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CITY OF OAKLAND



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November 1, 2010

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President Reid and Members of the City Council
Oakland, California

Re: **Hearing Pursuant to Oakland Municipal Code Section 2.20.270(D) to (a) Consider Whether to "Cure and Correct" an Alleged Violation of the Sunshine Ordinance Resulting from Complaints that All Public Speakers were not Given An Opportunity to Speak before Council Passed a Motion Appointing Victor Uno and Jakada Imani to the Port Board of Commissioners at the Council's October 18, 2011 Meeting; and (b) If So, Whether to Affirm or Supersede the Challenged Action After First Taking Public Testimony**

President Reid and Members of the City Council:

I. INTRODUCTION

At the Council's October 18, 2011 meeting, the Council passed separate motions appointing Victor Uno and Jakada Imani to the Port Board of Commissioners. At the October 21st Rules Committee meeting, the committee asked the City Attorney for a ruling regarding whether all public speakers were given an opportunity to speak before the Council took action. The Committee scheduled a cure and correct action for the November 1, 2011 meeting. To assure that Council has the option of curing and correcting the alleged violation by affirming or superseding its prior action, the agenda will include this report and a resolution appointing Mr. Uno and Mr. Imani.

II. DISCUSSION

The Brown Act and Sunshine Ordinance, which supplements the Brown Act, require that the City Council provide an opportunity for each member of the public to directly address the body concerning that item before the Council takes action. (See Government Code section 54954.3 and Oakland Municipal Code sections 2.20.150(B).)

The Brown Act provides in pertinent part:

"Every agenda for regular meetings 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 . . ."

The Sunshine Ordinance provides in relevant part:

"Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action."

The purposes of the open meeting requirements should be borne in mind in making compliance determinations regarding whether all public speakers were given an opportunity to speak before the Council took action. The purpose of the open meeting laws is to facilitate public participation in local government decisions. (See e.g., *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) The Brown Act provides the following policy declaration: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (Government Code section 54950.) The public speaker requirements of the Brown Act and Sunshine Ordinance assure that members of the public who wish to participate in the Council's discussion of proposed action items, have the opportunity to speak before the Council takes action.

III. Procedure/Recommendations

The Sunshine Ordinance allows a body to cure and correct an action that is challenged on the grounds that the body violated any material provision of the ordinance. Section 2.20.270(D) provides:

(D) Cure and Correction.

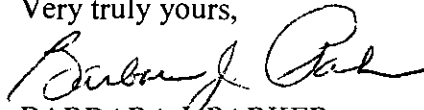
(1) Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this Ordinance. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking public testimony.

(2) In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this ordinance, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendaize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code section 549701(d)(1) - (4), inclusive.

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After the City Clerk calls the item, the Councilmembers may comment and the Council must hear public speakers. The item is on the agenda for the Council to hear public testimony and to make a decision whether to cure and correct the alleged violation and if so, to affirm or supersede its previous action.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Barbara J. Parker".

BARBARA J. PARKER
City Attorney