



Office of the Mayor

ACTION CALENDAR

October 10, 2006

To: Members of the City Council

From: Mayor Tom Bates
Council Member Kriss Worthington

Subject: Discussion of Draft Sunshine Ordinance

RECOMMENDATION:

That the City Council discuss the draft sunshine ordinance and provide guidance to staff on possible changes and improvements.

BACKGROUND:

In 2001, at the request of Councilmember Worthington, the City Council requested city staff begin work on a Sunshine Ordinance.

Since that time, the City Clerk and Office of Information Technology have made a number of major changes to increase the amount of information available publicly. For example, videostreamed broadcasts of the City Council, Redevelopment Agency, Berkeley Housing Authority and Zoning Adjustments Board, both live and stored, can be viewed from the City's website and the entire packets of reports and agendas and minutes of those meetings are also on the City's website. In addition, the creation of the Agenda Committee is providing an additional week of public notice regarding items scheduled to come before the City Council.

The proposed Sunshine ordinance is intended to address many of the concerns initially raised by Councilmember Worthington, to codify the improvements made by the City, to address some new concerns that have been raised in the intervening years, and to augment the requirements of applicable state law with respect to public information.

There are also several issues that may be more appropriately addressed by changing Council rules of procedure rather than the ordinance. Proposed changes to the Council rules are listed in the attached summary pages.

As the City Council moves forward in enacting a Sunshine Ordinance, Council Member Worthington has suggested we consider and address some specific public policy issues to decide whether specific areas in which we wish to make revisions. Some areas of concern raised by the public include the following:

- Last minute submittals of council items without adequate public notice.

- Moving City Council meetings to a larger location that is wheelchair and disabled accessible.
- Requiring task forces to be bound by Board and Commission rules.
- Public update of the agenda order during the City Council meetings – to make sure that the public is aware of changes after the consent calendar process.
- Identification of commissioners and staff when speaking at Council meetings.
- A satisfactory complaint & enforcement procedure to address violations of the Sunshine Ordinance.
- Notification of approximate beginning and end times for public hearings.
- Establishment of rules regarding public notice, location, and inclusion in meetings.
- Requirement for disclosure of settlement agreements before their adoption.
- Announcement in open session of final decisions made in closed sessions when legally possible.
- Cooperation with law enforcement agencies in making relevant records, logs, and other information accessible to the public and the press.

While many of these issues are addressed in the draft ordinance, the Council may desire to make changes to how they are addressed.

This item is to provide for a useful public discussion of the ordinance, not to take formal action.

FISCAL IMPACTS: None.

CONTACT PERSON: Mayor Tom Bates, 981-7100.
Council Member Kriss Worthington, 981-7170.

ATTACHMENTS :

- Summary of Sunshine Ordinance Provisions
- Elements of Sunshine Ordinance
- Draft Sunshine Ordinance
- Proposed Changes from SuperBOLD to include Public Comment

Attachment 1

Draft Sunshine Ordinance Summary Sheet

Sunshine Ordinance Provisions

Council scheduled to encourage public participation

- Requires City Council meetings, task forces, and subcommittees be scheduled in the evenings and at times the public is likely to be able to attend.
- When practicable, the Agenda Committee is directed to set a specific start time for those public hearings likely to be attended by a large number of people.

Task forces required to be open to the public

- Any task force created by the Mayor or a Council member that meets regularly and uses staff support must be open to the public and held in an accessible location. (This task force requirement is based on the San Francisco Sunshine Ordinance.)

Council and commission agendas and reports

- Agendas for all City Council, board and commission meetings and subcommittees thereof shall be posted on the City's website and in the bulletin board provided for this purpose. Failure to comply with this requirement for any City Council, Redevelopment Authority, or Housing Authority meeting is voidable as a violation of the Brown Act.
- The ordinance puts in place requirements for posting of draft and final Council agendas.
- The ordinance puts in place requirements about the information included in agenda item reports, including contact information for people with questions.
- Failure to adequately describe the subject matter under discussion can require re-noticing for subsequent meeting even if the item met the requirements of applicable state law.
- Reports and related materials, including supplemental material distributed by the City after the agenda packet was published, will be made available for public review at the Council or commission meeting.

Requirements for approval of litigation settlements

- As is the City's longstanding practice, the substance of existing litigation or liability claim settlements to be approved by the City Council should generally be placed on the Council open agenda for approval, except in narrow circumstances as defined in the ordinance. However, no exception to this rule can be made if the settlement includes the adoption, modification, repeal or rescission in whole or in part of a City ordinance, policy, practice or procedure.

