

Open Government

OPEN MEETINGS

Meetings of public bodies, such as the City Council and many of Oakland's advisory boards and commissions, are governed by laws requiring that business be conducted openly and only after the public has been notified a sufficient time in advance of any meeting.

Basic Rule

Local legislative bodies shall not convene a meeting unless and until adequate public notice has been provided.

What Is A "Local Legislative Body?"

In Oakland, local legislative bodies include 1) the City Council, Port Board, Planning Commission and Public Ethics Commission, 2) any board, commission, task force or committee established by the City Charter, ordinance or by City Council action, and 3) any advisory board, commission or task force created and appointed by the Mayor which exists for longer than a 12-month period. Any standing committee of the above entities are also considered a local legislative body.²⁵

What Constitutes A "Meeting?"

A meeting is a congregation of a majority of a local legislative body in which any item within its jurisdiction is "heard, discussed, deliberated or acted upon." This definition includes meal gatherings before, during or after a formal meeting.²⁶

It is not necessary that the local legislative body "take action" in order to constitute a meeting. Almost any gathering by a majority of members to receive information, hear a proposal, or discuss views on an issue can constitute a meeting. Meetings can include such gatherings as retreats, workshops, and so-called "team building" or "goal setting" activities.

Beware Of "Serial Meetings"

Use of direct communication or intermediaries that causes a majority to become aware of the views of other members is prohibited.²⁷ An illegal meeting can occur even if members do not gather in the same place at the same time -- Just communicating before a meeting can constitute an illegal meeting if it involves a majority of members. Sending emails is an especially easy way to violate this provision because of the ease of involving more members than originally intended (e.g. the "forward" keys or "reply to all.")

What Constitutes Adequate Public Notice?

For most regularly scheduled meetings of Oakland's local legislative bodies, a copy of the meeting agenda must be posted at least 72 hours before the meeting in a location that is freely accessible to the public 24

²⁵ O.M.C. Section 2.20.030(E)

²⁶ O.M.C. Section 2.20.030(F)

²⁷ O.M.C. Section 2.20.030(F)

hours a day. In addition, a copy of the agenda and all agenda-related materials (staff reports, draft minutes, correspondence etc.) must be filed with the Office of the City Clerk at least 72 hours before the meeting.²⁸

For special meetings (i.e., meetings that are called in addition to, or in lieu of, the regular meeting schedule) public notice must be given at least **48 hours** before the stated time of the meeting (excluding Saturdays, Sundays and holidays), by:

- posting a copy of the agenda;
- delivering a copy of the agenda to each member of the local legislative body, news media and any person who has previously requested notice in writing; **and**
- filing a copy of the agenda and all agenda-related materials in the Office of the City Clerk.²⁹

Meeting agendas must specify the date, time, and location of the meeting and a brief general description of each item of business to be transacted or discussed. Agenda items should be informative and give the public sufficient information to decide whether or not to attend a meeting. Agendas must avoid the use of abbreviations or acronyms whose meaning would not be known to the general public.³⁰

For more information about open meeting law, please see the Public Ethics Commission's "How to Notice a Public Meeting and Respond to Requests for Public Records" available from the Ethics Commission's website.

PUBLIC RECORDS

California law and the Oakland Sunshine Ordinance require that public, non-confidential information is made available promptly to persons who request it.

Basic Rule

Public records must be open to inspection at all times during regular business hours. Members of the public are also entitled to obtain exact copies of any public record upon request.³¹

What Is A "Public Record?"

The California Public Records Act ("CPRA") defines a "public record" as any writing containing information relating to the conduct of public business "prepared, owned, used or retained" by a local agency regardless of its physical form or characteristics.³² This means that even electronic documents, such as email or blog postings stored on City computers, can constitute discloseable public records.

Aren't Some Records Confidential?

Yes. There are many exceptions from the rule requiring public disclosure of City records. However many of these exceptions are complicated and must be narrowly applied. The best advice is if you have genuine

²⁸ O.M.C. Section 2.20.080

²⁹ O.M.C. Section 2.20.070

³⁰ O.M.C. Section 2.20.030(A)

³¹ Government Code Section 6253

³² Government Code Section 6252

questions about whether a document can be withheld from public inspection and copying to contact the Office of the City Attorney and review the matter with an attorney.

When Must Public Records Be Disclosed?

