CITY OF BENICIA

ORDINANCE NO. 05-6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE REGARDING PUBLIC ACCESS TO MEETINGS AND PUBLIC RECORDS, PUBLIC ETHICS AND ESTABLISHMENT OF AN OPEN GOVERNMENT COMMISSION

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

The Benicia Municipal Code is amended by adding a new Title 4 (Open Government) to read as follows:

Title 4

OPEN GOVERNMENT

Chapters:

4.04 In General.
4.08 Public Access to Meetings.
4.12 Public Information.
4.16 Ethics.
4.20 Open Government Commission.

Chapter 4.04

In General

Sections:

4.04.010 Goal.
4.04.020 Findings and purpose.
4.04.030 Fundamental rights.
4.04.040 Copies to be provided.
4.04.050 Definitions.

4.04.010 Goal. It is the goal of this Title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings, easier access to public records, ethical guidelines and a watchdog commission will help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well –

educated public and ethical officials are essential to good government.

4.04.020 Findings and purpose. The city council finds as follows:

A. The Ralph M. Brown Act states: "The people of this State do not yield their sovereignty to the agencies which serve them."

B. It is the city's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.

C. Elected city officials, commissions, boards, advisory bodies and other agencies of the city exist to conduct the people's business. This Title is intended to assure that the deliberations of these bodies and the city's operations are open to the public.

D. This Title is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Benicia can be fully informed and thereby retain control over the instruments of local government in their city.

E. This Title is intended to list and implement fundamental rights of each member of the public.

4.04.030 Fundamental rights. Fundamental rights of each member of the public include, but are not limited to:

1. the right to receive meaningful, advance notice of agendas and packets of all meeting materials.
2. the right to attend, listen to and participate in all meetings without cost, signup, giving name or address or any personal information.
3. the right to speak with a meaningful amount of time on every agenda item separately, including each consent item, closed session or any report items without being required to sign up, give their name, or address, or any other information.
4. the right to interrupt the body for a Point of Order or Clarification except to the extent that it becomes unduly disruptive.
5. the right to speak on any subject not on the agenda so long as the subject relates to the business of the body.
6. the right to criticize the body or members for their official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.
7. the right to pull Consent Agenda items for public review and discussion.
8. the right to comment on every agenda item either during the public comment period on that item, under the general public comment period or in writing.
9. the right to use presentation tools when commenting.

A plaque listing these rights will be placed at the entrance of the Council Chambers. These rights shall be read aloud by the presiding official to the public at the start of each meeting unless the rights are posted in the meeting room. If the rights are posted, the presiding officer may state the rights are posted instead of reading them.

4.04.040 Copies to be provided. The Office of the City Attorney shall provide any person with a copy of the Brown Act or Public Records Act or this Title without charge.

4.04.050 Definitions. The following words and phrases, whenever used in this Title shall be construed as hereafter set out unless it shall be apparent from the context that they have a different meaning. Unless defined herein, the definitions in the Ralph M. Brown Act and the California Public Records Act and related laws shall govern.

A. "Agenda packet" means the non-confidential portion of a body's agenda related materials. Agenda packet includes materials that:

1. Were distributed to a majority of the members of a body prior to or at the meeting and

2. Relate to an item on the agenda.

B. "Body" means:

1. The Benicia city council,

2. Any board, commission, task force or committee, which is established by city ordinance or by motion or resolution of the city council or created as a result of Federal, State or local grants,

3. Any advisory board, commission or task force created and appointed by the mayor and approved by the city council, or

4. Any standing committee of any body specified in Subsections (1), (2) or (3).

"Body" shall not mean any congregation or gathering which consists solely of employees of the city of Benicia or consists of employees and representatives of companies providing employees benefits including, but not limited to, retirement and health care plans.

C. "Days" means calendar days.

D. "Department" means a department of the city of Benicia.

E. "Information Request Facilitator" means the person who shall assist members of the public with their public information requests. For general request, it means the city clerk in accordance with Section 4.20.030(D). For department specific requests, it means the department director or designee.

F. "Meeting" shall mean any of the following:

1. A congregation of a majority of the members of any body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

2. Any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and

3. Any meal or social gathering of a majority of the members of a body immediately before, during, or after a meeting of a body. For the purposes of this definition, "immediately before" means the four hours prior to a meeting.

