

Chapter 2.06 Port of Oakland Sunshine Ordinance**Section 2.06.010 Definitions**

This Chapter may be referred to as the “Port of Oakland Sunshine Ordinance”. Words or phrases in this Chapter shall be defined pursuant to the Brown Act and the Public Records Act, unless otherwise specified as follows:

A. “Agenda-related materials” means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to the Board, and other documents forwarded to the Board, which provide background information or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include and the requirements for submission of agenda-related materials shall not apply to:

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 Chapter; and
2. Written amendments or recommendations from a Commissioner pertaining to an item contained in agenda related materials previously filed pursuant to Sections 2.06.040 or 2.06.050.

B. “Agenda subscriber” means 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 2.06.080.C. “Notice” means the posting of an agenda in a location that is freely accessible to the public as additionally specified in Sections 2.06.040 and 2.06.050. Where there are additional requirements for the delivery or the posting of the agenda, such delivery may be satisfied by the delivery through emails to the email address supplied by the intended recipient and such posting may be satisfied by the posting online. The failure to timely post a copy of the agenda online because of software or hardware impairment, as defined below, shall not constitute a defect in the notice for meeting, if the Port complies with all other posting and noticing requirements.

D. “Online” means accessible by computer or other electronic communication device without charge to the user; provided that the posting on the Port’s website which is accessible to the public by computer or other electronic communication device shall satisfy any requirement for posting online.

E. “Open Meeting Laws” means the Brown Act, the Public Records Act, this Chapter, Chapter 2.05, and/or any other applicable laws that may regulate the noticing and conduct of Board and standing committee meetings or public access to the Port.

F. “Software or hardware impairment” means the Port is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas online 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 Port’s computer network, or unanticipated system or equipment failure. “Software or

hardware impairment” may also include situations when the Port is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the Port 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 maintenance or installation of system upgrades.

G. “Standing committee” means such standing committees of the Board established under Chapter 2.01.

H. “Vexatious Requestor” means any Person who files three (3) Requests for Cure and Correction found to be without merit by the Port Attorney.

Section 2.06.020 Meetings to be Open and Public: Application of Brown Act

All meetings of the Board shall be open and public, to the same extent as if that body were governed by the provisions of the Brown Act, unless greater public access is required by this Chapter, in which case this Chapter shall be applicable.

Section 2.06.030 Agenda Requirement

The agenda shall meet the requirements of California Government Code § 54954.2. For closed sessions, the agenda shall meet the requirements set forth in the Brown Act. 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.

Section 2.06.040 Notice and Agenda Requirements: Special Meetings

A. Special meetings of the Board may be called at any time pursuant to Chapter 2.01 by:

1. Posting a copy of the agenda in a location freely accessible to the public at least forty-eight (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 Secretary of the Board at least forty-eight (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 Commissioner, 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 forty-eight (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, including delivery by email to an email address supplied by the intended recipient.

B. In addition to the noticing requirements of this Section, a copy of the agenda for any special meeting shall be posted online at the Board's website at least forty-eight (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 impairment shall not constitute a defect in the notice for a special meeting if the Board complies with all other posting and noticing requirements.

C. Notwithstanding the requirements of Subsections A and B of this Section, 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 Board except that the Board may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this Section for the special meeting at the alternative location 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 Board occur.

E. To the extent practicable, the President (or the presiding officer) or the majority of Commissioners 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 meeting noticed to be held on the same day as a previously scheduled regular meeting shall not include any agenda item that has been included in the agenda for such regular meeting.

G. Suspension in Response to Covid-19 Pandemic. Beginning April 9, 2020, any provision in Section 2.06.040 that the Port special meeting agendas post seventy-two (72) hours prior to the time of the meeting is hereby suspended indefinitely.

Section 2.06.050 Notice and Agenda Requirements: Regular Meetings

A. Ten Day Advance Notice Requirement for Regular Meetings. The Board shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (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 Secretary of the Board 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 Board's website no later than ten (10) days before the date of the meeting.

B. Suspension in Response to Covid-19 Pandemic. Beginning April 9, 2020, the provision in Section 2.06.050 that the Port post regular meeting agendas ten (10) days prior to the date of the meeting is hereby suspended indefinitely.

