ORDINANCE NO. 4125

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:


CHAPTER 1: GENERAL PROVISIONS

Sections:

19.0101 Citation.
19.0102 Findings and Purpose.
19.0103 Construction.
19.0104 Public Access Web Site.
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:

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

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

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

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

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

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

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

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

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

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

19.0103 Construction.

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

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

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

(d) All provisions of this Ordinance shall be interpreted in a manner consistent with the Ralph M. Brown Act (Government Code section 54950 et seq.) and the California Public Records Act, as both currently exist, or as both are hereafter amended 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
Brown Act or the California Public Records Act, as both currently exist, or as hereafter amended from time to time and as interpreted by the California Attorney General and case authority, the provisions of the Brown Act and the California Public Records Act as they exist at that time, and the opinions of the California Attorney General and the case law interpreting each as they exist at that time, shall prevail over any conflicting provision of this Ordinance. If this Ordinance is silent on any matter, the provisions of the Brown Act and the California Public Records Act as both then exist at that time, and as interpreted by the California Attorney General and case authority at that time, will govern. This Ordinance does not create a cause of action separate from a cause of action under the Brown Act or the California Public Records Act.

19.0104 Public Access Web Site.

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

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

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

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

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


(a) The Board of Supervisors and the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this County. There shall be a presumption that the record sought is public, and the burden shall be upon the custodian to articulate with specificity the exemption which applies.
(b) All requests for public records shall be directed to the department or Board office responsible for the records requested or to the Clerk of the Board, who shall direct the request to the appropriate department or Board office. The California Public Records Act sets forth timelines for responding to such requests and providing records. Each Board office and department will respond to and provide the requested records as rapidly as possible, striving to provide them sooner than the timelines in the California Public Records Act. Said timelines should never be asserted to delay fulfilling a simple, routine or otherwise readily answerable request. When gathering documents responsive to a request, the Board office or department will not withhold all of the records that are responsive to the request until all potentially responsive documents have been gathered and reviewed, but will rather provide them in stages as gathered and reviewed.

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

(d) County officers and officials are discouraged from asserting the “deliberative process privilege” as to records reflecting meetings or contacts where County business is discussed with persons who are not County officers, officials or 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.
(e) Any agenda item hiring the staff of the Board of Supervisors or raising the salaries of the staff of the Board of Supervisors shall have attached to said item a list of the staff members affected by the hiring or salary increase and the amount of increase for each such staff member.

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

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

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

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

(c) No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure based on an express provision of this Chapter, an exemption provided by California Public Records Act, or on an express prohibition against disclosure imposed by California or federal law. Information that is
exempt from disclosure shall be masked, deleted, or otherwise segregated in order that
the nonexempt portion of a requested record may be released.


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

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

Any audio or video recording of an open and public meeting of the Board of
Supervisors or the Planning Commission shall be retained in perpetuity. Any inspection
of an audio or video recording shall be provided without charge on equipment made
available by the County.
19.0109. **Computer Systems and Public Information.**

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

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

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

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

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

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

[Signature]

GARY O'VITTEN, Chairman
Board of Supervisors
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

LAURA H. WELCH, Clerk of the Board of Supervisors

STATE OF CALIFORNIA )
COUNTY OF SAN BERNARDINO ) ss.

I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San 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 which meeting were present Supervisors: ________________________________, Mitzelfelt, Biane, Derry, Owitt, Gonzales and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES: SUPERVISORS: Mitzelfelt, Biane, Derry, Owitt, Gonzales

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: None

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

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

Approved as to Form:

RUTH E. STRINGER, County Counsel

By: ________________________________
KENNETH C. HARDY
Deputy County Counsel

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