



Oakland City Attorney Highlights



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Challenges to Oakland's Affirmative Action Programs Dismissed

The City Attorney's Office has successfully defended three pre-Proposition 209 cases challenging Oakland's affirmative action programs. Judge William H. Orrick dismissed these cases in United States District Court on April 30, 1998. One of the cases, *Oakland City Employees for Affirmative Action Justice, et al., v. City of Oakland*, alleged that the City unlawfully discriminated and continues to unlawfully discriminate by excluding non-African Americans from senior and executive level positions in City employment. The other two cases, *Californians for Constitutional Contract Compliance* and *Bay Area Black Contractors* both involved challenges to the City of Oakland's MBE and LBE policies. The *Californians for Constitutional Contract Compliance* case sought to have more City contracts awarded to persons other than African-Americans. The Bay Area Black Contractors case sought to force the City to implement the Mason-Tillman study (the Croson study).

For more detailed information about these cases contact Assistant City Attorney Randolph Hall at (510) 238-3701. //

Amendments to the Brown Act Effective January 1, 1998 and to take Effect January 1, 1999

By Joyce M. Hicks

State law, the Ralph M. Brown Act, and local law, the City of Oakland Sunshine Ordinance, govern access to meetings of legislative bodies in the City of Oakland. Effective January 1, 1998 the Brown Act was amended in six areas:

➤ **Exceptions to Meetings.** A majority of a legislative body, such as a city council, may attend an open and noticed meeting of another body created by that city council, such as a planning commission meeting, without the meeting being noticed as a city council meeting so long as a majority of the members of the city council do not discuss city council business among themselves, other than as part of the scheduled meeting. (Gov. Code § 54952.2 (c) (4).) Oakland's Sunshine Ordinance does not provide for this exception and would require noticing as a City Council meeting if a quorum of the City Council attended a Planning Commission meeting. (Oakland Municipal Code § 2.20.030 A. 1.)

➤ **Attendance at Standing Committee Meetings.** A majority of the members of a legislative body, such as five members of the City Council, may attend a meeting of one of its standing committees without noticing it as a meeting of the City Council so long as the noncommittee members do not participate in the meeting. (Gov. Code § 54952.2(c)(6).) The Oakland City Council also notices its standing committee meetings as meetings of the City Council in order to advise the public that there may be instances where a quorum of the City Council will attend a standing committee meeting to speak on an item.

➤ **Teleconferencing May Be Used to Conduct Meetings.** A legislative body may conduct business by teleconferencing. All teleconferencing locations must be posted and open to the public. All votes must be conducted by roll call. (Gov.Code § 54953.)

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Successful Motions for Summary Judgment

In *Dayna Johnson v. City of Oakland*, the decedent climbed on top of a van whose occupants had stolen pagers from him. OPD saw decedent atop the van heard him yell out that the occupants of the van had stolen something from him. OPD was also aware that vans were being stolen from Vallejo and being used during robberies in Oakland. Also, OPD learned early in pursuit that this particular van was stolen. The decedent was killed when the van rolled over on him. Decedent's family alleged 14th Amendment claims along with a state wrongful death cause of action. The City's motion for summary judgment in United States District Court was granted in its entirety. No appeal was taken.

In *Omni Club v. City of Oakland* the City revoked Omni Club's cabaret permit. The plaintiffs alleged violations of substantive due process, procedural due process, and equal protection. The Ninth Circuit Court of Appeals upheld the grant of the City's motion for summary judgment and the permit revocation.

For more information on these cases contact Supervising Deputy City Attorney Karen Rodrigue at (510) 238-3539. //

Zero Tolerance for Code Violators and Drug Nuisances

Recent victories in Superior and the State Court of Appeal underscore the City Attorney's commitment to the City's campaign against crime and grime.

C/O v. Redding Associates, Szilard Szabo

On April 21, the City Attorney obtained a preliminary injunction ordering Szilard Szabo, the owner of blighted property on Redding Street, to relocate his tenants. The order also required Mr. Szabo to post a \$25,000 performance bond to secure relocation costs. The City relocated the tenants on June 3, 1998. The property had been extensively renovated without permits. Most of the renovation work was substandard. The City demolished the property on July 20, 1998.

Thomas Grossi v. City of Oakland

The First District Court of Appeal upheld the City's revocation of plaintiff's City issued pawnbroker permit. Thomas Grossi was arrested and subsequently convicted of selling cocaine from his business to an undercover State Bureau of Narcotics Enforcement officer. The City revoked Grossi's permit to operate as a pawnbroker following an administrative hearing and appeal to the City Council. Grossi sought a writ of mandamus from the Superior Court, arguing that the City's Municipal Code provisions on

pawnbrokers was preempted by the State Financial and Business and Professions Codes. The Alameda County Superior Court denied the writ, and in an unpublished opinion dated February 20, 1998, the First District Court of Appeal ruled in the City's favor. The Appeals Court ruled that state law does not preempt the City's Municipal Code, and that there was ample evidence to support the City's revocation of the permit.