"Meeting" shall not include any of the following:

1. Individual contacts or conversations between a member of a body and any other person;

2. The attendance of any number of the members of a body at a conference, or at any meeting or gathering organized to address a topic of local community concern and which is open to the public, provided that a majority of the members of a body refrains from collectively discussing, other than as part of the scheduled program, the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that body;

3. The attendance of any number of the members of any body at a purely social, recreational, educational or ceremonial occasion provided that a majority of the members of any body refrains from discussing any business within the subject matter jurisdiction of the body and provided that the gathering does not qualify as a meeting under Section 4.04.050(F)(3); and

4. The attendance of a majority of the members of a body at a standing committee, provided that the members of the body who are not members of the standing committee do not participate personally or through representatives.

G. "Notice" means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in Sections 4.08.030, 4.08.050 and 4.08.060.

H. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

I. "Public official" means all elective officials and members of all official boards, commissions and committees of the city.

J. "Online" shall mean accessible by computer without charge to the user.

K. "The Public Records Act" shall mean Government Code Section 6250 et seq.

L. "Ralph M. Brown Act" shall mean Government Code Section 54950 et seq.

M. "Software or hardware failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the city has taken customary precautions.

N. "Standing Committee" shall mean any number of members of a body which totals less than a quorum and which has (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of the body.

O. "Weeknight" shall mean after 5 p.m. on any day of the week except for Saturday or Sunday.

Chapter 4.08

Public Access to Meetings

Sections:

4.08.010 Meetings to be open and public: Application of Brown Act.
4.08.020 Conduct of meetings for public agencies covered by this Title.

4.08.030 Notice requirement: Emergency meeting.
4.08.040 Conduct of business: Time and place for meeting.
4.08.050 Notice and agenda requirement: Regular meeting.
4.08.060 Notice and agenda requirement: Special meeting.
4.08.070 Agenda related materials as public records: Agenda subscribers.
4.08.080 Barriers to attendance prohibited.
4.08.090 Public testimony at regular and special meetings.
4.08.100 Minutes and recordings.
4.08.110 Public comment by members of bodies.
4.08.120 Agenda descriptions and oral disclosures.
4.08.130 Statement of reasons for closed sessions.
4.08.140 Conduct of closed sessions.
4.08.150 Disclosure of closed session discussions and actions.
4.08.160 Ex-parte communications.

4.08.010 Meetings to be open and public: Application of Brown Act. All meetings of bodies defined in Sections 4.04.050 shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this Chapter, in which case this Chapter shall be applicable.

4.08.020 Conduct of meetings for public agencies covered by this Title. To the extent not inconsistent with state or federal law, a body may require, as a condition of any express delegation of power to any public agency, including joint powers authorities, whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act.

4.08.030 Notice requirement: Emergency meeting. Emergency meetings shall be held in accordance with Government Code Section 54956.5 which states:

"(a) For purposes of this Section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this Section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened

disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this Section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this Section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this Section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this Section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible."

4.08.040 Conduct of business: Time and place for meeting.

A. Every body established by city council ordinance shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible bodies shall conduct their regular meetings on weeknights except when the body determines that the subject matter would be more appropriately discussed at another time.

B. Regular and special meetings of every body shall be held within the city of Benicia except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the body is a party;

2. Inspect real or personal property which cannot be conveniently brought to Benicia, provided that the topic of the meeting is limited to items directly related to the real or personal property;

3. Participate in meetings or discussions of multi-agency significance that are outside Benicia. However, any meeting or discussion held pursuant to this Subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective body specified in this Title; or

4. Meet outside the city of Benicia with elected or appointed officials of the United States or the State of California or counties.

C. If a meeting is held outside of the city, the location of the meeting shall be posted in the city.

D. If a regular meeting for any body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least six (6) days in advance.

E. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding official of the body or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

F. If a quorum of a body becomes present at a meeting of a standing or ad hoc committee of said body, the body may not take action at the meeting of the committee unless the meeting has been properly noticed as a meeting of the body itself. The standing or ad hoc committee of a body may take action at the meeting consistent with the committee's jurisdiction and authority.

G. Every body shall ensure that video screens or presentation boards are reasonably viewable by both the body and the public.

H. To ensure business is conducted in open, bodies should avoid taking breaks during discussion of a particular agenda item. If a break is needed or if the item is continued to a future meeting, each member of the body shall disclose orally on the public record the general nature of any conversations during the break or continuance pertaining to the item.

I. Each body established by ordinance shall establish and publish an annual schedule of regular meetings.

4.08.050 Notice and agenda requirements: Regular meetings.

A. 6 day advance notice requirement for regular meetings of bodies. The city council, and any body defined in Section 4.04.050 shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (24) hours a day no later than 6 days before the date of the meeting;

2. Filing a copy of the agenda and a complete agenda packet with the Office of the City Clerk and the Benicia Public Library no later than 5 days before the date of the meeting; and,

3. Posting a copy of the agenda online at the city's web site no later than 6 days before the date of the meeting. Notwithstanding this Subsection, the failure to timely post a copy of the agenda because of software or hardware failure, as defined, shall not constitute a defect in the notice for a regular meeting, if the body

complies with all other posting and noticing requirements.

