

## **BACKROOM DEALING IN DEVELOPING CITY-OWNED PROPERTIES IN OAKLAND**

### **EXECUTIVE SUMMARY**

The Grand Jury investigated complaints that the Oakland City Council makes important decisions about the development of city-owned property behind closed doors. We examined three parcels of city-owned property in which the city held more than 45 closed session meetings for projects valued at more than \$500 million. The Grand Jury found that the Oakland City Council discussed key matters such as project vision, feasibility, and proposal requirements in closed session, and ultimately deliberated about and selected the project developers in private meetings not subject to public scrutiny.

Although the state’s Brown Act and city’s Sunshine Ordinance require open discussions for all but a handful of matters, the City Council has seized upon one of them – the real estate exception – to allow important decisions affecting city-owned property to be made without public participation. The plain wording and intent behind the open-meeting statutes allows public boards to discuss in closed session items that would affect an agency’s bargaining position in a real estate transaction, but does not permit a City Council to keep its deliberation about the basic nature of a transaction confidential.

This conduct precluded participation by the public in determining the best use of city-owned property and the selection of developers. Openness in government is a foundation of our democracy. It protects the public from backroom dealing and helps to ensure that government is transparent and accountable. The city must provide a “level playing field” by seeking meaningful community input and deliberating publicly before selecting its developers.

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## BACKGROUND

### Oakland City Council

The Oakland City Council is made up of eight members elected directly by the citizens of Oakland, and is the governing body of the city. There is one representative from each of seven districts and one representative at-large. The council sets goals and priorities for the city, approves the budget, adopts ordinances, and appoints members to various boards and commissions. It operates through six committees, each with four councilmembers, which review proposed legislative actions before forwarding to the full City Council for final action. Much of the council's work occurs at the committee level during open meetings that invite public participation.

The City Council also serves as the successor to the city's former Redevelopment Agency. In that capacity, council is responsible for making decisions about development of the city properties that are the subject of this report. Development projects formerly owned by the Redevelopment Agency are first considered by the council's Community and Economic Development (CED) Committee, which forwards its recommendations to the full council for approval. The staff supporting the projects for the former Redevelopment Agency property are in the city's Economic Workforce and Development Department.

### Brown Act

The open meeting law in California is known as the Brown Act and was adopted by the state legislature "to ensure the public's right to attend the meetings of public agencies," as well as "to facilitate public participation in all phases of local government decision making and to curb misuse of the democratic process by secret legislation by public bodies." (Gov. Code section 54950 et seq.)

To effectuate these purposes, the Brown Act "requires that the legislative bodies of local agencies hold their meetings open to the public except as expressly authorized by the Act." One of these exceptions, the one at issue here, covers certain aspects of real estate negotiations. Specifically, the Brown Act permits a local legislative body to hold a closed session with its negotiator to "**grant authority to its negotiator**" regarding the "**price and terms of payment**" in connection with the purchase, sale, exchange or lease of real property." (Gov. Code section 54956.8, emphasis added)

## Oakland Sunshine Ordinance

Oakland adopted a Sunshine Ordinance supplementing the requirements of the Brown Act in order to "assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city." (Oakland Municipal Code, Chapter 2.20)

The Sunshine Ordinance adopts all provisions of the Brown Act and imposes additional requirements on closed sessions including: making what are guidelines under the Brown Act for describing closed session agenda items mandatory (section 2.20.100), and disclosing any parts of closed sessions that are not confidential (section 2.20.130). The Oakland ordinance, unlike the Brown Act, requires the City Council to hold a public session in which council discusses the advisability of taking an action involving disposition of city-owned property before making a final decision (section 2.20.120(B)).

