

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
REGULAR MEETING  
One Frank Ogawa Plaza (City Hall)  
Monday, March 7, 2011  
Hearing Room One  
6:30 p.m.  
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Commission Membership: Richard Unger (Chair), Ai Mori (Vice-Chair), Alex Paul, Amy Dunning, Lloyd Farnham, Christopher Young, Aspen Baker

Staff Members: Commission Staff:  
Daniel Purnell, Executive Director  
Tamika Thomas, Executive Assistant  
City Attorney Representative:  
Alix Rosenthal, Deputy City Attorney

### **MEETING AGENDA**

- A. Roll Call And Determination Of Quorum
- B. Approval Of Draft Minutes Of The Special Meeting Of January 19, 2011, The Special Meeting Of February 2, 2011, And The Regular Meeting Of February 7, 2011
- C. Executive Director And Commission Announcements
- D. Open Forum
- E. Complaints
  - 1. A Staff Report And Action To Be Taken On Complaint No. 10-05 (Mix)
  - 2. A Staff Report And Action To Be Taken On Complaint No. 10-08 (Klein)
  - 3. A Staff Report And Action To Be Taken On Complaint No. 10-26 (Kanz)
  - 4. A Staff Report And Action To Be Taken On A Proposed Settlement Of Complaint No. 10-29 (PEC)
- F. A Presentation From The Office Of The City Auditor Regarding Its "Ethical Climate Survey -- 2010"
- G. A Staff Report And Action To Be Taken On Regarding The Administration Of The Limited Public Financing Program During The November 2010 Municipal Election

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H. A Staff Report And Action To Be Taken Regarding Approval Of The Commission's Annual Report For 2010

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

You may speak on any item appearing on the agenda; however, you must fill out a Speaker's Card and give it to a representative of the Public Ethics Commission. All speakers will be allotted three minutes or less unless the Chairperson allots 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](http://www.oaklandnet.com).

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Approved for Distribution

Date



## PUBLIC ETHICS COMMISSION TIMELINE FOR FUTURE AGENDA ITEMS (TENTATIVE)

ITEM	APRIL	MAY
Complaint No. 09-15 (Supplemental)		<b>X</b>
Complaint No. 10-07 (Supplemental)		<b>X</b>
Complaint No. 10-09		<b>X</b>
Complaint No. 10-16		<b>X</b>
Complaint No. 10-20	<b>X</b>	
Complaint No. 10-21	<b>X</b>	
Complaint No. 10-22 (Supplemental)	<b>X</b>	
Complaint No. 10-25	<b>X</b>	
Complaint No. 10-27	<b>X</b>	
Review Of Commission's General Complaint Procedures (Committee)		<b>X</b>
Sunshine Ordinance Hearings RE Public Accessibility To Records (Inc. Electronic Public Records Search; Email Retention)	<b>X</b>	<b>X</b>
Mandatory Review And Adjustment Of City Council Salaries	<b>X</b>	<b>X</b>

### ***Public Ethics Commission Pending Complaints***

<b>Date Received</b>	<b>Complaint Number</b>	<b>Name of Complainant</b>	<b>Respondents</b>	<b>Date of Occurrence</b>	<b>Issues</b>	<b>Status</b>
12-7-10	10-30	Sanjiv Handa	Oakland Parking Division	Ongoing	Oakland Sunshine Ordinance -- Alleged failure to timely produce records	Staff is investigating
11-1-10	10-29	PEC-initiated	Sean Sullivan	Various times during June 2008 election	OCRA; Limited Public Financing Act	Staff is investigating
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230	Staff is investigating
11-1-10	10-27	Ralph Kanz	Coalition For A Safer California	October 29, 2010	OCRA; §3.12.230	Staff is investigating
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090	Staff is investigating
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D)	Staff is investigating
10-13-10	10-24	Ralph Kanz	Jean Quan	September 2010	OCRA; §3.12.140(P)	Staff is directed to explore settlement in lieu of hearing.

9/13/10	10-22	Jeffery Cash	Desley Brooks	Ongoing	Sunshine Ordinance; public records	Staff is investigating
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	Staff is investigating
8/2/10	10-20	Sanjiv Handa	Various Business Improvement Districts & Community Benefit Districts	Various between June 3 and August 2, 2010	Sunshine Ordinance; public meetings	Staff is investigating
7/2/10	10-16	Gwillym Martin	Joseph Yew, Finance	June 18, 2010	Sunshine Ordinance; production of records	Staff is investigating
3/29/10	10-09	Sanjiv Handa	Port of Oakland Board Of Commissioners	1/26/10	Oakland Sunshine Ordinance	Staff is directed to explore settlement in lieu of hearing.
3/26/10	10-08	John Klein	Dan Schulman; Mark Morodomi	3/8/10 and ongoing	Oakland Sunshine Ordinance	Staff is investigating
3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil Tagami	January 1, 2007 to present	Lobbyist Registration Act	Staff is investigating
3/3/10	10-05	David Mix	Oakland City Council	3/2/10	Oakland Sunshine Ordinance	Staff is directed to explore settlement in lieu of hearing.

11/17/09	09-15	Anthony Moglia	Jean Quan	Ongoing	Alleged misuse of City resources	Staff is investigating.
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act	Staff is directed to explore settlement in lieu of hearing.
2/7/09	09-03	John Klein	City Council President Jane Brunner	February 3, 2009	Sunshine Ordinance -- Allocation of speaker time.	Awaiting report from City Attorney.
11/6/08	08-18	David Mix	Raul Godinez	August 2008	Allegations involving Sunshine Ordinance -- Public Records Request	Commission jurisdiction reserved
11/6/08	08-13	David Mix	Leroy Griffin	August 2008	Allegations involving Sunshine Ordinance -- Public Records Request	Commission jurisdiction reserved
3/28/08	08-04	Daniel Vanderprieem	Bill Noland, Deborah Edgerly	Ongoing since 12/07	Allegations involving production of City records	Commission jurisdiction reserved.
2/26/08	08-02	Sanjiv Handa	Various members of the Oakland City Council	February 26, 2008	Allegations involving the Oakland Sunshine Ordinance and Brown Act	Commission jurisdiction reserved.
2/20/07	07-03	Sanjiv Handa	Ignacio De La Fuente, Larry Reid, Jane Brunner and Jean Quan	December 19, 2006	Speaker cards not accepted because they were submitted after the 8 p.m. deadline for turning in cards.	Commission jurisdiction reserved.
3/18/03	03-02	David Mix	Oakland Museum Dept.	3/11/03	Allegation of Sunshine Ordinance and Public Records Act violation.	Commission jurisdiction reserved.





Commission Membership: Jonathan Stanley (Chair), Barbara Green-Ajufo (Vice-Chair), Alaric Degrafinried, Alex Paul, Ai Mori, Richard Unger, Amy Dunning

Staff Members: Commission Staff:  
Daniel Purnell, Executive Director  
Tamika Thomas, Executive Assistant  
City Attorney Representative:  
Alix Rosenthal, Deputy City Attorney

### **MINUTES OF SPECIAL MEETING**

A. Roll Call And Determination Of Quorum

The meeting was called to order at 6:30 p.m.

Members present: Stanley, Green-Ajufo, Paul, Mori, Unger, Dunning

B. Approval Of Draft Minutes Of The Regular Meetings Of December 6, 2010, and January 3, 2011.

The Commission approved by unanimous consent the minutes of the regular meetings of December 6, 2010, and January 3, 2011.

C. Executive Director And Commission Announcements

The Executive Director reported that the Commission will be conducting a hearing on public access to City records at a special meeting on February 2, 2011, with formal notice to follow.

Staff from the offices of the Commission, City Attorney and City Auditor recently completed the first round of mandatory ethics training for City Form 700 filers. A second round of training has commenced to be completed by April 2011.

Commission staff expressed its thanks to Commissioners Stanley, Green-Ajufo and Degrafinried for their service on the Commission.



D. Open Forum

There was one speaker: Sanjiv Handa  
(Note arrival of Commissioner Degrafinried)

E. Complaints

1. A Staff Report And Action To Be Taken On Complaint No. 09-16 (Sacks)  
**(3d Supplemental)**

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 09-16 upon a determination that staff had completed the actions requested by the Commission at its meeting of July 7, 2010.

There were two speakers: Sanjiv Handa; Michelle Cassens

2. A Staff Report And Action To Be Taken On Complaint No. 10-10  
(Handa) **(Supplemental)**

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-10 on grounds there was no information to support a conclusion that members of the advisory task forces specified in the complaint were appointed by the Mayor or were in existence for more than twelve months. The Commission directed staff to send a letter to the Office of the Mayor reminding the new administration of the Sunshine provision applicable to advisory task forces, and to members of a group meetings to discuss police issues to continue to refrain from identifying themselves as a "mayoral" task force in the future. (Ayes: All)

There was one speaker: Sanjiv Handa

3. A Staff Report And Action To Be Taken On Complaint No. 10-14  
(Cassens) **(2d Supplemental)**

The Commission moved, seconded and adopted a motion to 1) agendaize for a subsequent meeting an item to consider Commission support for a proposed replacement of the PTS database; and 2) request the Community and Economic Development Agency to waive any special



programming fees necessary to create an electronic copy of the non-confidential portions of the PTS database. (Ayes: All)

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-14 conditioned on the actions directed in the prior motion. (Ayes: Stanley, Green-Ajufo, Mori, Unger, Dunning; Noes: Paul, Degrafinried)

There were five speakers: Michelle Cassens; Sanjiv Handa; Ralph Kanz; Ken Gordon; Ray Derania

4. A Staff Report And Action To Be Taken On Complaint No. 10-18 (Handa)

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-18 and further directed Commission staff to invite a representative from the Port Board to appear at a subsequent Commission meeting to discuss the Port Board's meeting notice procedures.

There was one speaker: Sanjiv Handa

5. A Staff Report And Action To Be Taken On Complaint No. 10-22 (Cash)

The Commission directed staff to request the Office of the City Attorney to develop a written response to Mr. Cash in connection with his request for a copy of Councilmember Brooks' public calendar.

There was one speaker: Sanjiv Handa

F. A Staff Report And Action To Be Taken Regarding A Request By Jill Broadhurst To Be Declared Eligible To Receive Public Financing In Connection With Expenditures She Incurred During The November 2010 Election

The Commission moved, seconded and adopted a motion to deny the request of District Four City Council candidate Jill Broadhurst to be determined eligible to receive public financing in connection with expenses she incurred during the November 2010 election. (Ayes: Stanley, Green-Ajufo, Mori, Unger, Dunning, Degrafinried; Noes: Paul)

MINUTES OF MEETING -- DRAFT  
PUBLIC ETHICS COMMISSION  
SPECIAL MEETING  
One Frank Ogawa Plaza (City Hall)  
Wednesday, January 19, 2011  
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There were four speakers: Jill Broadhurst; Ralph Kanz; Sandra Kahutsky; Sanjiv Handa

The meeting adjourned at 10:42 p.m.

MINUTES OF MEETING -- DRAFT  
PUBLIC ETHICS COMMISSION  
SPECIAL MEETING  
One Frank Ogawa Plaza (City Hall)  
Wednesday, February 2, 2011  
City Council Chambers  
6:30 p.m.



Commission Membership: Richard Unger (Chair), Ai Mori (Vice-Chair), Alex Paul, Amy Dunning, Lloyd Farnham, Christopher Young,

Staff Members: Commission Staff:  
Daniel Purnell, Executive Director  
Tamika Thomas, Executive Assistant  
City Attorney Representative:  
Alix Rosenthal, Deputy City Attorney

### **MINUTES OF SPECIAL MEETING**

#### A. Roll Call And Determination Of Quorum

The meeting was called to order at 6:30 p.m.

Members present: Unger, Mori, Dunning, Farnham

Members excused: Young, Paul

#### B. A Staff Report And Public Presentations On Improving Public Access To City Records

The Commission received a brief overview of public records laws from Deputy City Attorney Mark Morodomi. The Commission then took public comment from four public speakers who provided the following comments and proposals:

1. The City should adopt policies and procedures so City employees will know how to deal with records requests; particularly requests that involve with multiple departments and agencies. The City of San Jose has adopted a set of policies and procedures that could be used as a model. Any adopted procedures be made available on the City's website so that they are accessible to individual departments and members of the public.
2. Each City department should have three or four people who are knowledgeable about public records requests and know where departmental records are kept. The City should enforce public records law and policies by making sure a directive comes from the Mayor, and that there are penalties for non-compliance.

MINUTES OF MEETING -- DRAFT  
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3. The Commission should address the issue of public officials having to comply with the Public Records Act.
4. Employee evaluations should include a rating of how individuals comply with records requests; this may create an incentive for City workers to better comply with records requests.

The Commission also received into its record of the hearing pleadings and exhibits filed in connection with Sacks v. City Of Oakland, Ala. Co. No. RG10504741.

There were four speakers: Marleen Sacks, Barbara Gordon, Jeffery Cash, David Stein

C. Open Forum

There were no speakers.

MINUTES OF MEETING -- DRAFT  
PUBLIC ETHICS COMMISSION  
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Commission Membership: Richard Unger (Chair), Ai Mori (Vice-Chair), Alex Paul, Amy Dunning, Lloyd Farnham, Christopher Young, Aspen Baker

Staff Members: Commission Staff:  
Daniel Purnell, Executive Director  
Tamika Thomas, Executive Assistant  
City Attorney Representative:  
Alix Rosenthal, Deputy City Attorney

### **MEETING AGENDA**

A. Roll Call And Determination Of Quorum

The meeting was called to order at 6:30 p.m.

Members present: Mori, Dunning, Farnham, Young, Baker

Members excused: Unger, Paul

B. Approval Of Draft Minutes Of The Special Meeting Of January 19, 2011

The Commission directed that the draft minutes for the January 19, 2011, special meeting be agendized for approval at the Commission's March 7, 2011, regular meeting.

C. Executive Director And Commission Announcements

The executive director reported that the Commission conducted its first in a series of public hearings on the subject of improving public access to City records on February 2, 2011. Additional opportunities for extended public comment will be provided at future meetings.

The City will institute online filing for Statements of Economic Interests (Form 700) filed by designated City employees and elected and appointed officials in 2011. The online filing system will permit members of the public to electronically access and search these public documents.

The Commission and staff welcomed the Commission's newest members, Aspen Baker.

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D. Open Forum

There was one speaker: Sanjiv Handa

E. Complaints

1. A Staff Report And Action To Be Taken On A Proposed Settlement Of Complaint No. 10-17 (Stanley)

The Commission moved, seconded and adopted a motion to approve the proposed stipulation settling all allegations contained in Complaint No. 10-17. (Ayes: All)

There were two speakers: Sanjiv Handa, Ralph Kanz

2. A Staff Report And Action To Be Taken On Complaint No. 10-19 (Handa)

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-19 conditioned on 1) the executive director communicate with the respective legal staffs to the City-Port Liaison Committee to consider whether and to what extent the Liaison Committee may create a separate legislative body should it decide to re-convene the task force on bumping rights in the future; and 2) Commission staff and/or the Office of the City Attorney provide public records training to employees of the City's HR Department. (Ayes: All)

There was one speaker: Sanjiv Handa

3. A Staff Report And Action To Be Taken On Complaint No. 10-24 (Kanz)

The Commission directed staff to attempt a negotiated settlement with Ms. Quan's campaign representatives of the allegations contained in the complaint.

There were two speakers: Ralph Kanz; Sanjiv Handa

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- F. A Staff Report And Action To Be Taken Regarding A Request For Commission Review And Development Of A Proposal To Amend OCRA Section 3.12.220 Regarding How and When Expenditure Ceilings Are Lifted; Other Staff Recommended Amendments Relating To Contribution Limits

The Commission directed staff to forward to the City Council the proposed amendments to OCRA Section 3.12.220 with the following modifications: 1) provide that the written notice required in Section 3.12.220(B) be submitted on a form developed and approved by the Public Ethics Commission, executed by the candidate under penalty of perjury, and filed within 72 hours after reaching the specified threshold; 2) provide that the written notice required in Section 3.12.220(C) be submitted on a form developed and approved by the Public Ethics Commission, executed by the committee treasurer and a principal officer of the committee, and filed within 72 hours after reaching the specified threshold; and 3) specify that the Commission or the City Clerk's Office be required to alert candidates affected by a written notice filed pursuant to Sections 3.12.220(B) or (C).

There was one speaker: Sanjiv Handa

The meeting adjourned at 9:10 p.m.

\_\_\_\_\_  
City Attorney

City of Oakland  
Public Ethics Commission  
March 7, 2011

In the Matter of

)  
) Complaint No. 10-05  
) **2d SUPPLEMENTAL**

David Mix filed Complaint No. 10-05 on March 3, 2010.

**I. SUMMARY OF COMPLAINT**

Mr. Mix filed Complaint No. 10-05 alleging that the Oakland City Council agendized an item for its March 2, 2010, regular meeting without providing ten days of public notice or making a proper "urgency" finding. Commission staff prepared a preliminary staff report for the Commission's June 7, 2010, meeting. **Attachment 1.** At its June 7 meeting, the Commission voted to conduct a hearing to determine whether the City Council's Rules and Legislation Committee violated Section 2.20.080(B) and (E) of the Oakland Sunshine Ordinance by supplementing the City Council's March 2, 2010, regular meeting agenda without making a proper urgency finding. The Commission directed staff to attempt a settlement of the allegations by means of a voluntary "cure and correction" before scheduling any hearing.<sup>1</sup>

At its meeting of October 4, 2010, the Commission considered a supplemental staff report in which Commission staff advised the Commission that it could not reach an agreement with Chief Deputy City Attorney Barbara Parker regarding settlement of the allegations. **Attachment 2.** The Commission voted to delegate authority to Commissioner Green-Ajufo to gather and hear evidence in connection with Complaint No. 10-05 in the event the Rules Committee did not agree to conduct a voluntary "cure and correction" of the alleged violations set forth in Complaint No. 10-05.

