



Office of the Mayor

SPECIAL MEETING

March 20, 2007

To: Members of the City Council

From: Mayor Tom Bates  
Council Member Kriss Worthington

Subject: Panel Discussion and Workshop on Draft Sunshine Ordinance

RECOMMENDATION:

That the City Council hear from the community panel on its reactions to the current (24th) draft of the Sunshine Ordinance, pose any questions to the panel and staff, hear from the public and then provide guidance on possible changes and next steps towards final adoption of the ordinance.

BACKGROUND:

In 2001, at the request of Councilmember Worthington, the City Council directed that the City Manager and the City Clerk take a look at improving City sunshine policies, including the adoption of a Sunshine Ordinance.

In the intervening years, the City made major improvements to the public's access to information. 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 has provided an additional week of public notice regarding items scheduled to come before the City Council. The Agenda Committee's packet includes early drafts of City Council, Housing Authority and Redevelopment Agency agendas and thereby increases the period of advance notice of agenda items of interest to the public.

The current Sunshine Ordinance drafting effort has been to codify the now expanded City policies and procedures, improve public information access and processes where appropriate, and provide a clear set of rules for the public. The proposed Sunshine ordinance also was intended to address many of the concerns initially raised by Councilmember Worthington, and to address some new concerns that had been raised in the intervening years. The City Attorney has prepared multiple drafts based upon the input of the Mayor and City Council, the City Clerk, City Manager and the public.

The next sections of this report address various issues that have been raised recently by the Council or the public concerning public access to information and meetings. A summary of the ordinance's provisions is also attached.

## **1. Public Comment Procedures**

Some members of the public wanted to expand the Council's public comment procedures to require item-by-item public comment. Both the Agenda Committee and the Council took public comment on this subject. While some members of the public wanted to expand the period allocated to public comment others were concerned that that the need to conclude Council business at a reasonable hour of the evening should be balanced against the need for more public input. The Mayor meanwhile has experimented with different approaches to expanding public comment.

In October 2006, the Council held a public hearing on the then current draft of the Sunshine ordinance. After the public hearing the Council asked for a workshop and panel discussion on the subject. Once again some of the members of the public reiterated their request that the Council change its hearing procedures to provide for item- by-item public comment and abandon the lottery system for allocating time at the beginning of the meeting. Other suggestions were also made.

In December 2006, the Mayor expanded Council public comment on a trial basis and has implemented this process consistently since then. The City Attorney and City Clerk have revised the information on the web regarding these procedures to provide better public notice of these changes. (Copy attached.) Under the system implemented in December 2006, and refined slightly since then, the Council first hears public comment from speakers on consent or information items before it votes on the consent calendar. Each speaker is entitled to speak for two minutes but if there are a large number of speakers on a single item the Mayor reserves the right to limit the total amount of time allocated for that item. Next, the Council hears ten minutes of comment on non-agenda items with two minutes allocated per speaker. Any remaining speakers on non-agenda items must wait until the end of the meeting to speak. Some members of the public have suggested that these changes should now be incorporated into the Council Rules and no longer regarded as experimental.

The Mayor has been discussing a further refinement of this process regarding a Council decision on whether to set an appeal for a public hearing. The new rules would provide that applicants and appellants will be limited to an aggregate public comment time of five minutes each before the City Council prior to its decision of whether to set the appeal for public hearing. If unlimited public comment is allowed at this early stage of an appeal before the Council has decided whether to set a public hearing the Council will in effect be having a public hearing even before it has actually voted to do so.

The Council may also wish to consider whether it is advisable to move comment on non-agenda items to the end of the agenda since public comment on weightier items on the agenda often gets delayed until late into the night, which is a burden on the members of the public who are either in attendance at the Council meeting or are trying to follow the cablecast or webcast.

## **2. Late Submission of Items**

The Council Rules of Procedure ("Rules") § III D 4 c requires that where the report concerning the item is not received by the Friday before the Tuesday Council meeting, a two-thirds vote of the Council is required to take up the item. A correction or supplement to the distributed report is not subject to these restrictions of the rule § III D 1 of the Rules. The City Attorney has advised any supplement or correction to the original report or and that motions or amendments proposed in reaction to it are likewise not subject to the rule since they by definition cannot be proposed before the report itself is delivered and absorbed by the Council. The Council is not expected to rubber stamp the recommendation in the original report and can make oral or written motions during the Council's discussion of the item for the Council to adopt a different recommendation.

## **3. Identification of commissioners and staff when speaking at Council meetings.**

The Mayor now regularly reminds staff and Commissioners to identify themselves for the benefit of the public.