Grossi petitioned the State Supreme Court for review. The Supreme Court denied the petition.



In addition to providing litigation services in code enforcement, the City Attorney's Office provides prelitigation assistance in code enforcement. Two recent examples:

Silver Dollar Hotel

This office provided legal assistance on the vacation of the Silver Dollar Hotel, a severely blighted and substandard hotel at 2327-2329 San Pablo Avenue. Responding to a routine call at the property, the Police Department discovered extreme filth, no running water, backed up toilets, no fire exits, and numerous hypodermic needles. The City's Building Services Division and the Fire Marshall declared the property an immediate threat to public life, health, and safety and ordered it vacated under the City's Housing and Fire Codes. All tenants were relocated and the property was cleaned out, boarded up and secured. City staff completed the entire process within 72 hours of discovering the problem. The owner of the property did not appeal the City's action

Supervising Deputy City Attorney Ralph Wheeler leads the code enforcement team that includes Deputy City Attorneys Patrick Tang and Charles Vose. They may be reached at (510) 238-3838, 238-6523 and 238-2961, respectively.

Operation Beat Feet

The City Attorney's Office provides legal assistance and administers the release of vehicles seized in the City's Operation Beat Feet Program. Operation Beat Feet is a tool used by the Police Department to combat the use of vehicles for the purchase of drugs and prostitution. To date, the City Attorney's Office has collected \$50,000 in forfeiture fees.

For more information on Operation Beat Feet contact Deputy City Attorney Marcia Meyers at (510) 238-383, Deputy City Attorney Tracy Chriss at 238-6519 or Supervising Legal Assistant Anita Hong at 238-2960. //

Sunshine Ordinance Anniversary

The Sunshine Ordinance, Oakland's open meeting and public records ordinance, has been in effect for over one year. During the first year, the City Attorney's Office conducted two citywide trainings for City staff. In addition, the office trained over 30 boards, commissions, and task forces. In coordination with the Public Ethics Commission, we will conduct ongoing annual training. The Sunshine Ordinance is no longer a stand-alone ordinance. It has become part of the Oakland Municipal code. The Sunshine Ordinance can be found at Chapter 2.20 of the Oakland Municipal Code. For further information contact Assistant City Attorney Joyce M. Hicks at (510) 238-3702, Deputy City Attorneys Patrick Tang at 238-6523 or Tracy Chriss at 238-3839. //

ARRIVALS AND DEPARTURES

ARRIVALS:

On May 26, 1998, Stephen Q. Rowell joined the City Attorney's Office as Deputy City Attorney IV in the Litigation Division.

Prior to his arrival, Steve worked as an attorney with the law firm of Larson & Burnham. He was engaged in all phases of insurance defense litigation matters including wrongful termination, sexual harassment and excessive force arising in the public entity arena; he also has experience in personal injury cases including general liability, automobile, assault and battery, and sexual battery. He has handled numerous construction defect, legal, medical and dental malpractice cases. Prior to working with Larson & Burnham, he served for two years as a regulatory/litigation attorney with the California Department of Insurance.

Mr. Rowell has also been a featured speaker on issues such as 42 USC 1983 litigation, insurance litigation and errors and omissions defense. He has been a featured attorney during "mock" trial presentations at various insurance functions.

Mr. Rowell is a graduate of the University of California at Berkeley and received his law degree from Hastings College of the Law.

DEPARTURES:

Supervising Deputy City Attorney Donnell Choy announced his resignation, effective July 1, 1998. He accepted a position in the Projects Division of the San

Brown Act Amendments (Cont.)

➤ **Advisory Committees and Standing Committees Are Not Required to Have Regular Meetings.** Neither standing committees of less than a quorum nor advisory committees are required to adopt a regular meeting schedule. (Gov. Code § 54954 (a).)

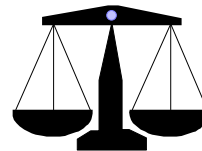
➤ **Agencies Must Timely Provide Agenda Packets to Requestors.** If a person requests in writing either an agenda or an agenda packet, the items must be mailed to the person when the agenda is posted or when it is delivered to a majority of the legislative body, whichever is sooner. The requestor's failure to receive the agenda or agenda packet will not invalidate actions of the legislative body at the meeting for which the items were requested. (Gov. Code § 54954.1.)

Governor Wilson signed Senate Bill 139 (Kopp) on August 4, 1998, which contains three amendments that will impact the City Council and its agencies, effective January 1, 1999:

➤ **More Detailed Agenda Disclosures for Real Property and Labor Negotiations Closed Sessions.** The names of the City's negotiators on real property negotiations or designated representatives for labor negotiations attending the closed session must be included on the closed session agenda. (Gov. Code § 54954.5 (b) and (f).)

