

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

Creating Article XVIII of the Berkeley City Charter

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

Berkeley Sunshine Charter XVIII

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## **Introduction**

### **Section 125 Title of Chapter.**

This Chapter Article XVIII shall be known as the Berkeley Sunshine Ordinance.

### **Section 126 Findings.**

Meaningful participation in our representative form of government requires that members of the public have:

A. Timely access to the same information relating to issues within the jurisdiction of their Legislative Bodies as is available to the members of such bodies and Staff, and

B. An opportunity to comment on issues in the presence of their representatives prior to any decision being made with the requirement that those decisions be reached in full view of the community, and

C. Prompt access to all Public Records to the maximum extent permitted by State and Federal law and as required by this Ordinance.

### **Section 127 Purpose.**

The purpose of this Chapter is to codify the City's policy regarding public participation in the deliberations of the City's Legislative Bodies, to ensure public access to Public Records, to declare the intent to expand such participation and access beyond that required by current City law and practice and to the maximum extent permitted by State and Federal law, and to establish a mechanism for the enforcement of the rights set forth in this Ordinance.

### **Section 128 Applicability.**

The provisions of this Ordinance supersede other Berkeley ordinances that address the same issues to the extent they are inconsistent with this Ordinance.

### **Section 129 Definitions.**

The words and phrases defined in this Section shall, for the purpose of this Ordinance, have the meanings specified below.

A. "Agenda" means a document that informs the public about a Meeting, published in advance of the Meeting which at a minimum (1) identifies the Legislative Body conducting the Meeting, (2) specifies the time and location of the Meeting, (3) lists each item of business to be discussed or transacted and describes the proposed action for each such item, and (4) lists all relevant Supporting Documents for each such item.

B. "Agenda Packet" means the Agenda of a particular Meeting with all its relevant Supporting Documents.

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

D. "City Council" means all members of the principal Legislative Body of the City as described in the City's Charter.

E. "Closed Session" means a Meeting that begins with a public comment period, followed by a session that excludes the public under the requirements of State and Federal law, and ends with an open session at which a public report is made regarding that part of the Meeting which excluded the public.

F. "Commission" means the Sunshine Ordinance Review Commission established in Section 162

hereto.

G. “Community Newspaper” means a newspaper that is published at least forty-five (45) times per year, distributes at least ten thousand (10,000) copies of each issue in the City of Berkeley, and devotes at least fifty (50) percent of its news coverage to Berkeley issues on a regular basis. If no newspaper meeting this definition exists, the Sunshine Ordinance Review Commission shall determine what constitutes a Community Newspaper.

H. “The Custodian of Records” means the City Manager.

I. “A Custodian of Records” means a person or persons appointed or approved by the City Manager to be in charge of the records of any department or other entity subject to this Ordinance.

J. “Deadline” means the time and/or date by which an action is required to be completed. Unless otherwise specified, the time period allowed for an action shall be computed in calendar days. When computing a Deadline forward from a Meeting or other event, the first day counted shall be the day after the Meeting or event, and if City offices are closed on the last day counted, the following work day shall be the Deadline. When computing a Deadline backward from a Meeting or other event, the first day counted shall be the day before the Meeting or event, and if City offices are closed on the last day counted, the preceding work day shall be the Deadline.

K. “Legislative Body” means any of the following: All governing bodies of the City, including but not limited to, the City Council, Rent Stabilization Board, Library Board of Trustees, Redevelopment Agency, Housing Authority, and all City commissions, committees, boards, or other bodies as defined in California Government Code Section 54950 - 54960 and its successor Sections, including private corporations or entities such as the Energy Services Corporation or similar bodies.

L. “Legislative Committee or Subcommittees” means a temporary committee or subcommittee that is neither created by charter, ordinance, resolution, or formal action of a Legislative Body, nor is a standing committee of a Legislative Body. Such Committees or Subcommittees are composed of less than a Quorum of members of the Legislative Body, who may meet with members of other Legislative Bodies, members of the public and Staff for the express purpose of formulating recommendations to the Legislative Body.

M. “Lobbyist” means a person or entity that receives compensation for influencing legislative or administrative action or that compensates its employees or members for their lobbying activities.

1. “City Lobbyist” means a person or entity that is designated to represent the City before any person, office, Legislative Body, or other entity.
2. “Special Interest Lobbyist” means a person or entity that is paid by and represents any non-City agency, organization, or entity to influence City policy.

N. “Meeting” means a gathering of a Quorum or more of the members of a Legislative Body at a specified time and place, including by teleconferencing or other technology, to hear, discuss, deliberate, or act on any matter that is within the subject matter of the Legislative Body, as defined in California Government Code Section 54950 – 54563 and its successor Sections.

O. "Minor Correction" means a correction that consists only of a change in spelling or grammar with no significant change in meaning.

P. "Public Records" means any writing containing information relating to the conduct of the public's business regardless of its physical form or characteristics, which is prepared, owned, used, or retained by any State or local agency.

Q. "Quorum" means a majority of the total authorized membership of a Legislative Body, but may be more than a majority if expressly required by this or another ordinance.

R. "Staff" means the City Manager, department heads, employees of all entities in the City Charter, directors and employees of Legislative Bodies, employees and volunteers in the offices of elected officials, and contractors.

S. "Supporting Documents" means all Public Records, regardless of form or medium or author, which are provided to members of a Legislative Body for their use in considering Agenda items for a particular Meeting, along with all communications that have been timely received for that Meeting.

### **Meetings**

#### **Section 130 Meetings to be Open.**

A. All Meetings of Legislative Bodies and Legislative Committees and Subcommittees shall be open and public, except as modified in Section 142 hereto regarding Closed Sessions or by applicable State or Federal law. No payment shall be required from those desiring to attend a Meeting.–

B. No decision shall be made by a Legislative Body in other than open and noticed Meetings, except as specified by State or Federal law. Any use of direct communication, personal intermediaries, or technological devices that is employed by a Quorum of the Legislative Body to develop a collective concurrence as to action to be taken on an item by the members of the Legislative body is prohibited. No Staff member or member of a Legislative Body shall lobby or privately brief a majority of the members of that same Legislative Body, either as a whole or serially, to propose, oppose, or otherwise discuss any recommendation or Agenda item pending or to be submitted to such Legislative Body.

C. To ensure that business is conducted in the open, Legislative Bodies shall meet continuously during discussion of each Agenda item, except as shall be necessary for the person retained to provide captioning services for the Meeting.

D. When an item is continued to a future Meeting of a Legislative Body, each member of the body shall, at that subsequent Meeting, disclose the general nature of any intervening conversations with other members of the body, Lobbyists, and Staff pertaining to the held-over item that took place during the continuance, and as provided for in Section 141.

#### **Section 131 Time, Place, and Frequency of Meetings.**

A. Each Legislative Body shall establish a time for regular Meetings when a significant portion of the public is able to attend. Meetings shall be held in a place that is of sufficient size for those attending, is accessible for the physically disabled, provides for adequate amplification, and where possible, has video

transmission capability, audio, and video-streaming.

