

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
REGULAR MEETING
One Frank Ogawa Plaza (City Hall)
Monday, May 2, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
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 Regular Meeting Of April 4, 2011
- C. Executive Director And Commission Announcements
- D. Open Forum
- E. Complaints
 - 1. A Staff Report And Action To Be Taken On A Proposed Settlement Of Complaint No. 10-24 (Kanz)
 - 2. A Staff Report And Action To Be Taken On A Proposed Settlement Of Complaint No. 10-27 (Kanz)
 - 3. An Informational Staff Report Regarding Complaints Over Which The Commission Has Retained Jurisdiction
- F. A Staff Report And Action To Be Taken Regarding 1) A Required Review And Adjustment Of City Council Salaries; And 2) Proposals To Modify Commission Authority To Adjust City Council Salaries Pursuant To City Charter §202(c)
- G. A Staff Report And Action To Be Taken Regarding A Request For Commission Review And Development Of A Proposal To Amend OCRA §3.12.220 (How And When Voluntary Expenditure Ceilings Are Lifted)

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

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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.

Approved for Distribution

Date



PUBLIC ETHICS COMMISSION TIMELINE FOR FUTURE AGENDA ITEMS (TENTATIVE)

ITEM	JUNE	JULY
Complaint No. 09-15 (Supplemental)		X
Complaint No. 10-05 (Hearing)	X	
Complaint No. 10-07 (Supplemental)	X	
Complaint No. 10-16		X
Complaint No. 10-20	X	
Complaint No. 10-21	X	
Complaint No. 10-25	X	
Complaint No. 10-28	X	
Complaint No. 10-30		X
Review Of Commission's General Complaint Procedures (Committee)		X
Sunshine Ordinance Hearings RE Public Accessibility To Records	X	X
Mandatory Review And Adjustment Of City Council Salaries	X	
Commission Goal Setting Meeting	X	

Public Ethics Commission Pending Complaints

Date Received	Complaint Number	Name of Complainant	Respondents	Date of Occurrence	Issues	Status
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/107/10 and 7/27/10	OCRA; §3.12.140	Staff is investigating
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	10-28	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.

9/14/10	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	Gwilym Martin	Joseph Yew, Finance	June 18, 2010	Sunshine Ordinance; production of records	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: 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

MINUTES OF MEETING

A. Roll Call And Determination Of Quorum

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

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

Members excused: Paul, Young

B. Approval Of Draft Minutes Of The Regular Meeting Of March 7, 2011

The Commission approved by unanimous consent the minutes of March 7, 2011.

C. Executive Director And Commission Announcements

The executive director reported that the Commission convened its second in a series of public meeting on improving access to City records on March 24, 2011. The Commission received comments from City staff who typically respond to public records requests. The next meeting will focus on "best practices" and suggestions from other governmental jurisdictions which maintain "open government" programs.

The executive director also reported that a Superior Court judge has issued a tentative ruling in favor of the City in a lawsuit filed by Marleen Sacks. Among her various allegations were that the City failed to timely respond to her numerous public records requests, and that the Commission failed to comply with its own procedures in considering a September 2009 complaint she filed with the Commission. The Court tentatively ruled that the City provided her requested records in a "reasonably timely manner" and that the Commission was "fully



engaged" in its efforts to address her September 2009 complaint. Her requested remedies on these allegations were denied.

D. Open Forum

There was one speaker: Sanjiv Handa

E. Complaints

1. A Staff Report And Action To Be Taken On Complaint No. 10-09 (Handa)
(Supplemental)

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-09 on grounds that the alleged violations do not warrant a Commission hearing to determine and the absence of an adequate remedy under the Sunshine Ordinance.

(Ayes: Unger, Mori, Dunning, Farnham, Baker)

There was one speaker: Sanjiv Handa

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

The Commission moved, seconded and adopted a motion to dismiss Complaint No. 10-22 on grounds that the Office of the City Attorney ultimately provided a written response on behalf of the City to the complainant's public record request. (Ayes: All)

There was one speaker: Sanjiv Handa

3. A Staff Report And Action To Be Taken On Complaint No. 10-26 (Kanz)
(Supplemental)

The Commission directed staff to discuss with Mayor Quan's campaign treasurer the alleged filing and disclosure issues pertaining to 1) three loan payments to the campaign committee, 2) filing a copy of the loan agreement, and 3) sub-vendor payments.

