

**CITY of BERKELEY**  
**SUNSHINE ORDINANCE**

Creating Chapter 1.30, Berkeley Municipal Code

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

**BERKELEY SUNSHINE ORDINANCE CREATING CHAPTER 1.30 ESTABLISHING  
LOCAL STANDARDS TO ENSURE PUBLIC ACCESS TO PUBLIC MEETINGS AND  
PUBLIC RECORDS**

## Berkeley Sunshine Ordinance

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End of Chapter

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

2 Section 1. Chapter 1.30 is added to the Berkeley Municipal Code to read as follows:

3 **1.30.000 Title of Chapter.**

4 This Chapter shall be known as the Berkeley Sunshine Ordinance.

5 **1.30.001 Findings.**

6 A. The City of Berkeley is committed to a robust and wide-ranging discussion of public  
7 issues and full access to public information.

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

11 C. Participatory democracy requires that members of the public have timely access to  
12 the same information relating to issues as is available to their elected representatives; that  
13 members of the public must have the opportunity to present their opinions and information in the  
14 presence of their representatives prior to any decision being made; that representatives should  
15 reach their decisions in full view of the community, and that open access to public records shall  
16 be provided to the maximum extent possible.

17 D. The nature of the City's sunshine policies and practices are often not publicly known  
18 or readily ascertainable, and many are not required by any City Council resolution.

19 E. It is advisable to codify existing and new policies to ensure they are followed.

20 F. The adoption of this Ordinance expands upon and supplements state law, and also  
21 has the salutary effect of providing the public with notice of the City's public access procedures.

22 **1.30.002 Purpose.**

23 The purpose of this Chapter is to set forth the City's policy regarding public participation in  
24 the deliberations of the City's Legislative Bodies, to ensure public access to public records, and to  
25 establish the City's intent to expand such participation and access beyond that required by other  
26 applicable law, including without limitation all other local, state, or federal statutes.

27 **1.30.003 Applicability.**

28 The provisions of this Sunshine Ordinance supersede other Berkeley laws that address the  
29 same issues.

30 **1.30.004 Definitions.**

31 A. Agenda: "Agenda" means a list of information about a Meeting, including the  
32 identity of the Legislative Body conducting the Meeting, the time and location of the Meeting, a  
33 meaningful description of each item of business to be transacted or discussed at the Meeting, the

1 proposed action for each item, and a list of the documents that are to be provided to the  
2 Legislative Body in connection with each item.

3 B. Agenda Packet: "Agenda Packet" means an Agenda of a Meeting and all supporting  
4 documents including contracts, agreements, letters of intent or memoranda of understanding, and  
5 reports, including any amendments or modifications to those documents and reports, any reports  
6 or memoranda prepared by a member of the Legislative Body, City or Council Staff, any reports  
7 of outside consultant(s), advisor(s), or contractor(s), and all communications pertaining to all  
8 matters anticipated for discussion or consideration at a public Meeting.

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

10 D. City Council: "City Council" means all Council Members.

11 E. City Staff: "City Staff" means the City Manager, department heads, executive  
12 directors of Legislative Bodies, employees of all entities in the City Charter, and persons retained  
13 as contractors.

14 F. Closed Session: "Closed Session" means that portion of a Meeting from which the  
15 public is excluded. A Closed Session is always preceded by a public comment period open to the  
16 public, and is followed immediately by an open session, during which all actions taken by the  
17 members of the Legislative Body are reported.

18 G. Commission: "Commission" means the Sunshine Review Commission, as  
19 established in Article 3 of this Ordinance.

20 H. Community Meeting: "Community Meeting" means a Meeting that meets the  
21 definition of a Meeting in Section O below, but which emphasizes interaction between members  
22 of the Legislative Body, City Staff, and members of the public by allowing more frequent and  
23 longer public comment than is allowed for regular Agenda items and public hearings, and by  
24 allowing for informal dialogue between members of the Legislative Body, City Staff, and the  
25 public.

26 I. Community Newspaper: "Community Newspaper" means a newspaper that is  
27 published at least forty-five (45) times per year, distributes at least ten thousand (10,000) copies  
28 of each issue in all parts of the City of Berkeley, and devotes at least fifty (50) percent of its news  
29 coverage to a wide range of Berkeley issues on a regular basis. If no newspaper that meets this  
30 definition exists, the Sunshine Ordinance Review Commission shall determine what constitutes a  
31 Community Newspaper.

32 J. Council Staff: "Council Staff" means all employees or volunteers directly serving  
33 the City Council and the Mayor.

1           K.    Custodian of Records: “Custodian of Records” means the City Manager, or other  
2 person(s) appointed by the City Manager, to be in charge of the records of any department or  
3 other entity subject to this Ordinance.

4           L.    Deadline: “Deadline” means any time or date by which an action, such as a noticing,  
5 production of document, or decision, is required under this Ordinance. Unless otherwise  
6 specified, days to be counted shall be calendar days, and the Deadline shall be computed as  
7 follows: When computing a Deadline backward from a Meeting or other event, the first day  
8 counted shall be the day before the event, and if City offices are closed on the last day counted,  
9 the preceding work day shall be the Deadline. When computing a Deadline forward from an  
10 event, the first day counted shall be the day after the event, and if City offices are closed on the  
11 last day counted, the following work day shall be the Deadline.

12          M.    Legislative Body: “Legislative Body” means any of the following:

- 13           1. A governing body of the City of Berkeley, which shall include, but not be limited  
14 to the City Council, Rent Stabilization Board, Library Board of Trustees,  
15 Redevelopment Agency, and Housing Authority.
- 16           2. A commission, committee, board, or other body of the City of Berkeley  
17 whether permanent or temporary, decision making or advisory, created by  
18 charter, ordinance, resolution, formal action, or consensus of a Legislative  
19 Body, including advisory committees, subcommittees, and task forces.
- 20           3. An informal group that is created by an individual member of a Legislative  
21 Body, which meets on a subject more than two (2) times, and which includes  
22 three (3) or more members of that same Legislative Body.
- 23           4. A board, commission, committee, or other multimember body of the City of  
24 Berkeley that governs a private corporation or entity that either is created by the  
25 elected Legislative Body, or the creation of which is facilitated by the City  
26 Manager, in order to exercise authority that may lawfully be delegated by the  
27 elected governing body to a private corporation or entity.

28          N.    Lobbyist: “Lobbyist” means a person, business, or organization that receives or  
29 becomes entitled to receive compensation, in any month, for influencing legislative or  
30 administrative action, or which compensates its employees or members for their lobbying  
31 activities.

- 32           1. “City Lobbyist” means a person or business entity that is designated to  
33 represent the City in matters before any local, regional, state, or federal  
34 administrative or Legislative Body.

1           2.   “Special Interest Lobbyist” means a person who is paid by or represents any  
2                   agency, organization, or business entity to influence City policy.

3   O. Meeting: “Meeting” means

4           1.   A gathering of a Quorum or more of the members of a Legislative Body at a  
5                   specified time and place, including teleconferencing, to hear, discuss, or  
6                   deliberate on any matter that is within the jurisdiction of the City.

7           2.   “Meeting” does not include:

8           a.   Individual contacts or conversations between a member of a Legislative  
9                   Body and another person providing those persons do not make up a  
10                  Quorum or more of a legislative Body.

11          b.   The attendance of a Quorum of a Legislative Body at a regional, state, or  
12                  national conference, or at a public meeting organized  
13                  to address a topic of local community concern, and open to the public.

14          c.   The attendance of a Quorum of a Legislative Body at  
15                  a purely social, recreational, or ceremonial occasion.

16          d.   The attendance of a Quorum of a Legislative Body at  
17                  an open and noticed meeting of a committee of the same Legislative  
18                  Body, provided that the members of the Legislative Body who are not  
19                  members of the committee attend only as observers or as members of the  
20                  public and do not have the right to comment.

21          e.   Notwithstanding the above, any use of direct communication, personal  
22                  intermediaries, or technological devices that is employed by a Quorum of  
23                  the Legislative Body to develop a collective concurrence as to action to  
24                  be taken on an item by the members of the Legislative body, is  
25                  prohibited. .

26   P.   Minor Correction: “Minor Correction” means a correction that consists only of a  
27   change in spelling or grammar with no significant change in meaning.

28   Q.   Public Records: “Public Records” includes any Writing containing information  
29   relating to the conduct of the public’s business prepared, owned, used, or retained by any state or  
30   local agency regardless of physical form or characteristics.

31   R.   Quorum: “Quorum” means a majority of the total authorized membership of a  
32   Legislative Body.

1           S.     Writing: “Writing” means any document, handwriting, typewriting, printing,  
2 photostating, photographing, photocopying, transmission by electronic mail or facsimile, and  
3 other forms of reproduction easily transmitted and preserved on paper.  
4

## 5     **Article 1**

### 6     **Meetings.**

#### 7           **1.30.005   Meetings to be Open**

8           A.     All Meetings of Legislative Bodies shall be open and public, except as modified below  
9 by Section 1.30.018 regarding Closed Sessions. All Meetings of Legislative Bodies shall be  
10 governed by the provisions of existing statutes and this Ordinance. In the case of different  
11 requirements under existing statutes and this Ordinance, the requirement that would result in  
12 greater public access shall apply.

13           B.     No decisions shall be made by a Legislative Body in other than open and noticed  
14 Meetings. No staff member, nor member, of a Legislative Body, shall lobby or privately brief a  
15 majority of the members of any Legislative Body to propose, oppose or otherwise discuss any  
16 recommendation pending or to be submitted to such Legislative Body.

17           C.     To ensure that business is conducted in the open, Legislative Bodies shall not take  
18 breaks during discussion of an Agenda item, except as shall be necessary for the captioner.