B. All Meetings shall be held in the City of Berkeley, unless the City Council finds, in advance of a Meeting, that the City's interest is likely to suffer if the Meeting is held within the city limits.-

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

D. Where a Legislative Body determines that the regular Meeting location does not meet the requirements of Subsection A above, the Legislative Body shall, by its own motion, either cancel or change the location of the Meeting provided that prominent and timely notices are posted at the original site.\_

E. A meal or other gathering of a Quorum of a Legislative Body immediately before or during a Meeting of the Legislative Body is part of that Meeting and the public shall be permitted to hear and observe the gathering.

F. A sufficient number of Meetings shall be held throughout the calendar year to ensure the City's business is completed in a public and timely manner in accordance with the provisions of this Ordinance.

**Section 132 Submitting Items for the Regular Meeting Agendas.**

A. Each Legislative Body shall establish a process for placing items, including presentations, on its own regular Meeting Agendas and designate a contact person responsible for receiving proposed Agenda items and Supporting Documents. Applicable procedures shall appear on the City's website and on each Agenda.

B. Any procedure for setting the Agenda by a Legislative Body shall provide for public participation with timely notice in compliance with this Ordinance.

C. With the exception of appeals from a quasi-judicial decision, any member of the public may place an item under the purview of a Legislative Body on the Agenda of that body by presenting the item to the designated Agenda contact person, with one hundred (100) or more signatures of Berkeley residents for an elected Legislative Body or fifty (50) or more signatures of Berkeley residents for a non-elected Legislative Body. Items submitted by the public shall be placed on the Action Calendar and cannot be moved to the Consent Calendar. Once such an item has been acted upon by the Legislative Body, subsequent items that are substantially the same may not be submitted for a period of one year, except on a showing of significantly changed circumstances.

D. All proposed Agenda items submitted in accordance with the Deadlines specified in Subsection E below shall appear on a regular Agenda of the Legislative Body that takes into consideration the timeliness of the item.

E. Deadlines for submission of Agenda items and related Supporting Documents for regular Meetings of Legislative Bodies shall be as follows:

1. Except for old business and citizens' petitions for recalls, initiatives, and referenda that have been certified as having qualified for the ballot, all items to be considered for placement on the regular Meeting Agenda of a Legislative Body shall be furnished to the Agenda contact

person no later than 12:00 noon, twenty (20) or more days prior to the Meeting for which the items shall appear on the Agenda.

2. Information regarding all items submitted for an Agenda shall be available to the public no later than 5:00 PM, twenty (20) or more days prior to the Meeting for which the items shall appear on the Agenda. This information shall be in the form of a list that includes the sponsor's name, title, and proposed action for each item. The information shall be posted on the City's website and placed in written form in the office of the Agenda contact person and shall include the date, time, and place of any Meeting at which the draft Agenda will be discussed and the final Agenda determined.
3. All Supporting Documents for Agenda items shall be submitted to the Agenda contact person no later than noon, fifteen (15) days prior to the Meeting for which the items shall appear on the Agenda.
4. The Agenda contact person shall not accept any new or revised item or revised Supporting Document for inclusion on the Agenda of a regular Meeting after the established Deadline.
5. Draft Agendas shall be finalized by noon, twelve (12) days prior to a Meeting.

**Section 133 Agenda Content.**

A. Every Agenda shall contain statements regarding disability-related accommodations and a statement regarding the right of all persons to address the Legislative Body or Committee/Subcommittee in accordance with the requirements of this Ordinance.

B. Agenda items shall be written in easily understood language without undefined abbreviations or acronyms and should at a minimum provide the following information: an accurate description of the subject matter, recommended action, fiscal impact, the website, and other locations at which Supporting Documents and related documents can be found, and contact information.

C. When items are withdrawn from the Agenda of a Legislative Body before publication of the final Agenda, the Agenda shall state the reason for withdrawal. Notice of such withdrawals shall also be posted on the City's website as soon as possible.

**Section 134 Documents Submitted by Members of the Public, Addressed to a Member or Members of a Legislative Body or to the Secretary of the Legislative Body for Distribution.**

A. Documents that are received at least twelve (12) days before a regular Meeting shall be included in the Agenda Packet to be issued eleven (11) days in advance of the Meeting and shall be posted as described in Section 150.

B. Documents received after the twelfth (12th) day and through the fifth (5<sup>th</sup>) day prior to a regular Meeting shall be included in Supplemental Agenda Communications Packet #1, placed in a viewing binder available to the public, and made available as described in Section 150.

C. Documents received after the fifth (5<sup>th</sup>) day and prior to 12:00 noon on the day of the regular Meeting shall be included in Supplemental Agenda Communications Packet #2 which shall promptly be posted on the City's website and made available to the public in the appropriate department office. Copies shall be available at the Meeting.

D. Documents received after 12:00 noon on the day of the regular Meeting, including during the Meeting, shall be included in Supplemental Agenda Communications Packet #3. When a document is submitted by a member of the public at the Meeting, it shall be distributed to members of the Legislative Body immediately upon submission, if thirty (30) copies have been provided: twenty (20) for the Legislative Body and Staff, plus ten (10) copies for the public. If fewer than thirty (30) copies have been provided, the document shall be placed in Communication Packet #3. All such documents shall be available for review by members of the public by 3:00 PM, two (2) business days following the Meeting .

**Section 135 Draft Agendas for Regular Meetings of Legislative Bodies.**

A. On the fourteenth (14th) day prior to the regular Meeting, the Agenda contact person shall post a draft Agenda for that Meeting, as described in Section 150.

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

C. The Agenda contact person shall maintain a record indicating the location, date, and time of posting of each draft Agenda.

**Section 136 Final Agendas for Regular Meetings of Legislative Bodies/Legislative Committees or Subcommittees.**

A. On the eleventh (11<sup>th</sup>) day prior to the Meeting of a Legislative Body to which it applies, the final Agenda and links to obtain Supporting Documents in the Agenda Packet shall be posted as described in Section 150.-

B. Seventy-two (72) hours prior to the meeting to which it applies, the Agenda of a Legislative Committee or Subcommittee shall be posted as described in Section 150.

C. Each Agenda contact person shall maintain a record indicating the location, date, and time of such posting.

**Section 137 Distribution of Final Agendas and Agenda Packets for Regular Meetings of Legislative Bodies.**

No later than eleven (11) days prior to a regular Meeting, the Agenda contact person shall distribute the Agenda Packet to each member of the Legislative Body, and if requested, to members of the press. A copy shall also be placed in a viewing binder in the office and in each Berkeley public library. Copies of the Agenda shall be mailed to any person who has requested it in writing.

**Section 138 Action Requirements for Legislative Bodies.**

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

B. No discussion or action by the Legislative Body shall be taken on any item not appearing on the Agenda. However, the Legislative Body may refer such a matter to Staff or request that the matter be placed on a subsequent Agenda.