Liberal construction of public requests for information.

- The City is required to liberally construe requests for public records whether or not the person seeking a City record has framed the request as a request under the California Public Records Act. All City departments shall help members of the public to identify and locate public records and provide them promptly.
- In general, requests for city records do not need to be made in writing and must be provided as soon as practicable.

Police records

- Any change in the existing City policy (which was worked out with interested citizens and the Police Review Commission) that would reduce public disclosure, shall be subject to advance public notice and review by the Police Review Commission.

Clear process for addressing violations of ordinance

- Any person may file a complaint with the City Manager if they believe a violation of this ordinance has been made.
- The City Manager shall respond to such complaint in writing within 30 days and can order any reasonable remedial action to ensure compliance with this law. Where the proposed complaint requires action by the City Council, the City Manager shall place the recommended Council action on the Council agenda for action.
- The City Manager shall maintain a file with the complaint and the City's response and disposition for public inspection
- Any City Councilmember may place any complaint on the Council agenda for further action or remediation., if he or she feels the City Manager's response is inadequate.
- Any person may challenge the City's decision in court when it relates to this ordinance's interpretation and implementation of the Brown Act, Public Records Act, or any other state or federal law.
- In addition, any person may file suit in relation to all sections that indicate an action is voidable – in particular regarding action based on oral reports, noticing of special meetings, and disclosure of settlement agreements.

Compliance reporting

- The City Manager is directed to provide the City Council with an annual report on the number of complaints filed, their disposition and the City's compliance with this ordinance.

Public Information regarding the sunshine ordinance

- The Berkeley Sunshine Ordinance shall be posted on the City's website.

- The City shall prepare an information guide for the public, which describes in lay, easily understandable language, the main federal state and local rules that facilitate public notice of and public access to City meetings and records.

Amendments to Council Rules of Procedure

In addition to the ordinance, there are several recommended changes to the Council rules of procedure.

- **Notification to public of availability of public agenda packet including last minute submittals.** The Mayor will announce that all late handouts from Members of the Council and from city staff have been placed in the public binder at the Council meeting.
- **Public updates on agenda items, identification of speakers.** The Mayor will give regular updates on the status of items on the Council agenda and official speakers during the Council meeting shall be required to introduce themselves so that members of the public can more easily follow the proceedings.
- **Public hearing start times.** Every effort will be made by the Agenda committee to determine and notice approximate “start times” of public hearings so the public does not have to sit through hours of meetings before the hearing.

Sunshine Ordinance Elements

Prepared as a Discussion Summary by an Intern at the First Amendment Project

- Define the bodies that will be subject to the Brown Act and the ordinance, such as task forces, committees (temporary and standing), JPA's, private/public entities (i.e. public hospitals) or any local body with express delegated power (see Oakland, Contra Costa County). The point of the ordinance is to supplement existing open government laws; go beyond the bodies subject the Brown Act if those bodies exercise a power that's of public importance.
- One shortcoming of the Public Records Act is that it does not explicitly set duplications fees. Though it has been founded by the courts that cost of duplication does not include the time spent retrieving, inspecting, and handling the file from which the copy is extracted, governmental entities are entitled to "direct cost of duplication," which can conceivably include the expense of the person operating it. A Sunshine ordinance should set copying costs (typically 10 cents a page) and prohibit those costs reflecting staff time operating the machine. Some ordinances have provided for free copies of documents routinely produced in multiples (agendas, etc.).
- California law does not mandate that local government bodies keep minutes, though many bodies still record them. A sunshine ordinance should require all policy bodies to record minutes and to make them available in a reasonable timeframe. Also, policy bodies, particularly a city council, should be required to audio record meetings.
- Under California law, records under two years old cannot be destroyed. In other words, records *can* be destroyed after 2 years unless otherwise prohibited by local law. Though two years may be sufficient time to hold documents, a municipality may want to extend this record retention period, if not for certain types of documents.
- Though California law does not prohibit the recording of a open meeting, a sunshine ordinance should establish the right of any person to record a meeting subject to the ordinance so as to make that right unequivocal, unless recording would cause a persistent/unduly disruption. Also, barriers to attendance of open meetings should be prohibited, such as requiring a purchase, payment, registration, etc. A sunshine ordinance should also deal with situations of exceeded capacity so as to allow all interested public participate, such as adjourning to another venue (with adequate notice, of course) or using speakers and TV sets to accommodate the public.
- One of the most important issues a sunshine ordinance can address is closed sessions, which have been misused and abused over the years. In order to mitigate any chance of misuse, a sunshine ordinance should make many stringent requirements, such as prior to any closed session, a local body should announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed. Also, the public should have the right to

comment on any item of closed session before the closed session convenes. Closed sessions should be audio recorded and retained and made available to the public whenever all rationales for closing the session are no longer applicable, or in the case of anticipated litigation, when the statute of limitations have expired.