19           D.     When an item is continued to a future meeting, at that subsequent meeting, each  
20 member of the body shall disclose orally the general nature of any conversations with other  
21 members of the Legislative Body pertaining to the held-over item that took place during the  
22 continuance.  
23

#### 24           **1.30.006   Time, Place, and Frequency of Meetings.**

25           A.     Each Legislative Body shall establish a time and place for regular Meetings. All  
26 Legislative Bodies shall schedule Meetings at times when a significant portion of the public is  
27 able to attend. Meetings shall not be scheduled on holidays.

28           B.     All legislative Bodies shall conduct all of their Meetings within the City limits of  
29 Berkeley, California unless the City Council finds, in advance of a Meeting, that the City’s  
30 interest are likely to suffer if the Meeting is held within the City Limits.

31           C.     All Meetings of all Legislative Bodies shall be held in a publicly accessible location  
32 which shall include disabled accessibility and shall have adequate amplification so that members  
33 of the audience, wherever positioned, can hear the deliberations of the Legislative Body



1 D. Meetings of Legislative Bodies shall be held in locations which have video  
2 transmission capability as determined by the City Council.

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

7 F. If at a Meeting of a Legislative Body, the body determines that the number of members  
8 of the public who want to attend the meeting is larger than can be accommodated in the usual  
9 Meeting place, the Legislative Body shall, by its own motion, change the location of the Meeting,  
10 if such a location is nearby that will better accommodate the number of people and meets the  
11 requirements of this Section. Such change of location shall require the posting of prominent  
12 notices of the change. If such alternative location is not available, the Meeting shall be canceled  
13 and re-scheduled to another date and place that will accommodate the number of people expected  
14 to attend.-

15 G. A meal or other gathering of a Legislative Body before, during, or after a Meeting of  
16 the Legislative Body is part of that Meeting and shall be conducted only under circumstances that  
17 permit the public to hear and observe the discussion. Meal gatherings shall not be conducted in a  
18 location where public access requires making a purchase or some other payment.

19 H. A sufficient number, but no fewer than forty (40) regular City Council Meetings, shall  
20 be held throughout the calendar year, to ensure the City's business is completed in a public and  
21 timely manner in accordance with the provisions of this Ordinance. If five (5) or more of twenty  
22 (20) consecutive Meetings exceed the adjournment time limit, it is a violation of the Ordinance  
23 and more Meetings must be scheduled.

24 I. The place and time of Meetings shall be made known to any member of the public upon  
25 inquiry, posted on the City's website, and noticed in accordance with Sections 1.30.009 and  
26 1.30.010.

27 **1.30.007 Submitting Items for the Regular Meeting Agendas.**

28 A. Each Legislative Body shall establish a process for placing items on its own regular  
29 Meeting Agendas. In the case of the City Council the contact person responsible for receiving proposed  
30 Agenda items and related documents shall be the City Clerk. Other Legislative Body's processes shall  
31 include the designation of a contact person responsible for receiving proposed Agenda items and  
32 related documents. Information regarding the process for submitting items, including contact  
33 information and Deadline dates shall appear on the City's website and on the printed Agenda for  
34 each Meeting of the Legislative Body.

1           B. Any procedure for setting the Agenda by a Legislative Body shall provide for public  
2 participation with timely notice in compliance with this Ordinance. If the City Council sets  
3 Agendas through a Meeting process, that Meeting shall take place during the evening or on a  
4 weekend.

5           C. All items for the City Council's regular Meeting Agenda submitted by Members of the  
6 City Council, Auditor, City Staff, other Legislative Bodies, and members of the public as  
7 specified in Subsection D below, that are submitted in accordance with the Deadlines in  
8 Subsection (H) below, shall be submitted to the City Clerk. Items for the regular Meeting  
9 Agenda of other Legislative Bodies submitted by Members of the Legislative Body, City Staff,  
10 and other Legislative Bodies, and members of the public as specified in Subsection D below,  
11 which are submitted in accordance with the Deadlines in Subsection G below, shall be submitted  
12 to the established Agenda process for each Legislative Body.

13           D. Any member of the public may place an item on the Agenda of a Legislative Body by  
14 presenting the item, with fifty (50) or more signatures of Berkeley residents, to the designated  
15 Agenda contact person of the appropriate Legislative Body. The item shall be placed on the  
16 Action calendar and cannot be moved to the Consent calendar. However, the petition method  
17 may not be used to place on the agenda of the City Council an appeal of a quasi-judicial decision,  
18 for which other procedures exist.

19           E. All proposed Agenda items submitted in accordance with Subsections C and D above  
20 shall appear on a regular Agenda of the Legislative Body.

21           F. Each submitted item shall include the sponsor's proposed Agenda date. When a  
22 submitted item is held for a date that is different from the date proposed by its sponsor(s), the  
23 Agenda contact person shall notify the sponsor(s) and explain in Writing the reasons the date has  
24 been changed. The Agenda contact person shall also provide a date certain that the item shall  
25 appear on the Legislative Body's Agenda. In making the decision to hold an item to a Meeting  
26 date that is different from the sponsor's proposed date, information submitted by proponents of  
27 the item regarding timeliness of the item shall be considered.

28           G. Any request submitted under Subsection C and D above for a presentation to a  
29 Legislative Body shall be submitted in the same manner as other Agenda items, and follow the  
30 same deadlines. The request for a presentation shall include general information regarding the  
31 purpose and content of the presentation, information on the presenters, contact information, and  
32 the length of the presentation. The designated Agenda contact person shall coordinate use of any  
33 presentation equipment and receipt of additional written material that is associated with the  
34 presentation.

1 H. Deadlines for submission of Agenda items and supporting documents for regular  
2 Meetings

- 3 1. All items, except for old business, to be considered for placement on the regular  
4 Meeting Agenda of a Legislative Body, shall be furnished to the Agenda  
5 contact person for that Legislative Body, no later than 12:00 noon, twenty (20)  
6 or more calendar days prior to the Legislative Body's meeting for which the  
7 items shall appear on the Agenda.
- 8 2. Information regarding all items submitted for placement on the Agenda of a  
9 regular Meeting shall be available to the public no later than 5:00 PM, twenty  
10 (20) or more calendar days prior to the Legislative Body's meeting for which  
11 the items shall appear on the Agenda. This information shall be supplied to the  
12 public in the form of a list, which includes the sponsor's name and title for each  
13 item submitted. The information shall be posted on the City's website and in  
14 written form in the office of the Agenda contact person, and shall include the  
15 date and place of any Meeting, if such Meeting is to be held, at which the draft  
16 Agenda will be discussed and final Agenda determined.
- 17 3. All supporting documents for Agenda items shall be submitted to the Agenda  
18 contact person no later than noon, fifteen (15) calendar days prior to the  
19 Meeting for which the items shall appear on the Agenda, except as described  
20 below for submissions by the public.
- 21 4. The Agenda contact person shall not accept any item, revised item, or  
22 revised supporting documents for inclusion on the Agenda of a regular  
23 Meeting after the established deadline.
- 24 5. Draft Agendas shall be finalized by noon, twelve (12) calendar days prior to a  
25 meeting.

26 **1.30.008 Agenda Content.**

27 A. Every Agenda for a Regular, Special, or Closed Session shall contain a statement  
28 explaining wheelchair accessibility and other disability-related accommodations.

29 B. Every Agenda for regular, special, or Closed Session shall state that all persons so  
30 desiring to, shall be allowed to address the Legislative Body on Agenda items, and every Agenda  
31 for regular or special Meetings shall state that all persons so desiring to, shall be allowed to also  
32 address the Legislative Body on Non-Agenda items. This advisory regarding the public's speech  
33 rights during the Meeting shall include all requirements contained in Sections 1.30.014, 1.30.016,  
34 and 1.30.017.

1 C. Agenda items shall provide the following minimum information: a description,  
2 including the length of time involved, known effect, and fiscal impact, if any; action being  
3 recommended; the website on which documents related to the item have been posted; and contact  
4 information to obtain further information.

5 D. When items are withdrawn from the Agenda before publication of the final Agenda,  
6 the Agenda shall state the reason for withdrawal. Notice of such withdrawals shall also be posted  
7 online as soon as possible.

8  
9 **1.30.009 Documents Submitted by Members of the Public.**

10 A. Documents submitted by members of the public addressed to a member or members of  
11 a Legislative Body, or to the Secretary of the Legislative Body, for distribution, that are received  
12 at least twelve (12) calendar days before a regular Meeting of a Legislative Body shall be  
13 included in the Agenda Packet to be issued eleven (11) calendar days in advance of the Meeting,  
14 and shall be posted on the City's website, and shall be available at the locations described in  
15 Section 1.30.011.

16 B. Documents submitted by members of the public addressed to a member or members of  
17 a Legislative Body, or to the Secretary, of the Legislative Body for distribution, after the twelfth  
18 (12th) day and through the fifth (5<sup>th</sup>) day prior to a regular Meeting of a Legislative Body shall be  
19 distributed to the members of that body in Supplemental Agenda Communications Packet #1,  
20 posted on the City's website, placed in a viewing binder available to the public, and made  
21 available at the locations described in Section 1.30.010.

22 C. Documents submitted by members of the public, sent to the members of a Legislative  
23 Body, or to the secretary of the Legislative Body for distribution, which are received after the  
24 fifth (5<sup>th</sup>) day and prior to 12:00 noon on the day of the Legislative Body's regular Meeting, shall  
25 be included in Supplemental Agenda Communications Packet #2. On the afternoon of the  
26 Meeting, Supplemental Agenda Communications Packet #2 shall be posted on the City's website  
27 and available to the public in the City Clerk's office or appropriate department office. Copies  
28 shall be available at the Meeting.