## **4. Scope of Ordinance**

The ordinance imposes requirements on the City in excess of those imposed by state law, for example web based access for agenda materials, or police reports under specified policies in Exhibit 1. It also clarifies practices that may be unclear under state law, for example that employee compensation and the billing records of City phones and information in an electronic format must be disclosed. The ordinance will be applicable to the Council and all City Boards and Commissions. Upon adoption by the Housing Authority Board and Redevelopment Agency Board, it will also be applicable to these bodies.

Article 1 addresses public access to meetings, Article 2 addresses public access to information, Article 3 addresses enforcement and Article 4 requires the preparation of a guide to public information within one year of adoption of the ordinance. It includes the subjects raised by Councilmember Worthington's original referral and many of the issues that have arisen in the interim. Some, such as public comment procedures, need to be addressed in amendments to the Rules to incorporate the procedures the Council is currently following (described in the attached public summary) as the Council may choose to modify them.

## **5. Enforcement**

The ordinance authorizes a complaint to be filed with the City Manager, who is the highest official in the City's administrative structure with power to compel compliance. The City Manager must respond to the complainant in writing within 30 days. The ordinance further requires that the City Manager must file a Report for Information on the Council agenda with a copy of each complaint and his written disposition of that complaint. Five Councilmembers may vote to discuss the City Manager's response to the complaint and to propose any action otherwise authorized by law, other than what the City Manager has directed.

It has been suggested that a commission would have greater authority to enforce the ordinance. However, according to the City Attorney, the Council- Manager form of government embodied in the City Charter prohibits a City Commission from having authority above and beyond that of the Council or City Manager. The Council will likely want to discuss how best to enforce the ordinance given this restriction.

**FISCAL IMPACTS:** The procedures mandated by the ordinance will have significant administrative costs, many of which are already being incurred. There will be additional costs to prepare the public guide or to conduct training of all staff required by this ordinance.

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

**ATTACHMENTS:**

1. Summary of major provisions of the ordinance
2. Public comment and hearing procedures from City website
3. Draft sunshine ordinance (#24)
4. Police Rules of Procedure (two attachments)
5. Council Member Worthington's original referral to the City Council

**Draft Sunshine Ordinance  
Summary Sheet  
March 2007**

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.
- The City policy is now incorporated as an exhibit to the Sunshine Ordinance.

**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.
- The City Manager must file a Report for Information on the Council agenda with a copy of each complaint and his written disposition of the complaint.. Council may vote to discuss the City Manager's response to the complaint and to propose any action otherwise authorized by law, other than what the City Manager has directed.
- The City Manager shall maintain a file with the complaint and the City's response and disposition for public inspection.
- 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 and surprise audits**

- The City Manager is directed conduct surprise audits of departments to check for compliance.
- The City Manager is also required 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 changes to Council meeting procedures, which the mayor has already implemented but which should be made explicit in 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.
- **New public comment procedures.** The City Council is now experimenting with new, more expansive, City Council public comment procedures. They are attached.

- **Public Comment Procedures from City Website**

<http://www.ci.berkeley.ca.us/citycouncil/general.htm#pccard>

## **PUBLIC COMMENT**

The City Council is currently experimenting with its public comment procedures in order to increase public participation. As of January 1, 2007 the following procedures will apply to matters other than public hearings. Persons who wish to speak on matters scheduled for a public hearing must make their comments at the time set aside for the public hearing on the matter. For public hearings, please review the [Public Hearings section](#) of this Overview.

**1. Public Comment on Consent Calendar or Information Items.** The Council will first determine whether to add to or remove matters on its “ Consent Calendar” and whether to move Information Items to Action. Items on the “ Consent Calendar” are voted on as a group. “ Information Items” are not discussed or acted upon at the Council meeting unless they are moved to “ Action” or “ Consent” .

The Council will first take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Each speaker will be entitled to a total of two minutes to speak to any such item. The Mayor retains the ability to limit the number of speakers speaking on a subject depending upon the number of speakers and the number of items on the Council agenda that night.

After hearing from public speakers any Councilmember may move any additional Information or Consent item to “ Action.”

**2. Public Comment on Non Agenda Matters (10 minutes).** The Council will then hear from speakers who wish to address items, which are not on the Council Agenda for a total of ten minutes. Each speaker will be entitled to speak for two minutes each. Any remaining speakers on non-agenda related items may speak for up to two minutes each, at the end of the Council Agenda. (See item 4 below.) The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**3. Item by Item Comment.** The public may comment on each remaining item on the Council Agenda as it is taken up, unless any speaker has already addressed that item during a prior period of public comment at that meeting. Each speaker may speak for up to two minutes. The Mayor retains the authority to limit the total public comment time allocated to an item or to persons representing a particular side of an issue, depending on the length of the Council Agenda and the number of potential speakers.

