



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: January 15, 2019

Agenda Item 11-A(2)

Approvals:

City Manager JM
Dept. Head ES
Attorney SS
Finance _____

Department: Finance & Administrative Services
Prepared By: Erik Sund, Assistant City Manager
Joanne Baade, City Clerk
Brian Brower, Information Technology Manager

Subject: *OVERVIEW OF SUNSHINE LAWS*

Fiscal Impact: None at this time, if direction requires further action and/or fiscal impacts, these will be addressed in a separate agenda report(s), at a future City Council meeting.

Summary: At the December 18, 2018 City Council meeting, City Council requested staff to agendize a report for the January 15, 2019 City Council meeting to provide information on "Government Sunshine Laws" and to highlight what the City of San Clemente currently does to provide transparency.

Background: As a local government agency, the City of San Clemente, its City Council, its respective commissions and committees, and its staff must conduct business in the purview of the public, providing the public access to public information and the opportunity to meaningfully participate in the City's legislative and other decision-making processes. Informed participation is protected by assuring that (1) the public has advanced notice of business that is scheduled for consideration by the City Council and City commissions, (2) the public has timely and reasonable access to information and materials that may be considered by the City Council and City commissions, (3) the public has the opportunity to present opinions, viewpoints, and information to the City's decision-making bodies, and (4) the City's decision-making bodies conduct their meetings in full view of the public. Minimum standards for each of these four pillars of good governance are found in the Ralph M. Brown Act (Government Code § 54950 *et seq.*) and the California Public Records Act (Government Code § 6250 *et seq.*).

Starting in the 1950's, the California Legislature passed a series of laws commonly referred to as the "Government Sunshine Laws." Most notable among these enactments are: (1) the Ralph M. Brown Act (1953), requiring California local agencies to meet and deliberate the public's business publicly, (2) the California Public Records Act (1968), providing public access to public "writings", and (3) the Political Reform Act (1974), providing for disclosure of financial interests and political contributions. Since that time, several California cities have adopted "Sunshine Ordinances" sometimes re-stating and often supplementing State law to provide even broader public access to governmental decision-making, public records, and public officials' financial and campaign records. The City of San Clemente has implemented some of these supplemental practices.

California cities are subject to three major bodies of State law relating to open government. They are:

The Ralph M. Brown Act (Gov't Code Secs. 54950-54963), which contains requirements relating to the notice and conduct of public meetings to ensure that "meetings of public bodies and the writings of public officials [are] open to public scrutiny." The Brown Act covers notice of City meetings, limits Council discussion and decisions outside those meetings, prescribes agenda posting requirements, provides public comment opportunities, and limits closed session discussions.

The California Public Records Act (Gov't Code Secs. 6250-6276.48), which ensures the public's right to access and inspect public records.

The Political Reform Act of 1974 (Gov't Code Secs. 81000-91014), which created the Fair Political Practices Commission, provides for local officials' disclosure of financial interests, prohibits their participation in decisions relating to their financial interests, and provides for campaign contribution disclosure.

These State laws allow cities to enact more stringent local requirements for city meetings, city records, and financial and campaign disclosures.

Discussion:

A number of cities across the State of California have made efforts to increase transparency by strengthening and implementing laws that build upon the Government Sunshine Laws of the 1950's. A few of these cities include: Benicia, Gilroy, Oakland, San Francisco, Riverside, and Santa Ana. Please reference Attachment 1, an informal survey the City of Lake Forest conducted in 2013 that identified nine cities that have adopted or were considering local Sunshine laws.

Although the City of San Clemente has never formally adopted a Sunshine Ordinance, there are areas of transparency where the City has adopted "open" government practices that exceed the minimum required by state law (see table in Attachment 2). For instance, the Brown Act requires agendas to be posted 72 hours prior to a regular meeting and 24 hours prior to a special meeting. In San Clemente, City Council and Planning Commission regular meeting agendas are posted at City Hall and on the City's website at least six days prior to the meeting, and special meetings are typically posted three days prior. Also, special City Council meetings are noticed on the City's social media. Agenda posting times for City Commissions and Committees vary, but conform at a minimum to State law requirements. As it pertains to public comment, the Brown Act states that the public has the right to comment on all items of business on an agenda and any other items within the City's jurisdiction, and gives cities the right to adopt reasonable regulations for public comment. In San Clemente, City Council agendas include two opportunities for the public to speak on items under the jurisdiction of the City that are not on the agenda in addition to the opportunity to speak on any agenda item. State law specifies that video and audio recordings of meetings are optional. In the City of San Clemente, Council and Planning Commission meetings are live-streamed and video recorded. Videos are maintained online for a minimum of two years. All

standing Commission and Committee meetings are audio recorded, with the exception of the Investment Advisory Committee

Recommended

Action: STAFF RECOMMENDS THAT the City Council receive and file the Administrative Report and provide direction to Staff as appropriate.