B. Supplemental agenda and related materials requirements for regular meetings of bodies. Notwithstanding the notice provisions of 4.08.050(A), a body may amend or supplement a posted agenda or agenda-related materials no later than 72 hours before a regular meeting and only for the following reasons or under the following conditions. Prior to amending or supplementing the posted agenda or agenda-related materials, the presiding officer shall state for the record what supplemental material is under consideration and/or how the agenda is proposed to be amended. Agendas or agenda-related materials may only be amended or supplemented:

1. To add an item due to an emergency or urgency, provided the body makes the same findings as required by Section 4.08.050(D) before taking action;

2. To delete or withdraw any item from a posted agenda;

3. To provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to staff;

4. To correct technical, non-substantive errors or omissions, or to change a stated financial amount that decreases the body's obligation under a proposed agreement, or to clarify the agenda title in a manner that does not substantively change the nature of the action to be taken on the agenda item;

5. To consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the city council provided that the item has not been materially changed by the committee or materially changed after the committee considered the item; or

6. To continue an agendized item to the next regular meeting of the body so long as members of the public are given an opportunity to address the body on the item at the meeting from which the item is continued.

If substantial supplemental information is received from the applicant or a member of the public, the body shall either (1) automatically continue the item to the next regular meeting or a special meeting, or (2) decide that there was adequate notice to allow consideration of the additional information.

C. Excuse of open government notice requirements. 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:

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:

(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.

D. Action on items not appearing on the agenda. Notwithstanding Subsection C of this Section, a body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the body that a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or

2. The matter is urgent. Upon a determination a two-thirds vote of those present, that there is a need to take immediate action which came to the attention of the body after the agenda was posted; that there was adequate public notification considering the subject matter to be considered; and that the need to take immediate action:

(a) Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

(b) Relates to federal or state legislation; or

(c) Relates purely ceremonial or commendatory action.

E. Nothing in this Section shall prohibit a body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 4.08.050(D) before or during a meeting.

F. Nothing in this Section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.

4.08.060 Notice and agenda requirement: Special meetings.

A. If the presiding official or senior staff member to the body finds that waiting for the next available regular meeting of the body would make it impossible to take meaningful action or the regular meeting will be cancelled due to a lack of quorum or a city holiday, a special meetings of any body may be called at any time by the presiding official thereof or by the senior staff member to the body. All bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least 72 hours (excluding Saturday, Sunday and Holidays) before the time of the meeting set forth in the agenda. The posting time for a special meeting due to the body's regular meeting falling on a holiday shall be six (6) days;

2. Filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and

3. Delivering a copy of the agenda to each member of the body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 24 hours before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Bodies specified in Section 4.04.050 shall, in addition to the noticing requirements of this Section, post a copy of the agenda for any special meeting online

at the city's web site at least 72 hours before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware failure, as defined, shall not constitute a defect in the notice for a special meeting if the body complies with all other posting and noticing requirements.

C. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the body except that the body may designate an alternative meeting location provided that such alternative location is specified in the agenda.

D. To the extent practicable, the presiding official or the majority of members of any body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

E. Special meetings may not be scheduled on the same day as a previously scheduled regular meeting that was not noticed in compliance with this Chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

4.08.070 Agenda packets as public records: Agenda subscribers. In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code 6250 et seq.) and this Title, every body specified in Section 4.04.050 shall make available for immediate public inspection and copying all agendas and agenda related materials.

A. All agendas shall be posted on the city's web site and the city's cable channel and available at the Benicia Public Library. Complete agenda packets for each body shall be posted on the city's web site to the extent fiscally and technologically feasible and shall be available for review at the Benicia Public Library and at the city manager's office during normal business hours. The time for compliance with this Subsection shall be in accordance with the time of the posting of the agenda for the meeting.

B. All agendas of every body shall be available to the public by an email subscription. Such service shall be provided free of charge and shall be provided to the subscriber until the request for the service is cancelled by the subscriber or the email address is no longer valid. The email shall be sent at the time of the posting of the agenda for the meeting. The city clerk shall establish the email subscribers list for the city council agendas. The secretary to other bodies shall establish and maintain the email subscribers list for the respective bodies.