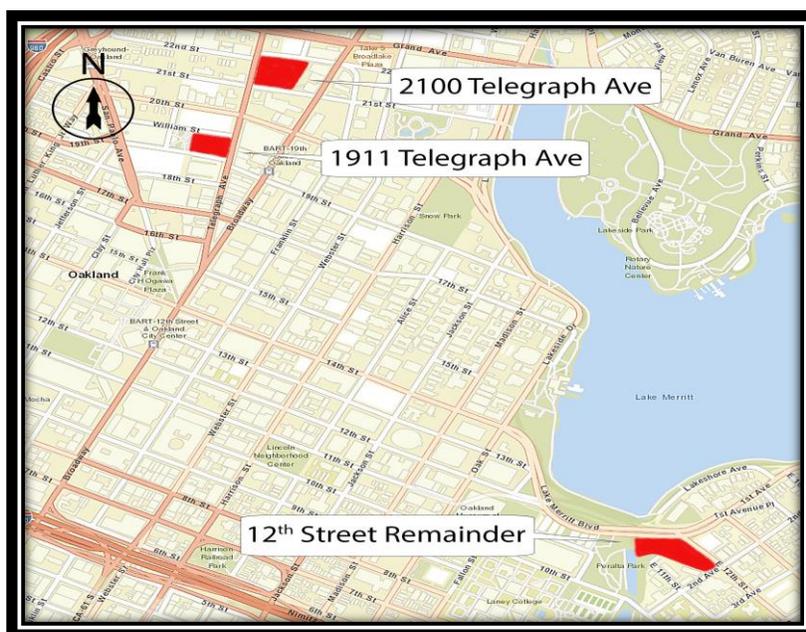
## **INVESTIGATION**

During the investigation, the Grand Jury heard testimony from several witnesses, including city employees and elected officials, and reviewed numerous documents and other materials, including:

- Staff reports, meeting minutes, and video recordings from Oakland City Council meetings concerning development of the three city-owned properties;
- Closed session agendas prepared by the Oakland City Attorney indicating “conference with real property negotiators” concerning the three projects;
- Community and Economic Development Committee staff reports, meeting minutes, and video recordings;
- Requests for proposals and proposals submitted in response thereto;
- The Brown Act, Gov. Code 54950 et seq.;
- The City of Oakland Sunshine Ordinance, Oakland Municipal Code chapter 2.20;
- Office of the Attorney General, State of California, Opinion No. 10-206, dated December 27, 2011;
- League of California Cities response of August 6, 2010, to draft of AG Opinion No. 10-206; and
- Open & Public V: A Guide to The Ralph M. Brown Act, League of California Cities, revised April 2016.

The Grand Jury contacted a representative of the city attorney's office for comments on the legal issues involved in this investigation, but was informed that the attorney-client privilege prevented the city's lawyers from discussing the matter.

Acknowledging the city's broad discretion in selecting developers for city-owned property, the Grand Jury did not review or evaluate the merits of the developers chosen for any of the three projects it investigated, known as 1911 Telegraph, 2100 Telegraph and the 12<sup>th</sup> Street Remainder Parcel. Instead, the Grand Jury looked at the process for selecting those developers. The investigation considered whether the City Council violated state and local open meeting laws and whether there were other irregularities in the selection processes.



### 1911 Telegraph

The city owns a 1.06-acre vacant parcel (property) in the Uptown area of the city across the street from the Fox Theater. The property has been described as a dynamic location with the ability to become a transformational development for this neighborhood. The estimated cost of developing the project is between \$150 and \$200 million.

On October 8, 2014, city staff issued a Request for Proposals (RFP) for mixed-use retail and housing on the property, with a hotel option. The parameters and scope of the project were not discussed in public session nor was public input sought. On December 8, 2014, staff received eight submittals in response to the RFP.

According to city documents, staff sought and received City Council's guidance on the preferred project type at the closed session on May 19, 2015. At the private meeting, council added non-negotiable project requirements that were not part of the original RFP. As a result, the responding developers were told to revise their proposals to include a hotel (now mandatory), affordable housing, a neutrality agreement with labor unions, a project labor agreement, and compliance with the city's employment and local business participation requirements. No decisions from this closed session meeting were reported to the public at the open session meeting that followed.

Six developers submitted revised proposals that were reviewed and ranked by a panel. This process is commonly used to ensure each project is evaluated by experts in the development field. One proposal was ranked first by the panel and recommended by staff to the City Council.

