



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: FEBRUARY 11, 2020**

FROM: COUNCILMEMBER RONALDO FIERRO **WARDS: ALL**
COUNCILMEMBER ERIN EDWARDS
COUNCILMEMBER JIM PERRY

SUBJECT: DISCUSSION OF AMENDMENTS TO RIVERSIDE MUNICIPAL CODE TITLE 4 (KNOWN AS THE SUNSHINE ORDINANCE) REGARDING THE ADOPTION OF STRONGER REQUIREMENTS FOR EXCUSING THE SUNSHINE NOTICE.

ISSUE:

Amend Chapter 4.05.50 of Title 4 (known as the Sunshine Ordinance) to adopt a higher threshold and stronger requirements for the Mayor and Council to excuse the Sunshine Ordinance when placing an item on the public agenda.

RECOMMENDATIONS:

That the City Council:

1. Discuss possible amendments to the Sunshine Ordinance to adopt a stronger threshold for the Mayor and Council to excuse sunshine notice requirements; and
2. Direct the City Attorney to prepare an ordinance to amend Section 4.05.50 of the Riverside Municipal Code to
 - a. Raise the threshold of authors from two to three for the Mayor and Council to waive the sunshine notice requirements; and
 - b. Require an explanation and documentation be included of why immediate action is needed in subsequent council reports or comments.

BACKGROUND:

Historically, the protocols of local legislative bodies in the State of California have been governed by Government Code section 54950 *et. seq.*, or the "Brown Act." The Act was passed to uphold standards of transparency and open governance.

The Brown Act emerged with two major provisions; (1) that the people have the right to access information regarding the conduct of the people's business and (2) that all meetings of local legislative bodies are open and public.

The Act establishes a required 72 hour notice for local bodies to post public agendas before the meeting of a legislative body.

On September 22, 2015, The City Manager, City Attorney and City Clerk brought a proposed Sunshine Ordinance to be heard and considered by the City Council, which would enact significantly stricter requirements than the Brown Act, quadrupling the requirement to a 12 day notice for the posting of public agendas.

On October 6 2015, the City Council passed and adopted the Sunshine Ordinance into the Riverside Municipal Code.

Language within the ordinance makes clear that it is *“intended to clarify and supplement the City Charter, the Brown Act and the California Public Records Act to assure that the people of the City of Riverside are fully informed and can retain control over the instruments of local governance within their city.”*

The Sunshine Ordinance is codified in Title 4 of the Municipal Code (sections 4.01.10 – 4.10.20).

The below language allows for the Mayor and Council to waive the restrictive requirements of the ordinance:

If the Mayor or a Council Member, with the concurrence of another Council Member, believe an item is urgent, and the failure to meet any additional notice requirements was due to:

(a)The need to take immediate action, which came to the attention of the local body after the agenda was posted, or;

(b)A software or hardware impairment as defined by Section 4.05.010.H and such additional notice requirements are satisfied no later than 72 hours before the date of the meeting;

During the September 22, 2015 City Council Meeting, City Attorney Gary Geuss made clear that the above exceptions for emergency actions was drafted with the effort of keeping exceptions to a minimum.

During the January 21, 2020 City Council Meeting, Council Member Jim Perry requested referral of the Sunshine Ordinance to the Governmental Affairs Committee for further definition of urgency and what type of documentation should be provided for items submitted after the twelve-day publication.

DISCUSSION:

The passage of the Sunshine Ordinance made significant changes and strides towards further transparency in Riverside, providing residents and elected officials with more time to examine, read, and digest proposals and legislation coming for consideration before the City Council.

However, the Sunshine Ordinance provides too vague of language when it comes to the power of the Mayor and Council to excuse sunshine notice requirements. Currently, it only takes two signatures (the Mayor and one Council Member or two Council Members) to sign off on an item to bypass the ordinance and be posted on the Friday before a Tuesday Council meeting (72 hours).

This gives the public, staff and the Council very little time to digest said items and to ask questions and become fully informed.

Below are five other municipalities in California that have similar Sunshine Ordinances, as well as the language in their ordinances for the excuse of sunshine notice requirements.

City / County	Threshold	Language for Excuse of Notice Requirements
Contra Costa County	$\frac{3}{4}$ vote and written explanation	<p>“All such staff material must made available to the public 96 hours before a scheduled meeting or 24 hours prior to a meeting when the agenda item has been added to the agenda at a previous meeting of the policy body not more than seven days prior to the scheduled meeting.</p> <p>However, the policy body may, by a $\frac{3}{4}$ vote, waive these time limits, when, in its judgement, it is essential to do so, providing that the County Administrator, appropriate Department Head or staff member furnishes the Board of Supervisors or other policy body a written explanation as to why the material could not be provided to the Board or other policy body and the general public within the above time limits.</p>
Benecia	2/3 vote	<p>If an item appears on an agenda but the body fails to meet any of the additional notice requirements under this section, the body may take action only if:</p> <ol style="list-style-type: none"> 1. The minimum notice requirements of the Brown Act have been met; and 2. The body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists: <ol style="list-style-type: none"> (a) The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting; (b) There is a need to take immediate action which relates to federal or state legislation or the body's eligibility for any grant or gift; or, (c) The item relates to a purely ceremonial or commendatory action.