C. Paper copies of the agenda and agenda packet shall be available to members of the public for every body upon payment of the fee established by city council resolution. Every body shall establish a subscription list for the agenda and/or agenda packet so that members of the public may subscribe to the agenda and/or agenda packet upon payment of the fee established by the city council. The fee shall not exceed the direct costs of copying the agenda and agenda packet and the reasonable mailing costs of the agenda and agenda packet. In order to enhance public participation and involvement, the fees for the agenda subscription shall be waived for anyone who reports on city government and makes the reports available to members of the public. Subscriptions for the agenda and/or agenda packet shall be valid for one year. The city clerk or the secretary to other bodies shall send the subscriber a note to

resubscribe and pay the subscription fee with the last agenda and/or agenda packet that is mailed to a subscriber.

D. Every body shall make available for immediate public inspection and copying the agenda packet that has been distributed to a majority of its members. The right to immediate public inspection and copying provided in this Section shall not include any material exempt from public disclosure under this Title or under state or federal law. Neither this Section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that Act or this Title.

E. All requests by agenda subscribers to receive agendas or agenda-related materials may be made by mail, telephone or email to the Office of the City Clerk or City Manager's Office. The city clerk shall maintain a list of all bodies and shall immediately forward a copy of the written request to the appropriate body to ensure compliance with the request.

F. Notwithstanding any other provision of this Title, the failure of an agenda subscriber to timely receive the agenda or agenda related material pursuant to this Section shall not constitute grounds for invalidation of the actions of the body taken at the meeting for which the agenda or the agenda related material was not timely received.

4.08.080 Barriers to attendance prohibited.

A. No body specified in this Title shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system or television shall be used to permit the overflow audience to listen to the proceedings.

B. Any person attending an open meeting of a body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings.

4.08.090 Public testimony at regular and special meetings.

A. Every agenda for every regular or special meeting shall provide a public comment Section on the agenda as an opportunity for members of the public to directly address a body on items of interest to the public that are within the body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2 and Section 4.08.050(D).

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have fifteen (15) minutes to present their case. The spokesperson for the proponent(s) shall have five (5) minutes to

present any rebuttal. Other speakers may be requested to keep their remarks concise.

C. At the presiding official's discretion, the official may grant up to 10 minutes to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the body's consideration of those items. Such comments shall be made under the public comment part of the agenda.

D. Every body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the city that all speakers are entitled to up to five minutes of speaking time per agenda item.

E. Members of the public who speak on an agenda item or under public comment do not have to give their name or address should they choose not to.

F. Written material submitted by members of the public shall be retained as part of the official agenda file and available for review by other members of the public in accordance with Chapter 4.12.

G. No body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, even if the criticism implicates the performance of one or more public employees. Nothing in this Subsection shall confer any privilege or protection beyond that which is otherwise provided by law.

4.08.100 Minutes and recordings.

A. All bodies shall record the minutes for each regular and special meeting convened under the provisions of this Chapter. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the body began and ended any closed session, any letters submitted on agenda items, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

B. Every body specified in Section 4.04.050 and established by city ordinance shall make an audio and where possible economically and technically a visual recording of every open regular meeting. Other bodies shall audiotape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying. For the city council and bodies established by ordinance, the recording shall not be erased, deleted or destroyed for at least four years. For all other bodies, the recording shall not be erased, deleted or destroyed for at least two years. If, during the four or two-year period, a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the body.

4.08.110 Public comment by members of bodies. Every member of a body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the body of which he or she is a member. Bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or non-disclosure of discussions or actions taken in closed session. However, the release of specific factual information made confidential by state or federal law including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this Title, may constitute grounds for censure or for an action for injunctive or declaratory relief by the body. Nothing in this Section shall confer any privilege or protection for expression beyond that which is otherwise provided by law.

4.08.120 Agenda descriptions and oral disclosures.

A. Agendas for meetings shall provide a brief description of the item under consideration. To the extent appropriate, information that should be described includes the following: the commonly used name and location of the property under consideration; names of proposed appointees, contractors or parties to an agreement; and the general nature of the action(s) under consideration. The use of acronyms, jargon and "double speak" should be avoided.

B. Closed session descriptions shall comply with the permissive provisions of Government Code Section 54954.5 in describing items for closed session.

C. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or Section 4.08.050(D) herein, the statement shall be made in open session concurrent with the findings required pursuant to that Section.

D. Any action taken on items that are not described in accordance with this Section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

4.08.130 Statement of reasons for closed sessions.

A. Prior to adjourning to any closed session, a body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of a closed session item added to the agenda pursuant to Government Code Section 54954.2(b) or Section 4.08.050(D) herein, the statement shall be made in open session concurrent with the findings required pursuant to that Section.