There were two speakers: Ralph Kanz, Sanjiv Handa

MINUTES OF MEETING -- DRAFT
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4. A Staff Report And Action To Be Taken On Complaint No. 10-27 (Kanz)

The Commission moved, seconded and adopted a motion to set for hearing the issue of whether the Safer California Committee negligently violated OCRA Section 3.12.230 by failing to include the required disclosure language on a campaign mailer, conditioned first upon staff's efforts to secure a settlement of the allegations. (Ayes: All)

There were two speakers: Ralph Kanz, Sanjiv Handa

5. A Referral From The Office Of The City Auditor Regarding Potential Violations Of OCRA Section 3.12.140; Action To Be Taken Whether To Initiate A Complaint

The Commission moved, seconded and adopted a motion to initiate a complaint to determine whether ABC Security and/or Ana Chretien, and Marina Security and/or Sam Tadesse, violated OCRA Section 3.12.140 by making alleged campaign contributions to Oakland candidates and officeholders. (Ayes: All)

There were three speakers: Ralph Kanz, Sanjiv Handa, Joel Feder

F. A Staff Report And Action To Be Taken Regarding 1) A Required Review And Adjustment Of City Council Salaries; And 2) Proposals To Modify Commission Authority To Adjust City Council Salaries Pursuant To City Charter §202(c)

The Commission received the staff report and directed the item to appear on the May agenda for purposes of providing direction to staff regarding preparation of draft resolutions to be considered at the June meeting and to continue the Commission's discussion on its authority to adjust City Council salaries pursuant to City Charter Section 202(c).

There was one speaker: Sanjiv Handa

G. A Staff Report And Action To Be Taken Regarding A Request For Commission Review And Development Of A Proposal To Amend OCRA §3.12.220 (How And When Voluntary Expenditure Ceilings Are Lifted)

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The Commission directed that this item be re-agendized for a subsequent meeting.

H. A Staff Report And Action To Be Taken Regarding Commission Participation In The Recruitment And Selection Of A New Executive Director

The Commission appointed Commissioners Baker, Dunning and Unger to work with staff and the City's Personnel Department to assist in the recruitment and selection of a new executive director.

There was one speaker: Sanjiv Handa

The meeting adjourned at 10:10 p.m.

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
Amy Dunning
Lloyd Farnham
Christopher Young
Aspen Baker



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612

(510) 238-3593

Fax: (510) 238-3315

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

RE: A Staff Report And Action To Be Taken On A Proposed Settlement Of
Complaint No. 10-24 (Kanz)

At its regular meeting of February 7, 2011, the Commission directed staff to explore and develop a settlement in the above complaint. The complaint alleges that then-mayoral candidate Jean Quan violated Oakland Campaign Reform Act (OCRA) Section 3.12.140(P) by failing to include the disclosure language specified in that section on approximately 4,100 campaign fundraising mailers.

Attached to this staff report is a proposed settlement that Ms. Quan's attorney and campaign treasurer said she has agreed to execute. **Attachment 1.** The proposed settlement contains relevant staff allegations and Ms. Quan's contentions over which Ms. Quan will relinquish her right to adjudicate conditioned in part upon making a settlement payment of \$225 to the City. The settlement payment represents five percent of the reported cost of the mailing. This amount is based on the particular facts and circumstances of this complaint which include 1) the absence of information indicating that the alleged violation was willful or intentional, 2) information that the campaign had included the required language on other campaign fundraising material, 3) the absence of information that the campaign received contributions in excess of the specified limits or from prohibited sources as a result of the alleged violation, and 4) Ms. Quan's willingness to resolve this complaint by means of the proposed stipulation. The proposed agreement and settlement payment does not constitute an admission of wrongdoing by Ms. Quan; she 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
May 2, 2011

In The Matter of

) Complaint No. 10-24
)
) **[Proposed]** Stipulation,
) Decision and Order

It is hereby stipulated by and among the City of Oakland Public Ethics Commission and Mayor Jean Quan:

A. Jean Quan was a candidate for Mayor in the November 2010 municipal election. At all times relevant to this complaint and stipulation, Ms. Quan maintained the candidate-controlled committee "Jean Quan For Oakland Mayor 2010" ("Committee").

