits of a disputed matter that is currently before the Commission or its Enforcement Committee.

C. Where a vacancy has been created for any of the reasons stated in this Section, it shall be filled within thirty (30) days by the appointing Council Member from the pool of applicants for Commission positions maintained by the City Clerk as described in Section 1.30.399. Failure to do so will result in the Commission making the appointment within thirty (30) days after the Council Member fails to make an appointment.

Section 1.30.410 Organizational Period.

A. The first Meeting of the Commission shall take place within sixty (60) days after the Ordinance is enacted into law. By the conclusion of the first Meeting, the Commission shall, by majority vote, elect a Chair and a Vice Chair, each to a term of one (1) year. Thereafter, at the conclusion of each Chair's and Vice Chair's term, the Commission shall elect replacements. No Chair or Vice Chair shall serve for more than two (2) consecutive terms. Should a Chair or Vice Chair leave the Commission, the Commission shall elect a new Chair or Vice Chair to finish that term.

B. Within thirty (30) days of the election of the Chair and Vice Chair, the Commission, by a majority vote, shall appoint three-member Enforcement Committees (each hereinafter referred to as a "Committee") so that each Commissioner shall serve on at least one Committee and the duties of the Committees shall be divided in an equitable manner.

C. Within six (6) months after the election of the Chair and Vice Chair, the Commission shall, with public input, determine and publish the procedures governing its activities and Meetings, which shall be consistent with the provisions of this Ordinance.

D. Within thirty (30) days of its first Meeting, the Commission shall develop a Sunshine Alert Form for use in accord with Section 1.30.160.

Section 1.30.420 Commission Staffing.

The City shall provide a part-time Staff person to the Commission to act as its secretary. The Commission shall review and make recommendations to the City Manager regarding the qualifications and job description for this position. Two (2) members of the Commission, selected by a majority vote of the Commission, shall sit on the interview panel and make recommendations to the City Manager regarding the applicants.

Section 1.30.430 Role of City Attorney.

A. The City Attorney may publish legal opinions in response to a request from any person as to whether a record is public.

B. All communications to or from the City Attorney's Office with regard to this Ordinance, including but not limited to petitions, requests for opinion, and opinions, shall be Public Records unless specifically determined to be subject to the attorney-client privilege.

Section 1.30.440 Commission Legal Counsel.

The City Attorney shall, upon request, provide legal counsel for the Commission. If a majority of the Commission or the City Attorney determines that there is a conflict of interest, which the Commission declines to waive, the City shall, at the Commission's request, provide the reasonable fees and expenses of outside counsel chosen by the Commission, from the City Attorney's budget to retain outside counsel.

Section 1.30.450 Enforcement: General Procedures.

A. In addition to any other remedies available under the law and subject to procedures established by the Commission in a form consistent with the provisions hereof, any interested party may file a petition for relief with the Commission alleging a violation of the Ordinance.

B. Petitioner and the City as respondent shall appear at the initial hearing of any petition brought hereunder or appeal thereof and may be represented by counsel. Each shall be given the opportunity to present evidence and argument and to cross-examine any witness for the other party. All participants shall be under oath.

C. Such petitions shall be heard by an Enforcement Committee at a public Meeting within seven (7) business days of receipt, or at a later date agreed to by petitioner and respondent.

1. The Committee shall render a written decision within five (5) business days of the close of the hearing and inform all interested parties of the decision. Unless appealed, the decision of the majority of the Committee shall be deemed to be that of the Commission as a whole.
2. Where such decision is made by the Enforcement Committee, any dissenting member thereof or the petitioner or respondent may file a written appeal to the Commission within five (5) business days of the issuance of the notice decision.

D. The Commission shall hear such appeal at its next scheduled public Meeting that satisfies the notice requirements in Subsection F below.

1. By a majority vote, the Commission shall issue its decision on an appeal based on this Ordinance, the record that was made before the Commission, and information received at the Meeting.
2. If the Commission fails to reach a decision within five (5) business days, the initial decision by the Committee shall stand.

E. Decisions of the Commission may be appealed to the City Council by any party to the relevant dispute.

1. Any such appeal must be filed with the City Clerk within five (5) business days of the issuance of the notice of decision; otherwise the decision of the Commission shall stand.
2. Within thirty (30) days after the date the appeal first appears on the Agenda of the City Council, the Council must either affirm the decision of the Sunshine Commission and dismiss the appeal, or set the matter for public hearing. Consideration of any such appeal shall not be moved to the Consent Calendar.
3. Within thirty (30) days after the date on which the public hearing was opened, the Council must make a decision which shall be based on explicit findings, this Ordinance, and the record. This decision must be accompanied by a specific recommendation and/or statement regarding any corrective action and/or whatever other matters the Council wishes to place

before the City Manager regarding the subject of the appeal.

