



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report
AGENDA ITEM NO.: 1

DATE: October 23, 2018

TO: City Council

FROM: Alexander Nguyen
City Manager

SUBJECT: Sunshine Ordinance (5/10/5)

CONTACT: Alexander Nguyen, City Manager
Alexander.Nguyen@oxnard.org, 805-385-7430

RECOMMENDATION:

That City Council approve the first reading by title only and waive further reading of an ordinance adding Article IV to Chapter 2 of the City Code to establish local standards to ensure public access to open meetings (a Sunshine Ordinance).

BACKGROUND

The Ralph M. Brown Act, more commonly known as the “Brown Act,” is California’s open meetings law for local government. The Brown Act is found in the California Government Code commencing with Section 54950. In a nutshell, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations. Although the Brown Act provides for certain open meetings laws, local agencies are free to enact ordinances that provide greater rights of access than state law. These ordinances are commonly called “sunshine” ordinances.

DISCUSSION

The goal of the proposed Sunshine Ordinance is to expand the noticing and materials publication time for City meetings, thereby providing the public greater access and time to weigh in on City business.

The Brown Act requires local governments to publish notices, agendas, and reports 72 hours, or three days, in advance of a regular meeting. The City’s current practice has been to publish five

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days in advance of City Council meetings and three days in advance of Boards and Commissions and Council Task Force meetings.

The Sunshine Ordinance expands noticing and publication of all related materials for a City Council Meeting to twelve (12) days in advance of the meeting. It expands noticing and publication of all related materials for special City Council meetings and for all City Boards, Committee and Commission meetings to seven (7) days.

There are exceptions in the ordinance for later publication of certain urgency items, where the public interest and necessity demand the immediate expenditure of public money to avoid harm to or to safe-guard life, health or property, or to mitigate severe economic expenses, certain grant opportunities, consideration of final maps or parcel maps, ceremonial items and closed session items.

Under the Sunshine Ordinance, the public will have ample opportunity to review agenda reports, understand the government's activities, and to communicate its support, concerns or questions to its elected and appointed representatives.

Likewise, the elected and appointed officials will also have ample time to review agenda reports, ask staff clarifying questions, discuss issues with their constituents, and ultimately make more informed decisions.

This Sunshine Ordinance codifies the City of Oxnard's public policy concerning public participation in the deliberations of the City's legislative bodies. It is an effort to expand our citizens' knowledge, participation and trust. As procedures of government change and evolve, so also must the laws designed to guarantee the process remains genuinely open and accessible.

The reason to have a sunshine ordinance is simple: it demonstrates City Hall's commitment to enhancing public participation.

STRATEGIC PRIORITIES

This agenda item supports the Organizational Effectiveness strategy. The purpose of the Organizational Effectiveness strategy is to strengthen and stabilize the organizational foundation of the City in the areas of Finance, Information Technology, and Human Resources, and to improve workforce quality while increasing transparency to the public.

FINANCIAL IMPACT

None at this time.

Prepared by Alexander Nguyen, City Manager, Jason Zaragoza, Deputy City Attorney, and Michelle Ascencion, City Clerk.

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ATTACHMENTS:

ATTACHMENT A: SUNSHINE ORDINANCE

CITY COUNCIL OF THE CITY OF OXNARD
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
AMENDING THE OXNARD CITY CODE BY ADDING ARTICLE IV (SUNSHINE
ORDINANCE) TO CHAPTER 2 ESTABLISHING LOCAL STANDARDS TO
ENSURE PUBLIC ACCESS TO PUBLIC MEETINGS

WHEREAS, Elected City officials, commissions, committees, boards, advisory bodies, task forces and other City of Oxnard (the “city”) legislative bodies exist to conduct the people’s business. This Sunshine Ordinance is intended to assure that the deliberations of these bodies and the city’s operations are in full view of the public; and

WHEREAS, it is the goal of this Sunshine Ordinance to ensure that residents of Oxnard have timely access to information and an opportunity to address the various legislative bodies of the city prior to governmental decisions being made; and

WHEREAS, this ordinance clarifies and supplements the Ralph M. Brown Act to ensure that the people of the city are fully informed so that they retain control over the instruments of local government in their city.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES
ORDAIN AS FOLLOWS:

PART 1. Article IV is hereby added to Chapter 2 of the Oxnard City Code to read as follows:

“ARTICLE IV SUNSHINE ORDINANCE

SEC. 2-220. FINDINGS AND PURPOSE

Democracy in our representative form of government requires that the public have an opportunity to understand the government’s activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner. This Sunshine Ordinance codifies the city’s public policy concerning participation in the deliberations of the city’s policy bodies, and clarifies and supplements the Brown Act. It is an affirmation of good government; and a continued commitment to open and democratic procedures. It is an effort to expand our residents’ knowledge, participation and trust. As procedures of government change and evolve, so also must the laws designed to guarantee the process remains visible.