B. Between approximately September 3 and September 6, 2010, the Committee mailed approximately 4,100 mailers to voters in City Council District Four. The mailer included a card and return envelope for recipients to use in order to make contributions to the Committee. The mailer included the following printed language:

"Campaign laws limit donations to \$700 per person. Couples may give \$1,400, but each person must write a separate check for \$700 each. Contributions to political committees are not deductible as charitable contributions under federal and state laws."

C. Commission staff contends that the above printed language did not comply with the disclosure language required by and contained in OCRA Section 3.12.140(P) which provides:

"The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.)."

D. Ms. Quan contends that the mailer in question was prepared and distributed by a campaign consultant who distributed the mailer before it could be carefully reviewed by other campaign members. She notes that all her other campaign fundraising material contained the specified language and that the language that was used substantially complies or evidences at least an intent to comply with OCRA. There is no information that she received a contribution in excess of OCRA's specified limits or from a prohibited source as a consequence of the language used on the mailer.

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 ten (10) business days after this Stipulation, Decision and Order ("Stipulation") is approved by the Commission, Ms. Quan shall make a settlement payment of \$225.00 in a check made payable to "The City of Oakland" and mail or deliver the check to the offices of the Public Ethics Commission.

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

3) Ms. Quan knowingly and voluntarily waive all rights to a hearing before the Commission on the merits of the contentions contained in paragraph C.

4) Ms. Quan 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. 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) Ms. Quan hereby agrees to the terms set forth in paragraph E above.

Dated: _____, 2011

Hon. Jean Quan

**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

Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
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Lloyd Farnham
Christopher Young
Aspen Baker



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612

(510) 238-3593

Fax: (510) 238-3315

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

RE: A Staff Report And Action To Be Taken On A Proposed Settlement Of
Complaint No. 10-27 (Kanz)

At its regular meeting of April 4, 2011, the Commission directed staff to explore and develop a settlement in the above complaint. Mr. Kanz filed Complaint No. 10-27 alleging that the committee known as the "Coalition For A Safer California" ("Committee") violated Section 3.12.230 of the Oakland Campaign Reform Act ("OCRA") during the November 2010 election by failing to include the disclosure language specified in that section on approximately 53,000 independent expenditure mailers.

Attached to this staff report is a proposed settlement that Committee representatives have agreed to execute. **Attachment 1.** The proposed settlement contains relevant staff allegations and the Committee's contentions over which the Committee will relinquish its right to adjudicate conditioned in part upon making a settlement payment of \$2,100 to the City. The settlement payment represents five percent of the reported cost of the mailing. The settlement amount is based on the particular facts and circumstances of this complaint which include 1) the absence of information indicating that the alleged violation was willful or intentional, 2) information that the Committee had included the required language on other independent expenditure mailers, and 3) the Committee's willingness to resolve this complaint by means of the proposed stipulation. The proposed agreement and settlement payment does not constitute an admission of wrongdoing by the Committee or its representatives; they have 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
May 2, 2011

In The Matter of

) Complaint No. 10-27
)
) **[Proposed]** Stipulation,
) Decision and Order

It is hereby stipulated by and among the City of Oakland Public Ethics Commission and the Coalition For A Safer California Committee ("Committee"):

A. At all times relevant to this complaint and stipulation, the Committee was duly registered and existing as a California general purpose committee (ID No. 1306339) whose responsible officer was and is Paul Kinney.

B. On or about October 29, 2010, the Committee caused to be mailed approximately 53,000 copies of a mailer to Oakland voters containing the following notice:

NOTICE TO VOTERS (Required by City and County of San Francisco)
This mailing is not authorized or approved by any candidate for City and County office, by any election official, or by a committee controlled by a candidate. It is paid for by Coalition for a Safer California, 1020 12th Street, Suite 408, Sacramento, CA 95814.

C. Commission staff contends that the above printed language did not comply with the disclosure language required by and contained in OCRA Section 3.12.230 which provides:

"Any person who makes independent expenditures for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate for city office shall place the following statement on the mailing in typeface of no smaller than fourteen points:

Notice to Voters

(Required by the City of Oakland)

This mailing is not authorized or approved by any City candidate or election official.

It is paid for

***by (name) _____
_____ (address, city, state)***

Total cost of this mailing is: (amount)"

D. The Committee contends that the use of the San Francisco disclosure language was purely inadvertent. As a statewide general purpose committee active in a number of jurisdictions during the November 2010 election, the Committee was required

to comply with other local disclosure requirements similar to Oakland's. The Committee had developed an independent expenditure mailer for use in San Francisco at approximately the same time as the mailer at issue here was prepared. The San Francisco language was innocently and inadvertently inserted into the layout. The presence of the San Francisco language in the instant mailer demonstrates the Committee's intent to comply with local disclosure requirements, and other independent expenditure mailers distributed by the Committee in Oakland met OCRA requirements.

