

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
AGENDA REPORT

2009 DEC -3 PM 5:07

To: Office of the City Administrator
Attn: Dan Lindheim

From: Office of the City Attorney
Office of the City Auditor
Office of the City Clerk
Public Ethics Commission

Date: December 15, 2009

Re: **Ordinance Amending Chapter 2.20 Of The Oakland Municipal Code (aka "The Oakland Sunshine Ordinance") Incorporating Amended Provisions Of The "City-wide Records Management Ordinance" (Ordinance No. 11370) Into The Sunshine Ordinance To Codify And Establish A City-wide Records Management Program**

SUMMARY

In September, 1991, the Oakland City Council unanimously adopted an "Ordinance Establishing A City-Wide Records Management Program" (Ordinance No. 11370). *Attachment I.* 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 §2.20.410.
- 2) updated required elements of the City's records management program. *See proposed §2.20.420(A).*
- 3) a process for City Council approval of any proposed records management program. *See proposed §2.20.420(D).*
- 4) specific duties and responsibilities for the Office of the City Clerk, agency and department heads and the Public Ethics Commission. *See proposed §2.20.430.*

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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 §2.20.440.*

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

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

FISCAL IMPACT

Responsibility for the development and administration of the Citywide records management program is vested with the Office of the City Clerk. The Clerk's Office is currently recruiting for the 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.

In October, 2008, the Finance and Management Committee considered a proposal almost identical to the one presented here. The Committee directed staff to implement a City-wide records management program "administratively" and chose not to recommend adoption of the proposed amendments. The City Clerk's Office requested each City agency and department to appoint a representative to the Records Management Committee (RMC). Initially, only 9 City agencies and departments appointed representatives for the 13 roster positions. The City Clerk's Office developed an implementation schedule for developing a Records Management Plan and presented it to the RMC early in November, 2008. Between October, 2008, and June, 2009, the RMC met 13 times. Committee participation ranged from only 5 to 10 people per meeting due to changes in departmental staffing and interest. In the absence of full departmental participation and cooperation, it was impossible to begin developing any of the proposed plan elements. This and other factors ultimately led to the resignation of the Records Manager in July, 2009.

The proponents of the proposed amendments contend that 1) existing Ordinance 11370 needs to be revised, codified, and indexed into the Oakland Municipal Code as a matter of legal administration, and 2) the effort to successfully develop and implement a City-wide records management program will continue to be frustrated without legislative adoption of the specific terms, timelines, duties and procedures set forth in the proposed amendments.

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KEY ISSUES AND IMPACTS

A. Proposal To Add, Delete And Amend Essential Terms [§2.20.410]

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 or 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.

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, Information Technology and City Council. 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 [§2.20.420]

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, within six months after the enactment of the proposed amendments, 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 within 60 days. After receiving 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 [§2.20.430]

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 [2.20.440]

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 [§2.20.450]

The proposed amendments would provide that before a City record could be destroyed, the appropriate Agency or department head, City Auditor 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." The City Attorney must also consent in writing pursuant to state law.

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

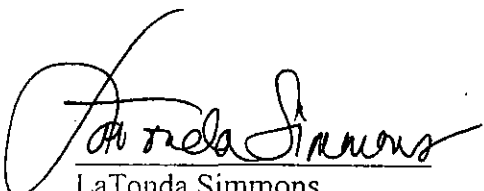
Not applicable.

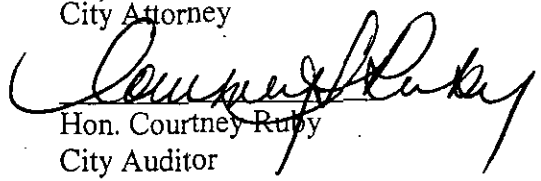
RECOMMENDATION AND ACTION REQUESTED

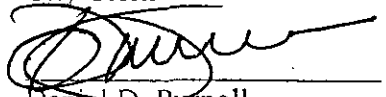
The Offices of the City Attorney, City Auditor, City Clerk, and Public Ethics Commission recommend that the City Council adopt the proposed amendments to the Oakland Sunshine Ordinance.

Respectfully submitted,



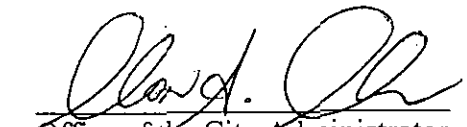
Hon. John Russo
City Attorney

LaTonda Simmons
City Clerk

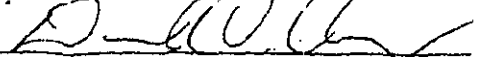
Hon. Courtney Ruby
City Auditor

Daniel D. Purnell
Executive Director
Public Ethics Commission

FORWARDED TO THE FINANCE AND MANAGEMENT COMMITTEE



Office of the City Administrator


CITY ATTORNEY

2009 DEC -3 PM 5:54

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

ATTACHMENT 1

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,

-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.

