

Legal Briefs

News You Can Use from the City of Oakland Office of the City Attorney

Legal Briefs is a series of essays by City Attorney John Russo to update the community on key projects, major initiatives and important legal developments in the Office of the City Attorney.

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KEEPING THE SUNSHINE ON OAKLAND CITY GOVERNMENT

Government should conduct the people's business on behalf of the people, accountable to the people, and in full view of the people. As a vigorous advocate for openness in government, the Office of the City Attorney strongly objects to ill-advised proposals currently under consideration by the Public Ethics Commission.

The first of these pernicious proposals would gut the most important feature of Oakland's progressive Sunshine Ordinance: the public's 10-day agenda notice period. This 10-day notice is essential to sound and open decision-making.

The proposed reduction to five (5) days would deny the public adequate opportunity to read, digest, and respond to the enormous volume of material associated with the City Council agenda. Reducing the notice period would also hinder the work of the City Councilmembers themselves, who must carefully review and analyze policy proposals and consult the public prior to making important decisions.

The Office of the City Attorney has not in the past two years received a single complaint from the public regarding the length of the 10-day agenda notice requirement. The proposal to geld the 10-day period comes from the same bureaucrats and insiders who six years ago claimed that a real sunshine ordinance would paralyze City business. They were wrong then; they are wrong now; and their position has no support from City Manager Robert Bobb. If the 10-day agenda notice were really damaging the City staff's effectiveness, one would expect the City Manager to be leading the charge. Instead, Mr. Bobb has said, "We've learned to live with it. Not sure [reducing the notice period] would be an advantage to us."

The second proposed loophole would excuse the City from timely posting a copy of the agenda on-line due to software or hardware "failure." Putting aside the dog-ate-my-homework nature of this excuse, there is this 21st century fact: on-line distribution of information is the wave of the present, is cost-effective, and must be a top priority of the City. The proposed "escape valve" would remove any consequences to the City should it neglect its duty to maintain state-of-the-art software and hardware and abandon its obligation to provide electronic information about our government to the public. We recommend this exception be limited to technological failures caused only by unforeseeable and external causes.

Principles are eternal, but the laws which put those principles into practice must evolve to meet changing times. No law should become sacred text. The Ethics Commission should be applauded for considering ways to streamline the Sunshine Ordinance. However, the Commission should summarily reject any proposal which would diminish the public's opportunity to participate in City government under the pretense of promoting efficiency. The current law permits emergency exceptions and allows the City the flexibility to respond promptly to changed circumstances in Washington and Sacramento. Most importantly, the current law has worked very well. Cutting the 10-day agenda notice in half would gravely weaken the Sunshine Ordinance and cast an unwelcome shadow over the governing of our City.