

Office of the City Manager

ACTION CALENDAR

April 22, 2008

To:  Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Zach Cowan, Acting City Attorney

Subject: Public Hearing on Draft Sunshine Ordinance

RECOMMENDATION

Conduct a public hearing and upon conclusion give direction to staff on any additional revisions to the draft Sunshine Ordinance and whether to place the Sunshine Ordinance on the May 6, 2008 agenda for a first reading.

BACKGROUND

In 2001, at the request of Councilmember Worthington, the City Council directed the City Manager and the City Clerk to 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, video streamed broadcasts of the City Council and Redevelopment Agency, 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 including early drafts of City Council and Redevelopment Agency agendas increase the period of advance notice of agenda items of interest to the public. Most recently, the Council adopted revisions to the Council rules to provide for greater public comment at council meetings.

At the March 20, 2007 special City Council meeting, the Council conducted a workshop at which a panel composed of representatives of Californians Aware, the Northern California Society of Professional Journalists, League of Women Voters and the American Civil Liberties Union commented on the then most recent draft of the Sunshine ordinance. (Successive drafts of the Sunshine ordinance were prepared by the City Attorney, beginning in March 2006, at the policy direction of the City Manager, Mayor Bates and Councilmember Worthington.) The March 20, 2007 draft included the matters that the City Manager, Mayor and Councilmember Worthington had requested

be included in the draft. The March 20, 2007 workshop was scheduled at the request of the City Council after a prior draft of the ordinance had been commented on at a November 2006 City Council meeting and revised in response. Members of the public commented further on the revised draft at the March 20, 2007 special Council meeting and at the regular Council meeting later that night.

Based on the comments received at the March 20, 2007 workshop, the City Manager asked the City Attorney to: 1) revise the draft ordinance to address any comments that would help clarify the ordinance or would implement any suggestions made which could be easily implemented; 2) prepare a matrix of the substantive issues raised to date with an explanation of which ones are addressed in the ordinance, and the practical and policy implications of including any others; and 3) post the revised Sunshine Ordinance and other documents on the City's website.

The draft Sunshine Ordinance, matrix and the revised Berkeley Police Department General Order R-23, *Guidelines for Release of Reports and Information Therein*, have been posted on the City's website since October 22, 2007. On that same date, copies of the draft Sunshine Ordinance and other documents were sent to all the panel members who participated in the March 20th workshop. To date, the City Attorney's office has received no comments regarding this latest draft of the ordinance from the public or any of the individuals who participated in the workshop.

The purpose of the public hearing is to receive further public input and for Council to give staff final direction on any revisions it desires and whether to place the ordinance on the May 6, 2008 agenda for a first reading.

CURRENT SITUATION AND ITS EFFECTS

State law, in the form of the Brown Act, requires local governments to provide advance written public notice of and access to the meetings and related reports of a city's governing body, subordinate boards and commissions and certain types of subcommittees. The Brown Act also provides for the public's right to comment at these meetings. The California Public Records Act requires that the public must be provided access to local government's records, with specified exceptions. The City of Berkeley has historically provided far greater access to both its records and meetings than that required by state law. It has continued from year to year to improve upon and expand such access. These open government practices are reflected in Council resolutions, ordinances and many longstanding and routine practices that are not codified.

The current Sunshine Ordinance draft is intended 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 and City staff. 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 prior City Attorney prepared multiple drafts of the ordinance based upon the input of the Mayor and City Council, the City Clerk, City Manager and the public.

Attachment 1, Exhibit B is a matrix of issues that explains in detail what revisions have been made to address comments made by the panelists on March 20, 2007, as well as by others. The matrix also identifies which revisions were not made and the issues that are implicated. Minor changes have been made to matrix issues numbered 26, 32, 41, 47 and police records table number 5 to address changes that have occurred since the matrix was first posted on October 22, 2007. For the most part, the panelists' comments were incorporated into this final draft of the Sunshine Ordinance.

Below is a summary of the Sunshine Ordinance:

1. 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, and release of police reports under specified policies in Exhibit B. 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. It will be applicable to the Council and all City Boards and Commissions. If adopted 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, have been addressed in amendments to the Rules adopted by Council in November 2007.