4. If the Council overturns the Commission's decision, the Commission may review the decision to determine further action.

F. Commission or Committee Meetings to review petitions and appeals require at least seventy-two (72) hours public notice which shall be given in writing to the petitioner and The Custodian of Records. Other deadlines for Meeting notices and Agendas specified in this Ordinance do not apply to Sunshine Ordinance enforcement procedures due to their time-sensitive nature and the necessity to conduct City business in a timely way.

G. The Commission and each Committee shall maintain records consisting of all written submissions, testimony, and other evidence of all hearings and appeals, including video and/or audio recordings.

H. The Commission shall prepare an annual report of alleged violations of the Ordinance brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof, and the location of all records relevant to each petition. With advance notice to The Custodian of Records, the Commission may also request a tally of records requests for statistical or comparative purposes.

Section 1.30.460 Enforcement: Public Records Access Denials.

A. Any one who believes the City has not fully complied with a request for Public Records may file a written petition with the Commission. The merits of such petition and of any appeal shall be determined in the manner described in Section 1.30.450.

B. The Commission shall immediately forward a copy of the petition to The Custodian of Records.

C. Where a document has been reasonably identified and is in City custody, it shall be presumed to be a Public Record, and A Custodian of Records or The Custodian of Records shall have the burden of overcoming such presumption.

D. If the determination is that the record is public, and no appeal has been taken, A Custodian of Records or The Custodian of Records shall comply with the request immediately.

E. If A Custodian of Records or The Custodian of Records fails to comply with a decision requiring production within three (3) business days of its issuance, any interested party or the Commission itself may notify the City Attorney, Grand Jury and/or District Attorney, who may take further action as appropriate.

F. Staff who have used the procedures and definitions set forth in this Ordinance shall not be disciplined for complying with a request for Public Records.

Section 1.30.470 Enforcement: Public Meeting and Noticing Violations.

A. Any interested party, within seven (7) business days of an alleged violation of the Meetings

provisions of this Ordinance, may file a petition with the Commission. The merits of the petition or of any appeal shall be determined by the Commission or Enforcement Committee, as described in Section 1.30.450.

B. Where the Committee or Commission finds that an action has been taken in violation of this Ordinance and available appeal rights have been exhausted, the City shall suspend implementation of the action pending judicial review or take a new action in conformance with this Ordinance. Nothing herein shall limit the jurisdiction of the Court on review to award interim equitable relief at the request of either party or on its own motion.

C. In the event of an action under Section 1.30.480 or related to a Closed Session, allegedly privileged tapes shall be discoverable by a plaintiff subject to the respondent's right to seek a protective order and pending review by the court *in camera* to determine the conditions under which production may occur.

Section 1.30.480 Judicial Review.

A. The Commission, and/or the City may seek a Writ of Mandate from the Superior Court of the State of California for the County of Alameda regarding issues including but not limited to a petition to identify and/or produce Public Records; a legislative or other action allegedly taken in violation of the provisions of this Ordinance; a timely decision that has not been rendered; or an allegation that the City has failed to comply with a decision made by a Committee or the Commission. The Court's review may be *de novo* and based on the full record maintained by the Committee and/or Commission. Where a violation is found, the Court may award appropriate relief which could include the voiding of any legislative or other action taken in violation of this Ordinance.

B. The provisions of Section 1.30.440 shall govern attorney's fees paid by the City in any legal action taken before the Superior Court by the Commission pursuant to this Ordinance. Other petitioners, if partly or fully successful, shall be awarded reasonable attorneys' fees. The City may be awarded its fees only if it is successful in defeating a petition found to be frivolous.

C. In the event of an action under this Section or related to a Closed Session, allegedly privileged tapes shall be discoverable by a plaintiff subject to the respondent's right to seek a protective order and pending review by the court *in camera* to determine the conditions under which production may occur.

D. The remedies provided under this Section shall in no way limit any person's right to seek a Writ of Mandate or use of other available administrative or judicial remedies.

Section 1.30.490 Penalties.

The willful failure of any elected official or City employee to discharge any duties imposed by any

State or Federal statute or this Ordinance shall be punishable as provided by existing Federal, State and local law.

Severability

Section 1.30.500 Severability.

