Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
July 6, 2009

In the Matter of)
) Complaint No. 09-02
) **SUPPLEMENTAL**

David Mix filed Complaint No. 09-02 on February 9, 2009.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 09-02 alleging that the City Council's Rules and Legislation Committee ("Rules Committee") violated the Oakland Sunshine Ordinance and the Ralph M. Brown Act by failing to agendize three scheduling items for the Rules Committee meeting of February 5, 2009. (A copy of the staff report and complaint was provided in the June 1, 2009, agenda package.) Commission staff concluded that because of express exceptions in both the Brown Act and Sunshine Ordinance, the Rules Committee was not required to provide a specific agenda description of every item submitted for scheduling before or during its meetings.[1]

At its regular meeting of June 1, 2009, the Commission directed staff to provide additional facts and analysis regarding whether 1) a quorum of the Rules Committee existed at the time the Rules Committee took action to refer the items; 2) whether the ten-day agenda descriptions for Rules Committee scheduling items is adequate; and 3) whether the Rules Committee's ten-day agenda should include a detailed description of any scheduling items that are known at the time the ten-day agenda is posted.

II. ADDITIONAL INFORMATION AND ASSESSMENT

A. Quorum Of The Rules Committee

According to the minutes, the Rules Committee meeting of February 5, 2009, convened at 10:52 a.m. The roll call (confirmed by the DVD recording) indicated that three of the four members were present: Councilmembers Quan, De La Fuente and Brunner. Chairperson Brunner announced that the full City Council was still conducting

[1] Commission staff reported at the June 1, 2009, meeting that it could find no case law or opinion interpreting Government Code Section 54954.2 as requiring a local legislative body to place on a meeting agenda items which the body will later schedule for a future meeting. In a somewhat analogous case, the court in Coalition of Labor v. County of Santa Barbara Board of Supervisors (2005) 129 C.A.4th 205, held that the Brown Act did not require a local body to permit members of the public to address it when considering whether to place items on a future meeting agenda.

a closed session downstairs but that the Rules Committee would convene to schedule the three items submitted at the dais by Councilmember Quan. The title of each item was then read audibly into the record. Councilmember Quan stated she needed to have the items heard at the February 24, 2009, meeting of the Finance and Management Committee to meet election deadlines later in the year. Chairperson Brunner announced a motion, second and unanimous approval for the scheduling requests. After this action, the Rules Committee adjourned. ***Attachment 1.***

The agenda and agenda-related materials for the February 24, 2009, meeting of the Finance and Management Committee were posted and filed on Friday, February 13, 2009, according to the Office of the City Clerk. The Finance and Management Committee recommended that two of the three items be forwarded to the full City Council meeting of March 3, 2009. The Committee continued the third item to its March 10, 2009, meeting, at which time the Committee recommended the item be forwarded to the full City Council meeting of March 17, 2009. All three items were timely noticed on the supplemental agendas for the respective City Council meetings. [2]

B. Rules Committee Agenda Descriptions

As stated in the June 1, 2009, staff report, the Rules Committee posts and files both a "ten-day" and "supplemental" agenda for each of its weekly meetings. The ten-day agenda contains five "standing items" for the Rules Committee's weekly review and determination. The five standing items on the ten-day agenda are:

1. Closed Session

2. Approval of Draft Minutes (From Prior Rules Committee Meetings)

3. Determination Of Schedule Of Outstanding Committee Items

4. Scheduling Of Agenda Items And Revisions To The Agenda For [Upcoming] Council Committee Meetings

5. A Review Of The Agendas For [Upcoming] City Council Meetings And Rules Committee Meetings

"Open Forum" always appears at the end of the agenda.

The ten-day agenda will also contain a detailed description of any item that the Rules Committee will consider in its role as a policy committee, such as proposals originating from this Commission or matters relating to City elections. The supplemental agenda

[2] Pursuant to Sunshine Ordinance Section 2.20.080(B)(5), the City Council may amend or supplement its ten-day agenda no later then 72 hours before a regular meeting "to consider the recommendations, referrals, minutes, modifications of or actions taken on" any item heard by one of its standing committees so long as the item has not been "materially changed" after the committee considered the item.

for a Rules Committee meeting is made available late Wednesday afternoon the day before every weekly Thursday meeting. The deadline for submitting items for scheduling at a Thursday Rules Committee meeting is Tuesday at 6 p.m. The supplemental agenda is typically many pages long since it can contain as many as 50 separate scheduling items. Stapled to the supplemental agenda is a copy of every scheduling request submitted by the Tuesday 6 p.m. deadline.

As discussed in the June 1, 2009, staff report, both the Sunshine Ordinance and the Brown Act contain several express exemptions from the requirement that agendas must contain a detailed description of items on which action is expected to be taken. One of the exceptions is for actions to place items on a future meeting agenda. City Council practice and procedures permit the Rules Committee to consider scheduling requests submitted by the Tuesday deadline or at the Rules Committee meeting itself. The Rules Committee's ten-day agenda attempts to provide advanced public notice of what the Rules Committee will generally consider at its weekly meetings before any specific item has been submitted. With the exception of items that the Rules Committee will consider in its policy-making role (which are always described specifically on the ten-day agenda), it would be very difficult to describe the "standing items" on the ten-day agenda in anything other than in general terms. The supplemental agenda, on the other hand, specifically describes in detail the items to be considered for scheduling once they become known.

C. Specific Descriptions On The Ten-Day Agenda

In a question closely related to the above discussion, the Commission inquired whether the ten-day agenda could not contain specific descriptions of scheduling items that were known to exist at the time the ten-day agenda is posted. Commission staff spoke with Bill Uber, primary staff to the Rules Committee. He said that with extremely few exceptions, all scheduling requests are made ***after*** the ten-day agenda is posted. He said the vast majority of scheduling requests are submitted just before the 6 p.m. Tuesday deadline.

While the Commission could recommend that all "known" scheduling items appear on the ten-day Rules Committee agenda, such a rule would likely have only a miniscule effect on public notice because of the very small number of scheduling requests that are submitted before the ten-day agenda is posted. Alternatively, a requirement that all scheduling items be submitted in time to be specifically described on the Rules Committee's ten-day agenda would effectively mean that routine agenda items would have to be submitted approximately four to five weeks before their first policy committee hearing because of internal review and approval procedures currently in place for City Council agenda reports. Such a requirement, in Commission staff's

opinion, would significantly impact the City Council's ability to manage City business.

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.*