C. No Agenda item shall be considered at the Meeting if the item's Supporting Documents are not included in an Agenda Packet that is timely received in accord with Section 134 A.

D. With the exception of Minor Corrections, no change to Agenda items or their Supporting Documents may be made once the final Agenda has been published as specified above.

E. Staff may not make oral reports to Legislative Bodies in lieu of written reports, but shall be available at Meetings to answer questions.

**Section 139 Legislative Body Meeting Agenda Sequence.**

A. Each Legislative Body shall set its own Meeting Agenda sequence of business. This sequence may be amended from time to time by a majority vote of the body after holding a noticed public hearing.

B. However amended, the Meeting Agenda Sequence for every Legislative Body must always satisfy the following:

1. Public comment on each Agenda item and Non-Agenda items shall be as set forth in this Ordinance. At regular Meetings, public comment on Non-Agenda items by up to ten (10) speakers shall occur at the beginning of the Meeting with priority given to individuals with disabilities and special needs, the elderly, and those accompanied by small children. Additional speakers wishing to speak on Non-Agenda items shall be accommodated during the latter part of the Agenda under the same protocol.
2. Ceremonial matters, if any, shall be limited to a maximum of fifteen (15) minutes.
3. Reports on meetings of regional bodies and other agencies as described in Section 145, if any, shall be placed on the Agenda as information items where they are subject to public comment and movement to action for discussion at the request of a single member of the Legislative Body.
4. Decisions regarding appeals, if any, shall not be placed on the Consent Calendar.

C. The order of individual Agenda items shall not be changed during the Meeting, except by a majority vote of the Legislative Body, before which members shall state their reasons for the record.

D. It is the intent of this provision that all Agenda items be completed prior to 11:00 PM. At approximately 10:00 PM, the Legislative Body shall assess what Agenda items remain to be completed and whether any need to be continued to another Meeting. The Meeting may be extended by a two-thirds (2/3) affirmative vote of the members of the Legislative Body. Any motion to extend the Meeting shall include a list of Agenda items to be covered during the extended time and shall specify the order of those items. Speakers on Non-Agenda items shall be heard after Agenda items, even if after 11:00 PM. The Legislative Body shall not adjourn until public comment on Non-Agenda items has been completed.

**Section 140 Public Speech Rights During Meetings.**

A. At the beginning of each Meeting of a Legislative Body, the presiding officer shall inform the public that their rights under this Section are posted on the Agenda and at the entrance of the Meeting room.

B. Any person attending a Meeting of a Legislative Body shall be provided an opportunity to speak for three (3) minutes on each Agenda item prior to any action by the body and in the case of a regular Meeting for two (2) minutes on a Non-Agenda item. Up to four (4) speakers on Agenda or Non-Agenda

items may combine their time when each of such speakers is present at the Meeting

1. The provision for public speaking times in this Section may be amended by an affirmative vote of not less than two-thirds (2/3s) of the membership of the Sunshine Review Commission and an affirmative vote of not less than two-thirds (2/3s) of the membership of the City Council following a public hearing on the subject.

C. Legislative Bodies shall not prohibit orderly public criticism of the body either by verbal comment or by holding signs.

D. Speakers have the right to use presentation tools, which shall be provided by the City, if available, and when requested five (5) business days in advance of a Meeting date.

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

1. At any time up to and including during the Meeting of a Legislative Body, if a matter is considered to be a violation of this Ordinance or the Legislative Body's procedural requirements, a member of the public may submit a complaint to the secretary of the Legislative Body on a Sunshine Alert form developed by the Commission.
  - a. If the Alert is received before the Meeting, the secretary shall transmit the Alert form to appropriate Staff who shall inform members of the body.
  - b. If the Alert is received during the Meeting, the secretary shall submit the Alert to Staff designated to act as Parliamentarian. The Parliamentarian shall announce the substance of the Alert when the item in question is before the body and his/her recommendation as to what action, if any, should be taken.
  - c. The Alert and the action which followed shall be reported to the Commission.
2. Alerts regarding a Legislative Committee/Subcommittee shall be submitted directly to the Commission.
3. The Commission shall prepare a follow-up report on each Alert received and place it on the Agenda for the next Meeting of the appropriate body.

#### **Section 141 Procedures for Public Hearings.**

A. For all public hearings, Staff shall introduce the public hearing by briefly summarizing their submitted report.

B. For Legislative Bodies that hold public hearings on zoning, land use, landmarks, and building code matters, following the Staff summary each member of the Legislative Body shall verbally disclose all *ex parte* contacts concerning the subject-of the hearing. Members shall also submit a report of such contacts in writing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the secretary to the Legislative Body prior to the Meeting and placed in a file available for public viewing at the Meeting.

C. In City Council consideration of whether appeals from the Zoning Adjustments Board or its successor Legislative Body, should be dismissed, remanded, or set for public hearing or in holding a public

hearing on these matters, the procedure shall be as follows: The Applicant(s) and Appellant(s) may be represented by others for all or part of their statement times. The Council shall not lower the time limits for statements given below, but if any party speaks more than the time allocated, then the other party or parties shall be given the same amount of time.

1. In determining whether an appeal should be dismissed, remanded, or set for public hearing, the times for statements shall be as follows:
  - a. If the Applicant is the Appellant, he/she shall have five (5) minutes to make a statement restricted to which of the three (3) options before the Council should be chosen. Public comment shall follow as provided for in this Ordinance.
  - b. If the Applicant is not the Appellant, the Applicant, and the Appellant shall each have five (5) minutes to make a statement restricted to which of the three (3) options before the Council should be chosen. In the instance of multiple Appellants, each Appellant has five (5) minutes to make a statement with the same restriction. Public comment shall follow as provided in this Ordinance.
2. When a public hearing is held by the City Council regarding a zoning appeal, the speaking protocol shall be as follows:
  - a. When the Applicant is the Appellant, the Applicant shall have five (5) minutes to make a statement. Members of the public shall then comment.
  - b. When the Applicant is not an Appellant, the Applicant shall have five (5) minutes to make a statement. The Appellant shall follow and have five (5) minutes to present the appeal. In the event of multiple, separate appeals, each Appellant shall have five (5) minutes to present his/her appeal. Following statements by the Applicant and Appellant(s), the Applicant shall have five (5) minutes to rebut any statement made by the Appellant, or in the case of multiple Appellants, a total time equal to the sum of as many five (5) minute statements as there are Appellants. The Appellant shall have five (5) minutes to rebut any statement made by the Applicant. In the case of multiple Appellants, each Appellant shall have five (5) minutes for rebuttal. Members of the public shall then comment. After all public comment has been received, one (1) person representing the Applicant and one (1) person representing the Appellant, or in the case of multiple Appellants, one (1) person for each, separate Appellant, are entitled to sit with Staff at the Staff table with opportunity to answer questions and respond to comments made by members of the Staff or the Council.