**4. Non-agenda comment.** At the end of the agenda, members of the public may speak to any item not on the Council Agenda, for a period not to exceed two minutes per speaker. The Mayor retains the authority to limit the number of speakers by subject.

DRAFT 24, March 20, 2007

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:

Section 1. 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 Comment At Meetings and 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; Provision of Records In Electronic Format.**
- 1.30.200 Written Request Not Required – Exceptions**
- 1.30.210 City Manager training and direction to City staff re disclosure of records**
- 1.30.220 Availability at Meetings of Documents Distributed to City Council, Boards and Commissions etc.**
- 1.30.230 Police Records**
- 1.30.240 City Employee and Official Compensation, Appointment Calendars and Phone Billing Records**
- 1.30.250 Posting of City Laws and Policies on Web**
- 1.30.260. Violations – How Addressed**
- 1.30.270 Periodic Audits -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 Council, 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.

Article 1

**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 geographical boundaries of 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 City limits 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, to the extent feasible. Meetings should not be scheduled on holidays or other days when a significant portion of the public is unlikely to attend.

B. Where practicable, the Council's Agenda Committee should consider scheduling Council public hearings for a time certain, if they are likely to be attended by a large number of members of the public.

C. Subject to the availability of space, members of the public may attend any task force established by the Mayor or any Councilmember 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 posting of agendas 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 City Clerk 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 to 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 (generally, eleven days before the Council meeting, except when adjustments are necessary to account for holidays). 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. Nothing in this section shall prohibit modifications to the recommendations in any item in the Council packet.

**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. The report and/or agenda item description shall be rewritten for such meeting 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, unless time constraints make such re-noticing impracticable.

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.

**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. The report and/or agenda item description shall be rewritten to provide better public notice for such meeting. This section shall require re-noticing of such meeting even if the agenda notice is sufficient to meet the requirements of otherwise applicable law, unless time constraints make such re-noticing impracticable.

**1.30.120 Public comment at meetings and public input on significant policies.**

A. Public comment shall be maximized on items on agendas of the Council and boards and commissions and their standing subcommittees and shall, to the maximum extent feasible permit members of the public to comment on items at the time they are taken up, subject to reasonable time limits, as well as to comment on matters which are not on the agenda but fall within the subject matter jurisdiction of such body.

B. 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 stakeholders affected by any significant policy or matter prior to formulating recommendations to the City Council or City Manager on that policy or matter.

**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 at the meeting that contain copies of all documents submitted for that meeting by the body or the staff to the body. To the extent practicable, copies of written comments or materials 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 except to the extent necessary to provide for fair public hearings.

**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. Under the City's longstanding practice at the time this ordinance was adopted, 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 requires 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.

Article 2

**Public Records**

**1.30.190. Liberal construction of public requests for information, provision of records in electronic format.**

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 Public Records Act. All City departments shall help members of the public to identify and locate public records and provide them promptly. Records shall be provided in an electronic format in the manner required by State law.

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 that are to be located and produced.

**1.30.210 City Manager training and direction to City staff re disclosure of records.**

The City Manager shall ensure that City staff are trained and directed 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 issued August 31, 2005 attached hereto as Exhibit 1. Any change in such policy that would reduce public disclosure shall be subject to advance public notice and review by the Police Review Commission.

**1.30.240 City employee compensation; City phone billing records.**

- a. The compensation paid to City employees and officials, including the exact amount of salary, benefits and overtime shall be disclosed, except to the extent prohibited by law.
- c. The billing records of City telephones and cell phones shall be disclosed except to the extent privileged, for example calls to confidential informants.

**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.

**Article III**

**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 violation of 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 after consulting with the City Attorney with respect to the legality or validity of the challenged practice under applicable law and City polices and practices and the appropriate remedy for any violation.. Upon finding that any violation has occurred, the City Manager 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 send a copy of his/her written disposition to the City Council and shall maintain a file containing the complaint and the City's response and disposition for public inspection. Where redressing 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. The City Manager shall provide the City Council with a Report for Information concerning each such complaint and his disposition thereof as soon as practicable The Council may, by a majority vote of the Council, discuss the matter and thereupon take such further

## Attachment 3

action on such complaint that the Council deems appropriate and is permissible and under the Charter and applicable law.

### **1.30.270 Periodic audits - compliance report to City Council – additional information and reports as requested**

A. The City Manager shall provide for a surprise audit of public records compliance in at least two City departments per year to monitor compliance with this chapter.

B. The City Manager shall provide the City Council with an annual report on the results of such surprise audits, 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.

