

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 OCT 23 PM 7:34

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 28, 2008

Re: Supplemental Report On 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

SUMMARY

At its regular meeting of October 14, 2008, the Finance and Management Committee considered a staff report and a series of proposed amendments to the existing City-Wide Records Management Ordinance (Ordinance No. 11370) and the Oakland Sunshine Ordinance. *Exhibit 1.* As outlined in the previous staff report, the proposed amendments 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.*
- 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.

Members of the Committee raised a number of questions at the March 14 meeting which this memorandum will now address.

QUESTIONS PRESENTED

A. How will the records management program segregate personal emails from work emails that must be retained? What will be the cost of doing so? (Chairperson Quan)

Under both existing law and the proposed amendments, the "media format" of a document does not diminish or alter its character as a potential "City record." Thus email must be addressed and managed under a records management program along with other types of writings.

City officials and employees are deluged with millions of electronic communications every year. How these emails are managed and maintained will be a mandatory element of the records management program. Clearly personal emails are not "City records" but the difficulty will be in screening them from other City-related emails. There are a variety of technological approaches that the Records Management Committee will be reviewing to address this issue, each having its own cost and resource requirements. For example, one approach is for the City's email system to automatically scan and retain only those emails that meet pre-determined characteristics and language triggers. Another approach would be to retain only "sent" emails for a specified period and then utilize a search engine to identify produceable emails in the event of a public records request or litigation demand. The Records Management Committee and the City Council will ultimately have to balance the cost and effectiveness of any approach which is impossible to determine at this time.

B. Does there currently exist a City-wide records management program? Why are we considering an ordinance before an actual plan exists? (Councilmember Brunner)

As stated in the initial agenda report, the Records Management Ordinance adopted in 1991 was incomplete, never indexed, nor codified into the published municipal code. On February 25, 2003, the City Council adopted Resolution No. 77659 C.M.S. that established a "Retention Schedule For Hard Copy Records," which specified for each department records that need to be retained. This schedule needs to be updated. The

proposed amendments seek to establish the process, duties and responsibilities for each City agency to collaborate on the further development of a City-wide records management program. If adopted by the City Council, the proposed amendments will set the following process in motion:

- The City Clerk's Office will work with representatives from each City agency to prepare a draft proposal.
- The proposal will be forwarded to the proposed Records Management Committee, consisting of representatives from each City Agency, and from the Offices of the City Clerk, City Attorney, City Auditor, Information Technology and City Administrator.
- After the Records Management Committee reviews the proposal, the Public Ethics Commission will conduct a public hearing on the proposal and forward all comments, analyses and recommendations to the City Clerk within 60 days.
- The City Clerk will submit a proposed records management program to the City Council for review and adoption. If approved, the records management program will specify 1) which records must be retained, 2) for how long they must be retained, and 3) what happens to the records after the retention period has lapsed.

C. How will "preliminary drafts and personal notes" be treated under the proposed definition of "City record"? (Councilmember Brunner)

Under existing Ordinance No. 11370 C.M.S., a City record 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 (*sic*) or the City Council."

The proposed amendments would retain the existing exemption for preliminary drafts or personal notes "except as specified in the records management program." Thus, with City Council approval, the records management program would have the option of including circumstances in which preliminary drafts or personal notes *would* be retained for a specified period of time.

The Public Ethics Commission takes a slightly different approach by proposing that the existing exemption for preliminary drafts or personal notes be eliminated, thus making them City records subject to the provisions of the records management program. As stated in the initial agenda report, the difference in the two approaches may ultimately be academic, in that both proposals will ultimately rely on the records management program to develop policies and procedures for handling such records.

D. What does it mean to "maintain" records? Where and how will records be kept? (Councilmember Brunner)

One of the proposed elements of the records management program will be a retention schedule. The retention schedule is the governing document within the records management program that specifies how long a certain category or group of records (a "record series") must be maintained. The disposition of a record basically means what happens to a record after the retention period lapses. For example, a retention schedule could specify that "constituent correspondence" be maintained for a period of one-year. After the retention period lapses, the records management program would specify the ultimate disposition of that category of records; for example, the constituent correspondence could be destroyed, or converted into an electronic format and saved on a computer file, or transferred to an off-site storage facility. Each category or group of records identified in the retention schedule will have an appropriate and corresponding provision for its permanent disposition.

To assist in a practical and persistent problem that every City office faces, the records management program also would be required to adopt specific policies and procedures for the handling of junk mail, duplicate copies of original records, and unsolicited email ("spam").

E. Will the proposed amendments extend the period of time for the current retention of documents? (Councilmember Nadel)

As discussed in Question "D" above, the period of time for which a City record shall be retained will depend on the nature and characteristics of the document itself (the "record series"). Some City records, because of their nature and characteristics, will have a longer retention period than others. How records are categorized, the appropriate retention period for a record category, and what should be the ultimate disposition of a record category are the essential components of a records management program. This records management program will ultimately be submitted to the City Council for approval under these amendments.

F. How will the new system be coordinated? (Councilmember Nadel)

Integrating the unique records requirements for all City agencies is one of the main objectives and purposes of the proposed amendments. For the first time, this ordinance would require all City agencies, departments and offices to maintain City records in accordance with City-wide policies and procedures. The proposed Records Management Committee will review and help develop the proposed records management program that the City Clerk's Office will initiate. Each agency and department head will be required to appoint a liaison to work with the City's Records Manager to implement the records management program. The Public Ethics Commission will provide a forum for public comment and be able to investigate specific instances of non-compliance.

RECOMMENDATION AND ACTION REQUESTED

The above answers respond to specific questions presented by members of the Finance and Management Committee. A more thorough description and analysis of the proposed amendments are contained in the October 14, 2008, agenda report.

Upon further analysis, the Office of the City Attorney submits the following technical amendments to proposed Sections 2.20.290 and 2.20.295, as follows:

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~~ the records management program. Any person who knowingly or willfully destroys or causes the destruction of a City Record during the retention period specified in the ~~except through the provisions of this Article~~ 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.

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;~~ Prior to the destruction of a City Record as specified by the records management program:

~~(2)(1) The appropriate agency or department head, City Attorney, City Auditor and City Clerk have certified~~ shall certify in writing that the City Records are no longer required to fulfill any administrative, fiscal, legal or historical value to the City; and

~~(3)(2) The City Attorney has consented~~ shall consent in writing to its destruction pursuant to Government Code Section 34090.

The technical change proposed in Section 2.20.290 is to clarify that the records management program, once approved by the City Council, will become the controlling City policy for the disposition of City records. The technical change proposed in Section 2.20.295 eliminates any redundancy with Section 2.20.290 and the potential for a "double review" by the Office of the City Attorney under state and local law.

ACTION REQUESTED OF THE COUNCIL

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,



Daniel D. Purnell
Executive Director
Public Ethics Commission

FORWARDED TO THE FINANCE
AND MANAGEMENT COMMITTEE:



Office Of The City Administrator