

approve certain projects based on a finding of negative environmental impacts as opposed to a more time consuming and expensive environmental impact assessment. At the end of his presentation, the Mayor requested the Planning Commission to "discuss it, and if you so choose, that you would pass a resolution supporting my efforts to get the Supreme Court to take the case..." There were no agenda-related materials distributed before or during the meeting on this item.

After brief comments from two public speakers and members of the Commission, the Chair entertained a motion for the Planning Commission to support a Supreme Court review of the case. A motion to that effect was made, seconded and adopted by a unanimous vote. The Mayor subsequently referred to the Planning Commission's support on the first page of his February 22, 2005, letter to the California Supreme Court. **Attachment 3.**

The complainant alleges that the Planning Commission improperly took action to adopt a position supporting the Mayor's efforts "without the item being noticed as an action item."

The Brown Act states that an agenda shall contain a "brief general description of each item of business to be transacted or discussed at the meeting. . ." generally not exceeding 20 words. [Gov't §54954.2] The Sunshine Ordinance contains similar language and also adds the following: "[An agenda]. . .description is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item." [O.M.C. §2.20.030.A]

The question before the Commission is whether the agenda description was sufficiently clear and specific to alert members of the public that "he or she may have reason to attend the meeting or seek more information on the item."

The agenda description did not expressly mention that the Planning Commission would consider a motion supporting a Supreme Court review of the case. It did state that the Mayor would be "requesting the Planning Commission's comments and thoughts on the matter." Commission staff believes that while the agenda description could have been more specific, it did meet the Sunshine Ordinance's minimum requirement of alerting the public that the Planning Commission would likely be expressing its collective "thoughts and comments" on the matter. A motion expressing the Planning Commission's support for the Mayor's efforts appears to be an action reasonably contemplated under that agenda description.

B. Distribution Of Speaker Time

Ms. Sidebotham alleges that the Planning Commission favored the proponents of a project located at Concordia Park with more speaking time than that provided to the opponents of the project.

According to the Planning Commission's rules on speaker time, people addressing the Planning Commission are generally provided two minutes per speaker.

Applicants and appellants are generally limited to five minutes, although these limits can vary depending on the number of agenda items and speakers, and on the complexity of the proposal.

After a staff presentation, the chair recognized two representatives from the project applicant, Girls, Inc. The two speakers spoke for approximately four minutes and three minutes each. The chair next called for opponents to the project. The chair stated that with such a large number of people appearing in support of the project, he would permit the project opponents to have two minutes of speaking time instead of limiting all speakers to just one minute. Eight people spoke up to two minutes each in opposition to the project.

After the opponents made their presentations, the chair asked the project applicants if it would be possible to organize their supporters so that the Commission could hear from a representative group. He noted there were more than 30 proponents wishing to speak. The chair called a five-minute recess to allow the project proponents to organize themselves. After the break, the chair announced that the proponents had agreed to nine speakers: seven minors and two adults. Each was to be given two minutes. After these speakers had addressed the Planning Commission, three more adults took the podium in support of the project. The public hearing was then closed. The Commission deliberated and then approved the project unanimously.

The Brown Act states that every agenda for a regular meeting "shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item." [§54954.3(a)]. The Brown Act further provides that a legislative body may adopt "reasonable regulations" to ensure the public's right to address a legislative body, including "regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker." The Sunshine Ordinance provides similar rights, and permits persons "to speak once based on previously adopted time constraints which are reasonable and uniformly applied."

A 1992 opinion by the California Attorney General concluded that a local legislative body may limit the right of the public to speak on particular items to five minutes **or less** for each individual speaker. [See 92 Ops.Atty.Gen. 212.] The opinion noted that local legislative bodies have "wide discretion" in adopting rules of procedure, and that this discretionary authority will usually not be disturbed on subsequent review.

There are two issues involved in the allocation of speaker time at the hearing on this matter. The first is the time allocated to the project applicants. While each of the project applicants spoke for less than five minutes, their collective time totaled approximately seven minutes.

The second issue is the three "extra" speakers who supported the project. Their presentation arguably provided project supporters with more total time than project opponents.

Commission staff first notes that with the exception of the time permitted for project applicants, the time allocated to all speakers on that item was two minutes. With very minor exceptions, this limit was uniformly applied throughout the meeting. The fact that one side submitted several more speakers than the other does not violate the standard that speaker limits be "reasonable and uniformly applied." Given the wide discretion of a local body to allocate speaker time, the slight variations in the number of speakers and the total amount of time they spoke are not sufficient, in Commission staff's opinion, to constitute a violation of the Sunshine Ordinance or an abuse of the chair's discretion.

III. STAFF RECOMMENDATION

Commission staff recommends that Complaint No. 05-02 be dismissed on grounds that the facts fail to support a finding that a violation of the Sunshine Ordinance occurred.

Respectfully submitted,

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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.*