



**CITY OF ENCINITAS
CITY COUNCIL
AGENDA REPORT
Meeting Date: June 10, 2009**

TO: Mayor and City Council
VIA: P. E. Cotton, City Manager *PE*
FROM: Bob McSeveney, Management Analyst *BM*
SUBJECT: Review of California Local Government "Sunshine Ordinance" Practices

BACKGROUND:

As an element of the FY 2008/09 City Council Goals/Work Tasks, Council gave direction to consider enhancements to local open government practices (sunshine ordinance). The Ralph M. Brown Act (Govt. Code 54950 et seq.) and the California Public Records Act (CPRA) (Govt. Code 6250 et seq.) provide the statutory framework by which California's 480 city governments, 56 county governments, and other local agencies make meetings and records accessible to the public. Although State law governs these access rights, local governments are free to enact ordinances that exceed State law. The first to do so was San Francisco in 1993, giving it the title "Sunshine" Ordinance. To date six cities and one county in California have adopted enhanced open government laws, five of which are titled "Sunshine" ordinance. The six city ordinances were examined in preparation of this report.

ANALYSIS:

Generally, the Brown Act was created to ensure government jurisdictions in the State of California give the public adequate notice, information and access to public meetings, and to ensure that public business is conducted in a public forum. The California Public Records Act ensures members of the public have timely access to written documentation or recordings relevant to the conduct of public business. Both of these laws establish minimum standards, but municipalities may exceed the requirements of the State law. These standards may be exceeded in practice through policies and procedures or by ordinance. The six cities in California that have adopted open government ordinances are Benicia, Milpitas, Oakland, Riverside, San Francisco and Vallejo.

Either by following State law, following City policy or in practice, the City of Encinitas conducts public business in public and often exceeds State law. Attachment A summarizes the current open government practices in Encinitas. The subjects listed are either addressed in State law, or are open government practices with no State or federal mandates. The last column titled "City Ordinances Exceeding State Law (Sunshine Ordinance)" examines the existing "sunshine" ordinances for

comparison with Encinitas practice. Ordinance specifics are listed by city, if applicable. "None" indicates the "sunshine" ordinances did not exceed State law on that subject.

In practice, the City exceeds State law in 15 of the 28 subjects listed in Attachment A. The last four subjects on the table are "sunshine" practices that at least three "sunshine" cities have codified for which there is no State or federal requirement. There are other unique "sunshine" practices than those listed, but the table would be much longer so the threshold of three cities was used to manage the data. The six "sunshine" ordinances examined ranged in length from one-page for the City of Riverside to 39-pages for the City of San Francisco, with an average length of 20-pages.

In many instances, State law was repeated or referenced but not exceeded in the "sunshine" ordinances, hence the qualification "City Ordinances Exceeding State Law" in Attachment A. Since all public agencies are required to comply with open government State law, staff inferred that only ordinance subjects exceeding State law would give them the qualifier "sunshine".

FISCAL AND STAFF IMPACTS:

None. This is an informational report.

RECOMMENDATION:

City Council accepts the agenda report, and provides further direction as desired.

ATTACHMENTS

- A. Encinitas Open Government Practices Table.