If any part or provision of this Ordinance is found by a court of law to be in conflict with or in violation of the Berkeley City Charter or any applicable State or Federal statute or administrative or judicial decision, and if a court should declare such portion, provision, or provisions of the Ordinance to be illegal, invalid, unlawful, void, or unenforceable as written, then such portion, provision, or provisions shall be given force to the fullest possible extent that they are legal, valid, and enforceable, and the remainder of this Ordinance shall be considered to be legal, valid and enforceable.

To the extent this Ordinance directly or indirectly incorporates provisions of State law, and such law is repealed or changed in a way that materially limits the rights of the people under Sections 6250 - 6276 or 54950 - 54963 of the California Government Code, this Ordinance shall be construed as continuing in full force and effect to the fullest possible extent, including as a part hereof the relevant portions of State law as they existed on the effective date of this Ordinance.

End of Chapter

Attachment A – Encinitas Open Government Practices

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Regular meeting noticing	Brown Act (CA Govt Code 54954) - 72 hour notice.	144 hour notice.	Benicia 144 hr., Oakland 240 hr.
Special meeting noticing (includes closed sessions)	Brown Act (CA Govt Code 54956) – 24 hour notice.	24 hour notice.	Benicia 72 hr., Oakland 48 hr.
Adjourned and continued meetings and hearings noticing	Brown Act (CA Govt Code 54955.1) – 24 hour notice.	24 hour notice.	None.
Emergency meeting noticing	Brown Act (CA Govt Code 54956.5) – 1 hour or more notice to the press.	1 hour or more notice to the press.	None.
Advance noticing requirements for regular public meetings	Brown Act (CA Govt Code 54954) – standing meeting times by ordinance.	2 nd , 3 rd , 4 th Wednesdays of every month at 6:00 pm (Encinitas Ordinance 2001-21).	None.
Public rights with respect to Brown Act shall be included on all notices and agendas	No legal state or federal mandate.	Brown Act rights are printed at the beginning of each City Council agenda document.	Milpitas and Benicia post public rights in chambers.
Language used on agenda reports	No legal state or federal mandate.	City policy G06 specifies clear, concise language with short sentences. Use of technical terms should be minimized, and acronyms explained.	Milpitas, SF and Vallejo also target “average” intelligence.
Regular meeting minutes	CA Govt Codes 36814 and 40801 – written minutes required.	Draft minutes available for review 6 working days after Council meeting. Adopted minutes available no later than 3 working days after mayor’s signature.	Milpitas (10/10) days after, Oakland (10/5) days after, SF (10/10) days after.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Closed meeting minutes	No legal mandate to record or take written minutes.	City Resolution 99-65 requires the City Clerk to take confidential written minutes.	Benicia, Milpitas, Oakland, Riverside and SF audio-record closed sessions.
Adopted minutes available on the Agency's website	No legal state or federal mandate.	Adopted Council meeting minutes are posted on the City's website no later than 72 hours after mayor's signature.	Benicia and Oakland in 120 hrs; Milpitas and SF in 240 hrs.
Agenda-related correspondence available for public inspection prior to public meeting	Brown Act (CA Govt Code 54957.5) – make available if less than 72 hours prior to the meeting.	Copy given to Council and placed in public viewing binder at the counter as received when less than 144 hours prior to the meeting.	Oakland if less than 240 hrs prior, Benicia if less than 144 hrs prior to the meeting.
Subscriber requests to receive agendas or agenda-related materials	Brown Act (CA Govt Code 54954.1) – must be mailed at the time the agenda is posted, at least 72 hours prior to meeting.	Website alert sent to subscribers when agendas are posted, and is available on City's website 144 hours prior to Council meeting.	Oakland 240 hrs prior; Benicia 144 hrs prior to the meeting.
Staff report availability	Brown Act (CA Govt Code 54957.5) - staff reports related to an agenda item must be made available to the public once distributed to the majority of Council, at least 72 hours prior to the meeting.	Available on City website 144 hours prior to the meeting, and available at the meeting. If report is submitted after website posting, report placed in public viewing binder at the counter as received if 144 hours or less prior to the meeting.	Oakland if less than 240 hrs prior; Benicia if less than 144 hrs prior.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Right to speak at public meetings	Brown Act (CA Govt Code 54954.3) – every agenda shall provide opportunity for the public to address the legislative body on any agenda item or any item of interest to the public.	Council Policy C003. Procedure printed on each Council agenda. Generally, three (3) minutes per speaker per agenda item. Currently Council limits non-agenda comments to 15 minutes total for all speakers.	None. Benicia (5 min), Milpitas (3 min), Oakland (2 min), SF (3 min).
Right to conduct closed sessions of City Council	Brown Act (CA Govt Code 54956.7 to 54957.0) – based on advice from legal counsel.	City conducts closed sessions to address certain issues including: litigation (existing, anticipated); negotiations (real property, labor); liability claims; personnel issues; and threat to public services or facilities.	None.
Draft documents	CPRA CA Govt Code 6254(a) – Generally exempt from public request unless retained in the normal course of business.	Subsequent to a specific case analysis, the City generally does not make draft documents available to the public, although draft minutes from the prior meeting are posted in each agenda packet. Proposed budgets (drafts) are made available to the public during the deliberative process, but are not retained after final budget adoption.	SF only exempts recommendations of the author in preliminary drafts. Milpitas specifically excludes certain legal opinions and proposed budgets from exemption. Oakland excludes proposed budgets from exemption.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Documentation of Agency compliance with CPRA Agenda availability	No legal state or federal mandate. Brown Act (CA Govt Code 54954.2) - agendas must be posted for public review at least 72 hours prior to the public meeting.	City Clerk logs all public records requests and responses. Agendas and agenda packets are available for public review 144 hours prior to Council meeting.	None. Oakland 240 hrs prior; Benicia 144 hrs prior.
Posting of Agency laws and policies on Agency website Engineering or architectural drawings records requests	No legal state or federal mandate. CA Health & Safety Code 19851 - requires 30-day period to notify engineer/architect. CA Govt Code 34090.	Encinitas Municipal Code is on the City's website. City requires 30-day period to notify engineer/architect.	Benicia, Milpitas, Oakland, SF, Vallejo. None.
Document Retention Policy	CA Govt Code 34090.	City records retention schedule amended on an as-needed basis.	None.
Litigation material	CPRA (CA Govt Code 6254(b)) – Certain records pertaining to pending litigation are not required to be disclosed until final adjudication or settlement.	Certain records available upon public records request subsequent to final adjudication or final settlement.	Draft settlement agreements in SF and Milpitas disclosed 10 days prior to approval; Vallejo 3 days prior to approval.
California Public Records Act exception	CPRA (CA Govt Code 6255) – Non-disclosure of certain documents when justified.	City Council appointment calendars and City cellular phone records available to the public upon request.	Milpitas makes cellular phone records and calendars available.