In January 2011, Commission staff and the City Attorney's Office discussed options to resolve the complaint. Based on the fact that the City Council committee chairs and committee membership have changed since the complaint was filed, both Commission staff and the City Attorney's Office agree that it would be desirable to discuss with the new City Council President the alternative of providing detailed guidance regarding when the City Council may "supplement" its ten-day agenda packet for regular City Council meetings.

<sup>1</sup> *The Sunshine Ordinance permits local bodies to "cure and correct" an alleged or determined violation of its public notice provisions by placing the challenged action on a subsequent meeting agenda for the purpose of deciding whether to cure and correct any action taken. [See O.M.C. Section 2.20.270(D)].*

Commission staff seeks Commission input regarding the acceptability of this approach. Should the Commission reject this proposed basis of settlement, the Commission will need to re-appoint another Commissioner to serve as a hearing officer in light of Ms. Green-Ajufo's departure from the Commission.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*

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City Attorney

City of Oakland  
Public Ethics Commission  
June 7, 2010

In the Matter of )  
 ) Complaint No. 10-05  
 )

David Mix filed Complaint No. 10-05 on March 3, 2010.

**I. SUMMARY OF COMPLAINT**

Mr. Mix filed Complaint No. 10-05 alleging that the Oakland City Council agendized an item on its March 2, 2010, regular meeting without providing ten days of public notice or making a requisite "urgency" finding. **Attachment 1.**

**II. FACTUAL SUMMARY**

On February 16, 2010, the City Council conducted a special meeting to consider a "Mid Year Review of FY 2009-2010" budget. City staff proposed several budget-balancing resolutions for the current fiscal year in the general fund, Measure B (transportation) fund, and in the Development Services fund. **Attachment 2.** At the special meeting, the City Council adopted a motion to make various adjustments to the City's general fund. The meeting ran well beyond the scheduled time and no action was taken regarding the Measure B and Development Services funds. City Council President Jane Brunner announced at the end of the meeting that these two items would have to return to the City Council for future consideration.

On Thursday, February 25, 2010, the City Council Rules Committee considered a request from Ms. Brunner to schedule another special meeting on City budget matters for Tuesday, March 16, 2010. During the Rules Committee's discussion, several members cited scheduling problems with the proposed date. Several alternative dates were discussed until a suggestion was made to schedule the item on the City Council's next regular meeting agenda on Tuesday, March 2, just five days away. City Clerk LaTonda Simmons advised the Rules Committee that in order to consider the matter at the March 2 meeting, the item would either have to be the subject of a special meeting (requiring only 48 hours' notice, excluding the intervening weekend) or the Committee would have to adopt an "urgency" finding in order to add the item as a "supplemental" agenda item to the ten-day agenda already posted for the March 2 meeting. She suggested that the Rules Committee seek advice from the City Attorney's Office representative on the urgency finding.

Councilmember Jean Quan noted that the agenda material for the two items remaining from the February 16 special meeting (Measure B transportation fund and Developmental Services fund) had already been filed and distributed. She then asked Deputy City Attorney Mark Morodomi what he thought of the idea to place the item on the March 2 agenda as an "urgency" item. Mr. Morodomi's response is not audible to Commission staff on the recording, but Ms. Brunner then states that the Committee needs an opinion from the City Attorney on making an urgency finding. She states that the City "needs to save money" and "the sooner the better". She noted that the City Council had previously given direction to have the matter returned to the City Council and that staff can simply place the "old [budget] materials" from the February 16 meeting into the supplemental agenda package for the March 2 meeting. While barely discernable from the audio recording, Mr. Morodomi recalls and believes he said "That's fine" in response to the reasons Ms. Brunner provided to justify the urgency.

As soon as Ms. Brunner finished speaking, Councilmember Ignacio De La Fuente or Councilmember Larry Reid stated "Second, Madam chair", apparently inferring that Ms. Brunner had supplied the factual basis for an urgency finding in the form of a motion. At that point, Ms. Simmons sought clarification whether the item was to be agendized as a special meeting or as a supplemental item on the March 2 regular meeting agenda. Ms. Brunner stated, "That's a good question." Ms. Brunner then said she thought the item would be supplemented to the March 2 agenda. Ms. Simmons immediately said such an action "would require the urgency finding made by Councilmember De La Fuente and seconded by Councilmember Reid." Ms. Brunner said "if that's okay with the City Attorney's Office. . ." There being no audible response, Ms. Simmons then states, "Okay then that is confirmed."

On Friday, February 26, 2010, the City Clerk posted and distributed the City Council's March 2 supplemental agenda. The budget item appears as Item S [Supplemental] -15.1. **Attachment 3.** The following language appears just beneath the published item:

**Pursuant to Section 2.20.080(E)2 of the Sunshine Ordinance an urgency finding was made at the February 25, 2010 Rules and Legislation Committee to place this item on the agenda for the following reasons: That there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting.**

**This item requires an Urgency Finding (2/3 majority vote) pursuant to Section 2.20.080E(2) of the Sunshine Ordinance, prior to discussion.**  
[Emphasis in original.]

Twenty-five people spoke to the budget item at the March 2 meeting. Following public comment and City Council debate, the City Council adopted the proposed resolutions pertaining to the Measure B and Development Services funds. There is no record in the minutes or on the audio recording that the City Council adopted an "urgency finding" before or during its consideration of the item. **Attachment 4.**

Mr. Mix contends that 1) the City Council failed to establish the requisite "urgency finding" at the City Council's March 2, 2010, regular meeting, and 2) the Rules Committee's "urgency finding" made at its February 25, 2010, meeting was an abuse of discretion.

### **III. ANALYSIS**

#### **A. Limitation Of Action**

Sunshine Ordinance Section 2.20.270 provides in relevant part:

*"No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken."*

Mr. Mix alleges that the City Council failed to make an "urgency finding" that would justify including Item S-15.1 on its March 2, 2010, regular meeting agenda. The minutes of the March 2 meeting as well as the online recording demonstrates that Mr. Mix attended the March 2 meeting as well as spoke on the item. Thus under Section 2.20.270, he is prohibited from "filing" that portion of his complaint that alleges violations of Section 2.20.080 as to the March 2 meeting. Mr. Mix denies that he attended the February 25 Rules Committee meeting. There is also no indication from the online recording or from the minutes that he attended either. Thus this report shall only address those issues raised in connection with the February 25 Rules Committee meeting.

#### **B. "Urgency Findings" And Supplemental Agendas**

Agendas for the regular meetings of the City Council, Board of Port Commissioners, Ethics Commission and their respective standing committees must be filed, posted and distributed to agenda subscribers no later than ten days before the date of the meeting. [O.M.C. Section 2.20.080(A)] These local bodies may "supplement" their respective ten-day agendas no later than 72 hours before a regular meeting and *"only for the following reasons or under the following conditions:*

*"(1) to add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action. . ."* [O.M.C. Section 2.20.080(B)(1)]

The findings required to justify an "urgent" matter under Section 2.20.080(E) are as follows:

*"Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:*

- (a) *is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;*
  - (b) *relates to federal or state legislation; or,*
  - (c) *relates to a purely ceremonial or commendatory action.*
- [O.M.C. Section 2.20.080(E)]

The original scheduling request at the February 25 Rules Committee meeting was to convene a "special budget meeting" of the City Council on March 16, 2010. As the discussion progressed, the Rules Committee indicated that it wanted to continue its consideration of the proposed budget resolutions pertaining to the Measure B and Development Services funds that the City Council was unable to consider at its February 16 special meeting. A proposal was made to add this item to the regular meeting agenda of March 2, but the City Clerk advised that the only way to "supplement" this item to the March 2 agenda was to make an "urgency finding" [pursuant to Section 2.20.080(B) and (E)]. Chief Deputy City Attorney Barbara Parker told Commission staff that it is the "custom and past practice" of the Rules Committee to make the urgency finding when supplementing a City Council agenda pursuant to Section 2.20.080(B).

In order to make an "urgency finding," several relevant elements must be present: 1) a need to take immediate action; 2) an item that "came to the attention of the local body after the [ten-day] agenda was posted"; and 3) a "substantial adverse impact" that would occur if the contemplated action were deferred to a special or regular meeting. Here it is at least arguable and probably not disputable that "immediate action" on the proposed budgetary adjustments was necessary in light of Oakland's current and projected budget deficits.

What is more subject to question is whether the need to take this proposed action came to the attention of the Rules Committee only after the ten-day agenda for the March 2 meeting was posted. All City Council members knew as early as February 16 that they would still have to take action on the remaining proposals to adjust the Measure B and Development Services funds. Ms. Brunner made an announcement to that effect at the end of the February 16 meeting. Commission staff thus concludes that there is an issue of fact and law whether the item came to the attention of the Rules Committee after the ten-day agenda was posted.<sup>1</sup>

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<sup>1</sup> *Commission staff notes there are no specific facts in the written or recorded record indicating how a delay beyond the March 2 meeting would have resulted in a "substantial adverse impact." The scheduling request which initiated the Rules Committee's action to supplement the March 2 agenda was a proposal to schedule the item for a special meeting on March 16. The only information Commission staff observed supporting a finding of "substantial adverse impact" was Ms. Brunner's comment that the sooner the City Council consider the proposed adjustments the better it would be. While hardly a clarion call of urgency, Commission staff believes that it can be reasonably inferred that a "substantial adverse impact" could have resulted by delaying action on the two budget items beyond the March 2 meeting.*

#### IV. STAFF RECOMMENDATION

The Commission has discretion whether to schedule and conduct an evidentiary hearing on the issue of whether the Rules Committee violated Sunshine Ordinance Section 2.20.080(B) and (E) in making an "urgency" finding to agendize Item S-15.1 to the March 2, 2010, regular meeting of the City Council.

If the Commission determines a violation occurred, the Sunshine Ordinance would require the Rules Committee to agendize whether to cure and correct the violation. If the Rules Committee chose to cure and correct the item, it would then decide whether to affirm or supersede its previous action after taking any new public testimony on the item. [O.M.C. §2.20.270(D)]

In deciding whether to conduct a formal hearing, the Commission may wish to consider the magnitude of harm or prejudice to the public, the chance that the alleged conduct is likely to continue, the amount of time and resources the Commission wishes to devote to conducting a formal hearing on this subject, and/or the availability or suitability of other remedies.

Should the Commission decide to schedule a formal hearing in this matter, the Commission's General Complaint Procedures require the Commission to decide whether to sit as a hearing panel or to delegate its authority to hear evidence to one or more Commission members or to an independent hearing examiner. Commission staff recommends that the Commission direct staff to discuss a mediated settlement or stipulated judgment with the Rules Committee before a hearing, if any, is scheduled.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*

\_\_\_\_\_  
City Attorney

City of Oakland  
Public Ethics Commission  
October 4, 2010

In the Matter of

)  
) Complaint No. 10-05  
) **SUPPLEMENTAL**

David Mix filed Complaint No. 10-05 on March 3, 2010.

**I. SUMMARY OF COMPLAINT**

Mr. Mix filed Complaint No. 10-05 alleging that the Oakland City Council agendized an item on its March 2, 2010, regular meeting without providing ten days of public notice or making a proper "urgency" finding. Commission staff prepared a preliminary staff report for consideration at the Commission's June 7, 2010, meeting. **Attachment 1.** At its June 7 meeting, the Commission voted to conduct an evidentiary hearing to determine whether the City Council's Rules and Legislation Committee violated Section 2.20.080(B) and (E) of the Oakland Sunshine Ordinance by supplementing the City Council's March 2, 2010 regular meeting without making a proper "urgency" finding. The Commission directed staff to attempt reaching a settlement of the allegations by means of a voluntary "cure and correction" before scheduling any hearing.

**II. STATUS OF SETTLEMENT**

Commission staff contacted Chief Deputy City Attorney Barbara Parker and City Clerk LaTonda Simmons on June 8, 2010, advising them of the Commission's action and of its direction that staff explore the possibility of settling the allegation. Ms. Parker told Commission staff that the City Council had not given her authority to negotiate such a settlement before it began its extended summer recess in July. Commission staff and Ms. Parker agreed to re-visit the issue when the City Council and Ethics Commission re-convened in September, 2010.

According Ms. Parker, the City Council will consider Complaint No. 10-05 in closed session on October 5, 2010. Because of the elapsed time, Commission staff recommends that the Commission decide tonight whether to sit as a hearing panel or to delegate its authority to hear evidence to one or more Commission members or to an independent hearing examiner. Given the relatively narrow issues involved and the fact that the relevant evidence is contained on the City Council agenda and DVD recordings of the relevant meetings, Commission staff believes that a hearing can be scheduled relatively quickly and be conducted by one or more members of the Commission pursuant to Section IX of the General Complaint Procedures. If the City Council decides on October 5 to voluntarily

"cure and correct" the alleged violation, Commission staff will refrain from setting a hearing date and apprise the Commission at the November 1, 2010, meeting.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*

\_\_\_\_\_  
City Attorney

City of Oakland  
Public Ethics Commission  
March 7, 2011

In the Matter of )  
 ) Complaint No. 10-08  
 )

John Klein filed Complaint No. 10-08 on March 26, 2010.

**I. SUMMARY OF COMPLAINT**

Mr. Klein filed Complaint No. 10-08 alleging that a member of Oakland's Landmarks Preservation Board failed to provide him with copies of electronic communications ("tweets") he allegedly received during a March 8, 2010, meeting of the Landmarks Preservation Board. **Attachment 1.**

**II. FACTUAL SUMMARY**

On March 8, 2010, Mr. Klein made an e-mail request to the Office of the City Attorney for the following records:

"I request any messages (Tweets) received by Commissioner Dan Schulman via the online web service "Twitter" between 7:00 pm and 9:00 pm on Monday March 8 related to the topic of View Corridors, item 3, on the Landmarks' board agenda. He would have received the messages via his cell phone or mobile device. The messages may be stored on his cell phone or mobile device and/or on his online Twitter account."

On March 12 Mr. Klein amended his request to include additional materials:

"I would like to get all communications received and/or sent by Dan Schulman, Landmarks Board commissioner, regarding Item 3 on the March 8 Landmarks board agenda: View Corridors in the CBD. This should include any "tweets" he received via Twitter; these may be stored in his Twitter account. But I want emails and documents; also records of any meetings or phone calls, and who attended or who Mr. Schulman spoke with."

On or about March 12, former Open Government Coordinator Michelle Abney sent Mr. Klein an email stating that "the City cannot pursue the disclosure of information contained on personal mobile devices or personal interest accounts." She suggested that Mr. Klein pursue his request directly with Mr. Schulman. She also gave Mr. Klein

the telephone number of Joanne Pavlinec, the City employee who provides staff support for the Landmarks Board, for copies of agenda material previously submitted to Mr. Schulman and other board members pertaining to the item in question. Mr. Klein responded to Ms. Abney that same day, arguing that communications stored on a personal device of a City official is subject to disclosure, "particularly if the official used the device for City business." Mr. Klein cited provisions of the Public Records Act and Proposition 59 [Cal.Const. Art. I, Section 3] to support his position. **Attachment 2.**

On March 29, 2010, Deputy City Attorney Mark Morodomi sent a letter to Mr. Klein stating that "[n]either the City nor Mr. Schulman has possessed or retained. . .any Twitter "tweets" on the topic of View Corridors Item No. 3 on the Landmarks Preservation Board Agenda." Mr. Morodomi advised that tweets are stored on the internet and accessed and displayed through the author's profile page. He states such records are not retained "on any device owned or controlled by the City or Mr. Schulman." **Attachment 3.**

On April 9, 2010, Mr. Klein sent an email to Mr. Morodomi and Commission staff arguing, in effect, that any written communication (including electronic communications) between a public official and a member of the public regarding public business constitutes a public record and must be made available for inspection and copying. **Attachment 4.**

Mr. Schulman told Commission staff that he received one email on the subject of "view corridors" from Ms. Pavlinec. He said she simply advised him of the existence of previous agenda material on this subject. (Ms. Pavlinec states that she did not retain a copy of this email to Mr. Schulman.) Mr. Schulman also told Commission staff that he did not receive any protected tweet, tweets from blocked users, or direct message tweets on the subject of view corridors. He also said he was not in possession of any electronic communication directed exclusively to him on the subject of view corridors. He acknowledged there may have been various blog postings on this subject but these were equally accessible to Mr. Klein as they were to him or to any other blog subscriber.

On April 9, 2010, and several times thereafter, Mr. Klein advised Commission staff that he would be taking an extended trip out of the country and would leave no forwarding address. Commission staff sent Mr. Klein an email in September 2010 inquiring whether he had returned from his trip and whether he would like to proceed with his complaint. Mr. Klein asked whether a staff report had been prepared and was advised that one could be prepared for the October 2010 meeting if he had returned and wanted to proceed. **Attachment 5.** Mr. Klein did not respond and Commission staff has not heard from Mr. Klein since then.

### **III. ANALYSIS**

Commission staff is reluctant to prepare an analysis and recommend a course of action for Commission consideration where the complaining party apparently no longer resides in the area and cannot attend the Commission meeting. Commission staff

prepared this report in part to determine whether it can establish Mr. Klein's whereabouts and interest in pursuing this complaint with the Commission. Commission staff also questions the utility of further analysis when it appears that neither Mr. Schulman nor the City is in possession of any records responsive to Mr. Klein's request.

Commission staff will forward a copy of this report to Mr. Klein via email and will supplement this report in the event any communication is received from Mr. Klein prior to the March 7 meeting.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*

Review 12/26/10  
1202 pm  
[Signature]

City of Oakland

For Official Use Only

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 10-08

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

- The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)
- Oakland Campaign Reform Act
- Oakland City Council's Rules of Procedure/Code of Ethics
- Oakland Limited Public Financing Act
- Oakland Conflict of Interest regulations

ATTACHMENT 1

Item E-2  
Date 3/7/11  
Page 4 of 14

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

Between March 8 and March 26, 2010.

