

Attachment A

Public Meetings, Records,
Oversight, and Enforcement Initiative

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The People of the City of Newport Beach do hereby ordain as follows:

Section 1. Title

This initiative measure shall be known as the “**Sunshine and Governmental Transparency Initiative**”.

Section 2. Purpose and Findings.

A. Purpose. This Initiative seeks to provide more transparency and accountability to City of Newport Beach (“**City**”) leadership and governance by amending and adding various provisions to the Charter of the City of Newport Beach (“**City Charter**”).

B. Findings. The People of the City of Newport Beach find:

(1) Government’s duty is to serve the public, reaching its decisions in full view of the public.

(2) Elected officials, departments, commissions, boards, councils and other bodies of the City exist 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 their local government.

(3) Although California has a long tradition of laws designed to protect the public’s access to the workings of government, every generation of governmental leaders includes officials who feel comfortable conducting the People’s business away from the scrutiny of those who elect and employ them. Technology offers public officials additional ways to hide the making of public policy from the public. As government evolves, so too must the laws designed to ensure that process remains visible.

(4) 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 that would prevent public access to information. Only in very rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(5) Private entities, individuals, employees and officials of the City have rights to privacy that must be respected. However, when a person or entity is before a policy body, that person, and the public, has the right to an open and public process.

(6) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong open government and Sunshine Ordinance, enforced by a strong Sunshine Task Force, can protect the public's interest in open government.

(7) The People of Newport Beach enact these amendments to assure that the People of the City remain in control of the government they have created.

Section 3. Amendments and Additions to the *Newport Beach City Charter*.

Sections 409.1 through 409.17, Sections 409.50 through 409.63, and Sections 409.70 through Section 409.76 collectively are the "**Sunshine Ordinance**".

The voters hereby adopt Section 409.1 ("Definitions") of the City Charter:

"Definitions": Whenever any provision of the Sunshine Ordinance uses the following words or phrases, those words or phrases shall have the following meanings:

- (1) "City" shall mean the City of Newport Beach.
- (2) "Department" shall mean any department or division of the City of Newport Beach.
- (3) "Meeting" shall mean any of the following:
 - (i) A congregation of a majority of the members of a Policy Body at the same time and place; and
 - (ii) A series of gatherings, each of which involves less than a majority of a Policy Body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or any other use of personal intermediaries or communications media that could permit a majority of the members of a Policy 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 thereupon.
- (4) "Meeting" shall not include any of the following:
 - (i) Individual contacts or conversations between a member of a Policy Body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members.
 - (ii) The attendance of a majority of the members of a Policy Body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided

that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City.

(iii) The attendance of a majority of the members of a Policy Body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the Policy Body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a Policy Body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(iv) The attendance of a majority of the members of a Policy Body at an open and noticed meeting of a standing committee of that body, provided that the members of the Policy Body who are not members of the standing committee attend only as observers.

(5) "Passive Meeting Body" shall mean:

(i) Advisory committees created by the initiative of a member of a Policy Body, the Mayor, or a Department head;

(ii) Any group that meets to discuss with or advise the Mayor, City Council, or any Department head on fiscal, economic, or policy issues; and

(iii) Social, recreational or ceremonial occasions sponsored or organized by or for a Policy Body to which a majority of the body has been invited.

(iv) "Passive Meeting Body" shall not include a committee that consists solely of employees of the City of Newport Beach created by the initiative of a member of a Policy Body, the Mayor, or a Department head.

(6) "Policy Body" shall mean:

(i) The City Council;

(ii) Any Department, board or commission enumerated in the Charter;

(iii) Any Department, board, commission, committee, or other body created by ordinance or resolution of the City Council;

(iv) Any advisory board, commission, committee or body, created by the initiative of a Policy Body;

(v) Any standing committee of a Policy Body irrespective of its composition;

(vi) "Policy Body" shall not include a committee which consists solely of employees of the City of Newport Beach, unless such committee was established by City Charter or by ordinance or resolution of the City Council; and

(vii) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

(7) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 7920.530), whether provided in documentary form or in an oral communication.

(8) "Supervisor of Records" shall mean the City Attorney.

The voters hereby adopt Section 409.2 ("Passive Meetings") of the City Charter:

a. All gatherings of Passive Meeting Bodies shall be accessible to members of the public upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

b. To the extent not inconsistent with State or federal law, a Policy Body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in Subdivision (a) of this Section. Records made available to the governing board relating to such matters shall be likewise available to the public.