The CPRA requires that public records be made available "promptly" whenever there is no question about their public nature. If there is a question whether the record exists or whether the request seeks the disclosure of a public, non-confidential record, then the local agency must notify the requestor within ten days of its determination and provide an estimated date and time when any public records will be produced.³³ (In some cases this deadline may be extended an additional 14 days, but never assume you have that much time to respond!)

FINANCIAL DISCLOSURE

(FORM 700)

Basic Rule

Public Officials and designated employees must disclose their financial interests upon assuming office, annually, and when leaving office. This is accomplished by timely filing a "Statement Of Economic Interests" with the Office of the City Clerk before the required deadlines.³⁴

Who Is A "Designated Employee?"

A designated employee is any employee (or consultant) whom the City Council determines either makes or participates in the making of decisions that may have a material effect on the employee's financial interests.³⁵

What Financial Interests Must Be Disclosed?

All discloseable financial interests are itemized on the "Statement of Economic Interests" (Form 700) that public officials and designated employees are required to complete. They include interests in real property, ownership positions in businesses and other entities, sources of income and gifts.³⁶

What Happens If I Don't File Or Don't File In Time?

Violations of the state law requiring financial disclosure are punishable by both civil and administrative sanctions, depending on the severity of the violation.³⁷ In addition, late filers may be subject to late fee of \$10 per day, up to \$100 maximum, imposed by the City Clerk.³⁸

³³ Government Code Section 6253

³⁴ Government Code Section Sections 81200 et seq

³⁵ Government Code Section 82048

³⁶ Government Code Section 87302

³⁷ Government Code Section 91000 et seq

³⁸ Government Code Section 91103

WHISTLEBLOWER LAWS

What Are They?

A “whistleblower” is someone who brings attention to a crime, wrongdoing or waste. Depending on the circumstances, the whistleblower can make his or her observations known internally within the organization, or externally to those who supervise or have oversight duties over the organization. Sometimes the whistleblower is subject to forms of reprisal or harassment for their actions. Whistleblower protection laws seek to protect those who “blow the whistle” on improper behavior from retaliation.

Basic Rules

State whistle blowing laws make it unlawful for employers to retaliate against employees who refuse to participate in unlawful activities. If an employee can demonstrate that his or her whistle blowing activities were a contributing factor in an adverse employment action, the burden of proof then shifts to the employer to demonstrate that the employer would have taken the action for “legitimate, independent reasons” even if the employee had not been a whistleblower.³⁹

The City of Oakland has adopted a “whistleblower ordinance” for any officer or employee who brings to the attention of the City Auditor information which, if true, would establish 1) a work-related violation of law, 2) fraud, waste or mismanagement, 3) “gross abuse” of authority, 4) specific and substantial dangers to public health, and 5) the use of a City office, position or resource for personal gain. Employees may make their allegations to the City Auditor confidentially. City officers and employees are prohibited from restraining a whistleblower or from taking an adverse employment action when the whistleblower is acting in good faith and with a reasonable belief that improper conduct has occurred.⁴⁰

The City of Oakland also extends whistleblower protection to employees who bring to the attention of the Public Ethics Commission the violation of any laws over which the Commission has authority (e.g., the Lobbyist Registration Act, the Campaign Reform Act and the Sunshine Ordinance).⁴¹

³⁹ There are several state whistleblower laws, but see generally California Labor Code Sections 1102.5 to 1105

⁴⁰ See O.M.C. Chapter 2.38

⁴¹ See O.M.C. Section 2.24.100

CITY AUDITOR'S FRAUD, WASTE, AND ABUSE PREVENTION PROGRAM

The presence of the FW+A Hotline reinforces the message that all City officials, managers, and employees are expected to follow the highest standards of ethical and legal behavior and to act as stewards of public resources. It also demonstrates the City's commitment to create an environment where fraud, waste or abuse issues are detected early and promptly addressed.

- An effective reporting system can be the most useful tool in reducing losses due to fraud, waste or misuse of City resources, and abuse of position.
- A reporting system administered by the elected, independent Auditor ensures objective review of reports.
- A reporting system also provides for collecting employee and citizens concerns which can improve internal and external communication as well as enhance our City's overall system of internal controls.

Definitions and Examples:

1) Fraud is the intentional misappropriation of City assets by any act including, but not limited to, theft, embezzlement, or misrepresentation. Fraud can be internal or external, in that it can be perpetrated by contractors or vendors as well as by City officials and employees.