The alleged violation occurred at the following place:

City Attorney; Landmarks Board

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

On March 8, I made a public records request which was forwarded to Mark Morodomi of the City Attorney. As of today, I have not received the requested records. See attached pages.

The persons you allege to be responsible for the violation(s) are:

Dan Schulman, Landmarks Board commissioner; Mark Morodomi, City Attorney

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

Michelle Abney, Open Records Coordinator.

ATTACHMENT 1

Item E-2

Date 3/7/11

Page 5 of 14

**PLEASE NOTE:**

*There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.*

*By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.*

NAME: John Klein \_\_\_\_\_ PHONE NO.(Day):(510) \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PHONE NO.(Eve.):( ) \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

FAX NO.: ( ) \_\_\_\_\_

E-MAIL: \_\_\_\_\_



**PLEASE RETURN THIS FORM TO:**

**Public Ethics Commission**  
One Frank Ogawa Plaza, 4<sup>th</sup> floor  
Oakland, CA 94612

Phone: (510) 238-3593  
FAX:(510) 238-3315

Submit by Email

Print Form

**ATTACHMENT!**

Item \_\_\_\_\_  
Date 3/7/11  
Page 6 of 14

**Attachment to John Klein complaint, March 26, 2010**

**On March 8, 2010, I made the following records request via email to Michelle Abney, the Open Government Coordinator.**

"I request any messages (Tweets) received by Commissioner Dan Schulman via the online web service "Twitter" between 7:00pm and 9:00 pm on Monday March 8 related to the topic of View Corridors, item 3, on the Landmarks' Board agenda. He would have received the messages via his cell phone or mobile device. The messages may be stored on his cell phone or mobile device and/or on his online Twitter account."

"Please consider this as a request under the California Public Records Act, Cal. Prop 59, and the Sunshine Ordinance."

**On March 12, I amended the Request to include additional materials.**

"I would like to get all communications and documents received and/or sent by Dan Schulman, Landmarks Board commissioner, regarding item 3 on the March 8 Landmark Board agenda: View Corridors in the CBD. This should include any "tweets" he received via Twitter; these may be stored in his Twitter account. But I want e-mails and documents; also records of any meetings or phone calls, and who attended or who Mr. Schulman spoke with."

"Please consider this a request under the Cal. Public Records Act, Prop. 59 of California, and the Sunshine Ordinance. I understand the City must provide the materials within 10 days."

**On March 12, I received the following response from Ms. Abney:**

"Subject: Public Records Requests/dated March 9th and 12th

"This office is in receipt of your public records requests submitted on March 9, 2010 and March 12, 2010. Because these request are very similar we are responding to both."

"The City cannot pursue the disclosure of information contained on personal mobile devices or personal interest accounts. We suggest that you contact Mr. Schulman directly and request the information you are seeking."

"We have contacted staff regarding "e-mails and documents; also records of any meetings or phone calls, and who attended or who Mr. Schulman spoke with." Staff responded that the following documents were given to Board member Schulman: the Board's previous minutes which would track prior Board discussion on this issue, background LPAB reports which had information related to this issue, the Impact and Mitigation Measures which included the view corridor mitigation. Staff is unaware of

**ATTACHMENT 2**

Item E-2

Date 3/7/11

Page 7 of 14

any other communications. Please inform Joann Pavlinec at 510 238-6344 if you wish a copy of these documents. Your requests are completed. Michelle Taylor Abney”

**On March 12, I sent the following reply to Ms. Abney:**

“Hi Michelle,

Thanks for this. I disagree that communications stored on a personal device of a City official are not subject to disclosure, particularly if the official uses the device for City business. If communication takes place between a member of the public and a City official regarding City business, it must be disclosed, whether on a personal device, computer, or otherwise. Nothing in your response indicates whether you inquired with Mr. Schulman about the communications and whether they exist. You have cited no authority in excluding communications made via an official's personal device.”

“Similarly, the response that "staff is not aware of other communication" is an incomplete response. It does not indicate whether the request was directly to Mr. Schulman. The request is made to Mr. Schulman regarding communications between him and the public, and any others. It is to be expected that staff would not be aware of all communication with a board member. Please ask Mr. Schulman to produce all emails and communications related to the item in question. Mr. Schulman is a City official and subject to all applicable laws and regulations related to public records disclosure.”

“Specifically, from the CPRA Gov't Code Section 6252: "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. and then "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

“As well, Article 1 Section 3 of the State Constitution (prop. 59): SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. (b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

“For these reasons, this request cannot be closed.

Thank you.  
John”

**ATTACHMENT 2**

Item E-2  
Date 3/17/11  
Page 8 of 14

any other communications. Please inform Joann Pavlinec at 510 238-6344 if you wish a copy of these documents. Your requests are completed. Michelle Taylor Abney”

**On March 12, I sent the following reply to Ms. Abney:**

“Hi Michelle,

Thanks for this. I disagree that communications stored on a personal device of a City official are not subject to disclosure, particularly if the official uses the device for City business. If communication takes place between a member of the public and a City official regarding City business, it must be disclosed, whether on a personal device, computer, or otherwise. Nothing in your response indicates whether you inquired with Mr. Schulman about the communications and whether they exist. You have cited no authority in excluding communications made via an official's personal device.”

“Similarly, the response that "staff is not aware of other communication" is an incomplete response. It does not indicate whether the request was directly to Mr. Schulman. The request is made to Mr. Schulman regarding communications between him and the public, and any others. It is to be expected that staff would not be aware of all communication with a board member. Please ask Mr. Schulman to produce all emails and communications related to the item in question. Mr. Schulman is a City official and is subject to all applicable laws and regulations related to public records disclosure.”

“Specifically, from the CPRA Gov't Code Section 6252: "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. and then "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

“As well, Article 1 Section 3 of the State Constitution (prop. 59): SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. (b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

“For these reasons, this request cannot be closed.  
Thank you.  
John”

**ATTACHMENT 2**

Item E-2

Date 3/1/11

Page 9 of 14 2

**On March 17, I received the following reply from Ms. Abney:**

“I am working with Attorney Mark Morodomi re your request. Will update you as soon as possible. Michelle Abney 238-2965”

**On March 20, I sent the following message to Ms. Abney:**

“Hi Michelle,

Thanks for this. However, I will not let the delay caused by Mr. Morodomi's review dissuade me from filing a complaint if the records are not made available within ten days from the date of my request. There is no question the records must be produced and I don't even know why Mr. Morodomi must be involved. I hope the City is able to provide the records very soon.

Thank you.

John Klein”

**I have not received a reply since my March 20 email. More importantly, I have not received the records I requested. The records are to be provided within ten days of the request, which, by Ms. Abney's records, should have been March 19. However, I have not received the records, nor a request for additional time, nor any explanation for the delay or any applicable exemption pertaining to the records.**

**John Klein**



**ATTACHMENT 2**

Item E-2

Date 3/7/11

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3

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

March 29, 2010

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

Mr. John Klein

*Mailed  
3/30/10*

Dear Mr. Klein:

Subject: Public Records Request/OLS File No. 802

This letter is in response to your public records requests submitted on March 9, 2010 and March 12, 2010.

Neither the City nor Mr. Schulman has possession or retained of any Twitter "tweets" on the topic of View Corridors Item No. 3 on the Landmarks Preservation Board Agenda. The tweets are not stored on any personal device. Tweets are text-based posts of up to 140 characters displayed on the author's profile page. That profile page exists on the Internet, not on any device owned or controlled by the City or Mr. Schulman.

~~Also, Mr. Schulman does not recall what tweets he viewed during the time period specified in your request. The only profiles that Mr. Shulman has seen on the subject of your request are the profile pages of Jonathan Bair, Echa Schneider, Max Aldstadt, and yourself. I understand that you are a subscriber to each of these profiles, so you have greater access to the postings than the City does and thus already have any "records" requested.~~

If you have questions, please call me at (510) 238-6101.

Sincerely yours,

MARK MORODOMI  
Supervising Deputy City Attorney

cc: Michelle Abney, Open Government Coordinator  
OLS File No. 802

Item E-2  
Date 3/7/11  
Page 11 of 14

## ATTACHMENT 4

This is my response to the City Attorney's March 29, 2010, letter regarding the above-reference Public Records Request.

The City Attorney's explanation of Twitter functionalities indicates a less-than-full understanding of the application, and of the Internet, for that matter. First, Internet-based text posts do not "exist on the Internet," as stated by the City Attorney. Rather, Internet-based text posts are stored as data on servers under the control of the company providing the service. The stored data is access via the Internet, but the data does not reside on the Internet. This is the case for Twitter messages, all email, and all websites.

Second, the explanation that the devices "exist beyond the control of the City" is irrelevant. What is relevant is the communication with the official regarding City business. The inquiry does not concern whether a device is owned or controlled by the City. Rather, it concerns communication between the public and an official, regardless of the method or medium utilized in the communication. There is no exemption for communication which occurs via devices outside the control of the City nor has the City Attorney cited any exemption on this basis. Moreover, it is the duty of the public official to preserve such communication and to make it available to the public.

Third, the City Attorney's explanation of Twitter functionalities is incomplete. There are numerous features of the application which give the user a high degree of selectivity with regard the privacy of text messages.

1. The user can 'block' individual followers using an application feature which allows the user to deny access to any follower. This feature is applied by the user on a follower-by-follower basis. Once a follower is blocked by the user, the tweets can't be viewed by that follower.
2. A user can limit all access to the account by setting the account security to 'Protected' and thereby rendering the entire account unviewable. When this is the case, a prospective follower must make a direct 'request' to the user via the system and the user must affirmatively grant access before the user's account is viewable by a particular follower. This feature operates for all followers, rather than follower-by-follower and the user must select and approve each and every follower beforehand.
3. A user can send a 'direct messages' to any follower, and vice versa. Direct messages are not viewable by any other follower. In fact, the very purpose a direct message is to allow users to communicate privately and without other followers viewing the communication.
4. An individual user can create multiple user accounts each using separate, anonymous, or fictitious user names. A follower might follow a user who is using multiple accounts under different profile names. Conversely, a user might

broadcast the same message from numerous separate accounts giving the appearance that more than one person is sending the message.

5. A user can simply set up an account and profile under a fictitious name and the public is not aware of the true identity of the user.

Given the foregoing, it is clear that there are numerous scenarios under which individuals might communicate via the Twitter system in a way that is private and inaccessible to followers or users on system. If the user is a government official, the official must disclose those public or private messages when requested since the messages cannot be accessed in the manner described by the City Attorney. I request all such private communications as noted in the records requests.

On a different topic raised by the City Attorney, I am not aware of, nor do I follow, any users by the name of Echa Schneider, Jonathan Bair, or Dan Schulman. Neither was I able to find users by those names when I searched Twitter for them. Please clarify who these individuals are and why you believe I subscribe to their Twitter profiles or accounts. Also, since I don't have a Twitter account under my name, John Klein, can you please explain the basis for your belief that I follow these individuals? Can you please also explain what is meant when you wrote that I have, "greater access to the postings than the City"? Any individual, including an employee with the City of Oakland, can access Twitter profiles to the exact same extent that I am able.

Finally, the City Attorney's letter addresses only the Twitter messages during the two-hour period of the LPAB meeting. However, I requested any communication to or from Mr. Schulman, including e-mail, documents, etc. Also, my March 12 request amended the initial request to include all Twitter messages, not just those during the two-hour period. I am awaiting a response to the amended request.

I will be traveling out of the country for several months beginning late April. Can you please make sure all communication on this complaint is sent via email? I have no forwarding address for regular mail. Multi-page documents should be sent as attachments or via web links. Please call me at 510-332-7596 if you have any questions or comments.

Thank you.

John Klein

#### **ATTACHMENT 5**

I'm prepared to write it but didn't want to go forward until I heard from you. Are you back in town? I can

probably get it before the Commission for the October meeting if you are. dp

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**From:** john [mailto:mandala051@gmail.com]  
**Sent:** Thursday, September 02, 2010 5:05 AM  
**To:** Purnell, Daniel  
**Subject:** Re: Your Ethics complaint No. 10-08 ("Tweets")

Hi Dan, is there a staff report?

On Wed, Sep 1, 2010 at 2:48 AM, Purnell, Daniel <[DPurnell@oaklandnet.com](mailto:DPurnell@oaklandnet.com)> wrote:

Hi John: I just sent you a letter to your Vermont Street address asking if you can contact me regarding the above complaint. My last communication from you indicated you would be travelling out of the country for several months and I am wondering whether you have returned and whether you would like to proceed with the above complaint. Please let me know.  
Thanks, dp

\_\_\_\_\_  
City Attorney

City of Oakland  
Public Ethics Commission  
March 7, 2011

In the Matter of )  
 ) Complaint No. 10-26  
 )

Ralph Kanz filed Complaint No. 10-26 on October 13, 2010.

**I. SUMMARY OF COMPLAINT**

Mr. Kanz filed Complaint No. 10-26 alleging that then-mayoral candidate Jean Quan violated the Oakland Campaign Reform Act (OCRA) by receiving a loan to her campaign in excess of OCRA's contribution limits. **Attachment 1.**

**II. FACTUAL SUMMARY**

On a campaign financial statement (Form 460) filed for the reporting period ending on June 30, 2010, Ms. Quan reported the receipt of a loan in the amount of \$80,000. The name of the lender is listed as Lloyd Huen, Ms. Quan's husband. **Attachment 2.** On a Form 460 filed for the reporting period ending on September 30, 2010, Ms. Quan reported the receipt of a second loan in the amount of \$75,000. The names of the lenders are listed as "Lloyd Huen & Jean Quan." **Attachment 3.**

Commission staff requested and received from Ms. Quan's campaign treasurer, Alan Yee, copies of the checks used to make the loan payments. The first loan of \$80,000 was made using two separate instruments -- A check written in the amount of \$75,000 and drawn from an account at First United Services Credit Union ("First United"); and a check written in the amount of \$5,000 and drawn from an account at Citibank. The First United account shows Mr. Huen as the account holder; the Citibank account shows both Mr. Huen and Ms. Quan as the account holders. **Attachment 4.** The second loan of \$75,000 was drawn from the First United account. **Attachment 5.** All checks were signed by Mr. Huen.

Mr. Yee told Commission staff that all funds loaned to the campaign constituted Ms. Quan's and Mr. Huen's community property. He said that the funds were drawn from a line of credit ("Equity Entree" as printed on the two checks) issued by First United and secured by Mr. Huen's and Ms. Quan's home in Oakland. Even though the account is maintained in Mr. Huen's name, he said both Mr. Huen and Ms. Quan are co-borrowers under the line of credit. He said Mr. Huen had been handling the couple's

finances during the campaign period and that Ms. Quan consented to and directed that the loan be made.

Commission staff performed a search of county assessor records to confirm Mr. Yee's statements. There exists in county records a 2007 deed of trust on Ms. Quan's and Mr. Huen's Oakland residence which secures an "Open-End Line Of Credit" from First United and authorized for an amount in excess of the \$155,000 campaign loan. The deed of trust lists both Ms. Quan and Mr. Huen, in their capacities as trustees of a family trust, as "co-borrowers" under the loan instrument secured by the deed.

### III. ANALYSIS

OCRA limits the amount a person may contribute, and a candidate can receive, in an election for local office. [OCRA §3.12.050] The amount depends on whether the candidate has accepted voluntary expenditure ceilings for his or her campaign. For the election of November 2010, the contribution limit totaled \$700 for candidates accepting voluntary expenditure ceilings and \$100 for candidates who did not accept the ceilings. Ms. Quan filed OCRA Form 301 accepting voluntary expenditure ceilings for the November 2010 election. **Attachment 6.**

OCRA also contains a related provision relevant to this complaint:

#### **3.12.090 Loans**

*A. A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Act.*

*B. Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee campaign statement on which the loan is first reported.*

*C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Act.*

Thus the issue presented is whether a loan reportedly made by a candidate's spouse that is actually drawn on a line of credit secured by a community property asset constitutes a loan subject to OCRA's \$700 contribution limit.

While OCRA restricts the amount of direct contributions to candidates and, pursuant to Section 3.12.090, applies those limits to the "maker and guarantor" of a loan to a candidate, OCRA does not include any express limit on the amount a local candidate may contribute or loan to his or her campaign. In Buckley v. Valeo (1976)

424 U.S. 1, the U.S. Supreme Court ruled that laws limiting a candidate's use of personal funds in his or her campaign burden a candidate's free speech rights and thus subject to "strict scrutiny" by the courts. Subsequent court decisions have indicated such laws would not survive a demanding strict scrutiny from the courts. Thus a reading or interpretation of OCRA Section 3.12.050 (contribution limits) and Section 3.12.090 (loans to candidates) that would include a candidate's personal funds would not likely be consistent with U.S. court decisions.