2. 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 the 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. Thus, absent a charter amendment, a City Commission could not direct the City Manager or staff. 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

Zach Cowan, Acting City Attorney 981-6950
Sarah Reynoso, Acting Assistant City Attorney 981-6950

Attachments:

- 1: Draft sunshine ordinance
Exhibit A: Berkeley Police Department General Order R-23 and
Guidelines for Release of Reports and Information Therein
- 2: Sunshine Ordinance Matrix of Issues
- 3: Public Hearing Notice

ORDINANCE NO. -N.S.
DRAFT OCTOBER 22, 2007

ADDING ~~SECTION-CHAPTER~~ 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. That Chapter 1.30 is added to the Berkeley Municipal Code to read as follows:

Chapter 1.30
BERKELEY SUNSHINE ORDINANCE

Sections:

- 1.30.010 Title ~~of Chapter~~ ~~Berkeley Sunshine Ordinance~~
- 1.30.020 Findings
- 1.30.030 Purpose
- 1.30.040 Applicability

Article 1. Public Access to Meetings and Related Provisions

- 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 ~~p~~Posting of ~~a~~Agendas on ~~e~~City ~~b~~Bulletin ~~b~~Board and ~~e~~City ~~w~~Website; ~~e~~Effect of ~~f~~Failure to ~~p~~Post as ~~r~~Required - ~~a~~Actions ~~t~~Taken ~~m~~Must ~~b~~Be ~~r~~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 ~~r~~Reports and ~~e~~Communications for City Legislative Bodies – ~~s~~Simplicity, ~~e~~Clarity, ~~r~~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 of Legislative Bodies Notices Must Be Posted on the City's Website
- 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

- 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

Article 2. Public Records

- 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 ~~€~~T Training and ~~d~~D Direction to City ~~S~~ Staff ~~r~~e Regarding ~~d~~D Disclosure of ~~r~~R Records
- 1.30.220 Availability at Meetings of Documents Distributed to City Legislative Body
- 1.30.230 Police Records
- 1.30.240 City ~~e~~E Employee and ~~e~~O Official ~~e~~C Compensation; and City ~~p~~P Phone ~~b~~B Billing ~~r~~R Records
- 1.30.250 Posting of City Laws and Policies on Website

Article 3. Complaint Procedure

- 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

Article 4. Public Information Regarding City’s Sunshine Ordinance and Related Policies

- 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.

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

~~A.~~—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.

~~B.~~—~~No staff member nor member of a City Legislative body shall serially lobby or privately brief a quorum of any City Legislative Body to propose or oppose any recommendation pending or to be submitted to such City Legislative Body.~~

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.
- 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 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 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 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 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.

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 regarding 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 hereto as Exhibit A. 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, 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 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 display 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.

BERKELEY POLICE DEPARTMENT

DATE: May 23, 2007

GENERAL ORDER R-23

SUBJECT: RELEASE OF PUBLIC RECORDS AND INFORMATION

PURPOSE

- 1 - The purpose of this Order is to establish the policy for release of public records to the public.

POLICY

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

DEFINITIONS

- 3 - Public Record: any writing or archival record containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 4 - Member of the Public: any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.
 - (a) Notwithstanding the definition of "member of the public," an elected member or officer of any state or local agency is entitled to access public records of that agency on the same basis as any other person.
- 5 - Person: any natural person, corporation, partnership, limited liability company, firm, or association.
- 6 - Custodian of Records: The Support Services Division Captain, or his/her designee, shall serve as Custodian of Records for written incident and investigative reports. For all other records maintained by this department, the Administrative Division Captain, or his/her designee, shall serve as Custodian of Records.

PROCEDURES

- 7 - The Custodian of Records shall be the person responsible for release of public records. No record shall be released to the public without his/her approval.
 - (a) Release of information by the Public Information Officer, in accordance with General Order P-29, shall adhere to the standards set forth in this Order.

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- 8 - A request for a public record shall be received in any form, including an oral request.
 - (a) Any question or concern regarding the nature or propriety of a public record request shall be forward to the Custodian of Records for review and determination.
- 9 - The Support Services Division Service Bureau will be primarily responsible for receiving public record requests and disseminating records authorized for release.
- 10 - The following reports, documents or information shall not be released unless specifically authorized by law or Court Order:
 - (a) The name or address of a juvenile arrested, detained, or who is a suspect in a police investigation, or any information which might lead to his/her identification;
 - (b) Vehicle collision reports involving death or personal injury, except to "persons with a proper interest therein" (Vehicle Code §20012);
 - (c) Incidents or investigations involving child neglect or abuse, either physical or emotional (Penal Code §§11167 and 11167.5);
 - (d) Incidents or investigations regarding violent or abusive conduct reported by a health care provider (PC §11163.2(b));
 - (e) The name and address of a victim of a sex crime, domestic violence, child abuse, stalking, or a hate crime, if confidentiality is requested by the victim, or if a minor, his/her parent or guardian (Government Code §6254(f)(2));
 - (f) Reports of suspected abuse of an elder or dependent adult (Welfare and Institutions Code §15633);
 - (g) Reports or information received from other agencies; and,
 - (h) Any other report or other information not listed above, the release of which is prohibited by Federal or State law.
- 11 - The Department has discretion to withhold release of a police report, document or information contained therein, when its release would:
 - (a) Endanger the safety of a witness or other person involved in an investigation;
 - (b) Endanger the safety of law enforcement personnel;

