

Approved as to Form and Legality\*\*

---

City Attorney  
City of Oakland

**Public Ethics Commission**  
September 11, 2006

In the Matter of

) Complaint Nos. 06-09;  
) 06-10; 06-11; 06-12;  
) 06-13; 06-14; 06-15;  
) 06-16; 06-17  
) **CONSOLIDATED**

David Mix filed Complaint No. 06-09 on July 31, 2006.  
Ken Pratt filed Complaint No. 06-10 on August 2, 2006.  
D. Allen Mix filed Complaint No. 06-11 on August 2, 2006.  
John Howard filed Complaint No. 06-12 on August 15, 2006.  
Michael and Loretta Ferraro filed Complaint No. 06-13 on August 15, 2006.  
Caryen King filed Complaint No. 06-14 on August 15, 2006.  
Barbara H. Harmon filed Complaint No. 06-15 on August 15, 2006.  
Charles Pine filed Complaint No. 06-16 on August 15, 2006.  
Mary Becker filed Complaint No. 06-17 on August 15, 2006.

The above-named persons filed their respective complaints alleging that the Oakland City Council violated the Sunshine Ordinance by failing to provide adequate public notice for a library bond measure at least ten days before a July 18, 2006, meeting of the Oakland City Council at which the item was adopted. **Attachment 1.**

## **I. BACKGROUND**

In 2002, the Oakland Public Library staff began developing a Master Facilities Plan outlining goals for the improvement of library services. At a June 27, 2006, meeting of the City Council's Life Enrichment Committee, Library staff requested the Committee to recommend that the City Council adopt a series of recommendations contained in the Plan. Staff reported at the June 27 meeting that it would "return to the City Council" with a proposal to implement the Plan's recommendations. The Committee voted to approve most of the recommendations and directed Library staff to return to the Committee's July 11, 2006, meeting with proposals to fund them.

The agenda for the July 11, 2006, Life Enrichment Committee meeting noticed the following item:

<b>Item 8</b>	<b>Subject:</b>	<b>Oakland Public Library's Master Plan</b>
	<b>From:</b>	<b>Oakland Public Library</b>

**Recommendation: A Presentation Of Implementation Options For The Oakland Public Library's 2006 Draft Master Facilities Plan And Request For Council Direction  
*Attachment 2.***

On June 29, 2006, Library staff timely filed a written report outlining five options for financing the Master Facilities Plan. Each option contemplated using public bonds to finance the improvements. ***Attachment 3.*** The bonding costs varied from \$117 to \$240 million, depending on the various improvements. At the July 11, 2006, Life Enrichment Committee meeting, Library staff additionally submitted to the Committee a modified version of one of the five funding options which ultimately became known as Option 6. ***Attachment 4.*** The Committee voted to recommend that all six financing options be forwarded to the full City Council for consideration.

Two days later, on July 13, 2006, the City Council's Rules And Legislation Committee considered the Life Enrichment Committee's recommendations that the City Council adopt the recommendations contained in the Master Facilities Plan and consider the various proposals to finance them. The agenda description for those items read as follows:

- Item 13      Subject:      Oakland Public Library's Master Plan  
From:        Oakland Public Library  
Recommendation: A Presentation Of Implementation Options For The Oakland Public Library's 2006 Draft Master Facilities Plan And Request For Council Direction**
- Item 14      Subject:      Oakland Public Library's Master Plan  
From:        Oakland Public Library  
Recommendation: Adopt One Of the Following Five Optional Groups Of Legislation**

***[Option One through Option Five were then separately listed and described. Each option contained the title of a draft resolution declaring the necessity of issuing general obligation bonds in specific amount, and a draft ordinance requiring that the proposed bond issue be placed on the November, 2006, ballot.] Attachment 5.***

Library staff submitted a written report for the July 13, 2006, Rules Committee Meeting on June 29, 2006, at the same time it submitted its written report for the Life Enrichment Committee. The Library staff's written report described the initial five funding options, and Library staff who attended the meeting verbally advised the Rules Committee that the Life Enrichment Committee had forwarded, two days earlier, a sixth option for approval. The Rules Committee voted to agendize all six funding options for City Council consideration at a special meeting set for the following Tuesday, July 18, 2006.