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

PASSED BY THE FOLLOWING VOTE:

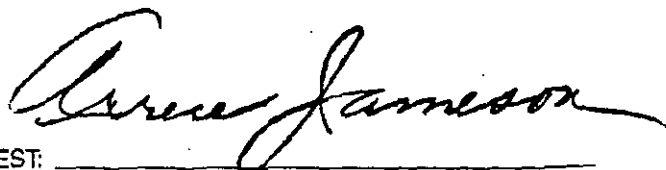
AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS ; - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE

ATTEST: _____



ARRECE JAMESON

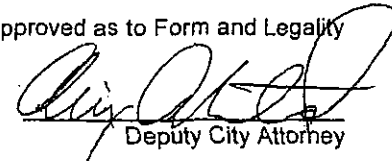
City Clerk and Clerk of the Council
of the City of Oakland, California

ATTACHMENT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC -3 PM 5:08

Approved as to Form and Legality


Deputy City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (AKA "THE OAKLAND SUNSHINE ORDINANCE") INCORPORATING AMENDED PROVISIONS OF THE "CITY-WIDE RECORDS MANAGEMENT ORDINANCE" (ORDINANCE NO. 11370) INTO THE SUNSHINE ORDINANCE TO CODIFY AND ESTABLISH 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

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 implementation of a City-wide records management program will assist in reducing administrative costs, improving efficiency and productivity, ensuring regulatory and legal compliance, minimizing litigation risks, safeguarding vital information, and supporting better decision-making; and

WHEREAS, the Oakland Sunshine Ordinance was adopted in 1997 "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,

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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.

SECTION I. ARTICLE V: CITY-WIDE RECORDS MANAGEMENT

SECTION 2.20.400 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~~ 2.20.410 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, official, employee, 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.

(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, Office of Information Technology and a representative of the City Council.

(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 2.20.420 Policies And Requirements

(A) The City's records management program shall consist of the following elements: (1) an adopted retention scheduling; (2) vital and historical records management; (3) electronic records management; (4) forms management; and (5) files management; (6) records conversion; and (7) disposition of City records.

(B) No later than six (6) months after the effective date of this ordinance, 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 2.20.450 have been met.

~~SECTION IV. RESPONSIBILITIES OF THE RECORDS MANAGEMENT DIVISION~~
Section 2.20.430 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 and maintain a Records Center for the centralized storage, protection, and retrieval for the inactive and historical records, developing and maintaining a records management program 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 establishing and 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;~~

~~(i) developing and administering a retention schedule;~~

~~(i) establishing and administering a files management program; and,~~

~~(k) establishing criteria for records conversion.~~

~~(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~~

ATTACHMENT 2

~~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 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, department or office with the implementation of the records management procedures for the department program under the direction of the City Records Manager; and,

(3) provide the necessary staff and resources to ensure the timely submission of the records management program to the Records Management Committee as specified in Section 2.20.420(B).

(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 2.20.420(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 2.20.440(A) and, subject to the Commission's discretion, refer such allegations to an appropriate law enforcement agency.

SECTION VI. Section 2.20.440 Interest In And Custody Of City Records; Misdemeanor Penalties

(A) All City Records are the property of the City of Oakland and shall be maintained consistent with the provisions of the records management program. Any person who knowingly or willfully or through gross negligence destroys or causes the destruction of a City Record during the retention period specified in the records management program is guilty of a misdemeanor.

(B) Unless otherwise directed or specified by the City Administrator, the City 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 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 2.20.450 Destruction Of Records

(A) Prior to the destruction of a City Record as specified by the records management program:

(1) The appropriate agency or department head, City Auditor and City Clerk shall certify in writing that the City Record is no longer required to fulfill any administrative, fiscal, legal or historical value to the City; and

(2) The City Attorney shall consent in writing to its destruction pursuant to Government Code Section 34090.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC -3 PM 5:08

Approved as to Form and Legality


City Attorney

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (aka "THE OAKLAND SUNSHINE ORDINANCE") INCORPORATING AMENDED PROVISIONS OF THE "CITY-WIDE RECORDS MANAGEMENT ORDINANCE" (ORDINANCE NO. 11370) INTO THE SUNSHINE ORDINANCE TO CODIFY AND ESTABLISH A CITY-WIDE RECORDS MANAGEMENT PROGRAM

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 mandatory elements to the Citywide records management program; 5) enumerate specific duties and responsibilities of the Office of the City Clerk, agency and department heads, and the Public Ethics Commission; and 6) establish misdemeanor penalties for the deliberate or grossly negligent destruction of City records not in accordance with the Citywide records management program.

ATTACHMENT:

ARTICLE V: CITY-WIDE RECORDS MANAGEMENT

SECTION 2.20.400 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 2.20.410 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, official, employee 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.

(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 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 the committee chairperson, Office of the City Administrator, Office of the City Attorney, Office of the City Auditor, Office of Information Technology, and a representative of the City Council.

(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 2.20.420 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) No later than six (6) months after the effective date of this ordinance, 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 City records pursuant to Government Code Section 34090 after the required retention periods have lapsed and the provisions of Section 2.20.450 have been met.

Section 2.20.430 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 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) establishing and 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;

(i) developing and administering a retention schedule;

(j) establishing and administering a files management program;
and,

(k) establishing criteria for records conversion.

(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 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, department or office with the implementation of the records management program under the direction of the City Records Manager; and

(3) provide the necessary staff and resources to ensure the timely submission of the records management program to the Records Management Committee as specified in Section 2.20.420(B).

(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 2.20.420(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 2.20.440(A) and, subject to the Commission's discretion, refer such allegations to an appropriate law enforcement agency.

Section 2.20.440 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 records management program. Any person who knowingly or willfully or through gross negligence destroys or causes the destruction of a City record during the retention period specified in the records management program is guilty of a misdemeanor.

(B) Unless otherwise directed or specified by the City Administrator, the City 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 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 2.20.450 Destruction Of Records

(A) Prior to the destruction of a City Record as specified by the records management program:

(1) The appropriate agency or department head, City Auditor and City Clerk shall certify in writing that the City Record is no longer required to fulfill any administrative, fiscal, legal or historical value to the City; and

(2) The City Attorney shall consent in writing to its destruction pursuant to Government Code Section 34090.