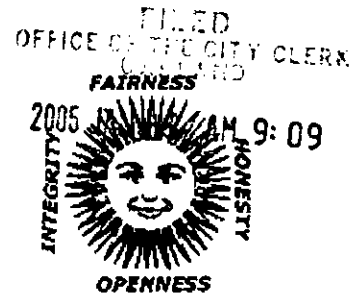


CITY OF OAKLAND
Public Ethics Commission

Alden Mudge, *Chair*
Peter Reinke, *Vice-Chair*
Lily Kimura
Kathryn Kasch
Ralph Kanz
Andrew Wiener
Caryn Bortnick



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

To: Oakland City Council
From: Office of the City Attorney
Office of the City Clerk
Public Ethics Commission
Date: January 20, 2005
Rules And Legislation Committee

Re: AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (aka "THE SUNSHINE ORDINANCE") TO REQUIRE THAT CITY EXECUTIVE OFFICERS PROVIDE AGENDA RELATED MATERIALS TO THE CITY CLERK; TO PROVIDE SPECIFIC EXEMPTIONS FROM THE DEFINITION OF AGENDA RELATED MATERIALS; TO AMEND THE DEFINITION OF SOFTWARE OR HARDWARE FAILURE; AND TO PROVIDE A LIMITED EXCUSE FROM PUBLIC MEETING NOTICE REQUIREMENTS DUE TO SOFTWARE OR HARDWARE IMPAIRMENTS

Please find attached a copy of the agenda report pertaining to the above matter.

Respectfully submitted,

Daniel D. Purnell, Executive Director
Public Ethics Commission

FORWARDED TO THE RULES AND LEGISLATION COMMITTEE

OFFICE OF THE CITY ADMINISTRATOR

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**RULES & LEGISLATION
CMTE**

MAR 03 2005

CITY OF OAKLAND
AGENDA REPORT

To: Oakland City Council
From: Office of the City Attorney
Office of the City Clerk
Public Ethics Commission

Date: January 20, 2005
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Re: AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE (aka "THE SUNSHINE ORDINANCE") TO REQUIRE THAT CITY EXECUTIVE OFFICERS PROVIDE AGENDA RELATED MATERIALS TO THE CITY CLERK; TO PROVIDE SPECIFIC EXEMPTIONS FROM THE DEFINITION OF AGENDA RELATED MATERIALS; TO AMEND THE DEFINITION OF SOFTWARE OR HARDWARE FAILURE; AND TO PROVIDE A LIMITED EXCUSE FROM PUBLIC MEETING NOTICE REQUIREMENTS DUE TO SOFTWARE OR HARDWARE IMPAIRMENTS

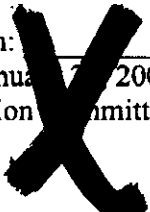
SUMMARY

The proposed amendments to the Sunshine Ordinance would:

- 1) require that the Mayor, City Administrator, City Attorney and the City Auditor provide agenda related materials to the City Clerk in time to meet agenda filing and posting deadlines
- 2) exempt from the definition of "agenda related materials" the written text or visual aids used in an oral presentation, and the written amendments or recommendations made by a member of a local body pertaining to an item on a meeting agenda
- 3) require a local body to determine whether to cure and correct actions taken on an item whose agenda related material was not timely filed by a City executive officer, and
- 4) amend the current definition of "software or hardware failure" and provide a limited excuse from advance public notice requirements if the failure to meet those requirements was due to a software or hardware impairment.

A "redline" version of the proposed amendments is attached as *Exhibit 1*.

Item: _____
January 20, 2005
Rules And Legislation Committee



FISCAL IMPACT

City agencies already provide the City Clerk with agenda related materials. Current law also permits local bodies to excuse certain local meeting requirements due to software or hardware failures. There should be no additional fiscal impact as a result of these proposed amendments.

BACKGROUND

The proposed amendments originate from two separate proposals from the Office of the City Attorney and the Office of the City Clerk. The Public Ethics Commission reviewed both sets of proposals before submitting them to the City Council for consideration. To avoid piecemeal amendments to the Sunshine Ordinance and to facilitate City Council review, both sets of amendments have been consolidated for this report.

