CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, January 7, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

Commissioners: Richard Unger (Chair), Lloyd Farnham (Vice-Chair), Aspen Baker, Roberta Johnson, Benjamin Kimberley, Monique Rivera

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Mark Morodomi, Deputy City Attorney (filling in for Kathleen Salem-Boyd)

MEETING AGENDA

1. **Roll Call and Determination of Quorum.**

2. **Staff and Commission Announcements.**

3. **Open Forum.**

CONSENT ITEMS[1]

4. **Approval of Commission Draft Minutes.**
   a. December 3, 2012, Meeting Minutes (Attachment 1)

5. **Proposed Meeting Schedule for 2013.** (Attachment 2)

ACTION ITEMS

6. **Elections of Chair and Vice-Chair of the Commission.** Commissioners will elect a chair and vice-chair for the 2013 year.

7. **Review and Selection of One New Commission Member.** The ad-hoc subcommittee of Commissioners who interviewed applicants to the Commission selected three candidates to appear before the full Commission, and one of the three will be selected as a new Commissioner. Copies of the applications and resumes of these three candidates are attached to this agenda. (Attachment 3) Each of the following candidates will take a few minutes to introduce themselves and respond to questions by the Commission, and the Commission will vote by secret ballot to select the new member:
   a. D'nnette Savannah
   b. Eddie Tejeda
   c. Jenna Whitman

[1] Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, January 7, 2013
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

8. **Access to Public Records.** The Commission will discuss how to proceed with exploring the issue of access to City of Oakland public records. Staff outlines a potential approach and recommends the creation of a Commission subcommittee to work on this issue. (Attachment 4)
    a. Karen Boyd, Communications Director for the City Administrator's Office, will join the discussion to provide information about current public information activities of the City Administrator's office.

9. **Complaint/Enforcement Program.** An updated list of pending cases is included. Commissioners may discuss the complaint process in general and may discuss any of the complaints listed in the attached spreadsheet. (Attachment 5)

10. **Limited Public Financing Act Program Analysis.** Commission staff provides a program and cost analysis of the administration of the Limited Public Financing Program. (Attachment 6).

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-7370. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandnet.com/pec.

12/21/12

Approved for Distribution — Date

ATTACHMENT 1

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, December 3, 2012
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT

Commissioners: Richard Unger (Chair), Lloyd Farnham (Vice-Chair), Aspen Baker, Roberta Johnson, Benjamin Kimberley, Monique Rivera

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

MEETING MINUTES

1. **Roll Call and Determination of Quorum.**

   The meeting was called to order at 6:31 p.m.

   Members present: Unger, Farnham, Baker, Johnson, and Kimberley

   Staff present: Whitney Barazoto and Kathleen Salem-Boyd, except for item 6(a)(ii) regarding case number 12-08 (Parker), in which San Francisco Deputy City Attorney Andrew Shen served as legal counsel to the Commission while Kathleen Salem-Boyd stepped out of the room.

2. **Staff and Commission Announcements.**

   The Commission skipped this item to return to it after the informational presentation.

3. **Open Forum.**

   There were two speakers: Max Allstadt and Barbara Newcombe.

CONSENT ITEMS

4. **Approval of Commission Draft Minutes.**

   The Commission skipped this item to return to it after the informational presentation.

INFORMATIONAL PRESENTATION

5. **Overview of Misuse of Public Funds Laws.** San Francisco Deputy City Attorney Andrew Shen provided an overview of the laws regarding misuse of public funds.

6. Complaint/Enforcement Program.

a. Dismissal of Complaints Not in Commission Jurisdiction

The Commission jumped ahead to item 6a(ii) in order to accommodate Mr. Shen who was appearing for only part of the Commission's meeting. Commissioners discussed complaint number 12-08 (Parker) and asked questions of Ms. Barazoto and Mr. Shen. Commissioner Johnson moved and Commissioner Farnham seconded a motion to dismiss the complaint for lack of jurisdiction and to refer the complaint to the Alameda County District Attorney's office. The motion passed 5-0.

There were three speakers on the item: Max Allstadt, Norm Budman, and Jenn Katz.

The Commission thanked Mr. Shen for his presentation and assistance.

2. Staff and Commission Announcements.

The Commission returned to this item to discuss announcements.

Executive Director Whitney Barazoto announced that the Commissioner recruitment subcommittee would conduct interviews of commissioner applicants on December 12 at 5pm. The subcommittee will select nominees to appear before the Commission at the January meeting.

Ms. Barazoto announced that the next Commission meeting will be on Monday, January 7, 2013 and that staff will provide a draft meeting schedule for the year at the January meeting.

Ms. Barazoto said she provided a presentation on November 19 to a government delegation from the Bureau of Disciplinary Supervision and Investigation from the People's Republic of China.

Ms. Barazoto informed the Commission that she would be providing an introduction to the Public Ethics Commission and public ethics issues for the new Councilmembers on December 17.

Commissioner Baker and Farnham gave an overview of their experience at CityCamp Oakland on December 1. Commissioner Baker asked that the issue of access to public records be place on the Commission's agenda for the January meeting.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Monday, December 3, 2012
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT

CONSENT ITEMS[1]

4. Approval of Commission Draft Minutes.

The Commission approved 5-0 the November 5, 2012, Meeting Minutes.

ACTION ITEMS

6. Complaint/Enforcement Program.

a. **Dismissal of Complaints Not in Commission Jurisdiction**

The Commission returned again to item 6a to discuss the second complaint recommended for dismissal for lack of jurisdiction. Commissioner Johnson moved, Commissioner Baker seconded, and the Commission approved 5-0 to dismiss complaint No. 09-15 (Quan).

There were two speakers on the item: Max Allstadt and Norm Budman.

7. Complaint No. 10-16.

Commissioner Johnson moved, Commissioner Baker seconded, and the Commission approved 5-0 to dismiss complaint No. 10-16 on the grounds that the complainant has not responded to staff's attempts to obtain further information.

8. Complaint No. 10-30.

Commissioner Johnson moved, Commissioner Baker seconded, and the Commission approved 5-0 to dismiss complaint No. 10-30 (Handa), in which the complainant may have received the information he requested.

i. There was one speaker on the item: Max Allstadt.

9. Commission Staffing Plan. Ms. Barazoto presented a draft assessment of staffing needs in preparation for budget requests for FY 2013-14.

[1] Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

i. There were three speakers on the item: Max Allstadt, Barbara Newcombe, and Katherine Gavzy.

The meeting adjourned at 8:52 p.m.

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, Chair
Lloyd Farnham, Vice-Chair
Aspen Baker
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera

Whitney Barazoto, Executive Director

FAIRNESS INTEGRITY HONESTY OPENNESS

TO: Public Ethics Commission Members
FROM: Whitney Barazoto, Executive Director
DATE: December 20, 2012
RE: Regular Meeting Schedule

Below is a proposed schedule for regular Commission meetings in 2013. Unless otherwise specified, meetings occur on the first Monday of each month.

2013 REGULAR MEETING SCHEDULE		
DATE	**TIME**	**ROOM**
January 7, 2013	6:30 PM	Hearing Room 1
February 4, 2013	6:30 PM	Hearing Room 1
March 4, 2013	6:30 PM	Hearing Room 1
April 2, 2013 (Tuesday)[1]	6:30 PM	Hearing Room 1
May 6, 2013	6:30 PM	Hearing Room 1
June 3, 2013	6:30 PM	Hearing Room 1
July 1, 2013	6:30 PM	Hearing Room 1
August Recess		
September 3, 2013 (Tuesday)[2]	6:30 PM	Hearing Room 1
October 7, 2013	6:30 PM	Hearing Room 1
November 4, 2013	6:30 PM	Hearing Room 1
December 2, 2013	6:30 PM	Hearing Room 1

[1] April 1, 2013, is a scheduled Mandatory Business Shutdown day; City Offices are closed.
[2] September 2, 2013, is the Labor Day Holiday.

One Frank Ogawa Plaza, 11th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

ATTACHMENT 3

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, Chair
Lloyd Farnham, Vice-Chair
Aspen Baker
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera

Whitney Barazoto, Executive Director

FAIRNESS INTEGRITY HONESTY OPENNESS

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 20, 2012
RE: Review and Selection of a New Commissioner

At the Commission's January 7, 2013, meeting, the Public Ethics Commission will interview three finalists in order to determine which of the three will be appointed to the Commission. The Commission's recruitment subcommittee conducted personal interviews of 6 applicants on Wednesday, December 12, 2012, and selected the following three finalists to present to the full Commission:

- D'nnette Savannah
- Eddie Tejeda
- Jenna Whitman

Attached is the application and resume for each of the three candidates. Each candidate will appear before the Commission at the January meeting and will stand for a few minutes to introduce themselves and discuss why they are interested in the Commission, what skills and experience they bring to the Commission, and what issues or projects they would like to work on as Commissioners. The Commission will then have the opportunity to ask questions of each candidate and then vote by secret ballot to appoint the new Commissioner. Following Commission appointment, the new Commissioner will be sworn in at a later date and will be able to begin participating at the February Commission meeting.

One Frank Ogawa Plaza, 11th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

APPLICATION FOR COMMISSIONER

Please fill out the form below and submit it with a copy of your resume to: City Of Oakland, Public Ethics Commission, One Frank Ogawa Plaza, Eleventh Floor, Oakland, CA 94612. Applications and resumes may also be faxed to: (510) 238-3315. **Your completed application and resume must be received no later than 5:00 p.m. on Friday, November 16, 2012 at 5:00 p.m., to be considered.**

Please type or print legibly. Try to limit your answer to the space provided, but you may attach additional sheets as necessary.

Please note: This application and supporting materials is not confidential and may be subject to public inspection upon request.

Name: D'nnette Savannah

Mailing Address: Oakland, CA

Daytime Phone: _____ **Evening Phone:** _____

Email: _____

Are you an Oakland resident? Yes/No **Years of Residency in Oakland:** 33

1. Why do you want to serve on the Public Ethics Commission?

   Serving on the Commission is an excellent way to give back to Oakland. Four generations of my family have resided in Oakland. I received scholarships from Oakland businesses that allowed me to become the first member of my family to attend college. I am passionate about giving back to a community that has given me so much. As an attorney compliance issues fascinate me. I believe the citizens of Oakland deserve an ethical government. I will work hard to ensure that they get what they deserve.

2. What skills and qualifications will you bring to the Commission?

   I am a California barred attorney with experience in immigration, probate, Oakland landlord/ tenant negotiations and criminal law. I am an Oakland native with an understanding of how policies downtown affect the citizens that live here. I have more than 10 years of experience as an administrator and a BA in government. I have successfully juggled priorities; meeting aggressive deadlines often exceeding established goals. I am an incredible problem solver with the ability to work well with others and an uncanny ability to see all sides of a conflict.

3. What interests would you like to pursue while serving on the Commission?
   I am very interested in the Campaign Reform Act given your findings that the public believes that candidates with few monetary resources become insignificant in a campaign. I am also very interested in the City Counsel Code of Ethics assistance that the Commission provides. I would like to assist in ensuring compliance with these rules.

4. Please list any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.
   I have volunteered with many organizations in the Bay Area including CHAANGE, The Clorox Company, The Alameda County Bar Association, The Charles Houston Bar Association and the Oakland Rotary Club. My work with non-profits in Oakland afforded me the opportunity to work with many people in Frank Ogawa Plaza for grants and community building.

5. Please list the names, addresses and telephone numbers of two references.

   Name: Damionne Reed

   Address: Tracy, CA

   Daytime Phone: _____ Evening Phone: _____

   Name: Dean Calhoune

   Address: Oakland, CA

   Daytime Phone: _____ Evening Phone: _____

D'nnette Savannah, Esq.

BAR MEMBERSHIP

Admitted to California State Bar, June 2012.

EDUCATION

Thurgood Marshall School of Law, Texas Southern University, Houston, Texas
Juris Doctor May 2011
Excellence for the Future, Award for appellate litigation, fall 2009; Immigration Clinic, 2010; Curriculum Committee, 2011.