29 D. Documents submitted by members of the public addressed to a member or members of  
30 a Legislative Body, or to the Secretary of the Legislative Body for distribution, that are received  
31 after 12:00 noon on the day of the Legislative Body's regular Meeting, including during the  
32 Meeting, shall be included in Supplemental Agenda Communications Packet #3. When a  
33 document is submitted by a member of the public at the Meeting, it shall be distributed to  
34 members of the Legislative Body immediately upon submission, if thirty (30) copies have been

1 provided: twenty (20) for the Legislative Body and staff, plus ten (10) copies for the public. If  
2 fewer than thirty (30) copies have been provided, the document shall be placed in  
3 Communication Packet #3, with any available copies distributed as the submitter chooses. All  
4 such documents shall be available for review by members of the public online and in hard copy  
5 by 3:00 PM, two (2) business days following the Meeting.

6 E. E-mails received from the public shall have the originating e-mail address redacted  
7 unless the author requests otherwise.

8 **1.30.010 Draft Agendas for Regular Meetings.**

9 A. On the fourteenth (14) day prior to the regular Meeting of the Legislative Body, the  
10 Agenda contact person shall post a draft Agenda and all accompanying documents for the  
11 subsequent regular Meeting at the place and in the same manner applicable to posting the notice  
12 of the final Agenda described in Section 1.30.010.

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

15 C. The Agenda contact person shall file an affidavit indicating the location, date and time  
16 of posting of each draft Agenda.

17 **1.30.011 Final Agendas for Regular Meetings.**

18 A. Each Legislative Body shall designate one or more physical locations to post notices  
19 and Agendas required by this Ordinance. Designated posting locations shall be freely accessible  
20 to members of the public twenty-four (24) hours per day. In addition, notices and Agendas shall  
21 be posted on the City's website.

22 B. Any Agenda notice that is mailed, posted, or published by a City department or  
23 Legislative Body shall be brief, concise, and written in plain, easily understood language with no  
24 use of undefined acronyms.

25 C. The final Agenda Packet for a regular Meeting of a Legislative Body shall be posted on  
26 the City's website and at the appropriate designated physical posting locations on the eleventh  
27 (11<sup>th</sup>) day prior to the regular Meeting to which it applies. The City Clerk, or secretary of a  
28 Legislative Body, shall file an affidavit indicating the location, date and time of posting each  
29 Agenda.

30 **1.30.012 Distribution of Final Agendas and Agenda Packets for Regular Meetings.**

31 A. No later than eleven (11) days prior to a regular Meeting, copies of the Agenda shall  
32 be mailed by the Agenda contact person to any resident of the City or member of the press who  
33 have requested it in writing. Those who wish to receive the Agenda Packet as well must request it  
34 in writing. Copies shall also be available no later than eleven (11) days prior to a regular Meeting

1 in the office of the Agenda contact person and also at the information and reference desks of the  
2 main public library, and each branch library, and at other locations deemed appropriate by the  
3 Legislative Body.

4 B. No later than eleven (11) days prior to a regular Meeting, the Agenda contact person of  
5 the appropriate Legislative Body shall distribute the Agenda Packet to each member of the  
6 Legislative Body. The Agenda Packet shall also be made available to members of the press upon  
7 their request and be available in hard copy in a viewing binder in the office of the Agenda contact  
8 person of the appropriate Legislative Body, and also at the information and reference desks of the  
9 main public library, and each branch library, and at other locations deemed appropriate by the  
10 Legislative Body.

11 **1.30.013 Action Requirements for all Legislative Bodies.**

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

15 B. No discussion or action by the Legislative Body shall be taken on any item not  
16 appearing on the Agenda. However, the Legislative Body may refer such a matter to appropriate  
17 staff, or request that the matter be placed on the next Meeting Agenda.

18 C. No Agenda item shall be considered at the Meeting if it is not included in the packet  
19 with all of its supporting documents.

20 1. After the eleventh (11<sup>th</sup>) day Deadline, no change to Agenda items or its  
21 supporting documents may be made, except that a Minor Correction, as defined in Section  
22 1.30.004 (P), to an item already included in the packet may be considered.

23 2. Staff may not make oral reports to Legislative Bodies in lieu of written staff  
24 reports.

25 D. Reports and other material for Agenda items carried over as old business shall be  
26 reproduced again if three weeks have passed since the item was last on an Agenda.

27 **1.30.014 City Council Agenda Sequence.**

28 The Agenda sequence for regular Meetings of the City Council shall be:

29 A. Staff announcements and ceremonial matters: maximum of fifteen (15) minutes.

30 B. Reports on meetings of regional bodies, other Legislative Bodies, and other agencies, as  
31 described in Section 1.30.021.

32 C. Public comment on Non-Agenda items: ten (10) speakers may speak for up to two (2)  
33 minutes each. Two (2) speakers in attendance may combine time. People with disabilities and

1 special needs, the elderly and those accompanied by small children are given priority. Remaining  
2 speakers will be accommodated under Section K, with the same time protocol.

3 D. Preliminary consent calendar: removal of items and additions to the consent calendar  
4 by members of the Council, except appeals shall not be moved to the consent calendar.

5 E. Public comment on each item on the preliminary consent calendar.

6 F. Determination of final consent calendar and approval of final consent calendar.

7 G. Public hearings.

8 H. Appeals: with public comment on each item.

9 I. Items removed from the consent calendar: with public comment on each item.

10 J. Action calendar: with public comment on each item.

11 1. Priority Items as determined by Council and City Manager

12 2. Old business

13 3. New business

14 K. Additional public comment on Non-Agenda items. (Refer to (C) above for  
15 protocol)

16 L. Information reports: with public comment on each report.

17 M. Communications.

18 N. Adjournment. It is the intent of this Section combined with the number of Meetings  
19 required in Section 1.30.006(H), that all Agenda items and all Non-Agenda public comment be  
20 completed prior to 11:00 PM and that Meetings adjourn by 11:00 PM. At approximately 10:00  
21 PM, the Council shall assess what remains to be completed on the agenda and the number of  
22 remaining speakers on Non-Agenda items. The Council shall not adjourn until public comment  
23 on Non-Agenda items has been completed. The Meeting beyond the completion of Non-Agenda  
24 public comment may be extended by a two-thirds (2/3s) affirmative vote of the Council Members  
25 present. Any motion to extend the Meeting shall include a list of agenda items to be covered,  
26 and shall specify the order of the items to be considered.

27 **1.30.015 Disclosure of *Ex Parte* Communications.**

28 A. All *ex parte* contacts by Legislative Body members regarding Agenda items not  
29 subject to public hearing shall be disclosed by placing the contact name on a list maintained by  
30 the City Clerk as part of the record regarding that particular item.

31 B. Prior to the beginning of the public hearing, each member of the Legislative Body is  
32 required to disclose and describe in Writing all *ex parte* contacts he or she has had concerning the  
33 subject of the hearing. Such reports shall include a brief statement describing the content of the  
34 contact. Reports shall be available for public review in the office of the secretary to the

1 Legislative Body prior to the Meeting, and placed in a file available for public viewing at the  
2 Meeting. At the beginning of a public hearing, each member of the Legislative Body shall also  
3 orally disclose and briefly describe all *ex parte* contacts concerning the matter.

4 **1.30.016 Public Speech Rights During Meetings.**

5 A. Any person attending an open Meeting of a Legislative Body shall be provided an  
6 opportunity to address the body on any item on the Agenda before or during discussion of the  
7 item and prior to any action by the Legislative Body, as well as an opportunity to comment on  
8 Non-Agenda items. Each speaker shall be entitled to speak for three (3) minutes on each Agenda  
9 and consent calendar item, and two (2) minutes on each Non-Agenda item.

10 B. Any speaker has the right to criticize or support the policies, procedures, programs,  
11 or services of the City Staff, the Legislative Body, or its individual members during public  
12 comment. Legislative Bodies shall not prohibit orderly public criticism of the policies,  
13 procedures, programs, services, or omissions of the body either by verbal comment or by holding  
14 signs.

15 C. Speakers have the right to use presentation tools, which shall be provided by the City  
16 when requested five (5) business days in advance.

17 D. When a presentation is on the Agenda of a Legislative Body, individual members of  
18 the public may choose whether to comment before or after the presentation.

19 E. The public has the right to alert a Legislative Body of a violation of this Ordinance or  
20 other procedural regulations by the following means:

21 1. At any time up to and including during the Meeting, if a matter is considered to  
22 be a violation of this Ordinance, or the Legislative Body's rules of procedure, a member of  
23 the public may submit a complaint to the secretary of the Legislative Body on a Sunshine  
24 Alert form developed by the Sunshine Ordinance Review Commission.

25 2. If the Alert is received before the Meeting, secretary of the Legislative Body  
26 shall transmit the Alert form to appropriate City staff or Meeting chairperson.

27 3. If the Alert is received during the Meeting, the secretary of the Legislative  
28 Body shall submit the Alert to the City Attorney or designated staff of the Legislative Body.  
29 The City Attorney or other appropriate staff member shall announce the substance of the  
30 Alert to the Legislative Body at the time the relevant item is before the Body. The City  
31 Attorney or other designated person, acting as Parliamentarian to the Legislative Body,  
32 shall decide what action, if any, should be taken at that time.



1           4. The Alert shall be reported to the Commission, and a follow-up report by the  
2 Commission shall be placed on the Agenda of the Legislative Body at the next regular  
3 meeting of the Body after receiving the follow-up report.

4           F. At the beginning of each Meeting, the presiding officer shall inform the public that  
5 the rights under this Section are posted on the Agenda and at the entrance of the Meeting room.

