

CITY OF OAKLAND  
AGENDA REPORT

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OFFICE OF THE CITY CLERK  
OAKLAND

2008 OCT -1 PM 5:14

**To:** Oakland City Council  
Finance and Management Committee

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

**Date:** October 14, 2008

**Re:** **An Ordinance Amending Chapter 2.20 Of The Oakland Municipal Code (aka "The Oakland Sunshine Ordinance") For The Purpose Of 1) Incorporating Amended Provisions Of The "City-wide Records Management Ordinance" Into The Sunshine Ordinance, and 2) Revising The Current Definition Of "Meeting" To Achieve Consistency With Recent Amendments To The Ralph M. Brown Act**

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## SUMMARY

In September, 1991, the Oakland City Council unanimously adopted an "Ordinance Establishing A City-Wide Records Management Program" (Ordinance No. 11370). *Exhibit 1.* Ordinance 11370 established the authority and process for the development of a City-wide records management program. The proposed amendments herein would incorporate revised provisions of Ordinance 11370 into the Oakland Sunshine Ordinance (O.M.C. Chapter 2.20) and specifically revise Ordinance 11370 to provide:

- 1) updated definitions of essential terms, including definitions of "City record" and "Records Management Committee." *See proposed §2.20.275.*
- 2) updated required elements of the City's records management program. *See proposed §2.20.280(A).*
- 3) a process for City Council approval of any proposed records management program. *See proposed §2.20.280(B).*
- 4) specific duties and responsibilities for the Office of the City Clerk, agency and department heads and the Public Ethics Commission. *See proposed §2.20.285.*

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- 5) penalties for the deliberate destruction of City records and a requirement that City records be transferred to the Office of the City Clerk upon the termination of office. *See proposed §2.20.290.*

Additionally, the proposed amendments would revise the Sunshine Ordinance's definition of "meeting" to achieve required conformity to the Ralph M. Brown Act.

A "redline" version of all proposed amendments is attached as *Exhibit 2*.

A "clean" version of all proposed amendments is attached as *Exhibit 3*.

## FISCAL IMPACT

Responsibility for the development and administration of the Citywide records management program is vested with the Office of the City Clerk, which recently filled the previously authorized position of Citywide Records Manager. The proposed amendments are compatible with ongoing responsibilities for City agencies to maintain records management practices consistent with a Citywide records management program. Once implemented, the Citywide records management program should realize greater efficiencies and economies in the retention and disposition of City records.

## BACKGROUND

The existing Citywide Records Management Ordinance (Ordinance 11370) was adopted in 1991 and authorizes the creation of a Citywide program for the management of City records. Apparently, this ordinance was never codified or indexed into published versions of the Oakland Municipal Code. The existing ordinance contains a series of definitions, many of which are vague or obsolete, and a description of administrative duties and responsibilities. The proposed amendments would codify and incorporate Ordinance 11370 into the Oakland Sunshine Ordinance as a key component of Oakland's public record policies.

## KEY ISSUES AND IMPACTS

### A. Proposal To Add, Delete And Amend Essential Terms [§2.20.275]

The existing ordinance amends the definitions of a number of terms that the proponents believe to be outdated, unnecessary or in need of revision. The following describes the significant proposed revisions:

- 1) **"City record"** is currently defined as "all books, papers, letters, documents, publications, maps, plans, photographs, sound recordings, automated systems, or other documentary materials, regardless of format or characteristics, made or received and retained by any office, person, or agent of the City of Oakland in connection with the transaction of city business. This definition does not include preliminary drafts or personal notes made, received or retained unless otherwise required by the situation or as directed by the City Manager or the City Council."

The proposed amendments would streamline and revise the existing definition to provide that a "**City record**" shall mean "all recorded information, regardless of media format of physical characteristics, that are produced, received, owned or used" by the City in connection with its affairs or legal obligations. The proposed revision would retain the existing exception for "preliminary drafts or personal notes" except as specified in the records management program. The proponents believe that this exception is necessary to preserve and protect the deliberative process in government decision making.

**NOTE:** The Public Ethics Commission differs slightly in its proposed definition of "**City record**". The Commission recommends that the existing and proposed exception for "preliminary drafts or personal notes" be deleted so that such material **shall** constitute a "City record" subject to the retention and disposition policies provided in the records management program. This difference in approach may ultimately become moot depending on whether and how the records management program provides for the handling of such material.

2) "**Records Management Committee**" would consist of a representative from each City agency, and from the Offices of the City Clerk, City Administrator, City Attorney, City Auditor and Information Technology. Current membership on the Records Management Committee is specified by Administrative Instruction No. 114 and consists of representatives from each City agency and from the Offices of the City Clerk, City Administrator, and the Executive Director of the Public Ethics Commission.