On October 29, 2015, the City Council met in closed session to review the panel and staff recommendations. Council rejected the recommendation and decided to have the three highest-ranked developers present their proposals for the property to the Community and Economic Development Committee in open session. This result and council's reasoning was not reported in open session.

On December 1, 2015, the three developers presented their projects to a joint City Council and CED committee meeting. This was the first opportunity for the public to provide comments on the project and developers. While city councilmembers did ask some questions, there were no deliberations among the councilmembers in public. In explaining the developer selection process to council, the city's project coordinator stated, "We will follow this with another visit to closed session of the council to seek further direction on the final recommendation."

One developer – the one ranked third by the panel and staff – made significant last-minute changes to its proposal. The retail component increased from 18,000 square feet in its written proposal to 55,000 square feet. This developer also increased the number of affordable housing units it planned to build.

This same developer had not submitted a financial statement as required in the RFP, explaining that, as a privately held firm, it did not want its financial information to be made public. In its written proposal, and again in its public presentation, the developer offered to share its financial records privately – but only after it was selected for the project.

On January 5, 2016, the City Council met again in closed session. Although the meeting agenda states that council would be discussing price and terms of disposition of the property, council used that closed session to deliberate and select the third-ranked developer for negotiations. This action was confirmed in the staff report for the CED committee meeting on February 23, 2016. Once again, nothing was reported out to the public when the open session commenced.

On February 23, 2016, the CED committee met and affirmed the City Council's closed session decision to direct staff to negotiate an Exclusive Negotiating Agreement (ENA) with the council's preferred developer. While the staff report summarized the council's closed session decision and rationale, there was no public discussion about the merits of the different options, only congratulations to the developer for what it was offering.

On March 1, 2016, as part of its consent calendar, the City Council affirmed its earlier decision to select the developer without comment or public discussion.

The City Council or its CED committee held three public meetings where the agenda included development of 1911 Telegraph. At none of them – on December 1, 2015, February 23, 2016, or March 1, 2016 – was there a public discussion among the elected decision makers about the advisability of policy decisions, changes to the RFP, changes to the selection process, or final selection of a developer. While limited questions were asked of the developers at the December meeting, the chair made a point to state that the council would be deliberating in closed session.

The meaningful discussions by the City Council concerning the project took place behind closed doors. The council expanded the scope of the project, added key requirements to the RFP, decided to require public presentations from the top three proposers, and ultimately chose the developer all behind closed doors. The Grand Jury heard testimony that “price and terms of payment for disposition of property” were not discussed at these three closed session meetings.

While there is ample opportunity for the public to comment at each open meeting, the ability to speak has limited value if the public does not know what substantive discussions took place in closed session. For example, the council added community amenities to the proposal requirements that have financial consequences. The public, however, had no say as to whether the costs of these amenities were worth the benefits associated with them. The only opportunity the public had to participate in the council's decisions concerning this valuable piece of property was to hear and comment upon presentations by three developers concerning a project whose scope had been delineated in private. The public never heard the thoughts and reasoning of its elected councilmembers regarding its

choice of a developer. There was no public deliberation on the advisability of choosing one developer over the other two, a violation of section 2.20.130 of the Oakland Sunshine Ordinance.

The ENA with the council's preferred developer expired. The developer did not proceed with the proposed project. The city has not announced publicly how it intends to proceed.

### 2100 Telegraph

In May of 2014, the city received an unsolicited proposal to develop 1.76-acres of city-owned property in the Uptown area on 2100 Telegraph Avenue. The city held closed session meetings on July 29<sup>th</sup> and 30<sup>th</sup> to discuss this project. No closed session actions were reported to the public in open session. The only open session discussion concerning selection of the developer was held on October 14, 2014. At this meeting the Community and Economic Development Committee recommended that the council negotiate an ENA with the developer that submitted the unsolicited proposal. On October 21, 2014, as part of its consent calendar, the City Council adopted a resolution directing staff to negotiate an ENA with the developer. The staff report for this meeting did not disclose the reason this estimated \$200 million residential and hotel project was sole-sourced.