C. 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.

## Article IV

### **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 one year from the effective date of this ordinance. It shall be forwarded to the

### **Attachment 3**

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.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

General Policy Statement Regarding Release Of Police Reports To The Public and the Police Review Commission (PRC):

It shall be the general policy of the Police Department to release a copy of a police report to any member of the public or the PRC, unless the release of the report, or a part of the report, or the information in the report would (1) endanger a person, (2) endanger the successful completion of the investigation or a related investigation, (3) constitute an unwarranted invasion of privacy as defined in this Policy, or (4) is prohibited by law.

A release of a police report to a City department such as the City Attorney’s office, the Office of Transportation, or the City Manager’s office is not a release to the public and is not governed by this Policy.

**NAMES AND ARRESTEE INFORMATION**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p>Adult <b>arrestee’s name</b>, occupation, physical description including <b>date of birth</b>, color of eyes and hair, sex, height and weight, the <b>time and date of arrest</b>, the time and date of booking, the <b>location of the arrest</b>, the <b>factual circumstances</b> surrounding the arrest, the amount of <b>bail set</b>, the time and manner of <b>release</b> or the <b>location where</b> the individual is currently being <b>held</b>, and all <b>charges</b> the individual is being held on, including any <b>outstanding warrants</b> from other jurisdictions and <b>parole or probation holds</b>.</p>	<p>Yes, release of this information is required by law, unless the release would (1) endanger a person’s safety, or (2) endanger the successful completion of the investigation or a related investigation. Gov’t Code 6254(f)(1).</p>		

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**NAMES AND ARRESTEE INFORMATION (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p>Adult <b>suspect name</b> (e.g. when suspect not arrested)</p>	<p>No to general public, but yes to the general public, if the adult suspect's name was already released to the public through the PRC process</p> <p>Release is also authorized to assist in specific public safety effort such as locating the suspect</p>	<p>Unwarranted invasion of privacy</p>	<p>For PRC to investigate, when relevant to a PRC investigation, the PRC shall get the name of an adult suspect, if ALL of the following conditions apply: (1) the release will not endanger a person's safety, (2) the release will not endanger the successful completion of the investigation or a related investigation, and (3) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information.</p> <p>With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.</p>

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**NAMES AND ARRESTEE INFORMATION (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p><b>Juvenile arrestee <u>name</u> and Juvenile suspect <u>name</u></b></p>	<p>No. The entire report cannot be released without a court order, except that the juvenile's name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.</p>	<p>Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/95; W&amp;I 601, 602; TNG v. Super. Ct.</p>	<p>Prior to release to victim confirm status of case is no longer active in Juvenile Court</p>
<p><b>Adult and juvenile <u>victim name</u></b></p>	<p>No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the victim should not be released. Pen. Code 964.  If no criminal case is pending or likely to be filed, then:  Yes, release of a victim's name is required by law, unless the release of the adult victim's name would (1) endanger a person's safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) the victim of one of the crimes listed in Government Code section 6254(f)(2), e.g. sex crimes, domestic violence, stalking or hate crime, has been asked and has requested (or, if a juvenile victim, his or her parent or guardian has requested) that his or her name be kept confidential. Gov't Code 6254(f)(2).</p>	<p>Penal Code 964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.</p>	

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**ADDRESS INFORMATION**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p>Adult or juvenile <b>witness</b> or “other party” <b>name</b>; an “other party” is a person who is not an arrestee, suspect, or witness</p>	<p>No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the witness (or other party) should not be released. Pen. Code 964.</p> <p>If no criminal case is pending or likely to be filed, then, for an adult witness name: Yes, unless release of the adult witness name would (1) endanger a person’s safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information.</p> <p>Note: The name of a juvenile witness will not be disclosed to the general public, unless it has already been disclosed through the PRC process. The name of a juvenile witness will only be disclosed to the PRC, if the parent or guardian consents to the disclosure.</p>	<p>Protection of witness and potential witnesses; Penal Code 964 sets forth certain restrictions on the release of a witnesses’ name if a criminal case is pending</p>	<p>If the PRC requests the name of a witness, the name can only be disclosed if (1) there is no active criminal case pending or a criminal case is likely to be filed, (2) the release of the name would not endanger a person’s safety, and (3) the release of the name would not endanger the successful completion of the investigation or a related investigation. In addition, if the witness is a juvenile, the parent or guardian must consent to the disclosure to the PRC.</p>