In addition, a policy body should publicly report any action taken in closed session and the vote or abstention of every member present. A very important provision should allow a policy body, after every closed session, in its discretion and in the public interest, to disclose to the public any portion of its discussion that is not confidential under law. Additionally, a sunshine ordinance should address permitted closed session topics in a way that sharpens existing topics and establish disclosure guidelines for each topic (see San Francisco, Milpitas).

- Another important issue is the “Deliberative Process Privilege” of the Public Records Act. An exemption founded by *Times Mirror v. Superior Court*, it protects the disclosure of materials that reveal the mental processes of governmental officials generated prior to reaching a decision, such as the governor’s appointment calendar. Though it is thought that Prop 59 has done away with the privilege, it is not explicit and will have to come about through litigation. With that said, a sunshine ordinance should explicitly prohibit the withholding of records on the basis of the “deliberative process privilege.” Furthermore, records should not have to put through a public interest balance as a condition of disclosure (weighing public interest in withholding and disclosing) and should only be withheld based on an express provision of the ordinance or on an express and specific exemption provided by the California Public Records Act that is not forbidden by the ordinance (see Milpitas).

If the deliberative process privilege is annulled, then it is possible to declare all policy body communications (drafts, memos, email, etc.) as public record unless protected by law (i.e. attorney-client privilege). It is recommended that a sunshine ordinance require policy bodies to maintain a communications file that is easily accessible to the public containing communications such as memos distributed to the majority of the body (see Milpitas, Benicia).

- To patch some of the holes in the Public Records act, the following should be declared public records in a sunshine ordinance:
 - Agenda packets and attachments
 - Litigation material that is adjudicated, settled and not protected by confidentiality
 - Contracts, Bids, proposals, though exempted during negotiation if it is a competitive process
 - Budgets and other financial information
 - Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed or 1 year after negotiations are terminated

- Investigation files, to the extent not prohibited by law, if completed and concluded, or after the statute of limitations have expired or determined that no charges will be sought
- Job pool information and personnel information with identifying information redacted

A potential hole in the Public Records Act is the applicability of copyright in withholding public records. This is currently being played out in court in Santa Clara County. In the meantime, as a precautionary measure, a sunshine ordinance should declare that public access rights unequivocally trump copyright.

- Since many exemptions in the Public Records Act apply to law enforcement, many of those exemptions give discretion to law enforcement and do not prohibit the disclosure of many records. To this extent, a sunshine ordinance should encourage the cooperation of law enforcement with the public in the disclosure of records not inconsistent with law.

In light of the recent State Supreme Court decision that declared police disciplinary files are exempt to disclose via the Public Records Act, a sunshine ordinance should mandate a public record be kept separate from investigation and personnel files that maintain the number of citizen complaints, disciplinary actions, etc.

- A sunshine ordinance should mandate that withholding of documents be kept to a minimum and that information that is exempt from disclosure should be redacted so that the nonexempt portion of a requested record may be released. Any redacted information should be foot-noted with the appropriate justification for withholding as well as statutory justification for any rejected request.

In order to increase transparency and to encourage public participation, a sunshine ordinance should require that agendas be posted in multiple public locations, such as a library. Also, email subscriptions to agendas should be made available. In addition, agenda item descriptions should be “meaningful” in that it is sufficiently clear and specific so as 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.

Furthermore, an immediacy of response should be established, such a 1-2 workday period in which an agency/department must notify the requestor of the document’s existence and availability and if it’s release is compatible with the ordinance and the Public Records Act. In the case of documents that have been previously distributed to the public, such as agendas, etc., they should be released in one workday if requested as an “immediate disclosure request” (See Benicia). Also, a sunshine ordinance should establish a right to “inspect” public documents.

- A sunshine ordinance should also extend the First Amendment rights of a citizen to members of a policy body 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. It

should also provide that policy bodies should not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance (See Contra Costa County, Benicia).