The first set of amendments pertains to the submission of "agenda related materials" to local bodies. The Sunshine Ordinance requires all of Oakland's "local bodies" to file a copy of their agendas and all agenda related materials with the City Clerk by specific deadlines before any regular or special meeting. A "local body" is generally defined as the City Council, Redevelopment Agency, Port Board, City advisory boards and commissions, certain advisory bodies created and appointed by the Mayor, and the standing committees of a local body.

The Mayor, City Administrator, City Attorney and City Auditor obviously do not meet the definition of a "local body." Issues have been raised whether Sunshine's current filing requirements apply to the City's executive officers, and whether certain types of writings, such as written amendments and materials accompanying an oral presentation, should constitute "agenda related material" that must be filed with the City Clerk in advance of a public meeting.

The second set of amendments pertains to situations in which failures of the City's computer system prohibit the timely completion of the City Council agenda materials and/or prevent a continuous ten-day, on-line posting of the City Council agenda.

KEY ISSUES AND RATIONALE

- A. Amendments Requiring The City's Executive Officers To File Timely Agenda Related Materials With The City Clerk**
 - 1. Executive Officers To Provide Agenda Related Materials To The City Clerk**

The Office of the City Attorney proposes to amend the Sunshine Ordinance by adding the following language to current Section 2.20.080, which governs the filing and public notice requirements for regular meetings:

H. The Mayor, City Administrator, City Attorney, and City Auditor in their capacities with the City and Redevelopment Agency shall submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and 2.20.070.

The proposed language essentially imposes an affirmative obligation on the City's executive officers to timely submit agenda related materials to the City Clerk in advance of a regular meeting. The reference to Section 2.20.070 makes this language applicable to the deadlines for special, as well as regular, meetings.

2. What Should Constitute "Agenda Related Materials"

While Mr. Russo's proposal was being considered by the Commission, Mayor Jerry Brown and City Auditor Roland Smith submitted letters questioning the scope of the above proposal. In summary, they argued that the above-proposed amendment would:

- 1) require copies of speeches to be filed ten days in advance of the regular meeting at which a speech is given;
- 2) prohibit members of a local body from making and submitting written amendments to staff proposals or recommendations during a public meeting;
- 3) prohibit members of a local body from considering written recommendations or amendments from members of the public unless they have been filed in advance with the City Clerk; and
- 4) preclude the City Auditor from submitting important analyses to decision-makers based on information that occasionally arises after filing deadlines have passed.

In considering the Mayor's and City Auditor's comments, the Commission noted that the Sunshine Ordinance already provides several exceptions for material that could not be included in the ten-day agenda package. These exceptions include provisions for so-called "supplemental" agenda filings and the excuse of Sunshine requirements altogether if two-thirds of the members of a local body find that it was not reasonably possible to meet Sunshine requirements and certain other conditions exist. The Office of the City Attorney advises that it would not oppose an

exception from the ten-day filing requirement for reports from the City Auditor's Office.

The Commission found that there are certain categories of written material that, for practical and policy reasons, should arguably be exempt from advance filing requirements. One category would be for the accompanying text of speeches and so-called "visual aids" for oral presentations. Examples of this category would be the text of the Mayor's State of the City Address, or PowerPoint images from an oral presentation. A second category would be for written amendments or recommendations from members of a local body regarding agenda items. Examples of this category would include amendments to a proposed ordinance or resolution that members of a local body develop before or during a meeting.

In order to address the above-concerns, the Commission proposes the following amendment to the existing definition of "agenda related materials" in Section 2.20.030(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.

The proposed amendment is intended to permit such documents as speech texts and PowerPoint presentations to be exempt from advance filing requirements. Such documents typically supplement otherwise permissible oral presentations and are usually not available in final form until just before the presentation. The language intends to avoid a potential loophole for using this exemption as a way to avoid advance filing requirements for staff reports that should otherwise be filed and distributed in advance of a meeting. The above proposed amendment also attempts to recognize and preserve the ability of members of local bodies to develop and distribute alternative written proposals or recommendations at a public meeting.