University of the Witwatersrand, Mandela Institute, Johannesburg South Africa
Winter Law School Program, Summer 2009

California State University Sacramento, Sacramento, California
Bachelor of Arts Government, December 2002 (Worked full time and attended school full time)

PROFESSIONAL EXPERIENCE

Thurgood Marshall School of Law, Houston, Texas
Street Law Instructor, January 2011 – May 2011
Facilitated workshops which taught legal concepts to high school students; Prepared lesson plans; Participated in classroom focus groups to determine lesson plan.

Immigration Legal Clinic, August 2010 – December 2010
Conducted client interviews; Researched legal issues; Prepared memos, letters, and court documents; Attended court hearings; Prepared clients for trial; Provided periodic updates, regarding action recommendations current status, to supervising attorney.

Youth ALIVE!, Oakland, California
Office Manager, October 2006 – August 2008
Provided administrative support to the Executive Director; Prepared materials and coordinated meeting logistics; Negotiated with vendors to update equipment and renew contracts; Updated and maintained Access and Excel databases, created analysis and reported data; Prepared and processed accounts payable; Successfully adapted to quickly changing priorities; Completed multiple projects working with various executives.

JP Morgan Chase, San Ramon, California
Loan Administrator II, May 2005 – September 2006
Prepared and processed mortgage documents; Complied with federal confidentiality regulations; Updated conversation log and reviewed pipeline daily; Completed all new files within three days, surpassing company regulations; Created and processed documents in computer systems.

Capital Beverage Company, Sacramento, California
Administrative Assistant, August 2000 – May 2005
Performed general office tasks, including accounts payable, accounts receivable, and cash applications; Implemented and maintained file systems; Provided customer service; Trained new employees on department procedures.

Mastagni, Holsted & Chiurazzi, Sacramento, California
File Clerk, Summer 2000
Sorted and filed client mail and documents; Provided procedure training to new employee.

SKILLS

Relativity; Concordance; Access; Publisher; PowerPoint; Windows OS; Mac OS; In-house banking system.

COMMUNITY SERVICE

Alameda County Bar Association 2012; Charles Houston Bar Association 2012; Citizenship & Immigration Forum 2011, 2010; Locks of Love (Hair Donation) 2011, 2006; Oakland School of Performing Arts Italy Tour (Chaperone) 2005; California HIV/AIDS Advocacy Network Grassroots Evolution 2001 .

INTERNATIONAL TRAVEL

South Africa (2009); Jamaica (2007); Grand Cayman Island (2007); Italy (2006); Jamaica (2000); Mexico (1996, 1997, 1998); Japan (1994).

INTERESTS

Japanese language; International and Domestic travel; Culinary exploration; Classic arts; Motorcycle riding.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

APPLICATION FOR COMMISSIONER

Please fill out the form below and submit it with a copy of your resume to: City Of Oakland, Public Ethics Commission, One Frank Ogawa Plaza, Eleventh Floor, Oakland, CA 94612. Applications and resumes may also be faxed to: (510) 238-3315. **Your completed application and resume must be received no later than 5:00 p.m. on Friday, November 16, 2012 at 5:00 p.m., to be considered.**

Please type or print legibly. Try to limit your answer to the space provided, but you may attach additional sheets as necessary.

Please note: This application and supporting materials is not confidential and may be subject to public inspection upon request.

Name: Eddie A Tejeda

Mailing Address _____

Daytime Phone: _____ **Evening Phone:** _____

Email: _____

Are you an Oakland resident? Yes/No **Years of Residency in Oakland:** 2

1. Why do you want to serve on the Public Ethics Commission?

I am a civic technologist and take great interest in what happens in my city. I have devoted my career to building technologies that help civic institutions become more transparent, ethical, and efficient. While technology plays a critical role in how citizens access and work with their governments, I would also want to get more directly involved. I would like to help enhance the reach and voice of the Public Ethics Commission by attracting a new generation of engaged citizens through my technology and organizing networks. Serving on the Public Ethics Commission would be both an honor, and a way for me to serve the City of Oakland using my interests and skills.

2. What skills and qualifications will you bring to the Commission?

Over the past year as a Code for America Fellow I devoted my time and energies to understanding how local governments function and what the City of Oakland is doing to improve the lives of its residents. While creating a blight tracking tool for New Orleans as part of my fellowship, I met with city staff and residents and learned about the importance of hearing both sides' needs, experiences, and expectations. As part of this and in my work before I have experience leading diverse teams through complex projects. I understand how to do research in nuanced topics, organize people and build support to ensure a project's success.

I have lived in Oakland for over two years and have attended-- and spoken at-- several City Council meetings. I stay current with my local representative and local news. I am also co-founder of the Open Oakland Brigade, a group dedicated to working with Oakland city staff to help bring efficiency to their work. I have experience in education and have a reputation of being a good listener, patient and responsive to people of wide range of skills and backgrounds.

3. What interests would you like to pursue while serving on the Commission?

With a strong understanding and familiarity with technological innovations that can help government be more transparent and open, I am interested in working to help Oakland strengthen and improve its ethical climate. I am curious about the challenges and opportunities involved in informing citizens about government, creating access to information and meetings, and educating City staff about ethics. One possible bridge between all of these is expanding the constituency and attendance of the Public Ethics Commission. I would like to attract a new generation of engaged citizens who are interested in solving problems, working together with their city, and creating a cultural of ethical, responsive government.

4. Please list any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.

I am the co-founder of a OpenOakland, a civic innovation organization that's bringing the local open government community. I was also a key organizers of Code for Oakland. There, we brought together city officials with a broad community of civic-minded folks who volunteered their time to create solutions to various city needs. In summer of 2012 I spoke to City staff at OakX about using technology to create new channels of communication. And with OpenOakland, we are collaborating with Nicole Niditch, to organize City Camp, an event slated for December 2012 for both city staff and local civic technologists to present their current projects and proposed ideas for improving the flow of governance for the benefit of all in Oakland.

5. Please list the names, addresses and telephone numbers of two references.

Name: Jen Pahlka, Founder/CEO of Code for America

Address: Oakland, CA

Daytime Phone: _____ Evening Phone: _____

Name: Cynthia Farina, Professor of Law at Cornell University

Address: Ithaca, New York

Daytime Phone: _____ Evening Phone: _____

Eddie A. Tejeda

Oakland, CA

Education

Hampshire College / Amherst, MA
Bachelor of Arts, May 2004; concentration on *The Fundamentals of Computer Science and the Digital Divide*

Professional Experience

Code for America / Oakland, CA
Fellow, January 2012 - present
- Selected as 2012 Code for America Fellow from a competitive nationwide request.
- Lead and successfully launched project in partnership with the City of New Orleans to better track the status of blighted homes, called BlightStatus. Project was later funded by Code for America's Incubator program.
- Presented at various conferences, including at OakX in Oakland City Hall, at the CfA Summit and at Personal Democracy Applied Conference in New York.
- Served as Google Summer of Code 2012 mentor.

OpenOakland / Oakland, CA
Co-captain, October 2012 - present
- Co-founded and co-lead a community of civic developers, designers, and organizers working to bring innovative solutions to Oakland governance; projects include Open Data Portal (September 2012- ongoing); CityCamp (December 2012); and Adopt-a-Drain (November 2012- ongoing).

Cornell University / Ithaca, NY and Oakland, CA
Lead Developer, September 2009 - September 2011
- Recruited by Cornell University Law School professors to lead the technology design and implementation of Regulation Room, a project to open public commenting on Department of Transportation rulemaking.
- Project received special recognition by the White House and news outlets like *The New York Times* in 2010 for bringing transparency to government and for leading agencies in open government practices.

Digress.it / San Francisco, CA
Creator and Founder, September 2006 - present
- Created Digress.it, an online tool aimed at encouraging thoughtful discussions on the paragraph-by-paragraph levels of academic, government, and other kinds of texts around the world. As of November 2012 there have been 5500 downloads.
- Presented at the Association of College and Research Libraries (ACRL) *Rare Books and Manuscripts* pre-conference.
- Received funding from United Kingdom's JISC (Joint Information Systems Committee) to adapt Digress.it for use by UK local governments, and from the New York Public Library for a special exhibit.

LittleSis.org / San Francisco, CA
Developer, July 2008 - 2009
- Co-lead technology development of this Sunlight Foundation-funded project designed to map and visualize the connections between key influentials in business and governance throughout the United States.

The Institute for the Future of the Book / Brooklyn, NY
Researcher, September 2006 - September 2007
- Researched and wrote articles for small think-tank funded by the MacArthur Foundation focused on considering the future of publishing and the impacts of the Internet and technology.
- Our work was written about in publications *Newsweek, The Chronicle of Higher Education, The Boston Globe, Wired, Forbes,* and *The Wall Street Journal.*

Visudo Software Consulting / London, England and Brooklyn, NY
Co-Founder, July 2005 - September 2006
- Co-founded web consulting company that provided technology services to artists, political publications, and non-profits.

Akaza Research / Isovera Inc / Cambridge, MA
Researcher and Consultant, June 2004 - June 2005
- Led launch of National Institute of Health- backed open source clinical research application, *OpenClinica.*
- Led consulting projects with clients such as American Association for the Advancement for the Advancement of Science (AAAS) and The National Center for Learning Disabilities (NCLD).

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

APPLICATION FOR COMMISSIONER

Please fill out the form below and submit it with a copy of your resume to: City Of Oakland, Public Ethics Commission, One Frank Ogawa Plaza, Eleventh Floor, Oakland, CA 94612. Applications and resumes may also be faxed to: (510) 238-3315. Your completed application and resume must be received no later than 5:00 p.m. on Friday, November 16, 2012 at 5:00 p.m., to be considered.

Please type or print legibly. Try to limit your answer to the space provided, but you may attach additional sheets as necessary.

Please note: This application and supporting materials is not confidential and may be subject to public inspection upon request.

Name: **JENNA M. WHITMAN**

Mailing Address: , OAKLAND CA

Daytime Phone: Evening Phone:

Email:

Are you an Oakland resident? YES Years of Residency in Oakland: 2004-08, 2010-present

1. Why do you want to serve on the Public Ethics Commission?
   I have been looking for a way to provide public service to the City of Oakland, where I have lived and/or worked since 2004. As noted below, the Commission seems like a good match for my experience and interests. I believe that government can and does make our lives better. I would be proud to participate in a process that is designed to increase accountability and public confidence in political processes, including governmental decision-making.

2. What skills and qualifications will you bring to the Commission?
   I have some experience in addressing conflicts of interest and ethical issues in the private and public sectors. This includes both a litigation posture, evaluating a factual record to determine whether conflicts exist or ethical breaches have occurred, as well as an institutional advice role, such as reviewing and/or drafting educational and training materials, or internal policies and procedures, to avoid conflicts and ethical breaches. In my role as an attorney, I regularly construe laws, regulations, policies and procedures, and opinion letters to determine what activities and/or relationships may be permissible.

3. What interests would you like to pursue while serving on the Commission?
I would be glad to serve in any areas deemed by the Commission to be most urgent. I believe I could be most helpful in the areas of ethics complaints and/or investigations, outreach and education, and revisions of law.

4. Please list any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.
I am currently employed by the Alameda County Superior Court, and have previously held short-term paid positions (as a law clerk) with the Department of Defense and the Department of Justice. At the Department of Defense Standards of Conduct Office, I was not only involved in analysis and enforcement, but also proactive efforts to prevent conflicts and ethical breaches through education and outreach. While I was employed in the private sector, I served on the Board of the AIDS Legal Referral Panel, a non-profit legal services organization in San Francisco. This involved outreach to legal and business communities to raise funds to provide legal services to the indigent. The Board also addressed issues of corporate governance and finances.

5. Please list the names, addresses and telephone numbers of two references.

Hon. Steven A. Brick
, Oakland CA

Caryn Becker, Policy Counsel
Oakland CA

Jenna M. Whitman

. *Oakland, California* *CA Bar # 215141*

experience

Legal Research Attorney: Superior Court of California, Alameda County (Dec. 2007 - Present)
Oakland, CA
Advisor to sitting civil court judges in law and motion matters. Review the parties' briefs related to motions, informal discovery disputes and ex parte applications; provide legal and factual analysis to judges orally and via written bench memoranda; draft proposed tentative rulings and final orders. Since March 2010, assigned exclusively to civil complex department, which handles class actions, mass torts, securities cases, and other cases that require exceptional judicial management, due to the number of parties, amount of evidence, complexity of issues presented, or other reasons.