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- (c) Impede the successful completion of an investigation;
 - (d) Reveal confidential investigative techniques or procedures;
 - (e) Reveal the identity of confidential informants or sources of information, including names, statements, and locations;
 - (f) Reveal information constituting an unwarranted invasion of privacy;
 - (g) Reveal the name and address of any person detained pursuant to WIC §5150, where disclosure would constitute an unwarranted invasion of privacy;
 - (h) Reveal information maintained in confidential or law enforcement sensitive databases or information management systems (e.g., NCIC, CLETS, DMV files, etc.); or,
 - (i) Reveal a person's criminal history information.
- 12 - The following public information shall be released subsequent to administrative review of the Custodian of Records, unless 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) Arrest information for arrests made within six (6) months of the date of the public information request (GC §6254(f)(1)):
 - (1) The arrestee's name, occupation, date of birth, and physical description, including gender, height, weight, and color of eyes and hair;
 - (2) The date, time and location of arrest, and the date and time of booking;
 - (3) The factual circumstances surrounding the arrest, the amount of bail set, the location where the individual is currently being held, or the time and manner of release; and,
 - (4) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, and parole or probation holds.
 - (b) Complaints and requests for assistance made within six (6) months of the date of the public information request (GC §6254(f)(2)):
 - (1) The time, substance, and location of all complaints or requests for assistance received by this department, and time and nature of

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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 his/her name and address are not be disclosed pursuant to paragraph 10(e) of this Order.
 - (3) Factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.
- (c) Information authorized for release to victims, their agents, and insurers, when an insurance claim has or might be made, and any person has suffered bodily injury, property damage or loss as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, or vehicle theft (GC §6254(f)):
- (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); and,
 - (7) All diagrams.
- 13 - Appeals relating to a denied request for the release of public records shall be forwarded to the Custodian of Records for review and disposition.
- 14 - Supervisory and command personnel may release verbatim excerpts from the General Orders, Training and Information Bulletins, or written policy directives of their particular command, and may quote statutory law which effects this Department and its conduct of public business.
- 15 - Subsequent to the approval of the Chief of Police, the Public Information Officer, his/her designee, and command personnel may respond to criticism of their particular command, of the activities of members of their command, or of the department, except when the criticism has resulted in an Internal Affairs investigation of alleged misconduct.

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16 - Guideline Matrix. A guideline matrix for public record release is attached to this Order, and is provided to facilitate clarity and efficiency regarding the evaluation and satisfaction of public record requests.

References: Evidence Code §§1040 – 1042
Government Code §§6251 – 6265 and 13960
Penal Code §§841.5, 964, 11075, 11076, 11105, 11163.2 (b), 11167,
11167.5 and 13300, et seq.
Welfare and Institutions Code §§5328 and 15633
Vehicle Code §§16005 and 20012
TNG v. Superior Court (4 C.3d 767 (1971))
City of Berkeley Administrative Regulations
General Order P-29
Support Services Division Manual

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			
Subject	Release	No Release Reason	Further Direction
Adult arrestee's <u>name</u> , occupation, physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, 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, and all charges the individual is being held on, including any outstanding warrants from other jurisdictions and parole or probation holds.	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. [Government Code §6254(f)(1)]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
Adult suspect name (e.g., when suspect not arrested)	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. Release is also authorized to assist in specific public safety effort, such as locating the suspect.	Unwarranted invasion of privacy.	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.
Juvenile arrestee name and Juvenile suspect name	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/her representative, after the criminal case against the	Release prohibited (except in limited circumstance noted) by Alameda County Court Order, dated 4/7/1995: Welfare & Institutions Code §§ 601 and 602; [TNG v. Sup. Ct.]	Prior to release to victim, confirm status of case is no longer active in Juvenile Court.

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	juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.		
NAMES AND ARRESTEE INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
Adult and juvenile victim <u>name</u> :	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. [Penal Code §9664] 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 GC §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. [GC §6254(f)(2).]	PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
Adult or juvenile witness or "other party" name; an "other party" is a person who is not an arrestee, suspect, or witness.	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. [PC §964] 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. 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.	Protection of witness and potential witnesses; PC §964 sets forth certain restrictions on the release of a witnesses' name if a criminal case is pending	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.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

PHONE NUMBERS			
Subject	Release	No Release Reason	Further Direction
Phone number of person whose name IS released under this Policy	No, to general public, but yes to the general public, if the phone number was already released to the public through the PRC process.	Unwarranted invasion of privacy.	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.
Phone number of any person whose name is NOT released under this Policy	No.	Unwarranted invasion of privacy.	