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 ten (10) business days after this Stipulation, Decision and Order ("Stipulation") is approved by the Commission, the Committee shall make a settlement payment of \$2,100.00 in a check made payable to "The City of Oakland" and mail or deliver the check to the offices of the Public Ethics Commission.

2) Nothing in this Stipulation shall be interpreted as an admission of wrongdoing by the Committee or its responsible officer; these persons have entered into this Stipulation to avoid any further proceedings before the Commission.

3) The Committee and its responsible officer knowingly and voluntarily waive all rights to a hearing before the Commission on the merits of the contentions contained in paragraph C.

4) The Committee and its responsible officer understand and acknowledge 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. 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) The Committee and its responsible officer hereby agree to the terms set forth in paragraph E above.

Dated: _____, 2011

Paul Kinney, for himself and on behalf of
Coalition For A Safer California
Committee (ID No. 1306339)

**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
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Daniel D. Purnell, Executive Director

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

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

RE: A Staff Report Regarding Complaints Over Which The Commission Has Retained Jurisdiction

At an earlier meeting, the Commission requested a status report on those complaints which, over the years, the Commission chose to retain jurisdiction. The following chart summarizes the allegations and the Commission's previous action with respect to each complaint:

COMPLAINT	ISSUE	ACTION
03-02 (David Mix)	Mr. Mix alleged that the East Bay Zoological Society, Oakland Museum Department, and the Chabot Space and Science Center failed to provide records he requested under the California Public Records Act and the Oakland Sunshine Ordinance.	The Commission dismissed the complaint as to the Chabot Space and Science Center and the Zoological Society but retained jurisdiction as to the Oakland Museum Department to permit Mr. Mix to identify and obtain copies of any public record he seeks from the Museum Department.
07-03 (Sanjiv Handa)	Mr. Handa alleged: 1) the City Council violated the Sunshine Ordinance by depriving him the opportunity to speak on four agenda items at the City Council's December 19, 2006, meeting; 2) the [previous] 8:00 p.m. deadline for filing speaker cards is "arbitrary, capricious and contrary to the spirit of the	The Commission took action to: 1) dismiss the allegations that the City Council's 8:00 p.m. deadline for submitting speakers cards is arbitrary and capricious, and that City Council Committees are arbitrarily reducing speaker time to less than one minute per item and, 2) reserve jurisdiction over allegations that Mr. Handa was deprived of the opportunity to address Item Nos. 32 through 36 on the City Council

	Sunshine Ordinance"; and 3) City Council committee chairs have reduced speaker time to less than one minute per item and capped total speaking time at five minutes.	agenda for the December 19, 2006, meeting until the Commission had an opportunity to review City Council public speaker procedures. (The Commission also requested Mr. Handa to continue his efforts to locate the missing speaker cards for the items in question.) ¹
08-02 (Sanjiv Handa)	Mr. Handa alleged that the City Council's Community and Economic Development Committee ("CEDA Committee") failed to make findings required under the Sunshine Ordinance to permit the Committee to consider agenda-related material not previously included in the ten-day agenda package.	The Commission moved, seconded and adopted a motion to dismiss Complaint No. 08-02 on grounds that the CEDA Committee agreed to agendize a cure and correction of Item 7 on the Committee's February 26, 2008, agenda pertaining to the receipt of an economic strategy report from the Oakland Chamber of Commerce. This dismissal was to be conditional upon performance of the cure and correction. ²
08-04 (Daniel Vanderpriem)	Mr. Vanderpriem alleged he requested documents from the Finance and Management Agency and had not received them as of the time of the complaint.	Commission staff made several attempts to follow-up with Mr. Vanderpriem regarding his record request, specifically whether his request remained unfulfilled. Mr. Vanderpriem never responded and Commission staff has received no further communication regarding this complaint.
08-13 (David Mix)	Mr. Mix alleged that the City of Oakland violated the Oakland Sunshine Ordinance and Public Records Act by failing to provide him with copies of records pertaining to the Oakland Wildfire Assessment District.	The Commission postponed final consideration of this complaint and directed staff to re-agendize it a later meeting based on a promised and anticipated production of records from the Wildfire Assessment District.