Commission staff further notes that Section 3.12.090(C) expressly excludes from its limitations "[t]he proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed. . ." Here, the proceeds of the home equity line from First United were "made" to Ms. Quan in her capacity as a co-borrower under the deed of trust and loan instrument. The loan is "secured" by her community property home asset. There is nothing to suggest the terms of the loan were not available to other credit union members. The fact that it was Mr. Huen who signed the checks does not change the character of their community property asset nor appear to affect the exception provided in Section 3.12.090(C).<sup>1</sup>

#### **IV. STAFF RECOMMENDATION**

Commission staff recommends that the Commission dismiss Complaint No. 10-26 on grounds that the reported loans from Floyd Huen were actually loans by a commercial lending institution to Mr. Huen and Ms. Quan and secured by Mr. Quan's community property interest in real property.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

---

*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*

---

<sup>1</sup> *The above conclusion does not imply that a person could never trigger the provisions of Section 3.12.090 by making a loan to his or her spouse-candidate; the use of **separate** property in making such a loan would present a different analysis under OCRA but such facts are not currently before the Commission.*

Rec'd  
1:43 pm  
10/13/00  
[Signature]

City of Oakland

For Official Use Only

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 10-26

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

- The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)
- Oakland Campaign Reform Act
- Oakland City Council's Rules of Procedure/Code of Ethics
- Oakland Limited Public Financing Act
- Oakland Conflict of Interest regulations

ATTACHMENT I

Item E-3  
Date 3/7/11  
Page 4 of 11

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

Starting June 30, 2010

The alleged violation occurred at the following place:

Oakland, California

Please provide specific facts describing your complaint. (Or attach additional pages as necessary.)

The attached two pages show a loan of \$80,000 from Floyd Huen to Jean Quan for Mayor of Oakland 2010. The subsequent loan of \$75,000 is from Floyd Huen and Jean Quan. These loans appear to violate OCRA contribution limits. Additionally none of the filings by Jean Quan for Mayor of Oakland 2010 has Schedule G attached even though the Schedule E's indicate they should be attached.

The persons you allege to be responsible for the violation(s) are:

Jean Quan and Floyd Huen

Any witnesses who were involved and/or who can provide additional information are: (Please indicate names and phone numbers, if available.)

ATTACHMENT 1

Item E-3  
Date 3/7/11  
Page 5 of 11

**PLEASE NOTE:**

*There may be other laws that apply to the violation(s) you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filing this complaint. You should contact an attorney immediately to protect any rights available to you under the law.*

*By filing this complaint with the Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public.*

NAME: Ralph Kanz PHONE NO.(Day):(510) [REDACTED]

ADDRESS: [REDACTED] PHONE NO.(Eve.):(510) [REDACTED]

CITY: Oakland STATE: CA ZIP: 94601

FAX NO.: ( )                     

E-MAIL: [REDACTED]

**PLEASE RETURN THIS FORM TO:**

**Public Ethics Commission**  
One Frank Ogawa Plaza, 4<sup>th</sup> floor  
Oakland, CA 94612

Phone: (510) 238-3593  
FAX:(510) 238-3315

Submit by Email

Print Form

**ATTACHMENT I**

Item E-3

Date 3/7/11

Page 6 of 11

**Schedule B - Part 1**  
**Loans Received**

Type or print in ink.  
Amounts may be rounded  
to whole dollars.

INSTRUCTIONS ON REVERSE

Statement covers period  
from 1-1-10  
through 06-30-10

Page 53 of 56

NAME OF FILER  
JAN QUAN FOR MAYOR OF OAKLAND 2010

I.D. NUMBER  
1320283

] IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	OUTSTANDING BALANCE BEGINNING THIS PERIOD	AMOUNT RECEIVED THIS PERIOD	AMOUNT PAID OR FORGIVEN THIS PERIOD *		OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	INTEREST PAID THIS PERIOD	ORIGINAL AMOUNT OF LOAN	CALENDAR YEAR CONTRIBUTIONS TO DATE
					PAID	FORGIVEN				
] IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	David 81 Baymead Road Oakland, CA 94602	Lifelong Medical Care Physician	\$ 0.00	\$ 80,000.0	<input type="checkbox"/> PAID 0	<input type="checkbox"/> FORGIVEN 0	\$ 80,000 Nov. 2010 DATE DUE	0 % RATE	\$ 80,000 6/30/10 DATE INCURRED	CALENDAR YEAR \$ 80,000 PER ELECTION**
SUBTOTALS \$			\$ 80,000	\$ 80,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	CALENDAR YEAR \$ PER ELECTION**

**Schedule B Summary**

Loans received this period ..... \$ 80,000.00  
(Total Column (b) plus unitemized loans of less than \$100.)

Loans paid or forgiven this period ..... \$ 0  
(Total Column (c) plus loans under \$100 paid or forgiven.)  
(Include loans paid by a third party that are also itemized on Schedule A.)

Net change this period. (Subtract Line 2 from Line 1.) ..... NET \$ 80,000.00

Enter the net here and on the Summary Page, Column A, Line 2.

Amounts forgiven or paid by another party also must be reported on Schedule A.  
\* If required.

(Enter (e) on Schedule E, Line 3)

†Contributor Codes  
IND - Individual  
COM - Recipient Committee  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

Date Still

**ATTACHMENT 2**

**Schedule B - Part 1  
Loans Received**

Type or print in ink.  
Amounts may be rounded  
to whole dollars.

Statement covers period  
from 7-1-10  
through 09-30-10

Page 44 of 55

**CALIFORNIA  
FORM 460**

SCHEDULE B - PART 1

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER  
**JEAN QUAN FOR MAYOR OF OAKLAND 2010**

I.D. NUMBER  
13320283

FILER NAME, STREET ADDRESS AND ZIP CODE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	OUTSTANDING BALANCE BEGINNING THIS PERIOD (a)	AMOUNT RECEIVED THIS PERIOD (b)	AMOUNT PAID OR FORGIVEN THIS PERIOD (c)		OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD (d)	INTEREST PAID THIS PERIOD (e)	ORIGINAL AMOUNT OF LOAN (f)	CUMULATIVE CONTRIBUTIONS TO DATE (g)
				PAID	FORGIVEN				
Fred Huen & Jean Quan 2011 Braemar Road Oakland, CA 94602	Lifelong Medical Care/ City of Oakland Physician/Councilperso	\$ 80,000	\$ 75,000	<input type="checkbox"/> PAID 0	<input type="checkbox"/> FORGIVEN 0	\$ 155,000 Nov. 2010	0 %	\$ 80,000 6/30/10	\$ 155,000 PER ELECTION**
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$	\$	<input type="checkbox"/> PAID	<input type="checkbox"/> FORGIVEN	DATE DUE	RATE %	DATE INCURRED	CALENDAR YEAR
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$	\$	<input type="checkbox"/> PAID	<input type="checkbox"/> FORGIVEN	DATE DUE	RATE %	DATE INCURRED	CALENDAR YEAR
<b>SUBTOTALS \$</b>		<b>75,000</b>	<b>75,000</b>	<b>0</b>	<b>0</b>	<b>80,000</b>	<b>0</b>	<b>0</b>	

**Schedule B Summary**

(Enter (e) on  
Schedule E, Line 3)

1. Loans received this period ..... \$ 75,000  
(Total Column (b) plus unitemized loans of less than \$100.)

2. Loans paid or forgiven this period ..... \$ 0  
(Total Column (c) plus loans under \$100 paid or forgiven.)  
(Include loans paid by a third party that are also itemized on Schedule A.)

3. Net change this period. (Subtract Line 2 from Line 1.) ..... **NET \$ 75,000**  
Enter the net here and on the Summary Page, Column A, Line 2.

Contributor Codes  
IND - Individual  
COM - Recipient Committee  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

\*Amounts forgiven or paid by another party also must be reported on Schedule A.  
\*\* If required.

**ATTACHMENT 3**

Date 3/7/11  
Page 3 of 11



Jean Quan  
Floyd Huen

OAKLAND, CA 94602

Electronic Check  
Fraud Protection

Date 6/30/10

MEMBERS UNLIMITED - COUNTRY CLUB  
TO REQUEST INFORMATION - www.Citibank.com

Pay to the order of Jean Quan for May 2010

Five Thousand

\$ 5,000

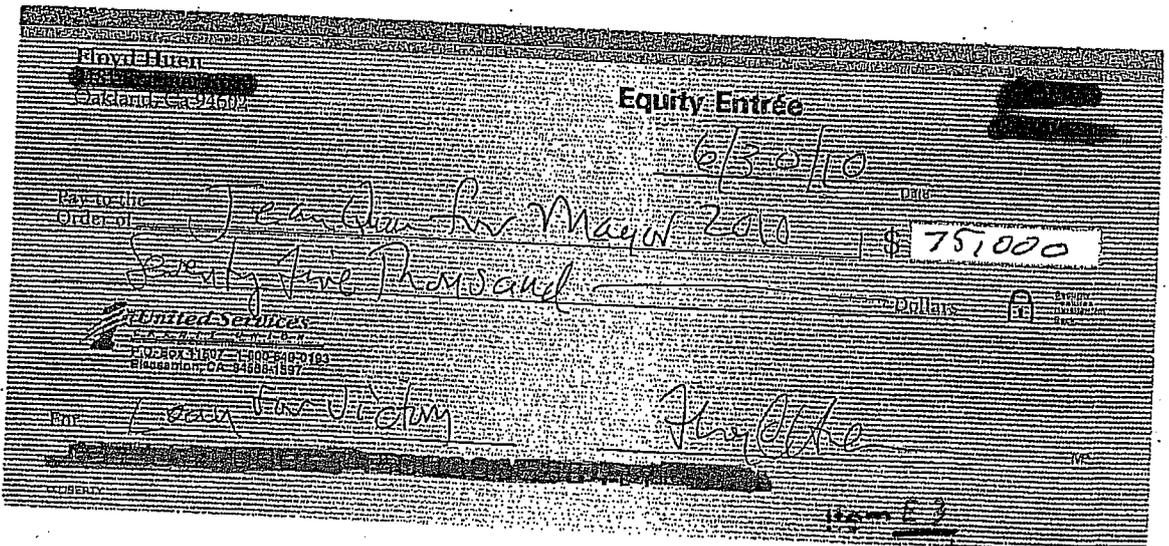
Dollars

Security Features  
Included  
Details on Back

CITIBANK, N.A. BR. #34  
3304 GRAND AVE.  
OAKLAND, CA 94610

VALUED CUSTOMER SINCE 1988

For Loan for Victory 2010 Floyd Huen



Floyd Huen

Oakland, Ca 94602

Equity Entrée

6/30/10

Pay to the order of Jean Quan for May 2010

Twenty Five Thousand

\$ 25,000

Dollars

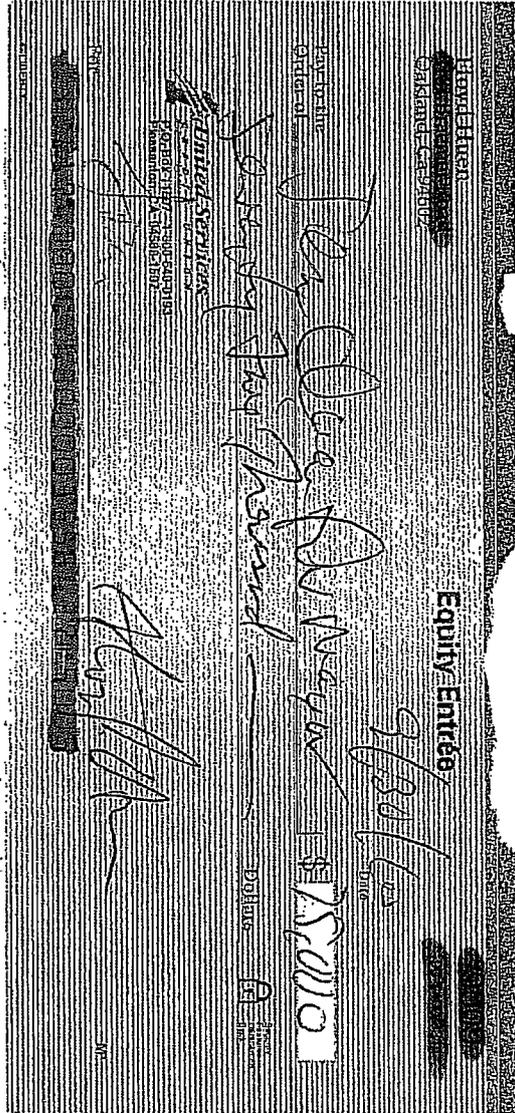
United Services  
3304 Grand Ave.  
Oakland, CA 94610

For Loan for Victory Floyd Huen

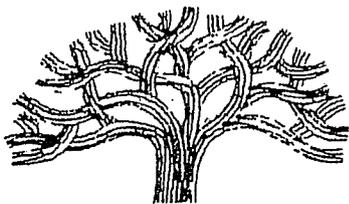
ATTACHMENT 4

Date 3/7/11

Page 9 of 11



2009 JUL 30 PM 3:48



CITY OF OAKLAND  
CAMPAIGN REFORM ACT  
OCRA FORM NO. 301

EXPENDITURE CEILING ACCEPTANCE FORM

I, JEAN QUAN, hereby declare that I am a candidate  
*Printed Name*

for the Office of MAYOR, in the *City Oakland Municipal*

Election, to be held on *Tuesday*, NOV 2, 2010  
*Nominating (Primary)/General (Run-Off)*

and I declare that I HAVE establish(ed) a campaign committee in order to solicit  
*have/will*

contributions towards my candidacy.

I, JEAN QUAN, hereby ACCEPT  
*Accept/Reject*

expenditure ceilings as defined in Sections 3.12.050(c), 3.12.060(c), 3.12.190, 3.12.200, 3.12.210 and  
3.12.220 of the City of Oakland's Campaign Reform Act. *I agree that once accepted, the expenditure  
ceiling is irrevocable except as waived, pursuant to the City of Oakland Campaign Reform Act at Section  
3.12.220.*

*I hereby certify that the above statement is true and correct.*

Executed on the 7/28 day of 2009

Signed: *Jean Quan*  
*Name of Candidate*

**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

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

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** March 7, 2011

**RE:** A Staff Report And Action To Be Taken On A Proposed Settlement Of Complaint No. 10-29 (PEC)

At its regular meeting of November 1, 2010, the Commission adopted a motion to initiate a complaint against Sean Sullivan based on certain findings contained in a City Auditor's Report dated October 14, 2010, and as identified and discussed in a Commission preliminary staff report. **Attachment 1.** Mr. Sullivan participated in the limited public financing program during the June 2008 election. One of the requirements of the program is for participating candidates to submit to an audit of their campaign finances by the Office of the City Auditor. The City Auditor's Report identified a number of items of "non-compliance" involving one or more provisions of the Limited Public Financing Act (LPFA), the Oakland Campaign Reform Act (OCRA) and/or the California Political Reform Act. The Commission is only authorized to adjudicate alleged violations of the LPFA and OCRA.

Attached to this staff report is a proposed settlement that Mr. Sullivan has agreed to execute. **Attachment 2.** The proposed settlement contains relevant staff allegations and Mr. Sullivan's contentions over which he will relinquish his right to adjudicate conditioned in part upon making a settlement payment of \$5,000 to the City and the return of all public matching funds received during the course of the election. The agreement is not an admission of wrongdoing by Mr. Sullivan; he has agreed to the settlement to avoid further proceedings before the Commission.

Commission staff recommends that the Commission review the specific terms of the proposed agreement and adopt a motion to approve its contents.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

*City of Oakland*  
**Public Ethics Commission**  
March 7, 2011

In The Matter of  
Sean Sullivan

) Complaint No. 10-29  
)  
) **[Proposed]** Stipulation,  
) Decision and Order

It is hereby stipulated by and between the City of Oakland Public Ethics Commission and Sean Sullivan.

A. Sean Sullivan was a candidate for office in the June 2008 municipal election for City Council District Three. At all times relevant to this complaint and stipulation, Richard Fuentes served as Mr. Sullivan's campaign treasurer. On or about May 27, 2008, Mr. Sullivan qualified to participate in the City of Oakland's program to provide public matching funds pursuant to the Limited Public Financing Act (LPFA), O.M.C. Chapter 3.13. During the course of the campaign, Mr. Sullivan received a total of \$9,839 in public matching funds.

B. On October 14, 2010, the Office of the City Auditor released its mandatory audit of Mr. Sullivan's campaign account pursuant to the LPFA. Among the relevant published findings were 1) The campaign reported \$13,173 more in contributions than was actually documented as deposited in the campaign's bank account; 2) The campaign reported approximately \$8,000 more in expenditures than could be documented by campaign bank statements; 3) The campaign could not produce original source documents and/or keep records for all its contributions and expenditures; 4) The campaign made cash withdrawals and allegedly made cash payments to vendors in amounts in excess of \$100; and 5) the campaign committee could not adequately determine whether it possessed any unencumbered matching funds as of the last day of the semi-annual reporting period following the election. A copy of the City Auditor's Report dated October 14, 2010 is incorporated into this Stipulation by reference.

C. Commission staff contends that Mr. Sullivan and his campaign failed to: 1) completely and accurately execute all pre-election and post-election campaign statements in connection with the election for which Mr. Sullivan received public matching funds, thus potentially violating LPFA Section 3.13.080(G) [Qualification Procedures]; and, 2) return to the Election Campaign Fund all unencumbered matching funds no later than 31 days from the last day of the semi-annual reporting period following the election, thus potentially violating LPFA Section 3.13.150(B) [Return Of Matching Funds].

D. Mr. Sullivan contends: 1) the reporting errors and mistakes were completely inadvertent; 2) Mr. Sullivan was a first-time candidate; 3) his treasurer was a first-time volunteer treasurer; and 4) his campaign was a grassroots, volunteer led effort. Mr. Sullivan and the campaign take full responsibility for these errors and mistakes.

E. Pursuant to Commission General Complaint Procedures Section XII(F), Commission staff recommends that the contentions stated in paragraphs C and D be resolved as follows:

1) Within thirty (30) calendar days after this Stipulation, Decision and Order ("Stipulation") is approved by the Commission, Mr. Sullivan shall (a) make a settlement payment of \$5,000 and (b) return to the Election Campaign Fund the amount of \$9,839, in the form of separate checks made payable to "The City of Oakland" and delivered to the offices of the Public Ethics Commission, and

2) Nothing in this Stipulation shall be interpreted as an admission of wrongdoing by Mr. Sullivan; he has entered into this Stipulation to avoid any further proceedings before the Commission.