The voters hereby adopt Section 409.3 ("Application of Brown Act") of the City Charter:

All meetings of any Policy Body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 *et. seq.*) and of the Sunshine Ordinance. In the case of inconsistent requirements under the Brown Act and the Sunshine Ordinance, the requirement which would result in greater or more expedited public access shall apply.

The voters hereby adopt Section 409.4 ("Conduct of Business; Time and Place for Meetings") of the City Charter:

- a. Each Policy Body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.
- b. All meetings of a Policy body shall be held within the City of Newport Beach unless a different location is required by state or federal law or is necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City of Newport Beach, to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the Policy Body that affect those residents.
- c. If a regular meeting would otherwise fall on a holiday, it shall instead be held on the previous or next business day, unless otherwise rescheduled in advance.
- d. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the Policy Body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.
- e. Meetings of Passive Meeting Bodies shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 409.5 of this Section in the place used by the Policy Body which it advises, is required.
- f. Special meetings of any Policy Body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such Policy Body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in subsection (e) at least 72 hours before the time of such meeting as

specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such written notice may be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the Policy Body except that the Policy Body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

- g. If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 409.4 and mailed notice if sufficient time permits.

The voters hereby adopt Section 409.5 ("Agenda Requirements") of the City Charter:

- a. At least 72 hours before a regular meeting, a Policy Body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a Policy Body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.
- b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the Policy Body in connection with an agenda item, such as correspondence or reports, and copies or links to such documents shall be included in the agenda or, if such documents are of more than one hundred pages in length, made available for public inspection and copying at a location indicated on the agenda during normal business hours.
- c. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.
- d. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a Policy Body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

- e. Notwithstanding Subdivision (d), the Policy Body may take action on items of business not appearing on the posted agenda under any of the following conditions:
- (1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
 - (2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in Subdivision (a).
 - (3) The item was on an agenda posted pursuant to Subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- f. Each board and commission enumerated in the City Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.
- g. Each Policy Body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE (Sections 409.1 through 409.76 of the Charter of
the City of Newport Beach)

Government's duty is to serve the public, reaching its decisions in
full view of the public.

Commissions, boards, councils and other agencies of the City of
Newport Beach exist to conduct the people's business. The
Sunshine Ordinance assures that deliberations are conducted
before the people and that City operations are open to the people's
review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE
SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF
THE ORDINANCE, CONTACT THE SUNSHINE TASK FORCE.

- h. Each agenda of a Policy Body covered by this Sunshine Ordinance shall include the address, area code and phone number, e-mail address, and a contact person's name for

the Sunshine Task Force (as defined below). Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

The voters hereby adopt Section 409.6 ("Public Notice Requirements") of the City Charter:

- a. Any public notice that is mailed, posted or published by a Policy Body to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English. Any such public notice must be provided at least seven days prior to the public meeting on the matter.
- b. The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.
- c. If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

The voters hereby adopt Section 409.7 ("Agenda Disclosures: Closed Sessions") of the City Charter:

- a. In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

- (1) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

_____ applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

- (2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: _____ Terms of payment: _____ Both: _____

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space following "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The space following "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

- (3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

_____ Unspecified to protect service of process

_____ Unspecified to protect settlement posture or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: _____ As defendant _____ As plaintiff _____

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to Section 54956.9 and applicable litigation has not yet been filed, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:
or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR ON COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

_____ Police officers, firefighters and airport police

_____ Transit Workers

_____ Nurses

_____ Miscellaneous Employees

Anticipated issue(s) under negotiation:

_____ Wages

_____ Hours

- ☐ Benefits
- ☐ Working Conditions
- ☐ Other (specify if known)
- ☐ All

If renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

(6) In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956 as applicable.