3. Correction And Cure For The Failure Of City Executive Officers To Timely File Copies Of Agenda Related Materials With The City Clerk

Mr. Russo's initial proposal provided no remedy in the event a City officer fails to meet the filing deadlines.

Existing Section 2.20.270(D)(2) establishes the remedy when a local body has violated material provisions of the Sunshine Ordinance:

"In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a **local body** violated any material provision of this ordinance, the **local body** shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) - (4), inclusive. (Emphasis added.)

The Commission determined that the consequence of a City officer's failure to meet filing deadlines should be the same as for a local body's failure to timely file agenda related material and proposes the following amendment to Section 2.20.270(D)(2):

"In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this ordinance or took action upon an item for which the agenda-related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) - (4), inclusive.

The above amendment would require local bodies to determine whether to correct and cure actions affected by the failure of City officers to meet filing deadlines.

B. Amendments Pertaining To The Excuse Of Sunshine's Notice Requirements Due To Software Or Hardware Failures

The Office of the City Clerk proposes a second set of amendments consisting of three parts. The first is an amendment re-defining what constitutes a "hardware or software failure" for purposes of the Sunshine Ordinance. The second slightly modifies existing law that excuses the local requirement for posting a copy of the agenda on-line if the failure to make such a posting results from a software or hardware failure. The third part would permit the City Council, Redevelopment Agency, Port

Commission and the Public Ethics Commission to excuse any local requirement pertaining to the notice of a regular meeting if the respective body determines, by a two-thirds vote, that the inability to comply with the Sunshine Ordinance's noticing requirements resulted from a software or hardware failure and corrections are made at least eight days before the regular meeting.

The following is a description and discussion of each of the City Clerk's proposed amendments.

1. Software Or Hardware Failure

The City Clerk proposes the following amendment to the current definition of "software or hardware failure":

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:

(l) "Software or Hardware Impairment" means the City is unable to utilize computer software, hardware and/or network services to produce agendas, agenda-related material or to post agendas on-line due to inoperability of hardware or software caused by the introduction of a malicious program (including but not limited to a computer virus), electrical outage affecting the City's computer network, or unanticipated system or equipment failure. "Software or Hardware Impairment" may also include situations when the City is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate de-activating the system network; however, the City shall make reasonable efforts to avoid a delay in the preparation, distribution or posting of agendas and agenda-related materials as a result of required or necessary Failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the City has taken customary precautions. maintenance or installation of system upgrades.

Under current law, a software or hardware "failure" must be either an "unforeseeable" technological mishap (as opposed to human error), or caused by a technical failure "against which the City has taken customary precautions." The City Clerk contends that the existing definition is too narrow to adequately describe the situations that can materially affect the City's computer network and the ability of the City to produce written and electronic versions of an agenda and agenda-related materials.

For example, Commission staff was advised by the City's Office of Information Technology that there have been occasions when a computer virus has required a temporary shut-down of the City's computer network. There are also times in which it is necessary to temporarily de-activate the system to install new or additional programs, or to perform required maintenance. There is also the possibility that the system can be affected by deliberate human activities, such as "hacking" or sabotage.

It appears that the current definition may not apply to these situations because they arguably do not constitute "technological" and/or "unforeseeable" failures, nor do they always present an opportunity for the City to take any kind of precaution.

2. Excuse Of The On-Line Posting Requirement

Under current law, the City Council, Redevelopment Agency, Port Commission and the Public Ethics Commission are required to post a copy of any regular or special meeting agenda on-line. The failure to meet this requirement will not constitute a defect in providing proper public notice for a meeting if the failure to do so results from a "software or hardware failure" (as currently defined) and these entities comply with all other posting and noticing requirements. [See existing Sections 2.20.070(B) and 2.20.080(D)].

In the second proposed amendment, the City Clerk simply seeks to conform existing law with the newly proposed definition of "software or hardware impairment." The text of the proposal is as follows:

SECTION 2.20.080 Notice and Agenda Requirements: Regular Meetings.