3) Mr. Sullivan knowingly and voluntarily waives all rights to a hearing before the Commission on the merits of the contentions contained in paragraph C.

4) Mr. Sullivan understands and acknowledges that this Stipulation a) will not be effective until it is approved by the Commission; b) is not binding on any other law enforcement agency and does not preclude the Commission or Commission staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the subject matter of this Stipulation; and c) will become null and void if the Commission refuses to approve it. Notwithstanding the foregoing, the Commission shall, by approving this proposed Stipulation, dismiss Complaint No. 10-29 [In the Matter Of Sean Sullivan] and take no further action to refer this matter to any other governmental agency. If the Commission refuses to approve this Stipulation and a full evidentiary hearing before the Commission becomes necessary, the Commission's prior consideration of this Stipulation will not constitute grounds for the disqualification of any member of the Commission or Commission staff.

F) Mr. Sullivan hereby agrees to the terms set forth in paragraph E above.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Sean Sullivan

**CERTIFICATION RE: APPROVAL OF STIPULATION  
DECISION AND ORDER**

The foregoing Stipulation, Decision and Order ("Stipulation") was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission ("Commission") held on \_\_\_\_\_, 2011. A quorum of the membership of the

Commission was present at the meeting. A motion approving the Stipulation was duly made and seconded, and the motion was adopted by a majority of said quorum.

I hereby certify that the foregoing is true and correct.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Daniel D. Purnell, Executive Director  
Oakland Public Ethics Commission

**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, 4<sup>th</sup> Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** November 1, 2010  
**RE: Receipt, Review And Action To Be Taken Regarding The City Auditor's Mandatory Review Of Candidate Sean Sullivan Receipt Of Public Matching Funds In The June, 2008, Election**

## I. INTRODUCTION

During the municipal election of June 2008, the Limited Public Financing Act (LPFA) authorized the Commission to disburse "public matching funds" to assist candidates running for district City Council offices.<sup>1</sup> The LPFA required the Office of the City Auditor to conduct audits of all candidates who received public funds during that election. Three candidates applied for and received public matching funds in 2008 -- Clifford Gilmore, Sean Sullivan and Nancy Nadel. On October 14, 2010, the Office of the City Auditor issued its audit of Mr. Sullivan's campaign finances for the June 2008 election. **Attachment 1.**

The Audit Report provides a summary of applicable law and contains detailed findings. The purpose of this memorandum is to review the Audit Report's findings and to seek Commission approval for initiating a formal complaint regarding issues over which the Commission has authority to determine or to refer to other governmental agencies.

## II. ITEMS OF COMPLIANCE

The Audit Report determined that Mr. Sullivan's campaign complied with the following provisions of the LPFA:

---

<sup>1</sup> The Oakland City Council amended the LPFA in July 2010 to abolish the "matching fund" program in favor of a program that reimburses specific qualified campaign expenditures.

1. The campaign complied with the voluntary expenditure limit applicable to the 2008 election in City Council District Three of \$115,000.
2. The candidate did not receive contributions from his own funds that exceeded five percent of the voluntary expenditure ceiling for the office being sought.
3. The campaign deposited all public matching funds into the campaign checking account.

### III. ITEMS OF NONCOMPLIANCE

The Audit Report identified ten instances of noncompliance with either local or state law. These items are addressed on page 13 of the report. The issue before the Commission is whether to initiate enforcement proceedings regarding the alleged items of noncompliance. The following is a brief discussion of the Commission's authority to determine or refer the specific items identified in the City Auditor's report (some items have been combined):

- A. "The campaign reported \$13,173 more in contributions on Form 460 than was actually documented as deposited in the campaign's bank account."**

**"The campaign reported \$75,978 in expenditures on the Form 460s; however, the committee's bank statement only showed a total of \$67,294 in expenditures. No documentation justifying the difference of more than \$8,000 was submitted."**

The California Political Reform Act (PRA) requires candidates to accurately disclose campaign finances. [Government Code Section 84200 et seq]

LPFA Section 3.13.080(G) also provides in relevant part:

*"An eligible candidate shall be approved to receive public matching funds if the candidate meets all of the following requirements: . . . The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time matching funds are payable. All candidates receiving matching funds shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received matching funds."*

The Commission is authorized to determine whether Section 3.13.080(G) was violated and to refer issues of state law to an appropriate governmental or law enforcement agencies.

- B. "The campaign did not maintain accurate records of contributions or expenditures, as required under the FPPC."**

**"The campaign failed to keep all original source documents (proof of payment) for expenditures."**

**"The campaign accepted \$694 in contributions [of less than \$100] without obtaining the appropriate information, full name and address, as required under the regulations."**

Government Code Section 84104 provides in relevant part:

*"It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter..."*

FPPC regulations provide in great detail the kinds of records candidates must create and retain. [See 2 Cal. Code Regs. Section 18401] Candidates are required to maintain and keep accounts, records, bills, receipts and "original source documentation" for a period of four years. With respect to contributions in amounts of \$25 or more but less than \$100, FPPC Regulation 18104 requires candidates to maintain accounts and records containing the amount, date, and full name and street address of the contributor.

Neither OCRA nor the LPFA contains a specific recordkeeping requirement. Local candidates are governed by the PRA in this regard.

**C. "The campaign accepted a total of \$1,800 from two contributors in excess of the contribution limit."**

The Oakland Campaign Reform Act (OCRA) limits the amount that candidates may receive from any person in an election, depending on whether the candidate has agreed to voluntarily limit his or her campaign spending. [OCRA Sections 3.12.050(B); 3.12.060(B)] For candidates in the June 2008 election participating in the matching fund program, the contribution limit was \$600.

The Commission has authority to determine alleged violations of OCRA.

**D. "The campaign accepted and deposited a total of \$710 in cash from undisclosed sources."**

**"The campaign accepted and deposited a total of \$710 in cash from an undisclosed source of funding, resulting in a violation of FPPC and OCRA's \$100 cash contribution limit."**

The Audit Report contains two separate findings (above) purportedly addressing the same contribution(s).

Government Code (PRA) Section 84300(a) states: "No contribution of one hundred dollars (\$100) or more shall be made or received in cash."

Neither OCRA nor the LPFA contains a provision regulating cash contributions (although the LPFA does not permit matching a cash contribution in any amount.) If the \$710 in cash was received from more than one source, none of which exceeded \$100, then there may not have been a violation of law (so long as properly documented and reported.) If the \$710 in cash was received from more than one source, and one or more of the contributions exceeded \$100, then there could be a violation of Government Code Section 84300(a). Finally, if the \$710 in cash was received from a single source, then there may have been a violation of Government Code Section 84300(a) **and** OCRA Section 3.12.050(B).

The Commission has authority to determine alleged violations of OCRA and refer issues of state law to appropriate governmental or law enforcement agencies.

**E. "One reported cash payment of \$2,000 involved a potential erroneous invoice and receipt of cash payment for \$2,000."**

**"One reported cash withdrawal and payment of \$4,459 to pay a vendor as indicated by the campaign's documentation was denied as having been received by the vendor and, therefore, could not be verified. Furthermore the withdrawal exceeded the \$100 cash withdrawal limit."**

Government Code Section 84300(a) provides: "No contribution of one hundred dollars (\$100) or more shall be made or received in cash." Government Code Section 84300(b) provides: "No expenditure of one hundred dollars (\$100) or more shall be made in cash."

LPFA Section 3.13.140(A) provides: "Public matching funds may only be used for lawful qualified campaign expenditures incurred by a candidate during the election for which the funds were allocated."

The Commission has authority to inquire and determine whether public matching funds were used for "lawful qualified campaign expenditures." It may refer issues of state law to appropriate governmental or law enforcement agencies.

**F. "The campaign reported contributions and expenditures on the Form 460s that could not be verified by the bank statement. As a result, the campaign's exact amount of unencumbered funds at the conclusion of the campaign could not be determined."**

LPFA Section 3.13.150(B) provides:

*"Unencumbered matching funds must be returned to the Election Campaign Fund no later than thirty-one (31) calendar days from the earlier of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election. Any unencumbered campaign funds remaining as of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election, shall be considered unencumbered matching funds to*

*be returned to the Election Campaign Fund, up to the amount of matching funds received for that election by the candidate."*

The Commission has the authority to inquire and determine whether the campaign had unencumbered campaign funds remaining as of June 30, 2008, and, if so, whether any such funds should have been returned by July 31, 2008 to the Election Campaign Fund.

#### **IV. CONCLUSION AND STAFF RECOMMENDATION**

The Audit Report provides additional information supporting its findings. It also includes a response to the findings by Mr. Sullivan. Commission staff recommends that the Commission initiate a complaint for enforcement and/or referral based on the findings contained in the Audit Report. If the Commission takes this action, Commission staff will prepare a preliminary staff report for subsequent consideration pursuant to the Commission's General Complaint Procedures.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

**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

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

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** November 1, 2010

**RE: Receipt, Review And Action To Be Taken Regarding The City Auditor's Mandatory Review Of Candidate Sean Sullivan Receipt Of Public Matching Funds In The June, 2008, Election**

## I. INTRODUCTION

During the municipal election of June 2008, the Limited Public Financing Act (LPFA) authorized the Commission to disburse "public matching funds" to assist candidates running for district City Council offices.<sup>2</sup> The LPFA required the Office of the City Auditor to conduct audits of all candidates who received public funds during that election. Three candidates applied for and received public matching funds in 2008 -- Clifford Gilmore, Sean Sullivan and Nancy Nadel. On October 14, 2010, the Office of the City Auditor issued its audit of Mr. Sullivan's campaign finances for the June 2008 election. **Attachment 1.**

The Audit Report provides a summary of applicable law and contains detailed findings. The purpose of this memorandum is to review the Audit Report's findings and to seek Commission approval for initiating a formal complaint regarding issues over which the Commission has authority to determine or to refer to other governmental agencies.

## II. ITEMS OF COMPLIANCE

The Audit Report determined that Mr. Sullivan's campaign complied with the following provisions of the LPFA:

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<sup>2</sup> The Oakland City Council amended the LPFA in July 2010 to abolish the "matching fund" program in favor of a program that reimburses specific qualified campaign expenditures.

1. The campaign complied with the voluntary expenditure limit applicable to the 2008 election in City Council District Three of \$115,000.
2. The candidate did not receive contributions from his own funds that exceeded five percent of the voluntary expenditure ceiling for the office being sought.
3. The campaign deposited all public matching funds into the campaign checking account.

### III. ITEMS OF NONCOMPLIANCE

The Audit Report identified ten instances of noncompliance with either local or state law. These items are addressed on page 13 of the report. The issue before the Commission is whether to initiate enforcement proceedings regarding the alleged items of noncompliance. The following is a brief discussion of the Commission's authority to determine or refer the specific items identified in the City Auditor's report (some items have been combined):

- A. "The campaign reported \$13,173 more in contributions on Form 460 than was actually documented as deposited in the campaign's bank account."**

**"The campaign reported \$75,978 in expenditures on the Form 460s; however, the committee's bank statement only showed a total of \$67,294 in expenditures. No documentation justifying the difference of more than \$8,000 was submitted."**

The California Political Reform Act (PRA) requires candidates to accurately disclose campaign finances. [Government Code Section 84200 et seq]

LPFA Section 3.13.080(G) also provides in relevant part:

*"An eligible candidate shall be approved to receive public matching funds if the candidate meets all of the following requirements: . . . The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time matching funds are payable. All candidates receiving matching funds shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received matching funds."*

The Commission is authorized to determine whether Section 3.13.080(G) was violated and to refer issues of state law to an appropriate governmental or law enforcement agencies.

- B. "The campaign did not maintain accurate records of contributions or expenditures, as required under the FPPC."**

**"The campaign failed to keep all original source documents (proof of payment) for expenditures."**

**"The campaign accepted \$694 in contributions [of less than \$100] without obtaining the appropriate information, full name and address, as required under the regulations."**

Government Code Section 84104 provides in relevant part:

*"It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter..."*

FPPC regulations provide in great detail the kinds of records candidates must create and retain. [See 2 Cal. Code Regs. Section 18401] Candidates are required to maintain and keep accounts, records, bills, receipts and "original source documentation" for a period of four years. With respect to contributions in amounts of \$25 or more but less than \$100, FPPC Regulation 18104 requires candidates to maintain accounts and records containing the amount, date, and full name and street address of the contributor.

Neither OCRA nor the LPFA contains a specific recordkeeping requirement. Local candidates are governed by the PRA in this regard.

**C. "The campaign accepted a total of \$1,800 from two contributors in excess of the contribution limit."**

The Oakland Campaign Reform Act (OCRA) limits the amount that candidates may receive from any person in an election, depending on whether the candidate has agreed to voluntarily limit his or her campaign spending. [OCRA Sections 3.12.050(B); 3.12.060(B)] For candidates in the June 2008 election participating in the matching fund program, the contribution limit was \$600.

The Commission has authority to determine alleged violations of OCRA.

**D. "The campaign accepted and deposited a total of \$710 in cash from undisclosed sources."**

**"The campaign accepted and deposited a total of \$710 in cash from an undisclosed source of funding, resulting in a violation of FPPC and OCRA's \$100 cash contribution limit."**

The Audit Report contains two separate findings (above) purportedly addressing the same contribution(s).

Government Code (PRA) Section 84300(a) states: "No contribution of one hundred dollars (\$100) or more shall be made or received in cash."

Neither OCRA nor the LPFA contains a provision regulating cash contributions (although the LPFA does not permit matching a cash contribution in any amount.) If the \$710 in cash was received from more than one source, none of which exceeded \$100, then there may not have been a violation of law (so long as properly documented and reported.) If the \$710 in cash was received from more than one source, and one or more of the contributions exceeded \$100, then there could be a violation of Government Code Section 84300(a). Finally, if the \$710 in cash was received from a single source, then there may have been a violation of Government Code Section 84300(a) **and** OCRA Section 3.12.050(B).

The Commission has authority to determine alleged violations of OCRA and refer issues of state law to appropriate governmental or law enforcement agencies.

**E. "One reported cash payment of \$2,000 involved a potential erroneous invoice and receipt of cash payment for \$2,000."**

**"One reported cash withdrawal and payment of \$4,459 to pay a vendor as indicated by the campaign's documentation was denied as having been received by the vendor and, therefore, could not be verified. Furthermore the withdrawal exceeded the \$100 cash withdrawal limit."**

Government Code Section 84300(a) provides: "No contribution of one hundred dollars (\$100) or more shall be made or received in cash." Government Code Section 84300(b) provides: "No expenditure of one hundred dollars (\$100) or more shall be made in cash."

LPFA Section 3.13.140(A) provides: "Public matching funds may only be used for lawful qualified campaign expenditures incurred by a candidate during the election for which the funds were allocated."

The Commission has authority to inquire and determine whether public matching funds were used for "lawful qualified campaign expenditures." It may refer issues of state law to appropriate governmental or law enforcement agencies.

**F. "The campaign reported contributions and expenditures on the Form 460s that could not be verified by the bank statement. As a result, the campaign's exact amount of unencumbered funds at the conclusion of the campaign could not be determined."**

LPFA Section 3.13.150(B) provides:

*"Unencumbered matching funds must be returned to the Election Campaign Fund no later than thirty-one (31) calendar days from the earlier of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election. Any unencumbered campaign funds remaining as of the last day of the semi-annual reporting period following the election, or the candidate's withdrawal from the election, shall be considered unencumbered matching funds to*

*be returned to the Election Campaign Fund, up to the amount of matching funds received for that election by the candidate."*

The Commission has the authority to inquire and determine whether the campaign had unencumbered campaign funds remaining as of June 30, 2008, and, if so, whether any such funds should have been returned by July 31, 2008 to the Election Campaign Fund.

#### **IV. CONCLUSION AND STAFF RECOMMENDATION**

The Audit Report provides additional information supporting its findings. It also includes a response to the findings by Mr. Sullivan. Commission staff recommends that the Commission initiate a complaint for enforcement and/or referral based on the findings contained in the Audit Report. If the Commission takes this action, Commission staff will prepare a preliminary staff report for subsequent consideration pursuant to the Commission's General Complaint Procedures.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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Daniel D. Purnell, Executive Director

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**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** March 7, 2011

**RE: A Presentation From The Office Of The City Auditor Regarding Its  
"Ethical Climate Survey -- 2010"**

In November 2010, City Auditor Courtney Ruby initiated a survey of City employees to assess their opinion on whether the City "fosters an ethical work environment." In February 2011, Auditor Ruby published the results of that survey. **Attachment 1.**

Appearing before the Commission to review the findings and significance of this survey will be Sharon Ball, a senior performance auditor with the City Auditor's Office.

Commission staff recommends that the Commission receive the report and any relevant public comment.

Respectfully submitted,

Daniel D. Purnell  
Executive Director



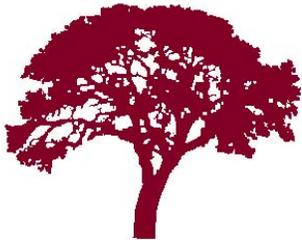
# City of Oakland

## Ethical Climate Survey – 2010

“Do you think Oakland fosters an ethical work environment?”



Courtney A. Ruby  
City Auditor  
(510) 238-3378  
www.OaklandAuditor.com  
cityauditor@oaklandnet.com



On November 19, 2010, City Auditor Courtney Ruby launched Oakland's first Ethical Climate Survey, which asked City employees, “Do you think Oakland fosters an ethical work environment?”

The survey, designed by the Institute for Local Government (ILG), establishes a baseline to measure Oakland's progress towards creating a more ethical work environment by examining respondents' perceptions of three distinct groups, including the employee (him/herself), management and elected officials.

Survey participation was voluntary and anonymous, and more than ten percent of employees from every level (line, supervisory and management) and all departments participated.