The voters hereby adopt Section 409.8 ("Additional Requirements for Closed Sessions") of the City Charter:

- a. All closed sessions of any Policy Body covered by this Sunshine Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained permanently unless the Policy Body determines, at a noticed public meeting, that permanent retention of such records is infeasible. Closed session recordings shall be made available immediately after all rationales for closing the session are no longer applicable. For closed sessions of a Policy Body where the justification for the closed session is due to "anticipated litigation", recordings shall be released to the public in accordance with the following provisions: (i) if no litigation is filed, either (a) as soon as the controversy leading to the anticipated litigation is settled or concluded, or (b) two years after the meeting or upon expiration of the statute of limitations for the anticipated litigation, whichever occurs later; and (ii) if litigation is filed, as soon as the litigation is settled or a judgment becomes final.
- b. Each agenda item covered by this Sunshine Ordinance that involves existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item covered by this Sunshine Ordinance that involves anticipated litigation, the City Attorney's Office or the Policy Body shall, upon request from any member of the public, disclose whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

The voters hereby adopt Section 409.9 ("Agendas and Related Materials") of the City Charter:

- a. Agendas of meetings and any other documents on file with the clerk of the Policy Body, when intended for distribution to all, or a majority of all, of the members of a Policy Body in connection with a matter anticipated for discussion or consideration at a public meeting, shall be made available to the public on the Policy Body's website. However, this disclosure need not include any material exempt from public disclosure under this Sunshine Ordinance or the California Public Records Act (Government Code sections 7920.000, *et seq.*).
- b. Records which are subject to disclosure under Subdivision (a) and which are intended for distribution to a Policy Body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- c. Records which are subject to disclosure under Subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.
- d. Records which are subject to disclosure under Subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

The voters hereby adopt Section 409.10 ("Closed Sessions; Permitted Topics") of the City Charter:

A Policy Body may, but is not required to, hold closed sessions:

- a. With the Attorney General, District Attorney, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.
- b. To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the Policy Body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a Policy Body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.
- c. Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

- (1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,
 - (2) A point has been reached where, in the opinion of the Policy Body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.
 - (3) A closed session may not be held under this Section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.
- d. With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a Policy Body has authority over such matters.
- (1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A Policy Body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.
 - (2) In addition to the closed sessions authorized by subsection 409.10, a Policy Body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Government Code Section 3504.

The voters hereby adopt Section 409.11 ("Statement of Reasons for Closed Sessions") of the City Charter:

- a. Prior to any closed session, a Policy Body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the Policy Body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 409.7. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 409.7, as part of the notice provided for the meeting.

- b. In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 409.7 of this Section. Nothing in this Section shall require or authorize a disclosure of information prohibited by state or federal law.

The voters hereby adopt Section 409.12 ("Disclosure of Closed Session Discussions and Actions") of the City Charter:

- a. After every closed session, a Policy Body must disclose to the public any portion of its discussion that is not confidential under federal or State law, the Charter, or non-waivable privilege. The Policy Body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.
- b. A Policy 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 given to a Policy Body's negotiator 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 Policy Body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the Policy Body shall, at its next meeting and immediately upon inquiry by any person, disclose the fact of that approval, the substance of the agreement and the Policy Body's vote or votes thereon as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the Policy Body's legal counsel to prosecute, defend or 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 pursuant to 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 City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A Policy Body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the Policy Body at which the settlement is to be approved to the extent that the settlement would commit the City (including any Department) to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than fifty thousand dollars (\$50,000). The agenda for any meeting in which a settlement subject to this Section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been or may be settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by Subdivision (b) of this Section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this Sunshine Ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the Policy Body to which the agreement is to be reported.

- c. Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.
- d. A written summary of the information required to be immediately reported pursuant to this Section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

The voters hereby adopt Section 409.13 ("Barriers to Attendance Prohibited") of the City Charter:

- a. No Policy Body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or 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 the City Council, or a Policy Body anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.
- b. Each Policy Body shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the Policy Body at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.
- c. Each Policy Body shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

The voters hereby adopt Section 409.14 ("Video and Audio Recording") of the City Charter:

- a. Any person attending an open and public meeting of a Policy Body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the Policy Body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.
- b. Each Policy Body shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other Policy Body made at the direction of the Policy Body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code sections 7920.000 *et seq.*), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.
- c. Every Policy Body shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a Newport City Civic Center hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code sections 7920.000 *et seq.*), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's website (www.newportbeachca.gov) within 72

hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (C) shall not be construed to limit or in any way modify the duties created by any other provision of this Section, including but not limited to the requirements for recording closed sessions as stated in Section 409.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

The voters hereby adopt Section 409.15 ("Public Testimony") of the City Charter:

- a. Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a Policy Body on items of interest to the public that are within Policy 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 Section 409.5.
- b. Every agenda for 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 prior to action thereupon.
- c. A Policy Body may adopt reasonable regulations to ensure that the intent of Subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each Policy Body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for no less than three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.
- d. A Policy Body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.
- e. To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a Policy Body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

