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ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING DIVISION 9 TO TITLE 1 OF THE SAN BERNARDINO COUNTY CODE, RELATING TO A SUNSHINE ORDINANCE (OPEN MEETING AND PUBLIC RECORD REQUIREMENTS).

SECTION 1. Division 9 is added to Title 1 of the San Bernardino Code,

to read:

DIVISION 9. SUNSHINE ORDINANCE

Chapters:

- 1. General Provisions

CHAPTER 1: GENERAL PROVISIONS

Sections:

- 19.0101 Citation.
- 19.0102 Findings and Purpose.
- 19.0103 Construction.
- 19.0104 Public Access Web Site.
- 19.0105 Release of Public Records – Sunshine of Documents.
- 19.0106 Immediacy of Response, Withholding Kept to a Minimum.
- 19.0107 Records Survive Transition of Officials.
- 19.0108 Retention of Audio and Video Recordings of Public Meetings.
- 19.0109 Computer Systems and Public Information.

19.0101 Citation.

This Division may be cited as the San Bernardino County Sunshine Ordinance or the Sunshine Ordinance.

19.0102 Findings and Purpose. The Board of Supervisors of the County of San Bernardino finds and declares:

1 (a) Efficient and effective governance occurs when the electorate is
2 adequately equipped to constructively oversee and hold elected and other officials
3 accountable for their actions.

4 (b) That transparency and open government is essential for good governance
5 and serves as the foundation upon which the electorate may equip itself to fulfill these
6 obligations.

7 (c) Members of the public must be provided with a meaningful opportunity to
8 participate in the decisions that affect them, and to understand how and why those
9 decisions are made.

10 (d) Public access to documents and records of San Bernardino County are an
11 essential component of transparency, and as such, failure to allow public access to
12 these documents compromises the strength and integrity of our government.

13 (e) In order to further the people's right of access to public records, any
14 exemptions that may be applied to the release of public records shall be narrowly
15 construed.

16 (f) Elected officials, commissions, boards, committees and other agencies
17 within the County exist to serve the public and to conduct the people's business. The
18 people do not cede to these entities the right to decide what the people should know
19 about the operations of local government.

20 (g) In order to ensure public participation in and scrutiny of the decisions and
21 conduct of County government, records pertaining to the conduct of the people's
22 business must be readily available to the public, unless exempt from disclosure under
23 the law.

24 (h) That it has a fiduciary responsibility to the people to exercise sound
25 judgment and take great care to be good stewards of their tax dollars and as such, all
26 County expenditures of public funds should be accounted for and fully disclosed where
27 not prohibited by law.

28 (i) Members of the public should not need to engage in prolonged or
burdensome efforts, or to retain the services of an attorney, to obtain meaningful access

1 to public records and information. Rather, it is the duty of every officer, official and
2 employee of County government to ensure prompt and meaningful access to public
3 records, and to assist the public in obtaining such access.

4 (j) Honesty, integrity, and openness in the exercise of government authority
5 are fundamental prerequisites to an effective and efficient County government that
6 serves the needs and interests of its citizens.

7
8 **19.0103 Construction.**

9 (a) The right of the people to know what their government and those acting on
10 behalf of their government are doing is fundamental to democracy, and with very few
11 exceptions, that right supersedes any other policy interest government officials may use
12 to prevent public access to information. Only in rare and unusual circumstances does
13 the public benefit from allowing the business of government to be conducted in closed
14 session, and those circumstances should be carefully and narrowly defined to prevent
15 public officials from abusing their authority.

16 (b) The provisions of this Ordinance requiring or promoting public access to
17 meetings, records, or information relating to the conduct of the people's business shall
18 be broadly construed. The provisions of this Ordinance that limit, restrict, or provide
19 exceptions to the public's right of access shall be narrowly construed.

20 (c) The provisions of the California Public Records Act (Government Code
21 section 6350 et seq.) requiring or promoting public access to records or information
22 relating to the conduct of the people's business, shall be broadly construed. The
23 provisions of the California Public Records Act that limit, restrict, or provide exceptions
24 to the public's right of access shall be narrowly construed.

25 (d) All provisions of this Ordinance shall be interpreted in a manner consistent
26 with the Ralph M. Brown Act (Government Code section 54950 et seq.) and the
27 California Public Records Act, as both currently exist, or as both are hereafter amended
28 from time to time and as interpreted by the California Attorney General and case
authority. In the event of any conflict between any provision of this Ordinance and the

1 Brown Act or the California Public Records Act, as both currently exist, or as hereafter
2 amended from time to time and as interpreted by the California Attorney General and
3 case authority, the provisions of the Brown Act and the California Public Records Act as
4 they exist at that time, and the opinions of the California Attorney General and the case
5 law interpreting each as they exist at that time, shall prevail over any conflicting
6 provision of this Ordinance. If this Ordinance is silent on any matter, the provisions of
7 the Brown Act and the California Public Records Act as both then exist at that time, and
8 as interpreted by the California Attorney General and case authority at that time, will
9 govern. This Ordinance does not create a cause of action separate from a cause of
10 action under the Brown Act or the California Public Records Act.