Associate: Lieff, Cabraser, Heimann & Bernstein, LLP
San Francisco, CA **(February 2005 - November 2007)**
Had responsibility for all aspects of litigating class action case against 10 large corporate defendants alleging unlawful kickback scheme in violation of Real Estate Settlement Procedures Act, and representing clients in two related cases; included case investigation, drafting complaint, legal research and analysis, drafting pre-trial motions and discovery pleadings (including motion for class certification, granted), regular appearances in federal court. Litigated other class actions on behalf of consumers, including non-injury product defect cases and consumer fraud cases. Served as firm Conflicts Counsel 2005-2006.

Associate: Howard, Rice, Nemerovski, Canady, Falk & Rabkin, a Professional Corporation
San Francisco, CA **(October 2001 – December 2004)**
In multi-billion dollar Chapter 11 reorganization, litigated claims objections; researched and drafted memoranda, motions and appeals; argued motions before bankruptcy court and Ninth Circuit Bankruptcy Appellate Panel; trained and supervised 30 attorneys in 3.1 million-page document review. Other complex litigation including copyright, theft of trade secrets, etc. Pro bono representation included applicants for asylum, aerial dancing troupe.

Law Clerk: U.S. Department of Justice, Criminal Division, Economic Crimes Unit
Washington, D.C. **(October 2000 - April 2001)**
Supported Assistant U.S. Attorneys prosecuting economic crimes, including throughout 3-week, 18-count embezzlement trial: fact investigation, organization and preparation of evidence, drafting of charge to jury.

Summer Associate: Patton Boggs LLP
Washington, D.C. **(June - August 2000)**
Researched and drafted memoranda on legal issues, including mine safety and health and securities fraud. Drafted summary judgment papers in Title VII employment discrimination case against the U.S. Department of State.

Summer Associate: United States Department of Defense, Office of General Counsel
Washington, D.C. **(June – August 1999)**
Conducted research, wrote and defended memoranda on a wide variety of issues for the Standards of Conduct Office (SOCO), including conflict of interest for federal employees in the areas of post-employment, nepotism, and compensation; receipt of gifts and awards for veterans.

Grant Coordinator: Prague Institute of Advanced Studies (PIAS)
Prague, Czech Republic **(1997–1998)**
Managed PIAS' participation in biotechnology grant; led efforts to allocate responsibilities among five partner institutions; redesigned, edited and produced newsletter promoting biotechnology information exchange in Europe.

VIP Services Coordinator: Bohemiae Foundation
Prague, Czech Republic **(March – September 1996)**
Coordinated special arrangements for speakers and panelists in the *New Atlantic Initiative Congress of Prague*, May 1996. Cooperated with Czech companies in public relations and logistics, coordinated accommodation and transport for over 300 delegates, engaged in delegate relations and crisis management.

education

Georgetown University Law Center, J.D.
Dean's list, top one-third of class. (1998-1999)
Board Member and Social Chair, Outlaw (Student LGBT organization). (1999-2001)

Yale College, Bachelor of Arts
Graduated "with distinction" in the major (American Studies, concentrating in Diplomatic History).
Varsity Swimming, 3 years. Also active in urban tutoring program, college intramural sports.

service

Board Member, Development Committee Co-Chair, AIDS Legal Referral Panel (2003-06).

personal

Enjoy outdoor activities, including cycling (mountain/road/commuting), hiking, and walking and training my dog.

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, Chair
Lloyd Farnham, Vice-Chair
Aspen Baker
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera

Whitney Barazoto, Executive Director

FAIRNESS INTEGRITY HONESTY OPENNESS

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 19, 2012
RE: Access to Public Records

The Public Ethics Commission (PEC) is exploring the issue of access to public records in the City of Oakland, with the goal of improving the accessibility of Oakland public records. The Commission conducted three hearings during the first half of 2011, but the project was on hold in June 2011 and during the time when the Commission lacked staffing. In the interim, the new City Administrator's office has taken steps to open up City documents and data, and other partners are showing increased interest in the issue and in providing assistance to the City. This memorandum seeks to provide some background on the Commission's prior work, information about the current context, and staff's suggestions on a framework for the Commission's work going forward. In the coming weeks and months, the Commission can continue the work of its prior Sunshine Committee, explore the context of the new environment, and make specific recommendations on how the City can improve its ability to provide open access to City documents and information.

Prior Commission Work on Access to Public Records

In early 2011, the Commission gathered information about access to public records from multiple perspectives over the course of a few hearings. The staff memoranda and supporting materials are included in this agenda packet to provide some background on the Commission's work on this issue in 2011. These materials are summarized as follows:

1. **Oakland Policies and Procedures** – On October 4, 2010, the Public Ethics Commission adopted a motion to conduct hearings on the subject of Oakland's policies and procedures regarding public records requests. (per December 6, 2010 Staff Report – attached here as **Exhibit A**)
2. **Problems with the System** – On February 2, 2011, the Public Ethics Commission heard testimony regarding the problems encountered by the public in attempting to access City records (February 2, 2011 Staff Memo – **Exhibit B**)
3. **City Employee Perspective** – On March 24, 2011, the Public Ethics Commission meeting focused on how City employees administer public records requests (March 24, 2011 Staff Memo – **Exhibit C**)

One Frank Ogawa Plaza, 11th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

4. **Comparison of Oakland Rules to Other Cities** – On May 18, 2011, the PEC reviewed ordinances, policies, and proposals from other local agencies (May 18, 2011 Staff Memo – **Exhibit D**)
5. **San Francisco Proposal** – On June 6, 2011, the PEC heard a presentation from Richard Knee, Chair of the Sunshine Ordinance Task Force, regarding proposed amendments to the San Francisco Sunshine Ordinance. The Commission directed outgoing staff to prepare a summary of Sunshine-related proposals from all the hearings listed above. (June 6, 2011 Staff Memo and Summary of Proposed Recommendations – **Exhibit E**)
6. **Records Management Policy** – The next hearing in the series was supposed to be a presentation from the City Clerk's office regarding the Records Management Policy being created by the Clerk pursuant to Resolution 82908 (June 29, 2010). (Exhibit E). The City Clerk is currently finalizing the policy and plans to present it at the PEC's February meeting after submitting it to City Council Rules and Legislation Committee, as required by the Resolution 82908. (Resolution 82908 – **Exhibit F**)

Current Context

Recent efforts by City officials and private and public partners have shifted the momentum on opening up City government and making way for significant progress on issues such as access to public records. For example, the City Administrator's Office recently created a new position of Online Engagement Manager, filled by Nicole Neditch, who is leading projects that seek to open up engagement with the citizens of Oakland. Ms. Neditch presented information to the Commission this past summer regarding the City's new open data platform and the Code for America fellowship application which had just been submitted. Since then, more work has been done on the open data initiative, and Oakland was awarded three Code for America fellows who start in January and will be working on special technology projects and applications for the City. One project that the fellows may decide to take on is the creation of a technological tool to facilitate access to public records for the City of Oakland. In addition, events like CityCamp Oakland, and initiatives by groups such as OpenOakland and OakX, among others, make this an exciting time for the City overall, and particularly on access to public records.

Framework for an Ideal System

Access to public records is not just about responding to public records requests. Rather, access to public records is a multi-level service for the public that encompasses how the City provides information to the public through both online and traditional means, from the information available on the City's website to publications that are accessible inside a physical office, to the public's understanding of where to find documents, to staff's knowledge and capacity to respond to requests. It is the entire system of providing information to the public. Staff suggests that the Commission take this broad, multi-dimensional approach to this issue and proceed with a project designed to assess and make recommendations to the City Administrator and City Council in the following areas:

1. **Law** - Develop potential amendments to the Sunshine Ordinance
2. **City Policy/Administrative Instruction** – A policy to affirm the Public Records Act and Sunshine Ordinance and articulate roles and procedures, identify department coordinators, and articulate penalties and incentives for compliance.

3. **Process for Responding to Requests** – A process based on the City Policy, complete with tools for staff such as instructions on how to respond to requests, sample response letters, a master list of public records coordinators for each department, a redaction guideline/checklist, and other helpful tools
4. **System/Database for Tracking Records Requests** – Technology to facilitate the process of responding to requests, tracking information about requests, and understanding the volume and types of requests received
5. **Online Availability of Information** – Information provided to the public through City websites in general, as well as information about how to make a specific public records request and who to call for help
6. **Prototype for Improving Online Information** – PEC could serve as an example of how to redesign its website to be more user-friendly and better meet the needs of its customers
7. **Incentive/Reward System** – Measures that can be taken by management and/or the PEC to encourage and improve compliance with public records requirements
8. **Ongoing Feedback Mechanism** – Solicit feedback on access public records issues – whether related to the availability of online information, a response or lack of response to a request, or changes needed in the law
    a. **See** a new webpage created for suggesting changes to the Sunshine Ordinance at www.oakland.digress.IT.

Some of the latter provisions could be implemented directly by the PEC within its existing authority. In addition, the Commission could articulate what an ideal access to public records system should look like – what characteristics and qualities it would have – along with performance measurements that could be tracked to assess and show performance and improvement over time.

Roadmap for the Commission

Given the ground that has been covered through the Commission's public meetings, staff recommends that the Commission create an Access to Public Records Subcommittee to review the historical record, consider the information in today's context, discuss the framework above, and draft potential recommendations to be considered by the full Commission. Staff also requests input from the Commission and the public on the above project proposal.

.

Exhibit A

CITY OF OAKLAND
Public Ethics Commission
Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
Ai Mori
Richard Unger
Vacancy (Mayoral)

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 **(510) 238-3593** **Fax: (510) 238-3315**

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: December 6, 2010

RE: **A Staff Report And Action To Be Taken Regarding Commission Hearings Regarding Public Accessibility To City Records**

At its meeting of October 4, 2010, the Commission considered a supplemental staff report in connection with Complaint No. 09-12. The complainant, Marleen Sacks, alleges that the City failed to produce or failed to timely produce copies of public records that she had requested.

At the October 4 meeting, the Commission adopted a motion to conduct a hearing(s) on the subject of Oakland's policies and procedures regarding public records requests. The Commission also requested its Sunshine Ordinance Committee ("Committee") to provide recommendations on the format, nature and scope of the hearing(s).

On October 19, 2010, the Committee discussed proposals for conducting a series of public meetings regarding the accessibility of public records. The Committee directed staff to develop a specific hearing schedule for subsequent consideration and recommendation addressing the following issues: 1) problems with the current process of providing records; 2) a review of the applicable law and an examination of procedures from other jurisdictions; 3) presentations from City representatives and key stakeholders; and 4) discussion and development of recommendations.

Based on the Committee's direction, Commission staff makes the following proposal for the scheduling and format of Commission hearings on public accessibility to City records:

First Hearing: Current Public Record Practices From The Outside Looking In

Commission staff recommends that the first hearing be devoted to an understanding and assessment of Oakland's current public record response practices. Staff will prepare in

advance of the hearing a written briefing on applicable law and any relevant internal protocols pertaining to public record requests. Commission staff recommends that the majority of hearing time be devoted to receiving comments from members of the public regarding their experience with obtaining records from the City. To that end, Commission staff will invite members of the public who routinely seek records from the City, as well as people who have in the past expressed difficulty in obtaining City records. At the Committee's suggestion, staff will invite comments from persons who have filed complaints with the Commission in recent years on public records issues. Commission staff believes this first hearing can be noticed and conducted by January 2011.

Second Hearing: Understanding City Challenges And Opportunities

Commission staff recommends that the second hearing be devoted to receiving comments from those within the City who are responsible for coordinating responses to public records requests. Representatives from the Offices of the City Clerk and City Attorney, as well as from agency and department information officers, would be logical participants. Based on the information obtained from the first hearing, the Commission will be able to suggest in advance specific questions for these representatives to address. Commission staff believes this second hearing can be noticed and conducted by February 2011.

