

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
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SUBJECT: OPEN GOVERNMENT ORDINANCE

AGENDA ACTION: ORDINANCE INTRODUCTION

RECOMMENDATION

It is recommended by the Open Government Task Force Implementation Subcommittee that the Council introduce an Open Government Ordinance to improve openness and transparency in Santa Rosa municipal government through the establishment of new local standards to supplement the provisions of the Ralph M. Brown Act and the Public Records Act.

EXECUTIVE SUMMARY

In 2014, then Mayor Scott Bartley convened the Mayor's Open Government Task Force to study and make recommendations to improve openness and transparency in Santa Rosa municipal government. The Task Force presented its report in December 2014. Among its recommendations was the adoption of a "Sunshine Ordinance" that would support transparency and open government through local policies that would strengthen the minimum requirements of state law.

The Sunshine Ordinance (Ordinance) now proposed is the result of a lengthy series of meetings of the Council's Open Government Task Force Implementation Subcommittee (Subcommittee). Those meetings provided an extensive opportunity for public participation.

Among its key provisions, the proposed Ordinance would require: (1) posting of the Council's preliminary agenda twelve business days prior to any regularly-scheduled Council meeting; (2) posting of supporting documents on a rolling basis, as those documents become available; (3) posting of the Council's final agenda four business days prior to any regularly-scheduled Council meeting; (4) expansion of the contents of City Council agendas; (5) all Council agendas to be provided in English and Spanish

and all Council meetings to include Spanish translation; (6) management of Council meetings to facilitate public participation; (7) enhanced procedures for the processing of public records requests and an administrative appeal process for requests not granted; (8) website posting of specified data generated by City departments; and (9) preparation of a Citizens Guidebook to support and encourage public participation.

BACKGROUND

A. Mayor's Open Government Task Force

In January 2014, former Mayor Scott Bartley convened the Open Government Task Force (Task Force), a group of dedicated and engaged Santa Rosa residents, to study and provide recommendations on how to improve openness and transparency in Santa Rosa Municipal Government. On December 2, 2014, the Task Force submitted the Mayor's Open Government Task Force Report (Report) (Attachment 1) to the Council. One of the recommendations of the Task Force was to adopt a "Sunshine Ordinance that supports transparency and open government through policies that exceed minimum requirements and statutes."

The Task Force recommended that the Ordinance codify the following practices (Report, Attachment 1, at page 3):

- Post preliminary agendas on the website 12 days prior to city meetings.
- Provide more detailed agenda summaries to better inform the public about the issue being considered by the Council, the proposed recommendations and potential budget impacts.
- Post preliminary agenda packets, including supporting documents, on the website 12 days prior to the meeting date.
- Post final agenda packets, including supporting documents, 5 days before the meeting.

In addition, the Policy Subcommittee of the Task Force recommended that the City adopt the following as formal policies (Report, Attachment 1, at page 3-6):

- Public Education: Provide written guidelines for members of the public, explaining the City's policies regarding public participation, public comment.
- Public Access to Information: Hire a public records coordinator and/or public information officer to work in coordination with other City officials to ensure each department is compliance with Sunshine policies adopted by the Council.
- Closed Session Agenda: Prior to closed session, the governing body should disclose the reason for the closed meeting.

- Agenda Exceptions: In addition to the City's current policy regarding agenda exceptions, provide a detailed explanation for the reason the material could not be provided with normal advance notice.
- Public Testimony: Accommodate public comment by providing time-certain opportunities to comment on agenda and non-agenda items.
- Access to Online Meeting Recordings: For online video recordings of Council hearings, provide an index and date stamp and link to each individual agenda item.
- Closed Meeting Actions (Disclosures): Expand requirements for disclosure of settled litigation.
- Access to Public Records: Provide a clear guide for the public, explaining how to make a request for public records, post the guide on the City's website, and ensure that staff is well-versed and can provide efficient service to the public.
- Response to Public Records Requests: Provide a written acknowledgment of all requests for public records within one business day; if the request is fairly routine, provide the requested documents within three business days; for more complex matters, follow Public Records Act guidance (response within ten days).
- Appeals Process to Gain Access to Public Records: Provide formal process by which a person making a Public Records Act request can appeal a determination by the City Attorney that the requested documents cannot be provided.
- New Website: Revise and update the City's website to make it more user-friendly.

All of these recommendations were carefully considered in the preparation of the proposed Open Government Ordinance. Most were incorporated into the draft ordinance. Many of the recommendations have already been implemented including, designation of Public Records Coordinator and Department Representatives, index for video recordings, and expanded disclosure of settled litigation.

B. Council's Open Government Task Force Implementation Subcommittee

On March 29, 2016, staff presented an initial draft of the proposed Ordinance to the Council in a Study Session. Council reviewed the draft, gave direction to staff as to requested revisions, and requested that staff return with an updated form of ordinance.

After several delays due to limited staffing resources, followed by the 2017 Sonoma County wildfires response and recovery, the updated draft ordinance was presented to the Sunshine Ordinance Ad-Hoc Committee on July 30, 2018. After conversations with the Mayor and participating Council Members, it was decided that the Ad-Hoc would broaden the scope of its mission and become the Open Government Task Force

Implementation Subcommittee. The Subcommittee met once a month beginning October 10, 2018, to systematically review each section of the draft ordinance and to gather public input. The Subcommittee's final regularly scheduled monthly meeting was held on April 17, 2019.