**B. Proposal To Revise The Process By Which The Records Management Program Is Approved [§2.20.280]**

Current law requires the records management committee as constituted under AI 114 to review the proposed records management program and make recommendations to the City Administrator before seeking City Council approval. The proposed amendments would require the City Clerk, at a time established by the City Council, to submit to the Records Management Committee a records management program for review. The records management program would consist of seven mandatory elements: a retention schedule, vital and historical records management, electronic records management, forms management, files management, records conversion and a disposition schedule for City records. After review by the Records Management Committee, the City Clerk shall provide a draft to the Public Ethics Commission for the purpose of conducting a public hearing on the proposed records management program with 60 days. Upon receiving the public comments and recommendations from the Public Ethics Commission, the City Clerk shall submit the proposed records management program to the City Council for consideration. The approved records management program and disposition schedule shall constitute the authority to destroy City records pursuant to state and local law.

**C. Duties And Responsibilities [§2.20.285]**

The proposed amendments would clarify and specify the duties of the City Clerk, Agency and department heads, and the Public Ethics Commission with respect to the development and implementation of the records management program. Among the City Clerk's proposed duties

would be the development and implementation of a records management program for all City elected officials. The Public Ethics Commission would be authorized to investigate and report to the Records Management Committee or other appropriate City offices on specific allegations of non-compliance with the records management program.

**D. Custody Of City Records [2.20.290]**

The proposed amendments would assert the City's proprietary right to City records and provide for misdemeanor penalties for the knowing, willful or grossly negligent destruction of City records except as specified in the records management program. All City records would be transferred to the Office of the City Clerk upon 1) the termination of an office's function or an agent's contractual obligations; or 2) an elected official's termination of office unless the records are to remain in the office of their successors.

**E. Destruction Of Records [§2.20.295]**

The proposed amendments would provide that no City officer or employee shall destroy a City record unless 1) the City record has been allocated to a previously approved retention and disposition schedule and the retention period has lapsed; and 2) the appropriate Agency or department head, City Attorney and City Clerk have certified that the City records are no longer needed to fulfill any "administrative, fiscal, legal or historical value to the City."

**F. Technical Amendment To Conform The Sunshine Ordinance's Definition Of "Meeting" To The Ralph M. Brown Act [§2.20.030]**

On an issue unrelated to records management, the Public Ethics Commission and the Office of the City Attorney propose to conform the Sunshine Ordinance's definition of a public "meeting" to a recent amendment to the Ralph M. Brown Act that is scheduled to take effect on January 1, 2009. Under the Brown Act, a public meeting can occur 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.

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

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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 Public Ethics Commission proposes that Section 2.20.030 be amended to delete language referencing a "collective concurrence" and include a state-recognized exception that employees or officials of a local agency be permitted to communicate with members of a local legislative body to answer questions or provide information so long as that employee or official does not communicate the comments or position of other members.

### SUSTAINABLE OPPORTUNITIES

The proponents contend that the successful development and implementation of a Citywide records management program will help avoid costly, time-consuming and inefficient records management practices and reduce the City's potential exposure to legal liabilities.

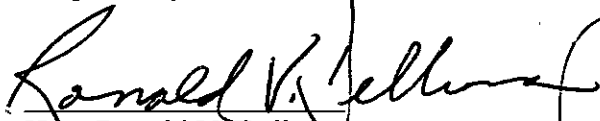
### DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

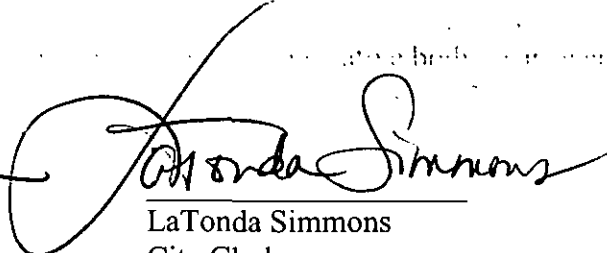
### RECOMMENDATION AND ACTION REQUESTED

The Offices of the Mayor, City Attorney, City Auditor, City Clerk, and Public Ethics Commission recommend that the City Council adopt the proposed amendments to the Oakland Sunshine Ordinance.

Respectfully submitted,




Hon. Ronald V. Dellums  
Mayor



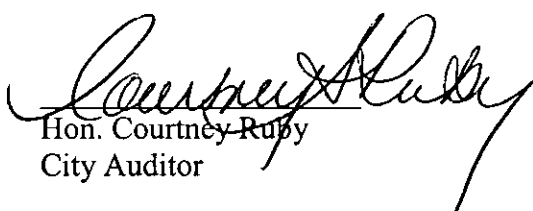
LaTonda Simmons  
City Clerk



Hon. John Russo  
City Attorney

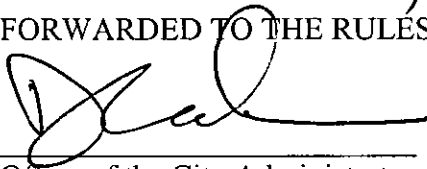


Daniel D. Purnell  
Executive Director  
Public Ethics Commission



Hon. Courtney Ruby  
City Auditor

FORWARDED TO THE RULES AND LEGISLATION COMMITTEE



Office of the City Administrator

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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
 CITY ATTORNEY

EXHIBIT 1

# ORDINANCE NO. 11370 C. M. S.

## ORDINANCE ESTABLISHING A CITY-WIDE RECORDS MANAGEMENT PROGRAM

WHEREAS, the City of Oakland recognizes the public need to establish a records management program that is centralized, professional, cost effective, preserves vital and historical City records, and guarantees its citizens access to public records of the City; and

WHEREAS, the City Charter identifies the City Clerk as the custodian of official City records; and

WHEREAS, during the course of City business records are received or created by City agencies; and

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

### SECTION I. Purpose

The purpose of this ordinance is to provide for efficient and economical management policies for the collection, creation, utilization, maintenance, retention, storage, preservation, and disposal of City records through the establishment of a City-wide records management program.

