

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE
LEGAL OPINION

TO: Mayor Ronald V. Dellums,
President De La Fuente
City Councilmembers
Deborah Edgerly, City Administrator

FROM: John A. Russo
City Attorney

DATE: June 13, 2007

RE: **Legal Opinion on Oakland's Equal Access Ordinance**

LEGAL OPINION

The Equal Access Ordinance, O.M.C. 2.30, is fully consistent with California law, including the Dymally-Alatorre Bilingual Services Act, which was enacted to provide individuals with limited English proficiency access to state and local government services. It responds directly to the very concerns that motivated passage of that Act: the increasing linguistic diversity of the population that may result in substantial numbers of individuals who lack English proficiency being deprived of access to government services. The Ordinance requires the City to hire "a sufficient number of *bilingual employees* in public contact positions so as to adequately serve members of the substantial number of limited-English-speaking persons group(s) in the City." The Ordinance vests discretion in the City Manager to determine the adequacy of service to members of the group(s). The Ordinance makes no reference to race or national origin, nor, given its similarity to Dymally-Alatorre, would it support any assumption that race or national origin motivated its passage. Notably, the Ordinance has never been challenged, nor has any union filed a grievance contending the Ordinance violates its Memorandum of Understanding with the City. Furthermore, many cities and other governmental entities have passed or are considering such ordinances (Illinois, New York City, Santa Cruz).

The Ordinance does not conflict with any federal or state law. Even if the Ordinance were to have a disparate impact on a racial or ethnic group, it would not violate Title VII of the Civil Rights Act of 1964, the Fair Employment and Housing Act, or any other statute or constitutional provision. Many job requirements have a disparate impact on protected groups.


What the Equal Opportunity Programs Division, which issued a report challenging the legality of the Equal Access Ordinance, may not understand is that it has been black-letter law since shortly after the passage of Title VII that a job requirement that has a disparate impact on a protected group is lawful if it is job-related and consistent with business necessity, and if other means could not achieve the same end. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Albemarle v. Moody*, 422 U.S. 405 (1975). Requiring a certain number of employees in public contact positions to have bilingual skills so that immigrants can have access to government services is undeniably job related and consistent with business necessity; it serves the same goal as Dymally-Alatorre. Dymally-Alatorre recognizes that the means of ensuring immigrants access to government services is to require government entities to employ bilingual individuals who can remove language barriers to access.

Indeed, it is difficult to imagine how the City could accomplish the same end, providing government service to individuals who lack English proficiency, without requiring that some individuals in public contact positions be able to serve them in the languages they speak. Because the Ordinance is so clearly lawful, and no threat to sue preceded its passage, there were no facts or circumstances that would have justified the Council meeting in Closed Session prior to the Ordinance's enactment. Although the City received one or two e-mails from right-wing individuals making vague threats following the Ordinance's adoption, such as an e-mail forwarded by Councilmember Spees, there was no credible legal threat made by an Oakland citizen after the effective date of the Ordinance.

Just as this Office does not prepare legal opinions to elucidate basic propositions of law, to address matters not reasonably susceptible to disagreement, or to discuss in Closed Session every e-mail from a citizen making vague threats of legal action (which would violate the Brown Act), so it did not prepare a formal legal opinion concerning the Equal Access Ordinance. There was no lawful basis for a Closed Session presentation on the Ordinance. The Ordinance is fully consistent with all relevant federal, state and local laws.

Should an Oakland citizen respond to the publicly announced opinion of the City Administrator's Office's Equal Opportunity Programs Division that the Ordinance may violate federal, state and local law by filing suit against the City, this Office is confident that it can successfully defend the Ordinance and that its defense will be assisted by amicus curiae support from a broad range of legal organizations that champion civil rights.

Respectfully submitted,



JOHN A. RUSSO

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