D. After hearing testimony and public comment, the Legislative Body may close a public hearing or continue it to another specified date. Action following the close of a public hearing shall take place at the next Meeting of the Legislative Body to allow members of the Legislative Body time to consider the testimony and any new information received at the hearing. If it is legally required to take action at the same Meeting following the receipt of testimony, the Legislative Body shall state the reason for doing so

before acting upon the subject of the public hearing.

**Section 142 Closed Sessions.**

A Legislative Body shall only meet in Closed Session when doing so is specified by State or Federal law. The procedures for Closed Session shall be as follows:

A. Before any Closed Session, a Legislative Body shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session.

B. Any member of a Legislative Body attending a Closed Session by teleconferencing is required to state at the beginning and end of the Closed Session that he/she is participating with no other person present and to file a signed statement to that effect under penalty of perjury. If a member of a Legislative Body is disabled and needs assistance to participate in a Closed Session, the City shall provide a Staff assistant who is authorized to attend the Closed Session.

C. For Closed Sessions on litigation matters, the Agenda shall list the parties involved, the actions being considered, and court case numbers, if assigned.

D. For Closed Sessions on real property negotiations, the Agenda shall identify the property by address, parcel number, and proposed purpose. Disclosure of the source(s) of payment for the property must be specified when negotiations are complete.

E. All Closed Sessions of any Legislative Body shall be audio recorded in their entirety and made a part of a record of the Meeting. Closed Session tapes shall be archived in the custody of the City Attorney and shall be made available whenever all rationales for closing the session are no longer applicable.

1. Recordings of Closed Sessions of a Legislative Body convened due to anticipated legislation shall be released to the public under any of the following circumstances:
  - a. Two years after the Meeting if no litigation is filed.
  - b. Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed.
  - c. As soon as the controversy leading to anticipated litigation is settled or concluded.

F. All agreements for the purchase or sale of real estate, contracts with employees, and agreements with other Legislative Bodies and regional agencies discussed in Closed Session shall not be deemed approved until the vote is taken in an open Meeting. Agreements between the City and other entities regarding land use and transportation issues that have been discussed in Closed Session shall not be deemed approved or rejected until a public hearing has been held and a vote is taken following the hearing. Such items shall be placed on the Agenda of a subsequent regular Meeting in the same manner that any new item is placed on the Agenda of the Legislative Body.

G. Immediately following the end of the Closed Session, the Legislative Body shall make a report in open session describing all matters reached either by consensus or voted upon and the results of such votes, whether approved or not. This shall be followed by a re-vote in full view of the public.

H. The location of reports to the public after a Closed Session has ended shall be in a venue that is open to the public, and where possible, one that supports video transmission, audio, and video-streaming.

The report on Closed Session actions shall be posted no later than the end of the following business day to the City's website and to all other places where the Agenda of the Legislative Body in question is posted.

**Section 143 Special Meetings.**

A. A presiding officer or three (3) members of a Legislative Body may call a Special Meeting with four (4) calendar days notice, but only for the purpose of considering a single item based on information that has come to light after the last regular Meeting of the Legislative Body, which requires action prior to the next regular Meeting of the Legislative Body and which will do irreparable harm to the City if action is not taken before the next regular Meeting.

B. The reason and timing for the Special Meeting shall be printed on the Agenda for the Special Meeting. The Agenda along with its Supporting Documents shall be posted and available to the public, as provided for in Section 150, no later than seventy-two (72) hours in advance of the Special Meeting.

C. At the beginning of the Special Meeting, after public comment is received, the Legislative Body shall vote on whether to proceed with the Special Meeting. The Special Meeting shall proceed only if two thirds (2/3) or more of the members are present and a Quorum of the Legislative Body votes affirmatively to proceed. Lacking the vote to proceed, the item on the Agenda will be deferred to the next regular Meeting that satisfies the requirements in Section 132.

**Section 144 Emergency and Dire Emergency Meetings.**

State law defines the circumstances and procedures for noticing and holding two (2) levels of emergency meetings: an Emergency Meeting and a Dire Emergency Meeting. At the beginning of either an Emergency or a Dire Emergency Meeting, a majority of attending members of the City Council shall confirm the nature of the emergency or dire emergency and the business which is to be transacted. The circumstances under which such meetings may be held and the procedures for holding Emergency and Dire Emergency Meetings in the City shall be at a minimum those that were in effect under State law as of the effective date of this Ordinance.

**Section 145 Reporting Requirements for Meetings of Local, Regional, State, and National Agencies, Institutions, and Other Entities.**

A. When one or more persons acting as a representative of the City or any of its Legislative Bodies, attends a meeting in person or by use of technology at which an item affecting the City is discussed with another representative of or members of local, regional, state or national agencies, including but not limited to, Legislative Bodies, the University of California, Lawrence Berkeley National Laboratory, the University of California Board of Regents, and other institutions and entities, such representative shall, within five (5) business days following the meeting, provide a written report to be placed on the Agenda of the appropriate Legislative Body or Bodies. The report shall state the name of the person or group, the time, place, and purpose of the meeting, a summary of the discussion of any item that impacts the City, the positions expressed by the Berkeley representative, any action(s) or non-action (s) taken, and the vote(s), if any, of the Berkeley representative.

B. Within six (6) months after the enactment of this Ordinance, Staff, working in consultation with the Commission, shall include on the City's website, up-to-date, organized information on the ongoing

activities of regional bodies and the University of California, Lawrence Berkeley National Laboratory, and the University of California Board of Regents, including website links to these agencies, their agendas and minutes, the City representatives' meeting reports, and information about activities of those entities that may be of significant interest to the residents of Berkeley.

**Section 146 Audio or Video Recording and Broadcast of Meetings.**

A. All Legislative Bodies shall record their Meetings with an audio recorder. Such recordings shall be permanently retained, be archived on the City's website and available to the public.

B. All regular and Special Meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board held in the venue regularly used shall be audio recorded, televised and video-streamed live and archived for replay on the local government cable channel and on the Internet. Such web broadcasts shall be captioned, with the captioned text displayed on the cable broadcast and as part of the video-stream. The captioner's transcript of the Meeting shall be retained with the video recording.

C. The City shall annually make a good faith effort to add Meetings of the Planning Commission, Board of Library Trustees, Housing Authority, Landmarks Preservation Commission, and Housing Advisory and Appeals Board to those Meetings that are televised and video-streamed.

D. The requirement to cable broadcast and video-stream Meetings shall not apply if necessary equipment malfunctions or if a public Meeting is changed to a location that does not have the technological capacity to accommodate the cable, web broadcast, and captioning. However, an audio recording of the Meeting shall be made, and a written transcript shall be produced.

E. Any person attending a Meeting of a Legislative Body may record the proceedings with an audio, video recorder, a still or motion picture camera, or broadcast the proceedings; unless or until the body makes a finding that the recording creates an unreasonable and persistent disruption of the proceedings.