11
12 **19.0104 Public Access Web Site.**

13 (a) The County shall create and maintain a public access Web site.

14 (b) The public access Web site will include, at a minimum, the following:

15 (1) A copy of the San Bernardino County Sunshine Ordinance.

16 (2) Information on how to obtain a free copy of the Sunshine
17 Ordinance. The County will provide a copy of the San Bernardino County Sunshine
18 Ordinance, the California Public Records Act, and the Ralph M. Brown Act to any
19 requestor, free of charge, except for postage if delivery by mail is requested.

20 (3) Any other information required by this Ordinance to be posted on
21 the public access Web site.

22 **19.0105. Release of Public Records – Sunshine of Documents.**

23 (a) The Board of Supervisors and the Legislature, mindful of the right of
24 individuals to privacy, finds and declares that access to information concerning the
25 conduct of the people's business is a fundamental and necessary right of every person
26 in this County. There shall be a presumption that the record sought is public, and the
27 burden shall be upon the custodian to articulate with specificity the exemption which
28 applies.

1 (b) All requests for public records shall be directed to the department or Board
2 office responsible for the records requested or to the Clerk of the Board, who shall direct
3 the request to the appropriate department or Board office. The California Public
4 Records Act sets forth timelines for responding to such requests and providing records.
5 Each Board office and department will respond to and provide the requested records as
6 rapidly as possible, striving to provide them sooner than the timelines in the California
7 Public Records Act. Said timelines should never be asserted to delay fulfilling a simple,
8 routine or otherwise readily answerable request. When gathering documents
9 responsive to a request, the Board office or department will not withhold all of the
10 records that are responsive to the request until all potentially responsive documents
11 have been gathered and reviewed, but will rather provide them in stages as gathered
12 and reviewed.

13 (c) County officers and employees will promptly provide records of
14 reimbursement of County officer and employee expenditures with as little redacted as
15 possible, except information routinely redacted by the County Auditor to deter identity
16 theft and protect privacy. For purposes of reimbursement of County officer and
17 employee expenditures, this subsection includes, but is not limited to, all bills, claims,
18 invoices, vouchers or other records of payment and disbursements showing the amount
19 paid, the payee and the purpose for which payment is made. The "deliberative process
20 privilege" shall not be asserted with regard to County payments and disbursements
21 other than information routinely redacted by the County Auditor to deter identity theft
22 and protect privacy. As technology advances, the County Auditor will devise a system
23 where records of reimbursement of expenditures can be posted and accessed by the
24 public on the County's website.

25 (d) County officers and officials are discouraged from asserting the
26 "deliberative process privilege" as to records reflecting meetings or contacts where
27 County business is discussed with persons who are not County officers, officials or
28 employees. In no case should the "deliberative process privilege" be asserted as to the
identities of other County staff members at such meetings or contacts.

1 (e) Any agenda item hiring the staff of the Board of Supervisors or raising the
2 salaries of the staff of the Board of Supervisors shall have attached to said item a list of
3 the staff members affected by the hiring or salary increase and the amount of increase
4 for each such staff member.

5 (f) The County Administrative Officer will provide training to at least two staff
6 members of each Board office and department about the California Public Records Act
7 and on how to properly respond to California Public Records Act requests received by
8 that office or department. No employee of any department shall deny access to any
9 record of that office without first consulting with at least one of the staff members who
10 has received such training.

11 **19.0106. Immediacy of Response, Withholding Kept to Minimum.**

12 (a) The maximum deadlines provided in the California Public Records Act are
13 appropriate for extensive or demanding requests, but shall not be used to delay fulfilling
14 a simple, routine or otherwise readily answerable request.

15 (b) The person seeking the information need not state his or her reason for
16 making the request, or the use to which the information will be put, and requesters shall
17 not be routinely asked to make such a disclosure. Where a record being requested
18 contains information most of which is exempt from disclosure under the California Public
19 Records Act and this Chapter, the County Counsel or custodian of the record may
20 inform the requester of the nature and extent of the non-exempt public information and
21 inquire as to the requester's purpose for seeking it, in order to suggest alternative
22 sources for the information which may involve less redaction or to otherwise prepare a
23 response to the request.

24 (c) No record shall be withheld from disclosure in its entirety unless all
25 information contained in it is exempt from disclosure based on an express provision of
26 this Chapter, an exemption provided by California Public Records Act, or on an express
27 prohibition against disclosure imposed by California or federal law. Information that is
28

1 exempt from disclosure shall be masked, deleted, or otherwise segregated in order that
2 the nonexempt portion of a requested record may be released.