C. If a closed session item or session has been adjourned or continued from a prior meeting, the body shall re-state the reasons for closed session before reconvening the closed session.

D. Nothing in this Section shall require or authorize a disclosure of information that is confidential under law.

4.08.140 Conduct of closed session.

A. A body shall consider in closed session only those matters specified in the

statement required in Section 4.08.130.

B. The following provisions of the Brown Act apply to the conduct of closed session by bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54956.95; 54957; and 54957.6.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with Section 4.08.150(B).

4.08.150 Disclosure of closed session discussions and actions.

A. In accordance with Government Code Section 54963 and as provided below, a person present at a closed session may not disclose confidential information received.

B. In addition to the required disclosures pursuant to Government Code Section 54957.1 and Subsection C below, the body may, by motion and vote in open session, elect to disclose any other information obtained in closed session which a majority of the members of the body deems to be in the public interest. Any disclosure pursuant to this Section shall be made through the presiding official or such other person present in the closed session, designated to convey the information.

C. Immediately following the closed session a body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real Property Negotiations: Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon after the other party or its agent has informed the body of its action upon (a) inquiry by any person, and, (b) in any event, at the next meeting of said body. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this Section need not be made until the conditions have been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation: Direction or approval given to the body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement: If a body accepts a settlement offer signed by an

opposing party, the body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this Section need not be disclosed until the closely related case is settled or otherwise finally concluded.

D. Reports required to be made pursuant to this Section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this Section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

E. A written summary of the information required to be reported immediately pursuant to this Section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting.

F. Action taken in closed session which is not immediately disclosable under this Section shall be disclosed and noticed under the procedures set forth in Section 4.08.150(C) at such time as disclosure is required.

4.08.160 Ex-parte communications. While it is the city's policy to encourage communications between the public and officials, the city recognizes that Constitutional due process protections may limit communications with council members or board or commission members, outside of a public meeting. Therefore, the city's policy on ex-parte communications discourages officials from discussing appeals or enforcement matters with members of the public except during the body's formal consideration of the matters. These matters should not be discussed during site inspections or field trips that are not part of an agendized meeting. If such discussions take place, officials must publicly disclose at the start of the agendized presentation of the item, the substance of any such discussions they have had with anyone other than another member of the body or staff member. This policy applies to any appeal or enforcement matter which is pending, or is reasonably expected to come before the body on which the official sits.

Chapter 4.12

Public Information

Sections:

4.12.010 Release of documentary public information.
4.12.020 Release of oral public information.

4.12.030 Public review file--policy body communications.
4.12.040 Non-exempt public Information.
4.12.050 Disclosure request.
4.12.060 Immediate disclosure request.
4.12.070 Withholding restrictions.
4.12.080 Justification for withholding.
4.12.090 Fees for copying.
4.12.100 Web site information.
4.12.110 Requests made by email.
4.12.120 Policy regarding purchase and use of computer systems.

4.12.010 Release of documentary public information. Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this Chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

4.12.020 Release of oral public information. Release of oral public information shall be accomplished as follows:

A. Every department director shall be responsible for being knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The department will make every effort to facilitate the information requested and will make it a top priority.

B. It shall be the duty of the department director (or designee) or, in the case of requests not directed to a specific department, the city clerk to provide information on a timely and responsive basis to the public. It shall also be their duty to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This Section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees, city board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the city, department, board, commission or committee and does not materially misrepresent the city, department, board, commission or committee's position. Nothing in this Section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

4.12.030 Public review file--policy body communications. Every body specified in Section 4.04.050 shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which

the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this Title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review.

4.12.040 Non-exempt public information. Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

(a) Sex, age and ethnic group;

(b) Years of graduate and undergraduate study, degree(s) and major or discipline;

(c) Years of employment in the private and/or public sector;

(d) Whether currently employed in the same position for another public agency;

(e) Other non-identify particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.

2. The job description of every employment classification.

3. The resumes of employees although personal information such as home address shall be deleted.

4. Any adopted memorandum of understanding between the city and a recognized employee organization.

D. Law Enforcement Information.

1. The Benicia Police Department shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law such as the TNG Order, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. The final decision for disclosure shall be made by the city council and the vote and reasoning of each city council member shall be made public on all nondisclosures. Such redacted information may include:

(a) The names of juvenile witnesses or suspects;

(b) Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(c) The identity of a confidential source;

(d) Secret investigative techniques or procedures;

(e) Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or

(f) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.

2. The Benicia Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts. Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the city council, or their standing

committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The non-confidential portion, if any, of such records shall be disclosed.