**Section 147 Meeting Minutes.**

A. For Legislative Bodies, the secretary of that body shall prepare the minutes of each Meeting. The minutes shall state the date and place of the Meeting, the time the Meeting was called to order, the names of the members present at the time the Meeting was called to order, the names and times of arrival or departure of any member of the Legislative Body arriving or leaving the Meeting after the call to order and before adjournment, the names of presenters and Staff who provided reports or comments, the names of other persons attending any Closed Session, Closed Session announcements, disclosures of any conflicts of interest and *ex parte* communications, a list of those members of the public who spoke on each matter (and their names, if the speakers identified themselves) a brief summary of each person's statement during the public comment period, the vote by name of each member on each matter considered by the body at the Meeting, and the time the Meeting was adjourned.

B. No later than six (6) business days after a Meeting draft minutes of a Meeting of a Legislative Body shall be posted on the City's website and be available for inspection and copying upon request. The minutes of a Meeting shall be officially adopted within sixty (60) days and available to the public no later

than six (6) business days after the Meeting at which they are adopted.

C. For Legislative Committees/Subcommittees, a member or Staff, as designated, shall prepare minutes of each meeting. The minutes shall state the date, time, and place of the meeting, the names of all those present, a brief description of the discussion, and any action taken. Minutes shall be prepared for adoption at the next subsequent meeting, posted on the City's website and made available to the public in the office of the contact person of the appropriate Legislative Body.

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

For the purposes of this Ordinance, California Government Code Sections 5260 – 5270 (California Public Records Act) and its successor Sections shall apply in addition to those provisions in this Ordinance.

#### **Section 148 Responsibilities of Staff.**

A. In addition to the duties assigned in other Sections of this Ordinance, whenever the City Manager issues an Annual Report on the City, such Report shall contain information on the rights of residents under this Ordinance, how those rights may be exercised, a summary of complaints filed under the Ordinance, and the results of any complaints. Further, the City Manager shall ensure that Staff is trained regarding their obligations under this Ordinance. The City Manager (herein referred to as The Custodian of Records) shall also designate in each department/office a departmental Custodian of Records (herein referred to as A Custodian of Records), who shall ensure that all Staff who have contact with the public are prepared to provide written and oral information to the public.

B. A Custodian of Records shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s).

C. A Custodian of Records shall, as soon as possible and within ten (10) days following receipt of a request for a Public Record, comply with such request. If A Custodian of Records believes the record requested is not a Public Record, he/she shall state in writing the express provisions of law that justify withholding the record.

D. When a member of the public submits a written request for information to any paid or elected agent of the City, that agent shall respond to said request within two (2) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral.

E. Nothing in this Section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communication between members of the public, Staff, and members of Legislative Bodies.

#### **Section 149 Responsibilities of the Mayor.**

If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video-streaming and transmission capabilities. The event shall be noticed, recorded, free to the public and open to all. The address shall include a report on the previous year's Sunshine complaints, how they were resolved, and a summary of any actions taken or pending related to provisions of this Ordinance.

**Section 150 Notices and Posting of Information.**

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

- City Charter
- Berkeley Municipal Code
- Building Code
- General Plan and Area Plans
- Zoning Ordinance
- Landmarks Preservation Ordinance
- Sunshine Ordinance
- Citizen’s Guide to Public Information
- Records Index
- Records Retention Schedule
- Council Rules of Procedure (when revised to comply with this Ordinance)
- Commissioner’s Manual (when revised to comply with this Ordinance)
- Conflict of Interest Code
- Statements of Economic Interest
- Appointment Calendars
- Agendas and Minutes of the Meetings of all Legislative Bodies

B. Each Legislative Body shall designate one or more physical locations to post notices and documents required by this Ordinance. Designated posting locations shall be freely accessible to members of the public twenty-four (24) hours per day, visually prominent, and readable from the public right of way. Notices and Agendas and any accompanying documents shall be posted indicating links as to where Supporting Documents may be found on the City’s website. In addition, such documents shall be placed in each Berkeley public library.

C. At a minimum, within six (6) months after enactment of this Ordinance, each Legislative Body shall have posted on the City’s website all current Meeting Agendas, minutes, and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each Legislative Body shall make reasonable efforts to ensure that its portion of the City’s website is updated on at least a weekly basis.

D. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City’s website and made available at designated City offices with copies available for borrowing by the public at each Berkeley public library.

E. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.

F. The Commission shall review public notices to ensure that they conform to the requirements of this Ordinance and work to improve publicly accessible information databases to ensure consistency, equity, timing, and extent of noticing for Meetings and other matters of public interest.

G. Right to notice regarding matters that may impact the physical environment shall be equivalent for residential and commercial tenants and property owners.

H. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for Meetings on said projects.

**Section 151 Public Records Index.**

A. The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and Legislative Bodies. The Index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what periods of retention. The Index shall be sufficient to aid the public in making a focused inquiry regarding Public Records. The Index shall be posted on the City's website and available in written form in the City Clerk's office and in each Berkeley public library.

B. The Index shall classify each type of record as either: (1) "Open," meaning accessible to the public without exception and subject to immediate disclosure; or (2) "Partially Open," meaning possibly containing some exempt content, such that review is required; or (3) "Closed," meaning that disclosure of the document is prohibited by State or Federal law. Each classification of a record as "Partially Open" or "Closed" shall identify the specific legal authority relied upon in assigning that classification.

C. The Custodian of Records shall be responsible for preparing and maintaining the Index. He/she shall report on the progress of developing the Index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of this Ordinance. In identifying the types of records to be maintained, each department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed Index shall be reviewed by the Commission and submitted for approval by the City Council.

D. The Index shall be periodically reviewed by Staff and Commission for accuracy and completeness.

E. A list of any change in the Index shall be noted on the City's website and posted in each Berkeley public library for a period of at least three (3) months.

**Section 152 Public Review File.**

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

**Section 153 Records of Officials: Appointment Calendars and Statements of Economic Interest.**

A. All documents connected with City business that are prepared, received, or maintained by any

elected or appointed City official, while in office, or by every department head are the property of the City. The originals of these documents shall be maintained in a professional manner and disclosed consistent with the Records Retention Ordinance and this Ordinance.

B. A calendar shall be maintained by all elected officials, the City Manager, the City Attorney, the Library Director and Trustees, the Rent Stabilization Program Director, and all department heads, listing by date, place, and time, all City-related meetings, appointments they make and meetings and tele- or video conferences that they attend. Such calendars shall be Public Records subject to disclosure, except for those parts, if any, specifically exempted by State and Federal law and shall be posted to the City's website prior to the close of business each week.

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

**Section 154 Contributions to the City.**

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

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

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

**Section 155 Reports of Lobbying.**

A. Any City Lobbyist shall file a quarterly report with the City Clerk, which shall be a Public Record. Each quarterly report shall identify all City-related financial expenditures by the Lobbyist, including name of each recipient, date, and the action that the Lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be cause for termination of the contract for representation. The City Clerk shall post on the City's website a direct link to the disclosure forms that the City's Lobbyists file with the appropriate State and/or Federal agencies.