### SECTION II. Definitions

A. City record - all books, papers, letters, documents, publications, maps, plans, photographs, sound recordings, automated systems, or other documentary materials, regardless of format or characteristics, made or received and retained by any office, person, or agent of the City of Oakland in connection with the transaction of city business. This definition does not include preliminary drafts or personal notes made, received, or retained unless otherwise required by the situation or as directed by the City Manager or the City Council.

B. Record series - a group or system of City records which may be treated as a unit for the purpose of description, management, retention, inventory, and disposition.

C. Staff person - anyone employed by City of Oakland whether in a full-time status, a part-time status, a temporary status, or in a voluntary status.

D. Agent - individual or organization authorized by the City

of Oakland to conduct business with the City, perform duties for the City, or provide services for the City.

E. Retention schedule - a timetable that specifies the period of time a record series must be kept in active and inactive status before final disposition. The relationship between a retention schedule and a records series is that a retention schedule is a list by records series delineating what to do with each chronological generation of records series.

F. Vital record - information required to be maintained by federal, state, or local laws, rules, or regulations or which the City Manager or the City Council deem to be essential to the continued operation of the City, to the protection of the rights and privileges of the City, its staff, its citizens, or which if lost could impose extreme financial hardship upon the City.

G. Microimaging - a technical art of capturing, producing and reproducing records in miniature/electronic form which is used as a tool to achieve records management goals.

H. Forms management - the application of system analysis methods to the design and use of forms as well as control of the publication, distribution, and classification of forms.

I. Files management - the logical and physical arrangement of records series that facilitates efficient storage, retrieval, retention, and disposition of City records.

J. Records Manager - the staff person delegated the responsibility for developing, implementing, and maintaining the City records management program.

K. City Agency - any department, office, committee, board, or commission created under the authority of the City Charter.

L. Inactive records - records whose reference rate drops to less than two times per file drawer-per month.

M. Disposition - the actions taken in the management of records after the retention period has elapsed.

N. Department Management - the senior managers or their designees in each major administrative subdivision of the City.

### SECTION III. POLICIES

A. The records management program shall consist of the following elements:

- retention scheduling;
- vital records management;
- microimaging;
- forms management; and,

by department, office, committee, board,

-files management.

B. That the City Records Management Committee established under Administrative Instruction 114, May 1988, shall review all proposed records management policies and make recommendations to the City Manager for adoption as administrative instructions.

C. That the City Records Management Committee shall review all retention schedules and submit them to the City Manager for forwarding to the City Council for approval as a resolution.

D. That a City Records Manager shall be appointed by the City Clerk and Clerk of the Council and a Records Management Division established which shall be responsible for the management of the City-wide Records Management Program.

#### SECTION IV. Responsibilities of the Records Management Division

A. Establish and maintain a Records Center for the centralized storage, protection, and retrieval of inactive and historical records.

B. Completion of a records series inventory of all City records.

C. Completion and maintenance of a Records Retention Schedule for each record keeping system maintained by the City.

D. Provide assistance to City departments in the replacement or improvement of record keeping management systems.

E. Establish, maintain, and operate a City microimaging or optical scanning program in accordance with the minimum quality control standards of the American National Standards Institute or the Association of Information and Image Management.

F. Administer a centralized forms management program.

G. Keep historical City records in such a condition that shall permit them to be inspected, examined, or copied by City staff or the general public unless access is restricted by policy, ordinance, statute, or administrative instruction.

H. Provide staff support to the City Records Management Committee.

I. Identify and protect the City's vital records.

J. Train all department records coordinators in records management procedures.

#### SECTION V. Responsibilities of Department Management



A. Ensure compliance with established City records management procedures.

B. Assist the records management staff in the completion and maintenance of a records series inventory, a vital records master list, and a forms register.

C. Coordinate the maintenance, retention, and disposition of all City records in the department's custody in accordance with the instructions outlined in the department's retention schedule.

D. Each City department shall appoint a records coordinator who will act as department liaison with the Records Management Division to assist with the implementation of records management procedures for the department.

SECTION VI. Unless otherwise directed or specified by Department Management, records of any office or agent of the City shall, upon termination of the office's function or agent's contractual obligations, be transferred to the custody of the City Records Center.