In the vein of the First Amendment, a sunshine law should prohibit a policy body from abridging public criticism of policy, procedures, programs or services of the municipality, or of any other aspect of its proposals or activities. A sunshine ordinance should take the time to establish rules on time constraints of public comments that are reasonable and uniformly applied.

- In order to further facilitate public access, a sunshine ordinance should encourage departments that use computer systems to collect and store public records to program and design such systems to ensure convenient, efficient, and economical public access to records and should make public records easily accessible over the internet, to the extent that it is technologically and economically feasible. Not only could this potentially save money and time for departments but it also mitigates the burden on public requestors.
- Lastly, a sunshine ordinance should provide for a commission that not only deals with the implementation of the ordinance, but also does annual reviews to recommend amendments that further access rights. Most importantly, a commission should have oversight in open government disputes. Instead of resorting to costly court battles, which can either cost the city thousands or force requestors to acquiesce with rejection, a commission can provide a forum that can settle complaints and disputes as an easier step before litigation. After a dispute is settled, the public still retains the right to appeal to court. A commission should also be charged with training officials/employees to comply with the ordinance. It is encouraged to have a yearly, mandatory seminar for employees/officials about the ordinance in which attendees must sign a contract acknowledging their understanding of the ordinance. In the case of non-compliance, a commission should have an enforcement capability and willful non-compliance should be considered official misconduct (See San Francisco, Benicia). As an option, a sunshine ordinance can also deal with conflicts of interest disclosures, lobbying reports, and other ethics (See San Francisco, Benicia).

BERKELEY SUNSHINE ORDINANCE ESTABLISHING ADDITIONAL LOCAL STANDARDS TO INCREASE PUBLIC ACCESS TO PUBLIC MEETINGS AND PUBLIC RECORDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section1. Chapter 1.30 is added to the Berkeley Municipal Code to read as follows:

Sections

- 1.30.010 Title of Chapter – Berkeley Sunshine Ordinance**
- 1.30.020 Findings**
- 1.30.030 Purpose**
- 1.30.040 Applicability**
- 1.30.050 Council, Boards and Commissions – Meeting Within The City**
- 1.30.060 Scheduling of Meetings to Encourage Public Participation**
- 1.30.070 Posting of Agendas on City Bulletin Board and City Website**
- 1.30.080 Broadcast, Closed Captioning of Council and Zoning Adjustments Board Meetings – Exceptions**
- 1.30.090 Posting of Draft Council Agendas and Final Agenda Packets**
- 1.30.100 Council Agendas and Reports – Recommendations-Simplicity, Clarity**
- 1.30.110 Agendas and Reports and Communications for Boards Commissions and Subcommittees – Simplicity, Clarity**
- 1.30.120 Public Input on Significant Policies**
- 1.30.130 Action on Oral Report Only in Exceptional Circumstances; Public File of Written Reports, Comments**
- 1.30.140 Special Meeting Notices Must Be Posted on The City’s Bulletin Board**
- 1.30.150 All Subcommittees To Provide Public Notice and Access – Exceptions for Obtaining Legal Advice**
- 1.30.160 No Disclosure of Address Required to Comment at Meeting**
- 1.30.170 Closed Sessions – Agendas, Approval of Litigation Settlement**
- 1.30.180 Self-Correction of Brown Act Violations**
- 1.30.190 Liberal Construction of Public Requests for Information**
- 1.30.200 Written Request Not Required – Exceptions**
- 1.30.210 Training of Staff**
- 1.30.220 Availability at Meetings of Documents Distributed to City Council, Boards and Commissions etc.**
- 1.30.230 Police Records**
- 1.30.240 Compensation of City Employees Public Record**
- 1.30.250 Posting of City Laws and Policies on Web**
- 1.30.260. Violations – How Addressed**
- 1.30.270 Compliance Report to City Council – Additional Information and Reports As Requested**
- 1.30.280 Private Right of Action-Limitations**
- 1.30.290 Posting of Sunshine Ordinance on City Web Site**
- 1.30.300 Preparation of Public Guide**

1.30.010 Findings.

A. The City of Berkeley has a longstanding sunshine policy of fostering robust and wide-ranging discussion of public issues and access to relevant public information.

B. This sunshine policy is reflected in the wide array of advisory boards and commissions with appointed community members who provide recommendations to the City Council on a gamut of public policy issues, after seeking and obtaining input from a wide spectrum of the Berkeley community.

C. City sunshine policies and practices are also reflected in a huge variety and number of City practices designed to inform the public and solicit public involvement in civic life which go far beyond the practices required by otherwise applicable law.