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**PHONE NUMBERS**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p><b><u>Phone number</u></b> of person whose <b>name IS released</b> under this Policy</p>	<p>No, to general public, but yes to the general public, if the phone number was already released to the public through the PRC process</p>	<p>Unwarranted invasion of privacy</p>	<p>For PRC to investigate, PRC shall get the phone number of any adult person whose name is released to the PRC. However, if the person whose name is released is a juvenile, the phone number will not be released to the PRC without the consent of the juvenile's parent or guardian.</p>
<p><b><u>Phone number</u></b> of any person whose <b>name is NOT released</b> under this Policy</p>	<p>No</p>	<p>Unwarranted invasion of privacy</p>	

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**ADDRESS INFORMATION**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<p><b>Adult arrestee address</b>  <b>Adult suspect address</b>  <b>Adult or juvenile victim address</b>  <b>Adult or juvenile witness address</b>  <b>Adult or juvenile “other party” address</b></p> <p>(Juvenile arrestee address:                      No: See below)</p> <p>(Juvenile suspect address:                      No: See below)</p>	<p>No, if the <i>name</i> is not released under this Policy and/or applicable law.</p> <p>In cases in which the <i>name</i> is released: No, to general public, but yes to the general public if the person’s address was already released to the public through the PRC process.</p> <p>Note: Juvenile arrestee and juvenile suspect addresses are not releasable. See below.</p>	<p>Unwarranted invasion of privacy</p>	<p>For PRC to investigate, when relevant to a PRC investigation, PRC shall get the address of an adult arrestee, or adult suspect, or any victim, witness, or other party, but only if ALL of the following conditions apply: (1) the PRC obtained the name from BPD under this Policy, (2) the person has no working telephone number, (3) the release will not endanger a person’s safety, (4) the release will not endanger the successful completion of the investigation or a related investigation, and (5) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information.</p> <p>In the case of a juvenile victim, juvenile witness, or juvenile other party, in addition to the above conditions, the address shall not be released to the PRC without consent of the juvenile’s parent or guardian.</p> <p>Juvenile arrestee and juvenile suspect addresses are not releasable to the PRC. See below.</p>

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**ADDRESS INFORMATION (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>Juvenile arrestee <u>address</u> and <u>Juvenile suspect address</u></b>	No. The entire report cannot be released without a court order, except that name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/95; W&I 601, 602; TNG v. Super. Ct.	Prior to release to victim confirm status of case is no longer active in Juvenile Court

**OTHER PERSONAL INFORMATION**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>Date of birth of <u>non-arrestee</u></b> (Date of birth of arrestee is required by law to be released. See above)	No	Unwarranted invasion of privacy and potential identity theft	As an alternative, release victim, witness, or suspect's age
<b>CDL, Social Security #, Bank Account #</b>	No	Unwarranted invasion of privacy and potential identity theft	
<b>Vehicle license plate numbers</b>	No	Unwarranted invasion of privacy	

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**OTHER PERSONAL INFORMATION (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>Medical treatment records</b>	No, unless a person is requesting his or her own medical records, or the person whose medical records are being requested has signed an authorization for the release of the medical records to the requesting party	Civil Code 56, et seq., provides that medical records are to be kept confidential; Welfare & Institutions Code 5328 provides that 5150 records (such as the BMH staff person's report re: the 5150) are confidential.  Note: An officer's report re: a 5150 call is not a medical treatment record; it is a police report.  Information provided by a medical treater noted in a police report is not a medical treatment record, but it should be deleted as an unwarranted invasion of privacy if it is highly sensitive information such as information involving sex crimes, suicide, or mental health.	Medical records can be given to the PRC if the person whose medical records are being requested has signed an authorization for the release of the medical records to the PRC.  Alternatively, a person can obtain his or her own medical records held by BPD, if any, directly from BPD, and then give them to the PRC.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**MUG SHOTS**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>PFN photos</b> taken by BPD (mug shots)	Yes, unless release would (1) endanger a person's safety, or (2) endanger the successful completion of the investigation or a related investigation		Obtain DD approval for release in all criminal cases
<b>PFN photos</b> taken by another agency	No, unless release is made for a public safety purpose	Policy decision	Obtain approval from Office of the Chief

**THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATIONS TAPE**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Oral (paraphrased) and written <b>statements</b> from victims, witnesses, and suspects;  Investigative <b>narrative</b>	Yes, unless release would (1) endanger a person's safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) result the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information.		
<b>Diagrams</b>			
<b>Evidence list</b>	With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATIONS TAPE (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>Evidence photographs</b>	Yes, unless release would (1) endanger a person's safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) result the release of highly personal information of a very sensitive nature such as the condition of person's body or a corpse.  With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.	Unwarranted invasion of privacy and undue burden on Comm Cir staff	For PRC to investigate, PRC shall get the tapes. However, if witness or victim information is not releasable to the PRC under this Policy or by law (e.g. Penal Code 964), then that information must be deleted. Also, if the tape contains highly personal information of a very sensitive nature such as a victim screaming as she is violently assaulted or killed, such segments shall be deleted before release to the PRC, unless the only person affected is the requesting party, and the person has filed a complaint with the PRC.
<b>Communications center audio tapes</b>	No, to general public, unless the tape was already released to the public through the PRC process		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

**THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATIONS TAPE (continued)**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>Investigative techniques:</b> Trackers, undercover, surveillance locations, Johns/decoys, tactics, interview tactics	No	Evidence Code 1040-1042	
<b>Confidential informant's</b> name or identifying information	No	Evidence Code 1040-1042	If the report uses "x" to refer to the confidential informant, release is permitted as no identifying information is included

**CRIMINAL HISTORY INFORMATION**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
<b>PFN Number</b>	No	Unwarranted invasion of privacy	
<b>Criminal history:</b> Actual RAP sheet or actual RMS print out for an individual	No. However, local criminal history information contained in the RMS print out must be released to the subject of that information, if requested by the subject. Penal Code 13330(b)(11).	Penal Code sections 11075, 11076, 11105, 13300	Okay to release serious felony conviction information only to Housing Authority managing Section 8 program
<b>Limited criminal history:</b> Fact of prior crime or similar arrests relevant to the investigation, or relevant to the arrest charge, such as felon with a gun	Yes. Although this information may be contained within a Rap sheet, it can be disclosed as a relevant part of a single police report, which in itself is not a Rap sheet. It can also be disseminated to the public generally for the purpose of assisting in the apprehension of a wanted person. Pen. Code 13305.		

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>CRIMINAL HISTORY INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Information taken out of <b>CLETS</b>	No	CLETS "Policies, Practices & Procedures" provides that CLETS information (which includes DMV) is confidential and for OFFICIAL USE ONLY	
<b>Probation or parole hold on an arrestee</b>	Yes, release of this information is required by law, unless the release of the probation or parole hold on the arrestee would (1) endanger a person's safety, or (2) endanger the successful completion of the investigation or a related investigation. Gov't Code 6254(f)(1).		
<b>Probation or parole status</b> when it is related to the investigation or arrest charge	Yes, unless release of the arrest charge or investigation would (1) endanger a person's safety, or (2) endanger the successful completion of the investigation or a related investigation		
<b>Probation or parole, general status</b> when there is no "hold" and it is not related to the investigation or arrest charge, and it is not being disclosed for a public safety purpose	No	Penal Code sections 11075, 11076, 11105, 13300	

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

**OPEN AND CLOSED INVESTIGATIONS; HOMICIDE REPORTS**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Open, Suspended, and Closed investigations	Yes, unless release would (1) endanger a person's safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) result the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information.		Obtain approval from affected DD Unit prior to release, if a criminal prosecution is still possible  For Homicide reports, obtain approval from Homicide Unit and Custodian of Records prior to release
	With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		

**SPECIAL POLICE REPORTS**

<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Juvenile arrest or juvenile suspect reports	No. The entire report cannot be released without a court order, except that the name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/95; W&I 601, 602; TNG v. Super. Ct.	Prior to release to victim confirm status of case is no longer active in Juvenile Court

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>SPECIAL POLICE REPORTS (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Child abuse reports	No	Penal Code 11167, 11167.5	
Elder abuse reports	No	Welfare and Inst. 15633 prohibits release	
Vehicle collision reports	No, except to persons authorized in Vehicle Code 20012	Vehicle Code 20012 limits the release of collision reports to certain interested parties	
Reports from other agencies	No	Policy decision	

<b>REQUESTS BY UNINVOLVED PARTIES AND SPECIAL REQUESTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Can an uninvolved party obtain a police report?	Yes, unless prohibited by law or this Policy, the same report or information released to involved parties should be released to any other person requesting the report	Examples of selective release required by law include ACSC Juvenile Court Order dated 4/7/95 (release to victim in certain circumstances); Gov't Code 6254(f) (release to victim of certain crimes, except in specific circumstances); and Vehicle Code 16005, 20012 (release to involved parties re: collision reports).	Support Services Captain to decide
Requests for all reports made by a certain officer, all reports pertaining to a certain address, or all reports regarding a type of use of force	No, unless release will enhance public safety, e.g. in a neighborhood effort to abate a nuisance such as drug dealing at a certain property where the reports are needed for a civil lawsuit	Officer privacy issues, may compile criminal history, and undue burden on staff	

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>SEARCH WARRANTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Search Warrants and Returns Search Warrant applications or affidavits, and any police reports attached to application	Yes, unless sealed Yes, but delete all identifying information pertaining to a victim or a witness in the application, affidavit, or a police report attached to the application	If sealed by Court Penal Code 964 prohibits the release of a witness or victim's identifying information in a Search Warrant application or a police report attached to the application.	