Attachment A – Encinitas Open Government Practices

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Regular meeting noticing	Brown Act (CA Govt Code 54954) - 72 hour notice.	144 hour notice.	Benicia 144 hr., Oakland 240 hr.
Special meeting noticing (includes closed sessions)	Brown Act (CA Govt Code 54956) – 24 hour notice.	24 hour notice.	Benicia 72 hr., Oakland 48 hr.
Adjourned and continued meetings and hearings noticing	Brown Act (CA Govt Code 54955.1) – 24 hour notice.	24 hour notice.	None.
Emergency meeting noticing	Brown Act (CA Govt Code 54956.5) – 1 hour or more notice to the press.	1 hour or more notice to the press.	None.
Advance noticing requirements for regular public meetings	Brown Act (CA Govt Code 54954) – standing meeting times by ordinance.	2 nd , 3 rd , 4 th Wednesdays of every month at 6:00 pm (Encinitas Ordinance 2001-21).	None.
Public rights with respect to Brown Act shall be included on all notices and agendas	No legal state or federal mandate.	Brown Act rights are printed at the beginning of each City Council agenda document.	Milpitas and Benicia post public rights in chambers.
Language used on agenda reports	No legal state or federal mandate.	City policy G06 specifies clear, concise language with short sentences. Use of technical terms should be minimized, and acronyms explained.	Milpitas, SF and Vallejo also target “average” intelligence.
Regular meeting minutes	CA Govt Codes 36814 and 40801 – written minutes required.	Draft minutes available for review 6 working days after Council meeting. Adopted minutes available no later than 3 working days after mayor’s signature.	Milpitas (10/10) days after, Oakland (10/5) days after, SF (10/10) days after.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Closed meeting minutes	No legal mandate to record or take written minutes.	City Resolution 99-65 requires the City Clerk to take confidential written minutes.	Benicia, Milpitas, Oakland, Riverside and SF audio-record closed sessions.
Adopted minutes available on the Agency's website	No legal state or federal mandate.	Adopted Council meeting minutes are posted on the City's website no later than 72 hours after mayor's signature.	Benicia and Oakland in 120 hrs; Milpitas and SF in 240 hrs.
Agenda-related correspondence available for public inspection prior to public meeting	Brown Act (CA Govt Code 54957.5) – make available if less than 72 hours prior to the meeting.	Copy given to Council and placed in public viewing binder at the counter as received when less than 144 hours prior to the meeting.	Oakland if less than 240 hrs prior; Benicia if less than 144 hrs prior to the meeting.
Subscriber requests to receive agendas or agenda-related materials	Brown Act (CA Govt Code 54954.1) – must be mailed at the time the agenda is posted, at least 72 hours prior to meeting.	Website alert sent to subscribers when agendas are posted, and is available on City's website 144 hours prior to Council meeting.	Oakland 240 hrs prior; Benicia 144 hrs prior to the meeting.
Staff report availability	Brown Act (CA Govt Code 54957.5) - staff reports related to an agenda item must be made available to the public once distributed to the majority of Council, at least 72 hours prior to the meeting.	Available on City website 144 hours prior to the meeting, and available at the meeting. If report is submitted after website posting, report placed in public viewing binder at the counter as received if 144 hours or less prior to the meeting.	Oakland if less than 240 hrs prior; Benicia if less than 144 hrs prior.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Right to speak at public meetings	Brown Act (CA Govt Code 54954.3) – every agenda shall provide opportunity for the public to address the legislative body on any agenda item or any item of interest to the public.	Council Policy C003. Procedure printed on each Council agenda. Generally, three (3) minutes per speaker per agenda item. Currently Council limits non-agenda comments to 15 minutes total for all speakers.	None. Benicia (5 min), Milpitas (3 min), Oakland (2 min), SF (3 min).
Right to conduct closed sessions of City Council	Brown Act (CA Govt Code 54956.7 to 54957.0) – based on advice from legal counsel.	City conducts closed sessions to address certain issues including: litigation (existing, anticipated); negotiations (real property, labor); liability claims; personnel issues; and threat to public services or facilities.	None.
Draft documents	CPRA CA Govt Code 6254(a) – Generally exempt from public request unless retained in the normal course of business.	Subsequent to a specific case analysis, the City generally does not make draft documents available to the public, although draft minutes from the prior meeting are posted in each agenda packet. Proposed budgets (drafts) are made available to the public during the deliberative process, but are not retained after final budget adoption.	SF only exempts recommendations of the author in preliminary drafts. Milpitas specifically excludes certain legal opinions and proposed budgets from exemption. Oakland excludes proposed budgets from exemption.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Documentation of Agency compliance with CPRA	No legal state or federal mandate.	City Clerk logs all public records requests and responses.	None.
Agenda availability	Brown Act (CA Govt Code 54954.2) - agendas must be posted for public review at least 72 hours prior to the public meeting.	Agendas and agenda packets are available for public review 144 hours prior to Council meeting.	Oakland 240 hrs prior; Benicia 144 hrs prior.
Posting of Agency laws and policies on Agency website	No legal state or federal mandate.	Encinitas Municipal Code is on the City's website.	Benicia, Milpitas, Oakland, SF, Vallejo.
Engineering or architectural drawings records requests	CA Health & Safety Code 19851 - requires 30-day period to notify engineer/architect.	City requires 30-day period to notify engineer/architect.	None.
Document Retention Policy	CA Govt Code 34090.	City records retention schedule amended on an as-needed basis.	None.
Litigation material	CPRA (CA Govt Code 6254(b)) – Certain records pertaining to pending litigation are not required to be disclosed until final adjudication or settlement.	Certain records available upon public records request subsequent to final adjudication or final settlement.	Draft settlement agreements in SF and Milpitas disclosed 10 days prior to approval; Vallejo 3 days prior to approval.
California Public Records Act exception	CPRA (CA Govt Code 6255) – Non-disclosure of certain documents when justified.	City Council appointment calendars and City cellular phone records available to the public upon request.	Milpitas makes cellular phone records and calendars available.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Regular meeting recordings	Brown Act (CA Govt Code 54953.5) - no requirement to record meetings but if a recording is made, it may be destroyed after 30 days.	Streaming video taken for City Council and Planning Commission meetings, audio recordings taken for other bodies. All recordings are retained permanently in the course of City business.	Benicia and Oakland retain recordings 4 yrs; Milpitas retains recordings 10 yrs.
Ethics training for elected officials	CA Govt Code 53235 - 2 hrs ethics training every 2 years.	City implements State law by Reso 2007-04; 2 hrs training every 2 years.	Benicia and SF annual ethics training.
Statements of Economic Interest	Political Reform Act (CA Govt Code 87100).	Public Officials and government officers file Form 700. (194 filers in Encinitas).	None.
Records request response time	CPRA (CA Govt Code 6253) - no later than 10 days.	Generally, provide requested records no later than 10 days after request.	Oakland 3 days, SF 10 days.
Records request extension	CPRA (CA Govt Code 6253) - not to exceed 14 days under unusual circumstances.	Administrative policy G014 - under unusual circumstances, not to exceed 10 days.	None.