D. The nature of these supplemental policies and practices are often not publicly known or readily ascertainable and many are not required by any City Council resolution but are simply long standing practices.

E. The City regularly implements additional procedures to facilitate public access to matters of public interest and concern.

F. It is advisable to ensure that existing and new policies are codified by the City Council so that they continue to be followed.

G. The adoption of this ordinance will also have the salutary effect of providing the public with the contents of the City's public access procedures, which significantly expand upon and supplement state law.

1.30.020 Title of chapter-Berkeley Sunshine Ordinance.

This chapter shall be known as the Berkeley Sunshine Ordinance.

1.30.030 Purpose.

The purpose of this chapter is to increase access to City of Berkeley decision making procedures beyond that required by the Ralph M. Brown Act, Government Code section 54950 et. sequitur ("Brown Act") and the California Public Records Act, Government Code section 6254 et. sequitur. ("Public Records Act")

1.30.040 Applicability.

The provisions of this chapter shall apply to the City Manager and City departments and all City of Berkeley boards, commissions, task forces and subcommittees thereof. Its provisions shall apply to the Berkeley Redevelopment Agency and Berkeley Housing Authority upon passage of resolutions, by the governing bodies of those agencies, which adopt the provisions of this chapter by reference.

Public Access to Meetings

1.30.050 Council, boards and commissions – meeting within the City.

Even when otherwise permitted by law, the City Council and all City of Berkeley boards commissions, task forces and subcommittees thereof shall, conduct their meetings within the City of Berkeley unless the Council finds in advance of such meeting that there is very significant articulated prejudice to the City's interests by conducting the meeting outside the City and the prejudice cannot be avoided by holding such meeting within City limits.

1.30.060 Scheduling of meetings to encourage public participation

A. The City Council and any board and commission established by the Council or by the Charter or City ordinance shall schedule meetings in the evenings, and at times when members of the public are likely to attend. Meetings should not be scheduled on holidays or other days when a significant portion of the public is unlikely to attend.

B. The Council's Agenda Committee should consider setting Council public hearings, which are likely to be attended by a large number of members of the public, for a time certain, where practicable, in order to increase the predictability of the time of commencement of public hearings.

C. Subject to the availability of space, members of the public may attend any task force established by the Mayor or any Council member if it meets on six or more occasions over a period of six months or more and is supported by the ongoing allocation of staff support. The place and time of its meetings shall be made known to a member of the public upon inquiry but no special notice of such meeting is required. Such task force may determine the manner in which any member of the public may participate in its proceedings.

1.30.070 Posting of agendas on City bulletin board and City website.

Agendas for all City Council, board and commission meetings and subcommittees thereof shall be posted on the City's website and in the bulletin board provided for this purpose, except where the City's technological resources impose limitations on web postings. Failure to comply with this section for notices of meetings of the City Council, Redevelopment Agency and Berkeley Housing Authority shall render any action taken at such meeting voidable upon the filing of a written complaint with the body within 30 days of such action.

1.30.080 Broadcast, closed captioning of Council and Zoning Adjustments Board meetings – exceptions.

A. To the extent fiscally and technologically feasible, all regular and special open meetings of the City Council, and Zoning Adjustments Board held in the Council chambers shall be broadcast live and for replay on the local government cable channel, videostreamed live and for replay over the internet, and captioned, with the captioned text displayed on the cable broadcast and as part of the videostream.

B. These requirements shall not apply if necessary equipment breaks down and it is impracticable to make repairs in time for a scheduled meeting, or regular or particular meetings have to be changed is at a location that does not have the technological capacity to accommodate the cable or web broadcast and captioning.

1.30.090 Posting of draft Council agendas and final agenda packets.

The draft agenda of the regular meetings of the City Council, received by the City Clerk, shall be posted on the web at the same time as the draft agenda and any accompanying items are delivered to the City Council Agenda Committee (under 2006 practices, eleven days before the Council meeting, except when adjustments are necessary to account for holidays), and the City Council final agenda packet for a regular Tuesday night meeting shall be posted on the City's website, the Thursday prior to the meeting. Any report delivered to the Council after the packet

is distributed, as authorized by Council Rules of Procedure, shall be posted on the City of Berkeley's website at the earliest time practicable.

1.30.100 Council agendas and reports – recommendations- simplicity, clarity, access.

A. Council agendas shall contain the recommendations made in the related agenda reports, unless the report is to be delivered after the agenda has been prepared and the precise recommendation is not known at the time the agenda is published and posted.

