

CITY OF OAKLAND
Public Ethics Commission

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

RE: A Report And Action To Be Taken Whether To Initiate A Commission Complaint Against The Oakland Port Board Of Directors In Connection With A Closed Session Meeting Held On February 18, 2005

At the Commission's regular meeting of March 7, 2005, the Commission directed staff to prepare a memorandum to assist the Commission in determining whether to initiate a formal complaint against the Oakland Port Board of Directors ("Port Board") regarding the Port Board's reported conduct of a closed meeting on February 18, 2005.

I. BACKGROUND

According to various news accounts, the Port Board convened a special closed meeting at the Waterfront Plaza Hotel on February 18, 2005. The meeting was reportedly called for the purpose of conducting a job evaluation of Port executive director Jerry Bridges, and to discuss the Port Board's goals and objectives. Apparently, the Port Board provided no advance notice for the meeting. Port Attorney David Alexander reportedly stated that the Port staff, which normally ensures proper public notice of meetings, was not involved with scheduling the February 18, 2005, meeting.

In an attempt to determine when and how the meeting was scheduled, reporters from the Oakland Tribune reportedly submitted a public records request to the Port Board requesting writings pertaining to the meeting. The only writing provided by the Port Board was an invoice in the amount of \$746.72 to pay for costs associated with the off-site meeting. There were no other records produced showing how the Port Board came to organize the meeting or decide what was to be discussed.

II. APPLICABLE LAW AND COMMISSION JURISDICTION

As a general rule, meetings of public agencies like the Port of Oakland must be conducted publicly with adequate notice given in advance of the meeting. Under the Oakland Sunshine Ordinance, all local bodies must post and file a copy of the agenda at least 48 hours before a special meeting. Copies of the agenda must also be sent to the members of the local body, to each local newspaper of general circulation, to each agenda subscriber and to each media organization that has previously requested notice in writing. In addition, if a special meeting is called for a location other than at the regular meeting place, the local body must give notice at least ten days before the meeting.

Not all portions of a meeting must be conducted in public. The Sunshine Ordinance incorporates provisions of the state's Ralph M. Brown Act which permits certain actions to be conducted in closed session. Among the actions permitted in closed session are personnel matters, such as employee job evaluations. However, the fact that the Brown Act and Sunshine Ordinance permit a particular topic to be considered in closed session does not excuse the local body from providing public notice. The public must still be advised that a closed session hearing will be taking place at the date, place and time specified on the agenda. Agency goal-setting "retreats" are considered by the California Attorney General to be subject to open meeting and notice requirements.

The Commission is authorized to oversee compliance with the Sunshine Ordinance. The provisions of the Sunshine Ordinance expressly apply to the Port Board. If the Commission finds that a local body has violated a material provision of the Sunshine Ordinance, the local body is required to agendize for immediate determination whether to correct and cure the violation by either affirming or superseding the challenged action after first taking any new public testimony.

III. COMMISSION CONSIDERATION

On February 25, 2005, the Port Board published and posted a belated agenda for the February 18, 2005, special meeting. **Attachment 1**. The notice states in relevant part:

"The purpose of the [February 18, 2005] Special Meeting was to provide for a Closed Session for public employee performance evaluation. No action was intended or taken, nor was public participation intended or permissible in Closed Session. No other business was calendared or intended.

"This notice of Special Meeting, which occurred on Friday, February 18, 2005, is intended to cure and correct inadvertent failure to post timely notice of Special Meeting and to provide public notice that the Closed Session occurred at such time and place."

On March 18, 2005, the Port Board conducted another special meeting to review the executive director's job performance and discuss "Port-wide goals and objectives." The

agenda for that meeting notices the performance evaluation as a closed session item and the Port-wide goals and objectives as a part of the open meeting. **Attachment 2.**

On March 24, 2005, Mark Morodomi and Michelle Abney of the City Attorney's Office are conducting a review of public meeting requirements with Port staff. Their presentation was sought by Port executive director Jerry Bridges who reportedly acknowledged the failure to provide public notice as an "error" and a "mistake".

Based on the information readily and publicly available in this matter, the Commission has the option of initiating a formal complaint to determine ultimately whether the Port Board violated material provisions of the Sunshine Ordinance. If so, the Port Board would be required to notice a cure and correction at a subsequent meeting. The investigation may provide additional information about how and why the February 18, 2005, occurred in the manner it did. From an enforcement perspective, there may be little more the Commission can order the Port Board to do (if the Commission determines a violation occurred) that the Port Board has not already done voluntarily.

The Commission's General Complaint Procedures require all complaints brought under the Sunshine Ordinance to commence within sixty days of the alleged violation. The Commission will need to decide whether to initiate any complaint at the April 4, 2005, meeting.

Respectfully submitted,

Daniel D. Purnell
Executive Director