**Attachment 4B**  
**BERKELEY POLICE DEPARTMENT**

**DATE: August 31, 2005**

**GENERAL ORDER R-23**

**SUBJECT: RELEASE OF POLICE REPORTS AND INFORMATION  
THEREIN**

PURPOSE

- 1- The purpose of this Order is to establish the policy for release of police reports and information contained therein to the public.

POLICY

- 2- It shall be the policy of the Berkeley Police Department to release copies of police reports, unless release would endanger citizens, law enforcement personnel, or a law enforcement investigation, or constitute an unwarranted invasion of privacy, or is prohibited by law.

PROCEDURES

- 3- Information or Reports Which May Be Withheld

Except as provided in Section 4, the Department retains the discretion to refuse to release a police report, or certain information contained in a report, when the release of the report or information would:

- a. Endanger the safety of a witness or other person involved in an investigation;
- b. Endanger law enforcement personnel;
- c. Impede the successful completion of an investigation, but only when the prospect of enforcement proceedings is concrete and definite;
- d. Reveal confidential investigative techniques or procedures;
- e. Reveal the identity of confidential informants, including names and statements;
- f. Reveal information constituting an unwarranted invasion of privacy;
- g. Reveal the name and address of any person detained pursuant to Welfare and Institutions Code Section 5150, where disclosure would constitute an unwarranted invasion of privacy.
- h. Reveal information that may place someone in danger of physical harm.

**Attachment 4B**  
**BERKELEY POLICE DEPARTMENT**

**DATE: August 31, 2005**

**GENERAL ORDER R-23**

- i. Reveal information taken out of CLETS, i.e., DMV information, computer entries, updates, cancellations, etc.
  - j. Tend to reveal a person's overall criminal history information.
- 4- Information Or Reports Which Shall be Withheld:
- a. Unless otherwise directed by court order, name or address of a juvenile who is a suspect or who has been arrested or detained, or any information which might lead to the identity of a juvenile who is a suspect or who has been arrested or detained shall not be released.
  - b. Vehicle collision reports involving death or personal injury, except to "persons with a proper interest therein" as provided for in California Vehicle Code Section 20012.
  - c. Any report regarding child abuse made confidential by Penal Code Sections 11167 and 11167.5, or any report by a health care provider regarding assaultive or abusive conduct made confidential by Penal Code Section 11163.2(b).
  - d. If requested by the victim or guardian or parent, the name and address of any victim of a sex crime, domestic violence, child abuse, stalking, or a hate crime. (Gov't. Code § 6254(f)(2))
  - e. Reports from other agencies.
  - f. Any other report or other information the release of which is prohibited by federal or state law shall not be released.

5- Information That Shall Be Released, Unless A Person Or Investigation Will Be Endangered

During the pendency of an investigation or prosecution and except as prohibited in Section 4, above, the following information shall be released unless the release would endanger the safety of a person involved in an investigation or endanger the successful completion of the investigation or a related investigation.

- a. Public Information Re: Arrests; Gov't. Code § 6254 (f) (1)

For each person arrested within the last 6 months, the following information shall be disclosed:

- (1) The arrestee's name, occupation, physical description, including date of birth, color of eyes and hair, sex, height, weight, the date

**Attachment 4B**  
**BERKELEY POLICE DEPARTMENT**

**DATE: August 31, 2005**

**GENERAL ORDER R-23**

and time of arrest, the date and time of booking, and the location of the arrest.

- (2) The factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held.
  - (3) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.
  - (4) Appeals relating to the release of arrest information may be discussed with the Custodian of Records.
- b. Public Information Re: Complaints and Request for Assistance; Gov't. Code § 625 (f) (2)

For all complaints or requests for assistance received by the Department within the last 6 months, the following information shall be disclosed:

- (1) The time, substance, and location of all complaints or requests for assistance received, and time and nature or response thereto, including, to the extent the information is recorded, the time, date and location of occurrence, and the time and date of the report.
  - (2) The victim's name, age and address, unless victim and victim's address shall not be disclosed as provided in Section 4.4 above.
  - (3) Factual circumstances surrounding the crime or incident and a general description of any injuries, property or weapons involved.
  - (4) Appeals regarding the release of complaints and requests for assistance information may be discussed with the Custodian of Records.
- c. Information To Be Released To Victims And Their Agents And Insurers; Gov't. Code § 6254 (f)