¹ The City Council has substantially revised its rules for public speakers since the Commission considered this complaint.

² The CEDA Committee agendized and completed a cure and correction at its meeting of June 10, 2008. Mr. Handa had an opportunity to speak under the item. It appears that Complaint No. 08-02 was inadvertently left on the "reserved jurisdiction" list.

08-18 (David Mix)	Mr. Mix alleged that the Public Works Agency failed to produce a large variety and number of records he requested pertaining to the Landscaping and Lighting Assessment District ("LLAD").	The Commission directed staff to work with Mr. Mix and representatives of the Public Works Agency to confirm whether: 1) there is any record of a response to an email cited on pg 12 of the April 6, 2009, staff report, 2) there is any record pertaining to "Neighbors For A Safe And Green Oakland", and 3) whether the City has any contractual or legal right to the "call sheets" purportedly created by Francisco & Associates in regard to the LLAD vote. ³
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Commission staff observes that all of the above complaints pertain to issues arising under the Oakland Sunshine Ordinance. All but one (No. 07-03) raise issues regarding the production of records. Commission staff notes that Commission jurisdiction could be re-invoked at any time simply upon the filing of a new request for any disputed document. The remaining complaint regarding City Council speaker rules could be addressed by an informational report evaluating the new rules or, as before, by considering any new complaint that alleges violation of the Sunshine Ordinance by the application of the current public speaking rules.

The Commission has several options regarding the above complaints. It may simply maintain its ongoing jurisdiction over the complaints. It could direct staff to contact each of the complaining parties to determine whether they still have an interest in the underlying records or issue(s) presented and report back separately to the Commission. Or the Commission could notify the complaining parties of its intent to dismiss some or all of the above complaints unless they object and provide a good reason why the complaints should not be dismissed. While more time intensive, Commission staff recommends that the Commission direct staff to proceed with the second option.

Respectfully submitted,

Daniel D. Purnell
Executive Director

³ Mr. Mix subsequently filed Complaint No. 10-03 on February 22, 2010, alleging that the City Attorney's Office improperly asserted an attorney-client privilege over a response to the email referenced in the April 6, 2009, staff report. At its meeting of June 7, 2010, the Commission dismissed Complaint No. 10-03 on grounds that the City Attorney's justification for redacting portions of the email could be consistent with provisions of the attorney-client privilege.

In its preliminary staff report to complaint No. 08-18, Commission staff reported that 1) Public Works Agency representatives said that it possessed no records pertaining to an organization known as "Neighbors For A Safe And Green Oakland" and 2) the City's contractor Francisco & Assoc. may have provided property/parcel information to a sub-contractor (Manross) so that Manross could conduct the polling and research it was retained to do by the City. She said any such "call sheets" were not provided to the City. Commission staff has not analyzed whether the City had a legal or contractual right to any such "call sheets."

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Daniel D. Purnell, Executive Director

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

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

RE: A Staff Report And Action To Be Taken Regarding 1) A Required Review And Adjustment Of City Council Salaries; And 2) Proposals To Modify Commission Authority To Adjust City Council Salaries Pursuant To City Charter §202(c)

At its meeting of April 4, 2011, the Commission considered a staff report pertaining to the Commission's required review and adjustment of City Council salaries for FY 2011-2012, and policy options regarding the Commission's future role in exercising this authority. This memorandum requests the Commission to provide direction to staff so that it may prepare draft resolutions for final consideration at the Commission's June 6, 2011, meeting for the FY 2011-2012 adjustment, and to continue the Commission's discussion regarding how future salary adjustments should be made.

I. ADJUSTMENT FOR FISCAL YEAR 2011-2012

In order to meet its City Charter obligation to provide an annual adjustment of City Council salaries, the Commission will need to take action at its June 6, 2011, meeting. Commission staff seeks direction from the Commission in order to prepare drafts of the resolutions the Commission will need to consider at the June meeting. At a minimum, the Commission is required to increase City Council salaries by the change in the Consumer Price Index (CPI). The amount of the annual CPI change will not be published until mid-May. The question is whether the Commission would like staff to prepare alternative draft resolutions providing for a salary adjustment greater than the change in the CPI of up to five percent, or for an adjustment of greater than five percent, which would require a public vote to ratify. Staff provided information and policy considerations to assist the Commission in this decision in its April 4 staff report.