Attachment A – Encinitas Open Government Practices (cont'd)

Subject	Applicable Law	Encinitas Practice	City Ordinances Exceeding State Law (Sunshine Ordinance)
Willful failure to comply with Brown Act, CPRA or Sunshine Ordinance shall be official misconduct	No legal state or federal mandate.	Encinitas does not have a Sunshine Ordinance, but complies with state and federal law as applicable.	Milpitas, SF, Vallejo.
None of the following shall be exempt from disclosure: years of academic study, degree(s) and major or discipline; years of employment in private and/or public sector; other non-identifying particulars as to experience credentials, aptitudes; employment resume minus personal information	No legal state or federal mandate.	Department directors post a biography on the City's website. For all other staff, the City provides name, position, salary classification and benefits as requested.	Benicia, Oakland, SF.
Complaint procedure for Sunshine Law violations	No legal state or federal mandate.	Not Applicable. Encinitas does not have a Sunshine Ordinance.	Benicia, Milpitas, Oakland, SF, Vallejo.
An Open Government Commission advises City Council on, and assists in implementation of the Sunshine Ordinance	No legal state or federal mandate.	Not Applicable. Encinitas does not have a Sunshine Ordinance.	Benicia and Milpitas. But Oakland has a Public Ethics Commission and San Francisco has a Sunshine Ordinance Task Force.