... records management staff in the completion and

... records management

IN COUNCIL, OAKLAND, CALIFORNIA, SEP 24 1991, 19     

PASSED BY THE FOLLOWING VOTE:

AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS ; - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE



ATTEST: \_\_\_\_\_

ARRECE JAMESON  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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OAKLAND

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Approved as to Form and Legality

  
\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE OAKLAND SUNSHINE ORDINANCE") AND ORDINANCE NO. 11370 FOR THE PURPOSE OF 1) INCORPORATING AMENDED PROVISIONS OF THE "CITY-WIDE RECORDS MANAGEMENT ORDINANCE" INTO THE SUNSHINE ORDINANCE, AND 2) REVISING THE CURRENT DEFINITION OF "MEETING" TO ACHIEVE CONSISTENCY WITH AMENDMENTS TO THE RALPH M. BROWN ACT**

**WHEREAS**, the City of Oakland recognizes the public need to establish a records management program that is centralized, professional, cost effective, preserves vital and historical City records, and guarantees its citizens access to public records of the City; and

**WHEREAS**, the City Charter identifies the City Clerk as the custodian of official City records; and,

**WHEREAS**, during the course of City business records are received or created by city agencies; and,

**WHEREAS**, the Oakland City Council adopted Ordinance No. 11370 in 1991, which ordinance establishes the "City-wide Records Management Program"; and

**WHEREAS**, Ordinance 11370 was never codified or indexed into published versions of the Oakland Municipal Code; and,

**WHEREAS**, the Oakland Sunshine Ordinance was adopted "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;" and

**WHEREAS**, incorporation of Ordinance No. 11370 into the Oakland Sunshine Ordinance will assure that the City's records management policies will be fully

implemented, transparent and available to the people of the City of Oakland; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

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

2. Ordinance 11370 is hereby incorporated into the Oakland Sunshine Ordinance (O.M.C. Chapter 2.20) and 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 I. ARTICLE IV: CITY-WIDE RECORDS MANAGEMENT**

**SECTION 2.20.270 Purpose**

The purpose of this ~~ordinance~~Article is to provide for efficient and economical management policies for the collection, creation, utilization, maintenance, retention, storage, preservation, retrieval and disposal of City records through the establishment of a City-wide records management program.

**SECTION II. Definitions 2.20.275 Definitions**

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

~~City record— all books, papers, letters, documents, publications, maps, plans, photographs, sound recordings, automated systems, or other documentary materials,~~  
(A) "City record" shall mean all recorded information, regardless of media format or physical characteristics, made or received and retained that are produced, received, owned or used by any office, person, or agent of the City of Oakland in connection with City affairs or the City's legal obligations. the transaction of city business. This definition does not include preliminary drafts or personal notes ~~made, received or retained unless otherwise required by the situation or as directed by the City Manager or the City Council.~~except as specified in the records management program.

***COMMENT: The Public Ethics Commission proposes an alternative amendment to the proposed definition of "City record":***

~~City record— all books, papers, letters, documents, publications, maps, plans, photographs, sound recordings, automated systems, or other documentary~~

~~materials.~~(A) "City record" shall mean all recorded information, regardless of media format or physical characteristics, made or received and retained that are produced, received, owned or used by any office, person, or agent of the City of Oakland in connection with City affairs or the City's legal obligations, the transaction of city business. This definition does not include preliminary drafts or personal notes made, received or retained unless otherwise required by the situation or as directed by the City Manager or the City Council.

(B) "Record series" shall mean file units or documents arranged in accordance with a filing system or maintained as a unit because they (1) relate to a particular subject or function, (2) result from the same City business activity, or (3) have a particular form or some other relationship arising out of Record series—a group or system of City records which may be treated as a unit for the purpose of their creation, receipt or use. The purpose of a record series is to facilitate the description, management, retention, inventory, disposition, retrieval and disposition of City records.

~~Staff person—anyone employed by City of Oakland whether in a full-time status, or part-time status, a temporary status, or in a voluntary status.~~

~~Agent—individual or organization authorized by the City of Oakland to conduct business with the City, perform duties for the City, or provide services for the City.~~

(C) Retention schedule—a timetable that specifies "Retention schedule" shall mean a document governing the period of time a City record within each record series must be kept in active and inactive status before final disposition. The relationship between a retention schedule and a records series is that a retention schedule is a list by records series delineating what to do with each chronological generation of records series.

(D) Vital record—information "Vital record" shall mean a City record required to be maintained by federal, state, or local laws, rules, or regulations or which the City Manager/Administrator or the City Council deem to be essential to the continued operation of the City, to the protection of the rights and privileges of the City, its staff, employees, its citizens, or which if lost could impose extreme financial hardship upon the City.

(E) Microimaging—a technical art of capturing, producing and "Electronic Records Management" shall mean the management and methods for capturing, storing, retrieving, producing or reproducing records in a miniature/electronic form which is used as a tool to achieve records management goals. electronic form.

(F) Forms management—"Forms management" shall mean the application of system analysis methods to the design and use of forms as well as control of the publication, distribution, and classification of forms.

~~(G) Files management—~~"Files management" shall mean the logical and physical arrangement of records series that facilitates efficient indexing, storage, retrieval, retention, and disposition of City records.

