

From:
To:
Subject:
Date:

From: Vanderhorst,Joseph A [jvanderhorst@mwdh2o.com]
Sent: Friday, November 06, 2015 10:49 AM
To: Taylor, Jim
Cc: Scully,Marcia L
Subject: RE: November Board Item 8-8

Jim,

You haven't cited any authority, and I haven't found any, that requires separate agenda items for the same action simply because there may be both closed and opens session discussions of that item. Government Code section 54954.2 requires the agenda to contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." It does not require the agenda to separately list the same item of business twice simply because there may be a closed session discussion in connection with that item of business.

Nor does the statute authorizing closed sessions to discuss the price and terms of real estate transactions require a separate agenda item. Section 54956.8 provides the legislative body "may hold a closed session" provided that, in the "open and public session ... it identifies its negotiators, the real property ... and the person or persons with whom its negotiators may negotiate." The statute itself anticipates an open session prior to the closed session on any item of business. Metropolitan's agenda meets the statutory requirements by providing the required closed session information in the form authorized by Section 54954.5(b). Again, nothing in these statutes requires a separate agenda listing for the same item of business simply because a portion of the discussion may be in closed session.

The agenda puts the public on notice of the proposed action and every member of the public has the opportunity to attend and speak on the item of business. The agenda item conforms to the statutory requirement that notes that it is the "price and terms of payment" that may be discussed in closed session. Listing the same item of business twice would not advance the public's ability to be heard on this particular matter.

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-----Original Message-----

From: Taylor, Jim [<mailto:JTaylor@sdewa.org>]
Sent: Friday, November 06, 2015 8:23 AM
To: Vanderhorst,Joseph A

Cc: Scully,Marcia L
Subject: RE: November Board Item 8-8

Joe -

I appreciate that there will be an open session on the purpose of the acquisition before the closed session. However, that open session needs to be noticed as an agenda item. Otherwise, the public will not know that there will be a discussion on the subject that they may attend. Please let me know your position on this.

Jim

From: Vanderhorst,Joseph A [jvanderhorst@mwdh2o.com]
Sent: Thursday, November 05, 2015 5:16 PM
To: Taylor, Jim
Cc: Scully,Marcia L
Subject: November Board Item 8-8

Jim,

Welcome back to the Water Authority; I look forward to working with you again during your tenure as General Counsel. Thank you for your letter regarding Metropolitan's Board Item 8-8, regarding the scope of the closed session under the Brown Act. Marcia Scully has asked that I respond.

Although we do not agree that the agenda requires revision, we do agree with your conclusion that any discussion of the purpose for acquiring the property would be held in open session except to the extent that it relates to the price and terms of payment. We expect that the open session discussion will take place before the committee meeting is closed to discuss price and terms.

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