CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Ryan Richardson
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 238-6451

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

March 3, 2025

HONORABLE CITY COUNCIL
AND MEMBERS OF THE PUBLIC

Re: Councilmember's Email Correspondence to the Entire City Council Which Stated the Councilmember's Position on Matters Within the Council's Subject Matter Jurisdiction and that Represent Potential Future City Council Agenda Items

I. BACKGROUND

On February 4, 2025, Councilmember Gallo sent two emails to the City Council, one regarding the City's Sanctuary City Policy and one regarding the City Council's efforts to address the Fentanyl public health crisis. On February 5, 2025, Councilmember Gallo sent an email to the City Council regarding topics of discussion for a City Council study session. This Office received a copy of the emails, which are attached to this report as Exhibit A.

These communications concern matters within the Council's subject matter jurisdiction, i.e., items that may be placed on a future City Council agenda, and were addressed and bcc'd to the entire Council. As such, the communications did not comply with the Ralph M. Brown Act ("Brown Act") requirement that Councilmembers communicate with a quorum of the Council only during a duly noticed open and public meeting or closed session. A communication to a quorum (five or more councilmembers) of the Council regarding a matter within the Council's subject matter jurisdiction is not permitted by the Brown Act. There is a limited exception that allows a councilmember to communicate with a quorum of the Council to schedule a meeting.

This Office contacted Councilmember Gallo's Office regarding the email communication to advise the Councilmember of the Brown Act requirement. This notice and report will be posted on the City Attorney's website.

II. The Purpose of the Brown Act "Open Meeting" Law is to Ensure that Discussion, Communications, and 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 Brown 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, and City Boards and Commissions. Councilmembers are subject to the Brown Act's requirement that a quorum of the Council or of a Council Committee may discuss, deliberate, and 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.

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.)

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 41 (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.

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 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 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 instances of noncompliance with the Brown Act on February 4, 2025 and February 5, 2025, and further provides the substance of the communication and explains the open meeting requirement and its purpose.

Very truly yours,

RYAN RICHARDSON
City Attorney

cc: City Clerk Asha Reed

3399787v1

EXHIBIT A

Oakland City Council Commitment to Our Sanctuary City Policy

Gallo, Noel
To
Bcc ⊞ **DL - Council Members**; Richardson, Ryan; Macaulay, Amber; Johnson, Jestin

Reply | Reply All | Forward

Tue 2/4/2025 12:46 PM

You forwarded this message on 2/7/2025 11:39 AM.
If there are problems with how this message is displayed, click here to view it in a web browser.

Oakland Sanctuary City Ordinance 13515.pdf 98 KB
OPD Immigration Policy Manual.pdf 303 KB
OPD Immigration Policy.pdf 368 KB

Open PDFs in Adobe Acrobat

Dear Council Colleagues,

I am reaching out to provide an update on our continued efforts to support our undocumented community, particularly in light of recent actions by the federal administration that threaten the safety and well-being of immigrant residents.

Oakland has been a proud Sanctuary City since 1986, standing in unwavering support of our undocumented community. Over the years, the City has reaffirmed this commitment through multiple resolutions, ensuring that local law enforcement does not engage in federal immigration enforcement by Immigration and Customs Enforcement (ICE).

In October 2018, the City Council strengthened this commitment by adopting Ordinance No. 13515 C.M.S., which amended previous resolutions to explicitly prohibit the City from cooperating with or providing support to ICE. You can review the full ordinance here: Sanctuary City Policy.

My office is actively working on reaffirming and strengthening our Sanctuary City protections in collaboration with community advocates and city stakeholders. Additionally, I have attached the most recent resolution amending our Sanctuary City policy, along with information on OPD's immigration-related policies for your reference.

I look forward to working together to uphold Oakland's commitment to protecting our immigrant communities. Please do not hesitate to reach out if you have any questions or would like to discuss this further.

Best regards,

Noel Gallo
Councilmember, District 5
City Of Oakland
1 Frank H. Ogawa Pl, 2nd Floor
Oakland, CA 94612
ngallo@oaklandca.gov
(510) 238-7005 District 5
(510) 238-6129 Fax

During COVI-19 Pandemic, while City offices are closed; along with my District 5 Team, I am actively serving District 5. Please leave a voice mail or contact me by email: NGallo@oaklandca.gov.

Follow us on Facebook and Twitter

Oakland City Council Efforts to Address the Fentanyl Crisis

Gallo, Noel
To
Bcc ⊞ **DL - Council Members**; Richardson, Ryan; Macaulay, Amber; Johnson, Jestin

Reply | Reply All | Forward

Tue 2/4/2025 12:49 PM

ResolutionFentanylCrisis.pdf 270 KB | Fentanyl Detection.pdf 440 KB | DefenseDiagnosticsInfo.pdf 1 MB

Open PDFs in Adobe Acrobat

Dear Council Colleagues,

I hope this message finds you well. I wanted to take a moment to share important information regarding the City's stance and actions on the ongoing fentanyl crisis in our community, as this issue has been the subject of significant public concern and inquiry.

Last year, in collaboration with my fellow council colleagues, we passed a **Resolution Recognizing Fentanyl as a Public Health Crisis**, urging the State of California and the federal government to expand resources to address the devastating impact of fentanyl in our community.