~~(H) Records Manager—~~"Records Manager" shall mean the staff person delegated the responsibility for developing, implementing, and maintaining the City records management program.

~~(I) "City Agency" shall mean those agencies of the City as set forth in Chapter 2.29 of the Oakland Municipal Code.~~City Agency—any department, office, committee, board, or commission created under the authority of the City Charter.

~~Inactive records—records whose reference rate drops to less than two times per file drawer per month.~~

~~(J) Disposition—~~"Disposition" shall mean the actions taken in the management of records after the retention period has elapsed.

~~Department management—the senior managers or their designees in each major administrative subdivision of the City.~~

~~(K) "Records Management Committee" shall mean a committee consisting of a representative from each City agency, the Office of the City Clerk who shall serve as committee chairperson, Office of the City Administrator, Office of the City Attorney, Office of the City Auditor, and Office of Information Technology.~~

~~(L) "Historical Records" shall mean records with enduring value because they reflect significant historical events, document the history and development of an agency, or provide valuable research data.~~

~~(M) "Electronic Recordskeeping" shall mean the use of records management principles and practices for records maintained electronically.~~

~~(N) "Records conversion" shall mean the practice of changing the form of a record into another form for the purpose of business process improvement, business continuity, historical preservation, format obsolescence, or media degradation. Records conversion includes documenting the change in record format to provide a legal foundation for the conversion process.~~

### **SECTION III. POLICIES 2.20.280 Policies And Requirements**

~~(A)A. The~~The City's records management program shall consist of the following elements: (1) an adopted retention scheduling; ~~vitals~~ schedule; (2) vital and historical records management; ~~microimaging~~; (3) electronic records management; (4) forms

management; and, files management. (5) files management; (6) records conversion; and (7) disposition of City records.

(B) Within a period of time to be established by resolution of the City Council, the Office of the City Clerk shall submit a records management program to the Records Management Committee for review. The Records Management Committee shall review that the City Records Management Committee has established under Administrative Instruction 114, may 1988, shall review all proposed records management policies program and make recommendations to the City Manager for adoption as administrative instructions. Office of the City Clerk.

~~That the City Records Management Committee shall review all retention schedules and submit them to the City Manager for forwarding to the City Council for approval as a resolution.~~

~~That a City Records Manager shall be appointed by the City Clerk and Clerk of the Council and a Records management Division established which shall be responsible for the management of the City wide Records Management Program.~~

(C) After the Records Management Committee has reviewed and made recommendations to the Office of the City Clerk, the Office of the City Clerk shall submit the proposed records management program to the Public Ethics Commission for the purpose of obtaining public comment, analysis and recommendations. The Public Ethics Commission shall agendize a public hearing and transmit the public comments, any analysis and recommendations pertaining to the proposed records management program to the Office of the City Clerk within 60 days of receipt.

(D) Upon completion of the requirements in subsections (A), (B) and (C) above, the proposed records management program shall be submitted by the Office of the City Clerk to the City Council for approval by resolution. The records management program shall only be modified or amended pursuant to the process set forth in this Section. The adopted resolution and accompanying disposition schedule shall constitute authority for the destruction of City records pursuant to Government Code Section 34090 after the required retention periods have lapsed and the provisions of Section 2.20.295 have been met.

#### **SECTION IV. RESPONSIBILITIES OF THE RECORDS MANAGEMENT DIVISION** **Section 2.20.285 Duties And Responsibilities**

(A) It shall be the duty and responsibility of the City Clerk to:

(1) Appoint a City Records Manager and establish a Records Management Division within the Office of the City Clerk which shall be responsible for:

(a) Establish developing and maintaining a Records Center records management program for the centralized storage, protection, indexing and retrieval for the inactive and historical records of City records, regardless of form or physical characteristics, that is in compliance with federal, state and City regulatory and business requirements;

Completion of a records series inventory of all city records.

Completion and maintenance of a Records Retention Schedule for each record-keeping system maintained by the City.

Provide assistance to City departments in the replacement or improvement of record keeping management systems.

(b) assisting City agencies to comply with the records management program;

(c) Establish, maintain, and operate a City microimaging or optical establishing a City-wide electronic records management program in accordance with the minimum nationally recognized quality control standards; standards of the American National Standards Institute or the Association of Information and Image Management.

(d) Administer administering a centralized forms management program.

(e) Keep maintaining and preserving vital and historical City records in such a condition that shall permit them to be inspected, examined, or copied by City staff or the general public unless access is restricted by policy, ordinance, statute, or administrative instruction or regulated by law;

(f) Provide providing staff support to the City Records Management Committee.

Identify and protect the City's vital records.

(g) Train training all department records coordinators in records management procedures.

(h) developing and implementing a records management program for the offices of all elected officials.

(2) Develop, within the records management program, specific policies and procedures for the management and disposition of:

(a) publications, promotional materials from vendors and other similar materials that are publicly available and that are not specifically incorporated into a City record ("junk mail");

(b) duplicates of City records in which the original or facsimile of the original is retained pursuant to this Article; and

(c) unsolicited bulk email ("spam").

