

DRAFT ORDINANCE

ORDINANCE NO. -N.S.

ADDING SECTION 1.30 TO THE BERKELEY MUNICIPAL CODE, 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 City Legislative Bodies to Meet Within The City**
- 1.30.060 City Legislative Bodies to Schedule Meetings at Times That Encourage Public Participation- Public Access to Mayor or Council Task Force**
- 1.30.070 City Legislative Bodies posting of agendas on city bulletin board and city website; effect of failure to post as required - actions taken must be rescinded**
- 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, Access**
- 1.30.110 Agendas and reports and communications for City Legislative Bodies – simplicity, clarity, renoticing.**
- 1.30.120 Public Comment At Meetings and Public Input on Significant Policies**
- 1.30.130 City Legislative Bodies - 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 Website**
- 1.30.150 All Subcommittees Exempt From the Brown Act To Provide Public Notice and Access – Exceptions for Obtaining Legal Advice**
- 1.30.160 No Disclosure of Name or Address Required to Comment at Meetings; Exceptions**
- 1.30.170 Closed Sessions – Agendas, Approval of Litigation Settlement; Scope; Personnel Matters**
- 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**

DRAFT ORDINANCE

1.30.220 Availability at Meetings of Documents Distributed to City Legislative Body

1.30.230 Police Records

1.30.240 City employee and official compensation; and City phone billing records

1.30.250 Posting of City Laws and Policies on Website

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 Title of chapter-Berkeley Sunshine Ordinance

This chapter shall be known as the Berkeley Sunshine Ordinance

1.30.020 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 range 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 notice of the contents of the City's public access procedures, which significantly expand upon and supplement state law.

DRAFT ORDINANCE

1.30.030 Purpose

The purpose of this chapter is to increase access to City of Berkeley decision making procedures and documents 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 6250 et. sequitur. (“Public Records Act”)

1.30.040 Applicability

- A. Meetings of Legislative Bodies Subject to Article 1, 3 and 4. The provisions of Articles 1, 3 and 4 of this chapter shall apply to any City of Berkeley legislative body as that term is used in Government Code section 54952 of the Brown Act or any successor thereto, and includes the Berkeley City Council, any City of Berkeley advisory or decision-making board, commission or task force whether temporary or permanent which has been created by formal action of the City Council, and any subcommittees of such bodies which would be “legislative bodies” under Government Code section 54952 including the Board of Library Trustees and the Berkeley Rent Stabilization Board. Such bodies shall hereafter be referred to as “City Legislative Bodies.” These provisions shall apply to the Berkeley Redevelopment Agency, and Berkeley Housing Authority upon passage of resolutions, by the governing bodies of those agencies, adopting the provisions of this chapter in whole or in part.
- B. Records of City Legislative Bodies. Articles 2-4 shall apply to the records of the City of Berkeley and City Legislative Bodies as defined in subsection A.

Article 1

Public Access to Meetings and Related Provisions

1.30.050 City Legislative Bodies to meet within the City

Even when otherwise permitted by law, City Legislative Bodies shall conduct their meetings within City limits unless the City Council finds, in advance of such meeting, that the City’s interests are likely to suffer significant articulated prejudice if the meeting is not held outside City limits and that prejudice cannot be avoided by holding such meeting within City limits.

1.30.060 City Legislative Bodies to schedule meetings at times that encourage public participation - public access to Mayor or Council Task Force

- A. City Legislative Bodies, to the extent feasible, 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.

DRAFT ORDINANCE

- B. If a public hearing is likely to be attended by a large number of the members of the public, the Council's Agenda Committee, when practicable, should schedule Council public hearings for a time certain at a regular Council meeting or may call a special meeting for this purpose.
- C. Subject to the availability of space, members of the public may attend any task force or other advisory group established by the Mayor or any Councilmember if such group receives staff support from staff assigned by the City Manager, other than the Mayor or Councilmember's own aides. The place and time of the meetings of such body shall be made known to any member of the public, upon inquiry, but no special notice of such meeting is required. Such task force or other advisory group may determine the manner in which any member of the public may participate in its proceedings. No other provisions of this Article shall apply to such group.

1.30.070 City Legislative Bodies posting of agendas on City bulletin board and City website; effect of failure to post as required - actions taken must be rescinded

Agendas for all regular and special meetings of City Legislative Bodies shall be posted on the City's website and in the bulletin board provided for this purpose. Upon the filing of a written complaint with the secretary of the City Legislative Body establishing that the agenda for a meeting of the City Legislative Body, was not posted as required under this section, any action taken at such meeting shall be rescinded within 30 days of the filing of such complaint and the matter rescheduled in the manner required by this section and other applicable law.

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

- A. All regular and special open meetings of the City Council, and Zoning Adjustments Board held in the current Council Chambers on Dr. Martin Luther King Junior Way "Old City Hall" 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 at the Council Chambers 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

DRAFT ORDINANCE

account for holidays). The draft agenda shall contain a prominent notification that the final agenda is subject to change after the Agenda Committee meeting. 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. If the City Manager, Council or Council Agenda Committee concludes, either on their own initiative or based upon a complaint made by a member of the public at the Council meeting that a report or description of an item on an agenda was written in a manner that 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, they may reschedule the item for a subsequent meeting. The report and/or agenda item description shall be rewritten for such meeting to provide adequate 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 impractical.
- 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 other City Legislative Bodies – simplicity, clarity, renoticing

- A. The description of agenda items and reports for other City Legislative Bodies, other than the City Council, shall be written in easily understandable language and provide adequate notice of the matter to be discussed at the meeting.
- B. Where a report or description of an item on an agenda for a City Legislative Body was written in a manner that the City Manager concludes would not lead a

DRAFT ORDINANCE

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 adequate 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 the City Manager determines that time constraints make such renoticing impractical.

