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City Attorney

City of Oakland  
Public Ethics Commission  
March 6, 2006

In the Matter of )  
 ) Complaint No. 06-01  
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Robert Patten filed Complaint No. 06-01 on February 2, 2006.

**I. SUMMARY OF ALLEGATIONS**

Mr. Patten filed Complaint No. 06-01 alleging that various City employees conducted a "closed door" meeting with representatives from the California Department of Transportation ("Caltrans") on January 12, 2006, in violation of the Oakland Sunshine Ordinance and the Ralph M. Brown Act. **Attachment 1.**

**II. FACTUAL BACKGROUND**

Sometime in late August/early September, 2005, Shelly Garza, executive assistant to City Administrator Deborah Edgerly, says she received a call from a City employee who told her about a woman who was trying to plant flowers on a public median strip along East 33<sup>rd</sup> Street at or near its intersection with Interstate 580. Ms. Garza said she contacted the City's "Adopt A Spot" program to inquire what the person had to do to obtain the City's permission for such a project. She said she passed the information along to the City employee who originally called her. Ms. Garza told Commission staff that she later learned that the woman, Carol Vee, had also painted a large mural of flowers on the concrete retaining wall that runs behind and parallel to the median strip.

On or about November 3, 2005, Ms. Garza says that she received a call from the complainant who protested the painting. In a follow-up email to Ms. Garza, he protested the City's "total lack of oversight and lack of regulation" over the project. **Attachment 2.**

At some point Ms. Garza said she and the City's Adopt-A-Spot coordinator, Cookie Robles-Wong, learned that the median strip and retaining wall lay along a Caltrans right-of-way and that the state had its own approval process for allowing landscaping and artwork along state highways. Ms. Garza states that Ms. Robles-Wong arranged a meeting with Caltrans staff to review Caltrans' policies and procedures for performing artwork and landscaping along state transportation right-of-ways. The meeting took place at a Caltrans district office in Oakland on January 12, 2006. The meeting was attended by Ms. Garza, Ms. Robles-Wong, and eight Caltrans representatives. **Attachment 3.** Contrary to the allegations made in the complaint, City

Administrator Deborah Edgerly told Commission staff that she did not attend the meeting and was unaware that it had been scheduled. According to Ms. Garza, the meeting was "informational" only and that Caltrans officials could not approve the project unless the City took action to support the project (see below). Neither Ms. Vee nor Mr. Patten were invited to attend the meeting.

Mr. Patten alleges that the January 12, 2006, meeting at Caltrans offices constituted an improper public meeting under the City's Sunshine Ordinance and Ralph M. Brown Act at which action was taken to approve and/or ratify Ms. Vee's project.

### III. ANALYSIS

Both the Brown Act and the Sunshine Ordinance generally require that all meetings of a local legislative body be open and accessible to members of the public. [See Government Code Section 54953(a); O.M.C. 2.20.050]. Both laws require that the bodies conducting a meeting provide advance public notice of the date, time and location of any meeting, and the items to be discussed. It is well established however, that the above requirements only pertain to "legislative bodies" and not to the employees of a local agency unless it can be shown that they are acting as the "personal intermediaries" of a majority of the members of a local legislative body. [Government Code Section 54952.2]

It is apparent from the facts presented above that the meeting of January 12, 2006, did not constitute a meeting of an Oakland local legislative body. Ms. Garza and Ms. Robles-Wong are not members of a local legislative body nor is there any information suggesting they were acting as "personal intermediaries" of any member of a local legislative body. Based on the above facts, it does not appear that Ms. Garza or Ms. Robles-Wong violated the Brown Act or the Sunshine Ordinance by attending the January 12, 2006, meeting.

Finally, Commission staff has been advised that Oakland's Cultural Arts Commission will be agendaizing the issue of Ms. Vee's project sometime in March, 2006. Apparently, the Caltrans "transportation art policy" requires that art projects be "supported by the local agency that has jurisdiction where the artwork will be placed." It also requires that the local agency must ensure that the artwork has "community support" and provides "an opportunity for public comment on the artwork." It is up to the local jurisdiction to determine the method of community review. **Attachment 4.** Staff from the Cultural Arts Commission stated they are aware of Mr. Patten's interest in the project and will provide him with timely notice of the meeting.

#### **IV. STAFF RECOMMENDATION**

Commission staff recommends that the Commission dismiss Complaint No. 06-01 on grounds that there is no information to support a finding that the meeting of January 12, 2006, constituted a public meeting of an Oakland local legislative body.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* 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.*