ADDRESS INFORMATION			
Subject	Release	No Release Reason	Further Direction
Adult arrestee <u>address</u> .	No, if the <i>name</i> is not released under this Policy and/or applicable law.	Unwarranted invasion of privacy	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
Adult suspect <u>address</u>			
Adult/juvenile victim <u>address</u> .	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.		
Adult/juvenile witness <u>address</u> .			
Adult/juvenile "other party" <u>address</u> .			
(Juvenile arrestee address: No: See below)	Note: Juvenile arrestee and juvenile suspect addresses are not releasable. See below.		
(Juvenile suspect address:			

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

No: See below)			successful completion of the investigation or a related investigation; [cont.]
ADDRESS INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
			<p>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>
<p>Juvenile arrestee <u>address</u> and Juvenile suspect <u>address</u>.</p>	<p>No. The entire report cannot be released without a Court Order, except that name and address information may be released to the</p>	<p>Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601, 602. [TNG v. Superior Court]</p>	<p>Prior to release to victim confirm status of case is no longer active in Juvenile Court.</p>

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OTHER PERSONAL INFORMATION			
Subject	Release	No Release Reason	Further Direction
Date of birth of non-arrestee. (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.
CDL, Social Security #, Bank Account #.	No.	Unwarranted invasion of privacy and potential identity theft.	
Vehicle license plate numbers.	No.	Unwarranted invasion of privacy.	
Medical treatment records.	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; WIC §5328 provides that WIC §5150 records (such as the Berkeley Mental Health staff person's report re a WIC §5150) are confidential. Note: An officer's report re a WIC §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	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.

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MUG SHOTS			
Subject	Release	No Release Reason	Further Direction
PFN photos 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 Detective Bureau approval for release in all criminal cases.
PFN photos 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 COMMUNICATION TAPE			
Subject	Release	No Release Reason	Further Direction
Oral (paraphrased) and written statements from victims, witnesses, and suspects. Investigative narrative. Diagrams. Evidence list.	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 in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the		

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	requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		
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GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	Release	No Release Reason	Further Direction
Evidence photographs.	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.		
Communications center audio tapes	Yes, unless release is prohibited under PC §964 (pending criminal case), or release results in an unwarranted invasion of a citizen's privacy. No, as to continuing police radio communications in lengthy incidents occurring more than one hour after the incident first started.	Unwarranted invasion of citizen's privacy and undue burden on 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., PC §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

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

			party, and the person has filed a complaint with the PRC.
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GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	Release	No Release Reason	Further Direction
Investigative techniques: Trackers, undercover, surveillance locations, 'Johns'/decoy, tactics, interview tactics.	No.	Evidence Code §§1040-1042	
Confidential informant's name or identifying information.	No.	EC §§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			
Subject	Release	No Release Reason	Further Direction
PFN Number.	No.	Unwarranted invasion of privacy.	
Criminal history: 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. [PC §13330(b)(11)]	PC §§11075, 11076, 11105 and 13300.	Okay to release serious felony conviction information only to Housing Authority managing Section 8 program.
Limited criminal history: 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.		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

CRIMINAL HISTORY INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
Information taken out of CLETS.	No.	CLETS "Policies, Practices & Procedures" provides that CLETS information (which includes DMV) is confidential and for OFFICIAL USE ONLY.	
Probation or parole hold on an arrestee.	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. [GC §6254(f)(1)]		
Probation or parole status 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.		
Probation or parole, general status 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.	PC §§11075, 11076, 11105 and 13300.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OPEN AND CLOSED INVESTIGATIONS, HOMICIDE REPORTS			
Subject	Release	No Release Reason	Further Direction
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 effected Detective Bureau 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			
Subject	Release	No Release Reason	Further Direction
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 4/7/1995; WIC §§601 and 602. [TNNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.
Child abuse reports.	No.	PC §§11167 and 11167.5.	
Elder abuse reports.	No.	WIC §15633 prohibits	

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		release.	
Vehicle collision reports.	No, except to persons authorized in VC §20012.	VC §20012 limits the release of collision reports to certain interested parties.	
SPECIAL POLICE REPORTS (continued)			
Subject	Release	No Release Reason	Further Direction
Reports from other agencies.	No.	Policy decision.	

REQUESTS BY UNINVOLVED PARTIES AND SPECIAL REQUESTS			
Subject	Release	No Release Reason	Further Direction
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 Alameda County Superior Court Juvenile Court Order dated 4/7/95 (release to victim in certain circumstances); GC §6254(f) (release to victim of certain crimes, except in specific circumstances); and, VC §§16005 and 20012 (release to involved parties re: collision reports.)	

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<p>Categorical requests, such as all reports pertaining to a certain address, all reports regarding a certain type of incident, or all reports related to a particular individual.</p>	<p>Yes, unless: 1) the release will impact citizen privacy issues; 2) the potential assembly of information will reveal criminal history; or, 3) if gathering the information will create an undue burden on staff. Yes, when 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.)</p>		<p>Custodian of Records to decide.</p>
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GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

SEARCH WARRANTS			
Subject	Release	No Release Reason	Further Direction
Search Warrants and Returns.	Yes, unless sealed.	If sealed by Court.	
Search Warrant applications or affidavits, and any police reports attached to application.	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.	PC §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.	