B. Special Interest Lobbyists shall file a report with the City Clerk, specifying by City-related issue all the dates, places, and names of the members of the Legislative Body they have contacted and the direct and indirect compensation received from their clients for such matters. This report shall also include, but not be limited to, fundraising activities conducted on behalf of elected City officials, contributions to persons and organizations, and payments received for services as a consultant to any City Legislative Body. No person who qualifies as a Special Interest Lobbyist shall contact any elected official of the City without first registering with the City Clerk and complying with the disclosure requirements of this Section. The City Council may establish a registration fee.

**Section 156 Types of Information Accessible by the Public.**

It is the intent of this Ordinance to provide for the disclosure, upon request, of all Public Records in printed or electronic form to the maximum extent permitted by State and Federal law and, wherever permitted, to waive the City's right under State law to withhold disclosure in certain circumstances. Accordingly, disclosure shall be made in all cases where not specifically forbidden by State and Federal law, including but not limited to, the following:

A. Drafts and memoranda or written communications or drafts thereof between Staff, members of Legislative Bodies, and/or third parties shall be subject to disclosure at the time a final recommendation is delivered. Draft versions of an agreement being negotiated between the City and third parties must be preserved and made available for public review beginning fifteen (15) days prior to the presentation of the agreement for approval by a Legislative Body.

B. Litigation records and attorney-client communications shall not be subject to disclosure to the extent that they are protected from disclosure by State and Federal law. Other communications relating to the subject matter of such protected communications are Public Records, including without limitation pre-litigation claims against the City, records received or created by a department in the ordinary course of business that were not subject to the attorney-client privilege at the time of their creation, and amounts paid by or to others in connection with claims by or against the City. When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any settlement shall be subject to disclosure. No attorney representing the City shall solicit or agree to any settlement provision that would restrict disclosure of terms or communications between each party after settlement and any such provision shall be void.

No communication with a legal advisor to the City shall be exempt from disclosure as confidential attorney-client communication to the extent that it concerns an actual or potential conflict of interest, analyzes a proposed legislative position or administrative action of the City, or reports on the status of negotiations relating to a claim by or against the City.

C. Personnel Records, including but not limited to, those listed below shall be disclosed, except for those portions which are exempt from disclosure under State or Federal law.

1. Job descriptions.
2. Salary, benefits, and overtime pay provided to each current employee by name and position.
3. Pension and benefits provided to each retired employee by name and position.
4. Communications with a recognized employee organization.

D. Law enforcement reports prepared by the Berkeley Police Department are Public Records and must be disclosed, except as exempt under State and Federal law, particularly as related to juveniles, domestic violence, and sex-related crimes.

1. Identifying information of a victim of a crime of sexual assault shall not be made public without the express written permission of that person.
2. Parts of non-exempt police reports may be redacted to exclude material that would endanger the safety of a person or compromise the completion of an investigation. When such a

redaction is made, a written explanation shall be provided.

E. Responses and other financial and qualifying documents relating to contracts, bids, and Requests for Proposals or Qualification shall be open to inspection immediately after the deadline for submittal has closed or the City has decided not to proceed.

F. All records concerning potential environmental impacts generated or received by the City, including but not limited to documents resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), for projects wholly or partially within the City of Berkeley shall be made available to the public in any requested available format in accordance with Section 161.

**Section 157 Access to Records.**

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of State or Federal law. If the record requested contains both exempt and non-exempt information, then the exempt information shall be masked, but not removed and the masked portion shall be keyed by footnote or other reference to the justification for withholding the information.

B. Nothing in this Section shall require programming a computer to respond to a request for information or to release information that would violate a licensing agreement or copyright law, provided that the provision in the agreement or legal authority precluding release is quoted and cited to the requestor.

C. The intent of this provision and its requisite open standards are to ensure the accessibility of all City information, which is not specifically exempted from public disclosure by State or Federal law. Technology will change over time; standards, standards bodies, and operating systems are noted here for reference only. To provide accessibility of information in electronic media, the City shall as soon as possible:

1. Use open, non-proprietary, cross-platform, standards-based text, image, audio, video, and other data exchange formats on public-facing computers and information systems.
2. Make an alternate format available when commercial, non-standard, or otherwise platform-listed formats must be used.
3. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration (Section 508, <http://section508.gov>).
4. Avoid binary document formats (such as image-based PDF or OOXML) when ASCII (PDF/A or ISO-8859-1) or other text-based formats are available. Rich-text documents should contain all fonts needed for their viewing. All document formats should be easily and entirely indexable for accurate searching.
5. Make audio available for both download and streaming using open, cross-platform, standards-based formats (such as OGG or MP3), which can be accessed from any computer (having Windows, Mac, Linux, Unix operating systems) or portable device (PDA or cell phone).
6. Use open, cross-platform, standards-based image formats such as those published by the ISO

and W3C (PNG, JPEG).

7. Make video available for downloading and streaming using open, cross-platform, standards-based formats (such as Theora or MPEG). Make the audio portion of video-streams available separately.
8. Maintain websites and URLs with fixed and logical tree structures that do not change unnecessarily. Once posted, data should remain online.
9. Prohibit the use of tracking technologies (such as cookies, xss, and Google Analytics) in accessing public information.
10. Avoid web content-types that are not compatible across browsers, including older browsers (avoiding Flash and platform or browser-specific HTML, CSS, and Javascript).
11. Make substantive website changes track able by title and synopsis in an open, cross-platform, standards-based journal format (such as RSS or Atom). Update these journals at least once per business day.
12. Index large files and make available by subsection, so that all elements can be downloaded or viewed on speed or size-limited platforms. Subsections should be no more than ten (10) pages of text and should be identifiable and accessible from their larger parent document. Audio and video files must have separate text indexes so that subsections can be quickly located and navigated to whether streamed or downloaded.

D. Access to non-exempt City information should not require action by Staff. Documents such as Agendas, minutes, bids, and requests for bids, should be digitized or converted to an open digital format (if necessary) and placed online when received. Staff and the public shall access non-exempt data from the same source. Exempt data should continue to be stored on separate internal computer systems.

**Section 158 No Public Interest Balancing Test or Deliberative Process Privilege.**

Neither the City nor any officer, employee, agent, or elected or non-elected official may assert California Public Records Act Section 6255 and/or its successor Sections or any other provision of law that prohibits disclosure as the authority for withholding any information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure or on a claim of “deliberative process” privilege. Any denial of access to information must be based on an express provision of this Ordinance or on a specific exemption provided by State or Federal law.

**Section 159 Process for Obtaining Records.**

A. A person seeking access to information need not state his/her identity, reason for making the request or the use to which the information will be put, unless such disclosure is required by State or Federal law. However, for redress under this Ordinance, a person seeking such access is encouraged to make his/her request, in writing.

B. A Custodian of Records shall assist a requester in identifying the existence, form, and nature of the information sought. When requested, this Custodian shall provide within three (3) business days following receipt of the request, a written statement as to the existence, quantity, form, and nature of the

records relating to a particular subject or question with enough specificity to enable the requester to identify and request the relevant records.