(A) Ten Day Advance Notice Requirement For Regular Meetings Of The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, And Their Standing Committees. The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:

- (1) posting a copy of the agenda in a location freely accessible to the public 24 hours a day no later than ten (10) days before the date of the meeting;
- (2) filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten (10) days before the date of the meeting; and,
- (3) posting a copy of the agenda on-line at the local body's website no later than ten (10) days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware failure, impairment, as defined in Section 2.20.030, shall not

constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

An identical and corresponding amendment is proposed for special meetings contained in Section 2.20.070(B).

3. Excuse of Other Sunshine Requirements

The Oakland City Council, Redevelopment Agency, Port Board and Public Ethics Commission must comply with both the Ralph M. Brown Act and the Oakland Sunshine Ordinance in order to properly notice regular and special meetings. No California city may excuse, weaken or ignore the Brown Act's minimum requirements for providing notice for public meetings.

The Sunshine Ordinance imposes additional requirements on City bodies for noticing public meetings. For the City Council, Redevelopment Agency, Port Board and Public Ethics Commission, these additional requirements include 1) posting a copy of the agenda in a public location ten days before a regular meeting, 2) filing a copy of the agenda and all agenda-related materials with the City Clerk and the Oakland main library ten days before a regular meeting, and 3) posting a copy of the agenda on-line ten days before a regular meeting. [See existing Section 2.20.080(A)].

The Sunshine Ordinance currently provides a way for a local body to take action on an item appearing on an agenda even if the additional requirements of the Sunshine Ordinance have not been met. For example, if for some reason the City was unable to file a copy of the agenda with the Oakland main library until nine days before a meeting instead of the required ten days, the local body can currently excuse this local requirement under a narrow set of circumstances.

In order to excuse the failure of a local body to meet local notice requirements, the local body must determine that 1) the minimum requirements of the Brown Act have been met and 2) adopt a motion by a two-thirds vote that it was not "reasonably possible" to comply with the Sunshine Ordinance's additional requirements AND any one of three conditions exist:

- a) there is a need to take immediate action on an item in order to avoid a "substantial adverse impact" that would occur if the action were deferred to a subsequent special or regular meeting;
- b) there is a need to take immediate action which relates to federal or state legislation or the local bodies' eligibility for any grant or gift; or

- c) the item relates to a purely ceremonial or commendatory action.

The City Clerk proposes that notwithstanding these three conditions, the City Council, Redevelopment Agency, Board of Port Commissioners and the Public Ethics Commission should be able to excuse the Sunshine Ordinance's additional notice requirements if the failure to do so is due to a "software or hardware impairment" as discussed above AND the additional notice is ultimately provided no later than eight days before the regular meeting. The full text of the City Clerk's proposal is as follows:

SECTION 2.20.080(D) Excuse Of Sunshine Notice Requirements

If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:

- (1) The minimum notice requirements of the Brown Act have been met; and,
- (2) The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:
- (a) the need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- (b) there is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or
- (c) the item relates to a purely ceremonial or commendatory action.

Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or the Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.20.030(l) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.

The City Clerk contends that the City Council, Redevelopment Agency, Board of Port Commissioners and Public Ethics Commission should be able to excuse any of Sunshine's additional notice requirements if the failure to do so results from a software or hardware impairment and the impairment is resolved no later than eight days before the date of the meeting. The eight-day limit essentially permits the City Council and Redevelopment Agency to resolve any impairment problem over the

first weekend before a regular City Council or Redevelopment Agency meeting without overly compromising Sunshine's 10-day notice rule.

SUSTAINABLE OPPORTUNITIES

None.

DISABILITY AND SENIOR CITIZEN ACCESS

Ensuring that the Mayor, the City Administrator, City Attorney and City Auditor provide agenda related material in time for the City Council and other local bodies to meet their noticing requirements under the Sunshine Ordinance will help all citizens, including disabled and senior citizens, to follow City Council proceedings.

ALTERNATIVE RECOMMENDATION(S)

The City Council has discretion to adopt the proposed amendments.

ACTION REQUESTED OF THE CITY COUNCIL

City Council is requested to adopt the above-proposed amendments to the Oakland Sunshine Ordinance.