SUNSHINE ORDINANCE MATRIX OF ISSUES, PREPARED BY CITY ATTORNEY, OCTOBER 22, 2007*

ISSUE	INCLUDED	NOT INCLUDED	COMMENT
1. Definitions required. (TF)	1.30.040		City Legislative Bodies defined as legislative body by reference to Brown Act. Otherwise explained in substantive section itself.
2. (TF)	1.30.050		Done-relates to territorial meeting language.
3. Hearings time certain (TF) (KW)	1.30.060 (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." The Council has found that routinely setting hearings for a time certain resulted in new problems, like the inability to predict when the hearing would actually commence, unscheduled delays when hearings got continued or matters were settled, yet the Council was unable to move to the next hearing. After experimenting with various approaches the Council has settled on delegating this issue to the Agenda Committee.
4. Clarify Access to task forces. (TF)	1.30.060 (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 by 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." Language clarified as requested and broadened coverage of task force to any staff support for any period. (Note Oakland only covers a Mayoral Task Force of twelve months duration and not Council task forces (Oakland has a strong Mayor form of government but Berkeley does not.) Berkeley's ordinance has a much wider scope.

*Key to Issues by proponent or type of issue:

TF=Terry Francke; LWV=League of Women Voters; CA=Californians Aware; JS=Judith Scherr; ACLU: Comments by Marc Shlossberg; SPJ=Society of Professional Journalists;

SB- Superbold; PC= Public comment procedures by various speakers; (W)=Worthington 2001 referral

SUNSHINE ORDINANCE MATRIX OF ISSUES, PREPARED BY CITY ATTORNEY, OCTOBER 22, 2007*

ISSUE	INCLUDED	NOT INCLUDED	COMMENT
5. Agenda web postings. (TF)	1.30.070		"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." As requested, revised language removes exemption for technological limitations and makes clear how action is rescinded.
6. Broadcast of meetings. (TF)	1.30.080 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, video-streamed live and for replay over the internet, and captioned, with the captioned text displayed on the cable broadcast and as part of the video-stream." "Current Council Chambers" language replaces language about technological and fiscal feasibility. Prior language regarding technological and fiscal feasibility had been inserted at the request of the prior City Clerk to account for the fact that such video-streaming may not be possible except at great expense if the Council chambers have to be relocated, if and when, the School District moves out of Old City Hall. The Council at its October 9, 2007 meeting referred its request to the City Manager and City Clerk to look at alternative locations for Council meetings.
7. Clarify draft agenda modified. (TF)	1.30.090		"The draft agenda shall contain a prominent notification that the final agenda is subject to change after the Agenda Committee meeting." Inserted as requested.
8. Clarify inadequate agenda language. (TF)	1.30.100 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

* Key to Issues by proponent or type of issue:
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SUNSHINE ORDINANCE MATRIX OF ISSUES, PREPARED BY CITY ATTORNEY, OCTOBER 22, 2007*

ISSUE	INCLUDED	NOT INCLUDED	COMMENT
9. Clarify input from stakeholders. (TF)	1.30.130 C		interest, they may reschedule the item for a subsequent meeting." Clarification requested supplied by added language above.
10. Clarify remedy for absence of written reports. (TF)	1.30.130		<p>"A. Except in exceptional circumstances where the 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.</p> <p>B. <i>If any person files a complaint with the Legislative Body within 30 days of such action or policy direction, such body shall rescind and set aside its action.</i>"</p> <p>Italicized clarifying language added as requested.</p>
11. Clarify remedy for special meeting notice problems. (TF)	1.30.140		<p>"The agendas of special meetings of the 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." Language clarified as requested.</p>
12. Clarify which sub-committees subject. (TF)	1.30.150		<p>"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."</p> <p>Clarifies that this rule applies to subcommittees that are not otherwise subject to the Brown Act as requested.</p>

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SUNSHINE ORDINANCE MATRIX OF ISSUES, PREPARED BY CITY ATTORNEY, OCTOBER 22, 2007*

ISSUE	INCLUDED	NOT INCLUDED	COMMENT
<p>13. Litigation sessions - Agenda descriptions (TF)</p>	<p>1.30.170 A</p>	<p>Already in</p>	<p>Government Code § 54954.5 (c) requires only that the number of cases or potential cases be listed in on the agenda when the matter to be discussed in closed session is either threatened litigation against the entity or potential litigation to be instituted by the agency. This section would codify the City's existing practice of describing on the agenda, the nature of the threatened litigation or litigation that the City is contemplating instituting, even though this is not required by the Brown Act.</p> <p>This prior language which is retained already required compliance with the Brown Act before the information can be withheld by the City Attorney "... 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."</p> <p>The section as written already addresses the commenter's concerns and is actually designed to impose a higher level of agenda disclosure than is required by the Brown Act. This higher standard is already the City's longstanding practice.</p>
<p>14. Litigation sessions - when settlements approval required on the regular agenda. (TF), (KW)</p>		<p>1.30.170 B (Not necessary. The commenter appears to misunderstand the cited language.</p>	<p>"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 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."</p> <p>This language requires that settlements be approved on the regular Council agenda unless: the city attorney is getting a range of confidential settlement authority in closed session, and disclosure of the City's bottom line to the other side would</p>

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			prejudice the City's ability to get the best deal from the other side in the litigation; or there is not enough time to get it on a regular agenda because of litigation deadlines.