1.30.120 Public comment at meetings and public input on significant policies

- A. Public comment shall be maximized on items on agendas of City Legislative Bodies 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. City Legislative Bodies shall ensure that they provide notice to and seek public input from any significant segments of the community affected by any substantial policy or other proposed action matter prior to formulating recommendations to the City Council or City Manager on that policy or other matter.

1.30.130 City Legislative Bodies -Action on oral report only in exceptional circumstances; public file of written reports, comments

- A. Except in exceptional circumstances where the City Legislative Body taking action determines that there is a need to take immediate action and under the circumstances it is infeasible to prepare a written report, no final action shall be taken or policy direction given by any City Legislative Body concerning a subject that has no written report.
- B. If any person files a complaint with the City Legislative Body within 30 days of such action or policy direction, such body shall rescind and set aside its action.
- C. All City Legislative Bodies shall maintain a file for public inspection at each meeting that contains 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 of City Legislative Bodies notices must be posted on the City's website

The agendas of special meetings of City Legislative Bodies shall be posted on the City's website. Action taken at any meeting at which the agenda was not posted on the City's website shall be rescinded if any person files a written complaint with the Legislative Body within 30 days of the date of such meeting, if the complainant establishes that she/he did not attend the meeting, did not otherwise have notice of it, has suffered

DRAFT ORDINANCE

significant demonstrable harm and the City's rescission of such action will not prejudice other important interest of the public or the City.

1.30.150 All Subcommittees of City Legislative Bodies exempt from the Brown Act to provide public notice and access – exceptions for obtaining legal advice

All subcommittees of City Legislative Bodies that are not otherwise subject to the Brown Act shall nonetheless hold meetings in a publicly accessible location, and must be open to the public, except where such body is receiving legal advice from the City Attorney or a designee.

1.30.160 No disclosure of names or address required to comment at meeting of City Legislative Bodies; exceptions

Persons speaking at a public meeting of City Legislative Bodies shall not be required to disclose their names or 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 or to follow up on the individual's comments.

1.30.170 Closed sessions - agendas, approval of litigation settlements; scope; personnel matters

- 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, even where such disclosure may not be required by the Brown Act, 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. Consistent with 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 requires 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. Upon the filing of a written complaint with the City within 30 days of the taking of any action in violation of this subsection or at the earliest

DRAFT ORDINANCE

practical time a City Council meeting can be called, if a meeting cannot be called within 30 days, the City Council shall set aside its action to approve such settlement.

- 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. To the extent feasible given staff resources, significant briefs filed by the City in a case of widespread public interest to which the City is a party, should be posted on the City's website.
- G. City Legislative Bodies 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 permissible subjects germane to the legally permissible basis of the closed session may be discussed in such session.
- H. Closed sessions for the appointment, evaluation or dismissal of a City employee may not include discussion of how to conduct a recruitment, what consultants to retain for such purpose, what employment criteria or process will be used to select an individual or the nature of the performance objectives by which the individual's performance will be measured.

1.30.180 Self-correction of Brown Act violations

If the City Attorney advises any City Legislative Body based upon information which comes to the attention of the City Attorney that the Legislative Body has taken action in violation of the Brown Act, the City Legislative Body shall rescind that action and shall reschedule the matter for discussion in compliance with applicable law, irrespective of whether or not any complaint concerning such violation has been lodged with such Legislative Body by a member of the public.

DRAFT ORDINANCE

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. Persons seeking to inspect records or obtain copies of such records shall not be required to identify themselves.
- 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 and courteously respond to public requests for information.

1.30.220 Availability at meetings of documents distributed to City legislative Body

Documents distributed to a City Legislative Body by the City concerning items on the agenda of that 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, whether or not such document has been requested. To the extent practicable, documents disseminated by other persons to the City Legislative body holding the meeting should also be available for public inspection at that meeting whether or not requested. If requested, they should be provided upon such request.

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 dates May 8, 2007 attached

DRAFT ORDINANCE

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 and official compensation; and 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.
- B. The billing records of City telephones and cell phones shall be disclosed except to the extent that the City Manager or a Department Director, after consultation with the City Attorney's office, determines that the matter is legally subject to being withheld or is privileged, for example, calls to confidential informants.

1.30.250 Posting of City laws and policies on website.

The City shall post links to the following laws and procedures on its website:

- 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 3

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. 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 policies and practices and the appropriate remedy for any violation. Upon finding that any violation has occurred,

DRAFT ORDINANCE

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 the disposition thereof as soon as practicable. The Council may, by a majority vote of the Council, discuss the matter and thereupon take such further action on such complaint that the Council deems appropriate and is permissible 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 ordinance and may 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 enactment 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

- A. 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.
- B. If the City fails to set aside actions taken in violation of sections 1.30.070, 1.30.140 and 1.30.170 C, or produce any records required by 1.30.230 any interested person may file suit to set aside such action but only if such person has previously filed a written complaint, in compliance with Section 1.30.260, within 30 days of the taking of the action and the City Manager has failed to set aside the action or produce the records. Any civil action for relief pursuant to this ordinance must be commenced no

DRAFT ORDINANCE

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 4

Public Information Regarding City's Sunshine Ordinance and Related Policies

1.30.290 Posting of Sunshine Ordinance on City Website

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

1.30.300 Preparation of public guide

The City Manager 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 City Council as an Information Report on the Council agenda, be posted on the City's web site and the press shall be notified of its availability. 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.