G. E-mail correspondence retained in the ordinary course of business and not exempt from disclosure shall be made available within three working days upon written or oral request. All such e-mail shall be maintained for two years before being destroyed.

4.12.050 Disclosure requests.

A. Notwithstanding any other provision of law and subject to the requirements of this Section, a written or oral request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than five business days unless the requestor is advised in writing within one business day that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;

2. The requested records are in the possession of the department processing the request;

3. The requested records are stored in a location outside of the department;

4. The requested records likely comprise a voluminous amount of separate and distinct writings;

5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

B. All determinations made pursuant to Section 4.12.050(A)(1)-(5) shall be communicated in writing to the requestor within five business days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than ten business days after the written determination pursuant to Section 4.12.050(A)(1)-(5) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state a number by which the requestor may be contacted.

C. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but shall be advised that providing such information may help the city assist the person finding all documents responsive to their request.

D. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to Section 4.12.050(A) shall be sent to the requestor if an address has been provided.

4.12.060 Immediate disclosure request.

A. An Immediate Disclosure Request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, within the past calendar year or (2) public records such as Statements of Economic Interests that have, by other law, a requirement to be disclosed within a specific shortened time frame. All Immediate Disclosure Requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

B. Notwithstanding any other provision of law and subject to the requirements of this Section, a written or oral request to inspect or obtain copies of public records pursuant to an Immediate Disclosure Request that is submitted to any department or to any body shall be satisfied at the earlier of the time required by other law or no later than two business days unless the requestor is advised in writing within two business days that additional time is needed because of the volume of records sought or because the records do not qualify as subject to the Immediate Disclosure Request procedure.

C. All determinations made pursuant to Section 4.12.060(B) shall be communicated in writing to the requestor within two business days of the date of the request. If additional time is needed or if the records do not qualify for an Immediate Disclosure Request, the request shall be processed in accordance with Section 4.12.050.

4.12.070 Withholding restrictions.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law.

B. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review.

4.12.080 Justification for withholding. Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this Title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

D. The final decision for withholding information shall be made by the city council. Each council member's vote and general reason shall be given and recorded in public. Detailed reasons need not be provided when such disclosure would

compromise privacy or confidential matters or would subject the city to litigation.

4.12.090 Fees for copying.

A. No fee shall be charged for making public records available for inspection.

B. No fee shall be charged for a single copy of a current meeting agenda.

C. A fee may be charged for:

1. Single or multiple copies of past meeting agenda or any agenda-related materials;

2. Multiple copies of a current meeting agenda; and

3. Any other public record copied in response to a specific request.

D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.

E. All drafts or Final Environmental Impact Reports and Environmental Impact Statements shall be posted either on the city's web site or on the consultant's web site.

F. In addition to the copies routinely required for city official or staff use, the city shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to 20 copies of documents such as Environmental Impact Reports. These copies will be provided on a first come first serve basis at no cost to members of the public. The City Manager or designee shall determine if and how many extra copies will be required on a case by case basis.

G. All fees permitted under this Section shall be determined and specified in the city of Benicia Master Fee Schedule, as amended. When the cost of writing a receipt and collecting the fees required under this Section would exceed the cost of the copies, the copying fee shall be waived. The Master Fee Schedule shall note the maximum amount that may be waived.

H. Nothing in this Section shall be interpreted as intending to preempt any fee set by or in compliance with State law.

4.12.100 Web site information. Each department shall make an effort to insure its portion of the city's web site is kept current. Each department shall also post public documents that are of interest to a wide number of the public.

4.12.110 Requests made by email. To ensure that email requests are received, records requests made by email shall not be effective until acknowledged by a return email of the city. Immediately upon receipt of an email request for records, the employee shall promptly acknowledge the request by a return email. Departments may establish a designated staff member or designated email address to receive email records requests.

4.12.120 Policy regarding purchase and use of computer systems.

A. It is the policy of the city to utilize 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 this

Chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.

B. Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

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

2. Implementing a system that permits paper reproduction of electronic copies of records.

C. Nothing in this Section shall be interpreted to require the city to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records.

Chapter 4.16

Ethics

Sections:

4.16.010 Policy.
4.16.020 Responsibilities of public office and employment.
4.16.030 Declaration of Open Government Awareness.
4.16.040 Dedicated service.
4.16.050 Fair and equal treatment.
4.16.060 Use of public property.
4.16.070 Obligations to citizens.
4.16.080 Conflict of interest.
4.16.090 Disclosure of conflict of interest.
4.16.100 Representation before bodies.
4.16.110 Gifts.