6           **1.30.017 Procedures for Public Hearings.**

7           A. There shall be no time restrictions on when significant new information may be  
8 heard by a Legislative Body, other than those written in this Ordinance and state law.

9           B. For all public hearings, except those described in Subsection D below, following  
10 the disclosure required in Section 1.30.015(B), City Staff shall introduce the public hearing and  
11 present its comments prior to public comment.

12           C. To ensure time for preparation by applicants and appellants, there shall be a  
13 break of no less than five (5) minutes before any land use public hearing.

14           D. For public hearings regarding appeals on zoning, land use, landmarks and building  
15 code matters, following the disclosure required in Subsection A above, and the staff's  
16 introduction and comments, the speaking protocol for public hearings on zoning, land use,  
17 landmarks, and building code hearings and appeals shall be as follows:

- 18           a. The Applicant, or his/her representative(s) shall be allocated no less than  
19 five (5) minutes to present the project that is the subject of the public  
20 hearing. This shall be followed by equal time for the Appellant or  
21 his/her representative(s) to present the appeal.
- 22           b. Members of the public shall then be allowed three (3) minutes each to  
23 comment. Groups of up to six (6) speakers in attendance shall be  
24 allowed to combine their speaking times.
- 25           c. After all public comment has been received, the Applicant or Applicant's  
26 representative(s) shall be given no less than five (5) minutes for final  
27 argument, followed by equal time for the Appellant or Appellant's  
28 representative(s).
- 29           d. Following final arguments, up to two (2) persons representing the  
30 Applicant and up to two (2) persons representing the Appellant are  
31 entitled to sit with City Staff at the staff table with opportunity to answer  
32 questions and respond to comments made by members of the staff or the  
33 Legislative Body.

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

9 **1.30.018 Closed Sessions.**

10 A. Before any Closed Session, a Legislative Body shall meet in open session for the  
11 purpose of taking public comment solely on the item(s) which is (are) the subject of the closed  
12 session.

13 B. No discussion shall take place in the Closed Session that is not pertinent to item(s)  
14 listed on the Agenda.

15 C. Description of items on the Agenda shall be clear and written in plain language  
16 without the use of undefined acronyms.

17 D. For Closed Sessions on litigation matters, the Agenda shall list the parties involved,  
18 the actions being considered and court case numbers, if such numbers have been assigned.

19 E. For Closed Sessions on real property negotiations, the Agenda shall identify the  
20 property at issue by address and parcel number, disclose any development plans for the property,  
21 and specify any source(s) of payment for the property.

22 F. All Closed Sessions of any Legislative Body shall be audio recorded in their entirety  
23 and made a part of a minute book consisting of a record of topics discussed and decisions made at  
24 the Meeting. See Sec. 1.30.018(J) regarding archiving these records.

25 G. Immediately following the end of the Closed Session, the Legislative Body shall state  
26 the specific action or non-action taken and the Legislative Body shall revote on the resultant  
27 action or non-action in full view of the public.

28 H. All proposed agreements for the purchase or sale of real estate, all proposed contracts  
29 with represented and unrepresented employees, and all agreements with other Legislative Bodies  
30 and regional agencies discussed in Closed Session shall not be deemed approved until the vote is  
31 taken in a regular open Meeting. All proposed agreements between the City and other entities  
32 regarding land use and transportation issues that have been discussed in Closed Session shall not  
33 be deemed approved or rejected until a public hearing has been held and a vote is taken following

1 the hearing. Such items shall be placed on the Agenda of a subsequent regular Meeting in the  
2 same manner that any new item is placed on the Agenda of the Legislative Body.

3 I. The location of these open session reports shall be in a venue that is available to the  
4 public and press and which supports video for internet broadcast and video-streaming. The report  
5 on Closed Session actions shall be posted, no later than the end of the following business day, to  
6 the City's website and to all other places where the Agenda of a relevant Legislative Body is  
7 posted.

8 J. Closed Session tapes shall be archived in the custody of the City Attorney.

9 **1.30.019 Special Meetings.**

10 A. A presiding officer, or three (3) members of a Legislative Body, may call a Special  
11 Meeting with four (4) calendar days notice, but only for the purpose of considering a single item  
12 about which information has come to light after the last regular Meeting of the Legislative Body,  
13 and which requires action prior to the next regular Meeting of the Legislative Body, and which  
14 will do irreparable harm to the City if the Legislative Body does not take action before the next  
15 regular Meeting.

16 B. The reason and timing for the Special Meeting shall be printed on the notice and  
17 Agenda for the Special Meeting, and together with supporting materials shall be available free of  
18 charge in the office of the Agenda contact person, and also at the information and reference desks  
19 of the main public library, and each branch library, and at other locations deemed appropriate by  
20 the Legislative Body. Supporting documents shall be made available to the public no later than  
21 72-hours in advance of the Special Meeting.

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

27 **1.30.020 Emergency Meetings.**

28 State law provides for two (2) levels of emergency meetings: an Emergency Meeting and a  
29 Dire Emergency Meeting. At the beginning of either an Emergency or a Dire Emergency  
30 meeting, a majority of attending members of the City Council shall confirm the nature of the  
31 emergency or dire emergency and the business which is to be transacted.

32 A. An Emergency Meeting of the City Council may be called to address a work  
33 stoppage, crippling activity, or other activity that severely impairs public health or safety No  
34 other business may be considered at such a Meeting.

1           1. The Emergency meeting may be called by the Mayor or three (3)  
2           members of the City Council by delivering written notice to each  
3           member of the Council, and to all members of the press who have  
4 requested notice of special meetings in Writing.

5           2. The notice shall be delivered, received, and posted in a location that is  
6           freely accessible to members of the public at least 24-hours before the  
7           time of the Meeting specified in the notice. The notice shall specify the  
8           time and place of the Meeting and the business to be transacted or  
9           discussed.

10          B. A Dire Emergency Meeting may be called in the event of a crippling disaster, mass  
11          destruction, terrorist act, or threatened terrorist activity or other action that poses a peril so  
12          immediate and significant that requiring the City Council to provide one-hour notice before  
13          holding the Meeting may endanger the public health, safety, or both.

14           1. The 24-hour notice requirement and the 24-hour posting requirement is  
15           waived for a Dire Emergency Meeting. Instead, each local newspaper and  
16           radio or television station that has requested notice of special meetings  
17           shall be notified by the Mayor, or his/her designee, one hour prior to the  
18           Meeting or at or near the time that the Mayor notified members of the  
19           City Council. This notice shall be given by telephone and all telephone  
20           numbers provided in the most recent request of a newspaper or station  
21           for notification of special meetings shall be exhausted. In the event that  
22           telephone services are not functioning, this notice requirement is waived.

23           2. As soon as possible after the Meeting, the Mayor, or his/her designee,  
24           shall notify newspapers, and radio and television stations that the Dire  
25           Emergency Meeting was held, the reason for the Meeting, and any action  
26           taken at the Meeting.

27           **1.30.021 Reporting Requirements for Meetings of Regional and Other Agencies.**

28          A. When one or more elected official(s) or other persons, acting as a representative of  
29          the City of Berkeley or any of its Legislative Bodies, attends a meeting with or sponsored by  
30          another agency or Legislative Body, such representative shall, within five (5) business days  
31          following the meeting, provide a written report to be placed on the Agenda of the Legislative  
32          Body to provide opportunity for comment by other members of the Legislative Body and the  
33          public. The report shall state the name of the group, the time, place, and purpose of the meeting,  
34          a summary of the discussion of any item that impacts the City of Berkeley, the positions

1 expressed by the Berkeley representative, any action(s) taken, and the vote(s) of the Berkeley  
2 representative.

3 B. Within six (6) months after the enactment of this Ordinance, City staff, working in  
4 consultation with the Commission, shall include on the City website, ongoing organized  
5 information on the activities of regional bodies and the Regents of the University of California,  
6 including website links to these agencies, their agendas and minutes, the City representatives'  
7 meeting reports, and information about activities of those agencies that may be of significant  
8 interest to the residents of Berkeley.

9 **1.30.022 Community Engagement Process.**

10 When any City Legislative Body, agency, department, or office is considering a  
11 proposal or action that would have significant citywide or widespread impact or lead to a change  
12 in citywide service levels, the Council shall initiate a Community Engagement Process as  
13 described in this section. Matters that have significant citywide or widespread impact include,  
14 but are not limited to: a general plan or area plan, the annual budget, labor negotiations, citywide  
15 fees, long term contracts, measures under consideration for placement on the ballot, and major  
16 development and transportation changes.

17 A. In addition to the types of issues listed above, the Community Engagement Process shall  
18 be activated by the following events:

- 19 1. The City Council designates funding, or contracts or designates staff, in excess of  
20 regular departmental budgets or staffing, to study or to implement a proposal, if the  
21 proposal is intended or likely to result in an ordinance, resolution, or other legislative  
22 action. The activation date is the date the vote is taken to designate the funding or  
23 staff.
- 24 2. A proposal is under consideration by a regional agency or body (the "Authorizing  
25 Agency"), which has Berkeley within its jurisdiction, and whose regular meetings take  
26 place in Alameda, Contra Costa, San Francisco, Santa Clara, or San Mateo Counties,  
27 and the proposal will significantly impact the City, and the Authorizing Agency  
28 designates funds to study or implement the proposal. The activation date is the date  
29 the vote is taken to designate funds.
- 30 3. The City enters into any contract, settlement, or memorandum of understanding that  
31 binds the City for five (5) or more years. The activation date is the date a City  
32 representative first enters into negotiations with the other party, orally or in Writing.
- 33 4. A project sponsored by the University of California or Lawrence Berkeley National  
34 Laboratory, within the Berkeley City limits or the Berkeley-area property of said

1 agencies, requires federal or state environmental review. The activation date is the  
2 date the City receives official notice of the proposal or a copy of the draft  
3 environmental impact assessment, whichever comes first.