Third Hearing: Considering Proposals For Reform

Commission staff recommends a third hearing to receive suggestions from various "open government" organizations and to review "best practices" from other local agencies to improve Oakland's ability to respond to public records requests. Depending on the response, the Commission can also begin deliberating on which options to recommend to both the City Council and administration. Additional meetings can be scheduled as necessary to complete this task.

Additional Hearing On The Citywide Records Management Program

Commission staff has previously advised the Commission about its upcoming role in the process to develop a comprehensive Citywide Records Management Program. Under City Resolution No. 82908, the Commission will be asked to hold at least one public hearing and to provide the City Council with "a summary of public comments, analysis, and recommendations pertaining to the proposed program." ***Attachment 1.*** Based on the timetable specified in the Resolution and conversations with the City Clerk's Office, Commission staff anticipates that the Commission will be asked to conduct its public hearing sometime in early 2011.

The relationship between sound records management policies and the ability to respond to public records requests cannot be over-emphasized. Establishing a comprehensive records management program is essential to the City's ability to respond to public records requests. Thus in addition to the three hearings discussed in this memorandum, the Commission will need to accommodate an additional hearing on records management at

some point within the above-proposed hearing schedule. This additional hearing and subsequent report to the City Council may impact the scheduling of any of the above-proposed hearings.

Commission staff notes that at the October 4 meeting, the Commission had expressed a desire to complete its hearings on public records issues within the current terms of several Commission members. However, based on the proposals from the Sunshine Committee and the availability of staff during the month of December, it does not appear feasible that the Commission can meet this timetable. The Commission is also reminded that there will be three and possibly four new Commissioners seated by January 2011. It may be more efficient and effective for the newly constituted Commission to play the lead role in conducting the hearings, formulating the recommendations and advocating their adoption.

Commission staff recommends that the Commission consider the above-proposed hearing schedule and format, consider any alternatives, and direct staff to begin planning and implementing the hearing process.

Respectfully submitted,

Daniel D. Purnell
Executive Director

Exhibit B

CITY OF OAKLAND
Public Ethics Commission
Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
Amy Dunning
Lloyd Farnham
Christopher Young

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 **(510) 238-3593** **Fax: (510) 238-3315**

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: February 2, 2011

At its meeting of October 4, 2010, the Commission directed staff to notice a series of public meetings on the subject of Oakland's policies and procedures regarding public records requests. The first meeting for Wednesday, February 2, 2011, is intended to apprise the Commission about problems people say they encounter when accessing City records. Commission staff will provide the Commission with a brief overview of public records law followed by an expanded format for public comment.

I. BACKGROUND

Public access to City records is regulated primarily by the California Public Records Act (CPRA) and the Oakland Sunshine Ordinance. The Sunshine Ordinance provides that the "[r]elease of public records by a local body, or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act ("CPRA") [citations] in any particulars not addressed by this Article." [O.M.C. §2.20.190] The Sunshine Ordinance requires the Commission to "develop and maintain an administrative process for review and enforcement of the ordinance, among which may include the use of mediation to resolve disputes." [O.M.C. Section 2.20.270(A)(3)] The Commission has developed and maintained an administrative process for review and enforcement of the Sunshine Ordinance in the form of the Commission's General Complaint Procedures ("GCPs"). Neither the Sunshine Ordinance nor the GCPs provide express remedies for the failure to comply with the public records provisions of the Sunshine Ordinance.

II. SUNSHINE ORDINANCE LIMITATIONS

Over the years, Commission staff has spoken with many individuals in connection with complaints they have filed over the alleged failure to receive (or to timely receive) requested City records. In addition, prior Commissions have expressed frustration over their inability to fashion

remedies in those instances where the City is alleged to have violated either the CPRA or the Sunshine Ordinance.

The following is a preliminary, non-exclusive list of areas that the Commission may wish to examine and address during the course of its scheduled meetings:

1. **No specific remedies for violations.** As stated above, the Sunshine Ordinance does not provide express remedies for violations of its public records provisions. While the Commission is authorized to "develop and maintain an administrative process for review and enforcement of the ordinance", the Sunshine Ordinance fails to specify how enforcement should be implemented.

2. **Under-staffed mediation service.** The Sunshine Ordinance provides that no complaint shall be filed with the Commission unless the complaining party has requested and participated in mediation with the executive director. Due to limits on staff resources, the Commission has been unable to consistently provide timely mediation services for some of the requests it receives.

3. **No specific provisions regarding elected officials.** A number of past complaints involve the production of records from elected officials. The Sunshine Ordinance however, addresses only the production of records from a 'local body, City agency or department.' Questions have arisen whether and to what extent the Sunshine Ordinance should apply to the production of records by elected officials.

4. **Development of a comprehensive City-wide record retention policy.** Some of the problems associated with record production can arguably be traced to the lack of an updated City-wide records management policy. Specific areas of concern include electronic records management (especially email retention and retrieval) and indexing of retained records. The Office of the City Clerk is currently developing an updated records management policy that the Commission will review in 2011.

5. **Mandatory records training.** Commission staff is currently implementing City-wide ethics training for Form 700 filers. A component of this training includes public records law, but the Sunshine Ordinance does not contain a comprehensive, mandatory records training requirement for City employees.

6. **Affirmative requirements to ensure greater access to public information.** Many local sunshine ordinances include affirmative programs and policies that are intended to increase access to public information, such as the online posting of elected officials' public calendars, campaign statements, statements of economic interests, and various agenda materials. Other affirmative programs and policies include expanded provisions for the immediate production of certain types of records, mandatory disclosure of certain ex parte communications, and the establishment of an online "citizen's guide" for accessing City records. The Sunshine Ordinance does not currently include these types of provisions.

III. FURTHER MEETINGS

Upcoming meetings will examine City challenges and opportunities for ensuring timely and comprehensive responses to public records requests; a review of "best practices" from other local agencies and open government advocates; and consideration of a proposed Citywide records management program from the Office of the City Clerk. Other subjects can be addressed at future meetings as the Commission directs.

Respectfully submitted,

Daniel D. Purnell
Executive Director

Attachments:

1) Relevant portions of Marleen Sacks' pleadings in the case of Sacks v. City of Oakland et al; Alameda County Case No. RG10504741. Ms. Sacks has requested that a complete copy of the pleadings including exhibits be "introduced into evidence at the hearing." A complete copy of the pleadings is available from the Commission in advance of the February 2, 2011, meeting and will be available and submitted to the Commission at that meeting. A full copy of Ms. Sacks' pleadings can also be accessed through the Alameda County Superior Court's website at: http://apps.alameda.courts.ca.gov/domainweb/html/casesumbody.html

Exhibit C

CITY OF OAKLAND
Public Ethics Commission
Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
Amy Dunning
Lloyd Farnham
Christopher Young
Aspen Baker

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 **(510) 238-3593** **Fax: (510) 238-3315**

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: March 24, 2011

At its meeting of October 4, 2010, the Commission directed staff to notice a series of public meetings on the subject of Oakland's policies and procedures regarding public records requests. The first meeting of this series occurred on February 2, 2011, at which the Commission received comments from members of the public on problems they encountered while attempting to access City records. The minutes from that meeting were included in the Commission's March 7, 2011, agenda packet.

Today's meeting will focus on how City employees administer public records requests. The Commission is expecting to hear from City employees who monitor and oversee public records requests, as well as from those whose job it is to actually search for and locate a variety of City records. The Commission will also receive information regarding the administration and management of so-called "electronic" records. The role that records management policies play in the public's right to access City records will also be addressed.

Upcoming meetings will include a review of "best practices" from other local agencies and open government advocates, and consideration of a proposed Citywide records management program from the Office of the City Clerk. Other subjects can be addressed at future meetings as the Commission directs. Pursuant to the Commission's request, an expanded amount of speaking time will be afforded to members of the public who were unable to attended the February 2 meeting.

Respectfully submitted,

Daniel D. Purnell
Executive Director

Exhibit D

CITY OF OAKLAND
Public Ethics Commission
Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
Amy Dunning
Lloyd Farnham
Christopher Young
Aspen Baker

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 **(510) 238-3593** **Fax: (510) 238-3315**

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: May 18, 2011

RE: A Staff Report And Presentations On Improving Public Access To City Records

The Commission has directed staff to notice a series of public meetings on the subject of Oakland's policies and procedures regarding public records requests. The first meeting of this series occurred on February 2, 2011, at which the Commission received comments from members of the public on problems they encountered while attempting to access City records. A meeting conducted on March 24, 2011, focused on how City employees administer public records requests.

Tonight's meeting will review ordinances, policies and proposals from other local agencies. Attached to this memorandum is a summary of public records ordinances, policies and proposals from five local jurisdictions -- San Francisco, Berkeley, San Jose, Vallejo and Milpitas. ***Attachment 1.*** Commission staff has summarized those provisions which are not currently included in, or are at variance with, Oakland's Sunshine Ordinance.[1] In addition, staff has included a copy of the City of San Jose's administrative procedures for handling public records requests. ***Attachment 2.***

[1] Copies of the actual text of the laws and proposals can be found at:

http://www.firstamendmentcoalition.org/category/resources/sunshine-ordinances/ or at
http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=35804 (San Francisco only).

Commission staff has the following observations regarding the attached laws and proposals:

1) Several jurisdictions (San Francisco, San Jose, Milpitas) attempt to address the issue of what members of the public can do if they are denied inspection of a known record. Typically, most Oakland complaints allege either that the City made an untimely response, or that a record exists even though the City maintains that it does not. There have been occasions however when the City has refused to produce a document on grounds of a claimed exception, such as attorney-client privilege, privacy, etc. The policy question raised in these scenarios is whether there should be a person or body (such as the Commission) that should be authorized to review the disputed record and make a determination whether the claimed exemption applies. In civil lawsuits seeking enforcement of the CPRA, this authority is delegated to a judge, who may review the record in a private *in camera* proceeding. It is interesting to note that none of the five jurisdictions actually authorize any of its administrative bodies to review a disputed record.

2) Several jurisdictions (San Francisco and Milpitas) grant employees a legal cause of action against the city if an employee is wrongfully disciplined for providing a public record to a member of the public.

3) All jurisdictions except Vallejo try to address the issue of whether and when preliminary drafts, notes or memoranda shall be retained and, if so, whether and when they should be made public. The CPRA provides that such records may be withheld if they are not retained in the "ordinary course of business" and the public interest in withholding the documents "clearly outweighs the public interest in disclosure." These jurisdictions propose to either mandate disclosure without weighing the public interests involved, or to permit disclosure only after a final decision has been reached.

Some of the jurisdictions also propose to eliminate the so-called "balancing test" and the "deliberative process" exemption as a basis for withholding records. Both of these concepts employ an evaluation similar to that regarding preliminary drafts -- Whether the public interest is better served by withholding the document than by disclosing it. There are several policy questions that should be considered before eliminating these justifications for withholding: First, whether a public agency should possess some ability to withhold a document where there exists a clear public interest in doing so. Second, whether there should exist some "breathing room" for staff, legislators and/or executives to communicate in writing various policy options without concern that their so-called deliberative process will be made public and thus arguably impede collaborative policy formation.

4) Most of the reviewed jurisdictions require the release of records pertaining to employee salaries and benefits. While there is a definite judicial trend requiring the release of such information, there is arguable merit in codifying the trend of these decisions, i.e., that employee salaries and benefits, including retirement benefits, are a matter of public record.

5) Several jurisdictions (San Francisco, Berkeley and Milpitas) create an affirmative duty on the part of all city departments (as well as local advisory bodies), to create and maintain a website that contains meeting notices, minutes and, in the case of Milpitas, all records that the departments are required to make publicly available.

6) San Francisco, Berkeley and Milpitas also require the completion and public posting of a city-wide "record index" for the purpose of assisting members of the public to make specific and focused public records requests. Such a project could be part of Oakland's ongoing records management process, which the Commission will be reviewing later this year.

7) San Francisco, Berkeley and Milpitas attempt to deal with the issue of whether records possessed or used by an elected official constitute a public record of the local agency. These jurisdictions, to a varying degree, assert a proprietary interest in such records and involve the city attorney's office to ensure that such records are maintained during the transition of office. A related issue is the creation of an affirmative duty to maintain a "public calendar" by specified city officials. Some argue that the combination of mandatory calendar disclosures, combined with an effective lobbyist registration ordinance, can provide a high degree of transparency into the public decision-making process.