The survey showed that Oakland's overall ethical climate is in a good place but has room for improvement. Positively, employees felt that they are expected to use ethical behaviors in getting results. They also expressed that elected officials and City management treat the public with civility and respect.

Looking across the survey, two major problem areas also became clear. First, elected officials and executives need to do more to create an environment where employees are comfortable surfacing ethical concerns. The first question in each survey section dealt with this issue and was the lowest or nearly lowest rated for the entire survey.

Secondly, employees generally believe they are expected to follow the City's stated policy – not individual elected or appointed officials' directed requests or opinions. However, employees question the effectiveness of management ensuring that elected officials stay within their policy role and out of day-to-day management.

The following pages of this report look at the results for each section of the survey, identify both positive and weak areas, as well as analyze the messages staff are sending and receiving about ethics.

### Oakland's Next Steps Where Do We Go from Here?

Oakland's Ethical Climate Survey establishes a baseline, which tells us that Oakland is at a good place but has room to improve. Currently, Oakland is addressing ethical concerns with three distinct approaches.

#### Ethical Climate Survey

Now that Oakland has established its ethical climate baseline, City leaders know where attention must be placed to tighten up the City's ethical culture. Suggested corrective actions from the Institute for Local Government can be found in the scoring matrix located at the end of this report.

The City Auditor will also conduct follow-up surveys at the end of each year to measure development or regression of Oakland's ethical work environment. Additionally, the City Auditor's Office will work with agencies to increase participation of employees who are without assigned computers and/or part-time employees.

#### Mandatory Ethics Training

Initiated by City Auditor Ruby and City Attorney Russo, Mandatory Ethics Trainings were launched in September 2010 for all Form 700 filers. This is a joint effort of the Public Ethics Commission, the City Attorney and the City Auditor's Offices. Trainings will continue on a bi-yearly basis.

From these trainings, two recurring themes have been voiced by participants:

- A desire to discuss ethical issues within work units or teams
- A need for enforcement of the Anti-Interference prohibition in the City Charter

#### AI 596: Citywide Code of Conduct

Communication is a significant tool to influence perceptions and build trust. Feedback from employees in the survey and the ethics trainings clearly show a desire and need by employees to discuss ethical issues within work units or teams.

A good starting point for internal ethics discussions is AI 596: Citywide Code of Conduct – Non-Sworn Employees, which was issued in October 2010.

## Oakland's Overall Score

The chart below shows the results of each section for Oakland's first Ethical Climate Survey. For a more complete explanation of the results below and suggested actions for Oakland to take, consult the scoring matrix located at the end of this report.

Survey Section	Rating	Score
Employees	Medium	65
Executives	Medium	53
Elected Officials	Low	38
<b>Overall</b>	<b>Medium</b>	<b>156</b>

## Survey Response Rate

Overall, Oakland employee participation was strong with more than ten percent of all employees participating.

Completed Surveys	535
City of Oakland Headcount	5195
Response Rate	10.3%

## Employee Participation by Position

Employee participation was generally consistent with the makeup of the City's workforce with respect to position level. Four hundred and thirty employees identified their position in the survey.

Line	65%
Supervisor	24%
Management	11%

## Employee Participation by Department

Survey participation was tremendously successful with employees from every City department partaking. The largest department, the Oakland Police Department, had the most respondents, yet its overall response rate was less than the overall average of 10.3 percent.

We noted a similar trend in the Public Works Agency, the Department of Human Services and the Office of Parks and Recreation. All of these departments have a large number of employees without a dedicated computer and/or a large part-time workforce.

The chart to the right shows participation by the department's total employee headcount. As you can see from the chart, the Department of Human Resource Management had the highest participation rate of 37 percent, while OPR had the lowest rate of one percent.

The City Auditor's Office will work with agencies to ensure greater participation in future surveys from employees who are without a dedicated computer and/or part-time employees.

## Institute for Local Government Ethical Climate Survey

This survey, designed by the Institute for Local Government (ILG), helps local municipalities identify ethical blind spots or reassures them that their ethical house is in order. The ILG states:

*The key question for local municipalities is the degree to which ethical standards influence decision-making by both the organization and individuals within the organization*

The survey is broken down into three, short sections comprised of ten questions and examines respondents' perceptions of three distinct groups: the employee (him/herself), management and elected officials.

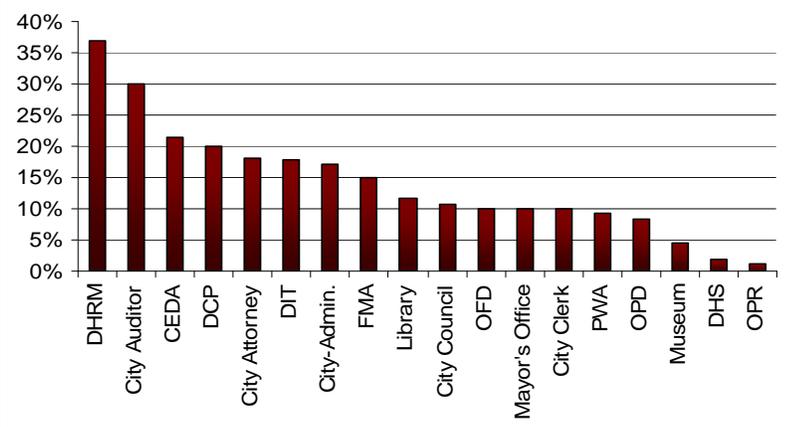
For each section, respondents were instructed to:

- Determine if a statement is "Always," "Almost Always", "Sometimes" or "Rarely" true based upon his or her experiences and perceptions working for the City of Oakland.

OR

- Select "Don't Know" if she or he didn't feel as if they knew the answer.

**Respondents as a % of Headcount**



# In my local government, I am...

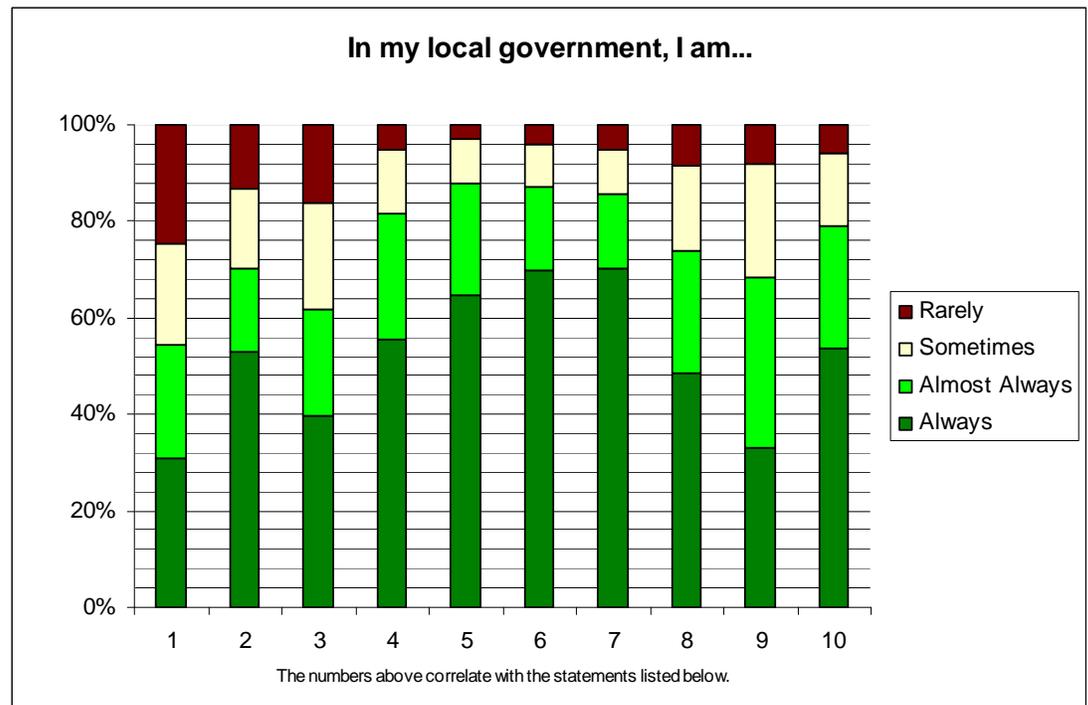
## Section One: Employee

The employee section had the best score of the three categories, with an average score of 65.

Looking at the bar graph to the right, you can see that the vast majority of responses were "Always" and "Almost Always" and met the "High" score ranking.

According to their responses, employees clearly expressed that they felt they are expected to use ethical behaviors in getting results.

It was clear from the responses, however, that greater attention must be paid towards encouraging employees to speak up about any agency practice or policy that is ethically questionable.



NOTE: Rate of Don't Know responses = 3%

### Good News

Respondents believe they are expected to:

- Follow the spirit as well as the letter of the law
- Use ethical behaviors to achieve results
- Tell the truth
- Treat everyone equally regardless of personal or political connections
- Follow stated policies, not individual elected or appointed officials' desires

### Bad News

Respondents indicate reservations about:

- Being encouraged to speak up about agency practices and policies that are ethically questionable.

### Statements

Statements	Score
1. Encouraged to speak up about any agency practices and policies that are ethically questionable.	Lowest
2. Expected to report questionable ethical behaviors of others.	Medium
3. Clear about where to turn to for advice about ethical issues.	Medium
4. Expected to follow the spirit as well as letter of the law in my work for the agency.	High
5. Expected to use ethical behaviors in getting results.	Highest
6. Expected to tell the complete truth in my work for the agency.	High
7. Expected to treat everyone who comes before the agency equally, regardless of personal or political connections.	High
8. Expected to follow stated policy of the governing body and not the desires of individual elected or appointed officials.	High
9. Surrounded by coworkers who know the difference between ethical and unethical behaviors, and seem to care about the difference.	Medium
10. Working with one or more trusted confidantes with whom I can discuss ethical dilemmas at work.	High

# In my local government, executives...

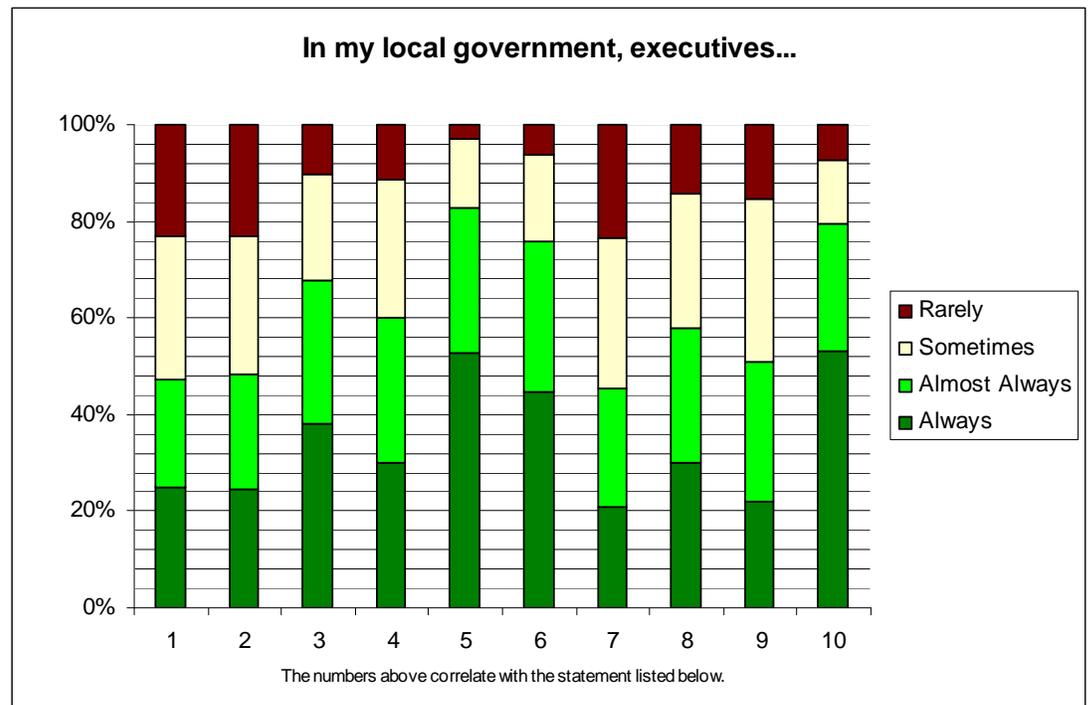
## Section Two: Management

The management section had the median score of the three categories, with an average score of 53.

Looking at the bar graph to the right, you can see that most of responses were "Always" and "Almost Always".

Respondents expressed that executives treat the public with civility and respect.

It was clear from the data, however, that greater attention must be paid by management towards appointing and rewarding employees on the basis of performance and contribution to the organization's goals and services.



NOTE: Rate of Don't Know responses = 10%

### Good News

Respondents perceive that Oakland's executives:

- Treat the public with respect
- Use public resources only for agency purposes
- Refuse gifts or special treatment from City business associates

### Bad News

Respondents perceive that executives:

- Do not base appointments and rewards on staff performance and contribution
- Do not create an environment where employees are comfortable raising ethical concerns
- Do not help elected officials stay within their policy role and out of day-to-day management issues
- Do not appreciate staff bringing forward bad news

### Statements

Statements	Score
1. Create an environment in which staff is comfortable raising ethical concerns.	Low
2. Appreciate staff bringing forward bad news and don't "shoot the messenger" for doing so.	Low
3. Expect staff to use ethical practices in getting results – not "whatever it takes."	Medium
4. Gear their decisions to the spirit as well as letter of the law.	Medium
5. Treat the public with civility and respect.	Highest
6. Use public resources only for agency purposes and not for their own personal or political uses (such as agency supplies, staff time and equipment).	High
7. Appoint and reward people on the basis of performance and contribution to the organization's goals and services.	Lowest
8. Treat all members of the public equally, regardless of who has people "connections."	Medium
9. Help elected officials work within their policy role and stay out of day-to-day work of the agency.	Low
10. Refuse to accept gifts and/or special treatment from those with business before the agency.	High

# In my local government, elected officials...

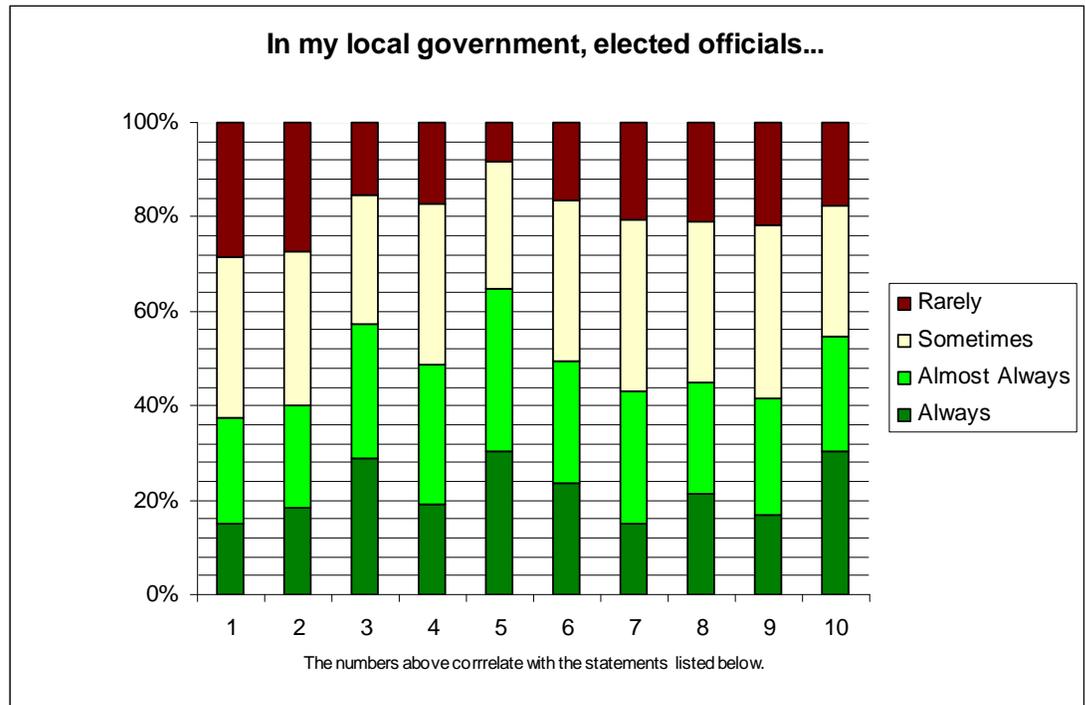
## Section Three: Elected Officials

The elected officials section was the lowest scoring category, with an average score of 38.

Much of the depreciated scores resulted from one quarter of all respondents not knowing the answer.

Respondents felt that elected officials treat the public with civility and respect.

It was also clear from the responses, however, that greater attention must be paid by elected officials towards creating an environment in which staff is comfortable raising ethical concerns.



NOTE: Rate of Don't Know responses =25%

### Good News

Respondents perceive that elected officials:

- Treat the public with respect

### Bad News

Respondents perceive that elected officials:

- Do not create an environment where employees are comfortable raising ethical concerns
- Do not consistently stay within their policy role and out of day-to-day management issues
- Do not appreciate staff bringing forward bad news
- Do not exclude themselves from decision when they cannot reasonably be impartial
- Do not refuse gifts or special treatment from City business associates

### Statements

Statements	Score
1. Create an environment in which staff is comfortable raising ethical concerns.	Lowest
2. Appreciate staff bringing forward bad news and don't "shoot the messenger" for doing so.	Low
3. Expect staff to use ethical practices in getting results – not "whatever it takes."	Medium
4. Gear their decisions to the spirit as well as letter of the law.	Medium
5. Treat the public with civility and respect.	Highest
6. Use public resources only for agency purposes and not for their own personal or political uses (such as agency supplies, staff time and equipment).	Medium
7. Allow the staff to handle day-to-day management issues and don't try to get involved.	Low
8. Treat all members of the public equally, regardless of who has people or political connections.	Medium
9. Exclude themselves from decisions when reasonable members of the public might question their ability to make a fair decision.	Low
10. Refuse to accept gifts and/or special treatment from those with business before the agency.	Low

## Answer Scoring

The Institute for Local Government's Ethical Climate Survey measures perceptions about ethics in a local government's work environment. For the purpose of scoring, ILG does not award points for "Don't Know" responses as they present an ethical gap in the organization's overall ethical climate. This survey tool has a graduated scoring algorithm that weighs responses as follows:

Always	Almost Always	Sometimes	Rarely	Don't Know
10 points	7.5 points	5 points	2.5 points	0 points

## Institute for Local Government Scoring Matrix

### High – Congrats!

75 – 100 per section  
225 – 300 for survey



Your agency has a strong ethical environment.