Section 2.06.060 Agenda-Related Materials - Submissions and Supplements

A. Notwithstanding the notice provisions of Sections 2.06.040 and 2.06.050, the Board and staff may amend or supplement a posted agenda or agenda-related materials no later than seventy-two (72) hours before a regular meeting or no later than twenty-four (24) hours before a special meeting, and only for the following reasons:

1. To add an item due to an emergency or urgency, provided the Board determines to take action pursuant to the requirements of the Brown Act for emergency and urgency items (California Government Code § 54954.2(b));

2. To delete or withdraw any item from a posted agenda; however, nothing herein shall limit the ability of the Board to delete or withdraw an item during the meeting as long as the Board 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 Secretary of the Board provided that the accompanying the Agenda at the time of the posting contained a substantial description of the Item and action to be considered by the Board; the cause for the delay and the date for publication of the supplemental material; or that the additional information was not known to the Executive Director 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 Commissioners after posting and filing of the ten (10)-day agenda and materials, and analyses or opinions of the item by the Office of the Port Attorney, the Auditor, or any Commissioner;

4. To correct errors or omissions, or to change a stated financial amount, or to clarify or conform the agenda title 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 Board provided that the item has not been materially changed after the committee considered the item;

6. To continue an agenda item to the next regular meeting of the Board so long as members of the public are given an opportunity to address the Board on the item at the meeting from which the item is continued; or

7. To publish form of ordinance or resolution reflecting the proposed action relating to the agenda item, as supplemented.

B. Submission of any supplemental agenda-related materials later than seventy-two (72) hours prior to the time of a regular meeting or later than twenty-four (24) hours prior to the time of a special meeting may be accepted only under Subsection A of Section 2.06.060. Copies of such documents shall be made available to the public at the meeting.

C. This Chapter shall not apply to the Port Auditor, and the Board may consider reports from the Port Auditor that are presented to the Board after the deadlines specified in this Chapter.

D. Nothing in this Section or in any other Provision of this Chapter shall be interpreted to require that the Executive Director, the Port Attorney, or Port Auditor to submit to the Secretary of the Board any documents that are not public records.

E. Suspension in Response to Covid-19 Pandemic. Beginning April 9, 2020, the provisions in Section 2.06.060 that supplements to agendas be posted seventy-two (72) hours prior to a regular meeting or twenty-four (24) hours prior to a special meeting are hereby suspended indefinitely.

Section 2.06.070 Excuse of Sunshine Notice Requirements; Emergency and Urgency Items

A. If an item appears on an agenda but the Board fails to meet any of the additional notice requirements under Sections 2.06.040, 2.06.050, or 2.06.060, the Board may supplement agenda related materials or may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and,
2. The Board, by a two-thirds vote of those Commissioners 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 Chapter and any one of the following exists:
 - a. There is a need to supplement the agenda related materials or take immediate action on the item during the meeting;
 - b. The item relates to a purely ceremonial or commendatory action; and,
 - c. The additional noticing requirements under this Section were not met due to a software or hardware impairment.

B. Notwithstanding Subsection A of this Section, the Board may take action on items not appearing on a posted agenda only if the Board determines to take action pursuant to the requirements of the Brown Act for emergency and urgency items (California Government Code § 54954.2(b)).

C. Nothing in this Section shall prohibit the Board 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 Subsection B of this Section before or during a meeting.

D. Nothing in this Section or this Chapter shall prohibit the Office of the Port Attorney from conforming a document or a form of a resolution or ordinance to comply with technical requirements as to form and legality, to correct a typographical or clerical error, or to conform with the Board's action taken at the meeting or with any supplemental agenda-related materials.

Section 2.06.010 Agenda-Related Materials as Public Records: Agenda Subscribers

In addition to providing access to all records which are public records pursuant to the Public Records Act and this Chapter, the Secretary of the Board shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. The Port may charge a fee to agenda subscribers and media organizations to cover reasonable mailing costs of the agenda and agenda-related materials. Neither this Section nor the Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act or this Chapter.

