
City Attorney

City of Oakland
Public Ethics Commission
December 12, 2005

In the Matter of)
) Complaint No. 05-09
) **(SUPPLEMENTAL)**

Gene Hazzard filed Complaint No. 05-09 on August 31, 2005.

I. SUMMARY OF COMPLAINT AND PROCEDURAL HISTORY

Mr. Hazzard filed Complaint No. 05-09 alleging that 1) the Oakland City Council took action on a motion that did not meet the required notice provisions of the Sunshine Ordinance; 2) a number of City Councilmembers took part in a "serial meeting" without providing proper public notice under the Brown Act and Sunshine Ordinance; and 3) the Oakland City Council improperly considered a report from the City Auditor that did not meet the required notice provisions of the Sunshine Ordinance.

Copies of Complaint No. 05-09 and the supporting materials were previously distributed and are available from the Commission's website at www.Oaklandnet.com.

At its meeting on November 7, 2005, the Commission dismissed the second allegation (pertaining to an unnoticed serial meeting of the City Council) and the third allegation (pertaining to consideration of the City Auditor's report). The Commission continued for further discussion the first allegation of whether the City Council violated the Sunshine Ordinance by considering a written motion submitted by Council President Ignacio De La Fuente at the meeting. While Commission staff reported that the Sunshine Ordinance expressly exempts written floor amendments from pre-meeting filing requirements, the Commission sought a more detailed explanation from Deputy City Attorney Barbara Parker why she advised the City Council that it could not take action on Mr. De La Fuente's proposed floor amendments at the City Council meeting of July 19, 2005.

II. COMMUNICATION FROM BARBARA PARKER

Attached is a communication requested by Commission staff on November 9, 2005, and received from Ms. Parker on November 29, 2005. In it, Ms. Parker states that "this Office has consistently ruled that if the amendment makes a **significant substantive change** in the action that was noticed, the Council may vote on the motion only after the public has received ten days' notice of the amendment." (Emphasis added.) Because Mr. De La Fuente's floor motion made, in Ms. Parker's opinion, a "significant substantive change" to the amended proposal to approve the Workforce

Investment Board's funding allocation, she advised the City Council that it could not take action on Mr. De La Fuente's floor motion until ten days' notice was provided to the public.

Commission staff notes that the criteria of "significant substantive change" does not appear in the Brown Act, Sunshine Ordinance or the City Council's Rules of Procedures. According to Ms. Parker, it is a standard that the City Council has historically used to determine whether a motion so deviates from a contemplated agenda action that it requires "new" public notice before the City Council may act on it. This criterion essentially means that a floor motion must not merely be relevant to an agenda action, but may not make any significant substantive changes to the proposed action unless additional public notice is given. This operative standard appears to be consistent with the Sunshine Ordinance's stated policy of increasing public information and participation.

III. STAFF RECOMMENDATION

Based on the above explanation and on the reasons set forth in the previous staff report, Commission staff recommends that the Commission dismiss Complaint No. 05-09.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*