For Official Use Only

City of Oakland

Public Ethics Commission

Stamp Date/Time Received:

November 25, 2008

COMPLAINT FORM

Complaint Number: 08-19

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

[X] The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

[ ] Oakland Campaign Reform Act

[X] Oakland City Council's Rules of Procedure/Code of Ethics

[ ] Oakland Limited Public Financing Act

[ ] Oakland Conflict of Interest regulations

[ ] Oakland Lobbyist Registration Act

[ ] Oakland False Endorsement In Campaign Literature Act

[X] I am/We are not sure which specific law, ordinance or regulations apply. However, I

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am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

November 18, 2008

The alleged violation occurred at the following place:

City of Oakland, City Council Meeting

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.) Please see letter attached

1) Illegal Council "closed session" and failure to agendize item, re: action to join San Francisco v. Horton (S168078) to invalidate Proposition 8 as a constitutional amendment.
2) Said action is contrary to their sworn duty to abide by the law.

The persons you allege to be responsible for the violation(s) are:

The City Attorney and the Oakland City Council

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

PLEASE NOTE:

There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.

NAME: David E. Mix PHONE NO.(Day):( ) _____

ADDRESS: _____ PHONE NO.(Eve.):( ) _____

CITY: Oakland STATE: CA ZIP: _____

FAX NO.: ( ) _____

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ATTACHMENT 1

November 25, 2008

City of Oakland
Oakland City Council
One Frank Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Re: November 18, 2008 City Council Meeting
Violation of Ralph M. Brown Act
"closed session" discussion and action taken.

Council President, Ignacio De La Fuente and
Honorable Members of the Oakland City Council:

By this letter I respectfully request that you immediately rescind the action taken at Tuesday's Council Meeting (November 18, 2008) whereby you, in closed session, agreed to take part in the litigation now pending before the California Supreme Court, San Francisco v. Mark B. Horton, (S168078), challenging the validity of Proposition 8, as was duly adopted at the November 4, 2008 general election, by the people of the State of California, amending the State Constitution.

The Oakland City Council has or had absolutely no authority or standing to address this issue or to take any kind of action on it whatsoever. It is not within the City's purview, jurisdiction or authority to take action on any issue or matter deemed not to be within the realm of City government. This matter clearly is not within the scope of Oakland's City government nor does it involve the function thereof.

Further, your action is a blatant violation of your oath of office as duly elected officials, as with all other officers and officials of the City of Oakland, having a sworn duty to uphold all the laws and regulations of the local jurisdiction, the State of California, the Constitution of California, and the Constitution of the United States.

Without question, Proposition 8 is Constitutional Law. It became constitutional law the moment the California electorate, by majority popular vote, approved it as a constitutional amendment. Having previously met all the criteria, been duly qualified and placed on the ballot, it was properly before the voters.

Your actions are a mockery of the democratic process and can only be construed as that of a rogue government operating outside the realm of the law and cannot be tolerated Whether you agree or disagree with the merits of the Proposition, is of no significance nor of any consequence, it has been constitutionalized and you are required to abide by your oath and commitment to your office in respecting the "rule of law" - anything less, boarders on anarchy.

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That is not to say, that a legitimate interested party does not have the right to challenge the law. But, the City of Oakland and its duly elected officers and appointed officials are mandated by virtue of their office to represent the people and citizens of the City and to abide by their sworn duty to uphold the law.

The City of Oakland does not have a legitimate nor lawful interest, nor does it have any perceived liability in this case. The City has absolutely no basis, reason, or need to join or intervene other than that of throwing its political weight and clout into the mix and that of attempting to advance particular individuals careers. It is nothing more than unadulterated politics and a gross abuse of the process.

This is not a sporting event where you root for your favorite team, or a schoolyard where adolescents pick and choose sides, nor is it an issue to be settled on a T.V. talk show hosting San Francisco's mayor. The City of Oakland needs to step back and disengage itself from this case and the politics surrounding it. The City has absolutely no legitimate reason to be involved and cannot possibly justify spending any of the public's money, or exerting any time or energy on this issue.

However, the most disturbing aspect of this fiasco is how you, the City Council, a governmental body representing the citizenry of our City, handled it. Without question the Council's actions are a blatant violation of the Ralph M. Brown Act. Not only the closed session activity but the failure to agendize it as well, (if it is indeed a proper subject to be dealt with by the City) for full discourse and open public discussion as is required by law. Clearly, it was not an action against the City, nor a matter posing any liability, or an issue affecting the business or function of Oakland City government in any form or fashion whatsoever. Unarguably, it did not qualify for closed session.

It is readily apparent and obvious that this sneaky, underhanded, and backdoor approach was done purposely to prevent public knowledge, (until after the fact) dissuade public input, and actually bar open public discussion. Considering the magnitude of the same-sex marriage issue and the challenge to the constitutionality of Proposition 8, as a constitutional amendment, your action and decision (by secret, closed-door meeting) to join the S.F. petition before the State Supreme Court, without giving the public an opportunity to weigh-in on the issue, is no less than utterly despicable.

It is exceedingly clear and unarguable, the Council's action was purely political and politically motivated and driven. The City of Oakland has absolutely no legitimate reason, legal interest nor necessity to participate in San Francisco v. Horton (S168078). To do so is a violation of public interest and the law.

The Council's action must be reversed.

David E. Mix

Cc: Ronald Dellums, Mayor
John Russo, City Attorney
La Tonda Simmons. City Clerk/Clerk of the City council
Edmond G. Brown, California Attorney General
Clerk of the Court, California Supreme Court

Note!