B. The Secretary of the Board shall make available for immediate public inspection and copying all agenda-related materials that have been distributed to a majority of the Board. The right to immediate public inspection and copying provided in this Section shall not include any material exempt from public disclosure under this Chapter or under State or federal law.

C. All requests by agenda subscribers to receive agendas or agenda-related materials by mail or by email shall be made in writing and delivered to the Secretary of the Board by mail or by email. Any written request shall be valid for the calendar year in which it is filed, and must be renewed after January 1 of each year.

D. Notwithstanding any other Provision of this Chapter, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this Section shall not constitute grounds for invalidation of the actions of the Board taken at the meeting for which the agenda or the agenda-related material was not timely received.

Section 2.06.020 Barriers to Attendance Prohibited

A. The Board shall not conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system shall be used to permit the overflow audience to listen to the proceedings, unless the speakers would disrupt the operation of the Port or the Board meeting.

B. Any person attending an open meeting of the Board shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings.

Section 2.06.030 Public Testimony at Regular and Special Meetings

A. Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address the Board on items of interest to the public that are within the Board's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by the Brown Act (California Government Code § 54954.2(b)). The agenda of local bodies need not provide an opportunity for members of the public to address the Board on any item that has already been considered by the Board or a standing committee composed exclusively of Commissioners, at a meeting in which members of the public were afforded the opportunity to address the Board or standing committee before or during the Board's or standing committee's consideration of the item, unless the item has been substantially changed since the Board or the standing committee heard the item, as determined by the Board.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the Board concerning that item before taking action. The President of the Board or presiding officer may request speakers representing similar views to designate a spokesperson in the interest of time. Nothing shall prohibit the Board from adopting rules for allocating additional time to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the Board's consideration of those items.

C. The Board shall provide that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the Board that all speakers be entitled to a minimum of two minutes of speaking time per agenda item, subject to the discretion of the presiding officer of the Board or meeting. The President of the Board or presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the Board.

D. The Board shall not abridge or prohibit public criticism of the policies, procedures, programs or services of the Board or Port, or of any other aspect of its proposals or activities, or of the acts or omissions of the Board, even if the criticism implicates the performance of one or more public employees. Nothing in this Subsection shall confer any privilege or protection beyond that which is otherwise provided by Law.

E. Members of the public may also submit written comments concerning any item on the agenda for any regular or special meeting of the Board by sending mail or email to the Secretary of the Board, which comments shall be provided to each Commissioner prior to the consideration of the item. Nothing shall prohibit the Board from adopting rules for establishing deadlines by which such written comments must be submitted. Subject to the Board's allocation of a budget and availability of technology feasible for Port implementation, the Board may adopt at its discretion procedures in compliance with Law (including the Brown Act) to allow members of the public to submit comments through other alternative specified online media or channels, such as social media or blog sites.

F. The Board has and may adopt further rules of public participation. In case of conflict between this Chapter and any such further rules of public participation adopted by the Board, the more specific rule shall govern.

Section 2.06.040 Minutes and Recordings

A. The Board shall record the minutes for each regular and special open meeting convened under the Provisions of this Chapter. At a minimum, the minutes shall state the time the meeting was called to order, the names of the Commissioners attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the Board began and ended any closed session, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each open meeting shall be available for inspection and copying upon request no later than ten (10) business days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes are adopted.

B. The Board shall make a visual and audio recording of every open meeting. The Board shall audio tape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least four years, provided that if during that four-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the Board. Notwithstanding any other provision of Law, the Board shall permanently maintain all recordings of all its meetings.

C. Subject to the Board's allocation of a budget and availability of technology feasible for Port implementation, the Board may adopt at its discretion procedures in compliance with Law (including the Brown Act) to broadcast live or recordings of its open meetings, including television broadcasts, streaming online or other broadcast media or channels. Subject to the requirements of Law (including the Brown Act), the availability of the recording online and the referral to available online streaming or broadcasting of any recording of an open meeting shall be deemed responsive to any request for inspection of such recording of open meetings.

