

CITY OF OAKLAND

CITY ATTORNEY'S OFFICE

LEGAL OPINION

TO: Oakland City Council

CC: Ronald V. Dellums, Mayor
Deborah Edgerly, City Administrator

FROM: John Russo
City Attorney

DATE: June 16, 2008

RE: **Impact of Proposed 12 Day City Closure on Measure Q Requirement.**

INTRODUCTION

City Council members have asked the City Attorney's Office to provide a legal opinion on whether the Mayor's proposed 12 day furlough of City employees violates the mandates of Measure Q: Library Services Retention and Enhancement Act of 1994 as amended in 2004, ("Measure Q") to keep libraries open a specified number of days per week. The City Attorney's Office has reviewed the full text of Measure Q, the informational materials provided to the public regarding the ballot measure including the impartial analyses of the City Attorney and City Auditor, and the "Argument in Favor of Measure Q." There was no argument presented against the passage of Measure Q.

QUESTION

Do the mandates of Measure Q preclude the participation of City library employees in the proposed 12 day furlough of City employees?

SUMMARY CONCLUSION

No. While the terms of Measure Q dictate and limit how the proceeds of the tax may be used, the prescribed usages are expressed as objectives, not as requirements.

BACKGROUND

In 1994, Oakland voters passed Measure O, the Library Services Retention and Enhancement Act (“the Act”) which imposed a parcel tax on residential and non-residential parcels for the sole purpose of retaining and enhancing library services. Measure Q, an ordinance amending the Act, passed in March, 2004. Measure Q extended the expiration date of the Act from 2009 to 2024, increased the parcel tax levy, expanded the services for which the tax proceeds could be used, increased the minimum general fund library appropriation (before Measure Q proceeds could be collected) to \$9,059,989, established a “Reserve Fund Requirement,” required that all funds collected be deposited in a special fund in the City Treasury and augmented the Act’s annual audit requirement by directing the City Council to designate a body of Oakland citizens to make recommendations and review expenditures of Measure Q funds.

ANALYSIS

Sections 2 and 4 of Measure Q unequivocally specify that this tax can only be used for the purposes authorized.

“All funds collected by the City from the imposition of the tax shall be deposited into a special fund in the City treasury and **appropriated and expended only for the purposes authorized by this Ordinance.**” (Emphasis added, Measure Q, Section 4.)

Measure Q specifies that tax proceeds can be used for twelve different reasons. Of those reasons, the first two specifically address public access to the libraries:

“The proceeds of this tax may only be used in accordance with the following objectives:

1. to keep neighborhood libraries open a minimum of six days per week and increase weekend hours;
2. to retain availability of library services at the Main Library, 7 days per week.” (Emphasis added. Measure Q, Section 2. “Use of Proceeds”).¹

While the terms of Measure Q dictate and limit how the proceeds of the tax may be used, the prescribed usages are expressed as “objectives”, not as requirements. For purposes of legal interpretation, one need only look to the plain meaning of the clear and

¹The objective to retain Main Library services 7 days per week was originally in Measure O. However, Measure Q expanded the availability objective for neighborhood libraries from a minimum of five to six days and added the provision for an increase in the weekend hours of neighborhood libraries.

unambiguous words of Measure Q. “Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. [citations.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters.” [Lungren v. Deukmejian 45 Cal.3d 727,735 (1988)] “Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.”[Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal3d 531, 543 quoted with approval in Professional Engineers in California Government v. Kempton (2007) 40 Cal4th 1016, 1037.]

Legal research into the term “objective,” when used as a noun, revealed that the term appears in numerous statutes and legal decisions without benefit of definition. The repetitious failure to define the term in legal documents indicates that that the noun “objective” is ordinary parlance, commonly used and understood. That inference is supported by the common, shared definitions accorded the term in various dictionaries. The primary definition given the noun, “objective,” in Webster’s New Collegiate Dictionary (1977) is “something toward which effort is directed; an aim or end of action: *Goal, Object.*” The Random House Dictionary (1980) agrees, noting that it is “something that one’s efforts are intended to attain.” These definitions demonstrate that an “objective” is a statement of intention rather than a requirement.

Measure Q dictates and limits how the proceeds of the tax may be used. It presents the prescribed usages as “objectives,” not as requirements. Accordingly, it seems clear that Measure Q does not require the City to keep its libraries open for any number of days.

Measure Q does specifically state that taxes cannot be collected if the General Fund appropriation for library services is less than \$9,059,989. According to the City Budget Director, the proposed 12 day employee furlough will not cause the General Fund appropriation to go below the requisite level. In fact, the furlough will result in approximately \$400,000 General Fund savings and about \$323,000 Measure Q fund savings.

Measure Q established the “Reserve Fund Requirement” to be calculated on January 1 of each year and, as of the date of calculation, five percent (5%) of the total amount of the parcel tax collected in the previous fiscal year shall constitute the reserve. The Reserve Fund can only be used for the purposes specified in Measure Q upon the express appropriation from the Reserve Fund by the City Council. Therefore, the Reserve Fund can be used to keep the libraries open.

CONCLUSION

Measure Q prescribes twelve different ways in which the proceeds of this tax can be used for the purpose of retaining and enhancing library services. These uses are

expressed as objectives with no mandatory impact other than the requirement that only those objectives can receive Measure Q tax proceeds. Notwithstanding the strong commitment to maintaining library access expressed in the objectives of this tax law, those commitments are not legal requirements.

Very truly yours,

JOHN A. RUSSO
City Attorney

Attorney Assigned:
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