4 B. The Community Engagement Process shall include the following actions:

- 5 1. The City Council shall determine whether the proposal requires the implementation of  
6 the Community Engagement Process.
- 7 2. The Council shall establish an appropriate timeline for Meetings on the proposal and  
8 channels for public input.
- 9 3. Information regarding the proposal shall be posted on the City's website. Flyers shall  
10 be posted in community centers and libraries. Notice shall be advertised in at least  
11 one Community Newspaper and shall be broadcast on the City television channel.  
12 Information shall also be sent by direct mail and e-mail to those who subscribe to  
13 receive direct mail or e-mail notice of Community Engagement Process activities. E-  
14 mail notices may also be distributed to the general public using procedures that are  
15 likely to result in noticing a diverse and representative cross section of Berkeley  
16 residents and viewpoints. Throughout the process, information shall be continually  
17 updated and provided to the public in accordance with this Ordinance.
- 18 4. The Legislative Body shall hold at least three (3) Meetings on the proposal, one (1) of  
19 which shall be a Community Meeting and at least two (2) of which shall be public  
20 hearings, including at least one (1) before the City Council.
  - 21 a. The first Meeting shall be held as soon as adequate information is available to  
22 enable meaningful public feedback on the proposal, depending on the nature and  
23 potential duration of the proposal.
  - 24 b. For lengthy projects, there shall be at least quarterly Meetings on the proposal, as  
25 long as the proposal is under active consideration by the City or Authorizing Agency.
  - 26 c. When the proposal is near its final form, there shall be significant opportunity for  
27 input, including a public hearing before the City Council.

28 C. The Community Engagement Process may also be activated by a petition of 200  
29 registered voters who reside within the City of Berkeley, presented to the Council's Agenda  
30 contact person. Upon receipt of the petition, the City Council shall initiate the Community  
31 Engagement Process at the next regular Council meeting for which the Agenda deadline is  
32 met.

33 D. Alleged violations under this Section may be brought before the Commission at  
34 any time following the activation date.

1 E. The statute of limitations for petition to the Commission under this Section shall  
2 expire fourteen (14) days following final decision to implement or not to implement the  
3 proposal, by the City or the Authorizing Agency.

4 **1.30.023 Audio or Video Recording and Broadcast of Meetings.**

5 A. Any permanent venue for City Council Meetings shall have the technological  
6 capacity to accommodate cable broadcast and captioning.

7 B. All Legislative Bodies shall record their Meetings with an audio recorder.  
8 Recordings of Meetings of all Legislative Bodies shall be permanently retained and be available  
9 to the public.

10 C. All regular and special Meetings of the City Council, Redevelopment Agency, Rent  
11 Stabilization Board, and Zoning Adjustments Board held in the venue regularly used shall be  
12 broadcast and video-streamed live and archived for replay on the local government cable channel  
13 and the internet. Such web broadcasts shall be captioned, with the captioned text displayed on the  
14 cable broadcast and as part of the video-stream. The captioner's transcript of the Meeting shall  
15 be retained with the video recording.

16 D. The City shall annually make a good faith effort to add Meetings of the Planning  
17 Commission, Board of Library Trustees, Housing Authority, Landmarks Preservation  
18 Commission, and Housing Advisory and Appeals Board to those Meetings that are cable  
19 broadcast and video-streamed.

20 E. The requirement to cable broadcast and video-stream meetings shall not apply if  
21 necessary equipment breaks down and it is impossible to make repairs or replace equipment in  
22 time for a scheduled Meeting, or if a public Meeting is changed to a location that does not have  
23 the technological capacity to accommodate the cable, web broadcast, and captioning.

24 F. Any person attending a Meeting of a Legislative Body may record the proceedings  
25 with an audio or video recorder or a still or motion picture camera, or broadcast the proceedings,  
26 unless or until the body makes a finding that the recording creates noise, illumination, or  
27 obstruction of view that constitutes an unreasonable and persistent disruption of the proceedings.

28 **1.30.024 Meeting Minutes.**

29 A. The secretary of a Legislative Body shall prepare the minutes of each Meeting and  
30 Closed Session. The minutes shall state the date and place of the Meeting, the time the Meeting  
31 was called to order, the names of the members present at the time the Meeting was called to  
32 order, the names and times of arrival or departure of any member of the Legislative Body arriving  
33 or leaving the Meeting after the call to order and before adjournment, the names of presenters  
34 and staff who provided reports or comments, the names of other persons attending any Closed

1 Session, Closed Session announcements, disclosures of any conflicts of interest and *ex parte*  
 2 communications, a list of those members of the public who spoke on each matter, and their names  
 3 if the speakers identified themselves, a brief summary of each person's statement during the  
 4 public comment period for each Agenda item, the vote by name of each member on each matter  
 5 considered by the body at the Meeting, and the time the Meeting was adjourned.

6 B. No later than six (6) business days after a Meeting or Closed Session, the draft  
 7 minutes of each Meeting or Closed Session shall be posted on the City's website and be available  
 8 for inspection and copying upon request The minutes of a Meeting shall be officially adopted within  
 9 sixty (60) days and available for inspection and copying upon request, no later than six (6) business  
 10 days after the Meeting at which they are adopted.

## 11 **Article 2**

### 12 **Access to Public Information**

#### 13 **1.30.025 Responsibilities of City Staff.**

14 A. The Custodian of Records shall designate in each of the City's departments/offices a  
 15 departmental Custodian of Records, who shall familiarize himself/herself with the  
 16 department's/office's records and ensure that all staff who have contact with the public are  
 17 prepared to provide information, including oral information, to the public.

18 B. The City Manager shall ensure that City Staff are trained and directed to timely and  
 19 courteously respond to the public regarding their obligations under this Ordinance.

20 C. When a member of the public submits a written request for information to any paid,  
 21 elected, or unelected agent of the City, that agent shall respond to said request within two (2)  
 22 business days by providing the information, or explaining how, when, and by whom the  
 23 information will be provided and arranging for that provision. The Custodian of Records shall  
 24 ensure that requesters receive information from City staff in ten (10) days or less.

25 D. Nothing in this Section shall be interpreted to hinder ordinary assistance in supplying  
 26 records or information to the public and informal communication between members of the public,  
 27 City staff, and members of Legislative Bodies.

#### 28 **1.30.026 Notices and Posting of Information.**

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

31 City Charter  
 32 Berkeley Municipal Code  
 33 Building Code  
 34 General Plan and Area Plans  
 35



- 1 Zoning Ordinance
- 2 Sunshine Ordinance
- 3 Citizen's Guide to Public Information
- 4 Records Index
- 5 Records Retention Schedule
- 6 Council Rules of Procedure (when revised to comply with this Ordinance)
- 7 Commissioner's Manual (when revised to comply with this Ordinance)
- 8 Conflict of Interest Code
- 9 Statements of Economic Interest
- 10 Appointment Calendars
- 11 Agendas and Minutes of the meetings of all Legislative Bodies

12           B. Each Legislative Body is encouraged to make publicly available on its portion of the  
 13 City's website as many public records as possible concerning its activities. At a minimum, within  
 14 six (6) months after enactment of this Ordinance, all current Meeting Agendas and other  
 15 documents required to be made public shall be posted on the website in accordance with this  
 16 Ordinance, and thereafter, reasonable efforts shall be made to post past materials. Each  
 17 Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is  
 18 updated on at least a weekly basis.

19           C. Large documents that the public is likely to want to study, such as environmental  
 20 assessments and City budgets, shall be posted on the City website and made available for  
 21 inspection at designated City offices and each branch library, and copies shall be made available  
 22 for borrowing by the public.

23           D. Notices posted in physical locations shall be visually prominent and readable from  
 24 the public-right-of-way.

25           E. Notices shall:

- 26           1. Be written in easily understood language without undefined abbreviations or  
 27 acronyms.
- 28           2. Give a full description of the subject including a statement of the most  
 29 significant information regarding the subject applicable City ordinances and  
 30 regulations, significant consequences of taking action or non-action, meeting  
 31 time and place the subject will be considered, timelines for public comment,  
 32 and sources where further information may be obtained.
- 33           3. The Commission shall review public notices upon request or its own initiative,  
 34 and City staff shall work with the Commission to ensure that notices conform to  
 35 the requirements and intent of this Ordinance.
- 36           4. The Commission shall work with City Staff, other Legislative Bodies, and the  
 37 City Council to improve publicly accessible information databases on matters

1 to ensure consistency, equity, timing, and extent of noticing, for Meetings and  
2 other matters of public interest.

3 F. Right to notice of land use decisions and other matters that impact the physical  
4 environment shall be equivalent for tenants and property owners.

5 G. Meetings on matters directly or necessarily related to, or actions taken in anticipation  
6 of, a potential development project or other land use matter, such as but not limited to grant  
7 applications, project funding, ordinance changes, or rights transfers, shall be noticed to the  
8 surrounding community at least as extensively to the surrounding community as is required for  
9 Meetings on said projects.

10 **1.30.027 Public Records Index .**

11 A. The City shall maintain a Public Records Index that identifies the types of  
12 information and documents maintained by City departments and offices, including offices of  
13 elected officials, and Legislative Bodies. The Index shall be available to the public, and shall be  
14 organized to permit a general understanding of the types of information maintained, by which  
15 officials and departments, for what purposes, for what periods of retention, and under what  
16 manner of organization, e.g. by reference to name, date, project or proceeding, or some other  
17 referencing system. The Index shall be sufficient to aid the public in making a focused and  
18 knowledgeable inquiry regarding public records. The Index shall be posted on the City's website  
19 and shall be available in written form in the City Clerk's office and at the reference desk in each  
20 of the City's public libraries.