SEC. 2-221. DEFINITIONS

- (A) **AGENDA** - A document that informs the public about a meeting, published in advance of the meeting, which at a minimum: (i) identifies the policy body conducting the meeting, (ii) specifies the time and location of the meeting and (iii) lists each item of business to be discussed or transacted and describes the proposed action for such item.
- (B) **AGENDA PACKET** - A complete set of materials that includes the agenda and its relevant supporting documents.
- (C) **BROWN ACT** - Government Code sections 54950 et. seq., as those sections may be amended from time to time.
- (D) **CLOSED SESSION** - A meeting or portion of a meeting that begins with a public comment period, followed by a session that excludes the public as permitted by state law, and ends with an open session at which a public report is made to the extent required by state law.
- (E) **MEETING** - Shall have the same meaning as defined in Section 54952.2 of the Government Code.
- (F) **POLICY BODY** – Shall have the same meaning as "legislative body" as defined in Section 54952 of the Government Code unless the definition in this subsection applies to a broader range of boards, commissions, committees or other bodies, and shall include the following:
 - (1) The city council;
 - (2) Any other board enumerated in the city code;
 - (3) Any board, commission, committee, or other body created by ordinance or resolution of the city council;
 - (4) Any committee or body created by the initiative of a policy body as a whole;
 - (5) Any standing committee of a policy body irrespective of its composition.
 - (6) Any committee consisting of city employees that was established by city council ordinance or resolution that specified that the meetings of such committee were to be open and public.
- (G) **SUPPORTING DOCUMENTS** - All documents, regardless of form, medium or author, that are provided to members of a policy body for their use in considering agenda items for a meeting.

SEC. 2-222. MEETINGS TO BE OPEN AND PUBLIC; THE BROWN ACT

All meetings of a policy body shall be open and public, and governed by the provisions of the Brown Act and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply.

SEC. 2-223. CONDUCT OF BUSINESS; TIME AND PLACE OF MEETINGS

- (A) Each policy body shall establish by resolution or motion the time and place for holding regular meetings.
- (B) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the city or to meet with residents residing on property owned by the city, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the city.
- (C) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.
- (D) Special meetings of any policy body may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by electronic mail written notice to each member of such body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described herein at least seven (7) days before the time of such meeting as specified in the notice, with the exception of the items described in Sec. 2-224, subsection (A)(1)(a)-(e). Each special meeting shall be held at the regular meeting place of the body except that the body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting.
- (E) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice, and electronically mailed notice if sufficient time permits.

SEC. 2-224. AGENDA REQUIREMENTS FOR REGULAR AND SPECIAL MEETINGS

- (A) Twelve (12) days before a regular meeting of the city council, and seven (7) days before a special city council meeting and any meeting of all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion, information, or receive-and-file only. These time requirements shall apply to posting on the Internet.

- (1) Notwithstanding subsection (A), items that may be agendized less than twelve (12) days before a regular city council meeting, or less than seven (7) days before other policy body meetings, include but are not limited to the following:
 - (a) Urgency items, where the public interest and necessity demand immediate city council action to avoid harm to or to safeguard life, health or property, or to mitigate severe economic impacts;
 - (b) Grant opportunities;
 - (c) Consideration of final maps or parcel maps;
 - (d) Ceremonial items; and
 - (e) Closed session items as specified in Section 2-226.
- (B) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English.
- (C) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.
- (D) All agendas shall be posted on the city's website and the city's cable channel and available at the kiosk outside of the city council chambers. Complete agenda packets for each policy body shall be posted on the city's website to the extent fiscally and technologically feasible and shall be available for review at the city clerk's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.
- (E) All supporting documents regarding an agenda item must be included in the agenda packet.
- (F) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- (G) Notwithstanding subsection (F), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
 - (1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

- (2) Upon a good faith, reasonable determination by a two-thirds (2/3) vote of the policy body, or, if less than two-thirds (2/3) of the members are present, a unanimous vote of those members present, that (a) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (b) that the need for such action came to the attention of the policy body subsequent to the agenda being posted as specified in subsection (A).
- (3) The item was on an agenda posted pursuant to subsection (A) for a prior meeting of the policy body occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(H) Information on the Sunshine Ordinance shall be provided on the city clerk's webpage, with hard copies provided free of charge upon request.

SEC. 2-225. AGENDAS AND RELATED MATERIALS; PUBLIC RECORDS

- (A) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter to be discussed or considered at an open session of a meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's website. However, this disclosure need not include any material exempt from public disclosure under the California Public Records Act, or any other state or federal law.
- (B) Records which are subject to disclosure under subsection (A) and which are intended for distribution to a policy body prior to commencement of a meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- (C) Records which are subject to disclosure under subsection (A) and which are distributed during a meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.
- (D) Records which are subject to disclosure under subsection (A) and which are distributed during their discussion at a meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.
- (E) A policy body may charge the direct cost of duplication for a copy of a public record prepared for consideration at a meeting. There shall be no charge for providing digital versions of documents (for example, PDFs) via electronic mail.