Respectfully submitted,



Daniel D. Purnell
Executive Director
Public Ethics Commission

INTRODUCED BY COUNCILMEMBER _____

City Attorney
DRAFT

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE TO REQUIRE THAT CITY EXECUTIVE OFFICERS PROVIDE AGENDA-RELATED MATERIALS TO THE CITY CLERK; TO PROVIDE SPECIFIC EXEMPTIONS FROM THE DEFINITION OF AGENDA RELATED MATERIALS; TO AMEND THE DEFINITION OF AGENDA RELATED MATERIALS; TO AMEND THE DEFINITION OF SOFTWARE OR HARDWARE FAILURE; AND TO PROVIDE A LIMITED EXCUSE FROM PUBLIC MEETING NOTICE REQUIREMENTS DUE TO SOFTWARE OR HARDWARE IMPAIRMENTS

WHEREAS, the current Sunshine Ordinance contains no prohibition against the Mayor, City Administrator, City Attorney and City Auditor for failing to meet the noticing deadlines of the Sunshine Ordinance; and

WHEREAS, the current Sunshine Ordinance does not adequately address the situations that can materially affect the City's computer network and the ability of the City to produce timely agendas and agenda related materials;

WHEREAS, these amendments to the Sunshine Ordinance would require that the City's executive officers to provide agenda related materials to the City Clerk so that the City Council and other legislative bodies can meet their legal deadlines under the Sunshine Ordinance; and

WHEREAS, these amendments to the Sunshine Ordinance will permit the City to respond in a timely manner to computer-related mishaps affecting the agenda process;

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

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

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

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

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

**RULES & LEGISLATION
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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~~.

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 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 a majority of the members of a local body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus 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;

(b) the attendance of any number of the members of a local body at a conference, or at any meeting or gathering organized to address a topic of local community concern and

which is open to the public, provided that a majority of the members of a local body refrains from collectively discussing the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that local body;

(c) the attendance of any number 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.

(G) "Notice" shall mean the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in Section 2.20.070 and 2.20.080.

(H) "On-Line" shall mean accessible by computer without charge to the user.

(I) ~~"Software or Hardware Failure" means solely technological failures.~~ "Impairment" means the City is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including but not limited to a computer virus), electrical outage affecting the City's computer network, or unanticipated system or equipment failure. "Software or Hardware Impairment" may also include situations when the city is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the City shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the City has taken customary precautions. maintenance or installation of system upgrades.

(J) "Standing Committee" shall mean any number of members of a local body which totals less than a quorum and which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the local body.

SECTION 4. Section 2.20.070 of the Municipal Code is hereby amended in its entirety to read as follows:

SECTION 2.20.070 Notice And Agenda Requirements: Special Meetings.

(A) Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:

(1) posting a copy of the agenda in a location freely accessible to the public at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;

(2) filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and,

(3) delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

(B) Local bodies specified in Section 2.20.030(E)(1) shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware ~~failure, impairment~~, as defined in Section 2.20.030, shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.

SECTION 5. Section 2.20.080 of the Municipal Code is hereby amended in its entirety to read as follows:

SECTION 2.20.080 Notice and Agenda Requirements: Regular Meetings.

(A) **Ten Day Advance Notice Requirement For Regular Meetings Of The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, And Their Standing Committees.** The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:

- (1) posting a copy of the agenda in a location freely accessible to the public 24 hours a day no later than ten (10) days before the date of the meeting;
- (2) filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten (10) days before the date of the meeting; and,
- (3) posting a copy of the agenda on-line at the local body's website no later than ten (10) days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware ~~failure, impairment~~, as defined in Section 2.20.030, shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

(B) **Supplemental Agenda And Related Materials Requirements For Regular Meetings Of The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, And Their Standing Committees.** Notwithstanding the notice provisions of 2.20.080(A), the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees, may amend or supplement a posted agenda or agenda-related materials no later than 72 hours before a regular meeting and only for the following reasons or under the following conditions:

- (1) to add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action;
- (2) to delete or withdraw any item from a posted agenda;
- (3) to provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this section are reports responding to questions or requests raised by members of a local body after posting and filing of the ten-day agenda and materials, and analyses or opinions of the item by the Office of the City Attorney or Auditor;
- (4) to correct technical, non-substantive errors or omissions, or to change a stated financial amount that decreases the local body's obligation under a proposed agreement, or to clarify the agenda title in a manner that does not substantively change the nature of the action to be taken on the agenda item;
- (5) to consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port