## SECTION V. RESPONSIBILITIES OF DEPARTMENT MANAGEMENT

~~Ensure compliance with established City records management procedures.~~

~~Assist the records management staff in the completion and maintenance of a records series inventory, a vital records master list, and a forms register.~~

(B) It shall be the duty and responsibility of each agency and department head to:

(1) Coordinate the maintenance, retention, and disposition of all City records in the department's custody of a City agency, department or office in accordance with the instructions outlined in the department's retention schedule records management program;

(2) Each City department shall appoint a records coordinator who will act as agency or department liaison with the Records Management Division to assist City Records Manager and assist the agency or department with the implementation of the records management procedures for the department program under the direction of the City Records Manager.

(C) It shall be the duty and responsibility of the Public Ethics Commission to:

(1) Conduct public hearings and transmit any testimony, findings, analyses or recommendations to the Office of the City Clerk pursuant to Section 2.20.280(C);

(2) Investigate and report to the Records Management Committee, Office of the City Clerk, Office of the City Administrator or other City agency or department as appropriate, specific allegations of non-compliance with the records management program; and

(3) Investigate allegations of criminal conduct pursuant to Section 2.20.290(A) and, subject to the Commission's discretion, refer such allegations to an appropriate law enforcement agency.



**SECTION VI. Section 2.20.290 Interest In And Custody Of City Records**

(A) All City Records are the property of the City of Oakland and shall be maintained consistent with the provisions of this Article. Any person who knowingly or willfully or through gross negligence destroys or causes the destruction of a City Record except through the provisions of this Article is guilty of a misdemeanor and, in the case of City employees, subject to discipline.

(B) Unless otherwise directed or specified by Department Management, records in writing by the City Administrator, the City records within the custody, control or possession of any office or agent of the City shall, upon termination of the office's function or agent's contractual obligations, be transferred to the custody Office of the City Records Center Clerk.

(C) Elected officials of the City of Oakland shall transfer to the Office of the City Clerk all City records within their custody, control, or possession and that will not remain in the office of their successors (1) no later than the last day of their final term of office, or (2) within 30 days after their removal or recall from office, or their resignation or abandonment of office.

**Section 2.20.295 Destruction Of Records**

(A) No City officer or employee shall destroy or cause to be destroyed any City Record unless:

(1) The City Record has been listed in and allocated to a previously approved retention schedule and disposition schedule and the required period of retention has lapsed;

(2) The appropriate agency or department head, City Attorney, City Auditor and City Clerk have certified in writing that the City Records are no longer required to fulfill any administrative, fiscal, legal or historical value to the City; and

(3) The City Attorney has consented in writing to its destruction pursuant to Government Code Section 34090.

**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) "Meeting" shall mean any of the following:

(1) a congregation of a majority of the members of any local body in ~~which at the same time or location, including a teleconference location as permitted by Government Code Section 54953, to hear, discuss, deliberate or take action on 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 by a majority of the members of a local body to become aware of discuss, deliberate, or take action on an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus that is within the subject matter jurisdiction of the local body; or, 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; person, including the separate conversations or communications by an employee or official of a local agency with members of a local body in order to answer questions or provide information regarding a matter within the subject matter jurisdiction of the local body so long as the employee or official does not communicate to members of the local body the comments or position of any other member or members of the local body;~~

(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.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 200\_\_\_\_\_.

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

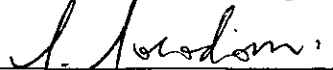
ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

EXHIBIT 3

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 OCT -1 PM 5:14

Approved as to Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE OAKLAND SUNSHINE ORDINANCE") AND ORDINANCE NO. 11370 FOR THE PURPOSE OF 1) INCORPORATING AMENDED PROVISIONS OF THE "CITY-WIDE RECORDS MANAGEMENT ORDINANCE" INTO THE SUNSHINE ORDINANCE, AND 2) REVISING THE CURRENT DEFINITION OF "MEETING" TO ACHIEVE CONSISTENCY WITH AMENDMENTS TO THE RALPH M. BROWN ACT**

**WHEREAS**, the City of Oakland recognizes the public need to establish a records management program that is centralized, professional, cost effective, preserves vital and historical City records, and guarantees its citizens access to public records of the City; and

**WHEREAS**, the City Charter identifies the city clerk as the custodian of official City records; and

**WHEREAS**, during the course of City business records are received or created by city agencies; and,

**WHEREAS**, the Oakland City Council adopted ordinance No. 11370 in 1991, which ordinance establishes the "City-wide Records Management Program"; and

**WHEREAS**, Ordinance 11370 was never codified or indexed into published versions of the Oakland Municipal Code; and,

**WHEREAS**, the Oakland Sunshine Ordinance was adopted "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;" and

**WHEREAS**, incorporation of Ordinance No. 11370 into the Oakland Sunshine Ordinance will assure that the City's records management policies will be fully implemented, transparent and available to the people of the City of Oakland;

**THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.
2. Ordinance 11370 is hereby incorporated into the Oakland Sunshine Ordinance (O.M.C. Chapter 2.20) and 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.