4.16.010 Policy. The proper operation of city government requires that (1) public officials and employees be independent, impartial and responsible to the people; (2) government decisions and policy be made using the proper channels of government; and (3) that public office or employment not be used for personal gain.

4.16.020 Responsibilities of public office and employment. Public officials and employees are bound to uphold and carry out the Constitution of the United States, the Constitution of the state of California, and the law and regulations of the city. Public officials and employees shall observe in their official acts the highest ethical standards and discharge faithfully the duties of their offices or employment regardless of personal considerations. Public officials and employees shall recognize that the public interests must be their primary concern; that they fulfill the public trust invested in them by their conduct; and that conduct in their official affairs should be above reproach.

4.16.030 Declaration of Open Government Awareness. All employees who are required to fill out conflict of interests forms pursuant to the Political Reform Act and the city's Conflict of Interest Code and all public officials shall sign an annual statement stating that they have read the text of this Title, Open Government, and have attended or will attend when next offered, a training session on Open Government, to be held at least once annually. The statements shall be maintained by the city clerk's office and shall be available as a public record. Annual training shall be provided by the city attorney's office with the assistance of the open government commission.

4.16.040 Dedicated service. Public officials and employees shall not exceed their authority or breach the law or ask others to do so. Public officials and employees shall work in full cooperation with other public officials and employees unless prohibited from doing so by laws or regulations including, but not limited to, attorney-client privilege, privacy or confidentiality laws.

4.16.050 Fair and equal treatment. Except in the case of moving an agenda item up on a particular agenda, preferential consideration of the request or petition of an individual person, group, business or entity shall not be given. No person, group, business or entity shall receive special advantages beyond that which are available to any other person, group, business or entity.

4.16.060 Use of public property. No public official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such property is available to the public generally or when such use is incidental as provided by city policy including city manager administrative instructions. No public official or employee shall use the time of any city employee, while said employee is on duty, for personal convenience or profit.

4.16.070 Obligations to citizens. No public official or employee shall use their official position to grant, or assist in granting, any special (whether negative or positive) consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen in the same circumstances.

4.16.080 Conflict of interest.

A. Incorporation of the California Political Reform Act. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the public official or employee knows or has reason to know he or she has a disqualifying conflict of interest within the meaning of California Government Code Section 87100 et seq. and any subsequent amendments to those Sections. Members of advisory bodies not subject to the Political Reform Act may make, participate in making, or in any way use or attempt to use their official positions to influence decisions on matters within the purview of their body. In the interest of open government, members of bodies are encouraged to disclose economic interests that are not conflicts under the Political Reform Act.

B. Incorporation of Government Code Section 1090 et seq. No public official or employee shall make a contract in which he or she has a financial interest within the

meaning of California Government Code Section 1090 et seq. and any subsequent amendments to those Sections.

C. Future employment. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a decision of the city, affecting a person or entity with whom the public official or employee is discussing or negotiating an agreement concerning said public official or employee's future employment. This prohibition shall be for a period of one year from the beginning of the discussion or negotiation or completion of the negotiation on future employment.

D. Incompatible activity or employment. Public officials and employees shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with their assigned duties as a public official or employee.

4.16.090 Disclosure of conflict of interest.

A. Public officials and employees shall disclose on the public record any personal, professional or business relationships with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the official or employee where as a result of the relationship, the ability of the official or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this Section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the city official or the employee's department shall constitute the public record.

B. Penalties. A court may void any governmental decision made by a public official or employee who fails to disclose a relationship as required by Subsection A if the court determines that the failure to disclose was willful.

C. Regulations. The open government commission may recommend regulations for adoption by the city council setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this Section.

4.16.100 Representation before bodies. No public official on a decision making body shall represent a client, a person or group before the board, commission, committee or the city council on which the public official presently sits.

4.16.110 Gifts. In addition to the gift limits imposed by California Government Code Section 89503 and any subsequent amendments to that Section, no official or employee of the city shall accept any gift, reward, service or gratuity of any kind in excess of the amount set forth pursuant to the Political Reform Act per single source as defined by the Political Reform Act regulations in a calendar year by reason of their employment or office. The open government commission may annually adjust, by the consumer price index, the gift limit imposed by this Section. The provisions of Government Code Section 89503 and the related regulations shall be used to interpret the provisions of this Section.

Chapter 4.20

Open Government Commission

Sections:

4.20.010 Open Government Commission.
4.20.020 Administrative review process.
4.20.030 Responsibility for administration.
4.20.040 Enforcement of ethics chapter.

4.20.010 Open Government Commission.

A. Duties: In the implementation of this Title, the commission shall:

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this Title with a priority on simple, standard procedures.