The Rules Committee also directed that an additional six financing options be agendaized for consideration, in addition to the six already recommended by the Life Enrichment Committee.

On July 14, 2006, the day after the Rules Committee meeting, the City Clerk's Office posted, filed and distributed the agenda for the July 18, 2006, City Council meeting. That agenda identified the 12 financing options forwarded by the Rules Committee together with the accompanying resolutions and ordinances for each financing option. **Attachment 6.**

At the July 18, 2006, City Council meeting, the City Council took up the financing proposals well after midnight in the early morning hours of July 19, 2006. The City Council approved financing Option 6 -- A proposal to seek voter approval of up to \$148 million in bond financing for library improvements. The agenda material pertaining to Option 6 contained a specific ordinance and resolution authorizing the City to place the matter before the voters in the November, 2006, election. That ordinance received its second reading before the City Council at a special meeting on July 25, 2006, at which time the ordinance was adopted.

Mr. Mix and the other complainants allege that the City Council violated Sunshine Ordinance Section 2.20.080(A) because Option 6 and its accompanying materials was not included on the ten-day agenda for the City Council meeting of July 18, 2006. They further allege that Option 6 could not properly be noticed on the "supplemental agenda" for the July 18, 2006, meeting because it was never contained in a ten-day agenda for any City Council or standing committee meeting.

## **II. ANALYSIS**

Section 2.20.080(A) of the Oakland Sunshine Ordinance requires that the Oakland City Council and its standing committees "provide notice before any regular meeting by:

- (1) posting a copy of the agenda in a location freely accessible to the public 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 City Clerk 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 local body's website no later than ten (10) days before the date of the meeting..."

Notwithstanding the ten-day requirement of Section 2.20.080(A), the City Council and its standing committees "may amend or supplement a posted agenda or agenda-related materials no later than 72 hours before a regular meeting" and only for the following relevant reasons or conditions:

(1) to provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to the Mayor or [or] staff or considered to be relevant at the time the agenda-related materials were filed...;

(2) 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; or

(3) to consider the recommendations, referrals, minutes, modifications of or actions taken on any item heard by a standing committee provided that the item has not been materially changed after the committee considered the item.  
[Section 2.20.080(B)]

Finally, Sunshine Ordinance Section 2.20.080(H) provides that the Mayor, City Administrator and City Attorney must submit agenda-related materials to the City Clerk in sufficient time to meet the agenda filing and posting deadlines. A local body may accept agenda material that failed to meet agenda deadlines if the local body finds, by a two-thirds vote, that "the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines." Copies of such documents must be made available to the public at the related meeting.

#### **A. Late Filing Of Option 6 Materials At The Life Enrichment Committee Meeting**

As cited above, the City Administrator is required to submit "public agenda related materials" in sufficient time to meet the filing and posting deadlines for regular and special meetings. The material for Option Six was first presented to the Life Enrichment Committee during the meeting of July 11, 2006. Deputy Library Director Gerald Garzon told Commission staff that the Option 6 proposal was developed after the deadline had passed for submitting materials to the City Administrator for internal review. He said that he was advised by the Office of the City Attorney to bring copies of the proposal to the committee meeting for distribution to members of the public.

Commission staff reviewed the videotapes of the Life Enrichment Committee meeting and did not observe any motion that could have permitted the committee to receive the Option 6 materials.

Based on the apparent omission of agenda material for Option 6 prior to the July 11, 2006, Life Enrichment Committee meeting, and the absence of any finding permitting its acceptance by the committee, Commission staff concludes there is a factual and legal issue whether 1) the City Administrator, by and through Library staff, failed to timely submit the agenda-related material on Option 6; and 2) the Life Enrichment Committee accepted the agenda-related material pertaining to Option 6 without making the findings required by Section 2.20.080(H).

## B. Application Of The Ten-day Requirement To Special Meetings

As stated above, the ten-day requirement applies only to regular meetings of the City Council (as well as the Redevelopment Agency, Port of Oakland and Public Ethics Commission.) Part of the misunderstanding apparent in many of the complaints is that the meeting of July 18, 2006, was a *special* meeting and not a regular meeting as some of the complainants allege.