Between October of 2014 and July of 2016, the city scheduled 24 closed session meetings to discuss the project. At the open session meeting on July 5, 2016, the ENA previously entered into with the initial development team was assigned to a newly formed entity, a joint venture partnership with the initial development team and a new partner. This appeared to be a continuation of the non-competitive city process of developer selection. Since then, 2100 Telegraph has not been discussed at any City Council or CED committee meeting, open or closed.

The only meaningful opportunity for public input on the selection of the developer on this project was at the CED committee meeting in October of 2014. The city selected the developer for exclusive negotiations without soliciting competitive proposals from other developers. For projects of this magnitude, the city typically issues an RFP describing the nature of the project it wants for the property, and solicits proposals from potential developers. With multiple offers, the city can assess proposals and determine, hopefully with public input, which one best meets the city's goals for development.

Operating behind closed doors gives the appearance of favoritism by the city and raises many questions: Is the city getting a competitive price for its property? Why was this developer chosen? Why was there no RFP?

### 12<sup>th</sup> Street Remainder

The city owns a parcel of vacant property just under one acre in size that is located between East 12<sup>th</sup> Street, 2<sup>nd</sup> Avenue and Lake Merritt Boulevard. The parcel, commonly known as the 12th Street Remainder, was planned by the city to be developed as high density residential. The cost of the project is estimated to be between \$150 and \$200 million.

On July 14, 2015, the city issued a Notice of Offer and Intent to Convey the Property to potential developers. The city received responses to the notice from five entities. Staff assembled a panel to evaluate the proposals to negotiate with the five respondents. After evaluating the proposals, the panel and staff unanimously recommended one of the proposals to the City Council. The council decided instead, in closed session, to have the three top-ranked development teams present their proposals for the parcel to the CED committee and the public before a final selection was made.

The City Council scheduled six closed session meetings concerning the parcel between September 14, 2015, when the city received responses from developers, and February 29, 2016, the open meeting where developers made presentations. The item on the agenda for each of these meetings identified the 12<sup>th</sup> Street Remainder project under “conference with real property negotiators” to discuss “price and terms for disposition of property.” No decisions or other actions from any of these closed session meetings were reported out in the City Council’s open sessions.

On February 29, 2016, the CED committee met to hear the three proposals. The staff report for this committee meeting was the first public notice that council had decided to hear presentations from the three top-ranked developers instead of selecting the one developer recommended by the selection panel and staff. More importantly, this was the first and only time for the public to provide meaningful input on the project and the proposals of the three developers. Once again, while the committee members asked questions of the three developers during this meeting, they did not engage in substantive discussion regarding the relative merits of the competing proposals. The committee chair closed the meeting by stating – “We’re gonna move this discussion back into closed session, where there’ll be more questions asked of city staff, and asked of you [pointing to the audience], before we make our final decision.”

On March 1, 2016, the City Council held a closed session to discuss development of the parcel. Although no decision was reported out of that meeting, the Grand Jury believes that council deliberated and chose a developer for the parcel because, two days later on

March 3, 2016, the following press release was issued by the city: “The Oakland City Council has directed city staff to prepare for consideration of approval on March 15, 2016, an ENA with the development team of [Name of Development Team] regarding development of the 12th Street Remainder parcel.” The deliberations that led to council’s choice of a single developer from the three that made public presentations were conducted in closed session, with no opportunity for public comment.

On March 15, 2016, the city held another closed session meeting on this project and later that day held a meeting which began in open session. However, during the open forum part of the meeting, members of the public became unruly, requiring the council to reconvene in a room without the public present. After deliberating on the project, the council directed staff to enter into an ENA with the selected developer. The video of the meeting revealed some candid conversation by the council on the project, particularly in discussing the market rate housing element.

Council agendas show at least 16 closed session meetings where this project was discussed. At the only public meeting, none of the councilmembers present engaged in a substantive discussion about the relative merits of the three proposals. At no time did council have a public discussion about the advisability of selecting one of the three developers before making a final decision.

The city recently executed a Disposition and Development Agreement for the 12<sup>th</sup> Street Remainder parcel.