Additionally, former Councilmember Dan Kalb introduced a **Resolution Authorizing the City Administrator to Engage with Defense Diagnostics, Inc.**, a California-based public health and safety company. This resolution directed the City to:

1. **Receive an informational report** on Defense Diagnostics' capabilities, technologies, and potential contributions to addressing the fentanyl crisis.
2. **Explore opportunities for grants and funding** to implement a **fentanyl detection pilot program** in Oakland.

Defense Diagnostics, Inc. provides an innovative approach to fentanyl detection with user-friendly, reliable solutions designed to protect vulnerable populations, including youth, socially active individuals, the unhoused community, and others at risk of unintentional fentanyl exposure.

I wanted to ensure that you are all informed of the steps we have taken as a city and our continued efforts to combat the fentanyl crisis. Additionally, I have attached the resolutions regarding council efforts.

Moving forward, I remain committed to working with you all to build upon these initiatives and expand resources for harm reduction, education, and prevention.

Best,

Noel Gallo

Councilmember, District 5

City Of Oakland

1 Frank H. Ogawa Pl, 2nd Floor

Oakland, CA 94612

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(510) 238-7005 District 5

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City Council Study Session

Gallo, Noel
To
Cc Johnson, Jestin; Richardson, Ryan
Bcc Ramachandran, Janani; Houston, Ken; Fife, Carroll

Reply | Reply All | Forward

Wed 2/5/2025 12:10 PM

If there are problems with how this message is displayed, click here to view it in a web browser.

Dear City Council,
I would like to bring the idea of coordinating a city council study session. We need to share our vision and I will outline the goals that will guide our discussions.

Our mission is clear: we aim to build an Oakland that is a full-service community—safe, clean, vibrant, and livable for all residents.

The goal of this session is to not only assess and analysis the current state of Oakland but also receive input that will help us build a stronger and more sustainable city for tomorrow.

Council Study Session Overview:
During this session, the City Council will hear from our team about the current state of Oakland, with an emphasis on the challenges we face. We will also work to identify solutions that can guide us toward a brighter future.

Key Focus Areas:

1. **Budget Balancing Overview:**
   - **Challenges:** Addressing the issues of securing financing, deferred maintenance of facilities and infrastructure, and managing city finances—particularly employee salaries, benefits, and community services.
   - **Re-Envisioning Our Approach:** We must consider a fundamental redesign of how we approach services, city management, and expenditures.
   - **Empowering Change Starts With Us:** Where are the gaps in our current thinking? What solutions have we not considered yet? How can we address these gaps to ensure Oakland becomes a sustainable city moving forward?
   - **Spending Beyond Our Means:** As it stands, we are spending beyond our budgetary capacity, with a growing deficit that threatens our fiscal health. We must develop strategies to balance our finances without compromising essential services.
2. **Re-Envisioning, Redesign, and Restructuring:**
   - **Focus on Sustainability:** The Mayor, City Council, and administration need to outline a comprehensive plan for the restructuring of Oakland's services and staff to ensure fiscal stability and long-term viability.
   - **Key Steps in Redesign and Restructuring:**
     - **Reducing Expenditures:** Identifying areas where we can reduce spending while maintaining essential services.
     - **Downsizing Service Scope:** A clear look at where we can consolidate or reduce services without negatively impacting our community.
     - **Leveraging Real Assets:** Exploring opportunities to convert revenue from city assets, including real estate, to support services and infrastructure.
3. **Location Analysis and Building a Model for the Future:**
   - **Population Projections:** Understanding the makeup of Oakland today and projecting future growth trends—looking at sanctuary city, homeowners, age demographics, business growth, and housing needs.
   - **Business Growth/Housing:** Focus on assessing the current business landscape, housing demand and supply, affordable vs. market-rate development, the impact of housing on business recruitment, infrastructure and transit development, affordable housing strategies, and the socio-economic impacts on historically marginalized communities, ensuring equitable growth without displacement.
   - **Educational and Recreational Needs:** Planning for growth in education and recreation services, which are vital for both community engagement and quality of life.
4. **Where Will We Be in 2028?**
   - **Strategic Planning:** This session will help guide us in creating a strategic work plan for 2025, focusing on how to address administration structuring, residential development, and strategic service allocation.
   - **Residential Areas:** We must consider the future of Oakland's residential areas and how they will evolve over the next several years, ensuring our services align with these developments.

Next Steps and Actions:
In order to take actionable steps toward addressing these issues, we need to consider the following in alignment with the re-envision, redesign and restructure:

- **Deficit Management:** Work to prevent special increases in city services that will unbalance the budget. Align redesign and restructuring efforts with deficit-reduction goals.
- **Restructuring City Services:** Focus on ensuring that essential services are protected while considering operational reductions where possible.
- **Staff Restructuring:** Examine how we can restructure staffing formulas and policies to better support efficient service delivery.
- **Revised Budgeting Approach:** Shift from a rebuild-based budgeting model to a more centralized and cohesive approach that emphasizes clearly defined criteria and efficient allocation of resources.

Our work ahead will require thoughtful collaboration, strategic foresight, and a shared vision for Oakland's future. I look forward to our discussion and the collective efforts we will make to move our city toward a more sustainable and thriving future.

Best,

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City Council Study Session

Gallo, Noel
To
Cc Johnson, Jestin; Richardson, Ryan
Bcc Kaplan, Rebecca; Brown, Rowena; Unger, Zachary; Jenkins, Kevin

Reply | Reply All | Forward

Wed 2/5/2025 12:13 PM

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