Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
May 4, 2009

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

II. FACTUAL SUMMARY

At its meeting of February 3, 2009, the Oakland City Council took up Item 3 -- Open Forum/Citizen Comments. The City Council typically allocates a total of 15 minutes for this item, as stated on every regular meeting agenda. ***Attachment 2.*** The City Clerk announced that 12 people had signed-up to speak under Open Forum. Ms. Brunner then announced that each speaker would receive one minute of time to address the City Council under this item.

Three speakers spoke under Open Forum before Mr. Klein approached the podium. Each of the three kept their comments to approximately one minute or less. Mr. Klein began speaking and after one minute had elapsed, he was notified by Ms. Brunner that his time had expired. He asked if he could finish his remarks was told that he had to finish "quickly." Mr. Klein spoke for approximately 40 more seconds before concluding his remarks. While appearing rushed, Commission staff notes he completed the point he wanted to make.

After Mr. Klein finished, three more speakers addressed the City Council. At that point, no other speakers came forward even though their names had been called. Ms. Brunner then instructed the City Clerk to call the next item on the agenda. A total of seven speakers addressed the City Council under Open Forum, using approximately 11 of the allotted 15 minutes for this item.

Mr. Klein told Commission staff that this is a "friendly" complaint filed to propose that whenever there is time remaining under Open Forum that anyone who previously

spoke under the item be invited back to the podium to complete their comments within the remaining time.

III. ANALYSIS

The Ralph M. Brown Act and the Oakland Sunshine Ordinance requires local legislative bodies to provide an opportunity for members of the public to address the body on any topic within their subject matter jurisdiction. [Government Code §54954.3; O.M.C. §2.20.080] This is accomplished in Oakland via an "Open Forum" item appearing on City Council agendas. The Brown Act further provides *"The legislative body of a local agency may adopt reasonable regulations. . .* ***limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker****."* [Government Code (§ 54954.3(b); emphasis added.] The Sunshine Ordinance expands on this provision by providing:

> *"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.*" [O.M.C. §2.20.150(C)]

Based on the above, there appears little doubt that the City Council may limit the time available under Open Forum (i.e., 15 minutes) and to reduce speaker time to one minute to accommodate the persons wishing to speak under this item. While Ms. Brunner did not publicly announce the reasons why speaker time was limited to one minute under Open Forum, the reasons can be fairly inferred from the fact that 12 people had signed up for an item whose total time allocation was 15 minutes.

Ms. Brunner told Commission staff that she is "very committed" to providing a minimum of two minutes of speaker time to persons wishing to address the City Council. Because of the number of speakers who signed up to speak under Open Forum that evening, she decided to reduce the time to one minute in order to accommodate everyone who wanted to speak. She stated she was surprised Mr. Klein filed this complaint since he was permitted to speak for almost two full minutes to complete the point he wanted to make.

As to Mr. Klein's suggestion that any remaining time under Open Forum be "re-opened" to previous speakers, Commission staff notes that this authority is currently subject to the discretion of the presiding officer. As a practical matter, it may be difficult to adopt a firm rule or policy to implement Mr. Klein's suggestion. For example, if 12 people spoke for one minute, should Open Forum be extended to all 12 speakers for the remaining 3 minutes? How would the practical problems of organizing 12 speakers for an additional 15 seconds each be overcome? For purposes of policy recommendations,

Commission staff believes the authority to allocate time under Open Forum remain under the discretion of the presiding officer rather than propose a fixed rule governing its use.

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.

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.*