Examples:

- Misappropriation of City cash and other funds
- Submitting invoices for fictitious or personal goods and services
- Theft or unauthorized removal of City records or property
- Willful destruction or damage of City records or City property
- Forgery of any document or account belonging to the City
- Falsification of records such as time cards or travel and other expense vouchers
- Impropriety in the handling or reporting of money or financial transactions
- Stealing a check the City issued to another payee
- Computer fraud or information theft
- Profiting on insider knowledge
- Accepting gifts from vendors

2) Waste is the needless, careless or extravagant expenditure of City funds or misuse of resources as a result of inefficient or ineffective practices, systems or controls, or misuse of resources for personal use.

Examples:

- Unauthorized use or misuse of City property
- Not working when being paid to work

3) Abuse is the use of employment with the City to obtain personal gain or benefit from the City to which one is not entitled, for the employee or for someone else, such as a friend or family member. Such actions constitute abuse of position and abuse of the public trust.

Examples:

- Obtaining a benefit or service from the City for which they do not qualify
- Providing a benefit or service to someone for which they do not qualify

- Unauthorized reduction of fines or fees
- Suspending or terminating enforcement action based on a personal relationship
- Unauthorized disclosure of confidential and proprietary information

How to Make a Report to the FW+A Prevention Program

The City Auditor has contracted with EthicsPoint, an independent vendor, to provide a secure server and trained intake specialists. EthicsPoint can be accessed by telephone or the Internet

- **888-329-6390**
- www.oaklandauditor.com

The hotline and the website allow individuals to make reports anonymously to a live operator or complete an online form 24 hours a day/7days a week. As a result of The Whistleblower Protection Act, all reports are confidential. In order to preserve the confidentiality of the process, FW+A does not give updates on the investigations.

Reporters are reminded that when they call or submit their information through the website to:

- Provide as much detail as possible including: who, what, when, where, and how
- Be as descriptive as possible: include dates, names, location, amounts and witnesses
- Provide documentation to substantiate your complaint, if possible
- Write down the report key and password and keep them in a safe place (when report is submitted, the system assigns a unique code called a “report key.”)
- Use the report key and password to check their report for questions from the City Auditor.

What Not To Report

- Complaints regarding discrimination - please contact the Equal Opportunity Program;
- Employee grievance - please contact Employee Relations;
- City campaign and lobbying violations - please contact the Public Ethics Commission;
- Conflict of Interest issues - please contact the Public Ethics Commission;
- Workmen's Compensation Fraud - please call 866-FRAUD-42 (866-372-8342);
- Welfare fraud - please call 800-349-9970; and
- Medi-Cal Fraud - please call 800-722-0432.

Fair Process

COMMON LAW BIAS

The California Political Reform Act provides in great detail how public officials or designated employees must conduct themselves when confronted with a decision potentially affecting his or her financial interests. However the law does not stop there. California courts have also ruled that public officials and employees must always act without personal interest and for the benefit of the public, regardless whether specific financial interests are at stake.

Basic Rule

Public officials and employees have a duty to exercise their powers of office and employment for the benefit of the public. They are not allowed to use those powers for private interests.⁴²

What Does This Rule Mean In Practical Terms?

The rule that public officials and employees should exercise their powers of office for public and not private interests manifests in several ways. Officials and employees should avoid making or participate in making decisions in which they have a significant personal interest, even if that interest is not a financial one. They should also avoid decisions in which they have a strong personal bias for or against a person whose interests are affected. In one California case involving concepts of both personal interest and personal bias, a court determined that a city council member improperly voted to deny a project where the court found that the project would have blocked the councilmember's ocean view from his rented apartment, and that the councilmember had previous altercations with the project applicants.⁴³

The key question to ask is whether any personal interest or personal bias makes it improbable that the public official or employee cannot make a fair and impartial decision based on the facts.

Does This Mean I Can't Express a Personal Opinion?

No. California courts distinguish between the kind of bias that requires disqualification from decision-making proceedings, and the mere expression of opinions, attitudes or beliefs about various issues or policies. The first type of bias requires a clear demonstration of personal interest or involvement in the outcome of a decision that effectively constitutes a violation of due process and the right to a fair hearing.⁴⁴ The second type does not rise to an actionable level. However, when participating in any type of hearing at which the rights of others are involved (such as a planning commission or rent board hearing, or a city council appeal), public officials should always be attentive to anything they might say that could be viewed as biased.

⁴² See Nussbaum v. Weeks (1989) 214 Cal.App.3d 1598

⁴³ See Clark v. City of Hermosa Beach (1996) 48 Cal.App. 4th 1152

⁴⁴ See BreakZone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205