Attachment A -- Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Regular meeting recordings	Brown Act (CA Govt Code 54953.5) - no requirement to record meetings but if a recording is made, it may be destroyed after 30 days.	Streaming video taken for City Council and Planning Commission meetings, audio recordings taken for other bodies. All recordings are retained permanently in the course of City business.	Benicia and Oakland retain recordings 4 yrs; Milpitas retains recordings 10 yrs.
Ethics training for elected officials	CA Govt Code 53235 - 2 hrs ethics training every 2 years.	City implements State law by Reso 2007-04; 2 hrs training every 2 years.	Benicia and SF annual ethics training.
Statements of Economic Interest	Political Reform Act (CA Govt Code 87100).	Public Officials and government officers file Form 700. (194 filers in Encinitas).	None.
Records request response time	CPRA (CA Govt Code 6253) - no later than 10 days.	Generally, provide requested records no later than 10 days after request.	Oakland 3 days, SF 10 days.
Records request extension	CPRA (CA Govt Code 6253) - not to exceed 14 days under unusual circumstances.	Administrative policy G014 - under unusual circumstances, not to exceed 10 days.	None.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
<p>Willful failure to comply with Brown Act, CPRA or Sunshine Ordinance shall be official misconduct</p>	<p>No legal state or federal mandate.</p>	<p>Encinitas does not have a Sunshine Ordinance, but complies with state and federal law as applicable.</p>	<p>Milpitas, SF, Vallejo.</p>
<p>None of the following shall be exempt from disclosure: years of academic study, degree(s) and major or discipline; years of employment in private and/or public sector; other non-identifying particulars as to experience credentials, aptitudes; employment resume minus personal information</p>	<p>No legal state or federal mandate.</p>	<p>Department directors post a biography on the City's website. For all other staff, the City provides name, position, salary classification and benefits as requested.</p>	<p>Benicia, Oakland, SF.</p>
<p>Complaint procedure for Sunshine Law violations</p>	<p>No legal state or federal mandate.</p>	<p>Not Applicable. Encinitas does not have a Sunshine Ordinance.</p>	<p>Benicia, Milpitas, Oakland, SF, Vallejo.</p>
<p>An Open Government Commission advises City Council on, and assists in implementation of the Sunshine Ordinance</p>	<p>No legal state or federal mandate.</p>	<p>Not Applicable. Encinitas does not have a Sunshine Ordinance.</p>	<p>Benicia and Milpitas. But Oakland has a Public Ethics Commission and San Francisco has a Sunshine Ordinance Task Force.</p>