The voters hereby adopt Section 409.16 ("Minutes") of the City Charter:

- a. The clerk or secretary of the City Council, and the clerk, secretary or other representative of all Policy Bodies and commissions shall record the minutes for each regular and special meeting of such bodies. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the meeting began and ended any closed session, the names of the members and the names, and titles where applicable,

of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

- b. The draft minutes of each meeting shall be made available on the City's website, and at a designated location for inspection and copying upon request, no later than five working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than 10 working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

The voters hereby adopt Section 409.17 ("Public Comments by Members of Policy Bodies") of the City Charter:

Every member of a Policy Body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the Policy Body of which he or she is a member. Policy Bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this Sunshine Ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the City Council seeking an accusation of misconduct, or both.

The voters hereby adopt Section 409.50 ("Process for Gaining Access to Public Records; Administrative Appeals") of the City Charter:

- a. Every person having custody of any public record or public information, as defined in this Sunshine Ordinance, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or 10 cents (\$0.10) per page.
- b. A custodian of a public record shall, as soon as possible and within 10 days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within 10

days following receipt of a request, that the record in question is exempt under express provisions of this Sunshine Ordinance.

- c. A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request. A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- d. If the custodian refuses, fails to comply, or incompletely complies with a request for records under this Section, the person making the request may petition the Supervisor of Records for a determination whether the record requested is public. The Supervisor of Records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the Supervisor of Records that the record is public, the Supervisor of Records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within five days, the Supervisor of Records shall notify the Sunshine Task Force, and district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this Sunshine Ordinance. The Supervisor of Records shall also have the right to investigate any failure to comply with the Sunshine Ordinance. The Supervisor of Records may implement disciplinary and/or remedial action against City officials and staff.
- e. If the custodian refuses, fails to comply, or incompletely complies with a request for records under this Section, or if a petition is denied or not acted on by the Supervisor of Records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this Sunshine Ordinance. The City Council and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records

request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

- f. The administrative remedy provided under this Section shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any executive office, or Policy Body; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this Section, the superior court shall have jurisdiction to order compliance.
- g. In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.
- h. On at least an annual basis, and as otherwise requested by the Sunshine Task Force, the Supervisor of Records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the Supervisor of Records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor of Records has decided. At the request of the Sunshine Task Force, the report shall also include copies of all rulings made by the Supervisor of Records and all opinions issued. All annual tallies and reports shall be made available on the City's website within ten days.
- i. The City Attorney Department shall act to protect and secure the rights of the people of Newport Beach to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this Sunshine Ordinance, including petitions, requests for opinion, and opinions shall be public records, regardless of whether such communications include City employees or officials.
- j. Notwithstanding the provisions of this Section, the City Attorney may defend the City or a City employee in litigation under the Sunshine Ordinance that is actually filed in court to any extent required by the City Charter or California Law.
- k. Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code sections 7920.000 *et seq.*) in particulars not addressed by the

Sunshine Ordinance and in accordance with the enhanced disclosure requirements provided in this Sunshine Ordinance.

1. Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the City, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this Sunshine Ordinance. Nothing in this Section shall require a Department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

The voters hereby adopt Section 409.51 ("Release of Oral Public Information") of the City Charter:

Release of oral public information shall be accomplished as follows:

- a. Every Department head shall designate a person or persons knowledgeable about the affairs of the Department, to provide information, including oral information, to the public about the Department's operations, plans, policies and positions. The Department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a Department has multiple bureaus or divisions, the Department may designate a person or persons for each bureau or division to provide this information.
- b. The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. 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. No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than two hours to obtain the information responsive to the inquiry or inquiries.
- d. Public employees 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 (1) is not represented as that of the Department and does not misrepresent the Department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this Subdivision, the City intends

merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this Section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

- e. Notwithstanding any other provisions of the Sunshine Ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

The voters hereby adopt Section 409.52 ("Public Review File – Policy Body Communications") of the City Charter:

- a. The City Clerk and the clerk of each Department and commission shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the Policy Body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code sections 7920.000, *et seq.*) and not deemed disclosable under Section 409.53 of the Sunshine Ordinance.
- b. Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the Department head or at a place nearby, clearly designated to the public. After documents have been on file for three full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.
- c. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

The voters hereby adopt Section 409.53 ("Public Information That Must Be Disclosed") of the City Charter:

Notwithstanding the City Council's and Department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

- a. Neither the City nor any office, official, employee, or agent thereof may assert as the basis for withholding any documents or information requested under the Sunshine Ordinance, or the California Public Records Act (Gov. Code section 7922.000 *et. seq.*) or

any similar provision authorizing the withholding of any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure.