The following information shall be released to victims, their authorized representatives, an insurance carrier against which a claim has or might be made, and any person suffering bodily injury or property damage or loss as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, car jacking, vandalism, or vehicle theft:

**Attachment 4B**

**BERKELEY POLICE DEPARTMENT**

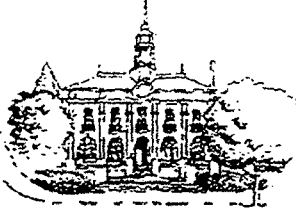
**DATE: August 31, 2005**

**GENERAL ORDER R-23**

- (1) Names and addresses of persons involved in the incident.
  - (2) Names and addresses of witnesses (other than confidential informants) to the incident.
  - (3) The description of any property involved.
  - (4) The date, time and location of the incident.
  - (5) Statements of parties involved in the incident.
  - (6) Statements of witnesses (other than confidential informants).
  - (7) All diagrams.
- 6- Persons Authorized To Release Reports And Information. The Custodian of Records, who is Services Division Captain, or a designee of the Custodian of Records, may release information and reports.
- 7- Procedures For Release Of Records and Information. Requests for records and information may be made in writing to the Department, or on forms provided by the Department for this purpose. The Department has no duty to create reports or lists of incidents, which do not already exist at the time a request for records or information is made, for the purpose of satisfying requests for records or information.
- 8- Guideline Matrix. A guideline matrix for information release is attached to this order.

Legal Authorities: (a) The Public Records Act, California Government code Sections 6251-6265 and 13960 (see section 6254 (f) (1)(2)(3) attachment); (b) The California Vehicle Code Section 20012; (c) The California Penal Code Sections 11167, 11167.5, 11163.2 (b), 841.5; (d) TNG v. Superior Court (1971) 4 C.3d 767 (see attachments); (e) City of Berkeley Administrative Regulations; and (f) Other state and local laws.

# Attachment 5



Kriss Worthington

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## CONSENT CALENDAR

March 27, 2001

To: Honorable Mayor and  
Members of the City Council

From: Councilmember Kriss Worthington

Subject: REFER TO CITY CLERK AND CITY MANAGER STUDYING THE  
FEASIBILITY OF A BERKELEY SUNSHINE ORDINANCE AND A  
PROCESS OF IMPLEMENTATION

### RECOMMENDATION:

That the Berkeley City Council refers to the City Clerk and the City Manager studying the feasibility of a Berkeley Sunshine Ordinance and a process of implementation.

### BACKGROUND:

At the symbolic core of all local governments exist the right for a democratic process of public participation, equal representation, and the access to information. Adoption of a Sunshine Ordinance in Berkeley would create a friendlier environment for the public during meetings, and make it easier for all citizens to access a wider array of public information to become better informed about their government. The following are some of the ideas which we would like to highlight and study:

1. Evaluate how to best alert people when a public hearing will begin and end. Establish and/or change guidelines for procedure during meetings to maximize public participation and end meetings in a timely fashion. Sometimes at City Council meetings, Zoning Adjustment Board meetings, and Landmarks Preservation Commission meetings, the public will come and will sit and wait for hours and hours waiting to speak. Public participation should not require you to be masochistic. No one should have to sit and endure 5 hours to find out what time the item will be discussed. When a public hearing or item comes up around midnight, most members of the interested public have left. No major or important policies should be discussed after midnight.

2. Establish rules regarding better public notice, location and inclusion in meetings.
- ✓ 3. Establish guidelines in creating agenda titles for Council, Commissions and City that accurately describe what the content of the item and what will be discussed.
- ④ 4. Announce in open session final decisions made in closed session after all parties agree to the settlement or that no final decision has been reached. Establish guidelines in making final closed session decisions available and accessible by the public.
5. Establish guidelines for all memos to the City Council or City Departments that are considered public information to become available for public view.
- ⑥ 6. Encourage law enforcement agencies to cooperate with the public and press in making police records, logs, and relevant information available. Make investigative information available after the statute of limitations expire or a court or District Attorney decides not to prosecute.
- ⑦ 7. Require disclosure of settlement agreements 10 days before the meeting of the policy body at which the settlement is to be approved, unless disclosure would harm the city's interest in pending litigation arising from the same facts but involving a party unrelated to the settlement.
8. Create a timeline to establish an Index of Records, like in San Francisco, available through the city's web site and public libraries, to inform the public of where various types of city records can be found.
9. Create a timeline to implement a system accessible by the public through online resources or remotely at public libraries and/or the City Clerk's office for the viewing of all public records, documents, and digital emails and files.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Councilmember Kriss Worthington 981-7170.

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