#### ARTICLE IV: CITY-WIDE RECORDS MANAGEMENT

##### SECTION 2.20.270 Purpose

The purpose of this Article is to provide for efficient and economical management policies for the collection, creation, utilization, maintenance, retention, storage, preservation, retrieval and disposal of City records through the establishment of a City-wide records management program.

##### SECTION 2.20.275 Definitions

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

- (A) "City record" shall mean all recorded information, regardless of media format or physical characteristics, that are produced, received, owned or used by any office, person, or agent of the City of Oakland in connection with City affairs or the City's legal obligations. This definition does not include preliminary drafts or personal notes except as specified in the records management program.

***COMMENT: The Public Ethics Commission proposes an alternative amendment to the proposed definition of "City record":***

- (A) "City Record" shall mean all recorded information, regardless of media format or physical characteristics, that are produced, received, owned or used by any office, person, or agent of the City of Oakland in connection with City affairs or the City's legal obligations.
- (B) "Record series" shall mean file units or documents arranged in accordance with a filing system or maintained as a unit because they (1) relate to a particular subject or function, (2) result from the same City business activity, or (3) have a particular form or some other relationship arising out of their creation, receipt or use. The purpose of a record series is to facilitate the description, management, retention, inventory, retrieval and disposition of City records.

- (C) "Retention schedule" shall mean a document governing the period of time a City record within each record series must be kept in active and inactive status before final disposition. The relationship between a retention schedule and a records series is that a retention schedule is a list by records series delineating what to do with each chronological generation of records series.
- (D) "Vital record" shall mean a City record required to be maintained by federal, state, or local laws, rules, or regulations or which the City Administrator or the City Council deem to be essential to the continued operation of the City, to the protection of the rights and privileges of the City, its employees, its citizens, or which if lost could impose extreme hardship upon the City.
- (E) "Electronic Records Management" shall mean the management and methods for capturing, storing, retrieving, producing or reproducing records in electronic form.
- (F) "Forms management" shall mean the application of system analysis methods to the design and use of forms as well as control of the publication, distribution, and other classification of forms.
- (G) "Files management" shall mean the logical and physical arrangement of records series that facilitates efficient indexing, storage, retrieval, retention, and disposition of City records.
- (H) "Records Manager" shall mean the staff person delegated the responsibility for developing, implementing, and maintaining the City records management program.
- (I) "City Agency" shall mean those agencies of the City as set forth in Chapter 2.29 of the Oakland Municipal Code.
- (J) "Disposition" shall mean the actions taken in the management of records after the retention period has elapsed.
- (K) "Records Management Committee" shall mean a committee consisting of a representative from each City Agency, the Office of the City Clerk who shall serve as committee chairperson, Office of the City Administrator, Office of the City Attorney, Office of the City Auditor, and Office of Information Technology.
- (L) "Historical Records" shall mean records with enduring value because they reflect significant historical events, document the history and development of an agency, or provide valuable research data.
- (M) "Electronic Recordkeeping" shall mean the use of records management principles and practices for records maintained electronically.
- (N) "Records conversion" shall mean the practice of changing the form of a record into another form for the purpose of business process improvement, business continuity,

historical preservation, format obsolescence, or media degradation. Records conversion includes documenting the change in record format to provide a legal foundation for the conversion process.

#### **SECTION 2.20.280 Policies and Requirements**

- (A) The City's records management program shall consist of the following elements: (1) an adopted retention schedule; (2) vital and historical records management; (3) electronic records management; (4) forms management; (5) files management; (6) records conversion; and (7) disposition of City records.
- (B) Within a period of time to be established by resolution of the City Council, the Office of the City Clerk shall submit a records management program to the Records Management Committee for review. The Records Management Committee shall review the proposed records management program and make recommendations to the Office of the City Clerk.
- (C) After the Records Management Committee has reviewed and made recommendations to the Office of the City Clerk, the Office of the City Clerk shall submit the proposed records management program to the Public Ethics Commission for the purpose of obtaining public comment, analysis and recommendations. The Public Ethics Commission shall agendize a public hearing and transmit the public comments, any analysis and recommendations pertaining to the proposed records management program to the Office of the City Clerk within 60 days of receipt.
- (D) Upon completion of the requirements in subsections (A), (B) and (C) above, the proposed records management program shall be submitted by the Office of the City Clerk to the City Council for approval by resolution. The records management program shall only be modified or amended pursuant to the process set forth in this Section. The adopted resolution and accompanying disposition schedule shall constitute authority for the destruction of the City records pursuant to Government Code Section 34090 after the required retention periods have lapsed and the provisions of Section 2.20.295 have been met.