B. Council reports, agendas and recommendations shall be written in easily understandable language, and shall list the names and phone numbers of City officials who can answer questions and provide information to the public about the subject of the report.

C. Where a report or description of an item on an agenda was written in a manner that the City Manager, Council or Council Agenda Committee concludes would not lead a reasonable person to have adequate notice of the subject under discussion and the matter involves a matter of significant public interest, the item shall be set for a subsequent meeting for which the report and/or agenda item description shall be rewritten to provide better public notice. This section shall require re-noticing of such meeting even if the agenda notice is sufficient to meet the requirements of otherwise applicable law.

D. A packet of reports and related materials including supplemental material distributed by the City after the agenda packet was published shall be made available for public review at the Council meeting and the City's agenda.

1. 30.110 Agendas and reports and communications for boards, commissions and subcommittees – simplicity-clarity.

A. The description of agenda items and reports for other City bodies, including boards, commissions, taskforces and subcommittees of such bodies, shall be written in easily understandable language and provide adequate notice of the matter to be discussed at the meeting, where such agenda notice is required by otherwise applicable law.

B. Where a report or description of an item on an agenda for a Board, Commission, task force or subcommittee thereof subject to advance public notice under otherwise applicable law was written in a manner that the City Manager concludes would not lead a reasonable person to have adequate notice of the subject under discussion and the matter involves a matter of significant public interest, the item shall be set for a subsequent meeting for which the report and/or agenda item description shall be rewritten to provide better public notice. This section shall require re-noticing of such meeting even if the agenda notice is sufficient to meet the requirements of otherwise applicable law.

1.30.120 Public input on significant policies.

The City Council and all City commissions, boards, task forces and subcommittees of such bodies shall ensure that they provide notice to and seek input of stake holders affected by any significant policy or matter before formulating recommendations or action on that policy or matter. Such input should maximize the public's ability to directly comment to the City Council, board or commission, but such public access must be balanced with getting City business accomplished in a timely manner and at a reasonable hour, when the public can still observe the proceedings.

1.30.130 Action on oral report only in exceptional circumstances, public file of written reports, comments.

Except in exceptional circumstances, as determined by the body taking action, no final action shall be taken or policy direction given by the Council, or any City board, commission, task force, otherwise required to notice its meetings under the Brown Act, concerning a subject that has no written report. Any action taken by such body is voidable upon the filing of a written complaint with the body within 30 days of the date the action was taken. All bodies shall maintain a file for public inspection which shall contain copies of all documents submitted for that meeting by the body or the staff to the body. To the extent practicable, copies of items submitted by the public to the body shall be made available for public inspection at the meeting on the item.

1.30.140 Special meeting notices must be posted on the City's bulletin board.

The agendas of special meetings of the City Council, or any City board, commission, task force or subcommittee of such bodies subject to the Brown Act shall be posted on the City's bulletin board, notwithstanding any provision of the Brown Act providing that such notice need only be delivered to members of the legislative body holding the meeting and members of the media who have requested notice. Action taken in violation of such requirement shall be voidable upon the filing of a written complaint with that body within 30 days of the day the action was taken.

1.30.150 All subcommittees to provide public notice and access – exceptions for obtaining legal advice.

All subcommittees of the City Council and City boards and commissions and task forces, whether or not such subcommittees would otherwise be subject to the noticing and public access provisions of the Brown Act, shall be held in a publicly accessible location and open to the public, except where such body is receiving legal advice and the providing of such legal advice in private is consistent with applicable law.

1.30.160 No disclosure of address required to comment at meeting.

Persons speaking at a public meeting of the City Council, City boards, commission, task force or subcommittees of such bodies shall not be required to disclose their address but may be asked to state whether or not they are Berkeley residents.

1.30.170 Closed sessions-agendas, approval of litigation settlements

A. Closed session agenda descriptions of threatened litigation or litigation which may be initiated by the City should describe the nature of the threatened or soon to be initiated litigation, unless the City Attorney concludes that such disclosure would compromise the legal interests of the City in such litigation and withholding the information is otherwise authorized by law.

B. As is the City's longstanding practice as of 2006, the substance of existing litigation or liability claim settlements to be approved by the City Council should generally be placed on the Council open agenda for approval, (even where accompanied by a confidential attorney-client memorandum or previously discussed in closed session), unless the settlement will only be finalized when the opposing side agrees and the disclosure of the range of settlement authority would compromise the City's strategic legal interests in the litigation or litigation deadlines or the opposing party's offer require swifter council action. In such circumstances, the settlement

shall be made public at the earliest practicable time after it has been finalized and a copy shall be filed with the City Clerk and available for public inspection.