C. A Custodian of Records shall permit all portions of a Public Record that are not exempt from disclosure to be inspected by any person and shall provide copies thereof upon request.

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

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

F. If the information requested involves more than one office or department, then the request shall be forwarded to the City Manager. The City Manager or his/her designee shall coordinate the timely response to the requester in accordance with this Ordinance.

G. If The Custodian of Records reasonably believes that part or all material requested is not a Public Record, The Custodian shall state in writing the basis for such denial within three (3) business days of receiving the request and shall, to the extent possible, suggest alternate ways of obtaining the desired information. The written explanation shall cite all facts and authority relied upon in denying the request.

H. Where State or Federal law gives the City discretion to withhold a particular Public Record, the City shall waive its right to withhold the record, except as specifically provided for in this Ordinance.

**Section 160 Request for Waiver of Confidentiality.**

A. Whenever The Custodian of Records asserts a justification for nondisclosure of a Public Record, an exemption based upon the interests of the individual or entity, he/she shall cooperate with the requester's efforts to communicate with the individual or entity using a blind-mailing process. This process includes the following elements:

1. The requester provides postage-paid envelopes for each of the individuals or entities sought to be contacted, with each envelope containing a letter explaining why the information is being sought and asking the person or entity to contact the requester, and
2. The City maintains confidentiality of the information by affixing all reasonably accessible addresses of involved subjects and mailing the envelopes, after including in each a statement that the subject of the information request must be legally competent to waive his or her privacy interests, but need not do so, and that the City is a disinterested party merely facilitating communication between citizens on matters that may be of public or private interest and is not liable for the result of any such communication. If the subject of the information request is legally competent and signs a privacy waiver for all or part of the information withheld, the City shall promptly release the information.

B. The City shall not be liable for any consequences of fulfilling its obligations under this Section.

**Section 161 Fees for Records.**

A. No fee shall be charged for making Public Records available for review.

B. No fee shall be charged for documents routinely produced in multiple copies for distribution to the public, e.g. Meeting Agendas.

C. Fees for documents copied on the order of the requester shall not exceed bulk rates charged by commercial copying services within the City for comparable services.

D. Copying of Public Records stored in electronic form shall be made available to the public in any medium at a charge no greater than the cost of the medium on which it is duplicated. Inspection of such records shall be at no cost.

E. Large documents that many members of the public are likely to want to study, such as City budgets and environmental review documents, including but not limited to those related to the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available for inspection at designated City offices and each Berkeley public library, where copies shall be made available for borrowing by the public.

### **Enforcement**

#### **Section 162 Sunshine Ordinance Review Commission.**

A Sunshine Ordinance Review Commission ("the Commission") is established by this Ordinance. The responsibilities of the Commission include:

A. Ensuring that the City's business is conducted in full view of the public to the maximum extent allowed by State and Federal law and this Ordinance;

B. Educating members of Legislative Bodies, Staff, and the public on the role of Sunshine in the City of Berkeley; and

C. Advising the Council and Staff on open government issues and suggest municipal ordinance changes as appropriate.

#### **Section 163 Commission Membership.**

A. The Commission shall consist of a number equal to the number of City Council members, one each appointed by every member of the City Council.

B. Each appointee shall be a resident of the City of Berkeley; but may not be an employee or volunteer in any City office, department, an elected official's office, or a contractor, vendor, or the holder of an ownership interest in an entity that is a contractor or vendor of the City. In addition, an appointee shall not have committed an ethics violation that has led to loss of a professional license or been convicted of a felony.

C. All appointees shall have completed an application form which shall be developed by the City Clerk within fifteen (15) days of the effective date of this Ordinance, and modifiable thereafter by the Commission. Such application shall include: i) a listing by the applicant of specific qualifications showing a demonstrated interest in-participatory democracy in local government, ii) a statement signed by the applicant that he/she has read, understands, and supports the Ordinance and pledges to make decisions that are independent of the appointer and to work the number of hours required to ensure the Ordinance is fairly

and fully implemented, and iii) a personal statement on why the applicant wants to serve on the Commission. All Commission applications are Public Records.

D. During the period of initial appointments and thereafter whenever there is a vacancy, the City Clerk shall publish notice of the vacancy in all Community Newspapers and on the City's website. The City Clerk shall maintain a standing file of individuals who have submitted applications and groups that have requested to be notified of vacancies. When a vacancy arises, the City Clerk shall promptly notify all contacts in the standing file. All applications received by the City Clerk from any source shall be submitted to the Mayor and Council Members for their consideration.

E. There shall be no term limits for Commissioners. Terms shall run concurrently with the appointing Council Member's term. Within sixty (60) days of the effective date of this Ordinance and thereafter after taking office, each Council Member shall appoint a new Commissioner or re-appoint an existing Commissioner, failing which the current Commissioner shall be deemed to be automatically reappointed. Once appointed or re-appointed, no Commissioner may be removed from office except in accordance with Section 164.

F. Substitute appointments are prohibited.

**Section 164 Commission Vacancies and Removal for Cause.**

A. A Commissioner's service shall terminate upon:

1. Death or voluntary resignation.
2. Conviction of a felony.
3. Unexcused absence from three (3) consecutive, properly noticed regular Meetings of the Commission or from 50% or more of all regular Meetings in a six-month reporting period as provided for in the City of Berkeley Commissioners' Manual.
4. Expiration of the term of office of the appointing Council Member.

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

1. Is no longer able or willing to perform the duties of a Commissioner, or
2. Has failed to meet one or more of the conditions described in Sec. 163 B and C, or
3. Has participated in and voted on an issue that constitutes a material conflict of interest for the Commissioner, or
4. Has communicated, except in a public Meeting, with members of a Legislative Body regarding the merits of a disputed matter that is currently before the Commission or its Enforcement Committee.

C. Where a vacancy has been created for any of the reasons stated in this Section, it shall be filled within thirty (30) days by the appointing Council Member from the pool of applicants for Commission positions maintained by the City Clerk as described in Section 163. Failure to do so will result in the Commission making the appointment within thirty (30) days after the Council Member fails to make an

appointment.

**Section 165 Organizational Period.**

A. The first Meeting of the Commission shall take place within ninety (90) days after the Ordinance is enacted into law. By the conclusion of the first Meeting, the Commission shall, by majority vote, elect a Chair and a Vice Chair, each to a term of one (1) year. Thereafter, at the conclusion of each Chair's and Vice Chair's term, the Commission shall elect replacements. No Chair or Vice Chair shall serve for more than two (2) consecutive terms. Should a Chair or Vice Chair leave the Commission, the Commission shall elect a new Chair or Vice Chair to finish that term.

B. Within thirty (30) days of the election of the Chair and Vice Chair, the Commission, by a majority vote, shall appoint three-member Enforcement Committees (each hereinafter referred to as a "Committee") so that each Commissioner shall serve on at least one Committee and the duties of the Committees shall be divided in an equitable manner.