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### Open Meeting Laws

While the Grand Jury recognizes that closed session meetings with real estate negotiators are essential to protect a public agency’s negotiating position – if the opposing party had information about a public body’s bargaining limits prior to negotiations, the public agency would lose any opportunity to bargain – there are important limits concerning how closed sessions involving real estate negotiations must be disclosed both beforehand and afterwards, and limits on what can be discussed.

Before every closed meeting, an agenda must be published that identifies the property address, agency negotiator, and negotiating parties, and states whether price or terms of payment or both will be addressed.

Government Code section 54957.1 requires that the “legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present. . . .” For real estate negotiations, the Brown Act requires public reporting only when the body has reached a final agreement in closed session. The Oakland Sunshine Ordinance requires public disclosure of the parts of closed session discussions that are not confidential (section 2.20.130) and public discussion about the advisability of taking action regarding development of city property before making a final decision (section 2.20.120(B)).

Regarding the scope of permissible closed session discussions, the California Attorney General provided a legal opinion as to what matters may be discussed in closed session under the real estate negotiation exception of the Brown Act. The opinion (AG Opinion No. 10-206) looked to the legislature’s intent when enacting the statute – that the actions of public bodies be taken openly and that their deliberations be conducted in full view of the public: “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Attorney General explained that the real estate exception must therefore be construed narrowly, always in favor of the public’s right to access to public information. The real estate negotiations exception does not permit the closed session discussion of “any and all aspects of a proposed transaction that might have some effect on price and payment terms.”

As to what is meant by the phrase “regarding the price and terms of payment,” the Attorney General stated that the terms have their ordinary meaning: “price” is the amount of consideration given or sought in exchange for the real property rights, and “terms of payment” is the form, manner, and timing upon which the agreed upon price is to be paid. The plain language of the exception rules out any possibility that the statute is meant to authorize closed session discussions of any and all terms of the transaction as a whole. Matters such as property easements, credit worthiness of the buyer, and the financial condition of the local agency do not fall under the exception and thus should be discussed in open session. The Attorney General concluded that the real estate exception is intended “to protect the agency’s bargaining position, not to keep confidential its deliberations as to the wisdom of a proposed transaction.”

The League of California Cities (League) is an association of California city officials from 475 member cities. The League was given the opportunity to comment on a draft of AG Opinion 10-206 before it was published. Noting that the intent of the real estate exception was to protect the financial interest of the local agency and to inform or develop a negotiating strategy, the League argued that a legislative body should be able to discuss with its negotiators in closed session any term in the prospective agreement that could affect the economic value of the transaction.

While supporting a broad construction of the real estate exception, the League acknowledged case law holding that the purpose of the real estate exception was “not to shield from the public the legislative body’s discussion of basic policy issues, but to facilitate the body’s negotiation of a specific real estate transaction.” It also conceded that the Brown Act should be viewed as a “floor, not a ceiling” for describing the scope of closed sessions, and that local policies going “beyond the minimum requirements of law may help instill public confidence and avoid problems.”

The League currently acknowledges on its website that, while agency attorneys want to construe the exception broadly, others (presumably including the California Attorney General) “take a narrower, more literal view of the phrase.”

The Grand Jury heard extensive testimony that items other than price and terms of payment were discussed in closed session. These discussions included project feasibility, vision for the properties, and community benefits from the project. Closed session discussions have clearly strayed beyond “price and terms of payment” for disposition of city property.

### City’s Closed Session Meetings

The Oakland City Attorney’s Office presided over closed session meetings concerning the three real estate transactions; the staff attorney assigned to the particular project being discussed was also present. The city negotiators were typically employees of the Economic and Workforce Development Department and the City Administrator’s Office. The city attorney prepared and posted agendas for the closed sessions, and staff usually prepared confidential reports for the meetings that were reviewed in advance by the city attorney.

Agenda item descriptions for these closed sessions generally follow the suggested language provided in the Brown Act (Gov. Code section 54954.5), with one notable difference. The Brown Act recommends that an agenda for a closed session involving real estate negotiations “[s]pecify whether instruction to negotiator will concern price, terms of payment, or both.” The city’s closed session agendas for the 1911 Telegraph and 12<sup>th</sup>

Street Remainder projects omitted the words “of payment.” Left unqualified, the agenda description, “price and terms for disposition of property,” may lead to broad interpretations of what are permissible topics under the Brown Act in meetings not open to the public. The Sunshine Ordinance (section 2.20.100) makes the suggested language of the Brown Act mandatory. Hence, a number of city closed session agenda notices did not comply with the Sunshine Ordinance.