II. POLICY OPTIONS FOR AMENDING CURRENT COMMISSION AUTHORITY

The April 4 staff report proposed and reviewed options regarding how the Commission may wish to seek modification of its current authority to adjust City Council salaries. The threshold issue is whether the Commission would like to retain any authority in this area and, if so, what that authority would be. Alternatively, the Commission may decide that the authority to adjust City Council salaries is inconsistent with its other Charter-mandated duties and to request the City Council to begin a process for delegating that authority to some other subsidiary body better suited to make such decisions.

Unlike the requested direction for the FY 2011-2012 salary adjustment, there is no specific timetable required for a decision on the Commission's future role in determining City Council salaries. The Commission may wish to prioritize this decision in light of other Commission goals and future efforts to improve the Commission's public outreach capabilities.

Respectfully submitted,

Daniel D. Purnell
Executive Director

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, *Chair*
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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: May 2, 2011

RE: A Staff Report And Action To Be Taken Regarding A Request For Commission Review And Development Of A Proposal To Amend OCRA §3.12.220 (How And When Voluntary Expenditure Ceilings Are Lifted)

At its meetings of February 7 and April 4, 2011, the Commission considered separate staff reports regarding a City Council request for the Commission to submit recommendations for amending OCRA Section 3.12.220 (How and when voluntary expenditure ceilings are lifted.)

At the April 4 meeting, several Commissioners expressed interest in staff developing a less complicated alternative to the current language. For purposes of convenience, Commission staff sets forth the current version of Section 3.12.220 and the April 4 proposal before presenting a second alternative for Commission consideration.

Section 3.12.220 currently reads as follows:

3.12.220 *Expenditure Ceilings Lifted*

If a candidate declines to accept expenditure ceilings and receives contributions or make qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if an independent expenditure committee in the aggregate spends more than fifteen thousand dollars (\$15,000.00) [NOW \$20,000] on a District City Council or School Board election or seventy thousand dollars (\$70,000.00) [NOW \$95,000] in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings

shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050C and 3.12.060C of this Act. The independent expenditure committee amounts of fifteen thousand dollars (\$15,000.00) and seventy thousand dollars (\$70,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.180 of this chapter.¹

Commission presented the following proposal to the Commission on April 4:

3.12.220 *Voluntary Expenditure Ceilings Lifted*

A. The voluntary expenditure ceiling accepted by a candidate pursuant to this Article shall not be binding on said candidate if and only when:

1) another candidate seeking election to the same office declines to accept voluntary expenditure ceilings and receives contributions or makes qualified campaign expenditures equal to or more than fifty (50) percent of the voluntary expenditure ceiling; or

2) a committee makes independent expenditures equal to or more than twenty thousand dollars (\$20,000.00) in an election involving said candidate for the office of District City Council or School Board Director, or equal to or more than ninety-five thousand dollars (\$95,000.00) in an election involving the candidate for the office of City Attorney, City Auditor, Councilmember-at-Large or Mayor.

B. Any candidate who declines to accept voluntary expenditure ceilings and who receives contributions or makes qualified campaign expenditures equal to or more than fifty (50) percent of the applicable expenditure ceiling shall, within 72 hours of equaling or exceeding that amount, provide written notice to the Office of the City Clerk of (a) the name and identification number of the candidate and his or her controlled committee, (b) the date the fifty (50) percent threshold was first equaled or exceeded, and (c) the amount the candidate has received or expended as of the date the written notice is provided. The written notice shall be executed under penalty of perjury by the candidate and his or her campaign treasurer on a form previously developed and approved by the Public Ethics Commission.

C. Any committee whose primary filing officer is the City Clerk and which makes independent expenditures equal to or more than twenty thousand dollars (\$20,000.00) in an election for the office of District City Council or School Board Director, or equal to more than ninety-five thousand dollars (\$95,000.00) in an election for the office of City Attorney, City Auditor, Councilmember-at-Large or Mayor shall, within 72 hours of equaling or exceeding the respective amounts, provide written notice to the Office of the City Clerk of (a) the name and identification number of the committee, (b) the date the relevant \$20,000 or \$95,000 threshold was first equaled or exceeded, (c) the election or

¹ In August 2010, the Office of the City Clerk revised the threshold amounts based on a change in the CPI, so that the new limits are \$95,000 for a City-wide race and \$20,000 for a district race.

elections in which said independent expenditures were made, and (d) the amount the committee has made in independent expenditures in each of the applicable races as of the date the written notice is provided. The written notice shall be executed under penalty of perjury by the treasurer and a principal officer of the committee on a form previously developed and approved by the Public Ethics Commission.

