

CITY OF OAKLAND



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PUBLIC NOTICE AND REPORT OF NON-COMPLIANCE WITH THE BROWN ACT (“OPEN MEETING LAW”)

July 7, 2022

HONORABLE CITY COUNCIL
AND MEMBERS OF THE PUBLIC
Oakland, California

**Re: Councilmember’s May 26, 2022 Email Response to an Email from a
Member of the Public Which Response Stated the Councilmember’s
Support for an Amendment to an Item on the May 26, 2022 Special
Meeting Agenda and was cc’d to the Entire Council**

I. BACKGROUND

The Council scheduled and conducted a 10:00 a.m., May 26, 2022 special meeting to consider amendments to a resolution placing the Progressive and Equitable Business Tax Ordinance ballot measure on the November 2022 election ballot. On May 14, 2022 a member of the public sent an email addressed to “Dear Elected Councilmembers,” asking that the Council include small rental property providers within the "Miscellaneous" business category under the proposed Progressive and Equitable Business Tax Ordinance ballot measure. On May 26th at 4:06 a.m. Councilmember (“CM”) Taylor responded to the email stating CM Taylor’s support for an adjustment to the tax for small rental property owners and that CM Taylor owns a small rental property. CM Taylor’s email was cc’d to the entire Council, addressed as “DL- City Council council@oaklandca.gov.” (A copy of the email exchange is attached to this report as Exhibit A.)

This Office was advised of the communication and received a copy of the email exchange. This notice and report will be posted on the City Attorney’s website.

Because the communication concerned a matter within the Council’s subject matter jurisdiction, i.e., a Council meeting agenda item, and was cc’d to the entire Council, the communication did not comply with the Ralph M. Brown (“Brown”) Act’s requirement that Councilmembers communicate with a quorum of the Council only during a duly noticed open and public meeting or closed session.

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This Office contacted CM Taylor regarding the email communication to advise the CM of the Brown Act requirement. CM Taylor advised this Office that he was aware of the Brown Act requirement and that he inadvertently clicked "reply to all."

At the next Council meeting, Council President Fortunato Bas made a public announcement regarding the noncompliance with the Brown Act and asked what steps our Office would take. This public report and notice apprise the public of the noncompliance, provide the public a copy of the email exchange and explain the requirement.

Please note that a communication to a quorum (5 or more CMs) of the Council regarding a matter on the Council's agenda is not permitted by the Brown Act. There is a limited exception that allows a CM to communicate with a quorum of the Council to scheduling a meeting.

II. The Purpose of the Brown Act "Open Meeting" Law is to Ensure that Discussion, Communications, Deliberations by a Quorum of the Council, Council Committees, City Boards and Commissions and Other Legislative Bodies Regarding Items on the Council's Agenda and Regarding Items That May Be Placed on a Council Agenda Occur Only During a Duly Noticed Open or Closed Session Meeting

The California Ralph M. Brown Act ("Brown Act" or "Act") is commonly referred to as California's "open meeting" law. (Government Code section 54950 et. seq.)

The Brown Act governs meetings conducted by local legislative bodies, such as the Oakland City Council, Council Committees, City Boards and Commissions. Councilmembers are subject to the Act's requirement that a quorum of the Council may discuss, deliberate, communicate regarding items on the Council's or Council Committee's agendas only in open and public meetings, subject to a few specifically enumerated exceptions for closed session meetings. Accordingly, the Brown Act prohibits a councilmember from communicating with a quorum of the Council outside of an open and public meeting or a duly noticed closed session authorized by the Brown Act (e.g., pending litigation and real estate or labor negotiations).

The Brown Act is liberally interpreted. As the courts have declared, the purpose of the Brown Act is to facilitate public participation in decisions by local governmental bodies in order to deter misuse of the public process and facilitate public participation in decision-making. The Brown Act thus established an open meeting requirement for the City Council and other local legislative bodies. (Gov. Code section 54953(a); *Boyle v. City of Redondo Beach*, 70 Cal.App.4th 1109, 1116 (1999).)

The closed session exception to the open meeting requirement is narrowly construed and is authorized only by the specific statutory exceptions provided by the Brown Act. If the Brown Act doesn't provide a specific closed session exception, the discussion must be conducted in open session. (Gov. Code section 54962.)

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To summarize, if closed session discussion of a matter is not authorized, all the deliberative processes by the Council or other legislative body, which include discussion, debate and the acquisition of information, must be conducted in open session and available to the public. (Sacramento Newspaper *Guild v. Sacramento County Bd. of Suprs.*, 263 Cal.App.2d 4 (1968).) The Brown Act applies only to multi-member bodies such as councils, boards, commissions and committees since, unlike individual decision makers, such bodies are created for the purpose of reaching collaborative decisions via public discussion and debate.

Consistent with the Brown Act's open meeting requirement, as a general rule, the Council must make available to the public information that is provided to a quorum of the Council regarding an open meeting. (Gov. Code § 54957.5.)

Accordingly, when a Councilmember communicates with a quorum of the Council outside of a duly noticed open or closed session meeting, and whether the Councilmember communicates with a quorum of the Council simultaneously or serially or through a daisy chain where one CM communicates to another and that Councilmember communicates to yet another Councilmember and so on until a quorum of the Council is privy to the communication, the communications are not in compliance with the Brown Act. The Brown Act's goal is to have the formulation of positions, and deliberations occur during a duly noticed public meeting so the public has knowledge of the process and can speak to the item(s). It is immaterial whether the noncompliance was intentional, unintentional or inadvertent. The public has the right to know about the non compliant communication and the substance of the communication.

III. CONCLUSION

This notice and report provide the Council and the public a writing memorializing the instance of noncompliance with the Brown Act on May 26, 2022 and further provides the substance of the communication and explains the open meeting requirement and its purpose.

Very truly yours,



BARBARA J. PARKER
City Attorney

cc: City Clerk Asha Reed

EXHIBIT A

From: Taylor, Loren <LTaylor@oaklandca.gov>
Sent: Thursday, May 26, 2022 4:06 AM
To: Benjamin Scott <bscott@owlsocks.com>
Cc: DL - City Council <council@oaklandca.gov>
Subject: Re: Proposed "Equitable" & Progressive Business Tax Ballot Measure

Hi Benjamin,

Thanks for this note.

As a small rental property provider in Oakland, myself, I am supportive of an adjustment to the tax proposal in a way that supports lower taxes for small rental property owners.

I'm working with the City Attorney to see what new language is permissible, and hope that my other colleagues will similarly be supportive.

Loren Taylor
Ltaylor@oaklandca.gov

Sent from my iPhone

On May 14, 2022, at 11:47 PM, Benjamin Scott <bscott@owlsocks.com> wrote:

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear elected Council Members:

Please include small rental property providers within the "Miscellaneous" business category. There is a stark inequity of charging struggling Mom & Pops between 11 & 35 times the tax rate of other businesses in the City. Reject placing LIENS on small rental properties. The majority of small rental property owners / housing providers are minority owners, currently struggling under the odious pandemic legislation that prevents any way of collecting rents - many with no rental income coming in and still having to pay mandatory rising fees on water, garbage, maintenance materials and labor, gas, food costs etc. Please, be fair and equitable as you say you are.

Benjamin Scott
Former:
Oakland Rent Board Commissioner
Parks and Recreation Commissioner
Chair, Budget Advisory Committee