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OPINION

Requester: Office of Council Member Donovan M. Dela Cruz
Agency: Honolulu City Council
Date: February 13, 2007
Subject: Public Testimony (S RFO-G 06-21)

REQUEST FOR OPINION

Requester seeks an advisory opinion on whether, under part I of chapter 92, Hawaii Revised Statutes ("HRS") ("Sunshine Law"), the Honolulu City Council (the "Council") is required to take oral testimony on agenda items that are cancelled or postponed.

QUESTIONS PRESENTED

1. Whether the Council must allow the public to offer oral testimony on an agenda item that is cancelled by the Council Chair before the Council's consideration of the item.

2. Whether the Council must allow the public to offer oral testimony on an agenda item where the Council has commenced consideration of the item, then postpones further consideration until a subsequent meeting.

BRIEF ANSWERS

1. No. The Council is not required to accept oral testimony on a cancelled agenda item so long as the Council does not discuss, deliberate, decide or take any other action to consider the item before its cancellation.

2. Yes. The Council is required to allow oral testimony when the Council discusses, deliberates or takes any other action to consider the agenda item regardless of whether the Council defers further action on that item to a subsequent meeting or indefinitely.

DISCUSSION

1. Cancelled Agenda Item

The Sunshine Law requires a board to "afford all interested persons an opportunity to present oral testimony on any agenda item." Haw. Rev. Stat. § 92-3 (1993). A board may, however, cancel an agenda item before taking it up or engaging in any discussion, deliberation, or other consideration of the item beyond announcing its cancellation and, if appropriate, the expected meeting date for which it will be rescheduled. OIP Op. Ltr. No. 05-07 at 4.

When a board properly cancels an agenda item, that item is effectively removed from the agenda. Because the matter is no longer an "agenda item," a board is not required to accept oral testimony on that matter.[1] See Haw. Rev. Stat. § 92-3 (requires boards to take oral testimony on "any **agenda** item") (emphasis added); OIP Op. Ltr. No. 05-02 at 2 (no Sunshine Law provision requires a boards to allow public testimony on matters outside the agenda). Therefore, if the Council Chair, exercising his or her discretion, cancels an agenda item without announcing the item or allowing any discussion or other consideration of the item,[2] the Council need not take oral testimony on that item.

2. Postponed Agenda Item

Once the Council Chair has announced an agenda item or the Council has otherwise begun to discuss or consider the item, the agenda item may not be cancelled and removed from the agenda. See OIP Op. Ltr. No. 05-07 at 1, 4 n.4. Because the item thus remains on the agenda, the Council must accept oral testimony on the item regardless of whether the board then decides to postpone further discussion and action on the agenda item to a subsequent meeting or

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[1] See Chaffee v. San Francisco Library Comm'n, 2004 Cal. App. Unpub. LEXIS 2321 ("nothing in . . .the Sunshine Ordinance . . . would entitle a member of the public to speak on an agenda item . . . not actually taken up, discussed, or considered by the public body").

[2] If a board follows the procedure of approving its agenda at the beginning of its meeting, the board's approval constitutes consideration by the board and, therefore, no agenda item can be cancelled and the public must be allowed to present oral testimony on all agenda items.

indefinitely. See Haw. Rev. Stat. § 92-3. Discussion during the meeting about postponing consideration of the item would preclude the board from cancelling the item because, at that point, the agenda item is already being considered. See OIP Op. Ltr. No. 05-07 at 4 n.4.

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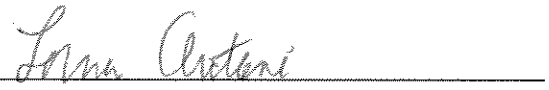
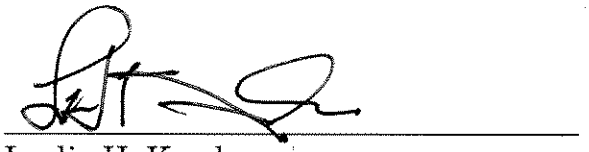


Lorna Aratani
Staff Attorney

APPROVED:



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