Attachments: 1. Overview of Sunshine Ordinances
2. Overview of San Clemente Open Government Regulations

Notification: None.

OVERVIEW OF SUNSHINE ORDINANCES

Below are a series of tables outlining and comparing various sunshine ordinances (i.e., "open" government ordinances that exceed minimum state law requirements). These tables are divided by category for reference. Jurisdictions without any provisions for a particular category are excluded.

BROWN ACT / OPEN MEETINGS REQUIREMENTS

PROVISION	STATE LAW	LAKE FOREST	BENICIA	GILROY	MILPITAS	OAKLAND	SF	RIVERSIDE	VALLEJO	SANTA ANA
Increased agenda requirements (posting)	72 hrs posting for regular mtg, 24 hrs posting for special mtg, agendas posted online and at one location within City.	Follows State law requirements.	YES, agenda must be posted 6 days before regular mtg (supp. agenda possible); agenda must be posted 72 hrs before special mtg; agenda must be posted in multiple locations and on cable TV	YES, preliminary agenda must be posted 7 days before regular mtg.	YES, preliminary agenda must be posted 6 days before regular mtg.	YES, 10 day notice for regular mtgs of Council and other important bodies; 48 hr notice required for special mtgs; agenda must be posted in two locations within City.	YES, agenda notice at least 72 hrs before most special mtgs (longer notice for some mtgs).	N/A	YES, agenda must be posted in two locations within City.	YES, 96 hrs posting; additional language alternatives; must list upcoming "major projects".
Increased agenda item requirements	Agenda must contain "brief general description of each item of business" and offer ADA assistance; agenda packets must be available for public inspection when (1) agenda is posted or (2) whenever distributed to a majority of the City Council if distributed after agenda for regular	Follows State law requirements.	YES, "acronyms, jargon and double speak" should be avoided.	YES, agenda must contain special note regarding Sunshine Ordinance and contact person; some closed session items must contain more detailed agenda descriptions; 10 day public availability before mtg to approve labor	YES, agenda items must inform "person of average intelligence and education"; must refer to explanatory docs which must be posted with agenda if 1 pg; must contain special note regarding Sunshine Ordinance and contact person; some closed session items must contain more detailed agenda descriptions; 10 day	YES, agenda items must inform "person of average intelligence and education." refer to explanatory docs which must be posted with agenda if 1 pg; must contain special note regarding Sunshine Ordinance and contact person; some closed session items must contain more detailed agenda descriptions; special	YES, agenda items must inform "person of average intelligence and education"; must refer to explanatory docs which must be posted with agenda if 1 pg; must contain special note regarding Sunshine Ordinance and contact person; some closed session items must contain more detailed agenda descriptions; special	N/A	YES, agenda items must not contain undefined abbreviations or acronyms if not publicly understood; must inform "person of average intelligence and education"; closed sessions subject to same requirements plus special rules for settlements and labor agreements (72 hour notice).	N/A

Other bodies subject to ordinance	City Council, standing committees, commissions created by formal act (i.e., Planning Commission).	All Commissions and Boards subject to Brown Act; Council has no committees.	N/A	N/A	public availability before mtg to approve labor agreement.	YES, ordinance has Brown Act-lite rules for private entities with connection to public property.	rules for settlements (10 days) and labor agreements (15 days), special requirements for disabled and other sensitive groups.	N/A	N/A
Expanded public comment	Public has right to comment on all items of business on agenda and other items within City's jurisdiction; City may adopt reasonable regulations for public comment.	Follows State law requirements.	N/A	N/A		YES, public has right to comment during open session (w/ body discussion) before most decisions in closed session to sell/buy City property.	N/A	YES, right to use counsel for all public comments.	N/A
Meeting recording requirements.	Video and audio recording of open meetings by City is optional; City may designate City Clerk to maintain minute book of closed sessions.	YES. In practice, City Council, Planning and Parks and Recreation Commission meetings are video streams and all recordings	YES, audio recordings of all closed sessions.	N/A	YES, audio or video recording of all closed sessions.	YES, audio and visual recording required for most open meetings with special right of access.	YES, audio or video recording of all closed sessions.	YES, audio recording required for all closed sessions.	N/A

Special rules for Mayor.	N/A	retained. No closed session minutes.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	YES, Brown Act applies to mayoral acts (i.e., mayor-appointed committees).	N/A	N/A
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Other common items that are largely duplicative of State law:

- Restate portions of the Brown Act.
- Online agenda postings.
- Express access to draft and regular meeting minutes.
- Clarification regarding what qualifies as an emergency or dire emergency.
- Public comment rights and requirements.
- Public right to record open meetings.
- Limitations/requirements for ex parte communications in quasi-adjudicatory proceedings.

PUBLIC RECORDS ACT / RECORDS ACCESS REQUIREMENTS

PROVISION	STATE LAW	LAKE FOREST	BENICIA	GILROY	MILPITAS	OAKLAND	SF	VALLEJO	SANTA ANA	RICHMOND	SAN DIEGO
Modified deadlines for responding to records requests	Records must be available for inspection during normal business hours; normal 10 day deadline to respond to request for copies, may be extended up to additional 14 days for unusual circumstances.	Follows State law requirements.	YES, generally 5 days to respond; 10 days to produce records.	YES, generally 10-day extension.	YES, generally 10-day extension.	YES, see below.	YES, generally can only take 10-day extension.	N/A	N/A	N/A	N/A
Right to immediate access of some records that are easy to produce.	Records must be available for inspection during normal business hours.	YES, in practice, while requestor waits.	YES, generally 2 business days.	YES, generally next day by close of business.	YES, generally next day by close of business.	YES, generally 3 day response time.	YES, generally by close of business.	YES, generally by close of business.	N/A	N/A	N/A
City-level appellate review of decisions to deny record requests.	Requestor that disagrees with City's decision must file lawsuit.	YES, LPMC § 1.12.060 provides for appeals of all officials' administrative decisions.	NO, but expanded details regarding why records are being withheld.	YES.	YES.	YES.	YES.	N/A	N/A	N/A	N/A
Ability to obtain oral information	No express right to obtain oral information but City must generally assist requestors.	YES, by informal practice.	YES, each department head must be available.	YES, each department must have an info designee; provide info as long as time required is 15 min or less.	YES, each department must have an info designee; provide info as long as time required is 15 min or less.	YES, each department must have an info designee.	YES, each department must have an info designee; provide info as long as time required is 15 min or less.	N/A	N/A	YES, right to ask brief factual questions.	N/A
File of communications to quorum of Council available during normal business hours	Communications are public records but no special requirement to segregate them into a separate file.	Follows State law requirements.	YES, all communications 30 days before and 30 days after agenda item.	YES, all communications 30 days before and 30 days after agenda item.	YES, all communications 30 days before and 30 days after agenda item.	YES, all communications 30 days before and 30 days after agenda item.	YES, all communications 30 days before and 30 days after agenda item.	N/A	N/A	YES, 3 business day running file of communications.	N/A

Waiver of exemptions from disclosure	State law contains a number of exemptions from disclosure. Common exemptions include attorney-client privilege, law enforcement investigatory records and a catch-all/deliberative process privilege where the public interest in withholding the record clearly outweighs the public interest in disclosure.	Follows State law requirements.	YES, job pool information; some law enforcement information.	YES, no catch-all or deliberative process exemptions.	YES, job pool information; some law enforcement information.	YES, job pool information; some law enforcement catch-all or deliberative process exemptions	N/A	N/A	YES, job pool information; confirmed misconduct; not exemption but City must assist persons trying to get third party confidentiality waivers to access exempted City records.	N/A
Contracts and RFPs	N/A	YES, RFPs, RFBs, and EIRs	YES, EIRs posted online; applicant must pay for 20 public copies.	N/A	YES, RFPs posted on website; maintain list of sole source contracts.	YES, generally posted online; maintain list of sole source contracts.	N/A	YES, RFPs posted on websites; bid does available after contract is awarded.	N/A	YES, MOUs; construction, goods and services agreements posted online

* Since 2009, all contracts and RFPs for services in excess of \$30,000 are searchable via the "Current Agendas" webpage. During the proposal period, RFPs and RFBs are posted to the City's website. Capital project RFPs and RFBs are also submitted to third party industry websites for further distribution. EIRs approved by the City Council since 2009 are searchable. EIR's for Opportunities Study, Sports Park, Baker Ranch, Serrano Summit, and Hsler Ridge are posted on website.

Other common items that are largely duplicative of State law:

-Restate portions of the Public Records Act

-Note City employees' right of free speech.