- b. Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 7922.000 or any other provision of law that does not prohibit disclosure.
- c. All withholdings of documents or information must be based on an express provision of this Sunshine Ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this Sunshine Ordinance.
- d. Drafts and Memoranda.

(1) Except as provided in subparagraph (2) below, no preliminary draft or Policy Body memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 7927.500 or any other provision of the California Public Records Act. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Government Code Section 7927.500. Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a Policy Body, unless the Policy Body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that Policy Body as used in this Subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the Policy Body may postpone public access to the final draft agreement until it is presented to it for approval.

- e. Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Sunshine Ordinance:

- (i) A pre-litigation claim against the City;

(ii) A record previously received or created by a Policy Body in the ordinary course of business that was not attorney/client privileged when it was previously received or created; and

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, the City Charter, the City of Newport Beach Municipal Code, or this Sunshine Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the Policy Body and the adverse party shall be subject to immediate disclosure, including the text and terms of any settlement.

f. Personnel Information.

None of the following shall be exempt from disclosure under Government Code Section 7927.400 to Government Code Section 7927.430, or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

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

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

(iv) Whether currently employed in the same position for another public agency.

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

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or Department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a Policy Body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

g. Law Enforcement Information.

The Chief of Police and City Attorney are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of the Sunshine Ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of any district attorney, sheriff, police officer or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the district attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

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

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel;
or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or Policy Body responsible for regulatory protection of the public health, safety, or welfare.

h. Contracts, Bids and Proposals.

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between a Policy Body and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded and for no less than two years after the contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this Subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection and for no less than two years. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed and for no less than two years.

(2) All documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request for no less than two years if they relate to negotiations for:

- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City of Newport of five hundred thousand dollars (\$500,000) or more or having a term of 10 years or more; or
- (iii) any franchise agreements.

In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of

each fiscal year, each Department shall provide to the City Attorney a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in the City Charter.

- i. Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any Departments, programs, projects or other categories, and 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 or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

The voters hereby adopt Section 409.54 ("Immediacy of Response") of the City Charter:

- a. Notwithstanding the 10 day period for response to a request permitted in Government Code Section 7922.535 and in this Section, a written request for information described in any category of non-exempt public information shall be satisfied no later than the five business days following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- b. If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested Department warrants an extension of 10 days as provided in Government Code Section 7922.535, the requester shall be notified as required by the close of business on the business day following the request. Any such notification shall identify with specificity the steps taken to identify the volume of responsive records, including any search parameters used to identify the volume of records and the record custodians who performed any such search, and briefly explain why it would not be possible to review the identified records without an extension. For the purposes of this Section, unusual circumstances shall not include consider any ordinary business activities of the City or any Department or division holding responsive records.
- c. 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 asked to make such a disclosure. Where a record being requested contains information which is exempt from disclosure under the California Public Records Act and this Section, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt 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.

- d. Notwithstanding any provisions of California Law or the Sunshine Ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City of Newport Beach shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This Section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of the Sunshine Ordinance.

The voters hereby adopt Section 409.55 ("Withholding Kept to a Minimum") of the City Charter:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of this Sunshine Ordinance, the California Public Records Act, or of some other statute. 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, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 409.56. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any City of Newport Beach employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

The voters hereby adopt Section 409.56 ("Justification of Withholding") of the City Charter:

Any withholding of information shall be justified, on a document-by-document basis, in writing and memorialized in a log to facilitate review by a requester, as follows:

- a. A withholding under a specific permissive exemption in the California Public Records Act or elsewhere, which permissive exemption is not forbidden to be asserted under the Sunshine Ordinance, shall cite that authority.
- b. A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- c. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d. When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and the Sunshine Ordinance, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

The voters hereby adopt Section 409.57 ("Index to Records") of the City Charter:

The City of Newport Beach shall prepare a public records index that identifies the types of information and documents maintained by the City Council, Departments, and elected officials. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and Departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, *e.g.*, by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or Policy Body responsible for the indexed records. The City Manager shall be responsible for the preparation of this records index. The City Manager shall report on the progress of the index to the Sunshine Task Force on at least a semi-annual basis until the index is completed. Each Department and public official shall cooperate with the City Manager to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each Department and elected official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each Department or public official of the City of Newport Beach. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the Departments or elected officials practices or procedures affecting the accuracy of the information provided to the City Manager shall be recorded by the City Manager on no less than an annual basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City of Newport Beach's website and made available at a public library within the City of Newport Beach.

The voters hereby adopt Section 409.58 ("Records Survive Transition of Officials") of the City Charter:

All documents prepared, received, or maintained by the City Council, by any elected City official, and by the head of any Department are the property of the City of Newport Beach. The originals of these documents shall be maintained consistent with the records retention policies of the City.

The voters hereby adopt Section 409.59 ("Internet Access, Minimum Standards") of the City Charter:

Each Department shall make publicly available through its website or the City's website, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this Section, each Department shall post on its website all meeting notices required under the Sunshine Ordinance, agendas and the minutes of all previous meetings of any of their Policy Bodies for the last three years. Notices and agendas shall be posted no later than the time that the Department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 10 days after they

have been approved. Each Department shall make reasonable efforts to ensure that its website or any portion of the City's website that it uses to post materials is regularly reviewed for timeliness and updated on at least a weekly basis.

The voters hereby adopt Section 409.60 ("Lobbyist on Behalf of the City") of the City Charter:

- a. Any lobbyist who contracts for economic consideration with the City of Newport Beach to represent the City of Newport Beach in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the Sunshine Task Force. This report shall be maintained by the Sunshine Task Force and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures exceeding two hundred dollars (\$200) by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Sunshine Ordinance. The City shall promptly terminate any lobbyist who fails to timely file two consecutive quarterly reports.
- b. No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least two thousand dollars (\$2,000) total compensation in any month for influencing legislative or administrative action on behalf of the City of Newport Beach, or within two consecutive months has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action on behalf of the City of Newport Beach. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City of Newport Beach, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City of Newport Beach during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City of Newport Beach for all lobbying activities on matters at the local, state, regional or national level.
- c. Funds of the City of Newport Beach, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

The voters hereby adopt Section 409.61 ("Calendars of Certain Officials") of the City Charter:

- a. The Mayor, City Attorney, the City Council, and every chief executive or head of every Department shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, either in person or by teleconference or other electronic means, with the exclusion of purely personal or social

events at which no City business is discussed and that do not take place at City of Newport Beach officers or at the offices or residences of people who do business with or are otherwise substantially financially affected by actions of the City of Newport Beach. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

- b. For meetings or events with ten or fewer attendees, the calendar shall also identify the individual(s) present and organization(s) represented at the meeting or event if known by the official, unless the official is aware that the information would reveal the identity of a confidential whistleblower, would disclose the attendance of members or representatives of a labor organization at a meeting to discuss matters within the scope of representation, as that term is defined in California Government Code Section 3504, would reveal personnel information not subject to disclosure, or is otherwise exempt from disclosure under State and local law. For the purpose of calculating the total number of attendees at a meeting or event an official shall not include himself or herself.
- c. The obligations imposed under subsection (b), and the obligations imposed upon under subsection (a), shall not apply to meetings or events where City of Newport Beach business is discussed only incidentally; to unplanned, casual conversations with residents; to campaign-related meetings, events, and appearances; or to meetings or events where all attendees are employees or officers in the official's Department, which for members of the City Council shall mean that all attendees are members of the City Council, legislative aides, or employees of the City Clerk. Officials are not in violation of subsections (b), and members of the City Council are not in violation of subsection (b), if they can demonstrate a good faith effort to comply with their obligations thereunder.

The voters hereby adopt Section 409.62 ("Sources of Outside Funding") of the City Charter:

No official or employee or agent of the City of Newport Beach shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than two thousand dollars (\$2,000) in aggregate, for the purpose of carrying out or assisting any City of Newport Beach function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the Department to which the funds are directed or the City's website. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by the Sunshine Ordinance before providing or managing such funds. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City of Newport Beach.

The voters hereby adopt Section 409.63 ("Correspondence and Records Shall Be Maintained") of the City Charter:

- a. The Mayor and all heads of every Department shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals, and shall disclose all such records in accordance with this Sunshine Ordinance.
- b. The City Clerk (or the Orange County Registrar of Voters, if accessible to the City Clerk) shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the City Clerk or Orange County Registrar of Voters.
- c. In any contract, agreement or permit between the City of Newport Beach and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City of Newport Beach shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this Sunshine Ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department under this provision shall be a violation of this Sunshine Ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in Newport Beach and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.

The voters hereby adopt Section 409.70 ("Sunshine Task Force") of the City Charter:

- a. There is hereby established a task force to be known as the Sunshine Task Force consisting of five voting members appointed by the City Attorney ("**Sunshine Task Force**"). All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. One member must be an attorney who has graduated from a law school accredited by the American Bar Association and who is, or was, licensed to practice to law in the State of California. One member shall be a member of the public experienced in consumer advocacy and/or civil liberties. The Sunshine Task Force may have no more than one City Council member as a member, but shall not be required to have any City Council member as a member.
- b. The City Attorney shall serve as legal advisor to the Sunshine Task Force. The Sunshine Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office, who is experienced in public access law matters. This attorney shall serve solely as a legal advisor and advocate to the Sunshine Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Sunshine Task Force and any person or City office that the Sunshine Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

- c. The term of each appointive member shall be three years unless earlier removed by the City Attorney. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The Sunshine Task Force shall elect a chair from among its appointive members. The term of office as chair of the Sunshine Task Force shall be two years. Members of the Sunshine Task Force shall serve without compensation.
- d. The Sunshine Task Force shall advise the City Council and provide information to other Departments on appropriate ways in which to implement this chapter. The Sunshine Task Force shall develop appropriate goals to ensure practical and timely implementation of this Section. The Sunshine Task Force may propose to the City Council amendments to this Section. The Sunshine Task Force shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of this Section. The Sunshine Task Force shall receive and review the annual report of the Supervisor of Records and may request additional reports or information as it deems necessary. The Sunshine Task Force shall make referrals to the City Attorney or any other governmental office with enforcement power under the Sunshine Ordinance, the California Public Records Act, or the Brown Act, whenever it concludes that any person has violated any provisions of the Sunshine Ordinance or the Acts. The Sunshine Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Policy Body.
- e. In addition to the powers specified above, the Sunshine Task Force shall possess such powers as City Council may confer upon it by ordinance or as the People of Newport Beach shall confer upon it by initiative.
- f. The Sunshine Task Force shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Sunshine Task Force members, and procedures and criteria for removing members for non-attendance.

The voters hereby adopt Section 409.71 ("Responsibility for Administration") of the City Charter:

The City Attorney, with advice of the City Council, shall administer and coordinate the implementation of all provisions for the Sunshine Ordinance for all Policy Bodies and any other bodies under its control. Elected officers or, in the absence of any elected officers, the most senior appointive officer, shall administer and coordinate the implementation of the provisions of this chapter for Policy Bodies and any other bodies under their respective control.

The voters hereby adopt Section 409.72 ("Provisions of Services to Other Agencies; Sunshine Required") of the City Charter:

It is the policy of the City of Newport Beach to ensure opportunities for informed civic participation embodied in the Sunshine Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political

relationships. Officers, agents and other representatives of the City of Newport Beach shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions.

The City of Newport Beach shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.

The voters hereby adopt Section 409.73 ("Department Head Declaration") of the City Charter:

All Department heads shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the City Manager and shall be available as a public record. Annual training shall be provided by the City Attorney's Office with the assistance of the Sunshine Task Force.

The voters hereby adopt Section 409.74 ("Willful Failure Shall Be Official Misconduct") of the City Charter:

The willful failure of any elected official, Policy Body head, or other managerial City employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this Sunshine Ordinance, the Brown Act or the Public Records Act by elected officials or any Policy Body heads of the City of Newport Beach shall be reported both to the Sunshine Task Force and the City Attorney. To the extent permitted by State law, the City Attorney shall have the right to establish processes for investigation and disciplinary processes to address potential and actual violations of the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act, and/or Political Reform Act.

The voters hereby adopt Section 409.75 ("Enforcement Provisions") of the City Charter:

- a. 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 right to inspect or to receive a copy of any public record or class of public records under this Sunshine Ordinance or to enforce his or her right to attend any meeting required under this Sunshine Ordinance to be open, or to compel such meeting to be open.
- b. A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Sunshine Ordinance.
- c. If a court finds that an action filed pursuant to this Section is frivolous, the City Attorney may assert its rights to be paid its reasonable attorneys' fees and costs.