By copy of this letter forwarded to the California Supreme Court I am requesting that the Court not allow you, the City of Oakland, to participate in, to intervene, or to join this action: San Francisco v. Mark B. Horton (S168078) or any of the other five cases regarding Proposition 8 now pending before the Court.

The City of Oakland lacks standing and does not have a beneficial interest or liability in Respondent not complying with Proposition 8. But more importantly, the City of Oakland has an absolute duty and legal obligation to perform its ministerial duties in accordance with the law and abide by and enforce the provisions of Proposition 8, a constitutional amendment. The City must not be allowed to pick and choose which laws it likes and reject those it doesn't and thus, the City's participation in this action is not in the best interest of the residents and citizens of the City of Oakland nor of the State of California.

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA 6TH FLOOR • OAKLAND, CALIFORNIA 94612

John A. Russo
City Attorney

(510) 238-3601
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THE OAKLAND CITY COUNCIL AND OAKLAND REDEVELOPMENT AGENCY WILL HOLD A SPECIAL CLOSED SESSION ON TUESDAY, NOVEMBER 18, 2008 FROM 4:00 P.M. TO 6:00 P.M. IN CITY HALL, HEARING ROOM 4

The City Council will Convene in Open Session Prior to Adjourning to Closed Session and will Report Out Any Final Decisions in City Council Chambers during the City Council Open Session Meeting Agenda

1. **Conference with its City Attorney pursuant to California Government Code Section 54956.9 (c) regarding:**

   Anticipated Litigation in one (1) matter

2. **Conference with its City Attorney pursuant to California Government Code Section 54956.9 (a) regarding:**

   a) **East Bay Municipal Utility District v. City of Oakland, et al.**
   Alameda County Superior Court
   Case No. RG07-326552

3. **Conference with its labor negotiators pursuant to California Government Code Section 54957.6 regarding:**

   a) **Agency Designated Representatives: Dan Lindheim, Marcia Meyers**

   Employee Organizations: Service Employees International Union Local 1021 (SEIU) and International Federation of Professional Engineers and Technicians Local 21 (IFPTE)

   Under Consideration: Terms and conditions of Employment of non-sworn personnel who are members of SEIU 1021 and IFPTE Local 21

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CITY ATTORNEY DENNIS HERRERA
NEWS RELEASE

FOR IMMEDIATE RELEASE
WEDNESDAY, NOV. 5, 2008

CONTACT: MATT DORSEY
PHONE: (415) 554-4662

Herrera Joined by Los Angeles, Santa Clara Counterparts in Suing to Invalidate Prop 8

Leader of S.F.'s original constitutional challenge says amendment 'if allowed to stand...devastates the principle of equal protection'

SAN FRANCISCO (Nov. 5, 2008)—City Attorney Dennis Herrera today joined Los Angeles City Attorney Rocky Delgadillo and Santa Clara County Counsel Ann M. Ravel in filing a petition for a writ of mandate with the California Supreme Court to invalidate Proposition 8, an initiative constitutional amendment that intends to strip gay and lesbian citizens of their fundamental right to marry in California. The 28-page suit filed with the high court in San Francisco this afternoon argues that the California Constitution's equal protection provisions do not allow a bare majority of voters to use the amendment process to divest politically disfavored groups of constitutional rights. Such a sweeping redefinition of equal protection would require a constitutional revision rather than a mere amendment, the petition argues. Article XVIII of the California Constitution provides that a constitutional revision may only be accomplished by a constitutional convention and popular ratification, or by legislative submission to the electorate.

Today's civil action by city and county governments follows a similar action filed earlier in the day by the National Center for Lesbian Rights on behalf of same-sex couples. Herrera pledged to lead an aggressive effort to enlist additional support in the civil litigation from other California cities and counties.

"The issue before the court today is of far greater consequence than marriage equality alone," Herrera said. "Equal protection of the laws is not merely the cornerstone of the California Constitution, it is what separates constitutional democracy from mob rule tyranny. If allowed to stand, Prop 8 so devastates the principle of equal protection that it endangers the fundamental rights of *any* potential electoral minority—even for protected classes based on race, religion, national origin and gender. The proponents of Prop 8 waged a ruthless campaign of falsehood and fear, funded by millions of dollars from out-of-state interest groups. Make no mistake that their success in California has dramatically raised the stakes. What began as a struggle for marriage equality is today a fight for equality itself. I am confident that our high court will again demonstrate its principled independence in recognizing this danger, and in reasserting our constitution's promise of equality under the law."

Herrera represented the City and County of San Francisco as a lead plaintiff in the original legal challenge that resulted in the landmark state Supreme Court decision earlier this year recognizing marriage as a fundamental right guaranteed to all Californians, "whether gay or heterosexual, and to same-sex couples as well as to opposite-sex couples." More than simply toppling a marriage exclusion that discriminated against millions of gay men and lesbians, the high court's May 15, 2008 ruling established gays and

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lesbians as a suspect class under the California Constitution's equal protection clause, including it among protected classes subject to a standard of strict scrutiny for judicial review.

The City and County of San Francisco was the first government entity in American history ever to sue for marriage equality, asserting in its March 2004 constitutional challenge a broad societal interest to strike down the marriage exclusion in California statutes. By the time the marriage cases were finally decided by the state high court more than four years later, fully twenty-one California cities and counties had joined San Francisco in support of marriage equality for same-sex partners. In total, some 7 of the state's 8 largest cities united for the successful effort: Los Angeles, San Diego, San Jose, San Francisco, Long Beach, Sacramento and Oakland. Herrera has pledged a similar effort in the lawsuit filed today by San Francisco, Santa Clara County and the City of Los Angeles to enlist additional support and participation from other California cities and counties.

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ATTACHMENT 3