

City of Oakland
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 APR 22 AM 10:44

To: City Council
From: Office of the City Attorney
Date: May 3, 2005

Re: A REPORT REGARDING 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, ADD ADDITIONAL DOCUMENTS TO SUPPLEMENTAL AGENDA PACKET, ALLOW ATTENDANCE AT AN OPEN AND PUBLICIZED MEETING, AND ALLOW FOR HARDWARE AND SOFTWARE IMPARMENT

SUMMARY

At the Rules and Legislation Committee's direction of April 14, 2005, the City Attorney has drafted the attached proposed ordinance amending the Sunshine Ordinance. The document contains elements of the versions proposed by Vice Mayor Brunner, City Attorney Russo, and the Public Ethics Commission that were approved by the Rules and Legislation Committee.

KEY ISSUES AND IMPACTS

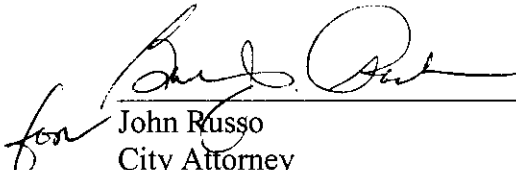
The proposed amendments to the Sunshine Ordinance would:

- 1) require that the Mayor, City Administrator, and City Attorney 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

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- 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.
- 5) allow the Mayor to add informational material to the supplemental agenda packet
- 6) conform the Sunshine Ordinance with the Brown Act's provisions relating to attendance at an "open and publicized meeting" of an outside organization.

Respectfully submitted,


John Russo
City Attorney

Attorney assigned: Morodomi

APPROVED AS TO FORM AND LEGALITY

OFFICE OF THE CITY CLERK
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. _____ C.M.S.

2005 APR 22 AM 10:44

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, ADD ADDITIONAL DOCUMENTS TO SUPPLEMENTAL AGENDA PACKET, ALLOW ATTENDANCE AT AN OPEN AND PUBLICIZED MEETING, AND ALLOW FOR HARDWARE AND SOFTWARE IMPAIRMENT

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

(c) the attendance of ~~any number~~ a majority of the members of any local body at a purely social, recreational, educational or ceremonial occasion provided that a majority of the members of any local body refrains from discussing any business within the subject matter jurisdiction of the local body; and

(d) the attendance of a majority of the members of a local body at a standing committee, provided that the members of the local body who are not members of the standing committee do not participate personally or through representatives.

(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"~~ "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 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 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 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.

(C) Notwithstanding the requirements of 2.20.070(A) and (B), if a special meeting is called for a Monday, notice shall be deemed timely made if the filing, posting and distribution requirements of subsections (A) and (B) are made no later than 12:00 p.m. (noon) on the preceding Friday.

~~(D)~~ No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that the notice pursuant to this Section is given at least ten (10) days prior to the special meeting. This ten (10) day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.

~~(E)~~ To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

~~(F)~~ Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this ordinance if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

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 however, nothing herein shall limit the ability of a local body to delete or withdraw an item during the meeting as long as the local body permits members of the public to address the deleted or withdrawn item;

(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 the Mayor or 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, City Auditor, or any member of the City Council ~~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 or conform the agenda title in a manner that does not substantively change to accurately reflect the nature of the action to be taken on the agenda item;

(5) to consider the recommendations, referrals, minutes, modifications of 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(l) 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 and City Attorney in their capacities with the City and Redevelopment Agency must submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and 2.20.070. However, the referenced officers may submit additional documents to the legislative body and the legislative body may accept the documents if the legislative body makes a finding by two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the related meeting. This subsection shall not apply to the City Auditor, and the City Council may

consider reports from the City Auditor that are presented to the Council after the deadlines specified in this Ordinance. Nothing in this section or in any other provision of this Ordinance shall be interpreted to require that the Mayor, City Administrator or City Attorney submit to the City Clerk any documents that are not public records.

~~(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-