8) Employee training in open government issues is a feature in the San Francisco and Milpitas versions, although staff questions why such a mandatory requirement should be limited only to open government issues versus other areas of public ethics law.

9) San Francisco and Berkeley address what has historically been a concern of this Commission -- getting City representatives to attend Commission meetings that involve Sunshine complaints against the City. Both jurisdictions require their city representatives to attend commission meetings considering sunshine complaints.

10) Most of the jurisdictions provide that the willful violation of a sunshine provision shall constitute "willful or official misconduct." This term has particular meaning under the state Government Code which provides for the removal from office of a public official accused and convicted of misconduct in office. Since the Government Code does not specifically define what constitutes "misconduct", these local provisions specify that violating a provision of the sunshine ordinance can be grounds for removal from office. Beyond that, various jurisdictions create a process for the administrative review of decisions made in connection with the release of public records. San Francisco goes so far as authorizing personal fines of up to $5,000 for employees who willfully violate sunshine provisions. San Francisco and Milpitas establish legal presumptions that favor the disclosure of records that would operate against the cities in the event a claim is filed against the cities in court.

11) San Jose has taken the step of adopting administrative procedures for handling public records requests. The procedures articulate specific deadlines and assign

responsibilities for complying with state and local laws. The adoption of such procedures could be done administratively in Oakland by the City Administrator.

The final two meetings in this series will focus on the City Clerk's Office's current efforts to develop a City-wide records management program, and a public discussion of what recommendations the Commission may wish to make to amend the Sunshine Ordinance in the area of public records.

Respectfully submitted,

Daniel D. Purnell
Executive Director

COMPARISON OF KEY PROVISIONS OF LOCAL SUNSHINE ORDINANCES

	City of San Francisco *(Proposed amendments)*	**City of Berkeley** *(To appear on 2012 ballot as an initiative)*	**City of San Jose** *(Adopted as city council resolutions)*	**City of Vallejo** *(Adopted ordinance)*	**City of Milpitas** *(Adopted ordinance)*
Public Assistance	Every dept. shall designate an employee to serve as its "custodian of records" to assist with the identification and disclosure of public records.	City manager shall designate a "custodian of records" in every City department.			
Public Recourse	If a dept. custodian refuses to produce a record, public may request opinion from the City Atty's Office or from the S.O. Task Force.		A member of the public may appeal a decision to withhold a record to the City's Public Records Manager, the City Council's Rules Committee, the Election Commission or to the City Council.		A member of the public may appeal a decision to withhold a record to the City's Public Records Supervisor or to the Open Government Commission.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Immediate Disclosure	Requests for non-exempt public information that is readily identifiable and maintained by the dept. shall be produced no later than the following business day. Voluminous requests or requests involving multiple depts. are not subject to an immediate disclosure request.	City shall respond to a record request within 2 business days by either providing the record or by advising who will be responding to the request. Requests for a specifically identified, readily available record shall be produced the following business day. Denials shall be communicated within 3 business days.	City must send acknowledgement of a record request within 24 hours. City must respond to "simple and routine requests" within 2 business days. For extensive/demanding requests, City must respond within 3 business days stating when the records will be produced. If the City claims an exemption, it must communicate its claim within 10 days.	A written request for an identifiable, nonexempt public record shall be satisfied on the day of receipt if the request is received before noon, or by the close of business on the following business day.	Requests for records shall be satisfied no later than the close of business on the day following the request unless the dept head advises in writing that the request will be answered by a specific future date.
"Rolling" Production	Documents shall be produced on a "rolling" basis so as not to delay production until all relevant records have been produced and reviewed.	Voluminous records or those from multiple locations may be produced on a rolling basis but in no event later than 10 business days from the request.	City must produce records as they become available and not wait until all records are ready for production.		

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Employee Rights And Obligations	Employees shall not be disciplined for providing non-confidential information to members of the public. Grants a cause of action against the City for wrongful discipline.	Employees shall not be disciplined for providing non-confidential information to members of the public.			Employees shall not be disciplined for disclosing any public info or record to any member of the public. Any employee who is disciplined for disclosing public info or records shall have a cause of action against the City and the supervisor imposing the discipline.
Preliminary Drafts and Memos	Preliminary drafts and memos shall ***not*** be exempt from disclosure.	Preliminary drafts and memos shall be subject to disclosure at the time at the time a final recommendation is delivered.	Preliminary notes, drafts or memos shall be subject to disclosure once a proposal has been made public and only if the records have been retained at the time of the request (no duty to retain any particular record.)		No preliminary draft or memo shall be exempt from disclosure if it is normally kept on file. Preliminary drafts and memos concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending council approval shall not be subject to disclosure until final action has been taken.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Settlement Agreements		No litigation settlement shall include language restricting disclosure of terms or communications between parties to the settlement.		When litigation is finally adjudicated or settled, records of all communications between the city and the adverse party shall be subject to disclosure. Settlement terms may not restrict disclosure of the terms and communications between the parties. All such records shall be released "as soon as reasonably possible."	
Employee Records	The following shall ***not*** be exempt from disclosure: employee resumes and job applications; investigative reports involving "substantial" allegations of misconduct; salary and benefits for each employee.	Employee salary, job description, benefits and pension benefits shall be a public record.	Employee salary, job description, benefits and pension benefits are public records. Records of misconduct involving City officials, including investigation and discipline, are public records subject to applicable exceptions under the law.		City must provide a listing of gross earnings, allowances, overtime, and deferred compensation, leave cash-out and percentage of base salaries that the city pays as its CalPERS contribution.

City Contracts	All bids and responses become public after contract award, including all evaluation materials. Drafts of all proposed contracts requiring public body approval shall be retained and disclosed.	Drafts of all agreements with third parties must be retained and made available for public inspection 15 days before approval by a legislative body. All bids and responses become public after contract award or city decision not to proceed.	All bids and responses become public after contract award, including summaries of evaluations (but not "score sheets.") All retained drafts of specified "no bid" contracts shall be subject to disclosure after conclusion of negotiations. City shall maintain a public index of the location of every city contract.		All communications between city and persons seeking city contracts become public after contract is awarded except for info regarding net worth or other proprietary financial data. Evaluation forms and score sheets, including names of evaluators and individual ratings, become public after RFP review is completed. Upon request, city atty shall prepare a summary of all negotiations regarding any no-bid contract, lease and franchise agreements where no records exist.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Basis For Withholding Records	Would abolish the "balancing test" and "deliberative process" exemption as a basis for withholding records.	Would abolish the "balancing test" and "deliberative process" exemption as a basis for withholding records. City waives its right to all discretionary exemptions under the CPRA.	Intent is to "narrowly construe" application of the balancing test. Provides a list of records that may not be withheld using the balancing test.		City may not use balancing test or deliberative process test or any similar provision as basis for withholding a record. All withholding must be based on an express exception.
Waiver Of Confidentiality By Third Parties		Where disclosure of records is refused based on third party interests (e.g., privacy), city shall contact the third parties to request them to waive their interests in the records.			
Dept Websites	All city depts. shall maintain a website to which is posted name of record custodian, links to pertinent laws and to S/O.	All local legislative bodies shall maintain a website providing specified information and records.			All city depts. shall maintain a website that contains info that it is required to make publicly available, including campaign reports, Form 700s, budgets, mtg agenda & minutes, public notices and staff reports.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Citywide Records Index	City shall develop and maintain a standardized public index of records.	City shall develop and maintain a standardized public index of records.			City has 12 months to prepare a public records index maintained by city depts, boards, commissions and elected officers and organized to permit an understanding of the types of information maintained and how to access it, e.g. by name, date, proceeding, project, etc.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Records Of Elected Officials	Records of elected officials are the property of the city and shall be maintained and made available for inspection. City Atty shall monitor transition of offices to ensure no records are lost or destroyed.	Records of elected officials are the property of the city and shall be maintained and made available for inspection.			Records of elected officials and dept heads are the property of the city. City Atty shall monitor transition of offices to ensure no records are lost or destroyed. Elected officials and city manager shall maintain all records and correspondence within their jurisdiction and disclose such records upon request. E-mail created or received in connection with public business, the legal or financial rights of the city, or of persons directly affected by the activities of the city is a public record. E-mail must be retained and printed unless the dept or office can retain and retrieve the e-mail in electronic format.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Calendars	Elected officials and dept heads are required to maintain a public calendar identifying who the official met with and the matters discussed, except for "purely" personal or social meetings. Calendar entries must be disclosed no later than 3 business days after the calendar entry date.	Elected officials and dept heads are required to maintain a public calendar identifying the date, place and time of all "city-related meetings" they attend.	Elected officials, certain appointees, council staff, and most dept heads are required to maintain weekly calendars of all meetings including names and titles of meeting attendees, and the topic of the meeting and post the information to the city's website.		Elected officials, planning commissioners and city manager shall maintain a monthly calendar that includes all city-related appointments, mtgs, public events, speaking engagements, meetings with developers, consultants, and lobbyists, regional meetings, and meetings of committees or task forces. Entries shall include the mtg's duration, and all "principal individuals" present. Calendars shall be posted for the prior month during the first week of every month. Councilmembers shall be trained on entering data into the City's automated calendaring system.

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Employee Training	All Form 700 filers must file an annual declaration that they have read the S/O and attend annual training.				All Form 700 filers, including city council and appointed board members, must file an annual declaration that they have read the S/O and have attended annual training.
Atty-Client Communications	All advice from City Atty to the S/O Task Force regarding public records and open meeting law shall be a public record.	No atty-client privilege on matters involving a conflict of interest, a proposed legislative or administrative action, or the status of negotiations regarding claims by or against the city.	Upon request, the City Atty's Office shall provide a written summary of any written interpretation of open meeting law or proposal.	All written communication from City Atty regarding open government laws shall be a public record.	The City Atty's office shall not act as legal counsel for any employee for purposes of denying access to the public. All communications with the City Atty's Office regarding this ordinance shall be a public record.
City Reps At Meetings	A city representative shall be present at all S/O meetings to explain or testify on allegations alleging S/O violations.	A city representative shall be present at all S/O meetings to explain or testify on allegations alleging S/O violations.			

	San Francisco	Berkeley	San Jose	Vallejo	Milpitas
Enforcemnt & Penalties	S/O TF may issue Order of Determinations that shall be obeyed within five days or referred to Ethics Commission for enforcement. Upon a finding of a "serious and willful" violation, the S/O TF may retain outside counsel to prosecute in civil court. The Ethics Commission may impose personal fines of up to $5000 for a city official or employee who willfully violates S/O. Creates a presumption in any civil court action that meetings should have been open or that records should have been disclosed.	Members of the public may allege violations with the S/O Commission. Hrgs must be held within 7 business days of filing before members of an Enforcement Committee. Committee shall issue ruling within 5 business days of a hrg. Decisions may be appealed to the full Commission at its next scheduled meeting. Commission decisions may be appealed to the City Council. If a Custodian of Records fails to produce a record determined to be a public record within 3 days, the requesting party or Commission "may notify" the City Atty, District Atty or Grand Jury.		Knowing, willful and deliberate failure of an elected official or managerial employee to discharge duties under the Brown Act, CPRA or S/O shall be deemed "official misconduct" subject to removal from office and/or disciplinary action including termination of employment.	Creates a presumption that the record sought is public, and the burden shall be upon the city to prove the exemption which applies. The willful failure by any elected official or management employee to discharge a duty imposed by the S/O, Brown Act or CPRA shall be deemed official misconduct. Any person may institute civil proceedings for enforcement and penalties under the S/O if enforcement is not taken by a city or state official 40 days after a complaint is filed.

Public Records Policy and Protocol 6.1.1

PURPOSE

The purpose of this policy is to affirm the public's right to access City records and to set forth the procedures to facilitate disclosure of records and information to members of the public.