5.

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SUNSHINE ORDINANCE MATRIX OF ISSUES, PREPARED BY CITY ATTORNEY, OCTOBER 22, 2007*

ISSUE	INCLUDED	NOT INCLUDED	COMMENT
15. Litigation sessions – clarify remedy. (TF), (KW)	1.30.170 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. <i>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 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.</i> "
16. Clarify language regarding scope of closed session. (TF)	1.30.170 F		"Even where any closed session is authorized by law, <i>only permissible subjects germane to the legally permissible basis of the closed session may be discussed in such session.</i> " Italicized language is the clarification requested.
17. Make it clear that records must be provided in electronic format upon request. (SPJ)	1.30. 190 A		"Records shall be provided in an electronic format in the manner required by State law. "
18. Documents concerning agenda. (TF), (KW)	1.30.220 A		"Documents distributed by a City Legislative Body 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, <i>whether or not such document has been requested. If requested, they should be provided upon such request.</i> 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 <i>whether or not requested.</i> "

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19. Posting pleadings on the web. (JS)	1.30.170		Language added as requested. "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."
20. Make it clear that employee compensation is a public record. (SPJ)	1.30. 240 A		"The compensation paid to City employees and officials, including the exact amount of salary, benefits and overtime shall be disclosed."
21. City Employee Compensation – why have an exception for anything prohibited by law. (TF)	18. 30.240 (A)		Exception deleted. The City has historically disclosed employee compensation of each employee. When the prior version of this section was written with an exception for any information prohibited by law, the California Supreme Court had not yet decided a case in which employee unions asserted that disclosure of exact employee salaries constituted a violation of the employee's constitutional right to privacy and the Oakland Police Officers' Associations claimed that compensation of police officers is part of a confidential personnel record protected by Penal Code section 832.7. The California Supreme Court since ruled, on August 27, 2007, that public employees did not have a reasonable expectation of privacy in their exact compensation and that such compensation was a disclosable public record and not protected by Penal Code §832.7. (<i>International Federation of Professional Technical Engineers, Local 21, AFL-CIO v. Superior Court</i> (2007) 42 Cal.4 th 319.) In coming to its conclusion the Court relied in part on Berkeley's policy: "The Attorney General's long-standing position that government payroll information is public is consistent with the widespread practice of federal, state, and local governments. ... Evidence submitted to the superior court by the Newspapers demonstrates that disclosure of salary information has been the practice of both the

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			state and of local governments, including not only the City of Oakland itself <i>but also the nearby City of Berkeley</i> , the City and County of San Francisco, as well as Contra Costa County." (Emphasis added) (Id. at 331.)
22. Disclose cell phone and telephone records. (SPJ)	1.30.240 B		Interestingly, the City of Oakland, a city with a Sunshine ordinance that required such disclosure, refused to disclose the exact salaries in this case. "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."
23. Clarify who will decide what information to redact from cell phone records.	1.30.240 B		The billing records of City telephones and cell phones shall be disclosed except to the extent that <i>the City Manager or a Department Director, after consultation with the City Attorney's office</i> , determines that the matter is legally subject to being withheld or is privileged, for example calls to confidential informants." See italicized language.
24. Attorney's fees. (TF), (ACLU)		1.30.280	This is a policy issue for the Council. Increasing the City's financial liability for errors has significant impact on the City's budget. No other successful litigants who sue the City and prevail are now entitled to attorney's fees except in limited instances. If such fees are allowed they could be capped or subject to a bad faith threshold.
25. Make sure agenda materials not just agenda are posted ahead of time. (LWV), (KW)	1.30.190		"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." This section currently only applies to Council agendas because staffing resources do not exist to post the reports of every City commission on the web. Some

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26. Balance encouraging public comment with getting through the agenda. (LWV)	1.30.120		“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.” At its November 6, 2007 meeting it approved these changes to the Council Rules resolution.
27. Describe what records are public. (LWV), (KW)	State law plus Article 2 and an integrated guide to federal state and local laws: 1.30.300		The League of California City Attorneys Department has appointed a committee of city attorneys that is preparing a guide to the Public Records Act. The Berkeley ordinance requires: “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 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.”
28. State what records must be kept. (LWV), (SPJ)	1.30.250		The City’s record retention schedule is required by state law and is already posted on the City’s website. The ordinance would require that it continue to be so posted.
29. Provide records promptly in courteous	1.30.190. 1.30.200, 1.30.210		Embodies what is suggested and more.

