

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

Memorandum

TO: Council President Rebecca Kaplan and Members of the City Council

FROM: Barbara J. Parker
City Attorney

CC: Mayor Libby Schaaf
Interim City Administrator Steven Falk
Assistant City Administrator Maraskeshia Smith
Assistant City Administrator Ed Reiskin
Public Works Agency Director Jason Mitchell

DATE: April 9, 2020

RE: **Scope of Discussion Permitted under Brown Act Personnel Exception –
Public Employee Appointment – Appointment of City Administrator**

Dear President Kaplan and Members of the City Council:

During its April 9, 2020 closed session, the Council will discuss the appointment of the City Administrator during closed session. This memorandum outlines the scope of discussion and action permitted under the Personnel Exception – Public Employee Appointment.

The Brown Act permits the discussion of the appointment and allows the Council to interview the City Administrator appointed by the Mayor because the City Charter provides that the Mayor's appointment is subject to confirmation by the City Council.¹ (City Charter section 305(e).) The resolution confirming the Mayor's appointment is anticipated to be scheduled for the Council's consideration at its April 21, 2020 regular meeting.

Importantly, the Brown Act prohibits discussion of or action on proposed compensation during closed session. (Government Code Section 54957(b)(4).) Compensation includes salary and other cash payments and benefits, such as automobile allowances, vacation, and management leave. Accordingly, the Council cannot discuss proposed compensation for the City Administrator during the April 9th closed session.

¹ Note that the Brown Act allows the Council to discuss the appointment of a public employee only if the Council has a role in the appointment.

Council President Rebecca Kaplan and Members of the City Council

April 9, 2020

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Government Code section 54957 provides in pertinent part:

(b) (1) . . . **this chapter** [the Brown Act] **shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment,** evaluation of performance, discipline, or dismissal **of a public employee** or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. . . .

(4) . . . **Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.**

The entirety of Government Code section 54957 is attached to this Memorandum as Exhibit A.

Very truly yours,



BARBARA J. PARKER
City Attorney

Attachment: Exhibit A

EXHIBIT A

CALIFORNIA BROWN ACT SECTION 54957

54957.

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

(Amended by Stats. 2013, Ch. 11, Sec. 1. (AB 246) Effective January 1, 2014.)