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

D. Within thirty (30) days of its first Meeting, the Commission shall develop a Sunshine Alert Form for use in accord with Section 140.

**Section 166 Commission Staffing.**

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

**Section 167 Role of City Attorney.**

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

B. All communications to or from the City Attorney's Office with regard to this Ordinance, including but not limited to petitions, requests for opinion, and opinions, shall be Public Records unless specifically determined to be subject to the attorney-client privilege.

**Section 168 Commission Legal Counsel.**

The City Attorney shall, upon request, provide legal counsel for the Commission. If a majority of the Commission or the City Attorney determines that there is a conflict of interest, which the Commission declines to waive, the City shall, at the Commission's request, provide the reasonable fees and expenses of outside counsel chosen by the Commission, from the City Attorney's budget to retain outside counsel.

**Section 169 Enforcement: General Procedures.**

A. In addition to any other remedies available under the law and subject to procedures established by the Commission in a form consistent with the provisions hereof, any interested party may file a petition for

relief with the Commission alleging a violation of the Ordinance.

B. Petitioner and the City as respondent shall appear at the initial hearing of any petition brought hereunder or appeal thereof and may be represented by counsel. Each shall be given the opportunity to present evidence and argument and to cross-examine any witness for the other party. All participants shall be under oath.

C. Such petitions shall be heard by an Enforcement Committee at a public Meeting within seven (7) business days of receipt, or at a later date agreed to by petitioner and respondent. -

1. The Committee shall render a written decision within five (5) business days of the close of the hearing and inform all interested parties of the decision. Unless appealed, the decision of the majority of the Committee shall be deemed to be that of the Commission as a whole.
2. Where such decision is made by the Enforcement Committee, any dissenting member thereof or the petitioner or respondent may file a written appeal to the Commission within five (5) business days of the issuance of the notice decision.

D. The Commission shall hear such appeal at its next scheduled public Meeting that satisfies the notice requirements in Subsection F below has been given.

1. By a majority vote, the Commission shall issue its decision on an appeal based on this Ordinance, the record that was made before the Commission, and information received at the Meeting.
2. If the Commission fails to reach a decision within five (5) business days, the initial decision by the Committee shall stand.

E. Decisions of the Commission may be appealed to the City Council.

1. Any such appeal must be filed with the City Clerk within five (5) business days of the issuance of the notice of decision; otherwise the decision of the Commission shall stand.
2. Consideration of any such appeal shall not be moved to the Consent Calendar.
3. Any decision made by the Council regarding an appeal shall be based on explicit findings, this Ordinance, and the record.
4. If the Council overturns the Commission's decision, the Commission may review the decision to determine further action.

F. Commission or Committee Meetings to review petitions and appeals require at least seventy-two (72) hours public notice which shall be given in writing to the petitioner and The Custodian of Records. Other deadlines for Meeting notices and Agendas specified in this Ordinance do not apply to Sunshine Ordinance enforcement procedures due to their time-sensitive nature and the necessity to conduct City business in a timely way.

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

H. The Commission shall prepare an annual report of alleged violations of the Ordinance brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation,

the relief sought by each petition, the disposition or current status thereof, and the location of all records relevant to each petition. With advance notice to The Custodian of Records, the Commission may also request a tally of records requests for statistical or comparative purposes.

**Section 170 Enforcement: Public Records Access Denials.**

A. Any one who feels the City has not fully complied with a request for Public Records may file a written petition with the Commission. The merits of such petition and of any appeal shall be determined in the manner described in Section 169.

B. The Commission shall immediately forward a copy of the petition to The Custodian of Records.

C. Where a document has been reasonably identified and is in City custody, it shall be presumed to be a Public Record, and A Custodian of Records or The Custodian of Records shall have the burden of overcoming such presumption.

D. If the determination is that the record is public, and no appeal has been taken, A Custodian of Records or The Custodian of Records shall comply with the request immediately.

E. If A Custodian of Records or The Custodian of Records fails to comply with a decision requiring production within three (3) business days of its issuance, any interested party or the Commission itself may notify the City Attorney and/or District Attorney, who may take further action as appropriate.

F. Staff who have used the procedures and definitions set forth in this Ordinance shall not be disciplined for complying with a request for Public Records.

**Section 171 Enforcement: Public Meeting and Noticing Violations.**

A. Any interested party, within seven (7) business days of an alleged violation of the Meetings provisions of this Ordinance, may file a petition with the Commission. The merits of the petition or of any appeal shall be determined by the Commission or Enforcement Committee, as described in Subsection 169.

B. Where the Committee or Commission finds that an action has been taken in violation of this Ordinance and available appeal rights have been exhausted, the City shall suspend implementation of the action pending judicial review or take a new action in conformance with this Ordinance. Nothing herein shall limit the jurisdiction of the Court on review to award interim equitable relief at the request of either party or on its own motion.

**Section 172 Judicial Review.**

A. A petitioner, the Commission, and/or the City may seek a Writ of Mandate from the Superior Court of the State of California for the County of Alameda regarding issues including but not limited to a petition to identify and/or produce Public Records; a legislative or other action allegedly taken in violation of the provisions of this Ordinance; a timely decision that has not been rendered; or an allegation that the City has failed to comply with a decision made by a Committee or the Commission. The Court's review may be *de novo* and based on the full record maintained by the Committee and/or Commission. Where a violation is found, the Court may award appropriate relief which could include the voiding of any legislative or other action taken in violation of this Ordinance.

B. The provisions of Section 168 shall govern attorney's fees paid by the City in any legal action

taken before the Superior Court by the Commission pursuant to this Ordinance. Other petitioners, if partly or fully successful, shall be awarded reasonable attorneys' fees. The City may be awarded its fees only if it is successful in defeating a petition found to be frivolous.

C. In the event of an action under Section 172 or related to a Closed Session, allegedly privileged tapes shall be discoverable by a plaintiff subject to the respondent's right to seek a protective order and pending review by the court *in camera* to determine the conditions under which production may occur.

D. The remedies provided under this Section shall in no way limit any person's use of other available administrative or judicial remedies.

**Section 173 Penalties.**

The willful failure of any elected official or City employee to discharge any duties imposed by any State or Federal statute or this Ordinance shall be punishable within the range of the following provisions:

A. A complaint to the Alameda County District Attorney or other appropriate State or Federal authority.

B. Disciplinary action up to and including termination of employment.

C. Fines as set forth in The City of Berkeley Charter, Section 114 and BMC Sections 1.20.010 and 1.20.020 and/or their successor Sections, for either a misdemeanor or infraction at the discretion of the Commission.

**Severability**

**Section 174 Severability.**

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

To the extent this Ordinance directly or indirectly incorporates provisions of State law, and such law is repealed or changed in a way that materially limits the rights of the people under Sections 6250 - 6276 or 54950 - 54963 of the California Government Code, this Ordinance shall be construed as continuing in full force and effect to the fullest possible extent, including as a part hereof the relevant portions of State law as they existed on the effective date of this Ordinance.

**End of Chapter**