AUTHORITY AND BACKGROUND

On January 27, 2004, the City Council approved Resolution Number 71946 established City Council Policy 0-33 Public Records Protocol and Policy to affirm and augment the City's obligations under the California Public Records Act (CPRS), Government Code 6250 et seq. On August 18, 2009, the City Council approved Resolution Number 75091 which adopted a number of recommendations of the Sunshine Reform Task Force revising Council Policy 0-33 and further augmenting the CPRA. On March 2, the City Council adopted Resolution Number 75923 further revising Council Policy 0-33.

POLICY

The public's right to access records and information concerning the conduct of the people's business is a fundamental and necessary right. A record shall not be withheld from disclosure unless it is exempt under applicable laws or the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. The California Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. The San José City Council desires to establish a formal written policy affirming the public's right to access City of San José records and to set forth the procedures by which such records will be made available to the public. The City Council is mindful of the constitutional right of privacy accorded to individuals and it is the intent of the City Council to promulgate a policy that strikes an appropriate balance between the objectives of open government and the individual's right of privacy.

ACCESS TO CITY RECORDS

Records Available for Inspection and Copying

Records available for inspection and copying include any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. The records do not have to be written but may be in another format that contains information such as computer tape or disc or video or audio recording.

"Writing" includes any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation such as letters, words, pictures, sounds, or symbols, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, and electronic mail.

If a request for records seeks the production of records or documents that are not in existence at the time the request is made, the City is not obligated to create a document in order to respond to the request.

Locating and Identifying Records

Public records are open to inspection at all times during regular City business hours. The City does not maintain a centralized record keeping system, other than certain documents routinely maintained by the

Office of the City Clerk. Each of the City's individual Departments maintains and has custody of records and information relating to the responsibilities and work performed by the particular Department.

Information identifying the City's Departments and Department contacts is available on the City's website at www.sanjoseca.gov. Information about City Departments and contacts may also be obtained by contacting the City's Informational Call Center located at City Hall. The telephone number for reaching the Call Center is (408) 535-3500, and the TDD telephone for the hearing impaired is (408) 294-9337.

Making a Request for Records

There is no specific form that must be used to request records, nor is there any language that must be used when making a request. Requests may be made orally or in writing, either in person, through the mail, via e-mail or over the telephone. The request, however, should contain a reasonable description of the desired records in order to expedite processing of the request.

Form of Records Provided

Records shall be made available in their original form or by a true and correct copy, except that a requestor may designate another format and a requestor cannot be required to accept records in electronic format. Audio, photographic and computer data, or any other such records shall be exact replicas unless the Department determines it is impracticable to provide exact replicas. Any reasonably segregable portion of a record shall be provided to the public after deletion of portions that are deemed exempt from disclosure.

To the extent that it is technologically and economically possible, forms and computer systems used by the City relating to the conduct of the public's business should be designed to ensure convenient, efficient and economical access to public information, including making public information easily accessible over public networks such as the Internet. Specifically, forms and computer systems should be designed to (1) segregate exempt information from non-exempt information; and (2) reproduce electronic copies of public information in a format that is generally recognized as an industry standard format.

Steps and Timeframes for Response

Upon receipt of a written or oral request for records, the City shall make the records promptly available to the requestor. If a request for any public information is presented to a City employee who is not responsible for responding to the request, it must be forwarded, within 24 hours from which it was received, to the City employee responsible for responding to the request or to the employee's supervisor if that employee is out of the office that day. Within 24 hours after the City employee responsible for responding to the request receives the request, he or she must acknowledge receipt of the request to the requestor.

For simple or routine requests, the City employee responsible for responding to the request must provide a response and the requested public information by the end of the second business day after her or she acknowledges receipt of the request to the requestor.

For extensive or demanding requests, no later than three (3) business days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the

requestor, he or she must provide a response, which will include either the requested public information or an estimate as to when the requested public information will be available. This deadline may be extended by mutual agreement between the City and the requestor.

If the City believes that the requested public information or a portion of the requested public information is exempt, the City employee responsible for responding to the request must determine and report to the requestor within 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. The response must also include the public information, if any, that the City believes is not exempt. This deadline may be extended by mutual agreement between the City and the requestor.

In unusual circumstances, the City employee responsible for responding to the request may notify the requestor in writing that an additional period no longer than 14 calendar days is necessary. The City employee responsible for responding to the request must notify the requestor as soon as possible but no later than 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. "Unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

1. The need to search for and collect the requested records from storage facilities that are separate from the office processing the request.

2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

3. The need for consultation, which must be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

4. The need to write programming language or extract data that would not be otherwise be extracted.

In order to comply promptly with requests that involve multiple documents, the City employee responsible for responding to the request will, upon request, release documents as they become available, where such an approach is both practical and pertinent. This provision is intended to prohibit the unnecessary withholding of public information that is responsive to a request for public records until all potentially responsive documents have been reviewed and collected.

Fees for Duplication

The work of responding to a request for public information and making public information available must be considered part of the regular work duties of the City employee and no fee will be charged to the requestor to cover the personnel costs of responding to a request for public information, except to the extent otherwise allowed in this policy or by other state or federal laws. In most situations, the City will not charge any fees to cover the time and costs incurred in searching for, locating or collecting records.

The City, however, may charge for the actual costs of duplicating paper copies of records and postage, consistent with the amounts set forth in City's Schedule of Fees and Charges.

The City may also charge for duplication costs in another medium in accordance with the amounts set forth in the Schedule of Fees and Charges (e.g., copying video or cassette tapes). The City will not charge for access to data that is readily accessible without significant cost to the City.

The actual direct hourly cost incurred by City staff will be charged for responding to any request for public information that either (1) is produced only at otherwise regularly scheduled intervals, if the interim production of the report cannot be achieved without a substantial burden on City staff; or (2) requires the City to write programming language or extract data that would not otherwise be extracted. Before any fees are incurred, the City employee responsible for responding to the request must notify

the requestor of the estimated cost to respond, including a breakdown showing how those costs were determined, and the requestor must agree to pay the estimated cost.

A requestor may appeal the imposition of fees to the Rules and Open Government Committee if he or she wishes to argue that the public interest would be better served by waiving the fees and making the information available at no charge.

RESPONSIBILITIES

All Staff Members

All City staff members have an obligation to accept and respond to or refer requests for public records. Staff members responding to requests shall, to the extent reasonably practicable, assist the public in making focused and effective requests for records and information. Responding staff members shall: (1) assist the member of the public with identification of records and information that is responsive to the request or the purpose of the request, if known; (2) describe the information technology about and physical location of the records; and (3) provide suggestions for overcoming any practical basis for denying the request. If the staff member or Department receiving the request is not the holder of the requested records, the staff member or Department must forward the request to the appropriate staff member or Department within 24 hours of receiving the request.

If a request seeks information from more than one Office or Department, the request shall be forwarded to the City Manager's Office and City Attorney's Office, as well as the designated records coordinators of all affected Offices/Departments. The City Attorney or City Manager's Offices will coordinate and respond to the request with the assistance of the other Offices/Departments.

Department Representatives

Each Department shall designate a person or persons who will serve as Departmental California Public Records Act coordinator(s) responsible for responding to requests for records and coordinating the response with other City Departments, when appropriate. A list of current Department Public Records Coordinators is posted on the Public Records and Records Retention page of the City employee Intranet website and on the Open Government page of the City Internet Website.

Department Coordination If a request seeks information from more than one Department, the request shall be forwarded to the designated representative in the City Manager's Office and the representative of all other interested Departments. The City Manager's representative will coordinate and respond to the request with the assistance of each of the Department coordinators.

City Attorney's Office Requests that are related to pending or potential litigation shall be coordinated with the City Attorney's Office. Questions regarding the California Public Records Act or any documents that may not be subject to disclosure shall be forwarded promptly to the City Attorney's Office for review. Decisions to withhold records must be made in consultation with the City Attorney's Office.

WITHHOLDING FROM DISCLOSURE

Common Exemptions

Certain categories of records may be withheld from disclosure. These include, but are not limited to: (1) preliminary drafts of certain documents if the public's interest in disclosure is clearly outweighed by the public's interest of non-disclosure; (2) records related to pending litigation; (3) attorney-client communications; (4) personnel records, medical information, or other similar records, the disclosure of which would constitute an unwarranted invasion of personal privacy; (5) certain proprietary information, including trade secrets; and (6) records protected by State or Federal law.

Withholding Kept to a Minimum

Withholding shall be kept to a minimum and must always be for a sound and justifiable reason. Information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained.

Justification Provided in Writing

If a Department, after consultation with the City Attorney's Office, determines that the records sought in a written request for records are not subject to disclosure either in whole or in part, then the Department shall advise the requestor in writing that the records will not be made available and include the reasons why access is being denied, including the citation of the specific statutory or case authority. The notice of withholding shall include the names and titles or positions of each person responsible for the denial. In addition, the requestor must be notified that he or she has the right to appeal the non-disclosure (see procedures below).

Redaction of Exempt Information

Records containing a mix of information that must be disclosed and information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained.

The Balancing Test

It is the intention of the City of San Jose to narrowly construe the balancing test if it limits the public's right of access. In order to withhold a record under Government Code Section 6255, the City must

demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. The City's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the City's interest, that is weighed.

Consistent with case law and Government Code Section 6255, the City may withhold a record that is protected by the "deliberative process privilege." The deliberative process privilege is intended to afford a measure of privacy to decision makers. This doctrine permits decision makers to receive recommendatory information from and engage in general discussions with their advisors without the fear of publicity. As a general rule, the deliberative process privilege does not protect facts from disclosure but rather protects the process by which policy decisions are made. Records which reflect a final decision, and the reasoning which supports that decision, are not covered by the deliberative

process privilege. If a record contains both factual and deliberative materials, the deliberative materials may be redacted and the remainder of the record must be disclosed, unless the factual material is inextricably intertwined with the deliberative material. The balancing test is applied in each instance to determine whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the particular information in question.

The following records will not be withheld on the basis of the balancing test:

1. Accounting Records, including accounts payable and receivable, general ledger, banking and reconciliation, but excluding sales tax and resident utilities billing records.

2. City Budgets, Proposed and Adopted.

3. Public Meeting Records, including agenda, minutes, synopses, reports, audio-visual recordings, and most supporting documents, but excluding closed session records and internal City staff meetings.

4. Calendars after the fact, excluding:

    a. Personal appointments
    b. Information protected by the attorney-client privilege
    c. Information about attorney work product
    d. Information about City staff recruitment
    e. Information about a personnel issue
    f. Information about corporate recruiting and retention
    g. Information about criminal investigations and security
    h. Information about whistle-blowers
    i. Information about those who may fear retaliation
    j. Information that is otherwise prohibited from disclosure

5. Staff Reports and Memoranda, excluding those related to closed session or covered by attorney-client privilege.

6. Summary Statistical Reports
7. Employee Compensation
8. City Master Plans
9. Labor-Management Agreements
10. Audit Reports and Responses
11. Officials and Employees Disclosure Records
12. Lobbyist Registration Records
13. Election Results
14. City Logos, Seals, and Other Branding Records
15. Licenses Issued by the City, excluding information the disclosure of which would violate personal privacy rights
16. Policies
17. Records Retention and Destruction Records
18. Published Information

The following records will not be withheld on the basis of the balancing test unless specifically approved by a vote of the Rules and Open Government Committee:

1. Geographic and Environmental Data and Records including geographic information systems data, environmental impact reports, and environmental monitoring and testing results.
2. Development Records and Permits, excluding plans of existing structures.
3. Contracts, Leases, and Other Legal Agreements, excluding information the disclosure of which would personal privacy or intellectual property rights.
4. Procurement Records after procurement activity has been concluded, excluding individual evaluator ratings and comments any information the disclosure of which would violate intellectual property rights.
5. Real Property Records.
6. Facility, Site, and Equipment Safety Inspection Reports, excluding security-related information.

7. Property Inventories excluding inventories of firearms and security equipment.

8. Closed Litigation Records, excluding information the disclosure of which would violate personal privacy, intellectual property rights or a protective order issued by a Court.

If the City determines that the public interest is served by not disclosing the information, the City Attorney must provide, in writing, a detailed justification. In addition, if the justification for withholding the information will expire at some point, the City Attorney must notify the requestor, in writing, that the record will be subject to disclosure at a later time.