21 B. The Index shall classify each type of record as either: (1) "Open," meaning  
22 accessible to the public without exception and subject to immediate disclosure; or (2) "Potentially  
23 Open," meaning not entirely exempt from disclosure, but possibly containing some exempt  
24 content, such that review is required; or (3) "Closed," meaning that disclosure of the document is  
25 prohibited by law. Each classification of a record type as Potentially Open or Closed shall  
26 specifically identify with the legal authority relied upon in assigning that classification.

27 C. The Custodian of Records shall prepare and maintain the Index. He/she shall report  
28 on the progress of developing the Index to the Commission on at least a quarterly basis until it is  
29 completed, which shall be no later than twelve (12) months from the enactment of this Ordinance.  
30 Each department, office, Legislative Body, and public official shall cooperate with the Custodian  
31 of Records to identify the types of records maintained. Each department, office, Legislative  
32 Body, and public official is encouraged to solicit and encourage public participation to develop a  
33 meaningful Records Index. The completed Index shall be reviewed by the Commission and  
34 submitted for approval by the City Council.

1 D. The Index shall be periodically reviewed by appropriate staff and the Commission for  
2 accuracy and completeness.

3 E. A list of any change in the practices or procedures in the Index shall be noted on the  
4 City website and posted in the library for a period of three (3) months.

5 **1.30.028 Public Review File.**

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

12 **1.30.029 Records of Officials: Appointment Calendars; Statements of Economic  
13 Interest.**

14 A. All documents connected with City business that are prepared, received, or  
15 maintained by any elected or appointed City official, while in office, and by every department  
16 head are the property of the City, and the originals of these documents shall be maintained  
17 consistent with the Records Retention Ordinance. These officials shall maintain in a professional  
18 manner all such documents, and shall disclose all such records in accordance with this Ordinance.

19 B. A calendar shall be maintained by all elected officials, the City Manager, Library  
20 Director and Trustees, Rent Stabilization Program Director, and all department heads, listing by  
21 date, place, and time all City-related meetings and tele- or video conferences that they attend.  
22 Such calendars shall be public records subject to disclosure, except for those parts, if any,  
23 specifically exempted, and shall be posted to the City's website prior to the close of business each  
24 week.

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

28 **1.30.030 Contributions to the City.**

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

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

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

3 **1.30.031 Reports of Lobbying.**

4 A. Any City Lobbyist shall file a quarterly report with the City Clerk, which shall be a  
5 public record. Each quarterly report shall identify all financial expenditures by the Lobbyist, the  
6 recipient of each expenditure, the date of the expenditure, and the local, regional, state, or  
7 national legislative or administrative action that the Lobbyist supported or opposed in making the  
8 expenditure. The failure to file a quarterly report with the required disclosures shall be cause for  
9 termination of the contract for representation. The City Clerk shall post on the City's website a  
10 direct link to the disclosure forms that the City's Lobbyists file with the appropriate federal  
11 and/or state agencies.

12 B. Special Interest Lobbyists shall file a report with the City Clerk specifying the  
13 general nature of the City-related issues on which they have been engaged; the dates, places, and  
14 names of the members of the Legislative Body they have contacted; and the direct and indirect  
15 compensation received from their clients for such matters, which shall include but not be limited  
16 to fundraising activities conducted on behalf of elected City officials, contributions to persons and  
17 organizations, and payments received for services as a consultant to any City Legislative Body.  
18 No person who qualifies as a Special Interest Lobbyist shall contact any elected official of the  
19 City without first registering with the City Clerk and complying with the disclosure requirements  
20 of this Section. The City Council may establish a registration fee.

21 **1.30.032 Types of Information Accessible by the Public.**

22 It is the intent of the Sunshine Ordinance to provide for the disclosure, upon request, of  
23 all public records to the maximum extent permitted by state law and, wherever permitted, to  
24 waive the City's right under state law to withhold disclosure in certain circumstances.  
25 Accordingly, disclosure shall be made in all cases where not specifically forbidden by state law,  
26 including but not limited to the following:

27 1. Drafts and memoranda:

28 Memoranda or written communications between City employees, and/or  
29 consultants, and/or elected or appointed officials, or drafts thereof, whether in  
30 printed or electronic form, shall be subject to disclosure at the time a final  
31 recommendation is delivered. Draft versions of an agreement being negotiated  
32 by representatives of the City with third parties need not be disclosed  
33 immediately upon creation, but must be preserved and made available for

1 public review beginning ten (10) days prior to the presentation of the agreement  
2 for approval by a Legislative Body.

3 2. Litigation records and attorney-client communications:

4 a. Attorney-client communications and communications regarding the  
5 settlement of claims by or against the City shall not be subject to  
6 disclosure to the extent that they are protected from disclosure by  
7 California law. Other communications relating to the subject matter of  
8 such communications, but which are not themselves protected by  
9 California law, are public records subject to disclosure under this  
10 Ordinance, including without limitation pre-litigation claims against the  
11 City, records received or created by a department in the ordinary course  
12 of business that were not subject to the attorney-client privilege at the  
13 time of their creation, and amounts paid by or to third parties or to  
14 attorneys in connection with claims by or against the City.

15 When litigation involving the City is finally adjudicated or otherwise  
16 settled, the text and terms of any settlement shall be subject to  
17 disclosure. No attorney representing the City shall solicit or agree to any  
18 settlement provision that would restrict public disclosure, after settlement  
19 of terms or of communications between the parties, and any such  
20 provision shall be void and unenforceable.

21 b. No record of a communication between an officer, department, or  
22 Legislative Body of the City and a legal advisor to the City shall be  
23 exempt from disclosure as a confidential attorney-client communication  
24 to the extent that it concerns an actual or potential conflict of interest:  
25 analyzes a proposed legislative position or administrative action of the  
26 City; or reports on the status of negotiations relating to a claim by or  
27 against the City.

28 3. Personnel Records.

29 None of the following shall be exempt from disclosure except where disclosure  
30 is expressly forbidden by California law:

31 a. The experience, prior history, references, and qualifications of all job  
32 applicants, provided that the home address, home telephone number,  
33 social security number, age, and marital status of the employee are  
34 deleted.

- 1                   b.    The job description of every employment classification.
- 2                   c.    The salary, benefits and overtime pay provided to each current employee
- 3                   by name and position.
- 4                   d.    Any memorandum of understanding or other communication between
- 5                   the City or department and a recognized employee organization.
- 6                   e.    Records relating to any accusation of misconduct of a public employee
- 7                   involving personal dishonesty; misappropriation of public funds,
- 8                   resources or benefits; unlawful discrimination against another on the
- 9                   basis of status; abuse of authority; unauthorized use of force; and of
- 10                  disposition of such accusation.
- 11                  f.    Records of the Berkeley Police Review Commission relating to citizen
- 12                  complaints against law enforcement agencies or officers, and the
- 13                  disposition thereof.
- 14                  4.    Law enforcement information:
- 15                   a.    All reports prepared by the Berkeley Police Department are public
- 16                   records, and must be disclosed except to the extent required by state law
- 17                   relating to Juvenile Contact Reports, Domestic Violence Reports, and
- 18                   certain reports where a person is charged with a violation or attempted
- 19                   violation of Section 220, 261, 261.5, 262, 264, 264.1, 273.5, 286, 288,
- 20                   288.5, 288a or 289 of the Penal Code.
- 21                   b.    All police reports that are not exempt must be disclosed in their entirety,
- 22                   except a document may be redacted to exclude material disclosure which
- 23                   would, in the Custodian of Record's reasonable view, endanger the
- 24                   safety of a person involved in an investigation, the successful completion
- 25                   of the investigation or a related investigation, or the use of lawful
- 26                   investigative techniques that require confidentiality in order to be
- 27                   effective. When such a redaction is made, a written explanation for it
- 28                   shall be provided.
- 29                   c.    Where applicable federal or state law so requires, names, addresses,
- 30                   social security numbers, and similar private information shall be deleted
- 31                   from the law enforcement information required to be disclosed.
- 32                  5.    Contracts, bids and proposals:
- 33                  Requests by the City for proposals from potential contractors and vendors are
- 34                  public records subject to disclosure at any time after they are issued. Other

1 documents relating to dealings between the City and its outside contractors,  
2 vendors, or potential contractors, shall be open to inspection immediately after a  
3 contract has been awarded, or the City has decided not to proceed with the work  
4 in question. Nothing in this provision requires the disclosure of a private person's or  
5 organization's net worth or other proprietary financial data submitted for  
6 qualification for a contract or other benefit, unless and until that person or  
7 organization is awarded the contract or benefit.

8 6. Environmental Impact Assessments:

9 Environmental impact assessments generated or received by the City, for projects  
10 wholly or partially within the city limits of Berkeley, are public records of the City of  
11 Berkeley under this Ordinance, and shall be made available to the public in any  
12 requested available format in accordance with Section 1.30.038 within four (4)  
13 business days of the request.

14 **1.30.033 Access to Records.**

15 A. No record shall be withheld from disclosure in its entirety unless all information  
16 contained in it is exempt from disclosure under express provisions of state or federal law. If the  
17 record requested contains information that is both subject to disclosure and not subject to  
18 disclosure, then the information that is exempt from disclosure shall be masked, but not removed  
19 in order that the nonexempt portion of a requested record may be released, and the masked  
20 portion shall be keyed by footnote or other reference to the justification for withholding the  
21 information.

22 B. Nothing in this Section shall require a department or office to program or reprogram  
23 a computer to respond to a request for information, or to release information where the release of  
24 that information would violate a licensing agreement or copyright law, providing that the  
25 provision in the agreement or legal authority precluding release is quoted and cited to the  
26 requester.