Keep up the good work, including such steps as:

1. Incorporating ethics into the hiring and evaluation process for staff
2. Conducting regular ethics-related learning opportunities, including examples of ethical dilemmas and ways to resolve them
3. Going through specific items on the assessment to identify further opportunities for positive change
4. Reinforcing the importance of ethical considerations in agency behaviors and decisions

### Medium – Pause!

50 – 74 per section  
150 – 224 for survey



Take a moment to reflect.

Your agency is at a good place but has room to improve by doing the following:

1. Evaluating the areas of weakness indicated by the questionnaire and considering targeted remedial actions
2. Analyzing the messages that staff and others receive and send about ethics
3. Reviewing the agency's policies, including the criteria by which staff are evaluated
4. Considering if having a code of ethics would be helpful for the agency
5. Following the best practices indicated in the box above

### Low – Stop!

0 – 49 per section  
0 – 149 for survey



Your agency's culture needs significant change.

Suggested activities include:

1. Identifying the aspects of the agency's culture that foster the problematic behaviors and analyze how to remediate them
2. Consulting with your agency's attorney about potential violations of laws and agency regulations
3. Following the best practices indicated in the boxes above

**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, 4<sup>th</sup> Floor, Oakland, CA 94612

(510) 238-3593

Fax: (510) 238-3315

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** March 7, 2011

**RE: A Report And Action To Be Taken On The Administration Of The Limited Public Financing Program In The November 2010 Municipal Election**

**I. HISTORY AND SIGNIFICANT PROVISIONS OF THE ACT**

The Oakland City Council adopted the Limited Public Financing Act ("LPFA") in December 1999. The original program provided public funds to qualified candidates to assist their election to local office. Qualified candidates received public financing through a "matching funds" formula: The City matched the first \$100 of every qualified campaign contribution received by a candidate up to a specified total amount. The program was first implemented during a special election in April 2001. Since then, the Commission has administered a program of public funding in 2002, 2005 (special election), 2006 and in 2008. The program was suspended during the 2004 election cycle due to budget constraints.

In July 2010, the City Council adopted a Commission proposal that changed the way public funds are made available to candidates. The highlights of the new program are:

- The City no longer matches campaign contributions but instead 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.
- 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 represents of total campaign expenditures.

## **II. IMPLEMENTATION DURING THE NOVEMBER 2010 ELECTION**

### **A. Program Budgeting And Fund Allocation**

The Commission entered the 2010 election cycle with a balance of \$116,387 in the Election Campaign Fund.<sup>1</sup> The nomination period for the November 2010 election closed on August 11, 2010, with a total of twelve candidates certified to run for City Council seats in Districts Two, Four and Six. Because the total amount that all candidates could potentially receive under the program exceeded the existing balance in the Election Campaign Fund, the Commission voted at an August 17, 2010, special meeting to divide the existing balance (after first reserving 3 percent for administrative expenses) equally among the 12 candidates for an initial allocation of \$9,408 for the November election.

During the following eight weeks, the Commission met to adjust the pro rata allocation three more times:

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<sup>1</sup> The Election Campaign Fund began 2010 with a balance of approximately \$225,000 available for public financing in the November 2010 election. In February 2010, City Councilmembers Kaplan and De La Fuente proposed suspending the public financing program during 2010 and transferring the \$225,000 to a project intended to increase voter awareness of the Ranked Choice Voting process. After several meetings, the City Council approved an appropriation of more than \$100,000 from the Election Campaign Fund, leaving approximately \$116,000 available for public financing in the November 2010 election.

Date Of Allocation	Reason For (Re)Allocation	Amount Of New Allocation (Per Candidate)
August 17, 2010	Commission allocates based on number of candidates (12) certified to participate in the November election	\$9,408
September 8, 2010	Commission re-allocates based on number of candidates (5) who timely filed a Statement of Acceptance Of Public Financing	\$22,579
September 22, 2010	Commission re-allocates after determining two more candidates had timely filed with the Office of the City Clerk (vs. Commission)	\$16,128
October 19, 2010	Commission re-allocates after determining another candidate had timely filed with the Office of the City Clerk (vs. Commission)	\$14,111
November 1, 2010	Commission re-allocates based on candidate shares likely to be unclaimed by non-participating candidates before the election.	\$16,463

**B. Public Financing Disbursement For The November 2010 Election**

A total of five candidates applied for, and were found eligible to receive, public financing in the November 2010 election. Three other candidates filed timely Statements Of Acceptance but never submitted claims for reimbursement. Total funds disbursed during the November 2010 election was \$76,109. The following chart summarizes funds received by candidates participating in the program:

<b>Candidate</b>	<b>Total Public Matching Funds Rec'd (\$16,463 maximum)</b>	<b>Percent Of Matching Funds Available To The Candidate</b>
Patricia Kernighan, D2	\$16,463	100%
Jennifer Pae, D2	\$16,061	98%
Libby Schaaf, D4	\$16,463	100%
Daniel Swafford, D4	\$14,111	86%
Jose Dorado, D6	\$13,011	79%
<b>TOTAL FUNDS DISBURSED</b>	<b>\$76,109</b>	<b>93% (ave.)</b>

### III. ADMINISTRATION OF THE PUBLIC FINANCING PROGRAM

Following the City Council's adoption of the amendments in July 2010, Commission staff sent a series of announcements to all potentially eligible district City Council candidates advising them of the availability of public financing in the November election. Once the Office of the City Clerk had notified Commission staff that all candidates' names had been certified to appear on the ballot, Commission staff sent out several notices reminding potentially eligible candidates of the August 26, 2010, deadline by which their "Statement of Acceptance or Rejection of Public Financing" ("Statement") would be due. Commission staff also drafted and distributed to all potentially eligible candidates the Commission's guide, "How To Apply For Public Financing." A total of eight of the twelve potentially eligible candidates filed a timely Statement of Acceptance.

In comparison to previous years, Commission staff spent significantly less time reviewing completed applications and determining eligibility for the public financing program. Since Commission staff no longer had to review hundreds of checks for matching purposes, the program's purported goal of reducing the administrative burden of staff and candidates was unquestionably achieved.

Commission staff did however experience some administrative difficulties during the election period, primarily the approval process after Commission staff had submitted claims to the City's Finance Department for processing. In several instances requests requiring the approval of the City Administrator's Office were not executed for more than seven days, resulting in payment delays to the candidates. Additionally, there was some confusion regarding with which City office the candidates' Statements Of Acceptance should be filed, causing additional Commission meetings and multiple fund re-allocations.

Pursuant to program requirements, the Office of the City Auditor will shortly begin its required compliance reviews of participating candidates.

#### **IV. ADDITIONAL POLICY AND BUDGETARY ISSUES**

To help identify the factors that influenced candidates whether to participate in the program, Commission staff developed and mailed to all district City Council candidates a survey following the November 2010 election. **Attachment 1.** Unfortunately only two responded to the survey. The responses of those who did are included in the following staff observations and suggestions for additional amendments to the LPFA.

One of the goals of the July 2010 amendments was to increase candidate participation in the program. In 2008, only three of eleven potentially eligible candidates participated (a 27 percent participation rate). In 2010, five of twelve potentially eligible candidates participated (a 41 percent participation rate). Commission staff believes that the July 2010 amendments, particularly to 1) increase the amount that a candidate could contribute or lend to his or her campaign, 2) eliminate the requirement to submit hundreds of check copies for matching, and 3) reduce the amount of surplus funds that must be returned to the City, contributed to greater candidate participation.

Commission staff submits the following observations and recommendations that might encourage greater candidate participation in future elections:

##### **A. Restriction On Personal Contributions And Loans**

The July 2010 amendments raised the amount that a participating candidate could contribute to his or her campaign from 5 percent of the voluntary expenditure ceiling to 10 percent. The primary rationale for limiting personal contributions and loans in the first place is to "maintain a level playing field" among the candidates who choose to participate in the program. One candidate who responded to the Commission questionnaire stated that even the 10 percent ceiling is too low. The candidate stated that it might be necessary to contribute or loan personal funds due to a last-minute need for money, such as the need to respond to a "hit piece" just before the election.

On the assumption that most candidates will use their own money only if and when they have to, the Commission may wish to consider recommending another increase (for example, 15 to 20 percent) to the voluntary expenditure limit. Such an amendment could provide candidates the option of using more of their own money and still protect other participating opponents from an arguably unfair infusion of cash into a campaign.

##### **B. Excessive "Threshold" Requirement**

Current law requires candidates to raise in local contributions (excluding personal sources) and make in expenditures an amount equal to 5 percent of the voluntary expenditure ceiling as a condition of eligibility. This threshold requirement is a test of a candidate's "viability" -- Those candidates who can raise and spend this amount (between \$5,300 and \$6,000) are probably "significant" candidates to whom public funds should be directed.

The Commission initially proposed lowering the 5 percent thresholds to 3 percent, but that proposal was ultimately rejected by the City Council in the July 2010 amendments. Commission staff notes there were at least two candidates who expressed an initial interest in participating in the program but who were never able to qualify because of the 5 percent threshold requirement. The Commission may wish to request a reconsideration of this provision, or consider alternatives to the current financial threshold requirement. The following are threshold requirements in other public financing jurisdictions:

Albuquerque, N.M.	City Council candidates must obtain signatures and \$5.00 from one percent of registered voters (approx. 300 signatures/\$1,500)
Los Angeles, CA	City Council candidates must raise \$25,000 in contributions
Portland, OR	City Commissioner candidates must receive 1,000-\$5.00 contributions
San Francisco, CA	County supervisor candidates must raise at least \$5,000 from at least 75 contributors
Tucson, AZ	City Council candidates must raise 200 contributions of \$10 or more

### **C. Unclaimed Candidate Allocations**

The Commission is authorized to "pro rate" the available amount of public funding whenever the total amount that all candidates can potentially receive under the program exceeds the existing balance in the Election Campaign Fund. One of the drawbacks with this provision is that a candidate may qualify to receive more public funds than his or her pro rata share. In the 2010 amendments, the Commission recommended, and the City Council adopted, a "cut-off" date by which candidates must declare whether they intend to participate in the program. The intent was to eliminate having to allocate shares for candidates who might never apply for public funding. In 2010, eight candidates filed timely Statements of Acceptance of public financing but only five actually filed claims for reimbursement. This caused the program to "freeze" the respective allocations for all eight candidates. The Commission may wish to consider imposing a deadline by which candidates must file claims for reimbursement or risk losing their shares to other participating candidates.

### **D. Funding For November 2012 Election**

At the time of this writing it is uncertain whether the City Council will budget sufficient funds to conduct a public financing program in the November 2012 elections. The City's general purpose fund is facing projected deficits of unprecedented amounts in each of the next two fiscal years. The City Council has suspended the public financing program on grounds of financial need in previous years (2004), so this could represent an alternative the City Council may consider again. Commission staff will keep the Commission apprised of budget negotiations as well as opportunities for the Commission to convey its policy preferences in the coming months.

## **VI. STAFF RECOMMENDATION**

Commission staff recommends that the Commission receive this report and refer it and any other additional issue or idea to the Campaign Finance And Lobbyist Registration Committee for further review and development.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

**CITY OF OAKLAND**  
**Public Ethics Commission**

Jonathan Stanley, *Chair*  
Barbara Green-Ajufo, *Vice-Chair*  
Alaric Degrafinried  
Alex Paul  
Ai Mori  
Richard Unger  
Amy Dunning



Daniel D. Purnell, Executive Director

---

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

**TO:** Candidates For District City Council In The November 2010 Election  
**FROM:** Daniel Purnell  
**DATE:** January 12, 2011  
  
**RE: Post-Election Questionnaire**

During the November 2010 election, candidates for the office of district City Council were invited to participate in a program that provided public financing to assist with campaign costs.

Whether or not you chose to participate in the public financing program, the Public Ethics Commission would like to learn how the program can be improved in future elections.

Please take a few minutes to answer the attached questionnaire and return it to the Commission in the attached self-addressed envelope. Section I should be completed only if you participated in the public financing program; all candidates are invited to complete Section II.

Thank you in advance for your help and cooperation.

# SECTION I

(Only Candidates Who Received Public Matching Funds Are To Complete This Section)

1. What *overall effect* did the public financing program have on your ability to run an effective campaign?

Circle:      Positive      Negative      No effect

Please explain:

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2. Did the public financing program decrease the time you would have ordinarily spent fundraising?

Circle:      Yes      No

If yes, was the amount of time it saved you:

Circle:      High      Moderate      Low      Insignificant

3. How would you describe the process for obtaining public financing?

Check one:     Too complicated for the benefit provided.  
                   About right for the benefit provided.  
                   Not rigorous enough for the benefit provided.

Please explain:

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4. How helpful was the Commission's training session?

Circle: Very helpful    Helpful    Moderately helpful    Not at all helpful

What additional topics, if any, should be included in future sessions?

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5. How helpful was Commission staff in applying for and receiving financing?

Circle: Very helpful    Helpful    Moderately helpful    Not at all helpful

Please explain:

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6. Would you participate in the public financing program in a future campaign?

Circle:      Yes              No              Not sure

Why or why not: \_\_\_\_\_

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7. Do you have any ideas about how to improve administration of the public financing program?

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## SECTION II (All Candidates To Complete)

1. Approximately how many campaign fundraising events did you hold during your campaign?

Circle:      0-5              6-10              More than 10

2. How many debates or other forums did you participate in which one or more of your opponents was present? \_\_\_\_\_

3. Was the voluntary expenditure ceiling applicable to your campaign:

Circle:      Too high      Too low      About right

Please explain:

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4. Were the permissible contribution amounts (\$700/\$1,300 for candidates accepting voluntary expenditure limits):

Circle:      Too high      Too low      About right

Please explain:

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5. Were independent expenditures made on your behalf or on behalf of your opponent(s)?

Circle:      On my behalf      For my opponent(s)

Please describe the impact the independent expenditures had on your or your opponent's campaign:

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6. What components of Oakland's public financing program would you change? (Circle all that apply):

The races eligible to receive public financing      Yes      No  
*(Only district City Council races are currently eligible)*

The threshold amount a candidate must raise and spend to qualify for public financing  
*(Currently candidates must both raise from Oakland contributors and spend from their campaign accounts funds totaling at least 5% of the voluntary expenditure ceiling applicable to the office being sought.)*

Yes No

The requirement that a candidate must be opposed by a another candidate

Yes No

The limit on the use of personal funds  
*(Eligible candidates may not loan or contribute from their personal funds more than 10% of the voluntary expenditure limit)*

Yes No

The types of expenditures for which reimbursement may be obtained

Yes No

7. Please identify any factors that led to your decision either to participate in the public financing program or not to participate:

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8. Please add any other comments or suggestions you have about the City's campaign finance laws or the Public Ethics Commission's efforts to administer and enforce them:

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***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

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

**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** March 7, 2011

**RE: A Report And Action To Be Taken Regarding Approval Of The  
Commission's Annual Report For 2010**

Every year the Commission drafts and distributes an Annual Report that summarizes the significant activities and policy developments the Commission undertakes.

Attached for the Commission's review and comment is a draft Annual Report. The Commission is asked to approve the attached draft subject to any material comments or edits the Commission may wish to make.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

## **THE OAKLAND PUBLIC ETHICS COMMISSION 2010 ANNUAL REPORT**

### **Composition**

In November, 1996, the citizens of Oakland added Section 202 to the City Charter to establish the Oakland Public Ethics Commission. The Commission was created with the goal of ensuring "fairness, openness, honesty and integrity" in city government.

Membership on the Commission consists of seven Oakland residents. Three members are appointed by the Mayor and confirmed by the City Council. Four members are recruited and selected by the Commission itself. Each Commissioner may serve no more than one consecutive three-year term.

### **Jurisdiction And Duties**

Oakland law requires the Commission to oversee compliance with Oakland's Campaign Reform Act (OCRA), conflict of interest code, code of ethics, Sunshine Ordinance, the Limited Public Financing Act, the Lobbyist Registration Act and Oakland's False Endorsement In Campaign Literature Act. Some of these ordinances grant the Commission specific powers of administration and enforcement. The citizens of Oakland have also entrusted the Commission with the authority to set the salaries for the Oakland City Council and to adjust those salaries up to five percent annually.

The Commission is authorized to conduct investigations, audits and public hearings, issue subpoenas, and impose fines and penalties to assist with its compliance responsibilities.

### **Organization, Staffing And Budget**

The Commission currently maintains two standing committees: The Sunshine Committee, which deals with policy issues arising from the Oakland Sunshine Ordinance; and the Lobbyist Registration and Campaign Finance Committee, which devotes its time to matters involving Oakland's Lobbyist Registration Act and the Oakland Campaign Reform Act (OCRA). Both of these committees meet on an "as needed" basis.

The Commission is staffed by an Executive Director and Executive Assistant. Commission offices are located on the Fourth Floor of City Hall, One Frank Ogawa Plaza, Oakland, CA, 94612. A website for the Commission can be accessed from [www.oaklandnet.com](http://www.oaklandnet.com). The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall. Its meetings are broadcast locally by KTOP, Oakland's cable television station.