2. Assist in citywide training for implementing the Title.

3. Develop and maintain an administrative process for review and enforcement of this Title.

4. Propose amendments to the city council of this Title as needed.

5. Report to the city council on any practical or policy problems encountered in the administration of this Title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible. The first appointment shall be for one year. The second appointment shall be for two years. The third appointment shall be for three years. All subsequent appointments shall be for four years. A commissioner may serve two full four-year terms on the commission.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this Title.

4.20.020 Administrative review process. The commission shall develop and implement an administrative review process to review whether a meeting was held in violation of this Title or records were withheld in violation of this Title. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act. Further, such administrative review process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor.

A. Such review process shall include an:

(a) Appeal to the city manager who shall make a decision within 7 days of the appeal. (This step shall not apply in cases involving the city manager or members of the city council.)

(b) Appeal of the city manager's decision to either the commission or a 3-member panel of city attorneys, at the option of the person appealing the decision.

(c) An appeal of the decision in Subsection (b) shall be final unless appealed to the council. If appealed to the city council and the city attorney panel was not used in step (b), the city attorney shall contact three other city attorneys in Solano County for an opinion on the violation and submit the opinion to city council for consideration. The decision of the city council shall be final.

B. Enforcement.

1. Upon the conclusion of the administrative review process, as implemented pursuant to Subsection (A) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this Title.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this Section where it is found that a body has violated this Title. The costs and fees shall be paid by the body and shall not become a personal liability of any public official or employee of the body.

3. If the litigation is judged to be frivolous by the court, the defendant body may assert its right to be paid reasonable court costs and attorneys' fees.

C. Mediation. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any body, agency or department, may demand immediate mediation of his or her request with the Solano County Courts mediation service or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.

D. Cure and Correction.

1. Nothing in this Title shall prevent a body from curing or correcting an action challenged on grounds that a body violated any material provision of Chapter 4.08. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the commission, upon the conclusion of a formal hearing conducted pursuant to its administrative review process, determines that a body violated any material provision of this Title, the body shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(l) - (4), inclusive.

E. Reports or recommendations from meetings alleged to have been held in

violation of this Title. If the sole purpose or nature of an action that is challenged for violation of this Title is to make or convey an advisory report or recommendation to another body, such body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said body to hear or take action on the item in the absence of such report or recommendation.

F. Penalties. The penalty for violation of this Title by an elected or appointed official may include censure, including findings of fact and a determination, which shall be given to media selected by the commission.

H. Limitation Of Actions. No person may file a complaint with the commission alleging violation of the notice provisions of Section 4.08.050 if he or she attended the meeting or had actual notice of the item of business at least seventy-two 72 hours prior to the meeting at which the action was taken. No person may file a complaint with the commission alleging violation of the notice provisions of Section 4.08.060 if he or she attended the meeting or had actual notice of the item at least 48 hours prior to the meeting at which the action was taken.

4.20.030 Responsibility for administration.

A. The city manager shall administer and coordinate the implementation of the provisions of this Title for all bodies, agencies and departments under his or her authority, responsibility or control.

B. The city attorney shall staff, or provide staff for, the commission to permit the commission to fulfill the functions and duties set forth herein. The city attorney shall provide the commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

D. The city clerk or designee shall act as information request facilitator to assist members of the public with acquiring the information they seek. If it will take longer than 48 hours (excluding Saturdays, Sundays, and Holidays) to obtain the information requested by a member of the public then the city clerk will provide a written concise explanation of how and when the information will be made available.

4.20.040 Enforcement of ethics chapter. The city council, and not the open government commission, shall be the enforcement body for alleged violations of the Ethics Chapter of this Title. This process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor. In the event of an allegation of a violation of the ethics provisions of this Title, the matter shall first be referred to the city attorney for a determination as to whether there is a substantial likelihood that an ethics violation occurred. If substantial cause exists, the city council shall use the administrative process set forth above to resolve the matter except the option of referral to the commission in Section 4.20.020(A)(b) shall be omitted. In the case of an allegation of an ethics violation committed by an elected official, the process shall proceed directly to the city council for a determination.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The city council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3.

This ordinance shall take effect thirty days after its adoption or thirty days after the adoption of the 2005-2006 Budget, whichever date is later.

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On motion of Vice Mayor **Patterson**, seconded by Council Member **Smith**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 21ST day of June, 2005, and adopted at a regular meeting of the Council held on the 5th day of July, 2005, by the following vote:

Ayes: **Council Members Campbell, Patterson, Smith and Whitney**

Noes: **Mayor Messina**

Absent: **None**

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk