

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, May 13, 2013
City Council Chambers
6:30 p.m.



Commissioners: Lloyd Farnham (Chair), Aspen Baker (Vice-Chair), Roberta Johnson, Benjamin Kimberley, Monique Rivera, Eddie Tejada, Jenna Whitman

Commission Staff: Whitney Barazoto, Executive Director

City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

SPECIAL MEETING AGENDA

1. Roll Call and Determination of Quorum.
2. Staff and Commission Announcements.
3. Open Forum.

GUEST PRESENTATION*

4. **California Public Records Act and California Ralph M. Brown Act.** Terry Francke, General Counsel, Californians Aware, will conduct a training on the California Public Records Act and the California Ralph M. Brown Act (Open Meetings) for the Commission, City staff, and the public. (Attachment 1)
5. **Oakland Sunshine Ordinance.** Kathleen Salem-Boyd, Deputy City Attorney, Oakland City Attorney's Office, will provide an overview of the Oakland Sunshine Ordinance for the Commission, City staff, and the public. (Attachment 2)

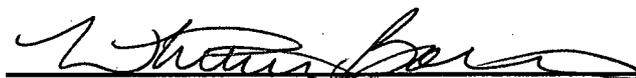
*State Bar approval pending for 3 hours of MCLE credit for attorneys.

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

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Approved for Distribution

5/3/13

Date



Top 10 Points to Remember about Handling a California Public Records Act Request

1. The agency has the burden of justifying the denial of access.

Perhaps the most fundamental rule in the California Public Records Act (CPRA) is the presumption of public access. Requesters do not have to prove or even state a “need to know” to justify access. On the contrary, the government agency must justify *not* providing the information by citing the law: a statute or a case interpreting a statute. “In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary.” *Williams v. Superior Court*, 5 Cal. 4th 337 (1993). “It’s not our policy” or “We never give that out” is not a legally sufficient response to a public records request, nor is anything else short of citing the law that bars or excuses the agency from providing access.

2. The request need not be in writing.

A written request often has advantages for the requester as well as the agency. Practically, it may be necessary where an oral request has been turned down for what appear to be inadequate or misinformed reasons, or where the kind or number of documents being sought needs detailed description. Legally, a written request sent by e-mail, fax or registered postal mail provably records the date on which certain response deadlines are set, and also entitles the requester to a written response from the agency giving the reasons and legal authority for withholding all or part of the requested records. But, as observed by the California Court of Appeal, “It is clear from the requirements for writings in the same and other provisions of the Act that when the Legislature intended to require a writing, it did so explicitly. The California Public Records Act plainly does not require a written request.” *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal.App.4th 1381 (2001).

3. The request need not identify the requester.

Likewise, nothing in the law precludes an anonymous request, and the CPRA requires identification (by a signed affirmation or declaration, respectively) only when the requester is seeking information about pesticides (Government Code §6254.2) or seeking the addresses of persons arrested or crime victims (Government Code §6254, subd. (f), par. (3)). Practically, it may be mutually convenient for a requester to provide a name and contact information if the request cannot be fulfilled immediately or if copying will take some time, but the requester’s option is to keep checking back on his or her own initiative. Legally, apart from the two situations noted above, an agency may not insist that the requester be identified.

4. The request need not state the requester’s purpose.

Demanding to know the purpose of the request or the intended use of the information is, again, not something the agency may do, apart from the pesticide and address provisions noted in (2) above. The CPRA states, in Government Code §6257.5: “This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.”

5. The scope of the request must be reasonably clear.

“Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control. (The CPRA) compels an agency to provide a copy of nonexempt records upon a request ‘which reasonably describes an identifiable record, or information produced therefrom . . . ‘ However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request.” *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159 (1998)

6. The agency need not compile lists or write reports.

The rights provided in the law are to “inspect” (look at words, symbols or images; listen to sounds) public records and/or to “obtain a copy” of those records, not to compel the agency to create lists or reports in response to questions. In only one instance is the agency required to generate a record that does not already exist, and that is if the information sought is distributed in computerized form in a database or otherwise and must be assembled in a single record. As provided in Government Code §6253.9, if the agency cannot “produce” or “construct” the record sought without special programming, the requester must pay for that work.

7. The agency must do its best to help the requester succeed.

Government Code Section 6253.1 states:

- (a) *When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:*
- 1) *Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.*
 - 2) *Describe the information technology and physical location in which the records exist.*
 - 3) *Provide suggestions for overcoming any practical basis for denying access to the records or information sought.*
- (b) *The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.*

These assistance requirements do not apply, obviously, if the agency fully grants the request, or denies access based on one of the exemptions in Government Code §6254. Also, if the agency has an index to its records and makes it available, no further help in refining the request is required.

8. Fees are for the costs of copying, not for those of inspection.

As noted by the Attorney General in an opinion concluding that counties may charge a fee “reasonably necessary” to recover wider costs for copying public records—costs beyond the strict “direct cost of duplication”—inspection is free: “In any event, a ‘reasonably necessary’ fee for a copy of a public record would have no effect upon the public’s right of access to and inspection of public records free of charge.” (Opinion No 01-605, November 1, 2002). Moreover, the “direct cost of duplication” that, pursuant to Government Code §6253, subd. (b), may be charged to the requester by agencies other than counties may not include overhead. “The direct cost of

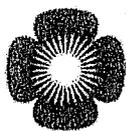
duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it. 'Direct cost' does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." *North County Parents Organization v. Department of Education*, 23 Cal.App.4th 146 (4th Dist. 1994)

9. Prompt access is required for clearly public records.

Delay is allowed only to resolve good faith doubts as to whether all or part of a record is accessible by the public. So, for example, if the requester asks to see the minutes of public meetings, there is no need to make the "determination" as to whether or not they are public, since minutes of public meetings are, without question, public records. That being the case, access is to be provided "promptly," not put off for 10 days (Government Code §6253, subd. (b)); to underscore this point, subd. (d) states that "Nothing in (the CPRA) shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." And while the 10-day period is not a legal deadline for producing the records, the date of production should not lag the 10-day (or, if extended with notice to the requester, up to 14 days more) "determination" point by much, because in most if not all cases, *the person making the determination will have already had to assemble and review the records in order to do so*. Once the determination has been made, in other words, actual release of the records in question should not take much time to accomplish.

10. Journalists, government agencies and officials, and ordinary citizens have the same rights of access.

Journalists' rights to inspect and copy public records are the same under the CPRA as those of any other person—no worse and, despite the free press guarantees of the state and federal constitutions, no better. "No California or federal judicial decision has ever attributed accessibility to public records upon First Amendment freedoms of speech or press." *Register Division of Freedom Newspapers v. County of Orange*, 158 Cal.App.3d 893 (1984). And while we often speak of "citizens" having the access rights, one need not be a California resident or even a U.S. citizen to inspect or copy state or local public records. "(W)hen section 6253 declares every person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to any person on request, and when section 6258 expressly states any person may institute proceedings to enforce the right of inspection, they mean what they say." *Connell v. Superior Court*, 56 Cal.App.4th 601 (1997). Moreover, public agencies and elected or appointed officials have full access rights under the CPRA to records of other public agencies. *Los Angeles Unified School Dist. v. Superior Court of Los Angeles County*, 151 Cal.App.4th 759 (2007).



CaliforniansAware
THE CENTER FOR PUBLIC FORUM RIGHTS

Top 10 Points to Remember about Exemptions from the California Public Records Act

1. Most CPRA exemptions are discretionary.

The main exemption section in the Act, for example—Government Code §6254—does not prohibit disclosure of the records it lists, but simply provides that “nothing in this chapter shall be construed to *require* disclosure” of them. Accordingly officials misstate the law in many cases when they say, “We can’t give that out.” It depends on the particular rule governing particular types of information. They may have the discretion to decide in favor of disclosure in the public interest. *Black Panther Party v. Kehoe*, 42 Cal.App.3d 645 (1974).

2. Exemptions are waived by selective disclosure.

Generally, once a particular record has been provided to a “member of the public,” access may not be denied to others, even though an exemption might have otherwise applied (Government Code §6254.5). A member of the public is anyone other than a governmental officer, employee or agent receiving the record in his or her official capacity. So, for example, an inspection, audit or investigation report that is shared with the subject investigated would, in all but a handful of cases, be a public record although, if not shared with the subject, it might have been exempt from public disclosure (see 7 below).

3. An exempt part does not justify withholding the whole.

Pursuant to Government Code §6253, subd. (a), any non-exempt (public) part of a record must be made available after any exempt information has been redacted (removed or obliterated). This rule applies unless redaction is impossible because the public and confidential material are so tightly interwoven as to be “inextricably intertwined” (*Northern California Police Practices Project v. Craig*, 90 Cal. App. 3d 116 (1979)), or unless multiple redactions applied to a large number of requested records would leave them so bereft of substantive information relevant to the requester’s purpose that the benefit to him or her would be “marginal and speculative.” *American Civil Liberties Union Foundation of Northern California Inc. v. Deukmejian*, 32 Cal. 3d 440 (1982).

4. Drafts are not inherently and entirely exempt.

The word “draft,” even if accurately descriptive of a document, does not exempt it from disclosure. Government Code §6254, subd. (a) applies only to “preliminary” drafts, notes or memos “that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.” Moreover, the exemption applies only if the record was created to inform or advise a particular administrative or executive decision. Also, the document must be of the kind customarily disposed of: “If preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed.” Finally, the exemption applies only to the “recommendatory opinion” of its author, making a judgment or offering advice as a conclusion based on a set of facts. Those facts, however, remain accessible to the public, and

only the author's conclusion is protected. *Citizens for A Better Environment v. Department of Food and Agriculture*, 171 Cal. App. 3d 704 (1985).

5. Litigation documents may be withheld while the case is alive.

Government Code §6254, subd. (b) exempts "Records pertaining to pending litigation to which the public agency is a party, or to claims . . . , until the pending litigation or claim has been finally adjudicated or otherwise settled." This exemption includes communications between the agency and its attorney, which are privileged in any event as long as the agency wishes to assert the privilege (see 8 below). Otherwise, "a document is protected from disclosure only if it was specifically prepared for use in litigation." *City of Hemet v. Superior Court*, 37 Cal.App.4th 1411 (1995). Accordingly, the exemption does not apply to an attorney's billing for legal work. *County of Los Angeles v. Superior Court (Anderson-Barker)*, 2d Dist. No. B239849 (2012). The claim itself is not exempt. *Poway Unified School District v. Superior Court*, 62 Cal.App.4th 1496 (1998). And when a case has been fully adjudicated (no appeal possible) or settled, records covered by this exemption that are not communications between the agency and its attorney—for example, communications between the agency and the other party—become accessible to the public.

6. Personal information may be withheld to avoid unjustifiably invading privacy.

The CPRA allows withholding of "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" (Government Code §6254, subd. (c)). The rule covers more than "personnel" files and reaches any information in government records linked to an identified or readily identifiable individual. But it allows withholding only where the person in question has an objectively reasonable expectation of privacy, which would not apply, for example, to résumé-type "information as to the education, training, experience, awards, previous positions and publications" of a public employee. *Eskaton Monterey Hospital v. Myers*, 134 Cal.App.3d 788 (1982).

Even when a privacy expectation would be normally reasonable, disclosure may be justified—"warranted"—and required, if the public interest in having it known outweighs the public interest to the contrary. For example, when a public official denied taking an unlawful personnel action, "access to records proving it then became in the public interest." *Braun v. City of Taft*, 154 Cal. App. 3d 332 (1984).

The two most frequently sought categories of personal information about public employees are compensation and performance complaints. The California Supreme Court has concluded that the compensation of all public employees is such a matter of public concern that such information is not protected as a matter of personal privacy, either for employees generally or for peace officers, except in extraordinary circumstances, for example to maintain the secrecy of undercover assignments. *International Federation of Technical and Professional Engineers, Local 21, AFL-CIO v. Superior Court (Contra Costa Newspapers, Inc.)*, 42 Cal.4th 319 (2007).

Correspondingly, pension amounts of all public employees are open to public inspection, either by statute concerning state agency retirees (Government Code §20230) or by three decisions of the California Court of Appeal concluding that county retirement system records showing individual pension amounts are not matters of personal privacy. *Sacramento County Employees' Retirement System v. Superior Court (Sacramento Bee)*, 195 Cal. App. 4th 440 (2011), *San Diego County Employees Retirement Association v. Superior Court (California Foundation for Fiscal Responsibility)*, 4th Dist. No. D058962 (2011), *Sonoma County Employees' Retirement Association v. Superior Court (The Press Democrat)*, 1st Dist. No. A130659 (2011).

Complaints about the performance of public employees—other than peace officers—are public if they lead to disciplinary action, *AFSCME v. Regents*, 80 Cal. App. 3d 913 (1978) or even, discipline or not, if they are “well-founded” or reasonably reliable in terms, for instance, of their substance, frequency and/or sources. *Bakersfield City School District v. Superior Court*, 118 Cal.App.4th 1041 (2004), *Marken v. Santa Monica-Malibu Unified School District*, 202 Cal. App. 4th 1250 (2012). Disciplinary information about peace officers and custodial officers, like most other contents of their personnel files, is statutorily confidential under Penal Code §832.5 in a manner that the courts have concluded exempts it from disclosure under the CPRA. But the names of those who fired their weapons in officer-involved shootings are not made confidential by that provision. *Long Beach Police Officers Association v. City of Long Beach et al*, 2d Dist. No. B231245 (2012).

7. Law enforcement investigative files may be withheld, but not the basic facts.

With respect to police and other criminal justice law enforcement agencies, Government Code §6254, subd. (f) applies to records that “encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency.” *Haynie v. Superior Court*, 26 Cal.4th 1061 (2001) But the exemption also applies to “any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,” including investigations by state or local regulatory agencies. If the investigation does not have one of these purposes, the exemption does not apply. *Register Division of Freedom Newspapers Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984). The exemption may be asserted no matter how old and dead the investigation may be. *Williams v. Superior Court*, 5 Cal. 4th 337 (1993).

But unless doing so would threaten the successful completion of an investigation or the safety of a person involved, an agency must disclose the basic “who/what/where/when” facts in crime, incident and arrest reports, including requests for assistance, at least with respect to “contemporaneous police activity” rather than attempts to obtain information about an officer’s long-term performance that would otherwise be confidential (see 6 above) *County of Los Angeles v. Superior Court*, 18 Cal.App.4th 588 (1993).

8. Information that is privileged or confidential otherwise is exempt.

Numerous other laws outside the CPRA either prohibit disclosure of certain information, limit its disclosure to certain persons, purposes or both, or give the agency discretion over release. Moreover, the Evidence Code contains a number of privileges that allow information to be withheld even from a court proceeding. The CPRA incorporates these laws and privileges as exemptions from disclosure (Government Code §6254, subd. (k)).

The attorney-client privilege, for example, allows communications between a public agency and its lawyers to be kept confidential (see 5 above). But a federal court has observed that “the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected” (*Clarke v. American Commerce National Bank*, 974 F.2d 127 (1992)).

The official information privilege allows a public official to withhold information submitted to him or her in confidence, until and unless it has been expressly relied upon in the making of a decision, if the public interest in such secrecy outweighs the public interest in disclosure. *San Gabriel Valley Tribune v. Superior Court*, 143 Cal.App.3d 762 (1983).

Government agencies may acquire business or industry information protected by the trade secret privilege, but to be protected, the formula, pattern, compilation, process, device,

method, etc. must derive independent value from not being known to the public or a competitor, and must be subject to reasonable efforts to maintain its secrecy otherwise (Civil Code §3426.1, subd. (d)).

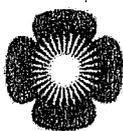
9. The “balancing test” may justify non-disclosure in well-defined instances.

Even if no specific exemption in the CPRA applies, information may be withheld “by demonstrating ... that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” As the wording suggests, this exemption is applicable on a case-by-case basis, and in particular a targeted request for a particular record will be circumstantially easier to justify in the public interest than a wholesale request for a large volume of records. *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal.3d 440 (1986), *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991).

10. The deliberative process privilege may apply to pre-decisional records.

While the deliberative process privilege originates with the common law and is not codified in California statutes, its policy has been recognized as supporting, in certain circumstances, a withholding of access under the “balancing test” (see 9 above). Its rationale is the same as that underlying the draft exemption (see 4 above), namely the need of government officials and their advisors to discuss policy options freely and frankly in the course of developing a decision, without fear of political recrimination upon disclosure. But unlike the draft exemption with its limited application, the privilege invoked under the balancing test applies to documents that are not preliminary drafts or memos but that otherwise would impede or chill candid pre-decisional deliberation. Cases so far have applied the privilege in a balancing test to deny disclosure, concluding that:

- The pragmatic chill on candor and effectiveness of the governor’s consultations with visitors resulting from wholesale disclosure of his appointment calendars, and risk to his security posed by wholesale disclosure of his travel itineraries, outweigh the arguable public interest in understanding patterns of access to and influences affecting state’s chief executive. *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991).
- With respect to a request filed during the pendency of an appointive decision, avoiding the interference with the governor’s exercise of his or her prerogative to make appointments to fill vacancies on boards of supervisors that would result from disclosing information submitted by applicants for appointment—and thus deterring the full and candid flow of information supporting that decision—outweighs the voters’ interest in knowing who is applying for the normally elective position and what qualifications they are citing in their favor. *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159 (1998).
- With respect to a request for such records filed five months after the governor made the appointive decision, the same factors outweigh the voters’ interest in an appointment to the board of a county emerging from bankruptcy. *Wilson v. Superior Court*, 51 Cal.App.4th 1136 (1997).
- Disclosing the telephone numbers of persons with whom a city council member has spoken over a year’s time equates to revealing the substance or direction of the member’s judgment and mental process, and the inhibiting intrusion posed by such disclosures outweighs the public interest in learning which private citizens are influencing the member’s decisions, especially where no misuse of public funds or other improprieties are alleged. *Rogers v. Superior Court*, 19 Cal.App.4th 469 (1993).



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Top 10 Points to Remember about Open and Public Meetings under the Ralph M. Brown Act

1. The Act applies to “legislative” bodies of local government agencies.

That term encompasses the agency’s governing body (for example the board of supervisors of a county), any body created by state law (for example its planning commission), any body created by charter, any standing committee of a legislative body, and any multi-member body created by ordinance, resolution or other formal action of an existing legislative body to serve as special advisory or study group, if the group contains one or more members who are *not* on the creating body (for example a “blue ribbon” or outreach task force comprising at least some staff members and other citizens). (Government Code §54952, subs. (a) and (b)).

- In the latter case, if the advisory body was created pursuant to the policy of a legislative body, it makes no difference that the members are selected or appointed by staff—the body is subject to the Act. *Frazer v. Dixon Unified School District*, 18 Cal.App.4th 781 (1993).

- In some cases, the Act may also apply to a board of a private corporation, namely if a legislative body either:

- played a significant role in creating the corporation to perform a function spun off from the local agency (Section* 54952, subd. (c) (1) (A)); or

- provides funding to the corporation and appoints one of its own members to the corporate board as a voting member (Section 54952, subd. (c) (1) (B)).

2. The Act applies when a body’s majority collectively hears, discusses or acts.

This usually means a literal “congregation of a majority of the members ... at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” (Government Code §54952.2, subd. (a)).

- The Act prohibits equivalent “meetings of minds” orchestrated outside public meetings to achieve majority consensus over time, namely “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” (Section 54952.2, subd. (b), par. (1)).

- But such “serial meeting” violations do not arise casually or inadvertently, since the Act exempts isolated “individual contacts or conversations between a member of a legislative body and any other person” (Section 54952.2, subd. (c) (1)). And routine staff briefings of individual members of the body concerning issues on its next meeting agenda do not violate the Brown Act so long as they are not used by a majority of the body, exchanging views through the staff briefer as an intermediary, to reach collective concurrence on an issue. *Wolfe v. City of Fremont*, 144 Cal.App.4th 533 (2006). Or as the Act now puts it, the serial meeting restriction does not prevent

* Unless otherwise specified, the term “Section” refers to a section of the Government Code that is part of the Brown Act.

“an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.” (Section 54952.2, subd. (b), par. (2)).

• And because the “meeting” definition is so broad, several occasions are specified when a majority *may* be present together and at least listen to matters relevant to their agency without triggering the Act’s requirements, namely:

- professional conferences, local community forums, and meetings of other local agency bodies, providing that the event is open to the public and the attending members do not use the occasion to discuss “among themselves” specific matters that they have authority to act on (Section 54952.2, subd. (c), pars. (2)-(4)); or
- “a purely social or ceremonial occasion,” with the same caveat against specific agency business discussions (Section 54952.2, subd. (c), par. (5)); or
- “an open and noticed meeting of a standing committee of (their) body, provided that the (visiting) members ... who are not members of the standing committee attend only as observers” (Section 54952.2, subd. (c) (6)).

3. A body may meet outside its agency’s boundaries only for certain purposes.

“Retreats” outside the area are not on the list, which does however include meetings outside their territory by a majority or more to, in the words of Section 54954:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency’s jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency’s legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees’ potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

• These occasions are special meetings and as such must be given the appropriate public notice (see 4 below) and remain open to the public, with the exception of situations (7), (c) 2 and (c) 3, and where the topic of discussion otherwise permits a closed session in situation (4).

• The Act also states that within the agency’s boundaries, if an emergency leaves the body’s normal meeting place unsafe to occupy, “the meeting can convene elsewhere for the duration of the emergency, with appropriate notice to the local media.” (Section 54954, subd. (c)).

- The most relaxed rule applies to a joint powers authority with member agencies throughout the state. It may meet at any facility in the state except one “that prohibits the admittance of any person, or persons, on the basis of (race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability), or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.” (Section 54954, subd. (d)).

4. Agendas and notices must be publicly posted, accessible 24/7, and adhered to.

For **regular meetings** convened on a formally adopted schedule, a notice specifying the time, place and agenda of the meeting must be posted in a place “freely accessible” to the public 72 hours in advance. The posting may be via a touchscreen electronic kiosk, but may not be confined to the interior of a building inaccessible to public view for part of the 72-hour period, e.g., a weekend. (AG Opinion No. 04-1217 (2005); AG Opinion No. 95-812 (1995)).

- The agenda must include “a brief general description of each item to be transacted or discussed...” which “generally need not exceed 20 words” per item.

- Nothing not on the agenda may be acted on unless

- an emergency meeting would be justified (see below) in any event; or
- the matter is continued from the agenda of a meeting less than six days

previously; or

- the body makes a preliminary vote finding that “there is a need to take immediate action and that the need for action came to the attention of the local agency” after the agenda notice was posted. That finding must be voted by two thirds of the members present, or in the case of larger bodies where fewer than two thirds of the members are present, by all present.

- Action taken on off-agenda items where none of these conditions apply is voidable by a court. As for mere discussion or comments on off-agenda items, they are limited to

- brief informational responses by members to statements or questions from the public, questions for clarification;
- a brief announcement or report of a member’s personal activities; or
- direction to staff to follow up on a citizen’s issue or place it on the agenda of a future meeting.

- Meeting notices must be provided in formats accessible to the disabled if so requested (Section 54954.2).

Special meetings (those *not* on the regular schedule’s fixed time, place, or both) may be called at any time and for any purpose by the presiding officer, or by a majority of the members, by delivering a written notice announcing the time and place of the meeting and “the business to be transacted or discussed,” at least 24 hours in advance of the meeting. (Section 54956)

- The notice may be delivered “personally by any other means” but must reach:

- each member of the legislative body, but it may be “dispensed with as to any member who is actually present at the meeting at the time it convenes;” and
- each local newspaper of general circulation and radio or television station requesting notice in writing; these media need not be given notice unless they have requested it in writing, but they need only do so once—a standing request—and if they do so, they are entitled to notice even if the special meeting will be mainly a closed session. (62 Ops.Cal.Atty.Gen. 658 (1979); 43 Ops.Cal.Atty.Gen. 79 (1964)).

- Unlike the rules for regular meetings, nothing may be considered by the body that is not specified in the special meeting notice, and members of the public have the right to address the body only on that topic.

Emergency meetings may be called in rare crisis circumstances by telephone notice to the members and may convene an hour after local newspapers and broadcasters (that have requested such notice and provided phone numbers to be used) have been alerted by phone, or even sooner if the situation, including but not limited to terrorist causation, is “dire.” (Section 54956.5)

- Such meetings may address only “matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities” caused by a “a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both”—as determined by a majority of the body.

- In such instances the only closed session permitted is one addressing personnel or public access to facilities, as provided in Section 54957 (see 7 below), and then only if agreed to by two thirds of those present, or if less than two thirds of the body is present, unanimously.

- If the emergency is “dire,” defined as one where a one-hour advance media notice delay “may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body,” the meeting may commence as soon as members have been notified of its time and place, so long as the media entitled to phone notice receive it “at or near” the time of the member alert.

- Minutes and other meeting particulars—“a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting”—must be posted for 10 days in a public place as soon as possible.

Agenda/notice content must provide “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session”.

- The item description “generally need not exceed 20 words” but, according to the Attorney General, the purpose of the requirement “to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body. (*The Brown Act: Open Meetings for Local Legislative Bodies*, California Attorney General, 2003; p. 16).

5. Meeting-related records become public no later than when the body gets them.

Documents in the agenda packet, or indeed any others, “when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting,” become accessible to the public at that point, “available upon request without delay” unless expressly exempt from disclosure under the law. (Section 54957.5)

- If distributed to the body only at the meeting, they must be made immediately available if prepared by agency staff or a member of the body; if prepared by someone else, then after the meeting.

- Meeting-related documents must be in formats accessible to the disabled if so requested.

- None of these rules may be used to *postpone* access to a record that would otherwise be available sooner under the California Public Records Act (CPRA), for example on the grounds that the record “has not yet gone to the board.”

- Fees permitted by the CPRA may be charged for copies of records—i.e., reflecting the direct costs of photocopying—but not surcharges for special formats that would be prohibited by the federal Americans with Disabilities Act.

6. Citizens may address the body on matters that it has the authority to deal with.

At regular meetings, this applies to topics both on and off the body's agenda; at special meetings, only the agenda topic(s) listed in the posted notice need be open to public comment. (Section 54954.3).

- For regular meeting agenda items, comment must be permitted “before or during the legislative body's consideration of the item.”

- Regular meeting opportunities for comment on others matters can be confined to those “within the subject matter jurisdiction of the legislative body.” Subject matter jurisdiction is simply the scope of issues that the body has authority to deal with; for example a city council need not take comments on matters

- exclusively within the powers of a county or other public agency, or
- that strictly concern the private lives of members of the council or employees and have no bearing on their official duties or responsibilities.

But this should not preclude the right of citizens, for example, to urge the city council to communicate with the county and request its action on a matter of general interest.

- The body may not act in response to off-agenda statements or requests by citizens unless the body makes the super-majority voted finding of a need for immediate action (see section 4 above).

- And public comment need not be taken on an agenda item already considered at a prior meeting of a standing committee of the body “wherein all interested members of the public were afforded the opportunity to address the committee on the item . . . unless the item has been substantially changed since the committee heard the item, as determined by the legislative body.”

- The body may adopt “reasonable regulations to ensure that the intent (to provide opportunity for public comment) is 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.”

- The body may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”

- Federal courts have additionally ruled that:

- Because these required citizen speech opportunities amount to the Legislature's creation of a “limited public forum,” under the First Amendment the body may not prevent a citizen from making a statement about an agency employee in open session that may be unfair, untrue and/or even defamatory, so long as it concerns the agency's business. *Baca v. Moreno Valley Unified School District*, 36 F.Supp. 719 (1996).

- But the body may curtail speech that is unduly repetitive or wanders off the pending agenda topic. *White v. City of Norwalk*, 900 F.2d 1421 (1989).

- Above all, application of time limits and other ground rules must be strictly neutral, not favoring viewpoints the body welcomes and/or burdening those it dislikes. *Rubin v. City of Santa Monica*, 823 F.Supp. 709 (1993).

7. Closed sessions may be used to discuss potential, current or former employees.

That is, to consider “the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.” (Section 54957).

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- A closed session to hear such complaints or charges must be preceded, at least 24 hours in advance, by delivery of a written notice to the employee informing him of his right to have an open hearing; absent this notice, any action taken in the closed session “shall be null and void.”

- The right to notice does not apply to a routine evaluation of performance, nor for example to a school or community college district board’s discussion of the performance of a probationary employee, as part of the decision whether or not to retain him or her on the permanent staff, (*Furtado v. Sierra Community College*, 68 Cal.App.4th 876 (1998)), especially where by that point any “specific complaints or charges” had been dealt with on lower administrative appeal and were not part of the board’s deliberation. (*Fischer v. Los Angeles Unified School Dist.*, 70 Cal.App.4th 87 (1999)).

- Similarly, the court in *Bollinger v. San Diego Civil Service Com.*, 71 Cal.App.4th 568 (1999) concluded that since the Act refers to the employee's right to have complaints or charges "heard" in open session, if the body is not conducting an evidentiary hearing but simply deliberating whether to ratify the recommendations of a prior administrative hearing, the right to notice does not apply.

- But the court in *Morrison v. Housing Authority Board*, 107 Cal.App.4th 860 (2003) held that a “hearing” requiring the advance notice occurred when a board on its own initiative decided to conduct an accusatory inquiry into the facts of an employee’s alleged misconduct instead of making a decision based on a hearing officer’s factfinding.

- As for the nature of “complaints or charges,” the court in *Bell v. Vista Unified School District*, 82 Cal.App.4th 672 (2000) held that a high school football coach had been denied his rights when his school board employer held a closed session, without giving him the 24-hour written notice, to consider disciplining him. The California Interscholastic Federation (CIF) had imposed a one-year suspension on Bell’s school’s athletic program as the result of his involvement in the transfer of a foreign student, ineligible under CIF rules, into the school in order to join the football team, and CIF’s notice to the district, the court held, qualified as a “specific complaint or charge” against the coach.

- The “public employee” subject to discussion or action in closed session includes an officer or independent contractor “who functions as an officer or an employee;”

- But the term does *not* include:

- other independent contractors;

- elected officials;

- members of legislative bodies; or

- employees over whom the body has no employing authority, i.e. those who can be hired, fired, appointed or disciplined by someone else without the body’s approval. (AG Opinion No. 01-505 (2002). But an earlier AG opinion (80 Ops.Cal.Atty.Gen. 308 (1997)) concluded that a citizen’s advisory committee created by the governing body could use closed sessions to interview candidates for a key employee position, discuss their merits and make confidential recommendations to the hiring body.

- Closed sessions under this section may not include discussion or action on setting or increasing compensation. The body may discuss compensation matters only in a differently structured and listed closed session (see 8 below).

8. Closed sessions are permitted to guide sensitive legal or bargaining processes.

When the body needs to consult with its attorney on pending litigation, or with its negotiator concerning a proposed deal to acquire or dispose of a real property interest or concerning

employee union bargaining, these consultations may take place in closed session to avoid disclosing the agency's litigation or negotiation strategy to the adversary.

Pending Litigation (Government Code §54956.9)

The pending litigation session may involve an actual case in court or before an administrative law tribunal, which must be identified on the agenda; or a case the agency may want to bring in such a forum, which need not be identified; or the threat of litigation made by some other person or entity.

- In the latter instance, the closed session must be justified in light of “existing facts and circumstances” threatening litigation, which generally must be disclosed, at least on request prior, to the session or afterwards, specifying who is making the threat and what they say.

- If the threat comes in a letter from the threatening party or his or her attorney in a pre-litigation claim or otherwise, the letter must be made public on request, prior to or after the closed session.

- If the threat is made by a citizen in an open meeting, the closed session should wait until a future meeting, at which the threatening party and the threat made should be noted on the agenda.

- If the threat is made to a member of the body, its attorney or some other agency employee orally, outside a public meeting, the person who heard it must reduce the event to a memo, which must be made public on request, prior to or after the closed session that the memo was created to justify.

- If the threat has not yet been expressed, but litigation can be expected in due course because of “an accident, disaster, incident, or transactional occurrence that (is) known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

- But when the “facts and circumstances that might result in litigation against the local agency” are those which the agency believes are not yet known to the potential plaintiff, those facts and circumstances need not be disclosed.

- The closed session is available only for a conference with legal counsel—physically present or by phone—and only concerning specific current, planned or threatened litigation involving the agency, not general legal questions or concerns, which can and must be confined to written communications, confidential under the attorney-client privilege. *Roberts v. City of Palmdale*, 5 Cal.4th 363 (1993). The closed conference with counsel is permitted only to a legislative body of the client agency, not to other bodies that the agency has created to assist it, e.g. in eminent domain matters. *Shapiro v. Board of Directors of the Centre City Development Corp.*, 134 Cal.App.4th 170 (2006).

- Within the closed session the body may actually vote to sue, defend a suit, settle or appeal. But it may not:

- meet directly with the adversary to discuss settlement. *Page v. MiraCosta Community College Dist.*, 180 Cal.App.4th 471 (2009);

- adopt a settlement that grants a zoning variance or otherwise takes final “action for which a public hearing is required by law, without such a hearing.” (*Trancas Property Owners Association v. City of Malibu*, 138 Cal.App.4th 172 (2006)). But agreements or undertakings not requiring a public hearing may be adopted in closed session, with no prior notice to the public, as a settlement of litigation. (*Southern California Edison Co. v. Peevey*, 31 Cal.4th 781 (2003)).

Real Property Negotiations (Section 54956.8)

The real property negotiation session must concern either acquisition or disposal of an interest in a disclosed, specifically identified parcel of property, presently under negotiation with a specifically identified party. The scope of discussion is confined to the “price” and/or “terms of payment” for the transaction. (Section 54956.8), and the Attorney General has concluded that these terms are to be read narrowly, permitting discussion in closed session of only: “(1) the amount of consideration that the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred in the particular transaction; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential.” AG Opinion No. 10-206 (2011).

- If there are no such specific negotiations under discussion, the closed session may not be lawful, and at a minimum all other topics of the discussion must be disclosed on the agenda. *Shapiro v. San Diego City Council*, 96 Cal.App.4th 904 (2002).

Employee Pay/Benefit Negotiations (Section 54957.6)

This closed session is to allow the body to confer with its own bargaining agent, who then separately meets with representatives of employee unions, or with top level agency executives or other “unrepresented” employees—not members of a recognized bargaining unit—negotiating for better pay or benefits.

- Final agreements with unions may be approved in closed session.
- But with unrepresented employees, any final action on increased compensation must be confined to open session. And compensation discussions must be noted on the agenda separately from closed sessions on “personnel” issues under Section 54957, which as noted above may not include discussions of compensation.
- The closed session may involve discussion of budgetary priorities as part of the variables affected by a proposed agreement.

9. Most closed session actions taken must be reported—at least if requested.

The Act requires that most, if not all, actions taken by the body in closed session be disclosed afterwards, together with the names of those who voted for or against or were present but abstaining, either immediately at the same meeting or upon request later if there remains some formality (or acceptance by the other party) to complete the action. Section 54957.1.

- Specifically, that is:
 - On **real property deals**, “If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held. If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.” The text of the agreement is a public document upon request.
 - Action on **pre-litigation claims** must be announced immediately, identifying the claimant and the agency claimed against, the substance of the claim and any money paid to and accepted by the claimant. The claim is a public document upon request.
 - On **litigation decisions**, an approval to defend, appeal or file a friend of court brief in a case already filed must be announced in open session at the same meeting,

naming the adverse party and what the case is about. An approval to file or intervene in an action must also be immediately announced, but the announcement “need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.”

- Litigation **settlement approvals**, like real property deals, must be announced immediately if the body's approval closes the negotiations, but if the adversary has the final call or a court must approve the settlement, the announcement may await those events; the text of the settlement agreement is a public record upon request.

- Approval of an agreement concluding **labor negotiations** must be reported after the agreement is final and has been accepted or ratified by the bargaining unit(s); the text of the settlement agreement is a public record upon request.

- The “upon request” status of some of these delayed disclosures leaves the burden on the press or public to be alert at the point when the agenda no longer refers to a closed session on a certain matter, since that silence probably signals an achieved property deal, union agreement or litigation settlement.

10. Violations of the Act may justify court action as correction or punishment.

Compelling Compliance

If the object is to force the body to comply with the law when it is consistently failing to do so or insists that its conduct is lawful, the Act allows any person or the district attorney to file a lawsuit in the superior court seeking a declaratory judgment that the law has been or is being violated, usually coupled with an injunction ordering compliance. Section 54960.

- If the object is to challenge the compliance of one or more past practices of the body with the Act, the plaintiff seeking a declaratory judgment must first, within nine months of the most recent occurrence, send the body a written cease and desist letter demanding an unconditional commitment not to repeat the challenged practice. Unless the body formally provides such a commitment in an open and public meeting within 30 days of receiving the demand, the plaintiff can file the declaratory judgment action at any time within 60 days of the body's failure to provide the commitment. This cease and desist procedure applies only to practices occurring on or after January 1, 2013.

- If the court finds that the body used a closed session for an unlawful discussion or action, it may also order the body to tape record its closed sessions (and preserve the recordings) for a certain period thereafter, to encourage compliance and provide evidence of any repeated violations. The tapes are not public records but may be reviewed by a court in any similar subsequent lawsuit.

Overturing Unlawfully Taken Action

If the goal instead is to overturn a particular action taken in violation of fundamental requirements of the Brown Act, any person or the district attorney may file a suit asking the superior court find that the body violated the Act in taking an action that should be therefore declared null and void. Section 54960.1.

- This remedy is confined to actions taken with unlawful *secrecy* (not in an open and public meeting) or unlawful *surprise* (at a public meeting, but not given adequate notice on the agenda).

- Filing a lawsuit to invalidate *secret* action must be preceded by a written notice to the body, delivered no later than 90 days from the date of the alleged violation, demanding a suitable “cure and correction.”

- To sue for invalidation of *surprise* action, the notice period for demanding cure and correction is only 30 days, and in any event no one may sue who had actual notice of the surprise item at least 72 hours before a regular meeting at which the surprise action was taken, or at least 24 hours in advance of a special meeting at which the surprise action was taken.

- If the body makes an unsatisfactory response to the demand, or when 30 days pass without any response—whichever happens first—the plaintiff has just 15 days to file the nullification action in court.

- The court may decline to nullify an action if:

- the body has satisfactorily cured the violation; or

- the action authorized the sale or issuance of notes, bond or other instruments of debt, or with the collection of a tax; or

- the action resulted in a contract with a third party who had no knowledge of a Brown Act violation and would be harmed by having the contract nullified; this rule does not apply to a salary or fee for professional services, which contract may be nullified).

Attorney Fees

If the plaintiff wins in any of these civil actions, he or she may be entitled to an award of attorney’s fees and costs from the defendant agency, especially if the lawsuit clearly benefited the public rather than just the plaintiff’s private interests, and was necessary to force compliance with the law. Section 54960.5.

- If the plaintiff loses and the court finds that the lawsuit was not only not legally sound but “clearly frivolous and totally lacking in merit,” the defendant agency may ask the court to order the plaintiff to pay its costs and fees.

Criminal Prosecution

Finally, Section 54949 provides: “*Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.*”

- Given this daunting burden of proof, no one is known to have been successfully prosecuted for a criminal violation of the Act. There has apparently been only one case that went to a jury verdict since 1953, and it resulted in a hung jury.

ATTACHMENT 2

Oakland, California, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >> Chapter 2.20 - PUBLIC MEETINGS AND PUBLIC RECORDS >>

Chapter 2.20 - PUBLIC MEETINGS AND PUBLIC RECORDS**Sections:**

Article I. - In General

Article II. - Public Access to Meetings

Article III. - Public Information

Article IV. - Policy Implementation

Oakland, California, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >> Chapter 2.20 - PUBLIC MEETINGS AND PUBLIC RECORDS >> Article I. - In General >>

Article I. - In General

2.20.010 - Findings and purpose.

2.20.020 - Citation.

2.20.010 - Findings and purpose.

The Oakland City Council finds and declares:

- A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.
- B. Commissions, boards, councils, advisory bodies and other agencies of the city exist to conduct the people's business. This chapter is intended to assure that their deliberations and that the city's operations are open to the public.
- C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.1, 1997)

2.20.020 - Citation.

This chapter may be cited as the Oakland Sunshine Ordinance.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.2, 1997)

Oakland, California, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >> Chapter 2.20 - PUBLIC MEETINGS AND PUBLIC RECORDS >> Article II. - Public Access to Meetings >>

Article II. - Public Access to Meetings

2.20.030 - Definitions.

2.20.040 - Conduct of meetings for additional bodies covered by the chapter.

2.20.050 - Meetings to be open and public: Application of Brown Act.

2.20.060 - Conduct of business: Time and place for meetings.

2.20.070 - Notice and agenda requirements: Special meetings.

2.20.080 - Notice and agenda requirements: Regular meetings.

2.20.090 - Agenda-related materials as public records: Agenda subscribers.

2.20.100 - Agenda and oral disclosures: Closed sessions.

2.20.110 - Statement of reasons for closed sessions.

2.20.120 - Conduct of closed session.

2.20.130 - Disclosure of closed session discussions and actions.

2.20.140 - Barriers to attendance prohibited.

2.20.150 - Public testimony at regular and special meetings.

2.20.160 - Minutes and recordings.

2.20.170 - Public comment by members of local bodies.

2.20.030 - Definitions.

Words or phrases in this chapter shall be defined pursuant to the Ralph M. Brown Act, Government Code Section 54950 et seq. and the Public Records Act, Government Section 6250 et seq., unless otherwise specified as follows:

- A. "Agenda" means the agenda of a local body which has scheduled the meeting. The agenda shall meet the requirements of Government Code Section 54954.2, except that the timing requirements of this chapter shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code Section 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material. A description of an item on the agenda is adequate 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.
- B. "Agenda-related materials" means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include:
1. The written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this chapter; and
 2. Written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 2.20.070 or Section 2.20.080

- C. "Agenda subscriber" means any person or organization who requests in writing, on an annual basis, the receipt of an agenda or agenda-related materials as specified in Section 2.20.090 of this chapter.
- D. "City" means the city of Oakland.
- E. "Local body" means:
1. The Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;
 2. Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;
 3. Any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a twelve (12) month period; and,
 4. Any standing committee of any body specified in subsections (E)(1)(2) or (3).

"Local body" shall not mean any congregation or gathering which consists solely of employees of the city of Oakland, the Oakland Redevelopment Agency, or the Port of Oakland.

- F. "Meeting" shall mean any congregation of a majority of the members of a local body at the same time and location, including teleconference location as permitted by Government Code Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body.
1. A majority of the members of a local body shall not, outside a meeting defined in this subsection F., use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.
 2. Subsection F.1. shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting defined in this subsection F. with members of a local body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the local body the comments or position of any other member or members of the local body.
 3. Nothing in this subsection F. shall impose the requirements of this chapter upon any of the following:
 - a. Individual contacts or conversations between a member of a local body and any other person that do not violate subsections F.1. and 2.;
 - b. The attendance of a majority of the members of a local body a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the local body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance;
 - c.

- The attendance of a majority of the members of a local body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;
- d. The attendance of a majority of the members of a local body at an open and noticed meeting of another local body of the local agency or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;
 - e. The attendance of a majority of the members of a local body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency; or
 - f. The attendance of a majority of the members of a local body at an open and noticed meeting of a standing committee of that body, provided that the members of the local body who are not members of the standing committee attend only as observers.

"Meeting" shall also mean a meal or social gathering of a majority of the members of a local body immediately before, during or after a meeting of a local body.

- G. "Notice" means the posting of an agenda in a location that is freely accessible to the public twenty-four (24) hours a day and as additionally specified in Section 2.20.070 and 2.20.080
- H. "On-line" means accessible by computer without charge to the user.
- I. "Software or hardware impairment" means the city is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including, but not limited to, a computer virus), electrical outage affecting the city's computer network, or unanticipated system or equipment failure. "Software or hardware impairment" may also include situations when the city is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the city shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.
- J. "Standing committee" means any number of members of a local body which totals less than a quorum and which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the local body.

(Ord. No. 12909, § 3, 1-6-2009; Ord. 12668 § 3, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.3, 1997)

2.20.040 - Conduct of meetings for additional bodies covered by the chapter.

- A. To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).
- B. To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the city, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the property or the public function or service is discussed or considered subject to the following conditions:
1. Such meetings need not be formally noticed, 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 meeting be made available upon request;
 2. Such meetings need not be conducted in any particular location to accommodate spectators, although spectators shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy;
 3. Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,
 4. The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.4, 1997)

2.20.050 - Meetings to be open and public: Application of Brown Act.

All meetings of local bodies specified in Sections 2.20.030(E) and Section 2.20.040(A) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this chapter, in which case this chapter shall be applicable.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.5, 1997)

2.20.060 - Conduct of business: Time and place for meetings.

- A. Every local body specified in Section 2.20.030(E) shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible local bodies specified in Section 2.20.030(E)(1) and (2) shall conduct their regular meetings on weekday evenings.
- B. Regular and special meetings of legislative bodies specified in Section 2.20.030(E) shall be held within the city of Oakland except to do any of the following:
- 1.

- Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;
2. Inspect real or personal property which cannot be conveniently brought to Oakland, provided that the topic of the meeting is limited to items directly related to the real or personal property;
 3. Participate in meetings or discussions of multi-agency significance that are outside Oakland. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body specified in this chapter; or
 4. Meet outside the city of Oakland with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the city of Oakland, the Oakland Redevelopment Agency or the Port of Oakland, and over which issue the other federal or state agency has jurisdiction.
- C. If a regular meeting for any local body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least five days in advance.
- D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding officer of the local body or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.
- E. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority.

(Ord. 12483 (part), 2003; Ord. 12463 § 2, 2003; Ord. 11957 § 00.6, 1997)

2.20.070 - Notice and agenda requirements: Special meetings.

- A. Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:
1. Posting a copy of the agenda in a location freely accessible to the public at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;
 2. Filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and,
 3. Delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.
- B. Local bodies specified in Section 2.20.030 (E)(1) shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least forty-eight (48) hours (excluding Saturdays, Sundays and

holidays) before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.

- C. Notwithstanding the requirements of 2.20.070(A) and (B), if a special meeting is called for a Monday, notice shall be deemed timely made if the filing, posting and distribution requirements of subsections (A) and (B) are made no later than 12:00 p.m. (noon) on the preceding Friday.
- D. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this section is given at least ten days prior to the special meeting. This ten day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.
- E. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.
- F. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

(Ord. 12668 § 4, 2005; Ord. 12483 (part), 2003; Ord. 12463 § 3, 2003; Ord. 12106, 1999; Ord. 11957 § 00.7, 1997)

2.20.080 - Notice and agenda requirements: Regular meetings.

- A. Ten Day Advance Notice Requirement for Regular Meetings of the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:
 1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (24) hours a day no later than ten days before the date of the meeting;
 2. Filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten days before the date of the meeting; and,
 3. Posting a copy of the agenda on-line at the local body's website no later than ten days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.
- B. Supplemental Agenda and Related Materials Requirements for Regular Meetings of the City Council Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Notwithstanding the notice provisions of 2.20.080(A), the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees, may amend or supplement a posted agenda or agenda-related materials no later than seventy-two (72) hours before a regular meeting and only for the following reasons or under the following conditions:
 - 1.

- To add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action;
2. To delete or withdraw any item from a posted agenda; however, nothing herein shall limit the ability of a local body to delete or withdraw an item during the meeting as long as the local body permits members of the public to address the deleted or withdrawn item;
 3. To provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to the Mayor or staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this section are reports responding to questions or requests raised by members of a local body after posting and filing of the ten day agenda and materials, and analyses or opinions of the item by the Office of the City Attorney, City Auditor, or any member of the City Council;
 4. To correct errors or omissions, or to change a stated financial amount, or to clarify or conform the agenda title to accurately reflect the nature of the action to be taken on the agenda item;
 5. To consider the recommendations, referrals, minutes, modifications of or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission provided that the item has not been materially changed after the committee considered the item;
 6. To place an ordinance on the agenda pursuant to Oakland City Charter Section 216 because the Mayor has caused its reconsideration by the City Council under the Mayor's power to suspend an ordinance receiving five votes; or,
 7. To place an item on the agenda to allow the Mayor to cast a vote pursuant to Oakland City Charter Section 200; or
 8. To continue an agenda item to the next regular meeting of the local body so long as members of the public are given an opportunity to address the local body on the item at the meeting from which the item is continued.
- C. **Seventy-two (72) Hour Advance Notice Requirement for Regular Meetings of All Local Bodies Other Than the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees.** Any local body specified in Section 2.20.030(E)(2), (3), and (4), with the exception of standing committees of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission, shall provide notice for any regular meeting in compliance with the Ralph M. Brown Act and shall also file a copy of the agenda and all agenda-related material with the Office of the City Clerk at least seventy-two (72) hours before the time of any regular meeting.
- D. **Excuse of Sunshine Notice Requirements.** If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:
1. The minimum notice requirements of the Brown Act have been met; and,
 2. The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:
 - a.

- The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- b. There is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or,
 - c. The item relates to a purely ceremonial or commendatory action. Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.220.030(I) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.
- E. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (D) of this section, a local body may take action on items not appearing on a posted agenda only if:
1. The matter is an emergency. Upon a determination by a majority vote of the local body that a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or,
 2. The matter is urgent. Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:
 - a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
 - b. Relates to federal or state legislation; or,
 - c. Relates to a purely ceremonial or commendatory action.
- F. Nothing in this section shall prohibit a local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 2.20.080(E) before or during a meeting.
- G. Nothing in this section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.
- H. The Mayor, City Administrator and City Attorney in their capacities with the city and Redevelopment Agency must submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and Section 2.20.070. However, the referenced officers may submit additional documents to the legislative body and the legislative body may accept the documents if the legislative body makes a finding by two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the related meeting. This subsection shall not apply to the City Auditor, and the City Council may consider reports from the City Auditor that are presented to the Council after the deadlines specified in this chapter. Nothing in this section or in any other provision of this chapter shall be interpreted to require that the Mayor, City Administrator or City Attorney submit to the City Clerk any documents that are not public records.

(Ord. 12668 § 5, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.8, 1997)

2.20.090 - Agenda-related materials as public records: Agenda subscribers.

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code 6250 et seq.) and this ordinance, every local body specified in Section 2.20.030(E) shall make available for immediate public inspection and copying all agendas and agenda-related materials.

- A. Every local body may charge a fee to agenda subscribers and media organizations to cover reasonable mailing costs of the agenda and agenda-related materials. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act or this ordinance.
- B. Every local body shall make available for immediate public inspection and copying all documents that have been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this ordinance or under state or federal law.
- C. All requests by agenda subscribers to receive agendas or agenda-related materials by mail shall be made in writing and delivered to the Office of the City Clerk or, in the case of the Board of Port Commissioners, to the Secretary of the Board. The City Clerk shall maintain a list of all local bodies and shall immediately forward a copy of the written request to the appropriate local body to ensure compliance with the request. Any written request shall be valid for the calendar year in which it is filed, and must be renewed after January 1 of each year.
- D. Notwithstanding any other provision of this ordinance, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the local body taken at the meeting for which the agenda or the agenda-related material was not timely received.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.9, 1997)

2.20.100 - Agenda and oral disclosures: Closed sessions.

- A. In addition to the brief general description of agenda items to be discussed or acted upon in open session, the permissive provisions of Government Code Section 54954.5 are mandatory under this ordinance with respect to any closed session item.
- B. Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.10, 1997)

2.20.110 - Statement of reasons for closed sessions.

- A. Prior to any closed session, a local body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.
- B. In the case of an item added to the agenda pursuant to Government Code Section 54954.2 (b) or Section 2.20.080(E) herein, the statement shall be made in open session concurrent with the findings required pursuant to that section.
- C.

A local body shall re-state the reasons for closed session before convening a closed session at any meeting and as to any item that has been adjourned or continued from a prior meeting.

- D. The public shall have the right to comment on any item of closed session before the closed session convenes.
- E. Nothing in this section shall require or authorize a disclosure of information that is confidential under law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.11, 1997)

2.20.120 - Conduct of closed session.

- A. A local body shall consider in closed session only those matters specified in the statement required in Section 2.20.110
- B. After any initial closed session to consider the sale, lease, gift, purchase, or exchange of any property to which the city, Redevelopment Agency, or Port of Oakland has or will have an ownership or possessory interest, such local bodies shall notice for open session a discussion of the advisability of taking such an action before a final action is taken in the matter. This requirement shall not apply if the local body adopts a finding that holding an open session discussion would prejudice the local body in the proposed proceeding or transaction.
- C. With respect to any closed session discussion pertaining to employee salaries and benefits, a local body shall not discuss compensation or other contractual matters with one or more employees having a direct interest in the outcome of the negotiations.
- D. The following provisions of the Brown Act apply to the conduct of closed session by local bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54957; and 54957.6.
- E. The Offices of the City Attorney, the City Clerk, and the Public Ethics Commission shall provide any person with a copy of the Brown Act or Public Records Act without charge.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.12, 1997)

2.20.130 - Disclosure of closed session discussions and actions.

- A. After every closed session, in addition to the required disclosures pursuant to Government Code Section 54957.1, a local body shall reconvene into open session prior to adjournment and shall disclose publicly all portions of its discussion which are not confidential. The local body may, by motion and vote in open session, elect to disclose any other information which a majority deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding officer or such other person, present in the closed session, designated to convey the information.
- B. Immediately following the closed session a local body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:
 - 1. Real property negotiations: Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the local body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the local body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, and, in any event, at the next meeting of said local body after the other party or its agent has

informed the local body of its action. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the condition has been satisfied or an agreement has been reached with respect to all the properties, or both.

2. **Litigation:** Direction or approval given to the local body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the local body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.
 3. **Settlement:** If a local body accepts a settlement offer signed by an opposing party, the local body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the local body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A local body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.
- C. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.
- D. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting. Written notice that such a written summary or supporting documentation is available as to every reported document shall be posted the next business day following the meeting in the place where the meeting agendas of the local body are usually posted.
- E. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in Section 2.20.130(D) at such time as disclosure is required.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.13, 1997)

2.20.140 - Barriers to attendance prohibited.

- A.

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

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

(Ord. 12483 (part), 2003; Ord. 11957 § 00.14, 1997)

2.20.150 - Public testimony at regular and special meetings.

- A. Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address a local body on items of interest to the public that are within the local body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2(b). The agenda of local bodies need not provide an opportunity for members of the public to address the local body on any item that has already been considered by a committee, composed exclusively of members of the local body, at a meeting in which members of the public were afforded the opportunity to address the committee before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the local body.
- B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. The presiding officer of any local body may request speakers representing similar views to designate a spokesperson in the interest of time. Nothing shall prohibit a local body from adopting rules for allocating additional time to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the local body's consideration of those items.
- C. Every local body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the city that all speakers be entitled to a minimum of two minutes of speaking time per agenda item, subject to the discretion of the presiding officer of the local body. The presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the local body.
- D. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.15, 1997)

2.20.160 - Minutes and recordings.