Mental Process Principle

Under case law, the mental process that a legislator uses to reach a conclusion, including any motivation for that decision, is not subject to disclosure. The courts have held that the mental process used by a legislator in deciding how to vote is beyond the reach of the judiciary. Instead, it is the majority's vote itself that is relevant in evaluating the resulting action. The City need not apply the balancing test when deciding to withhold a record based on the "mental process principle."

APPEALS PROCESS

Requestors who believe that records have been inappropriately withheld from disclosure by a City department may resort to the City's appeal process for public records requests. A requestor has a number of options available as follows:

- The requestor may appeal to the City's Public Records Manager.
- The requestor may appeal to the City Council Rules and Open Government Committee either before or after an appeal to the City's Public Records Manager by contacting the Office of the City Clerk.
- Should the response of the Rules and Open Government Committee be unacceptable to the requestor, he or she may appeal to the Elections Commission or directly to the City Council by contacting the Office of the City Clerk.
- Should the response of the Elections Commission be unacceptable to the requestor, he or she may appeal to the City Council by contacting the Office of the City Clerk

The requestor may file an appeal with the Santa Clara County Superior Court at any time before, during, or after resorting to any other option listed here.

RESPONDING TO REQUESTS FOR PARTICULAR DOCUMENTS

Below are requirements for responses for particular types of records.

Advice from the City Attorney's Office

Upon request, the City Attorney will release a summary document that explains any written interpretation of the California Public Records Act, the Ralph M. Brown Act or any Open Government reform adopted by the City Council. This provision does not constitute a waiver of the attorney-client privilege, does not require the disclosure of the actual advice given to any client, does not require to the release of the specific information that the City is alleging it should not have to release, and does not require the release of any information that the City alleges could cause substantial harm to a member or members of the public.

Disclosure of Drafts and Memoranda

Once a proposal, initiative or other contemplated or suggested action is made public, or presented for action by any City body, agency or official, all related preliminary drafts, notes or memoranda, whether in printed or electronic form, will be subject to disclosure if they have been retained as of the time the request is made. This provision does not require the retention of preliminary drafts, notes or memoranda that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure, or practice.

Disclosure of Litigation Materials

Notwithstanding any exemptions or privileges otherwise provided by law, the following are public records subject to disclosure:

1. A pre-litigation claim against the City;

2. A record previously received or created by a Department in the ordinary course of business that was not protected by the attorney-client privilege when it was received or created; and

3. When a lawsuit is finally adjudicated or otherwise settled, records of all communications between the Department and the adverse party including the text and terms of any settlement.

Disclosure of Personnel Information

None of the following will be exempt from disclosure under Government Code Section 6254(c), or any other provision of California law where disclosure is not forbidden:

1. The job pool characteristics and employment and education histories of all successful job applicants, including, at a minimum, the following information as to each successful job applicant:

    (a) Years of graduate and undergraduate study, degree(s) and major and discipline
    (b) Years of employment in the private and/or public sector
    (c) Whether currently employed in the same position for another public agency

(d) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question

2. The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, personal email address, social security number, age and marital status of the employee must be redacted.

3. The job description of every employment classification.

4. The total compensation, by category, paid to an employee, including salary and City-paid benefits.

5. Any memorandum of understanding between the City or department and a recognized employee organization.

6. The amount, basis and recipient of any performance-based increase in compensation, benefits or both, or any bonus, awarded to any employee.

Disclosure of Information Relating to Misconduct of City Officials

The term "City Official" means the Mayor and Members of the City Council; any appointees of the City Council, Mayoral or Council unclassified staff members, Redevelopment Agency Board Member, the City Manager and his or her Assistant City Manager, Deputy City Managers, and heads of offices under the City Manager, the Executive Director of the Redevelopment Agency and his or her Assistant and Deputies, City department heads and Redevelopment Agency division heads.

The term "misconduct" includes dishonesty, misuse of City property or City funds, any violation of conflict of interest policies, the City's Gift policy or Discrimination and Harassment policy, inexcusable neglect of duty, fraud in securing employment and unlawful political activity.

Where there is reasonable cause to believe the complaint is well-founded, records of misconduct by a City Official, including any investigation and discipline, if any form of discipline is imposed, are subject to disclosure. Information that falls within the protection of any privileges or rights provided under the law may be redacted.

Nothing in this policy may be constructed as limiting access to other disciplinary records as permitted by the California Public Records Act.

Disclosure of Log of Disciplinary Actions

A log of disciplinary action taken when a Notice of Discipline is issued for regular classified civil service employees must be maintained, updated as frequently as possible and available for inspection. The log must include the department, employee classification (except for single position classifications or unique classifications, for which releasing the classification would identify the employee), type of discipline (i.e. suspension, demotion, step reduction or dismissal/termination), basis of the complaint (such as violation of the San Jose Municipal Code, Council Policy or Administrative Policy) and any final disposition. Identifying information must not be included in the log. Nothing in this policy may be

construed as limiting access to other disciplinary records as permitted by the California Public Records Act.

Disclosure of Code Enforcement Records

The following information is public and subject to disclosure:

1. Case number;
2. Name of the subject of the complaint;
3. Address of the property;
4. Substance of the complaint;
5. Notices of violation;
6. Compliance orders;
7. Administrative citations;
8. Warning notices;
9. Other documents submitted to the Appeals Hearing Board to support enforcement;
10. Resolutions of the Appeals Hearing Board;
11. Recordings of the Appeals Hearing Board proceedings; and
12. Any documents submitted to the Court for an inspection warrant or other legal action, unless the documents are filed with the Court under seal or there is a Court order preventing disclosure of the documents or information contained in them.

The name or other identifying information of the complainant in Code Enforcement complaints is confidential and must be redacted from any document unless the complainant agrees to disclose his or her identity.

Investigative files are not public until after the case has been closed. However, any information within the investigative file that would identify the complaining party's identity, information that would disclose legitimate law enforcement techniques that require confidentiality in order to be effective and information protected by other exemptions will be redacted.

Disclosure of Information relating to Contracts with the City and Redevelopment Agency

A. Solicitation for Contracts:

1. All correspondence regarding a solicitation for contracts with the City or Redevelopment Agency, including responses to Requests for Proposals, become the exclusive property

of the City or Agency and are public records under the California Public Records Act. All documents that are sent to the City and Agency are subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement as set forth in the California Public Records Act.

2. Therefore, any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret" or "Proprietary," or fails to provide the exemption information required as described below will be considered a public record in its entirety.

3. All formal bid responses become public upon bid opening and must be made available immediately after bid opening.

4. The City or Agency will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to a solicitation will be subject to public disclosure. If a proposer believes that there are portion(s) of the proposal, which are exempt from disclosure under the California Public Records Act, the proposer must mark it as such and state the specific provision in the California Public Records Act, which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer

   must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

5. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City or Agency may not be in a position to establish that the information a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret" or Proprietary," the City or Agency will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

6. After the notice of intent to award a City or Agency contract has been announced, the names of the evaluators and collective summaries of the evaluations or ratings must be made available if requested; under no circumstances are the individual evaluations or ratings (also known as "score sheets") subject to disclosure.

B. When the City or Agency has negotiated the following types of agreement without a competitive process: (1) personal, professional or other contractual services for $500,000 or more; (2) a lease or permit having (a) total anticipated revenue or expense to the City or Agency of $500,000 or more; or (b) a term of ten years or more; or (3) any franchise agreement, then, after the negotiations have been concluded, all documents exchanged and related to the position of the parties, including draft contracts, must be made available for public inspection and copying upon request.

This provision does not require the retention of draft contracts that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice. Upon

completion of negotiations, the executed contract, including the dollar amount of the contract, must be made available for inspection and copying.

C. San Jose Municipal Code Section 4.04.080 provides:

1. The City Manager must file a quarterly report with the City Council, which describes all the contracts having a value of One Hundred Thousand Dollars or more that were entered into and executed by the City Manager, City Attorney, City Clerk and City Auditor in the preceding calendar quarter. The report must identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.

2. The City Attorney, City Clerk, and City Auditor must provide to the City Manager the information necessary to enable the preparation and filing of quarterly reports.

D. Contracts over $100,000 that are not entered into by the Council Appointees listed in Municipal Code Section 4.04.080 are reported to the City Council when they are requested to be approved.

E. An index of the location of every contract, except for Purchase Orders, regardless of amount or who approved it, shall be available and open to public inspection at the City Clerk's Office.

Disclosure of Budgetary and Other Financial Information

Proposed or final budgets for the City or any of its departments, programs or projects are subject to disclosure and should be made available in electronic form.

All bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee, the purpose for which the payment was made and who approved the payment are subject to disclosure, except that any information that is protected by privilege or other right provided under the law may be redacted.

Disclosure of Electronic Mail

E-mail shall be treated the same as other written documents. If the e-mail is kept in the ordinary course of business, it is a public record unless it falls within an exemption. Additional information regarding the storage and use of e-mail in the City may also be found in Section 1.7.1 of the City Policy Manual entitled "Use of E-Mail, Internet Services & Other Electronic Media."

RECORDS RETENTION

This policy and protocol does not obligate City departments to retain documents beyond the period of time indicated by the City's records retention schedule. In the event a request for records is received before its destruction under the City's record retention schedule, the requested records will be provided.

Approved:

/s/ Ed Shikada	November 15, 2010
Assistant City Manager	Date

Exhibit E

CITY OF OAKLAND
Public Ethics Commission
Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
Amy Dunning
Lloyd Farnham
Christopher Young
Aspen Baker

Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 **(510) 238-3593** **Fax: (510) 238-3315**

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: June 6, 2011

RE: A Staff Report And Presentations On Improving Public Access To City Records

At its regular meeting of May 18, 2011, the Commission continued its series of hearings on the subject of improving public access to City records. At its May 18 meeting, the Commission reviewed ordinances, policies and proposals from five other local agencies and received comments from representatives from the Berkeley Sunshine Task Force. The Commission requested staff to agendize this issue for tonight's meeting to continue its discussion of other sunshine ordinances and to receive comment from representatives from other jurisdictions. Commission staff anticipates that a representative from the San Francisco Sunshine Ordinance Task Force will attend tonight's meeting and provide comments on the Task Force's proposed amendments to the San Francisco Sunshine Ordinance.

The next meeting in the series will be to consider a proposed Citywide records management program developed by the Office of the City Clerk. Commission staff expects that report to be submitted for Commission review within the next 30 to 60 days.

Respectfully submitted,

Daniel D. Purnell
Executive Director

Table Of Proposed Recommendations

Proposal	Means To Accomplish	Approving Authority
Every agency, department and office shall designate a "custodian of records" or "public information officer" who shall be the initial point of contact for all public records requests. The City shall maintain the names of every records custodian prominently on the City's website.	Amendment To Sunshine; Administrative Instruction for non-elected officers and employees.	City Council for Sunshine amendments; City Administrator for AI.
Records of elected officials are the property of the city and shall be maintained and made available for inspection. The City Attorney/City Clerk shall monitor the transition of office to ensure no records are lost or destroyed.	Amendment to Sunshine	City Council
Elected and appointed officers, and agency and department heads, shall maintain an electronic calendar identifying who they met with and the matters discussed regarding City-related business.	Amendment to Sunshine.	City Council.
All records custodians/public information officers shall receive at least two-hours of training every year relating to production of public records and records management. Training shall be conducted by the Offices of the City Attorney and City Clerk.	Amendment To Sunshine; Administrative Instruction for non-elected officers and employees.	City Council for Sunshine amendments; City Administrator for AI.
Require a City agency or department representative to appear at all Commission meetings at which a complaint is considered involving allegations of public record or public meeting violations.	Amendment To Sunshine; Administrative Instruction for non-elected officers and employees.	City Council for Sunshine amendments; City Administrator for AI.
The willful failure by any elected official or management employee to discharge a duty imposed by the Sunshine Ordinance, Brown Act or Public Records Act shall be deemed official misconduct subject to removal from office or employee discipline.	Amendment To Sunshine; Administrative Instruction for non-elected officers and employees.	City Council for Sunshine amendments; City Administrator for AI.
The City Administrator shall issue a comprehensive Administrative Instruction that establishes City policies and procedures for responding to public records requests.	Administrative Instruction	City Administrator for AI.