3
4 **19.0107. Records Survive Transition of Officials.**

5 All public records maintained by a member of the Board of Supervisors or their
6 staff, by any other elected County official or their staff, by the County Administrative
7 Officer, County Clerk, or by the head of any County department, shall, upon the
8 departure of that individual from County service, be retained, preserved, and stored in a
9 manner consistent with the records retention policies of the County. Except in the case
10 of his/her own departure, the County Administrative Officer, in consultation with the
11 Director of Human Resources, shall designate a person to assist such individual prior to
12 his or her departure to assure that his or her records are properly retained, preserved,
13 and stored for the period prescribed by the records retention policies of the County.
14 The County Administrative Officer shall in like manner direct the Information Services
15 Department to properly retain, preserve and store all electronic public records of said
16 departing individual in a manner consistent with the records retention policies of the
17 County. In the case of the departure of the Chief Administrative Officer, the Chairman
18 of the Board of Supervisors shall perform the functions of the Chief Administrative
19 Officer as described above. Notification of this section shall be given by the County
20 Administrative Officer or his/her designee to the departing individual(s) prior to his/her
21 departure.

22 **19.0108. Retention of Audio and Video Recordings of Public Meetings.**

23 Any audio or video recording of an open and public meeting of the Board of
24 Supervisors or the Planning Commission shall be retained in perpetuity. Any inspection
25 of an audio or video recording shall be provided without charge on equipment made
26 available by the County.

1 **19.0109. Computer Systems and Public Information.**

2 (a) It is the policy of the County to use computer technology in order to reduce
3 the cost of public records management, including the costs of collecting, maintaining,
4 and disclosing records subject to disclosure to members of the public under the
5 California Public Records Act or this Chapter. To the extent that it is technologically and
6 economically feasible, departments that use computer systems to collect and store
7 public records shall program and design these systems to ensure convenient, efficient,
8 and economical public access to records, and shall make public records easily
9 accessible over public networks such as the Internet.

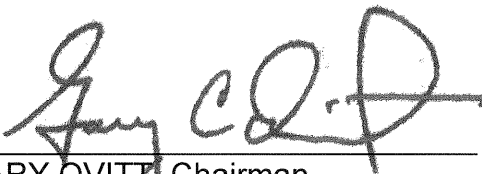
10 (b) Departments purchasing new computer systems or software, or upgrading
11 existing systems or software, shall maintain the following goals as a means to achieve
12 the policies of this section:

13 (1) Implementing a computer system in which exempt information is
14 segregated or filed separately from otherwise disclosable information.

15 (2) Implementing a system that permits reproduction of electronic
16 copies of records in a format that is generally recognized as an industry standard
17 format.

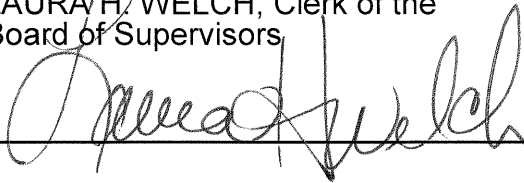
18 (3) Implementing a system that permits making records available
19 through a public computer network, consistent with the requirement for security of
20 information.

21 SECTION 2. This ordinance shall take effect thirty (30) days from the date
22 of adoption.

23 
24 _____
25 GARY OVITT, Chairman
26 Board of Supervisors
27
28

1 SIGNED AND CERTIFIED THAT A COPY
2 OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

3 LAURA H. WELCH, Clerk of the
Board of Supervisors

4 
5 _____

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF SAN BERNARDINO)

9 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San
10 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
Supervisors of said County and State, held on the 5th day of October, 2010 at
11 which meeting were present Supervisors: _____

12 Mitzelfelt, Biane, Derry, Ovitt, Gonzales
and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
13 to wit:


14 AYES: SUPERVISORS: **Mitzelfelt, Biane, Derry, Ovitt, Gonzales**

15 NOES: SUPERVISORS: **None**

16 ABSENT: SUPERVISORS: **None**

17 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
18 official seal of the Board of Supervisors this 5th day of October, 2010.

19 LAURA H. WELCH, Clerk of the
20 Board of Supervisors of the
21 County of San Bernardino,
State of California

22 
23 _____
Deputy

24 Approved as to Form:

25 RUTH E. STRINGER, County Counsel

26 By: 
27 KENNETH C. HARDY
Deputy County Counsel

28 Date: 9/23/10

**A copy of this ordinance may be obtained
free-of-charge by contacting the
County of San Bernardino Executive Office,
Public Information Office
at (909) 387-4717
or via mail at:**

**Sunshine Ordinance
County Executive Office
Public Information Office
385 N. Arrowhead Ave., Fifth Floor
San Bernardino CA 92415-0120**