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manner. (LWV)			
30. Place as many records on the City's web site. (LWV), (KW)	1.30.250		<p>Agree. See section already in ordinance: "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 <i>Such other documents as may be useful to the public to the extent that the City's information technology resources allow.</i>"</p>
31. Procedure for getting records – too bureaucratic – simplify. (JS)	1.30.090 A, 1.30.200		<p>"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." "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."</p>

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31. (cont'd)			<p>The City's current practice is to provide a copy of any identifiable document upon the request of any member of the public. No document may be withheld unless the city staff member in question seeks City Attorney approval that such withholding is permitted by law. The City staff member then writes a letters to the requester, as required by the Public Records Act, explaining the basis for withholding any records requested. The letter is reviewed by the City Attorney's office to ensure that the asserted justification for withholding a document falls within exemptions under state law. When a request seeks multiple documents relating to records that may exist in many different departments, the City Manager's office coordinates the response to ensure that all documents are provided. <i>This process is followed to ensure that all relevant documents are searched for and provided.</i> Change desired not clear.</p>
32. Codify current public comment procedures. SB Create one hour of general public comment at beginning of meeting. SPJ Be more specific. (SPJ)	1.30.120		<p>"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." The City Council approved changes to the Council Rules resolution on November 6, 2007.</p>
33. Make records available free. (SPJ)		No	<p>This is a policy determination. In actual practice the City provides many documents free. The City's administrative regulations provide that the City can charge no more than 10 cents per page copied.</p>
34. Do not require identification for seeking to inspect or copy	1.30.190A		<p>"Persons seeking to inspect records or obtain copies of such records shall not be required to identify themselves." Language included as requested.</p>

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records.			
35. Do not require speakers to identify themselves.	1.30.160		"Persons speaking at a public meeting of the City Legislative Bodies shall not be required to disclose their <i>names</i> 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 <i>or to follow up on the individual's comments.</i> "
36. Bypass complaint procedure where futile. (SPJ)		Not included in 1.30.280	Italicized language added. The purpose of a complaint procedure is to avoid suits and correct specific violations as soon as the City is put on notice of them via a complaint. The Brown Act has a similar procedure. In the last twenty years we have not found any instance where a complaint to the City Manager was rejected in bad faith. In fact, in a lawsuit that so claimed, <i>the court found these allegations to be baseless.</i> Recently, the California Supreme Court relied in part on Berkeley's practice of releasing exact compensation by employees in rejecting the claim that such compensation was not a disclosable public record. Berkeley actually self corrects Brown Act violations as soon as they are identified. While errors may inadvertently occur at a staff level, the purpose of a complaint procedure is to correct them immediately and not to encourage lawsuits.
37. Public Records Act-citation. (SPJ)	1.30.030		Changed initial section for Public Records Act citation as requested.
38. Broadcast all commission and standing subcommittees meetings. (SB)		Not Included	Expanding televised broadcast of meetings to all City commissions and their subcommittees would require a large expenditure of funds and allocation of City staff resources that are presently unbudgeted. The City can expand this service as funds and resources permit and amend the ordinance accordingly at that time. This is a policy and financial decision for the City Manager and City Council.
39. Expand 1.30.170 to	1.30.170		Done. "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

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sub-committees. (SB)			the requirements of the Brown Act and otherwise applicable law, if any." Legislative Bodies as defined include standing subcommittees.
40. Press to be notified of guide.	1.30.250		"It shall be forwarded to the City Council as an Information Report on the Council agenda, be posted on the City's web site <i>and the press shall be notified of its availability.</i> " Included by italicized language.
41. Prohibit serial briefings or lobbying of quorum of City legislative body (Recommended by prior City Attorney)		Not included	Legislation has been introduced (SB 1732) addressing this and is pending before the Legislature currently. Staff recommends that the City rely on the provisions of State law, rather than possibly creating a local approach that could be in conflict with state law.
42. Clarification of scope of closed session to appoint, evaluate or dismiss an employee	1.30.170 H		Recommended by City Attorney to ensure that personnel closed sessions are narrowly confined to permissible subjects since this an area of common misunderstanding by appointed and elected officials.
43. Allow access to Council appointment calendars without asserting deliberative process privilege.		Not included, policy call for the Council	Under a California Supreme Court case, access to an elected official's appointment calendars is protected as part of the deliberative process privilege that allows elected officials to confer with their constituents without disclosing their identities. (This would not of course apply to any appointments covered by the Council ex parte disclosure resolution which requires such disclosure in any quasi adjudicatory matter) The Mayor and Council are permitted to but do not have to withhold this information as to other matters. If any such request was made, the Mayor or Councilmember would have to assert the confidentiality of particular appointments and many may not be subject to withholding, for example meetings with the City Manager or staff.