- d. Any person or entity may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction.

The voters hereby adopt Section 409.76 ("Enforcement Provisions") of the City Charter:

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

Section 4. Implementation of this Initiative.

A. This Initiative is considered adopted and effective upon the earliest date legally possible after the elections official certifies the vote on the Initiative by the voters of the City (the "**Effective Date**"). Upon the Effective Date of this Initiative, the City is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to taking any administrative steps necessary to update any and all City ordinances, codes, maps, figures, and any other documents maintained by the City so they conform to the legislative policies set forth in this Initiative.

B. Upon the Effective Date of this Initiative, the provisions of Section 3 of this Initiative are hereby inserted into the City Charter as set forth above. The City may reorganize, renumber, and/or reformat the City Charter and City of Newport Beach Municipal Code to incorporate Section 3 of this Initiative, provided that the full text of each provision is inserted into the City Charter without alteration.

C. The City Charter and City of Newport Beach Municipal Code in effect on the date of filing of the Notice of Intention to Circulate Petition ("**Filing Date**"), and the City Charter and City of Newport Beach Municipal Code as amended by this Initiative, comprise an integrated, internally consistent and compatible statement of policies for the City. To ensure that the City Charter and City of Newport Beach Municipal Code and other City policies and plans remain an integrated, internally consistent, and compatible statement of policies for the City, any provision of the City Charter or City of Newport Beach Municipal Code that is adopted between the Filing Date and the Effective Date of the City Charter amendment adopted by this Initiative shall, to the extent that such interim-enacted provision is inconsistent with or would diminish, render invalid, defeat, or impair the City Charter amendment adopted by this Initiative, be amended as soon as possible and in the manner and time required by applicable law to ensure consistency with this Initiative.

Section 5. Effect of Other Measures on the Same Ballot.

If this Initiative and another measure on the same subject matter appear on the same ballot, and a majority of the voters vote in favor of both measures but this Initiative receives more votes than the other measure, this Initiative alone shall become valid, binding and adopted in its entirety, and the other measure shall be null and void in its entirety. If a majority of the voters

vote in favor of both measures but this Initiative receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this Initiative shall control, and all other provisions of this Initiative shall become valid, binding and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

Section 6. Interpretation, Severability, and Legal Defense.

A. This Initiative must be interpreted so as to be consistent with all federal and State laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this Initiative. The voters declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are found to be invalid. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this Initiative that can be given effect without the invalid application. If there is any conflict between this Initiative and other applicable law, this Initiative shall control, to the extent consistent with applicable law.

B. If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of the City of Newport Beach indicate our strong desire that: (i) the Newport Beach City Council use its best efforts to sustain and re-enact that portion, and (ii) the Newport Beach City Council implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

C. This Initiative must be broadly construed in order to achieve the purposes stated above. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the City and others in a manner that facilitates the purpose set forth in this Initiative.

D. The People of the City of Newport Beach desire that this amendment to the City Charter, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this City Charter amendment, hereby declare that the proponent(s) of this City Charter amendment have a direct and personal stake in defending it from constitutional or statutory challenges to its validity or implementation. In the event the City fails to defend this City Charter amendment, or the City fails to appeal an adverse judgment against its constitutionality, statutory permissibility or implementation, in whole or in part, in any court of law, the proponents shall be entitled to assert their direct personal stake by defending its validity and implementation in any court of law, shall be empowered by the People through this measure to act as agents of the People, and shall be entitled to recover reasonable attorney's fees from

the City of Newport Beach.

Section 7. Amendment or Repeal.

The City Charter as amended and adopted by Section 3 of this Initiative can be amended or repealed only by a majority of the voters of the City voting in an election held in accordance with applicable State and City law. For the avoidance of doubt, this Section only limits the power to amend the City Charter provisions as amended and adopted by Section 3 and does not limit the power of the City to amend or repeal other portions of the City Charter or City of Newport Beach Municipal Code in a manner that is consistent with this Initiative and other applicable law.

Section 8. Judicial Enforcement.

Any aggrieved person shall have the right to bring an action to enjoin any violation of this Initiative or to enforce the duties imposed on the City by this Initiative. The proponents of this Initiative may defend the provisions of this Initiative in any litigation brought to challenge the Initiative. Any member of the public who prevails in a lawsuit to enforce any portion of this Initiative shall be entitled to recover reasonably incurred legal fees and costs.