Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
June 1, 2009

In the Matter of)
) Complaint No. 09-03
) **SUPPLEMENTAL**

John Klein filed Complaint No. 09-03 on February 7, 2009.

I. SUMMARY OF COMPLAINT

Mr. Klein filed Complaint No. 09-03 alleging that City Council President Jane Brunner prohibited him from completing his presentation to the City Council under Open Forum even though there was time remaining for that particular agenda item. ***Attachment 1.***

At its regular meeting of May 4, 2009, the Commission requested staff to provide an assessment as to whether the 15 minutes that the City Council allocates for "Open Forum" on its regular meeting agendas is consistent with the Sunshine Ordinance's policy that every public speaker is entitled to receive at least two minutes of time per item.

II. BACKGROUND AND ASSESSMENT

There are three separate provisions of law relevant to the Commission's inquiry regarding speaker time at City Council meetings.

Government Code [Brown Act] Section 54954.3(b) provides in relevant part:

> *"The legislative body of a local agency may adopt reasonable regulations . . .including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker."*

Sunshine Ordinance Section 2.20.150(C) provides:

> *"Every local body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the City that all speakers be entitled to a minimum of two (2) minutes of speaking time per agenda item, subject to the discretion*

of the presiding officer of the local body. The presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the local body."

Rule 13 of the City Council's Rules of Procedures provides in relevant part:

"Open Forum prior to Modifications to the Agenda shall be limited to a total of 15 minutes. If all public speakers who submitted speaker cards for open forum pursuant to Rule 12 are not heard within the 15 minute time frame, open forum will be continued at the end of the agenda prior to adjournment.

"Public Speakers submitting their names to speak under open forum shall be allotted a minimum of one (1) minute each to speak and a maximum of three (3) minutes. A speaker may speak only once under open forum during any one meeting. Speakers during open forum may address the City Council regarding any items of public interest that are not on the meeting agenda. Open Forum speaker cards are to be numbered by the City Clerk in the order received."

It appears that City Council Rule 13 complies with Sunshine Ordinance Section 2.20.150(C) and Brown Act Section 54954.3(b). Under Sunshine Ordinance Section 2.20.150(C), the policy of two minutes per speaker/per item is subject to the discretion of the presiding officer, who may justify a reduction of speaker time based on "a consideration of the time allocated or anticipated for the meeting. . ." The Brown Act expressly permits local regulations "limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker." Thus as a matter of law, the City Council's procedures regarding Open Forum appear to be valid.

As a matter of policy, the City Council is, of course, free to modify its regulations pertaining to Open Forum. Commission staff reviewed the recent history of public participation during Open Forum between October, 2008, to the present. Of the eleven regular meetings convened during this period for which minutes are available, an average of eight public speakers addressed the City Council during Open Forum. (The range was between five and twelve speakers.) The average length of the City Council meetings totaled approximately five and one-half hours. At four of the eleven meetings, Open Forum was continued until after the completion of the regular agenda; however, no more than two people at any one meeting ever waited to the end of a meeting to exercise their right to speak.

Based on this information, Commission staff concludes that by expanding the time available for Open Forum by only five to ten minutes, the goal of two minutes per speaker could be realized at most meetings without requiring anyone to wait until the conclusion of the meeting, which often occurs past eleven p.m.

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 09-03 on grounds that there does not appear to be a factual or legal basis to conclude that a violation of the Brown Act or Sunshine Ordinance occurred by limiting speakers under Open Forum to one minute of speaking time where 12 people had signed up to speak on an item whose total allocated time was 15 minutes.

The Commission may wish to consider directing staff to communicate a recommendation to the President of the City Council that the time allocated for Open Forum be extended an additional five to ten minutes to permit speakers up to two minutes of time to make their comments.

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.*