27 C. To ensure accessibility of information provided in electronic media, the City shall, as  
28 soon as possible:

- 29 1. Use open, standards-based text, audio, video, and other file formats in all  
30 public-facing computer and information systems.
- 31 2. Meet or exceed the guidelines for accessibility found in Federal  
32 General Services Administration Section 508 (<http://section508.gov>).
- 33 3. Avoid image-PDFs, and other binary document formats when text-PDFs  
34 and other accessible and researchable text-based document formats can be used.

- 1           4.    Avoid Flash, browser-specific HTML, and proprietary formats in favor of
- 2                    Cross-platform, ISO and W3C standards such as HTML, PNG, and JPEG.
- 3           5.    Make audio broadcasts available in an open format such as MP3 that can be
- 4                    listened to on any Windows, Mac, Linux, or Unix computer using non-
- 5                    commercial software.
- 6           6.    Make video streams available for download and/or streaming in an
- 7                    open, cross-platform, and non-commercial format. Make the audio portion of
- 8                    video streams available separately.
- 9           7.    Maintain websites with fixed and logical tree structures that can be
- 10                   linked to URLs that do not change periodically.
- 11           8.    Prohibit the use of cookies or other tracking devices unless required for
- 12                   authentication..

13           **1.30.034    No Public Interest Balancing Test or Deliberative Process Privilege.**

14           A.    Neither the City, nor any officer, employee, nor agent thereof may assert California  
 15 Public Records Act Section 6255 as the authority for withholding any documents or information  
 16 requested under this Ordinance, based on a finding or showing that the public interest in  
 17 withholding the information outweighs the public interest in disclosure. Any denial of access to  
 18 information must be based on an express provision of this Ordinance providing for withholding of  
 19 the specific information in question, or on a specific exemption provided by the California Public  
 20 Records Act, reliance on which is not precluded by this Ordinance.

21           B.    Neither the City, nor any officer, employee, or agent thereof may assert an exemption  
 22 for withholding any document or information based on a “deliberative process” privilege, either  
 23 as provided by California Public Records Act Section 6255 or any other provision of law that  
 24 prohibits disclosure.

25           **1.30.035    Process for Obtaining Records.**

26           A.    A person seeking access to information or records need not state his or her identity,  
 27 reason for making the request, or the use to which the information will be put, unless such  
 28 disclosure is required by law. However, for redress under this Ordinance, a person seeking access  
 29 to information or records should make his/her request in Writing.

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



1 C. The Custodian of Records shall permit all portions of a public record that are not  
2 exempt from disclosure to be inspected and examined by any person, and shall provide copies  
3 thereof upon request.

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

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

9 F. If the information requested involves more than one office or department, then the  
10 request shall be forwarded to the City Manager and City Attorney, as well as the designated  
11 Records Coordinators of all affected offices/departments. The City Attorney or the City Manager  
12 shall coordinate the timely response to the requester in accordance with the provisions of this  
13 Section.

14 G. If the Custodian of Records reasonably believes that part or all material requested is  
15 not a public record or is exempt from disclosure, the Custodian shall state in Writing the basis for  
16 denying the request for all or part of the material within three (3) business days of receiving the  
17 request, and shall, to the extent possible, suggest alternate ways of obtaining the desired  
18 information. The written explanation shall cite all facts and/or statutes, case law, or other  
19 authority relied upon in denying the request.

20 H. Where applicable state or federal law gives the City discretion to withhold or  
21 produce a particular public record, the City shall waive its right to withhold production except in  
22 such cases as specifically provided for in this Ordinance.

23 **1.30.036 Request for Waiver of Confidentiality.**

24 Whenever the Custodian of Records asserts, as a justification for nondisclosure of a public  
25 record, the exemption protecting personal privacy in Government Code section 6254(c), the  
26 exemption for names and addresses of crime victims in Government Code section 6254(f)(2), the  
27 exemption for taxpayer information in Government Code section 6254(i), any confidentiality or  
28 privilege statute referenced under Government Code section 6254(k), the exemption for personal  
29 financial data in Government Code section 6254(n), and any other claimed exemption based upon  
30 the interests of the individual or entity, the Custodian of Records shall cooperate with the  
31 requester's efforts to communicate with the individual or entity of the record as follows:

- 32 1. If the requester seeks information concerning an unknown number of persons, the  
33 Custodian of Records shall inform the requester of the number or approximate

1                    number of individuals or organizations to whom the public record request  
2                    pertains.

- 3                    2. The requester shall prepare one stamped envelope for each of the individuals  
4                    or organizations sought to be contacted, with the requester's return address on the  
5                    envelope. The requester shall place in each envelope a letter explaining why the  
6                    information is being sought and asking the person to contact the requester. The  
7                    envelope(s) shall be presented to the Custodian of Records for mailing.
- 8                    3. The Custodian of Records shall affix to each envelope the mailing address of the  
9                    individual or organization that is the subject of the information request and shall  
10                    mail it, provided that the mailing address is included in City records or is  
11                    otherwise accessible. The Custodian shall include in the mailing a statement that  
12                    the subject of the information request need not waive his or her privacy interests  
13                    and that the City is a disinterested party merely facilitating communication  
14                    between citizens on matters that may be of public or private interest, and is not  
15                    liable for the result of any such communication.
- 16                    4. If the subject of the information request is legally incompetent to waive privacy  
17                    interests, the Custodian of Records shall address the requester's envelope to the  
18                    parent, guardian, conservator or judicial officer, as the case may be, if known,  
19                    with the duty and authority to make such decisions for the incompetent person.
- 20                    5. If the subject of the information request signs a privacy waiver for all or part of  
21                    the information withheld, the City shall promptly release the information.
- 22                    6. The City shall not be liable for any consequences of fulfilling its obligations  
23                    under this Section.

24                    **1.30.037    Fees for Records.**

- 25                    A. No fee shall be charged for making public records available for review.
- 26                    B. No fee shall be charged for documents routinely produced in multiple copies for  
27                    distribution to the public, e.g. meeting agendas and related materials.
- 28                    C. Fees for documents copied on the order of the requester shall not exceed bulk rates  
29                    charged by commercial copying services within the City for comparable services.
- 30                    D. Inspection and copying of public records stored in electronic form shall be made  
31                    available to the public in any medium at a charge no greater than the cost of the medium on  
32                    which it is duplicated.
- 33                    E. Large documents that significant members of the public are likely to want to study,  
34                    such as environmental assessments and City budgets, shall be posted on the City website, and

1 made available for inspection at designated City offices and each branch library, and copies shall  
2 be made available for borrowing by the public.

### 4 **Article 3**

#### 5 **Enforcement**

##### 6 **1.30.038 Sunshine Ordinance Review Commission.**

7 A Sunshine Ordinance Review Commission (the “Commission”) is established by this  
8 Ordinance. The purpose of the Commission is:

9 • to monitor and ensure that the City’s business is conducted in full view of the public to  
10 the extent required by state law and this Ordinance;

11 • to work with Legislative Bodies, staff, and citizens to create procedures to enforce  
12 compliance with this Ordinance;

13 • to oversee educational and outreach programs to acquaint members of the City’s  
14 Legislative Bodies, staff, and the public on the role of sunshine in the City of Berkeley; and

15 • to advise the Council on open government issues and suggest municipal ordinance  
16 changes as appropriate.

##### 17 **1.30.039 Commission Membership.**

18 A. The Commission shall consist of nine (9) members, each appointed by one member  
19 of the City Council, each of whom shall make one appointment to the Commission within sixty  
20 (60) days of the effective date of this Ordinance.

21 B. Each appointee shall be a resident of the City of Berkeley; but may not be an  
22 employee of or volunteer in any City office or department or in the office of any City Council  
23 Member, or a paid contractor, or the holder of an ownership interest in an entity that is a  
24 contractor of the City of Berkeley. In addition, an appointee shall not have been either convicted  
25 of a felony due to an ethics violation or lost a professional license due to an ethics violation.

26 C. All appointees shall have completed an application form, to be developed by the City  
27 Clerk within fifteen (15) days of the effective date of this Ordinance, and modifiable thereafter by  
28 the Commission. Such application shall be signed by the applicant, and shall articulate specific  
29 qualifications that show a demonstrated interest in participatory democracy in local government.  
30 The application shall include a signed statement that the applicant has read the Ordinance and  
31 understands and supports its principles and goals, and a signed pledge to make decisions that are  
32 independent of the appointer, to work the number of hours required to ensure the Ordinance is  
33 fairly and fully implemented, and to listen to and participate with the public, elected officials, and  
34 City staff. Applicants shall also be required to submit a personal statement on why he/she wants

1 to serve on this Commission. All Commission applications are public records.

2 D. During the period of initial appointments to the Commission and thereafter whenever  
3 there is a vacancy, the City Clerk shall publish notice of the vacancy in one or more community  
4 newspaper and on the City's website. The City Clerk shall maintain a standing file of individuals  
5 who have submitted applications, and shall invite citizens' groups that include transparency in  
6 government as part of their ongoing activities to submit additional applications of qualified  
7 individuals who are interested in filling such vacancies. When a vacancy arises, the City Clerk  
8 shall promptly notify all such groups and individuals in the standing file, using contact  
9 information in the file. All applications received by the City Clerk from any source shall be  
10 submitted to the Mayor and Council Members for their consideration.

11 E. There shall be no term limits for Commissioners. Terms shall run concurrently with  
12 the appointing Council Member's term. Within sixty (60) days after taking office, each Council  
13 Member shall appoint a new Commissioner, or re-appoint an existing Commissioner, failing  
14 which the current Commissioner shall be deemed to be automatically reappointed. Once  
15 appointed or re-appointed, no Commissioner may be removed from office except in accordance  
16 with Section 1.30.040.

