

**CITY OF OAKLAND
AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 NOV 20 PM 6:58

To: Oakland City Council
Finance and Management Committee

From: Office of the City Attorney
Public Ethics Commission
Attn: Dan Purnell
Phone No. 238-3593

Date: December 2, 2008

Re: **Second Supplemental Report On An Ordinance Amending Chapter 2.20 Of The Oakland Municipal Code (aka "The Oakland Sunshine Ordinance") For The Purpose Of Revising The Current Definition Of "Meeting" To Achieve Consistency With Recent Amendments To The Ralph M. Brown Act (TITLE CHANGE)**

SUMMARY

At its regular meeting of October 28, 2008, the Finance and Management Committee considered a staff report and a series of proposed amendments to the existing City-Wide Records Management Ordinance (Ordinance No. 11370) and the Oakland Sunshine Ordinance. The Committee decided to proceed with a motion to direct the Office of the City Clerk to begin preparing a City-wide records management program without amending either ordinance. The Committee also requested staff to return with proposed amendments to the Sunshine Ordinance that would replicate recently enacted amendments to the Brown Act's definition of what constitutes a "meeting".

KEY ISSUE

As previously conveyed to the Committee, a public meeting can occur under the Brown Act if the members of a local legislative body use a series of communications to develop a "collective concurrence" as to an item within their subject matter jurisdiction. [Government Code Section 54952.2] A local legislative body may not conduct a public meeting unless timely notice is provided to the public. The Sunshine Ordinance contains similar language. [O.M.C. §2.20.030]

In response to a California appellate court decision that ruled that there can be no "meeting" unless the members of a local legislative body actually reach a "collective concurrence" from their serial communications, the Legislature adopted and the Governor signed SB 1732 to remove the requirement that members reach a collective concurrence in their serial communications before a meeting is deemed to take place. SB 1732 arguably expands the

circumstances under which a "meeting" can occur and the obligation to provide public notice arises. SB 1732 takes effect on January 1, 2009.

Government Code Section 54953.7 provides that "legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter." With the deletion of the Brown Act's requirement that serial communications not require a "collective concurrence" before a meeting takes place, the Sunshine Ordinance must be brought into compliance with the minimal standards soon to be required under the Brown Act. Accordingly, the Committee requested language that would amend Sunshine Ordinance Section 2.20.030 in a way that replicates the recent amendments to the Brown Act.

A "redline" version of the requested amendment is attached as *Exhibit 1*.

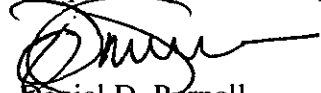
A "clean" version of the requested amendment is attached as *Exhibit 2*.

A copy of the chaptered version of SB 1732 is attached as *Exhibit 3*.

ACTION REQUESTED OF THE COUNCIL

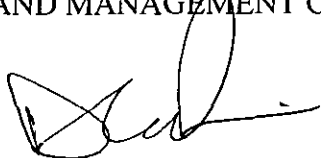
The Office of the City Attorney and Public Ethics Commission recommend that the City Council adopt the proposed amendment to the Oakland Sunshine Ordinance.

Respectfully submitted,



Daniel D. Purnell
Executive Director
Public Ethics Commission

FORWARDED TO THE FINANCE
AND MANAGEMENT COMMITTEE:



Office Of The City Administrator

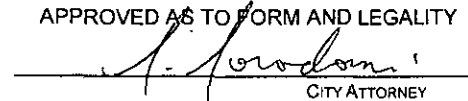
Item: _____
Finance and Management

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE TO CONFORM THE DEFINITION OF "MEETING" TO PROVISIONS OF THE RALPH M. BROWN ACT

WHEREAS, the current Sunshine Ordinance defines what constitutes a "meeting" for purposes of public notice and attendance, and

WHEREAS, this amendment to the Sunshine Ordinance would conform the definition of "meeting" contained in the Sunshine Ordinance to amendments adopted to Government Code Section 54954.2 pursuant to Senate Bill 1732 (2008 Cal. Stats. Chapter 63)

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Section 2.20.030 of the Municipal Code is hereby amended in its entirety to read as follows:

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:

(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. 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 Ordinance, 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" 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)~~ (F) "Meeting" shall mean any of the following:

~~(1)~~ (1) ~~a congregation of a majority of the members of any local body in which any item within its~~ 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 is heard, discussed or deliberated; 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) any use of direct communication, personal intermediaries~~

(2) Subparagraph (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 subparagraphs (F)(1) and (2); media to cause

(b) The attendance of 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 at 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 thereon; and, 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.

~~———— (3) ——— any "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.~~

~~———— (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 a majority of members of a local body at a conference, or at any open and publicized meeting or gathering organized by a person or organization other than the local body, to address a topic of local community concern and, provided that a majority of the members of a local body refrains from discussing among themselves, other than as a part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of that local body;~~

~~———— (c) ——— the attendance of a majority 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.~~

**DEFINITION OF "MEETING" AS AMENDED TO CONFORM WITH
PROVISIONS OF THE RALPH M. BROWN ACT
("CLEAN" VERSION)**

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:

... (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) *Subparagraph (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 subparagraphs (F)(1) and (2);

(b) The attendance of a majority of the members of a local body at 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.

Senate Bill No. 1732

CHAPTER 63

An act to amend Section 54952.2 of, and to add Section 6252.7 to, the Government Code, relating to local agencies.

[Approved by Governor July 3, 2008. Filed with Secretary of State July 3, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1732, Romero. Local agencies.

(1) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. An appellate court in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

This bill would instead prohibit a majority of members of a legislative body of a local agency from using, outside a meeting authorized by the act, 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. It also would state the Legislature's declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding. It would also provide that the changes made by this bill 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 authorized by the Ralph M. Brown Act, 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 body.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, 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 of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

(b) It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

SEC. 2. Section 6252.7 is added to the Government Code, to read:

6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

SEC. 3. Section 54952.2 of the Government Code is amended to read:

54952.2. (a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, 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 legislative body.

(2) Paragraph (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 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.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at 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 legislative 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.

(3) The attendance of a majority of the members of a legislative 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 legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another 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 legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative 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 legislative body of the local agency.

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

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE OAKLAND SUNSHINE ORDINANCE") FOR THE PURPOSE OF REVISING THE CURRENT DEFINITION OF "MEETING" TO ACHIEVE CONSISTENCY WITH AMENDMENTS TO THE RALPH M. BROWN ACT

NOTICE AND DIGEST

The proposed amendments to Chapter 2.20 of the Oakland Municipal Code would, if adopted conform the definition of public "meeting" under the Sunshine Ordinance to the recently amended provisions of the Ralph M. Brown Act [Government Code Section 54950 et. seq.] by prohibiting a majority of the members of a local body from using a series of communications to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the local body. The proposed amendments would also permit an employee or official of a local agency to engage in communications with members of a local body to answer questions or provide information about an item so long as that employee or official does not communicate to members of the local body the comments or position of any other member of the local body.