The purpose of these closed sessions is to give direction to the agency’s negotiator regarding price and terms of payment in their negotiations with the other party. However, many of these meetings occurred during the city’s selection process, involving multiple developers, making such negotiations improbable.

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### Required Financial Statement

The RFP for the 1911 Telegraph property required developers to submit financial statements with their proposals, and stated that submittals that did not include all the specified elements would be deemed nonresponsive and ineligible for consideration. The developer that was ultimately chosen by City Council did not include a financial statement with its submission, and at the public meeting in front of the CED committee, the developer offered to submit its financials confidentially, after it was selected. While the developer eventually produced a financial statement for review in the offices of a local attorney, it benefited from receiving a temporary waiver of this RFP requirement when other developers did not.

The Grand Jury believes that the city must follow its own requirements, and not consider proposals that are incomplete unless compliance with RFP terms is waived in writing by the city and fully disclosed to other respondents. To protect the confidentiality of developers, the RFPs can specify an alternative process when financial statements will be reviewed confidentially and will not be made available for public scrutiny, but the council must have a sound basis for concluding that a developer has the financial ability to build the project it proposes before that developer is chosen.

### Changes to Proposal

For the 1911 project, one of the developers – again, the one ultimately chosen by council – presented publicly a proposal that differed from the written submittal that had been ranked by the panel. The new proposal substantially increased the amount of low-income housing and retail space. The other two development team finalists were not made aware by city staff that changes to their proposal would be permitted. Last year, the Grand Jury reported that the City Council allowed last-minute changes to the proposal of one of the bidders on the Zero Waste Franchise contract that negated the rigorous RFP process developed by staff.

Selection of a developer for a project on city-owned property must be on a level playing field. The city should follow its own RFP process for the sake of fairness to all developers and for assuring the integrity of the city's vetting process. All responders to an RFP should be informed whether or not their proposals are final as of the submission date so that they can be compared fairly against one another. Allowing one applicant to make an 11<sup>th</sup> hour revision that increased the cost of the project made moot the evaluation panel's recommendations about the viability of the respective proposals. If the city wants to allow changes to the proposal, then all the finalists must be given the same opportunity to make changes.

Staff must be allowed to reevaluate the feasibility of a changed project. Without that input, council is making its decisions with incomplete information. The City Council benefits from the input and expertise that staff and panel members provide in their assessment of proposals.

### Private Discussions between Councilmembers and Developers

Another issue that concerns the Grand Jury involves ex parte or private communications between councilmembers and the developers when a competitive process is underway. The Grand Jury learned that such communications are common. We also learned that the city has no general rule precluding these communications, nor does it require councilmembers who have such communications to disclose them to other councilmembers or to the public.

The Grand Jury is concerned that private discussions during the pendency of the selection process favor well-connected developers, and make the process vulnerable to undue influence, or at least the perception thereof. We learned that the council as a whole gives deference to the councilmember in whose district a project is located, giving that one

individual greater influence over a decision, with ramifications for the whole city. This practice makes transparency during the selection process even more important.

While the Grand Jury recognizes that councilmembers are important contacts for developers and others wishing to do business with the city, once an RFP is issued, the city must require councilmembers to disclose such communications publicly. A number of cities in California have adopted rules requiring the disclosure of ex parte contacts including Santa Barbara, Berkeley, Palo Alto, Santa Monica, Mountain View and Thousand Oaks. While the city of Oakland has no such rule, it did restrict bidders on its Zero Waste Franchise contracts from contacting city officials for the purpose of influencing the selection process. These restrictions, which applied specifically to the Zero Waste Franchise RFP, indicated the city's commitment to an open procurement process.

