

ORDINANCE NO. _____ C.M.S.

ORDINANCE FOR PUBLIC ACCESS TO RECORDS OF NONPROFIT ORGANIZATIONS THAT PERFORM GOVERNMENTAL FUNCTIONS ON CITY PROPERTY

SECTION 1. INTENT AND INTERPRETATION; COSTS OF COMPLIANCE.

(A) The intent of this Ordinance is to ensure that nonprofit organizations that operate City property and perform municipal governmental functions on City property do so with the greatest possible openness. Nothing in this Ordinance shall be construed to limit the level of openness and democracy in nonprofit organizations, and any contracting nonprofit organization may establish policies that guarantee additional openness.

(B) This Ordinance is intended to be cost-neutral in its effects upon nonprofit organizations. This Ordinance is not intended to allow individuals who seek to harass an organization to make excessive or repeated records requests. The requirements imposed by this Ordinance shall be subject to this intent. This Ordinance is not intended to impose obligations equal to those of governmental agencies upon nonprofit organizations.

SECTION 2. CONTRACT LANGUAGE ESTABLISHING PUBLIC ACCESS TO NONPROFIT ORGANIZATIONS.

(A) Each contracting agency of the City or any department thereof, acting for or on behalf of the City, shall include in all contracts between it and any nonprofit organization which is subject to this Ordinance, provisions imposing the requirements set forth in Sections 3 through 5, inclusive, or incorporate by reference the requirements.

SECTION 3. DEFINITIONS.

(A) "Actual costs of duplication" includes the costs of paper, ink, the amortized costs of copying equipment, staff time necessary to find, copy and compile the records or perform any legally permitted redactions.

(B) "City" shall mean the City of Oakland, Redevelopment Agency or Port Department.

(C) "Nonprofit organization" shall mean any corporation formed pursuant to California Corporations Code Sections 5000 et seq. for any public or charitable purpose, and/or any organization described within 26 U.S.C Section 501(c) that operates or manages any real property in which the City has an ownership interest and on which property the organization contracts with the City to perform a governmental function or service on behalf of the City.

SECTION 4. PUBLIC ACCESS TO RECORDS.

(A) Disclosure of Records. Each nonprofit organization shall maintain and make available for public inspection and copying any of the following subject to any privilege or exemption in law, including the Public Records Act or Sunshine Ordinance, and subject to exemption to protect any trade or business secret whose disclosure would inhibit the entity's ability to compete in the marketplace:

- (1) The nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, or in connection with the review and/or renewal of, the nonprofit organization's contract,
- (2) The nonprofit organization's most recently filed State and federal tax returns except to the extent those returns are privileged,
- (3) Any financial audits or any performance evaluations of such organization performed by or for the City and/or pursuant to a contract between the City and the nonprofit organization only if such financial audits and performance evaluations meet the following criteria:
 - (a) Are in the nonprofit organization's possession,
 - (b) Are not prohibited from disclosure under the terms of the contract between the City and the nonprofit organization, and
 - (c) Relate to the nonprofit corporation's performance under its contract with the City within the last two years

(4) A member of the public may request additional financial information pursuant to other than that described above, pursuant to Section 4(c) of this ordinance; however, the provision of such additional financial information by a nonprofit organization shall be voluntary, not compulsory

(B) Procedure to Obtain Records. Members of the public, upon giving ten days' notice to the nonprofit organization and payment of actual costs of duplication, shall be entitled to inspect the records during the nonprofit organization's regular business hours or to receive a copy of records a nonprofit organization may comply with this section by sending a copy of the records, by first class mail, with the costs of such mailing and actual costs of duplication prepaid by the member of the public, to a member of the public who has requested such information. The nonprofit organization may extend its time to allow inspection or provide copies if it informs the requestor the reasons for the extension and gives a date certain for inspection or production.

(C) Dispute Resolution. A requestor who has a complaint concerning a nonprofit organization's compliance or noncompliance with this Ordinance, may submit that complaint to the Office of the City Attorney or Port Attorney as appropriate. That office shall consider the request or complaint and shall determine a resolution. After resolution by the City Attorney or Port Attorney, a requestor may seek declaratory relief from a Superior Court only on whether the organization has violated this section.

(D) Donor Confidentiality. No nonprofit organization shall be required to make available to the public any document which would reveal the identity of any of that nonprofit organization's donors or the amount or nature of any donations to that nonprofit organization.

(E) Creation of Records. Nothing in this Ordinance requires the creation of new record or conducting computer programming in response to a request.

(F) Advice. Any nonprofit organization may also contact the Office of the City Attorney or Port Attorney for advice on how to comply with this Ordinance.

SECTION 5. COMPLIANCE.

In the event that a nonprofit organization materially fails to comply with any contract provision required by this Ordinance, the City agency or department which is a party to such contract shall consider such failure a material breach of the contract. The City Attorney or Port Attorney may, but is not required to, further consider such material breach as grounds for terminating the contract or not renewing the contract, partially or in its entirety.

SECTION 6. SEVERABILITY.

This Ordinance shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Ordinance shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by State or federal law at the time such agency or department action is taken.

In the event that a court or agency of competent jurisdiction holds that State or federal law invalidates any clause, sentence, paragraph or section of this Ordinance or the application thereof to any person, or circumstances, it is the intent of the City Council that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Ordinance shall remain in effect.

SECTION 7. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Ordinance, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Other than that provided in Section 4 (C), this Ordinance does not create a legally enforceable right by any member of the public against the City or a nonprofit organization.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest: _____

LATONDA SIMMONS
Interim City Clerk and Clerk of the Council
of the City of Oakland, California