C. Where a threatened or existing litigation matter to be settled entails the adoption, modification, repeal or rescission in whole or in part of a City ordinance, policy, practice or procedure, the proposed settlement will be placed on the Council's regular open agenda for approval at the time required for other reports from the City Manager for such meeting. Failure to comply with this section will render the action taken to approve such settlement voidable upon the filing of a written complaint with the City within 30 days of the taking of such action as provided in section 1.30.260.

D. Closed session agendas involving existing litigation shall list the name of each case to be discussed, its case number and the court in which such case is pending.

E. The City Attorney's quarterly summary of claims paid and lawsuits settled shall be filed with the City Clerk and be available for public inspection.

F. The City Council, City boards, task forces or commissions shall not meet in closed session, unless the City Attorney has confirmed that the closed session is legally permissible and conforms to the requirements of the Brown Act and otherwise applicable law, if any. Even where any closed session is authorized by law, only legally impermissible subjects germane to the legal rationale for the closed session may be discussed in such session.

1.30.180 Self-correction of Brown Act violations.

If it becomes apparent that the City Council or any City board, commission, task force or subcommittee of such bodies has taken action at a meeting in violation of the Brown Act, the action shall be rescinded and the matter rescheduled for discussion and action by that body in compliance with applicable law, irrespective of whether or not any complaint concerning such violation has been lodged with the body by a member of the public.

Public Records

1.30.190. Liberal construction of public requests for information.

A. The City shall liberally construe requests for public records whether or not the person seeking a City record has framed the request as a request under the California Public Records Act. All City departments shall help members of the public to identify and locate public records and provide them promptly.

B. State law exemptions from public disclosure shall be narrowly construed and records disclosed when appropriate.

1.30.200 Written request not required – exceptions.

Requests for a specific readily identifiable City record, (such as a copy of a particular City Manager report to the City Council on a specific subject at a specific meeting), need not be made in writing. Where such public records are clearly identified and readily available, the records shall be provided as soon as practicable. Where the nature of the record sought is unclear or a detailed list of records is sought, the person requesting the records may be asked to submit the request in writing in order to ensure that the City understands the exact nature and list of the records which are to be located and produced.

1.30.210 Training of staff.

City staff shall be trained to timely respond to public requests for information.

1.30.220 Availability at meetings of documents distributed to City Council, boards and commissions, etc.

Documents distributed by the City to the City Council, boards, commissions, taskforces and subcommittees of such bodies which are the subject to the Brown Act, concerning items on the agenda of the body shall be made available for inspection by the public as soon as practicable, but no later than the meeting at which the subject is to be discussed. To the extent practicable, documents disseminated by other persons to the City body holding the meeting should also be available for public inspection at that meeting.

1.30.230 Police records

Police Department records shall be made available for public inspection if the records are not required by state or federal law to be kept confidential and are subject to disclosure under the Police Department disclosure policy in effect on March 1, 2006. Any change in such policy which would reduce public disclosure shall be subject to advance public notice and review by the Police Review Commission.

1.30.240 Compensation of City employees' public record.

The compensation paid to City employees and officials, including the exact amount of salary, benefits and overtime shall be a public record, except to the extent prohibited by law.

1.30.250 Posting of City laws and policies on web.

The City shall post copies of the following laws and procedures on its web site:

- City Charter
- Berkeley Municipal Code
- Council Rules of Procedure
- Commissioner's Manual
- Council resolution establishing procedures in land use matters
- Records Retention Schedule
- Agendas and minutes for the meetings of all legislative bodies subject to the Brown Act
- The Conflict of Interest Code
- A Citizen's Guide to Public Information
- Such other documents as may be useful to the public to the extent that the City's information technology resources allow

Complaint Procedure

1.30.260. Violations – how addressed.

A. Any person who asserts that the provisions of the City's Sunshine Ordinance or applicable state laws regarding open meetings or public records have been violated may file a complaint with the City Manager. Such complaint shall be the exclusive remedy for raising the City's compliance with the City's operating policies embodied in this ordinance and where a private right of action is authorized pursuant to 1.30.280 the complaint required by this section must precede the filing of such action as more specifically set forth in that section.