- A. All local bodies specified in Section 2.20.030(E)(1) and (2) and their standing committees shall record the minutes for each regular and special meeting convened under the provisions of this ordinance. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the local body began and ended any closed session, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten business days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes are adopted.
- B. Every local body specified in Section 2.20.030(E)(1) shall make a visual and audio recording of every open meeting. Local bodies specified in Section 2.20.030(E)(2) and (4) shall audio tape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least four years, provided that if during that four-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the local body. Notwithstanding any other provision of law, every local body specified in Section 2.20.030(E)(1) shall permanently maintain all recordings of all meetings.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.16, 1997)

2.20.170 - Public comment by members of local bodies.

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

(Ord. 12483 (part), 2003; Ord. 11957 § 00.17, 1997)

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Article III. - Public Information

2.20.180 - Definitions.

2.20.190 - Release of documentary public information.

2.20.200 - Release of oral public information.

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2.20.220 - Non-exempt public information.

2.20.230 - Immediate disclosure request.

2.20.240 - Minimum withholding.

2.20.250 - Justification for withholding.

2.20.260 - Fees for duplication.

2.20.180 - Definitions.

Whenever in this Article the following words or phrases are used, they shall mean:

- A. "Agency" means an agency of the city of Oakland.
- B. "Department" means a department of the city of Oakland or a department of the Port Department of the city of Oakland.
- C. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.18, 1997)

2.20.190 - Release of documentary public information.

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997)

2.20.200 - Release of oral public information.

Release of oral public information shall be accomplished as follows:

- A. Every Agency director for the city and Redevelopment Agency, and department head for the Port shall designate a person or persons knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The name of every person so designated under this section shall be filed with the City Clerk and posted online.
- B. It shall be the duty of every designated person or persons to provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person. It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- C. Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the agency or department and does not materially misrepresent the agency or department position. Nothing in this section

shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.21, 1997)

2.20.210 - Public review file—Policy body communications.

Every local body specified in Section 2.20.030(E)(1) shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing which the clerk or secretary of such local body has distributed to, or sent on behalf of, a quorum of the local body concerning a matter that has been placed on the local body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this chapter. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.22, 1997)

2.20.220 - Non-exempt public information.

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

- A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning contracts, memoranda of understanding or other matters subject to negotiation and pending a local body's approval need not be subject to disclosure until final action has been taken.
- B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.
- C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):
 1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
 - a. Sex, age and ethnic group;
 - b. Years of graduate and undergraduate study, degree(s) and major or discipline;
 - c. Years of employment in the private and/or public sector;
 - d.

- Whether currently employed in the same position for another public agency;
- e. Other non-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 every employee who has provided such information to the city, Redevelopment Agency or the Board of Port Commissioners excluding the home address, home telephone number, social security number, date of birth, and marital status of the employee.
 3. The job description of every employment classification.
 4. The exact gross salary and paid benefits available to every public employee.
 5. Any adopted memorandum of understanding between the city or Board of Port Commissioners and a recognized employee organization.
- D. Law Enforcement Information. The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such redacted information may include:
- a. The names of juvenile witnesses or suspects;
 - b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
 - c. The identity of a confidential source;
 - d. Secret investigative techniques or procedures;
 - e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
 - f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.
2. The Oakland Police Services Agency shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.
- E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city, Redevelopment Agency and Board of Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a

person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request.

- F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:
1. Any proposed or adopted budget for the city, Redevelopment Agency and the Port Department, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, Redevelopment Agency or Board of Port Commissioners or their standing committees.
 2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.23, 1997)

2.20.230 - Immediate disclosure request.

- A. Notwithstanding any other provision of law and subject to the requirements of this section, a written request to inspect or obtain copies of public records that is submitted to any department or agency or to any local body shall be satisfied no later than three business days unless the requestor is advised within three business days that additional time is needed to determine whether:
1. The request seeks disclosable public records or information;
 2. The requested records are in the possession of the agency, department or local body;
 3. The requested records are stored in a location outside of the agency, department or local body processing the request;
 4. The requested records likely comprise a voluminous amount of separate and distinct writings;
 5. Reasonably involves another agency, department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request; or,
 6. There is a need to compile data, to write programming language or a computer program or to construct a computer report to extract data.
- B. All determinations made pursuant to Section 2.20.230(A)(1)-(6) shall be communicated in writing to the requestor within seven days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination pursuant to 2.20.230(A)(1)-(6) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. All written requests to inspect or copy documents within three business days must state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state "Immediate Disclosure Request" and a number by which the requestor may be contacted.
- C.

An Immediate Disclosure Request is applicable only to those public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials. All Immediate Disclosure Requests shall describe the records sought in focused and specific language so they can be readily identified.

- D. The person seeking the information need not state a reason for making the request or the use to which the information will be put.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.24, 1997)

2.20.240 - Minimum withholding.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.25, 1997)

2.20.250 - Justification for withholding.

Any withholding of information shall be justified, in writing, as follows:

- A. A withholding under a permissive exemption in the California Public Records Act or this ordinance shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.26, 1997)

2.20.260 - Fees for duplication.

- A. No fee shall be charged for making public records available for inspection.
- B. No fee shall be charged for a single copy of a current meeting agenda.
- C. A fee may be charged for: 1) single or multiple copies of past meeting agenda or any agenda-related materials; 2) multiple copies of a current meeting agenda; and, 3) any other public record copied in response to a specific request.
- D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- E. No charge shall be made for a single copy of a Draft or Final Environmental Impact Report and Environmental Impact Statement.
- F. All fees permitted under this section shall be determined and specified in the city of Oakland Master Fee Schedule, as amended.
- G. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with State law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.27, 1997)

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Article IV. - Policy Implementation

2.20.270 - City of Oakland Public Ethics Commission.

2.20.280 - Responsibility for administration.

2.20.290 - Severability.

2.20.300 - Effective date.

2.20.270 - City of Oakland Public Ethics Commission.

- A. Duties: In the implementation of this ordinance, the Public Ethics Commission shall:
1. Advise the City Council and the Board of Port Commissioners and provide information to other city departments and local bodies on appropriate ways in which to implement this ordinance with a priority on simple, standard procedures.
 2. Assist in citywide training for implementing the ordinance.
 3. Develop and maintain an administrative process for review and enforcement of this ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act.
 4. Propose amendments to the City Council of this ordinance as needed.
 5. Report to the City Council on any practical or policy problems encountered in the administration of this chapter.
- B. Enforcement.
1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (A)(3) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this chapter.
 2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a local body has violated this ordinance. The costs and fees shall be paid by the local body and shall not become a personal liability of any public officer or employee of the local body.
 3. If the litigation is judged to be frivolous by the court, the defendant local body may assert its right to be paid reasonable court costs and attorneys' fees.
- C. Mediation.
1. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand immediate mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.
 2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.
 - 3.

The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.

D. Cure and Correction.

1. Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this chapter. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.
2. In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this chapter, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080 (H), the local body shall agendaize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1)-(4), inclusive.

E. Reports or Recommendations From Meetings Alleged To Have Been Held In Violation of this Chapter.

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

F. Limitation of Actions.

No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least seventy-two (72) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the item at least forty-eight (48) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation as specified in Section 2.20.270(C).

(Ord. 12668 § 6, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.28, 1997)

2.20.280 - Responsibility for administration.

- A. The City Manager shall administer and coordinate the implementation of the provisions of this chapter for all local bodies, agencies and departments under his or her authority, responsibility or control.
- B. The City Manager shall provide the Public Ethics Commission with staff to permit the Public Ethics Commission to fulfill the functions and duties set forth herein. The City Attorney shall provide the Public Ethics Commission with legal assistance, to the extent such assistance does not constitute a conflict.
- C.

The Office of the City Clerk shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it. The Office of the City Clerk shall retain copies of agenda-related materials filed with it by local bodies specified in Section 2.20.030(E)(2)(3) and (4) for a period of at least sixty (60) days following the meeting for which said agenda-related materials were submitted.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.29, 1997)

2.20.290 - Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.30, 1997)

2.20.300 - Effective date.

The amendments herein shall become effective on May 1, 2003.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.31, 1997)