#### **SECTION 2.20.285 Duties and Responsibilities**

- (A) It shall be the duty and responsibility of the City Clerk to:
  - 1. Appoint a City Records Manager and establish a Records Management Division within the Office of the City Clerk which shall be responsible for:
    - a. developing and maintaining a records management program for the centralized storage, protection, indexing and retrieval of City records, regardless of form or physical characteristics, that is in compliance



with federal, state and City regulatory and business requirements;

- b. assisting City agencies to comply with the records management program;
- c. establishing a City-wide electronic records management program in accordance with nationally recognized quality control standards;
- d. administering a centralized forms management program;
- e. maintaining and preserving vital and historical City records in such a condition that shall permit them to be inspected, examined, or copied by City staff or the general public unless access is restricted or regulated by law;
- f. providing staff support to the Records Management Committee;
- g. training all department records coordinators in records management procedures; and
- h. developing and implementing a records management program for the offices of all elected officials.

2. Develop, within the records management program, specific policies and procedures for the management and disposition of:

- a. Publications, promotional materials from vendors and other similar materials that are publicly available and that are not specifically incorporated into a City record (“junk mail”);
- b. Duplicates of City records in which the original or facsimile of the original is retained pursuant to this Article; and
- c. Unsolicited bulk email (“spam”).

(B) It shall be the duty and responsibility of each agency and department head to:

1. coordinate the maintenance, retention and disposition of all City records in the custody of a City agency, department or office in accordance with the records management program;
  2. appoint a records coordinator who will act as agency or department liaison with the City Records Manager and assist the agency or department with the implementation of the records management program under the direction of the City Records Manager.
- (C) It shall be the duty and responsibility of the Public Ethics Commission to:
1. Conduct public hearings and transmit any testimony, findings, analyses or recommendations to the Office of the City Clerk pursuant to Section 2.20.280(C);
  2. Investigate and report to the Records Management Committee, Office of the City Clerk, Office of the City Administrator or other City agency or department as appropriate, specific allegations of non-compliance with the records management program; and
  3. Investigate allegations of criminal conduct pursuant to Section 2.20.290(A) and, subject to the Commission's discretion, refer such allegations to an appropriate law enforcement agency.

#### **SECTION 2.20.290 Interest in and Custody of City Records**

- (A) All City Records are the property of the City of Oakland and shall be maintained consistent with the provisions of this Article. Any person who knowingly or willfully or through gross negligence destroys or causes the destruction of a City Record except through the provisions of this Article is guilty of a misdemeanor and, in the case of City employees, subject to discipline.
- (B) Unless otherwise directed in writing by the City Administrator, the City records within the custody, control or possession of any office or agent of the City shall, upon termination of the office's function or agent's contractual obligations, be transferred to the Office of the City Clerk.
- (C) Elected officials of the City of Oakland shall transfer to the Office of the City Clerk all City records within their custody, control, or possession and that will not remain in the office of their successors (1) no later than the last day of their final term of office, or (2) within 30 days after their removal or recall from office, or their resignation or abandonment of office.

## **SECTION 2.20.295 Destruction of Records**

- (A) No City officer or employee shall destroy or cause to be destroyed any City Records unless:
1. The City Record has been listed in and allocated to a previously approved retention schedule and disposition schedule and the required period of retention has lapsed;
  2. The appropriate agency or department head, City Attorney, City Auditor and City Clerk have certified in writing that the City Records are no longer required to fulfill any administrative, fiscal, legal or historical value to the City; and
  3. The City Attorney has consented in writing to its destruction pursuant to Government Code Section 34090.

## **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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(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,

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"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 at the same time or location, including a teleconference location as permitted by Government Code Section 54953, to hear, discuss, deliberate or take action on any item within its subject matter jurisdiction;

(2) any use of direct communication, personal intermediaries or communications media by a majority of the members of a local body to discuss, deliberate, or take action on an item of business that is within the subject matter jurisdiction of the local body; or,

(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, including the separate conversations or communications by an employee or official of a local agency with members of a local body in order to answer questions or provide information regarding a matter within the subject matter jurisdiction of the local body so long as the

employee or official does not communicate to members of the local body the comments or position of any other member or members of the local body;

(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.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 200\_\_\_\_\_.

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Approved as to Form and Legality

  
City Attorney

**AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE OAKLAND SUNSHINE ORDINANCE") AND ORDINANCE NO. 11370 FOR THE PURPOSE OF 1) INCORPORATING AMENDED PROVISIONS OF THE "CITY-WIDE RECORDS MANAGEMENT ORDINANCE" INTO THE SUNSHINE ORDINANCE, AND 2) 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: 1) incorporate revised provisions of the Citywide Records Management Ordinance (Ordinance No. 11370) into the Oakland Sunshine Ordinance; 2) delete, add and revise definitions of essential terms including, but not limited to, the definition of "City Record" and membership on the Records Management Committee; 3) add new required elements to the Citywide records management program; 4) modify the process for City Council approval of the Citywide records management program including required public hearings before the Public Ethics Commission; 5) enumerate specific duties and responsibilities of the Office of the City Clerk, agency and department heads, and the Public Ethics Commission; 6) establish misdemeanor penalties for the deliberate or grossly negligent destruction of City records not in accordance with the Citywide records management program; and 7) 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.] to provide that a public "meeting" occurs through the use of direct communications among a majority of members of a local body without the requirement that such members reach a "collective concurrence" with respect to the item being discussed.