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## CONCLUSION

The city's process for selection of developers for city-owned property is not open and transparent. The real estate exception to the Brown Act does not give the council free reign to discuss policy, project vision, and RFP terms, or the authority to deliberate about and select developers, in private meetings. These matters are intended to be discussed openly in public, not behind closed doors. When deliberations occur in closed sessions, the public and those doing business with the city are given the perception that backroom deals are being made. Key questions are left unanswered for the public. Intended to protect the financial interests and negotiating position of a public agency, the Brown Act's real estate negotiation exception limits closed-door discussions to providing direction to its negotiator regarding the price and terms of payment.

While the Grand Jury only investigated three recent city development projects, it is concerned that the city's misuse of closed sessions in discussing development of city property is a systemic problem. Public deliberations are important. The city must provide an environment whereby public participation in developer selection is invited. In addition, developers must believe that they will be treated fairly and equitably, thus promoting a competitive selection process benefiting the city. The city must follow open meeting laws

to prevent further misuse of closed session meetings and eliminate the inequities in the developer selection process.

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## FINDINGS

### Finding 17-1:

The Oakland City Council misapplies the real estate negotiation exception to the open-meeting requirements of the Brown Act and the Oakland Sunshine Ordinance, thereby shielding the deliberative processes – including discussions and debates regarding project vision, project scope, feasibility issues, community benefits, and the ultimate selection of a developer – from public scrutiny.

### Finding 17-2:

The city's closed session agendas for discussions of the 1911 Telegraph and 12<sup>th</sup> Street Remainder projects did not comply with disclosure requirements in the Brown Act and the Oakland Sunshine Ordinance.

### Finding 17-3:

The Oakland City Council violates the city's Sunshine Ordinance by failing to discuss publicly the advisability of selecting particular developers for projects on city-owned property before making final decisions (section 2.20.120(B)) and failing to disclose the parts of closed session discussions that were not confidential (section 2.20.130).

### Finding 17-4:

Unauthorized closed sessions prevent the public from witnessing council deliberations, preclude public input into planning, and restrict public participation in the selection of appropriate developers for city-owned property.

### Finding 17-5:

The city of Oakland unfairly applied the requirements of its RFP for 1911 Telegraph by allowing the successful proposer to wait until after it was chosen to provide required financial information.

### Finding 17-6:

A developer was allowed to change the scope of its proposal for 1911 Telegraph at the last minute. This put the other proposers at a disadvantage, and resulted in the city choosing that developer without the benefits of staff analysis of the new proposal.

*Finding 17-7:*

Oakland City Councilmembers privately discuss projects with developers whose proposals are pending, and the communications are not disclosed publicly before one developer is selected. This compromises public scrutiny of the selection process because citizens have no ability to assess the strength or weakness of private arguments made by developers in support of their proposals.

## **RECOMMENDATIONS**

*Recommendation 17-1:*

The city of Oakland must comply with the Brown Act and city of Oakland Sunshine Ordinance provisions relating to the real estate exception. The city must limit closed session discussions concerning proposed real estate development projects to price and terms of payment, and ensure that deliberations on matters such as project vision, project scope, feasibility issues, community benefits, and selection of a developer are conducted openly, allowing the public to be informed about and comment intelligently upon proposals for use of city-owned property.

*Recommendation 17-2:*

The city of Oakland must follow its Sunshine Ordinance by conducting open meetings in which councilmembers discuss publicly the advisability of any proposed disposition of city-owned property before making final decisions.

*Recommendation 17-3:*

The city of Oakland must update its training for public officials on open meeting laws to prevent the city from misapplying the real estate negotiation exception.

*Recommendation 17-4:*

The city of Oakland must enforce requirements of its RFPs even-handedly to create a level playing field for all proposers, and to allow city staff a full record with which to vet competing proposals.

*Recommendation 17-5:*

The city of Oakland must treat developers who respond to an RFP equitably by informing all RFP respondents whether changes to proposals after the submission date are permitted.

*Recommendation 17-6:*

The city of Oakland must adopt rules to address private communications between councilmembers and proposing developers before a developer is selected.

**RESPONSES REQUIRED**

Oakland City Council:

*Findings 17-1 through 17-7*

*Recommendations 17-1 through 17-6*