

RESOLUTION NO. 50-2009

Adopted May 19, 2009

ADOPTING THE MAYOR'S POLICY ON DISCRIMINATORY OR HARASSING REMARKS MADE AT PUBLIC MEETINGS

BASIS FOR RESOLUTION

1. The Redevelopment Agency of the City and County of San Francisco ("Agency") is subject to the public meeting requirements of state law. The Ralph M. Brown Act, Cal. Gov't Code §§ 54590 *et seq.* ("Brown Act").
2. In addition to the Brown Act, the Agency Commission also follows Robert's Rules of Order ("Robert's Rules of Order" or "Robert's Rules") in conducting its public meetings. Section 37 of the By-Laws of the Redevelopment Agency (Sept. 1, 2003). Robert's Rules provides, among other things, standards for decorum in debate. These standards apply to Commissioners' discussions and deliberations and provide that "a member can condemn the nature or likely consequences of the proposed measure in strong terms, but he [or she] must avoid personalities, and under no circumstances can he [or she] attack or question the motive of another member. The measure, not the member, is the subject of the debate." Robert's Rules of Order at p. 380 (10th ed. 2000). Robert's Rules apply to members of the Commission, but do not apply to members of the public who may speak at the Commission hearings. More importantly, federal and state laws governing the rights of the public at Commission meetings would supersede any specific aspect of Robert's Rules that is inconsistent with those laws.
3. Under the Brown Act, the public must be allowed to speak at Agency Commission meetings and has the right "to directly address the [Agency Commission] on any item of interest to the public, before or during the [Agency Commission's] consideration of the item, that is within the subject matter jurisdiction of the [Agency Commission], provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by [the Brown Act]." Cal. Gov't Code §54954.3 (a).
4. The First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution guarantee that the public has broad rights of free speech at Agency Commission meetings. See Leventhal v. Vista Unified School District (S.D. Cal. 1997) 973 F. Supp. 951 (holding that public body's prohibition of criticism of its employees violated free speech rights of public); Baca v. Moreno Valley Unified School District (C.D. Cal. 1996) (holding that public body's prohibition of possibly defamatory public comment and expulsion of speaker from meeting violates constitutional rights). Accordingly, members of the public speaking at Agency Commission meetings have the right, among others, to criticize the Agency's programs, practices, policies, and services, as well as its members and staff.

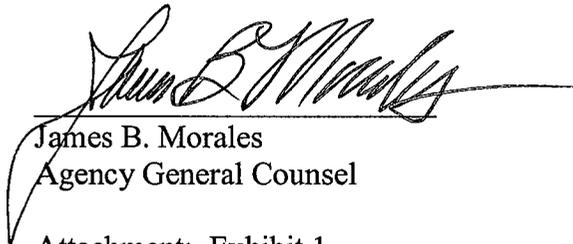
5. Notwithstanding the public's expansive free speech rights, the Agency Commission has the authority to limit reasonably a public speaker's comments to the agenda item being addressed or, for general public comment, to the subject matter jurisdiction of the policy body. Brown Act, Cal. Gov't Code § 54954.3(a). See e.g. Leventhal v. Vista Unified School District (S.D. Cal. 1997) 973 F. Supp. 951 (state created a limited public forum where comments may be restricted to the subject matter of the public body).
6. In addition, the Agency Commission has the obligation--in extreme and unusual circumstances--to take immediate and appropriate corrective action to stop harassment, on the basis of a protected class status, of an Agency employee or an Agency contractor by a member of the public at an Agency Commission meeting. Cal. Gov't Code § 12940 (j)(1). See also Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e—2000e-17. Under the California Fair Employment and Housing Act ("FEHA"), unlawful employment discrimination occurs when an employee or contractor is subject to harassment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. An employer is also potentially liable for harassment of employees by non-employees.
7. FEHA requires an employer to take all reasonable steps to prevent harassment from occurring in the workplace and to take immediate and appropriate action when it is, or should be, aware that harassment has occurred. Cal. Gov't Code §§ 12940 (j)(1) & (k). In general, the harassment, however, must be both objectively and subjectively offensive to violate the law. "The conduct must be extreme: 'simple teasing,' [citation] offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" * * * Thus, for example, 'mere utterance of an . . . epithet which engenders offensive feelings in a employee,' [citation] does not sufficiently affect the conditions of employment to implicate [anti-discrimination law]." Jones v. Dept. of Corrections & Rehabilitation (2007) 152 Cal.App.4th 1367, 1377-78.
8. To address extreme and unusual circumstances where public comment may constitute discriminatory or harassing speech, the Mayor's Office, in 2005, issued the Policy on Discriminatory or Harassing Remarks Made at Public Meetings of City Boards and Commissions ("Mayor's Policy"). City Attorney, Good Government Guide Supplement: A Compilation of Laws, Regulations, and Policies Governing the Conduct of Public Officials, (2007-2008), pp. 157-158 at http://www.sfgov.org/site/uploadedfiles/city_attorney/Resources/GGGSUPPLEMENT2007-08.PDF [as of May 5, 2009]. See also City Attorney, Good Government Guide, p. 106 (2007-2008). The Mayor's Policy attempts to balance the public's broad right to speak at City Commission meetings with the protection of public employees.

9. The Agency Commission now desires to adopt the Mayor's Policy on Discriminatory or Harassing Remarks Made at Public Meetings of City Boards and Commissions and to apply them to Agency Commission meetings. References in the Mayor's Policy to "City" shall be deemed to also refer to "Agency."
10. Adoption of the Mayor's Policy is not a Project as defined by the California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5), will not independently result in a physical change in the environment, and is not subject to environmental review under CEQA.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that it hereby adopts the Mayor's Policy on Discriminatory or Harassing Remarks Made at Public Meetings of City Boards and Commissions that is attached to this Resolution as Exhibit 1.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel
Attachment: Exhibit 1