MISCELLANEOUS

PROVISION	STATE LAW	LAKE FOREST	BENICIA	GILROY	MILPITAS	OAKLAND	SF	VALLEJO	SANTA ANA	RICHMOND	DAVIS
Pre-application meetings for projects	N/A	YES, in practice, public scoping sessions and field tours on major developments.	N/A	N/A	N/A	N/A	N/A	N/A	YES, City projects, large residential projects, and others are subject to community meeting requirement	N/A	N/A
Community meetings	N/A	YES, in practice, public scoping sessions and field tours on major developments. Annual Lake Forest Leadership Academy and Community Preparedness Academy.	N/A	N/A	N/A	N/A	N/A	N/A	YES, five-year strategic plan and bi-annual cmty budget meetings.	N/A	N/A
Public calendars	Case law provides that appointment calendars may not be a public record. (<i>Times Mirror Co. v. Superior Court.</i>)	Follows State law requirements.	N/A	N/A	YES, Council and City Manager maintain publicly available meeting schedules.	N/A	YES, officials and dept. heads maintain publicly available meeting schedules.	N/A	YES, officials and dept. heads maintain publicly available meeting schedules.	N/A	N/A

Lobbyist rules and information	No specific local lobbyist rules or requirements.	Follows State law requirements.	N/A	N/A	YES, City reports; registration.	YES, City reports; registration.	YES, City reports; registration.	N/A	YES, no unique City reports required but online access from City website to state reports.	N/A	YES, quarterly City reports; registration.
Sunshine training for officials and senior employees	Most officials are required to attend AB 1234 ethics training once every two years.	YES, as required by AB 1234; included in Leadership Academy curriculum.	YES	YES	YES	YES	YES	N/A	N/A	N/A	N/A
Sunshine committee or commission	N/A	N/A	YES	YES	YES	YES	YES	N/A	N/A	N/A	N/A
City elections rules on contributions/expenditures	N/A	Follows State law requirements.	YES	N/A	YES	YES	YES	N/A	N/A	YES	YES
Waiver of atty privilege related to all or some of sunshine ordinance	N/A	N/A	N/A	N/A	YES	N/A	YES	YES	N/A	N/A	N/A
City revolving door restrictions (i.e., certain restrictions on lobbying City after leaving)	1-year restriction for electeds and City Manager.	YES, 2-year limit on Council, City Attorney and department heads	N/A	N/A	YES, 2-year restriction for Council and Planning Commission.	YES, 1-year restriction for officers and dept. heads.	YES	N/A	N/A	N/A	YES, 1-year restriction for Council; Planning Comm'n and dept. heads.

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¹ San Diego also has a revolving door restriction.

BROWN ACT/OPEN MEETINGS REQUIREMENTS		
PROVISION	STATE LAW	SAN CLEMENTE
Increased agenda requirements (posting)	72 hrs posting for regular mtg, 24 hrs posting for special mtg, agendas posted online and at one location within City.	YES, regular City Council and Planning Commission meeting agendas are posted at City Hall and on the City's website no later than 6 days prior to the meeting. Special Meetings are posted as soon as practical after the need for the meeting is known (usually about 3 days prior). Special City Council meetings are noticed on the City's social media. Online agendas include hyperlinks to backup staff reports. Additionally, the City offers an agenda packet subscription service free of charge, whereby persons are emailed agendas with hyperlinks to backup reports as soon as they are issued. In the case of Public Hearings involving real property, the City surpasses State law publication and mailing requirements by also posting three Notices of Public Hearing on the site that is the subject of the hearing.
Increased agenda item requirements	Agenda must contain "brief general description of each item of business" and offer ADA assistance; agenda packets must be available for public inspection when (1) agenda is posted or (2) whenever distributed to a majority of the City Council if distributed after agenda for regular mtg is posted.	In addition to following State law, Staff recommendations are included on agendas, thereby providing the public with additional insight into a possible course of action to be considered, cost associated with proposed contracts, etc. Agendas are written in layman's terms and relevant information (such as project locations, etc.) are provided in bold type on the titles above the agenda item.
Other bodies subject to ordinance	City Council, standing committees, commissions created by formal act (i.e., Planning Commission)	Follows State law
Expanded public comment	Public has right to comment on all items of business on agenda and other items within City's jurisdiction; City may adopt reasonable regulations for public comment.	Council agendas include two opportunities for the public to speak on items under the jurisdiction of the City that don't appear elsewhere on the agenda (one opportunity occurs toward the beginning of the agenda and a second opportunity occurs toward the end). Members of the public are allotted 3 minutes to speak under Oral Communications or any item included on the agenda. Project applicants are allotted 10 minutes.
Meeting recording requirements.	Video and audio recordings of open meetings by City is optional; City may designate City Clerk to maintain minute book of closed sessions.	Council and Planning Commission meetings are live-streamed and video recorded. Videos are maintained online for a minimum of two years. Council Closed Sessions are not recorded. All standing Commission and Committee meetings are audio recorded, with the exception of the Investment Advisory Committee.
Special rules for Mayor.	N/A	N/A
PUBLIC RECORDS ACT/ RECORDS ACCESS REQUIREMENTS		
Modified deadlines for responding to records requests	Records must be available for inspection during normal business hours; normal 10 day deadline to respond to request for copies, may be extended up to additional 14 days for unusual circumstances.	The City makes every effort to respond to PRA requests within the 10 day deadline and only uses the 14 day extension when necessary. For particularly voluminous requests, additional extensions are used on a rolling basis to enable the requester to receive records as they become available. The City utilizes an online portal (JustFolia) that provides an easy mechanism for persons to submit a PRA request, allows requesters to track the status of their requests, and enables requesters to view records immediately through a web browser once they are released.