SEC. 2-226. CLOSED SESSIONS; PERMITTED TOPICS

The City Council may hold closed sessions:

- (A) With its negotiator prior to the purchase, sale, exchange or lease of real property by or for the city to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.
- (B) Based on advice of the City Attorney, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the city in that litigation.
- (C) To discuss a claim for liability or losses.
- (D) Based on the advice of the City Attorney, to receive, discuss, and take action concerning information obtained in a closed session of a joint powers agency.
- (E) With the Attorney General, district attorney, City Attorney, or chief of police, or their respective deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.
- (F) To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a city employee, if the City Council has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee.
- (G) With the city's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.
- (H) For any other reason permitted by state law.

SEC. 2-227. STATEMENTS OF REASONS FOR CLOSED SESSIONS

Prior to any closed session, the city council shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subsection, or other legal authority under which the session is being held. In the closed session, the city council may consider only those matters covered in its statement.

SEC. 2-228. BARRIERS TO ATTENDANCE PROHIBITED

- (A) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the city council, a board or commission, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a city office.
- (B) Each policy body shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.
- (C) Meetings of policy bodies shall adjourn no later than 10:00 p.m., unless the meeting is extended by a majority vote of the policy body. No new items will begin after 10:00 p.m. unless a supermajority of the policy body votes to allow the items to be heard.

SEC. 2-229. VIDEO AND AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY

- (A) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.
- (B) Every policy body shall audio or video record every noticed regular or special meeting held in a city owned facility, except to the extent that such facility may not be available for technical or other reasons. All recordings will be archived in digital form at a centralized location on the city's website within seventy-two (72) hours of such meeting. Each recording shall be a public record subject to inspection pursuant to the California Public Records Act.

SEC. 2-230. PUBLIC COMMENT

- (A) Every agenda for regular meetings shall provide, before undertaking regular business, an opportunity for members of the public to directly address a policy body on items not appearing on the agenda or for non-action items, such as the Ceremonial Calendar, City Manager Reports, or City Council Business. The city council agenda shall provide up to thirty (30) minutes for this use. If the number of speakers interested in speaking under "Public Comment: Non-Agendized / Non-Action Items" exceeds the 30-minute period, additional time will be made available at the end of the meeting.

- (B) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the city, or of any other aspect of its proposals or activities, or of the acts or omissions of the policy body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted.
- (C) Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for any member of the public to directly address the policy body concerning that item before the policy body takes action. Public comments on closed session items shall be taken before the closed session is convened. The presiding officer of any policy body may request speakers representing similar views to designate a spokesperson in the interest of time.
- (D) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.
- (E) All staff reports, presentations, and comments from parties with a direct connection to the agenda item will be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues before the board, commission or council. City council comments on the agenda item shall take place after public comments on the agenda item.

SEC. 2-231. MINUTES

The clerk or secretary of each policy body shall record the minutes for each regular and special meeting of the policy body. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten (10) working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten (10) working days after the meeting at which the minutes are adopted.

SEC. 2-232. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater access to public information shall apply.”

PART 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

PART 3. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council's adoption of the ordinance.

PART 4. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation, published and circulated in the City. Ordinance _____ was first read on _____, and finally adopted on _____, to become effective on January 1, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

PROPOSED SUNSHINE ORDINANCE

City Manager's Office
City Clerk's Office
City Attorney's Office

10-23-2018





Proposed Sunshine Ordinance:

That City Council approve the first reading by title only and waive further reading of an ordinance adding Article IV to Chapter 2 of the City Code to establish local standards to ensure public access to open meetings (a Sunshine Ordinance).

BACKGROUND

- **Ralph M. Brown Act enacted in 1953**
- **Ensures open meetings, public participation and notification**
- **72-hour agenda publication requirement for regular meetings**



PROPOSED SUNSHINE ORDINANCE



- **Agendas: Regular Meetings 12 days, Special Meetings 7 days**
- **Reiterates Closed Session parameters**
- **Clarifies Public's rights: accessibility, recording, public comments**

WHY?

- **Provides more TIME for review and clarification**
- **Enables increased public participation and dialogue**
- **TRANSPARENCY and public oversight**



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EXCEPTIONS

Items NOT required to meet 12 or 7 day agenda posting:

- Urgent public interest / necessity demanding immediate Council action to safeguard life, health & property, or to mitigate severe economic impacts
- Grant opportunities
- Final maps or parcel maps
- Ceremonial items
- Closed session items



Questions?