Commissioners, and Public Ethics Commission provided that the item has not been materially changed by the committee or materially changed after the committee considered the item;

(6) to place an ordinance on the agenda pursuant to Oakland City Charter Section 216 because the Mayor has caused its reconsideration by the City Council under the Mayor's power to suspend an ordinance receiving five votes; or,

(7) to place an item on the agenda to allow the Mayor to cast a vote pursuant to Oakland City Charter Section 200; or

(8) to continue an agenda item to the next regular meeting of the local body so long as members of the public are given an opportunity to address the local body on the item at the meeting from which the item is continued.

(C) **Seventy-two Hour Advance Notice Requirement For Regular Meetings Of All Local Bodies Other Than The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, And Their Standing Committees.** Any local body specified in Section 2.20.030(E)(2),(3), and (4), with the exception of standing committees of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission, shall provide notice for any regular meeting in compliance with the Ralph M. Brown Act and shall also file a copy of the agenda and all agenda-related material with the Office of the City Clerk at least 72 hours before the time of any regular meeting.

(D) **Excuse Of Sunshine Notice Requirements.** If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:

(1) The minimum notice requirements of the Brown Act have been met; and,

(2) The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

(a) the need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

(b) there is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or,

(c) the item relates to a purely ceremonial or commendatory action.

Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or the Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.20.030(I) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.

(E) **Action On Items Not Appearing On The Agenda.** Notwithstanding subsection (D) of this section, a local body may take action on items not appearing on a posted agenda only if:

(1) **The Matter Is An Emergency.** Upon a determination by a majority vote of the local body that a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or,

(2) **The Matter Is Urgent.** Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:

(a) is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

(b) relates to federal or state legislation; or,

(c) relates to a purely ceremonial or commendatory action.

(F) Nothing in this section shall prohibit a local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 2.20.080(E) before or during a meeting.

(G) Nothing in this section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.

(H) The Mayor, City Administrator, City Attorney and City Auditor in their capacities with the city and Redevelopment agency shall submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and 2.20.070.

SECTION 6. Section 2.20.270 of the Municipal Code is hereby amended in its entirety to read as follows:

SECTION 2.20.270 City of Oakland Public Ethics Commission.

(A) **Duties:** In the implementation of this ordinance, the Public Ethics Commission shall:

(1) Advise the City Council and the Board of Port Commissioners and provide information to other City departments and local bodies on appropriate ways in which to implement this ordinance with a priority on simple, standard procedures.

(2) Assist in citywide training for implementing the ordinance.

(3) Develop and maintain an administrative process for review and enforcement of this ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act.

(4) Propose amendments to the City Council of this ordinance as needed.

(5) Report to the City Council on any practical or policy problems encountered in the administration of this ordinance.

(B) **Enforcement.**

(1) Upon the conclusion of the administrative review process, as implemented pursuant to subsection (A)(3) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this ordinance.

(2) A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a local body has violated this ordinance. The costs and fees shall be paid by the local body and shall not become a personal liability of any public officer or employee of the local body.

(3) If the litigation is judged to be frivolous by the court, the defendant local body may assert its right to be paid reasonable court costs and attorneys' fees.

(C) **Mediation.**

(1) Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand immediate mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.

(2) Mediation shall commence no later than 10 days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or

department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.

(3) The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.

(D) Cure and Correction.

(1) Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this Ordinance. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

(2) In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this ordinance, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) - (4), inclusive.

(E) Reports Or Recommendations From Meetings Alleged To Have Been Held In Violation Of This Ordinance.

If the sole purpose or nature of an action that is challenged for violation of this ordinance is to make or convey an advisory report or recommendation to another local body, such local body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said local body to hear or take action on the item in the absence of such report or recommendation.

(F) Limitation Of Actions

No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the item at least 48 hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation as specified in Section 2.20.270(C).

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-
ABSTENTION-

6

**RULES & LEGISLATION
CMTE**

MAR 03 2005