Berkeley	Majority vote	<p>The City Council Agenda Committee shall meet 15 days prior to each City Council meeting and shall determine the agenda of that City Council meeting. After the conclusion of the Agenda Committee meeting, an item may be added to the Agenda only by the City Council as a whole at a duly noticed meeting that occurs after the Agenda Committee meeting.</p> <p>No item may be considered unless it is included in the Agenda Packet except that a correction or supplement to an item already included in the Agenda Packet may be considered, if either:</p> <ol style="list-style-type: none"> 1. the City Council, by a two-thirds vote, determines that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of an item; or 2. the correction or supplement to an item is posted on the City's website no later than 5:00 p.m. on the fifth calendar day prior to the City Council meeting at which it is to be considered. The online version of the City Council agenda shall contain a link to all such items.
Oakland	2/3rds vote	<p>If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:</p> <ol style="list-style-type: none"> 1. The minimum notice requirements of the Brown Act have been met; and, <p>The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:</p> <ol style="list-style-type: none"> a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting; b. There is a need to take immediate action

		<p>which relates to federal or state legislation or the local body's eligibility for any grant or gift;</p> <p>c. The item relates to a purely ceremonial or commendatory action. Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.220.030(l) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.</p>
Alameda	<p>2/3rd vote</p> <p>or</p> <p>unanimous vote if less than 2/3rd present.</p>	<p>Notwithstanding subdivision d., the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:</p> <p>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.</p> <p>Upon a good faith, reasonable determination by a two-thirds (2/3) vote of the body, or, if less than two-thirds (2/3) of the members are present, a unanimous vote of those members present, that</p> <p>(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</p> <p>(B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision a.</p> <p>The item was on an agenda posted pursuant to subdivision a. for a prior meeting of the 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.</p>

Riverside**	<p>2/3 vote at meeting</p> <p>or</p> <p>second and motion at prior meeting</p> <p>or</p> <p>2 signatures prior to meeting.</p>	<p>If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if the minimum notice requirements of the Riverside City Charter and the Brown Act have been met and one of the following applies:</p> <p>(1) The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:</p> <p>(a) The need to take immediate action on the item is required to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting; or,</p> <p>(b) There is a need to take immediate action which relates to federal, state, county or other governmental agency legislation or action or the local body's eligibility for any grant or gift; or,</p> <p>(c) The item relates to a purely ceremonial or commendatory action.</p> <p>(2) If the Mayor or a Council Member, with the concurrence of another Council Member, believe an item is urgent, and the failure to meet any additional notice requirements was due to:</p> <p>(a) The need to take immediate action, which came to the attention of the local body after the agenda was posted, or;</p> <p>(b) A software or hardware impairment as defined by Section 4.05.010.H and such additional notice requirements are satisfied no later than 72 hours before the date of the meeting;</p>
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The Mayor and Council's ability to bypass the sunshine ordinance for emergency matters can be a good thing. Because of this, maintaining the ability for the Mayor and Council to add an urgent item to an upcoming agenda is important.

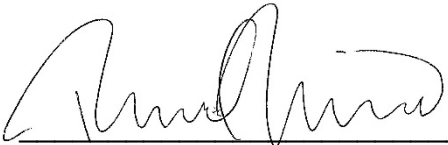
Raising the threshold of authors and requiring an explanation of the immediacy will both strengthen this ordinance and help ensure that it is used for real emergency action.

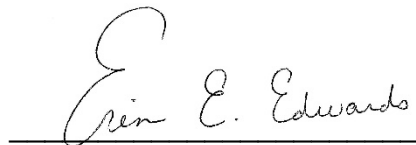
This option raises the amount of signees required to waive the ordinance and requires a clear written reason in the memorandum for doing so.

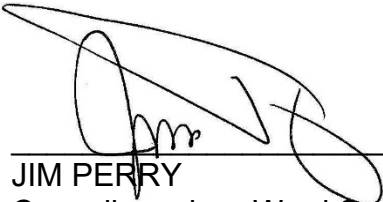
FISCAL IMPACT:

There is no anticipated fiscal impact of this item.

Prepared by:



RONALDO FIERRO
Councilmember, Ward 3

ERIN EDWARDS
Councilmember, Ward 1

JIM PERRY
Councilmember, Ward 6

Attachments:

1. Riverside Sunshine Ordinance (Title 4)