Right to immediate access of some records that are easy to produce.	Records must be available for inspection during normal business hours.	Readily-available documents, such as contracts and staff reports, are generally provided the same day that a request is received. Moreover, numerous types of documents are available from the City's website for immediate access. These documents include Council, Commission and Commission agendas, staff reports, and minutes, as well as Council and Planning Commission meeting videos. Fair Political Practices Commission documents, such as Statements of Economic Interests and Campaign Statements are also available online.
City-level appellate review of decisions to deny record requests.	Requestor that disagrees with City's decision must file lawsuit.	Appeals are reviewed with the City's legal counsel and decisions are conveyed to the appellant. When documents are being withheld, the appellant is informed of the reasoning therefor and the State law statute that authorizes the City to withhold the document.
Ability to obtain oral information	No express right to obtain oral information but City must generally assist requestors.	The City makes every effort to answer questions from the public. The public is referred to the PRA process when they are requesting documents. In cases where the records are available online, the public is advised of that fact.
File of communications to quorum of Council available during normal business hours	Communications are public records but no special requirement to segregate them into a separate file.	Correspondence provided to a quorum of Council members are included in the file relating to the subject matter. Agendas include a statement that "All written material distributed to a majority of the Council after the original agenda packet was distributed is available for public inspection in the City Clerk's Department during normal business hours."
Waiver of exemptions from disclosure	State law contains a number of exemptions from disclosure. Common exemptions include attorney-client privilege, law enforcement investigative records and a catch-all/deliberative process privilege where the public interest in withholding the record clearly outweighs the public interest in disclosure.	N/A
Contracts and RFPs	N/A	The City utilizes Planet Bids software to enable vendors to interactively search for and obtain information concerning bid/proposal opportunities over the internet. Copies of contracts and RFPs are available to the public upon request.
<u>Miscellaneous</u>		
Pre-application meetings for projects	N/A	Planning offers a voluntary Pre-application Review process to project applicants to identify issues, concerns, or problems related to a project. The process also allows the applicant to become familiar with the City's development review process before they submit a formal application.
Community meetings	N/A	The City holds community meetings for long-range planning initiatives of public concern such as the Local Coastal Program, General Plan, Housing Element, Specific Plan amendments, etc. Public forums are also held to inform the public of issues of interest, such as the toll road.

Public calendars	Case law provides that appointment calendars may not be a public record. (<i>Times Mirror Co. v. Superior Court.</i>)	Calendar entries that relate to City business are provided in response to PRA requests.
Lobbyist rules and information	No specific local lobbyist rules or requirements.	Follows State law requirements
Sunshine training for officials and senior employees	Most officials are required to attend AB 1234 ethics training once every two years.	Officials take AB 1234 ethics training every two years. Additionally, the City Clerk and/or City Attorney provides periodic Brown Act training for officials and staff that provide support to a Commission or Committee. Additionally, the City Clerk produces a handbook for new officials that addresses due process, conflict of interest, and major tenets of the Brown Act.
Sunshine committee or commission	N/A	N/A
City elections rules on contributions/expenditures	N/A	Follow State law
Waiver of atty privilege related to all or some of sunshine ordinance	N/A	N/A
City revolving door restrictions (i.e. certain restrictions on lobbying City after leaving)	1-year restriction for electeds and City Manager.	Follows State law