

CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: May 3, 2004

**RE: Supplemental Report To Item "E" On The May 3, 2004, Regular Meeting
Agenda:**

**A Proposal From Oakland City Attorney John Russo To Amend The
Oakland Sunshine Ordinance To Require That City Executive
Officers Provide Agenda-Related Material To The City Clerk**

This item was placed on the agenda for the May 3, 2004, regular meeting at the request of City Attorney John Russo. The item was initially submitted in time to be included in the ten-day agenda package but time did not permit staff to prepare a written report. This supplemental report is filed and submitted pursuant to Section 2.20.080(B) of the Oakland Sunshine Ordinance.

BACKGROUND

Section 2.20.080 sets forth the basic notice and agenda requirements for regular meetings of Oakland's "local bodies." A "local body" is generally defined as the City Council, Redevelopment Agency, Port Board, City advisory boards and commissions, certain advisory bodies created and appointed by the Mayor, and any standing committee of the foregoing entities.

With few exceptions, all local bodies are required to file a copy of the agenda and all "agenda related material" with the City Clerk before a regular meeting. The City Council, Port Board, Public Ethics Commission and their standing committees must file a copy of the agenda and "agenda related material" at least 10-days before a regular meeting.

The Sunshine Ordinance defines "agenda related material" as "the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item."

During the Commission's March 18, 2004, hearing on Complaint No. 03-15 (Grinage), the Commission determined that Oakland Mayor Jerry Brown did not violate the 10-day agenda requirement by submitting to a City Council standing committee a document containing his recommendations for action on a duly-noticed agenda item during the meeting at which the item was being considered. The Commission reasoned and concluded in part that because the Mayor was not a "local body" as defined under the Sunshine Ordinance, the provisions of 2.20.080(A) did not apply to him or his office.

PROPOSED AMENDMENT

Mr. Russo proposes to amend Section 2.20.080 by adding the following language:

H. The Mayor, City Administrator, City Attorney, and City Auditor in their capacities with the City and Redevelopment Agency shall submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and 2.20.070.

The proposed language essentially imposes an affirmative obligation on the City's executive officers to timely submit agenda related materials to the City Clerk. The reference to Section 2.20.070 makes this language applicable to the deadlines for special, as well as general, meetings.

On April 27, 2004, Mayor Jerry Brown submitted a letter requesting that the Commission postpone this item until several issues can be further researched and deliberated.

Attachment 1. Among the legal issues he raises is whether the proposed amendment interferes with the authority granted to the Office of the Mayor under the City Charter. For example, City Charter Section 305 requires the Mayor to make recommendations to the City Council concerning affairs of the City. A question is raised whether and to what extent the proposed language might limit or restrict the Mayor's Charter-imposed duty to make recommendations on legislative proposals, and/or whether any restriction on this duty can be imposed by ordinance.

The Mayor also presents some practical issues that could become problematic if the language were adopted as presented, such as whether the proposed language could require the Mayor to file a copy of his or her "State of the City" address 10-days before it is even given.

On April 28, 2004, City Auditor Roland Smith submitted a letter raising additional issues that apply to the information his office typically submits to the City Council. **Attachment 2.** Like the Mayor, he questions whether the proposed amendment may conflict with his Charter-imposed duties and suggests that any change to, or restriction upon, those duties

may require an amendment to the City Charter. He also argues that the information his office provides to the City Council is either not related to a specific "action" item (such as survey results or audits), or becomes available too late to conform to current filing deadlines.

Commission staff believes that some of the issues raised by Mayor Brown and City Auditor Smith (as well as others envisioned by staff) could be addressed by re-examining the definition of "agenda related material." The current definition of this term could be amended to recognize specific and narrow exclusions that, for legal, policy or practical reasons, should arguably be exempt from current filing requirements.

Commission staff also notes that the proposed language provides no remedy if the City's executive officers fail to adhere to the filing deadlines. Under current law, a local body which violates the agenda filing requirements must re-agendize the items affected by the violation and subsequently vote whether to ratify the previous action or supersede it with a new action after first providing proper notice. The Commission should explore what the appropriate recourse should be if a City officer (as opposed to a "local body") violates the filing requirements.

Finally, the Commission had previously expressed a desire to review additional portions of the Sunshine Ordinance in light of Measures X and P. The Commission may wish to consider the proposed amendment in the context of a more comprehensive review of the ordinance before recommending specific amendments to the City Council.

STAFF RECOMMENDATION

Commission staff recommends that the Commission take public comment on the proposed amendment and refer it to the Commission's Sunshine Committee for further research and review. The Commission should set a reasonable timeline for the completion of the Committee's work and return back to the Commission.

Respectfully submitted,

Daniel D. Purnell
Executive Director