Table Of Proposed Recommendations

Management employees shall be evaluated annually in part on their knowledge of, and compliance with, public records laws and procedures.	Administrative Instruction	City Administrator for AI.
Post frequently requested records on the City's website including Form 700s and campaign finance documents.	Amendment To Sunshine; Administrative Instruction.	City Council for Sunshine amendments; City Administrator for AI.
RECORD RETENTION ISSUES: To be presented to Commission by the Office of the City Clerk. Items should include: Creation of a records index; clear retention schedules for different types of records; policies and technology acquisition for the retention and search of emails; support for CEDA's request for an upgrade to its Permit Tracking System.		

Exhibit F
M. Mordoni

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

RESOLUTION No. 82908 C.M.S.

2010 JUN 29 PM 1:37

RESOLUTION REGARDING DEVELOPMENT OF A CITYWIDE RECORDS MANAGEMENT PROGRAM

WHEREAS, the City of Oakland recognizes the public need to establish a records management program that is centralized, professional, cost effective, preserves vital and historical City records, and guarantees its citizens access to public records of the City; and

WHEREAS, the City Charter identifies the City Clerk as the custodian of official City records; and

WHEREAS, as a part of City functions, City records are received or created by City agencies; and

WHEREAS, the implementation of a City-wide records management program will assist in reducing administrative costs, improving efficiency and productivity, ensuring regulatory and legal compliance, minimizing litigation risks, safeguarding vital information, and supporting better decision-making; and

WHEREAS, the City needs a records management program to provide for efficient and economical management policies for the collection, creation, utilization, maintenance, retention, storage, preservation, retrieval and disposal of City records; and

WHEREAS, to establish such records program, the City Council desires input from the Office of the City Clerk, each City Agency, the Office of the City Administrator, the Office of the City Attorney, the Office of the City Auditor, the Office of the City Council, the Office of Information Technology, and the Public Ethics Commission; now therefore be it

RESOLVED: That the Citywide Records Management Program ("Program") shall be created by the City Clerk with input from employees of the Office of the City Clerk, the Office of the City Administrator, the Office of the City Attorney, the Office of the City Auditor, the Office of Information Technology, and staff of the City Council, and be it

FURTHER RESOLVED: That the City Clerk shall present to the Rules Committee a Program, consisting of the following elements: (1) A definition of "City Record;" (2) A retention schedule; (3) Vital and historical records management; (4) Electronic records management; (5) Forms management; (6) Files management; (7) Records conversion; and (8) Disposition of City records; and be it

FURTHER RESOLVED: That within 6 months after the passage of this resolution, the City Clerk shall present a proposed Program to the City Council Rules Committee for the purpose of receiving comment and of apprising the Committee of any issues affecting the development of the Program; and be it

FURTHER RESOLVED: That after the Rules Committee considers the City Clerk's proposed Program, the City Clerk will present the adopted proposed Program to the Public Ethics Commission together with a request that the Commission hold a public hearing and thereafter provide a summary of any public comments, analysis, and recommendations pertaining to the proposed Program; and be it

FURTHER RESOLVED: That 60 days after the Public Ethics Commission has transmitted the summary of public comments, analysis, and recommendations pertaining to the proposed Program, the City Clerk shall submit the Program to the Rules Committee and City Council for adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 20 2010, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE , KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER -8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: LaTonda Simmons

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Public Ethics Commission Pending Complaints

Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority*
11/21/12	12-14	Avram Gur Arye	Jane Brunner	11/8/2012	Alleges respondent violated the City of Oakland's Conflict of Interest regulations in their involvement with the proposed Safeway on College Avenue.	Staff is reviewing	H/S 2
11/1/12	12-13	Judith Cox and Pamela Drake	Ignacio De La Fuente	9/28/2012	Alleges respondent violated Oakland's Campaign Reform Act by accepting campaign contributions in violation of the $700 contribution limit.	Staff is reviewing	H/M 3
11/1/12	12-12	Okhoo and Ernest Hanes	Mitch Thomson (City Arborist, Tree Section, Public Works Agency) and Camille Rodgers (Vegetation Management Inspector - Oakland Fire Department)	3/20/2009 - 3/29/2012	Alleges respondents abused their City authority and misused public funds.	Staff is reviewing	H/M 3
10/18/12	12-11	Scott Alonso	Ignacio De La Fuente	July 26, 2012	Alleges respondent used his Councilman elected position and City resources for a campaign press conference.	Staff is reviewing	H/S 2
4/26/12	12-04	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente		Alleges respondent failed to report $37,500 in payments from a campaign group tied to a lobbyist for a group competing for the Coliseum mgmt contract (alleges failure to report payment and a COI issue)	Staff is reviewing	H/L 4

* Priority code is based on a dual determination: 1) level of priority (High, Medium or Low, based on criteria such as public interest, complainant interest, timing of complaint, statute of limitations, and impact of Commission decision), and 2) amount of staff time likely needed (Small, Medium, or Large amount of time).

ATTACHMENT 5

4/4/12	12-03	City Auditor/ Anonymous	Downtown Oakland Association and Lake Merritt/Uptown District Assoc.	Dec 2009 and annually thereafter	Alleges respondents failed to provide adequate public notice about discussions and decisions related to the payment of "holiday bonuses," adds that discussion of bonuses was never put on open session agenda	Staff is reviewing	M/M 4
8/23/11	11-03	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente	June 2011	Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent	Staff is reviewing	H/L 4
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/107/10 and 7/27/10	Complaint alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election (OCRA; §3.12.140)	Staff is investigating	H/L 4
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230 – Alleges 1) failure to include written disclosure required by OCRA and 2) failure to file late contribution and independent expenditure reports	Staff is investigating	H/M 3
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090 – Alleges failure to report and include information regarding respondent's loans to own campaign	Staff is investigating	H/M 3
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D) – Alleges campaign was given extension of credit of over $1500 for more than 90 days	Staff is investigating	H/M 3
9/14/10	10-21	Jean Quan	Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee	Ongoing	OCRA violations – Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election	Staff is investigating	H/L 4
3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil	January 1, 2007 to present	Lobbyist Registration Act – Alleges respondents failed to register as lobbyists	Staff is investigating	H/L 4

			Tagami				
3/3/10	10-05	David Mix	Oakland City Council	3/2/10	Oakland Sunshine Ordinance – Alleges City Council Rules Committee failed to make an "urgency finding" to schedule a decision (per Section 2.20.080)	Staff was directed to explore settlement in lieu of hearing.	M/M 4
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act – Alleges failure to provide multiple public records upon request	Final hearing set for January 3, 2013 re: Records Management Policy	M/M 5
2/7/09	09-03	John Klein	City Council President Jane Brunner	February 3, 2009	Sunshine Ordinance -- Allocation of speaker time – Alleges City Council 15-minute total time limit on Open Forum comments is inconsistent with the Sunshine Ordinance, which authorizes 2 minutes per person	Staff is investigating	M/M 4

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, Chair
Amy Dunning, Vice-Chair
Aspen Baker
Lloyd Farnham
Roberta Ann Johnson
Benjamin Kimberley
Monique Rivera

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 19, 2012
RE: Administration of the Limited Public Financing Program in the November 2012 Municipal Election

Overview of the Limited Public Financing Act

The Oakland City Council adopted the Limited Public Financing Act ("LPFA") in December 1999. The program, amended in 2010, now consists of the following provisions:

- The City reimburses district City Council candidates for certain campaign expenditures they have incurred and paid. The maximum amount a candidate can receive is 30 percent of Oakland's voluntary expenditure ceiling for the office being sought, (although the actual amount of available funds ultimately depends on the amount the City Council has appropriated to the Election Campaign Fund.)

- Candidates must make an irrevocable decision whether to participate in the public financing program within fourteen days after their names have been certified to appear on the ballot. Candidates must raise in Oakland campaign contributions, and incur in campaign expenditures, an amount equal to at least 5 percent of the voluntary expenditure ceiling for the office being sought. Eligible candidates must also agree to abide by OCRA's voluntary expenditure ceilings, and not lend or contribute personal funds to their respective campaigns in an amount exceeding ten (10) percent of the voluntary expenditure ceiling.

- The expenditures for which candidates may seek reimbursement are limited to: 1) candidate filing and ballot fees, 2) printed campaign literature and production costs, 3) postage, 4) print advertisements, 5) radio and cable television airtime and production costs, and 6) website design and production costs. Candidates are required to provide copies of their invoices, the check(s) used to make payment, and any copies of any communications for which reimbursement is sought.

One Frank Ogawa Plaza, 11th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

- Candidates must return to the Election Campaign Fund a portion of any surplus funds remaining after the election. The amount owed is based on the percentage that total campaign contributions represent of total campaign expenditures.

LPFA Implementation for the November 2012 Election

The combined total amount in the Election Campaign Fund for fiscal years 2011-12 and 2012-13 was $129,449.68 available for the November 2012 election. As indicated in the LPFA, the Commission received 7.5%, or $9,708.73 to cover the costs of administering the provisions of the Act. The remaining balance of $119,740.95 was available for distribution to the fourteen (14) candidates who opted into the program. Each candidate was permitted to apply for the maximum public financing of $8,552.92, which is the even dispersal of the balance among the fourteen candidates.

Fourteen candidates opted into the program. Six candidates applied for, and were found eligible to receive, public financing in the November 2012 election. The total funds claimed for reimbursement during the November 2012 election was $50,798.89. To date, the total funds the Commission has distributed to eligible candidates was $42,386.09.[1]

Candidate	Total Public Funds Approved	Percent of Max Funds Available to the Candidate
Noel Gallo, D5	$8,552.92	100%
Dan Kalb, D1	$8,174.41	96%
Amy Lemley, D1	$8,552.92	100%
Derrick Muhammad, D3	$8.412.80	98%
Richard Raya, D1	$8,552.92	100%
Sheryl Walton, D7	$8,552.92	100%
Total Funds Distributed	$50,798.89	Average: 99%

Costs of Administering the Program

Commission staff spent approximately 520 hours administering the program from July to November 2012. This includes roughly 320 hours of part-time program analyst time at $27.39/hour, and roughly 200 hours of the executive director's time, for a total rough salary cost of $18,564.80 (not including benefits). Tasks performed by staff in administering the program include activities such as the following:

- Prepare program materials, update manuals and forms, create accounting/tracking forms, develop Powerpoint presentation and handouts
- Advertise and conduct outreach to candidates
- Conduct LPF trainings for candidates
- Meet with Accounting Department to establish process, submit authorization-approval forms
- Monitor Election Campaign Fund budget, request transfer of funds

[1] This amount includes an inadvertent overpayment of $300 to one candidate due to a typo on a form submitted by PEC staff to the Accounting Department; the overpayment is in the process of being resolved.

- Communicate with candidates and answer questions via email, phone and in person
- Review and process all forms, requests for reimbursement, copies of checks, expenditures and supporting materials
- Track and confirm candidate compliance with eligibility requirements
- Communicate with candidates when more information is needed to show requirements are met
- Work with Accounting Department to ensure all forms are complete
- Maintain electronic and hard-copy files (Scan, copy, insert data on spreadsheet)
- Process payments to campaign committee and monitor deposit into campaign account

Program Evaluation

Commission staff developed and mailed an LPFA evaluation to all district City Council candidates following the November 2012 election, but staff received only two responses. Staff intends to reach out to candidates for anecdotal feedback and suggests incorporating a more complete evaluation piece into a potential intern project in order to provide an effective evaluation of the program and how it can be improved overall.

A comparison of the last two City election cycles shows that the LPFA participation rate has remained about the same for both elections. While the participation rate stayed about the same, the actual number of participating LPFA candidates (and number of candidates running for district City Council seats overall) increased for the 2012 election.

Year	Total City Council D1-7 Candidates	Potentially Eligible LPF Candidates	LPF Recipient Candidates	LPF Participation Percentage
2010	12	11	3	25%
2012	20	14	6	30%