Section 2.06.050 Online Transparency and Disclosures

A. In addition to other online posting requirements set forth in this Chapter, the following documents shall be available online to members of the public:

1. This Chapter.
2. Any rules of public participation adopted by the Board.
3. Procedures for submission of public comments on agenda items through the email or other online media or channels as adopted by the Board.

4. Procedures for submissions and response to public records requests under the Public Records Act.
5. Board or Port administrative policies relating to expenditures relating to travel and hosting.
6. Board or Port administrative policies relating to conflict of interest or incompatible activities of public officials.
7. Salaries and compensation of Port employees displaying the amount of total compensation paid for each Port employee identified only by his or her job title.

B. Subject to the Board's allocation of a budget and availability of technology feasible for Port implementation, there shall be available online system of public records requests and tracking of the response to such requests.

Section 2.06.060 Enforcement of Open Meeting Laws

A. Where a member of the public alleges that the Port has failed to comply with the Open Meeting Laws, such member of the public must comply with the cure and correction procedures set forth in this Chapter. The Port Attorney shall be charged with investigating and responding to any such allegations.

B. Any Person alleging Port noncompliance with the Open Meeting Laws shall submit a written request for cure and correction to the Secretary of the Board clearly describing the nature of the alleged noncompliance, including the facts and circumstances of the alleged noncompliance, any legal theories supporting the allegation, and the nature of the corrective action requested. Generalized concerns or conclusory arguments, unsupported by specific factual or legal arguments against the challenged actions, are not sufficient. Oral comments made to Port staff or at meetings shall not be accepted in lieu of a request for cure and correction.

C. When the alleged noncompliance was the failure to adequately provide notice on the agenda of an action taken in open session of a Board or standing committee meeting, the request for cure and correction must be made within thirty (30) days of that action. In all other cases, the deadline is ninety (90) days from the time the action was taken.

D. Upon receipt of the request for cure and correction, the Port Attorney shall investigate the alleged noncompliance and shall respond to the requestor within thirty (30) days of receipt by the Secretary of the Board. The Port Attorney's response shall indicate whether the request was found to have merit. If the Request is found to be without merit, it shall be dismissed by the Port and the Port shall take no further action. If the request is found to have merit, the Port Attorney shall indicate either that a cure or correction has been made, or that none will be made.

E. Any requestor who files three requests for cure and correction found to be without merit by the Port Attorney, shall be deemed a Vexatious Requestor for one (1) year from the date of his or her third meritless request. Further requests submitted by a Vexatious Requestor shall be accompanied by a \$300.00 deposit. Should any request submitted by the Vexatious Requestor

be found to have merit by the Port Attorney, the \$300.00 shall be refunded to the Vexatious Requestor. Otherwise, deposits shall be nonrefundable.

F. Requesters submitting requests for cure and correction are advised that any action to seek judicial review of the Port Attorney's response to a request may be time barred under the Brown Act if such action is filed more than fifteen (15) days after the requestor's receipt of the Port Attorney's response.

G. The Port has a compelling interest in complying with the Open Meeting Laws. The Port is entitled to learn of any allegations of noncompliance with the Open Meeting Laws and shall be provided the opportunity to cure and correct any such noncompliance prior to institution of any other administrative action concerning the Port or the institution of litigation. For these reasons, the request for cure and correction procedures set forth in these Rules have been established as the Port's one and only system for receiving allegations of noncompliance with the Open Meeting Laws and for investigating and responding to such allegations. In any lawsuit alleging noncompliance with the Open Meeting Laws that may be filed against a Port action, the issues and evidence shall be limited to those raised in a timely request for cure and correction. Failure to file a timely request for cure and correction shall be an absolute bar to further administrative and judicial review of the alleged noncompliance with the Open Meeting Laws. Where, as here, administrative machinery exists for the resolution of Open Meeting Laws complaints, the courts will not act until such administrative procedures are fully utilized and exhausted. The Port Attorney shall be granted substantial deference in reasonably interpreting this Chapter and Chapter 2.05. Litigants whose claims under this Chapter or Chapter 2.05 are found to be without probable cause shall be required to reimburse the Port for its reasonable attorneys' fees and costs, including an amount attributable to Port Attorney time.