The Subcommittee reconvened with a new City Clerk and new Community Engagement Division Director on October 29, 2020. The Subcommittee reviewed the revised draft ordinance, received additional comment from the public, and gave direction to staff as to final recommended revisions.

PRIOR CITY COUNCIL REVIEW

On March 29, 2016, the Council conducted a study session to review the first draft of the proposed Ordinance.

ANALYSIS

Adoption of a Sunshine Ordinance, now titled the Open Government Ordinance, would promote the City Council's Tier 1 Goals of Government and Council Reform and is consistent with the recommendation of the Open Government Task Force.

The proposed ordinance, a copy of which is attached, generally follows closely the recommendations of the Task Force. In a few areas, the proposed ordinance goes further, for example in the timing of the posting of agendas. In other areas, for reasons of logistic difficulties or legal constraints, the proposed ordinance does not go as far as the Task Force recommends. The variations from the Task Force recommendations will be discussed below.

Key elements of the proposed Open Government Ordinance, by topic area, are as follows:

A. Agendas:

- Requires that the Council's preliminary agenda be posted and made available to the public no later than twelve (12) business days prior to a regular meeting of the Council.
- Requires that supporting documents, including staff reports and materials submitted by the public, be posted online to the preliminary agenda as those documents become available.
- Requires that the Council's final agenda be posted and made available to the public no later than four (4) business days prior to a regular meeting of the Council.

- Requires that agendas include, for each agenda item, a brief meaningful description of the item, a statement of the recommended action, its potential budget impacts and, if possible, a link to prior Council actions on the item.
- Provides that Council agendas be provided in both English and Spanish. Translation into languages other than English and Spanish, and into other medium for hearing impaired persons, will be provided upon request at no charge.
- Provides that Council agendas will be automatically translated into languages other than English and Spanish if the particular non-English and non-Spanish speaking population reaches or exceeds 5% of the total City population.
- Retains existing exemptions from agenda requirements.

B. Meetings and Minutes:

- Requires that all meetings of the City Council, boards and commissions that are held in Council Chambers be broadcast live and archived for replay.
- Requires live Spanish translation. Requires that archived videos include closed captioning in English and Spanish.
- Provides a series of recommendations for management of Council meetings, including timeframes for public hearings and public comments on items not on the agenda, early announcements of continuances and other adjustments to the agenda, and a prioritization of public hearings over non-urgent report items.
- Strengthens disclosure requirements before and after closed sessions.
- Requires that draft meeting minutes be available within 15 days of the meeting if a video recording of the meeting is not available.

C. Community Education:

- Requires that the Office of Community Engagement and the City Clerk prepare a Citizen's Guidebook, including an outline of City government structure, organization, responsibilities and basic functions, as well as local government terms and definitions, and guidance on how to obtain information and participate in local government activities, meetings and proceedings. The Guidebook shall be provided in both English and Spanish.

D. Access to Public Records:

- Designates the City Clerk as the Public Records Coordinator and requires that each department designate a Department Representative.
- Requires staff training, public education, and annual reporting with respect to the Public Records Act.
- Codifies procedures for submission and response to public records requests.
- Provides an administrative appeal procedure if records are withheld improperly.

E. Access to City Data:

- Requires that data generated by the City and its departments be available for public review on the City's website unless that data is exempt from disclosure under the Public Records Act or other state or federal law.

F. Enforcement:

- Provides for an administrative appeal process in the event of allegations of violations of the ordinance.

Variations from Task Force Recommendations

The proposed Open Government Ordinance varies from the recommendations of the Task Force in several respects. The most significant are:

- Posting of preliminary agenda: While the Task Force recommended posting of the Council's preliminary agenda twelve calendar days prior to the meeting, the proposed ordinance requires the posting of the preliminary agenda twelve business days prior to the meeting. The shift from calendar days to business days, pushes the preliminary agenda posting back almost a week, or longer if a holiday intervenes.
- Posting of supporting documents: While the Task Force recommended posting of supporting documents with the preliminary agenda, twelve calendar days prior to the Council meeting, the proposed ordinance instead provides that supporting documents will be posted as they become available.
- Posting of final agenda: While the Task Force recommended posting of the final agenda five calendar days before the Council meeting, the proposed ordinance instead requires the posting of the final agenda four business days

before the Council meeting. The shift pushes the final agenda posting back one day, or longer if a holiday intervenes.

- Time to respond to Public Records Act request: The Task Force recommended a three step requirement for response to a public records request: (1) provide a written acknowledgment of all requests for public records within one business day; (2) if request is fairly routine, provide the requested documents within three business days; and (3) for more complex matters, follow Public Records Act guidance (response within ten days). For logistics and legal reasons, the proposed ordinance instead retains Public Records Act deadlines.

Other Jurisdictions:

Within Sonoma County, no other jurisdiction has an open government ordinance. Petaluma is the only other jurisdiction that posts a preliminary agenda.

Within the greater Bay Area, staff has identified five jurisdictions that have open government ordinances, including San Francisco, Oakland, Alameda, Berkeley and Contra Costa County. Early agenda postings range from 12 calendar days to 72 hours.

FISCAL IMPACT

The fiscal impact of the proposed Open Government Ordinance has not yet been determined.

ENVIRONMENTAL IMPACT

None.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

The City Council's Open Government Task Force Implementation Subcommittee has reviewed the proposed ordinance and recommends its approval.

NOTIFICATION

Not Applicable

ATTACHMENTS

- Attachment 1 – Mayor's 2014 Open Government Task Force Report
- Ordinance