In June, 2009, the Oakland City Council authorized a total budget of \$265,750 for FY 2010-2011 for the Commission. The Office of the City Attorney continues to provide part-time legal support for Commission matters.

## **COMMISSION MEMBERS AND STAFF**

The following persons served as Commissioners during 2010:

### **BARBARA GREEN-AJUFO**

**(Commission appointee)**

**Term: 1/22/08 - 1/21/11**

Barbara Green-Ajufo has been a resident of Oakland since 1964. She is an epidemiologist who has worked in public health for more than 20 years at the local and federal levels. Ms. Green-Ajufo currently works for the Alameda County Public Health Department managing the HIV/AIDS Epi Surveillance Unit, Alcohol and Drug Program and HIV/AIDS-related special epidemiologic projects. In these roles, she ensures accurate, timely reporting of HIV and AIDS cases to the State Office of AIDS, ensures HIV and HCV testing, counsels and refers individuals to alcohol and drug treatment facilities, and conducts community-based research to improve HIV and sexually transmitted disease rates. Ms. Green-Ajufo has a long-standing commitment to improving the health of women and infants. In 1995, she served as an Epidemic Intelligence Service (EIS) Officer at the Centers for Disease Control and Prevention (CDC), Atlanta, GA. Her research there focused on the roles of race, racial-esteem and racism on reproductive health outcomes and the role of race/ethnic-specific research in explaining the gap in disease disparity. She has worked as an adjunct professor, published a number of articles and presented at a number of national and international conferences on a range of topics. Ms. Green-Ajufo previously served on Berkeley Women's Health Collective Board and is a current board member of Youth Cultural Learning Center. She received a B.S. in Biological Sciences from the University of California, Irvine and has two public health degrees from the University of California, Berkeley: a Masters of Public Health (MPH) in Health Planning, Policy, and Administration and a Doctorate of Public Health (DrPH) in Epidemiology. Outside of the office, she enjoys traveling and experiencing the cultures of the world with her son and friends.

### **JONATHAN STANLEY**

**(Commission appointee)**

**Term: 1/22/08 - 1/21/11**

Jon Stanley formerly served as the Executive Director of the San Francisco Bay Area Water Emergency Transportation Authority (WETA). He is the former CEO of the Aircraft Carrier Hornet Foundation which operates the USS Hornet Museum in Alameda. He is a registered professional engineer and has worked for several Bay Area engineering and software firms over the past 25 years prior to joining the Museum. His past project assignments were located all across the United States and Canada. He also spent three years as a staff member of the Lawrence Berkeley Laboratory. Mr. Stanley earned his undergraduate degree at the U.S. Naval Academy followed by service as an officer in the nuclear submarine force. He also obtained a graduate degree in Nuclear Engineering from UC Berkeley. He is currently a "Blue and Gold Officer" for the Naval Academy, providing admissions counseling for potential applicants. Mr. Stanley has lived in Oakland for 28 years. He is a Commission appointee.

**ALARIC DEGRAFINRIED**  
**Term: 1/22/08 - 1/21/11**

**(Mayoral appointee)**

Alaric Degrafinried is a Contract Compliance Officer for the City & County of San Francisco's Human Rights Commission (HRC). In this role, Mr. Degrafinried is responsible for implementing, monitoring, and enforcing San Francisco's Small, Local Business Enterprise (LBE) program which forbids discrimination in contracting and mandates that economically disadvantaged businesses located within San Francisco are eligible for certification, bid/rating discounts and subcontracting opportunities when bidding on City contracts. Prior to joining HRC, Mr. Degrafinried worked as a Finance Manager for General Electric (GE), followed by two-year assignment in Haiti as a Peace Corps Volunteer. He later served a two-year Equal Justice Works Fellowship with the National Housing Law Project (NHLP) in Oakland. Mr. Degrafinried earned his undergraduate degree at the University of Colorado and his law degree from the Santa Clara University School of Law.

**ALEX PAUL**  
**Term: 1/22/09 - 1/21/12**

**(Commission Appointee)**

Alex Paul is an attorney and has worked for several Bay Area companies over the past 10 years. Mr. Paul earned his law degree at the University of Notre Dame. He also obtained a graduate degree in business administration from the University of Illinois at Springfield. Mr. Paul has created Ethics courses that have been utilized by thousands of workers nationwide. At law school, Mr. Paul was awarded by the Dean of the law school for the highest grade given in an Ethics class. As an attorney and one that works for a public company, he is also involved in investigating Code of Conduct violations and understands the importance of compliance training and education. Mr. Paul has lived in Oakland for 7 years. He is a Commission appointee.

**AI MORI**  
**Term: 1/22/09 - 1/21/12**

**(Mayoral appointee)**

Ai Mori is a staff attorney at the Court of Appeal in San Francisco. She earned her undergraduate degree from UC Berkeley and her law degree from UC Hastings College of the Law. Prior to joining the Court of Appeal, she practiced employment litigation and family law and was certified by the State Bar of California as a specialist in family law. She serves on the Board of Directors of Asian Women's Shelter, a domestic violence shelter in San Francisco, and is a member of the Civil Rights Committee of the Asian American Bar Association of the Greater Bay Area. She has also volunteered as a judge at the McCullum Youth Court in Oakland.  
Ms. Mori is a Mayoral appointee.

**RICHARD UNGER****(Commission Appointee)****Term: 1/22/10 - 1/21/13**

Richard Unger has lived in the Bay Area since 1966. He has been a home owner and with his wife has raised a family in Oakland since 1978. Currently his three grandchildren attend Oakland schools. Dr. Unger practices psychiatry with an emphasis on psychotherapy and consultation to non-medical practitioners and their patients about psychopharmacological treatment. He has worked in both public and private sectors and is a founding member of Bay Psychiatric Associates, a group practice in the East Bay providing inpatient psychiatric care. He is a member of the Board of Directors and has been the CFO of that organization for 14 years. He has been a consultant for psychiatric patient advocacy organizations. Dr. Unger earned his undergraduate degree at the University of Pennsylvania, a Master's degree in Bacteriology at the University of Wisconsin and then moved to the University of California at Berkeley where he completed a Ph.D. in Molecular Biology. After directing a research laboratory group in private industry in San Jose he earned his MD degree at the University of California, San Francisco where he then took a psychiatric residency. Additional interests include medical and professional ethics as well as travel, fishing, river and fishery conservation and a wide range of outdoor activities. Mr. Unger is a Commission appointee.

**AMY DUNNING****(Mayoral Appointee)****Term: 1/22/10 - 1/21/13**

Amy Dunning serves as the Regional Director/Chief Administrative Judge of the Western Regional Office of the U.S. Merit Systems Protection Board. The Board adjudicates employment cases involving Federal employees and conducts studies of Federal employment. From 1998-2001 Ms. Dunning served as Counsel to the Commander, U.S. Naval Forces Europe, in London, United Kingdom. As the senior Navy Office of the General Counsel attorney in Europe, she provided legal services throughout Europe as well as in Bahrain. Prior to working in London, Ms. Dunning served on the legal staff of the Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity), as Counsel to the Director, Human Resources Operations Center. From 1993-1994, Ms. Dunning worked in the Justice Management Division of the Department of Justice representing management in cases brought by Department of Justice employees and their unions.

Ms. Dunning served 8 years on active duty as a Judge Advocate with the U.S. Marine Corps, including time spent mobilized for Operation Enduring Freedom. She retired as a Colonel from the U.S. Marine Corps Reserve in January 2009.

Ms. Dunning is a native of Milwaukee, Wisconsin. She received her undergraduate degree in Political Science from the University of Missouri and her law degree from Southern Illinois University. She earned an LL.M in Labor Law from Georgetown University. Ms. Dunning is admitted to practice law in California, Illinois, and the District of Columbia. She resides in Oakland, California, where she tutors public high school students in writing and enjoys running the trails of the East Bay Regional Park District. Ms. Dunning is a Mayoral appointee.

## **Commission Staff**

### **DANIEL D. PURNELL EXECUTIVE DIRECTOR**

Daniel Purnell was hired as the Executive Director to the Oakland Public Ethics Commission in April, 2000. He is a former civil litigation attorney with a background in employment, contract, land use and environmental law. Prior to joining the California Bar, Mr. Purnell served as manager of media relations for Pacific Telesis Group and Bechtel Group, Inc. Mr. Purnell is a former Mayor and Councilmember from the City of Pinole, California.

### **TAMIKA THOMAS EXECUTIVE ASSISTANT**

Tamika Thomas was hired in January, 2007, as Executive Assistant to the Public Ethics Commission. She comes to the Commission with a background as a paralegal assistant for large litigation firms. Ms. Thomas completed her law degree at John F. Kennedy University School of Law's night program.

## **SIGNIFICANT ACTIVITIES DURING 2010**

### **Lobbyist Registration**

In June, 2002, the City Council adopted the "Oakland Lobbyist Registration Act." This Act requires all professional lobbyists to register with the City before attempting to influence a local governmental action on behalf of another person. It requires paid, professional lobbyists to file initial and quarterly reports with the City Clerk. The reports require disclosure of a lobbyist's clients or employer, as well as the subject of any lobbying. The Commission is responsible for administering and enforcing the Act.

As of December 31, 2010, 45 lobbyists had registered with the City representing a total of 41 registered clients. Commission staff maintains on the Commission's website a list of registered lobbyists and their clients. Quarterly reports are also posted on-line to disclose: a) the lobbyists' clients; b) the subject of governmental action lobbied upon; c) who was lobbied; 4) the client's position on the item being lobbied; 5) campaign contributions solicited by a lobbyist; and 6) employment opportunities arranged by a lobbyist.

In conjunction with its duties under the Act, the Commission publishes and widely distributes "A Guide To Lobbyist Registration" to inform the regulated community about its duties under the Act.

During 2010, the Commission expended a significant amount of Commission and staff time to develop proposed amendments to the Act. The proposed amendments include changes to the definition of "lobbyist", additional exceptions from the definition of "lobbyist", and proposals to authorize the imposition of registration fees and late penalties, as appropriate. The Commission took action in late 2010 to forward a series of proposed amendments to the City Council for consideration during 2011.

### **Oakland Campaign Reform Act (OCRA)**

The Oakland Campaign Reform Act (OCRA) regulates campaign contributions and expenditures in connection with local elections. It establishes voluntary expenditure ceilings for campaigns for local office and regulates the amount persons may contribute to a local candidate. Contribution amounts depend on whether the candidate has accepted the voluntary expenditure ceilings. OCRA also regulates campaign contributions by contractors who are in the process of negotiating certain contracts with the City.

The Commission continues to publish and distribute its "Guide To The Oakland Campaign Reform Act," a section-by-section analysis for political candidates, treasurers and other interested parties. This Guide is now part of the package of materials that candidates receive when they take out nomination papers to run for Oakland office. Commission staff devotes considerable time to responding to inquiries from candidates, contributors and the public regarding the ordinance.

In March 2010, the Commission held a special hearing to review several proposals to double OCRA's limit on direct contributions to candidates as well as the voluntary expenditure ceilings in local campaigns. As part of the hearing, the Commission directed staff to review the pattern of campaign contributions and spending during recent election cycles. The staff report demonstrated that from a total of 37 candidates surveyed during the 2006 and 2008 election cycles:

- There were five campaigns in which a candidate reported "payments made" totaling at least 90 percent of the voluntary expenditure ceiling applicable to the election. For all candidates reporting payments made in excess of \$10,000, "payments made" comprised approximately 42 percent of the voluntary expenditure ceiling, on average.
- Six candidates reported total contributions from which at least 50 percent of the total amount was derived from contributions made at the maximum \$600 level. For all candidates reporting total contributions of more than \$5,000, approximately 36 percent of the reported total contributions was derived from contributions at the maximum \$600 level, on average.

The campaign data suggest that on average OCRA's current limits do not significantly inhibit candidates from raising or spending the money they need to run a single campaign for office. Based on these findings and extensive public testimony, the Commission voted not to support the proposal to double OCRA's contribution and voluntary expenditure ceilings. The City Council subsequently chose not to proceed with the proposals to amend OCRA's contribution and expenditure limits for the November 2010 election.

During 2008 and 2009, the Commission's Lobbyist Registration and Campaign Finance Committee held a series of special meetings to review a section-by-section analysis of OCRA and to develop a package of specific proposed amendments based on that analysis. The Commission is expected to review these specific amendments during 2011.

### **Oakland Sunshine Ordinance**

The Oakland Sunshine Ordinance is a local ordinance that was enacted in 1997 to supplement the California Brown Act and Public Records Act. The goal of the Sunshine Ordinance is to provide greater access to Oakland meetings and records.

During 2010, the Commission approved the distribution of a desktop brochure entitled "Handling Public Record Requests -- A Guide For City Employees." The Commission also directed staff to convene a series of public hearing on the subject of improving public access to City records. The meetings will focus on such areas as public difficulties in obtaining prompt access to records, City challenges and opportunities dealing with public record requests, best practices from other jurisdictions, and review of a City-wide records retention proposal from the Office of the City Clerk. The Commission is expected to use

the findings from these meetings to develop specific recommendations for amending the Sunshine Ordinance and to assist administrative compliance with the Public Records Act.

### **Limited Public Financing Act**

The Oakland City Council adopted the Limited Public Financing Act (LPFA) in December, 1999. As originally established, the LPFA existed as a "matching funds" program whereby the City matched for district City Council candidates the first \$100 of every qualified campaign contribution received and deposited within 180 days before the election.

In July 2010, the Commission proposed a substantial revision of the public financing program. As ultimately adopted by the City Council:

- The City no longer matches campaign contributions but instead 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.
- Candidates must make an irrevocable decision whether to participate in the public financing program within fourteen days of their names being 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 more than 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 must return to the Election Campaign Fund a portion of any surplus funds remaining after the election.

The Commission entered FY 2009-2010 with a balance of \$225,000 in the Election Campaign Fund available for public financing in the November 2010 election. In February 2010, the City Council considered a proposal to suspend the public financing program during the 2010 election and transfer the \$225,000 to a project intended to increase voter awareness of the Ranked Choice Voting process. After several meetings, the City Council approved an appropriation of more than \$100,000 from the Election Campaign Fund, leaving approximately \$116,000 available for public financing in the November 2010 election.

A total of five candidates qualified to receive public financing under the new program during the November 2010 election. Commission staff processed and distributed approximately \$76,110 in public financing claims.

Due to substantial budget shortfalls projected for FY 2011-12 and FY 2012-13, it is uncertain whether the public financing program will be funded sufficiently for use in the November 2012 election.

### **Complaint Administration**

Complaints are administered pursuant to the Commission's General Complaint Procedures. Each formal complaint is reviewed by the Executive Director who conducts a preliminary investigation and produces a staff report. Each report is considered during an open public meeting at which time the Commission decides whether to dismiss the complaint, direct further investigation, explore settlement with the respondent, or proceed to a formal administrative hearing on the merits of the complaint.

During 2010, the Commission received a total of 30 formal complaints. This compares to 16 complaints filed in 2009, 20 complaints filed in 2008, nine complaints filed in 2007, and 23 complaints filed in 2006. Of the 30 formal complaints filed with the Commission in 2010, there were 15 alleged violations of the Sunshine Ordinance, one alleged violation of the Lobbyist Registration Act, four alleged violation of the City's conflict of interest code, one alleged violation of the City Council's Code of Ethics, and nine violations of Oakland's Campaign Reform Act. Of the 30 complaints filed in 2010, 13 have been settled or dismissed and three in which staff has been directed to explore settlement in lieu of hearing. The Commission has reserved jurisdiction over six complaints dating back to 2002.

### **Compensation For City Council Members**

In March, 2004, Oakland voters adopted Measure P by a vote margin of 70 to 30 percent. Oakland City Charter Section 202(c) now authorizes the Public Ethics Commission to annually adjust City Council salaries "by the increase in the consumer price index over the preceding year." The Commission may also adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any annual increase beyond five percent must be approved by the voters.

At its regular meeting of June 7, 2010, the Commission adopted a resolution which approved an 1.7 percent salary increase for the Office of City Councilmember effective as of the first pay period of FY 2010-2011. The increase was based on the change in the consumer price index over the preceding year.

Pursuant to Measure P, the Commission will undertake its required review of City Council salaries again in 2011.

## **Education, Public Outreach And Affiliations**

In 2010, Commission staff developed a training course and resource guide to implement a program of City-wide ethics training for more than 750 Oakland employees who are required to file FPPC Form 700s (Statements Of Economic Interests). The training, conducted by Commission staff and representatives from the Office of the City Attorney and City Auditor, reviews state and local laws in the areas of:

- Personal Gain (bribery, theft, conflicts of interest, self-dealing in contracts);
- Perks Of Office (use of public resources, loans, gifts, honoraria);
- Transparency (open meetings, public records, whistleblower protections, the City Auditor's "Fraud, Waste and Abuse" program); and
- Fair Process (bias, incompatible offices and employment, nepotism).

In addition, the training includes a segment on "ethical decision-making" for public employees.

Approximately 300 City employees attended eight "live" training sessions during 2010. Commission staff will continue to conduct training throughout 2011.

The Commission's webpage, accessed through "oaklandnet.com", offers links to all legislation in the Commission's jurisdiction, past and current agendas with related materials, Commission publications, public matching funds forms, lobbyist registration forms, information on the Commissioners, and notification of recruitment for vacancies when they occur.

The Commission maintains and regularly distributes its publications of:

- How To Notice A Public Meeting And Respond To Requests For Public Information
- Handling Public Records Requests
- A Guide To Lobbyist Registration
- How To Apply For Public Financing
- A Guide To Oakland's Campaign Reform Act
- A Handbook For Members Of Oakland Boards And Commissions