

INTRODUCED BY COUNCILMEMBER

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CITY ATTORNEY

ORDINANCE No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.20,  
REGULATING PUBLIC MEETINGS AND PUBLIC RECORDS KNOWN AS THE  
CITY OF OAKLAND SUNSHINE ORDINANCE, ORIGINALLY ADOPTED  
JANUARY 14, 1997**

ARTICLE I: IN GENERAL  
ARTICLE II: PUBLIC ACCESS TO MEETINGS  
ARTICLE III: PUBLIC INFORMATION  
ARTICLE IV: POLICY IMPLEMENTATION

**ARTICLE I: IN GENERAL**

**SECTION 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 Ordinance is intended to assure that their deliberations and that the City's operations are open to the public.

(C) This Ordinance 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.

**SECTION 2.20.020 Citation.**

This Ordinance may be cited as the Oakland Sunshine Ordinance.

**ARTICLE II: PUBLIC ACCESS TO MEETINGS**

**SECTION 2.20.030 Definitions.**

Words or phrases in this ordinance 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:

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(A) "Agenda" shall mean 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 ordinance 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" shall mean 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.

(C) "Agenda Subscriber" shall mean 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 ordinance.

(D) "City" shall mean the City of Oakland.

(E) "Local Body" shall mean:

(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, ordinance, 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 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 of the following:

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

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

(3) any meal or social gathering of a majority of the members of a local body immediately before, during, or after a meeting of a local body.

(4) "Meeting" shall not include any of the following:

(a) individual contacts or conversations between a member of a local body and any other person;

(b) the attendance of any number of the members of a local body at a conference, or at any meeting or gathering organized to address a topic of local community concern and which is open to the public, provided that a majority of the members of a local body refrains from collectively discussing the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that local body;

(c) the attendance of any number of the members of any local body at a purely social, recreational, educational or ceremonial occasion provided that a majority of the members of any local body refrains from discussing any business within the subject matter jurisdiction of the local body; and

(d) the attendance of a majority of the members of a local body at a standing committee, provided that the members of the local body who are not members of the standing committee do not participate personally or through representatives.

(G) "Notice" shall mean the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in Section 2.20.070 and 2.20.080.

(H) "On-Line" shall mean 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 hardware or software 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 de-activating the system network; however, the City shall make reasonable efforts to avoid a delay in the preparation, distribution or

**Deleted:** Failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the City has taken customary precautions.

posting of agendas and agenda-related materials as a result of required or necessary maintenance or installation of system upgrades.

(J) "Standing Committee" shall mean 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.

**SECTION 2.20.040 Conduct of Meetings for Additional Bodies Covered by the Ordinance.**

(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.

**SECTION 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 ordinance, in which case this ordinance shall be applicable.

**SECTION 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 ordinance; 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 (5) 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.

**SECTION 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 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 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 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 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(I), shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.

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(C) No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the 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 (10) days prior to the special meeting. This ten (10) day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.

(D) 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.

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

**SECTION 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 24 hours a day no later than ten (10) 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 (10) 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 (10) 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(l), shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

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

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

(5) to consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission provided that the item has not been materially changed by the committee or 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 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 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;

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(c) the item relates to a purely ceremonial or commendatory ~~action; or,~~

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(d) the City experienced a software or hardware impairment as defined by Section 2.20.030(l).

(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.

[END]