➤ **Meetings for Standing Committees and Advisory Committees Where Agendas are Posted 72 hours in Advance Will be Treated as Regular Meetings.** Although the 1998 amendments exempted standing committees and advisory committee from the requirement to adopt a regular meeting schedule, if these committees do notice their meetings at least 72 hours in advance then, the meetings are treated as regular meetings. (Gov. Code § 54954 (a).)

➤ **For Teleconferencing At Least of Quorum of a Legislative Body must Remain in the Jurisdiction.** If teleconferencing is used at least a quorum of a legislative must remain the jurisdiction. If the City Council uses teleconferencing at least five must remain in Oakland. (Gov. Code § 54953 (b) (3).)



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DEPARTURES (Cont.)

Francisco City Attorney's Office. Donnell supervised the Redevelopment Economic Development/ Real Estate/ and Municipal Finance Unit of the Advisory Division of the City Attorney's Office.

Mr. Choy joined the Oakland City Attorney's Office in August of 1984 as a contract litigator and moved into the redevelopment area after completing an eminent domain trial of a surface parking lot in the Old Oakland/Victorian Row Project. Since that time, he was involved in numerous economic development and redevelopment projects for both the City and its Redevelopment Agency.

Some of the projects Donnell worked on over the years are: work-out and restructuring of the former Hyatt Regency Hotel (now the Marriott Hotel); work-out and restructuring of the Washington Inn; the EBMUD Administrative Headquarters; the Pacific Renaissance Plaza; the Old Oakland/Victorian Row Project; the American President Company's Building; City Square; 1300 Clay Street; the Federal Administration Building; City Center Garage West; the Elihu M. Harris State Building; Yoshi's; Jack London Cinema; the University of California Office of the President; acquisition of the Fox Theater, Swan's Market, and the Rotunda sites; Galbraith Golf Course; the Montgomery Ward Building; and the City Administration Project. He also handled several contamination problems affecting the development of real property, and he was the primary liaison for this office to the Community and Economic Development Committee of the City Council. //

Service of Process for Claims and Lawsuits Has Been Moved to the City Attorney's Office from the City Clerk's Office, Effective July 1

Effective July 1, 1998, claims and lawsuits against the City are served and filed in the Office of the City Attorney (6th floor City Hall), instead of the City Clerk's Office. In consultation with the City Clerk, we determined that customer service and staff efficiencies could be obtained by this restructure. Members of the public now have a "one step" process for filing claims and lawsuits. Response time has been improved by up to three days.

For more detailed information, contact Elida Paredes, Supervising Claims Investigator at (510) 238-3364. //

Message from the City Attorney Jayne W. Williams

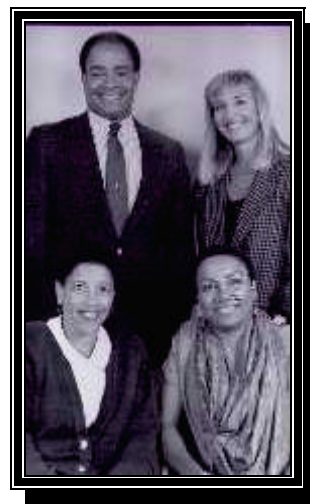
I hope you will find this inaugural edition of the monthly newsletter informative.

The purpose of this newsletter is to communicate current events and developments in municipal law and issues and cases of particular importance to the City of Oakland.

In addition, "Oakland City Attorney Highlights" will introduce you to members of the City Attorney staff and highlight their many accomplishments. In this first edition, I am featuring the City Attorney's Executive Management Team: Assistant City Attorneys Joyce Hicks and Randolph Hall manage the advisory and litigation divisions respectively and our Legal Administrative Services Manager Rosemarie Sanchez manages the support division.

Ms. Hicks began her legal career in 1977 in the Office of the City Attorney as a Deputy City Attorney. She is a graduate of Pomona College and the University of California Boalt Hall Law School. Mr. Hall began his legal career in 1977, working in both the public and private practice sectors before joining the City Attorney staff as a Deputy City Attorney in 1985. He is a graduate of Stanford University and Harvard Law School. Ms. Sanchez has been employed by the City since 1979 and joined the City Attorney's Office in 1985 as its first legal administrator. She is a graduate of St. Mary's College.

I joined the City Attorney's Office in 1974 as a Deputy City Attorney following my graduation from the University of California Hastings College of the Law. I was appointed City Attorney in 1987.



Collectively the management team of Jayne Williams, Joyce Hicks, Randy Hall and Rosemarie Sanchez has served the City of Oakland for over 75 years.

