

**CITY OF OAKLAND**  
**Public Ethics Commission**

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Daniel D. Purnell, Executive Director

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**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** April 4, 2005

**RE:** A Staff Report And Action To Be Taken In The Matter Of Complaint No. 05-01 (Mordecai)

At its regular meeting of March 7, 2005, the Commission dismissed Complaint No. 05-01 conditioned upon the preparation and approval of a draft letter to the Oakland City Council expressing the Commission's concern over the omission of an "open forum"-type item on the City Council's January 3, 2005, agenda and for taking action on items before receiving public comment. A copy of the preliminary staff report on Complaint No. 05-01 was contained in the Commission's March 7, 2005, agenda package.

Attached for Commission review is the draft letter. Commission staff has tried to capture and convey the collective intent of the Commission based on the Commission's discussion at the March 7, 2005, meeting. Upon Commission approval, the letter will be conveyed to the City Council and Office of the City Clerk.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

# DRAFT

April XX, 2005

The Honorable City Council  
One Frank Ogawa Plaza, Second Floor  
Oakland, CA 94612

Office of the City Clerk  
One Frank Ogawa Plaza, Second Floor  
Oakland, CA 94612

RE: Public Ethics Complaint No. 04-09 (Mordecai)

Dear Councilmembers:

At its regular meeting of March 7, 2005, the Oakland Public Ethics Commission considered the above complaint filed by James Mordecai in connection with the City Council special meeting of January 3, 2005.

Mr. Mordecai alleges that the City Council violated provisions of the Oakland Sunshine Ordinance (and Ralph M. Brown Act) by 1) failing to provide an opportunity for public comment on matters of interest to the public (i.e., open forum); and, 2) taking public comment on agendized items only after the City Council took action.

The Oakland Sunshine Ordinance requires that every agenda for regular and special meetings shall provide an opportunity for members of the public to comment on items of interest that are within the local body's subject matter jurisdiction. [O.M.C. §2.20.150(A)] This requirement is typically met by placing an "open forum" item somewhere on the meeting agenda. The Sunshine Ordinance also requires every agenda to provide an opportunity for members of the public to address the local body concerning an agendized item before the local body takes action on the item. [O.M.C. §2.20.150(B)]

The City Council's special meeting of January 3, 2005, consisted of consecutive inauguration ceremonies by the City Council and Oakland School Board. A videotape of the meeting demonstrates that the City Council took action on all four agendized items before taking public comment. The agenda for the meeting also did not contain a provision for "open forum" as required by the Sunshine Ordinance.

# DRAFT

In considering Mr. Mordecai's complaint, the Commission noted that Mr. Mordecai did not submit a speaker card for any of the agenda items and told Commission staff that he did not initially intend to speak at the City Council meeting. The Commission also noted the comments of Chief Deputy City Attorney Barbara Parker who told Commission staff that the absence of "open forum" on the agenda was an oversight and that the City Council typically places this item on all meeting agendas.

For these and other mitigating factors, the Commission decided not to pursue a formal hearing on the allegations raised in Complaint No. 04-09. Instead, the Commission decided to express its concern that members of the public apparently were not apprised of their right to speak under open forum at the meeting, and that the City Council took action on items without considering public comment.

Both the Oakland Sunshine Ordinance and the Brown Act view public comment as a fundamental part of the democratic process. While the omission of public comment in this circumstance may have affected only a few, the Commission believes this issue is too important to pass without an expression of concern over the manner in which the meeting was noticed and conducted. The Commission anticipates that future City Council meetings will always meet the requirements and goals of the Sunshine Ordinance.

Thank you in advance for your kind attention to this matter.

Very truly yours,

Chairperson/Exec. Director  
Public Ethics Commission