B. The City Manager shall respond to such complaint in writing within 30 days thereof and, upon finding that any violation has occurred, may order any reasonable remedial action to ensure compliance with this chapter or state law by any City employee, board, commission, task force, or subcommittee thereof. The City Manager shall maintain a file with the complaint and the City's response and disposition for public inspection. Where the proposed complaint requires action by the City Council, the City Manager shall place the recommended Council action on the Council agenda for action.

C. Any City Councilmember may place any such complaint and the City Manager's response on the Council agenda for further action and the Council may, by a majority vote of the Council, decide to take the matter up for such further action on such complaint as may be permissible under the Charter and applicable law and that the Council deems appropriate.

1.30.270 Compliance report to City Council – additional information and reports as requested.

A. The City Manager shall provide the City Council with an annual report on the number of complaints filed, their disposition and the City's compliance with this resolution and recommend any other Council actions to augment public access to meetings or records or otherwise modify this chapter. The first such report shall be due one year from the date of adoption of this ordinance.

B. Any member of the City Council may seek information from the City Manager concerning one or more such complaints at any time. The Council may also request additional reports or actions and take action to augment or modify this chapter.

1.30.280 Private right of action-limitations

The purpose of this chapter is to create internal operating procedures that facilitate public access to City decision making and records beyond that required by applicable federal or state law and to create an internal monitoring mechanism to evaluate the City's implementation of these internal operating policies. The exclusive means of raising compliance with these internal procedures of the City is the complaint procedure set forth in section 1.30.260 and 1.30.270. If the City fails to set aside actions which are voidable taken in violation of sections 1.30.070, 1.30.140 and 1.30.170 C, any interested person may file suit to set aside such allegedly voidable action but only if such person has previously filed a written complaint within 30 days of the taking of the allegedly voidable action in compliance with Section 1.30.260. Any such action must be commenced no earlier than 30 days and no later than 60 days after the filing of the written complaint, required by 1.30.260.

Nothing in this section shall be construed to preclude or constrain the filing of any action to redress violations of state or federal law with respect to the disclosure of records or the holding of meetings such as, for example, the Public Records Act, or the Brown Act.

Public Information Regarding City's Sunshine Ordinance and Related Policies

1.30.290 Posting of Sunshine Ordinance on City web site.

The Berkeley Sunshine Ordinance shall be posted on the City's website.

1.30.300 Preparation of public guide.

The City shall prepare an information guide for the public, which describes in lay, easily understandable language, the main federal, state and local rules that facilitate public notice of and public access to City meetings and records. Copies of important written city policies concerning meetings or records shall be appended to such a guide. The first such guide shall be prepared within six months from the effective date of this ordinance. It shall be forwarded to the City Council as an Information Report on the Council agenda and shall be posted on the City's web site. It shall be updated from time to time to reflect current City practices and changes in state law.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Attachment 4

Proposed changes in Title 1.30.120 of Draft (13) Sunshine
Ordinance
Public Comment at City Council, Board, and Commission
Meetings

1.30.120. Public Comment at City Council, Board and Commission Meetings

Every agenda for regular, special, agenda, or closed meetings shall permit all interested members of the public, except as hereinafter described, to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, or to address any matter that is within the subject matter jurisdiction of the legislative body. No action shall be taken on any item not appearing on the agenda, unless by a two-thirds (2/3) vote of the legislative or advisory body it is decided that an emergency situation exists and that it is of such urgency that it is impossible to schedule a special meeting.

Any member of the public may speak on one or more agenda items or subjects under the jurisdiction of the City Council (and Boards and Commissions) at the General Public Comment Period to be held at the beginning of each meeting, and prior to review of the Consent Calendar.

Upon announcement of the commencement of the General Public Comment Period, all members of the public who wish to speak will be asked to line up at the speakers' podium. Persons who arrive after the commencement of the General Public Comment Period may join in the line at the podium and be allowed to speak if Public Comment is still in session. If it is anticipated that 51 or more persons will want to speak at an upcoming meeting, a public hearing on the subject of public concern shall be scheduled ahead of time.

Members of the public who have signed up to speak may make a request, which shall be honored, to have items pulled from the Consent Calendar for action.

Each speaker will be allowed three (3) minutes to speak at any General Public Comment Period, unless there are more than thirty (30) speakers, in which case the City Council (or Board or Commission) may reduce the time per speaker to no less than two (2) minutes, requiring, if necessary, that a Public Comment Period be expanded to accommodate all members of the public who wish to speak. **At no time shall police be present to exclude persons from a City Council, Board or Commission meeting.**

Proposed by Super BOLD (Berkeleyans Organizing for
Library Defense)