17 F. Substitute appointments for short-term absences are prohibited.

18 **1.30.040 Commission Vacancies and Removal for Cause.**

19 A. A Commissioner's service shall terminate upon:

- 20 1. Death or voluntary resignation of the Commissioner.
- 21 2. Conviction of a felony.
- 22 3. Unexcused absence from three (3) consecutive, properly noticed Meetings of the  
23 Commission, with dismissal determined by the Commission.
- 24 4. Expiration of the term of office of the appointing Council Member.

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

- 29 1. Is no longer able or willing to perform the duties of a Commissioner.
- 30 2. Has failed to meet one or more of the conditions described in Section  
31 1.30.039 (B) and (C) above.
- 32 3. Has declined to rescue him or herself from participating in and voting on an  
33 issue which constitutes a material conflict of interest for the Commissioner.
- 34 4. Has communicated, except in a public Meeting, with members of a Legislative

1                   Body regarding the merits of a disputed matter that is currently before the  
2                   Commission or its Enforcement Committee.

3           C. Where a vacancy has been created for any of the reasons stated in this Section, it shall  
4 be filled within thirty (30) days by the appointing Council Member from the pool of applicants  
5 for Commission positions maintained by the City Clerk as described in 1.30.039(C).

6           **1.30.041   Organizational Period.**

7           A. The first meeting of the Commission shall take place within ninety (90) days after  
8 the Ordinance becomes law. At the first or second meeting, the Commission shall elect a Chair  
9 and a Vice Chair, each to a term of one (1) year. No person shall serve more than two (2)  
10 consecutive terms as Chair or Vice Chair.

11           B. Within thirty (30) days of the election of the Chair and Vice Chair, the Commission,  
12 by a two thirds (2/3s) vote of the whole Commission, shall appoint one (1) or more Enforcement  
13 Committee(s) (hereinafter referred to as the "Committee") each consisting of three (3)  
14 Commissioners.

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

18           **1.30.042   Commission Staffing.**

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

24           **1.30.043   Role of City Attorney.**

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

27           B. All communications to or from the City Attorney's Office with regard to this  
28 Ordinance, including petitions, requests for opinion, and opinions, shall be public records unless  
29 specifically determined to be subject to the attorney-client privilege.

30           **1.30.044   Commission Legal Counsel.**

31           The City Attorney shall, upon request, provide legal counsel for the Commission.  
32 However, if a majority of the Commission or the City Attorney determines that there is a conflict  
33 of interest, which the Commission declines to waive, the City shall, at the Commission's request,  
34 fund the reasonable fees and expenses of outside counsel chosen by the Commission funded from

1 the budget of the City Attorney to retain outside counsel.

2 **1.30.045 Enforcement: General Procedures.**

3 A. Subject to procedures established by the Commission, the Committee(s) shall review,  
4 and at a duly noticed public Meeting, decide the merits of petitions from the public alleging  
5 violations of the Ordinance.

6 B. A decision in Writing by a majority of the Committee shall be deemed to be that of  
7 the Commission unless any single member of the Committee that heard the complaint, or the  
8 petitioner, or respondent initiates an appeal.

9 C. Subject to procedures established by the Commission, the Commission, acting as a  
10 whole, shall review an appeal within seven (7) days of receipt of the appeal.

11 D. By a majority vote the Commission shall issue its own decision based on the record  
12 that was made before the Commission plus public comment received at the Meeting. If the  
13 Commission fails to reach a decision, the initial decision by the Committee shall stand.

14 E. Decisions of the Commission are not appealable to the City Council.

15 F. Commission or Committee Meetings to review petitions and appeals require seventy-  
16 two (72) hours public notice. Other deadlines for Meeting notices and agendas specified in this  
17 Ordinance do not apply to time-sensitive Sunshine Ordinance enforcement procedures.

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

21 H. The Commission shall prepare an annual report of enforcement petitions and  
22 Sunshine Alerts brought before the Commission. The report shall identify the nature of the  
23 alleged violation, the relief sought by each petition, the disposition or current status thereof, and  
24 the location of all records relevant to each petition. With advance notice to the Custodian of  
25 Records, the Commission may also request a tally of records requests, for statistical or  
26 comparative purposes.

27 **1.30.046 Enforcement: Public Records Access Denials.**

28 If the Custodian of Records fails to fully comply with a request for public records, the  
29 records requester may file a written petition for relief with the Committee.

30 1. The petitioner shall have the right to address the Committee on the subject of  
31 the petition at a public Meeting which, unless otherwise agreed between the  
32 parties, shall take place no more than ten (10) business days following receipt  
33 of the petition.

34 2. The Custodian of Records, or the Custodian's representative, shall appear at such

1 Meeting, and, where a document has been reasonably identified and is in City  
2 custody, it shall be presumed to be a public record, and the Custodian of Records  
3 shall have the burden of overcoming such presumption.

- 4 3. Within five (5) business days of the date the petition was first heard, the  
5 Committee shall, at this or a second Meeting, make a decision and shall inform  
6 the petitioner in Writing of its determination. Seventy-two (72) hour notice of  
7 the second Meeting may be given orally to the parties.
- 8 4. If the determination is that the record is public, the Custodian of Records shall  
9 comply with the request immediately.
- 10 5. Either the petitioner or the Custodian of Records may appeal the decision to the  
11 Commission within forty-eight (48) hours.
- 12 6. If the Custodian of Records fails to comply with the decision of the Committee or  
13 Commission within three (3) business days, the Commission shall notify the City  
14 Attorney. If the City Attorney is unable to resolve the issue to the satisfaction of  
15 the Commission, then the Commission shall notify the District Attorney of the  
16 violation.

17 **1.30.047 Enforcement: Public Meeting and Noticing Violations**

- 18 A. Any interested party, within seven (7) days of an alleged violation of the Meetings  
19 provisions of this Ordinance, may file a written petition with the Committee stating  
20 all of the facts that a legislative action has been taken in violation of this Ordinance.
  - 21 1. Upon receipt of such a petition, the Committee shall notice a public  
22 hearing to take place no sooner than three (3) business days nor no later than  
23 ten (10) business days thereafter.
  - 24 2. Petitioner and the City as respondent shall appear, and may be represented by  
25 counsel. Each shall be given the opportunity to present evidence and argument  
26 in support of its allegations, and to cross-examine any witnesses for the other  
27 party, who shall be under oath.
  - 28 3. Within five (5) business days of the date the petition was first heard, the  
29 Committee shall, at this or a second Meeting, make a decision and shall inform  
30 the petitioner in Writing of its determination. -Seventy-two (72) hour notice of  
31 the second Meeting may be given orally to the parties.
  - 32 4. Either the petitioner or the respondent may appeal the decision to the  
33 Commission within five (5) days.
  - 34 5. The Commission shall render its decision within thirty (30) days.

1           6. Where the Commission finds that a legislative or other action has been taken in  
2           violation of this Ordinance, the City shall suspend implementation of the action  
3           pending judicial review, or, may take a new action in conformance with this  
4           Ordinance.

5           7. Nothing herein shall limit the jurisdiction of the Court on review to award  
6           interim equitable relief at the request of either party or on its own motion.

7           B. In the event of an action under Section 1.30.048, allegedly privileged materials shall  
8           be discoverable by a plaintiff, including but not limited to tapes or other documents reflecting  
9           discussions and actions taken in Closed Session, subject to a Court finding of potential relevance  
10          and to the respondent's right to seek a protective order. The Court may in passing on such matters  
11          review alleged materials *in camera*.

12           **1.30.048 Judicial Review.**

13          A. A petitioner, the Commission and/or the City may seek a writ of mandate from the  
14          Superior Court of the State of California for the County of Alameda regarding: a petition to  
15          identify and/or produce public records; a legislative or other action allegedly taken in violation of  
16          the provisions of this Ordinance; a timely decision that has not been rendered; or an allegation  
17          that the City has failed to comply with a decision made by the Committee or Commission. The  
18          Court's review shall be *de novo* and shall be based on the full record maintained by the  
19          Committee and/or Commission. Where a violation is found, the Court shall award appropriate  
20          relief which may include the voiding of any legislative or other action taken in violation of this  
21          Ordinance.

22          B. The provisions of Section 1.30.044 shall govern attorney's fees paid by the City in  
23          any legal action taken before the Superior Court by the Commission pursuant to this Ordinance.  
24          Other petitioners, if partly or fully successful, shall be awarded reasonable attorneys' fees. The  
25          City may be awarded its fees only if it is successful in defeating a petition found to be frivolous.

26          C. The remedies provided under this article shall in no way limit any person's use of  
27          other available administrative or judicial remedies.

28           **1.30.049 Penalties.**

29          A. The willful failure of any elected official or City employee to discharge any duties  
30          imposed by any state or federal statute or this Ordinance, shall be punishable within the range of  
31          the following provisions:

- 32           1. A complaint to the Alameda County District Attorney.
- 33           2. Disciplinary action, up to and including termination of employment.
- 34           3. Fines as set forth in BMC Sections 1.20.010 and 1.20.020 for either a



1                   misdemeanor or infraction, at the discretion of the Commission.

2

3     **Article 4**

4             **1.30.050 Severability**

5             If any part or provision of this Ordinance is found by a court of law to be in violation of  
6 any applicable state, or federal statute, or administrative or judicial decision, and if a court should  
7 declare such portion, provision, or provisions of the Ordinance to be illegal, invalid, unlawful,  
8 void, or unenforceable as written, then such portion, provision, or provisions shall be given force  
9 to the fullest possible extent that they are legal, valid, and enforceable, and the remainder of this  
10 Ordinance shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion,  
11 provision or provisions were not contained therein.

12

13     **End of Chapter**

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