Pursuant to its Rules of Procedure, the City Council holds its regular meetings on the first and third Tuesdays of every month. Because of the number of items that the City Council wanted to consider before taking its annual "August recess" this year, the Rules Committee called for the July 18 meeting to begin at 4:30 p.m. instead of its usual starting time of 6 p.m. This time change was announced on the City Council's legislative calendar as early as July 11, 2006. **Attachment 7.** Once the time had changed, the July 18 meeting could no longer be classified as a "regular meeting" but had to be noticed as a "special meeting" to which a different set of notice requirements apply.

Under Sunshine Ordinance Section 2.20.070(A), a local body shall provide public notice for a special meeting by:

- (1) posting a copy of the agenda in a location freely accessible to the public at least 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 City Clerk at least 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 member of the local body, 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 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.

The notices and materials for the July 18, 2006, special meeting were posted, filed and delivered by 12 noon on the preceding Friday, July 14, 2006. Option 6 and its accompanying agenda materials were properly identified and included in the agenda package for the July 18, 2006, meeting. Thus it appears that Option 6 was timely noticed for consideration at the City Council's July 18, 2006, meeting.

**C. Effect Of Alleged Violations By The Life Enrichment Committee On The City Council's Action To Place The Library Bond Measure On The November, 2006, Ballot**

There are two separate provisions in the Sunshine Ordinance which govern the effect that any alleged violation of the Sunshine Ordinance may have on the City Council's action to place the library bond issue before the voters.

Sunshine Section 2.20.270(D)(2) states:

"In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this ordinance, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendize for immediate determination whether to correct and cure the violation. ***Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) - (4), inclusive.***" (Emphasis added.)

One of the actions described in Government Code Section 54960.1(d)(2) are those which are "...taken in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto." Thus even if the Commission were to find that the Life Enrichment Committee violated a material provision of the Sunshine Ordinance, any violation would not effect the decision to place the library bond on the November, 2006, ballot.

The second provision is Sunshine Section 2.20.270(E) which states:

(E) Reports Or Recommendations From Meetings Alleged To Have Been Held In Violation Of This Ordinance.

"If the sole purpose or nature of an action that is challenged for violation of this ordinance is to make or convey an advisory report or recommendation to another local body, such local body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said local body to hear or take action on the item in the absence of such report or recommendation."

Section 2.20.270(E) means is that any violation by the Life Enrichment Committee to accept and consider Option 6 would not affect or "taint" the actions of the full City Council to timely agendize and take action on Option 6 at its July 18, 2006, meeting.

### III. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss allegations contained in Complaint Nos. 06-09; 06-10; 06-11; 06-12; 06-13; 06-14; 06-15; 06-16; and 06-17 that the City Council failed to provide adequate public notice for Option 6 at its special meeting of July 18, 2006.

Commission staff believes there is a legal and factual issue regarding 1) whether the City Administrator, by and through Library staff, failed to timely submit the agenda-related material on Option 6 at the July 11, 2006, meeting of the Life Enrichment Committee; and 2) whether the Life Enrichment Committee accepted the material pertaining to Option 6 without making the findings required by Section 2.20.080(H).

The Commission has discretion whether to schedule a formal hearing on this issue to determine whether a violation of the Sunshine Ordinance occurred. If the Commission were to determine that a violation of the ordinance occurred, the Sunshine Ordinance would require the Life Enrichment Committee to re-agendize the item and determine whether to cure and correct the violation. If the Committee chooses to cure and correct the item, it would then decide whether to affirm or supersede its previous action after taking any new public testimony on the item. [O.M.C. §2.20.270(D)]

In deciding whether to conduct a formal hearing on this matter, the Commission may wish to consider the provisions of Section 2.20.270(D)(2) and (E) which effectively state that any violation by the committee shall have no effect on the actions of the City Council to place Option 6 before the voters. Should the Commission decide to schedule a formal hearing, Commission staff recommends that the Commission direct staff to attempt to negotiate a mediated settlement or stipulated judgment with the respondents before a hearing is scheduled.

Daniel D. Purnell  
Executive Director

---

*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*