

CITY OF OAKLAND



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**RULES AND LEGISLATION COMMITTEE
CITY COUNCIL
Oakland, California**

**RE: APPLICABILITY OF BROWN ACT/SUNSHINE
ORDINANCE TO BUDGET COMMITTEE OF THE
OAKLAND WORKFORCE INVESTMENT BOARD**

Dear President and Chairperson Reid and Members of the Rules Committee:

I. INTRODUCTION

During its October 13, 2011 meeting, the Rules Committee asked the City Attorney whether the Budget Committee of the WIB was subject to the Brown Act/Sunshine Ordinance noticing and open meeting requirements. The Committee did not notice its meetings.

II. QUESTION

Were meetings of the Budget Committee, a committee of the Oakland Workforce Investment Board, subject to open meeting requirements of the Brown Act and Sunshine Ordinance?

III. SUMMARY ANSWER

Since the Budget Committee fell within the exemption for ad hoc committees set forth in the Brown Act and the Sunshine Ordinance, it was not subject to the open meeting requirements of either law.

IV. BACKGROUND

The Oakland Workforce Investment Board ("WIB") was formed by the City as a City board under the federal Workforce Investment Act ("WIA"). The WIB is subject to open meetings rules in state law, the Ralph M. Brown Act ("Brown Act", Cal. Gov't. Code Sections 54950, et seq.), and local law, the Oakland Sunshine Ordinance ("Sunshine Ordinance", Oakland Municipal Code Chapter 2.20).

The bylaws of the WIB authorize the chair of the WIB to form ad hoc committees on an as-needed basis. (WIB Bylaws, Art. VII, Sec. 2.) The role of an ad hoc committee is to "address specific issues of immediate concern, and report back to the originating body with its recommendations." (Id.)

The WIB bylaws also authorize the creation of standing committees. (WIB Bylaws, Art. VII, Sec. 1.) The bylaws recognize the Executive Committee, the Youth Council, the Quality Assurance Committee, the Business Services Committee, and the One Stop Leadership Committee as the WIB standing committees. These five committees are the only current standing committees of the WIB. The bylaws provide that all meetings of standing committees, as well as the WIB, are subject to Brown Act and Sunshine Ordinance open meetings requirements. (WIB Bylaws, Art. V, Secs. 1, 2, and 5.)

In August of this year, the Chair of the WIB exercised his authority under the WIB bylaws to convene an ad hoc Budget Committee ("Budget Committee") as a part of the WIB's FY 2011-12 budgeting process. The Chair appointed four WIB members to serve as the Budget Committee. The Budget Committee met three times in August, and submitted its proposed budget to the WIB at the WIB's August 30 meeting. The Budget Committee did not follow the noticing and open meeting rules that apply to bodies covered by the Brown Act or Sunshine Ordinance

In previous years, the WIB Chair has convened ad hoc budget committees to make budget recommendations to the WIB, although last year no budget committee was formed. The members of this year's Budget Committee have not served on previous years' budget committees.

V. LEGAL ANALYSIS

The Brown Act open meeting requirements apply generally to all "legislative bodies", defined among other things to include boards and commissions of a local agency. (Gov't. Code Section 54952(a)(1).) However, the Brown Act exempts advisory committees composed solely of members of the

legislative body and comprising less than a quorum of the legislative body, as long as the committee is not a "standing committee." (Id.) A standing committee is one that has either (1) a continuing subject matter of jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of the legislative body. Thus to be a Brown Act "ad hoc" exempt committee, the committee must meet five criteria: (1) it must be advisory to the legislative body, (2) it must be composed solely of members of the legislative body, (3) its membership must be less than a quorum of the legislative body, (4) it must not have continuing subject matter jurisdiction, and (5) it must not have a fixed meeting schedule.

The Sunshine Ordinance essentially incorporates the same rule as the Brown Act for ad hoc exempt committees. The Ordinance applies to boards and commissions established by the City Charter, ordinance, or motion or resolution of the City Council, or advisory boards or commissions created and appointed by the Mayor that exist for longer than one year. (Sunshine Ordinance Section 2.20.030(E)(2) and (3).)¹ And it applies to standing committees of such boards and commissions. (Sunshine Ordinance Section 2.20.030(E)(4).) Like the Brown Act, the Sunshine Ordinance defines a "standing committee" as a committee composed of less than a quorum of the body that has continuing subject matter jurisdiction or a fixed meeting schedule. (Sunshine Ordinance Section 2.20.030(J).)

Based on these provisions, we conclude that the Budget Committee met the criteria in the Brown Act and the Sunshine Ordinance for an ad hoc exempt committee:

(1) **ADVISORY COMMITTEE.** The Budget Committee was advisory to the full WIB. It made its recommendations to the WIB on a proposed budget, and had no final decision-making authority of its own.

(2) **ALL COMMITTEE MEMBERS WERE WIB MEMBERS.** The Budget Committee was composed solely of WIB members.

¹ It is not clear that the WIB actually falls within the definition of a covered "local body" under the Sunshine Ordinance. The WIB was not created by the Charter or by motion, resolution, or ordinance of the City Council. The WIB was created and appointed by the Mayor, under WIA, but it is not an advisory committee; under WIA, it is actually the recognized policy setting body for the Oakland workforce development system (while sharing concurrent decision-making authority with the City Council and Mayor, per the Charter, as we have previously opined). However, the WIB bylaws provide that the WIB and its standing committees will hold their meetings in conformance with the Sunshine Ordinance.

(3) COMMITTEE DID NOT CONSTITUTE A QUORUM OF THE WIB. The membership of the Budget Committee was less than the quorum of the WIB. The Budget Committee was composed of only four members; a quorum (set at 40% of membership) of the WIB (with a current membership of 42) is 17.

(4) COMMITTEE DID NOT HAVE CONTINUING SUBJECT MATTER JURISDICTION. The Budget Committee had no continuing subject matter jurisdiction. The Chair convened Budget Committee as an ad hoc committee for the specific task of drafting a FY 2011-12 budget, and disbanded it fulfilled its mission. As we mentioned above, Budget committees have been established in past years; however, we do not conclude that this creates a de facto standing budget committee of the WIB. The budget committee is not a recognized standing committee under the WIB bylaws. Past budget committees have had different members each year and they also have met for short periods of time and they have been disbanded each year after the committee completed its recommendations. It is our understanding that the budget committees have been charged strictly with developing a budget for that year, and they have not been charged with dealing with ongoing budget issues or other subject matter continuing beyond adoption of a particular fiscal year's budget.

(5) COMMITTEE HAD NO FIXED MEETING SCHEDULE. The Budget Committee met on an as-needed basis (for a month) and had no fixed schedule.

VI. CONCLUSION

Because the Ad Hoc Budget Committee of the WIB fell within the exemption for ad hoc committees set forth in the Brown Act and the Sunshine Ordinance, it was not subject to the open meeting requirements of either law. The WIB has the power to establish a standing budget committee if it chooses to do so.

Respectfully submitted,



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cc: Members of the City Council
Deanna J. Santana, City Administrator
Fred Blackwell, Assistant City Administrator
John Bailey, CEDA Workforce Development