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			<p>Recently, the Mayor received a request for his calendar and decided to release his calendar, except for personal appointments, instead of asserting the deliberative process privilege. Whether the Council wants to disclose these appointments as a blanket matter is a policy call that requires the Council's consent.</p>

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POLICE RECORDS TABLE

Police Records Issues	Included In Ord.	Comment
<p>1. Authorize disclosure of a police report, not required to be kept confidential by law, after the DA determines criminal prosecution will not go forward or prosecution is time-barred, unless release would</p> <p>(1) endanger a person's safety, (2) endanger the successful completion of the investigation or a related investigation, or (3) disclose a secret investigative technique, or (4) result in the unwarranted invasion of a person's privacy. (TF)</p>	Yes	<p>Berkeley's policy is actually broader than those of SF and Oakland because a redacted report would still be released even if the DA intended to go forward with prosecution in cases where the successful completion of the investigation would not be impaired by the release. Also, the items of personal privacy are more specifically defined in Berkeley's ordinance than in the other two ordinances. Indeed no local Sunshine ordinance provides such broad disclosure for law enforcement records as does Berkeley's policy.</p> <p>Californian's Aware's protocol does not provide for the release of any reports, but rather, specific information from the report. Thus Berkeley's disclosure policy on police records is much broader.</p>
<p>2. Reports involving juvenile suspects</p>	No	<p>Oakland's ordinance inadvertently requires reports with juvenile suspects to be disclosed with the identifying info redacted, but the entire report is actually confidential and cannot be released to the public under case law.</p>

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POLICE RECORDS TABLE

<p>3. Adult arrestee's name, occupation, birth date, color of eyes/hair, sex, height/weight, time/date of arrest and booking, location of arrest, factual circumstances of arrest, bail, time/manner of release or location arrestee is being held, charges being held on, outstanding warrants from other jurisdictions, parole or probation holds.</p>	<p>Yes, unless the release would (1) endanger a person's safety, or (2) endanger the successful completion of an investigation. Gov't Code 6254(f)(1)</p>	<p>Release of this information is already required by law, unless the release would (1) endanger a person's safety, or (2) endanger the successful completion of an investigation. Gov't Code 6254(f)(1).</p>
<p>4. Disclosure of 911 and Radio Comm Tapes. (ACLU)</p>	<p>Yes</p>	<p>PD has modified its position and decided to voluntarily release such audio tapes. BPD recently purchased new communications center audio copying equipment that will enable BPD to comply with requests for copies of 911 and police radio communications tapes without imposing an undue burden on staff. Limited exceptions for non-release or redaction are Penal Code §964 (identity of victim/witness in pending criminal case should not be disclosed), or if the full release results in an unwarranted invasion of a citizen's privacy. SF and Oakland do not provide for release of these audio tapes.</p>

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POLICE RECORDS TABLE

<p>5. Requests for categories of police reports such as all reports re: an address, a type of force, or an individual. (ACLU)</p>	<p>Yes</p>	<p>BPD has modified its position and decided to voluntarily release reports responsive to a broad category of reports, e.g. all reports pertaining to an address, a type of force, or an individual, unless: 1) the release will impact citizen privacy issues; 2) the potential assembly of information will reveal criminal history; or 3) if gathering the information will create an undue burden on staff. Previously, BPD did not accept requests for broad categories of reports because such requests can cause undue burden by resulting in the review of hundreds of reports to respond to a single request. The one exception was when the release of the reports may benefit public safety such as when a neighborhood organizes and seeks to obtain information about a drug house. This new policy attempts to strike a balance between giving access to information and the staff time needed to respond to requests pertaining to a broad category of reports.</p>
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**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY**

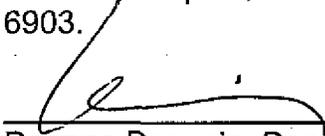
**DRAFT SUNSHINE ORDINANCE
TUESDAY, APRIL 22, 2008 AT 7:00P.M.**

The City Council will conduct a public hearing on the Draft Sunshine Ordinance, a copy of which is posted on the City Manager's webpage. The draft sunshine ordinance is intended to codify the City's existing expanded policies and procedures, improve public information access and processes where appropriate, and provide a clear set of rules for the public and staff.

The purpose of the public hearing is for Council to receive further input from the community and for Council to give staff final direction on any further revisions it desires and whether to place the sunshine ordinance on the May 6, 2008 agenda for a first reading.

For further information, please contact Sarah Reynoso (510) 981-6950.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Comments received no later than Monday, 4/21 will be included in Council agenda packets. Comments received thereafter will be submitted to Council as supplemental communications at the meeting. For further information, call Deanna Despain, Acting City Clerk, 981-6900. FAX: (510) 981-6901. TDD: (510) 981-6903.



Deanna Despain, Deputy City Clerk

**Publication Dates: April 11, 2008 and April 18, 2008
Mailed Notice by: April 4, 2008**