D. Any committee whose primary filing officer is not the City Clerk and which makes independent expenditures equal to or more than twenty thousand dollars (\$20,000.00) in an election for the office of District City Council or School Board Director, or equal to or more than ninety-five thousand dollars (\$95,000.00) in an election for the office of City Attorney, City Auditor, Councilmember-at-Large or Mayor shall, within 72 hours of equaling or exceeding the respective amounts, notify the Office of the City Clerk of (a) the name and identification number of the committee, (b) the date the relevant \$20,000 or \$95,000 threshold was first equaled or exceeded, (c) the election or elections in which said independent expenditures were made, and (d) the amount the committee has made in independent expenditures in each of the applicable races as of the date of notification.

E. Before any candidate may exceed the voluntary expenditure ceilings based on filings submitted pursuant to subsection (C) or the notification provided in subsection (D), said candidate shall execute and file with the Office of the City Clerk a declaration stating that (a) none of the independent expenditures were made at the behest of the candidate or his or her representatives, and (b) neither the candidate nor any person acting at the behest of the candidate made or solicited contributions to the committee whose independent expenditures would result in a lifting of the voluntary expenditure ceilings pursuant to this section. The declaration shall be executed under penalty of perjury by the candidate on a form previously developed and approved by the Public Ethics Commission.

F. Upon receipt of the filings submitted pursuant to subsections (B) or (C), or upon receipt of the notice pursuant to subsection (D), the City Clerk shall advise within 24 hours all candidates in the relevant election of the information submitted and of their right to submit a declaration pursuant to subsection (E), as applicable.

G. Any candidate whose voluntary expenditure ceilings are no longer binding pursuant to this section shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050(B) and 3.12.060(B) of this Act.

H. The amounts of twenty thousand dollars (\$20,000.00) and ninety-five thousand dollars (\$95,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.200 of this chapter.

I. Notwithstanding any other provision of this Chapter, any candidate or committee that fails to timely or accurately provide the information to the City Clerk pursuant to subsections (B), (C) or (D), and such failure results in a material delay in another candidate's ability to seek relief from his or her voluntary expenditure ceiling pursuant to this section, shall be subject to enforcement proceedings before the Public Ethics

Commission pursuant to its General Complaint Procedures. The Public Ethics Commission is hereby authorized to impose penalties and fines of up to \$1,000 per day for every day information required by this section is not provided.

Another way to approach the issues raised in the February 7 staff report and the Commission's concerns regarding the April 7 proposal would be to place more of the burden of ascertaining whether any threshold amount has been equaled or exceeded on the candidate seeking relief from his or her voluntary expenditure ceiling. Commission attention is drawn particularly to subsection (B), below:

3.12.220 Expenditure Ceilings Lifted

- A. If a candidate declines to accept expenditure ceilings and receives contributions or make qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if a committee makes independent expenditures in an amount equal to or more than twenty thousand dollars (\$20,000.00) on a District City Council or School Board election or ninety-five thousand dollars (\$95,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office.*
- B. Before a candidate may exceed the voluntary expenditure ceilings based on the threshold amounts specified in subsection (A), said candidate shall execute and file with the Office of the City Clerk a declaration that shall include: (1) a copy of the writing, signed and dated by an opposing candidate, or by the treasurer or responsible officer of a committee, which informed the candidate that the applicable threshold amounts had been equaled or exceeded, (2) a statement (if applicable) that none of the independent expenditures were made at the behest of the candidate or his or her representatives, and (3) a statement (if applicable) that neither the candidate nor any person acting at the behest of the candidate made or solicited contributions to the committee whose independent expenditures would result in a lifting of the voluntary expenditure ceilings pursuant to this section. The declaration shall be executed under penalty of perjury by the candidate on a form previously developed and approved by the Public Ethics Commission.*
- C. Upon receipt of a declaration submitted pursuant to subsection (B), the City Clerk shall mail or otherwise send a copy of the declaration within eight business hours to the Public Ethics Commission and to all candidates in the relevant election, along with a copy of this section.*
- D. Any candidate whose voluntary expenditure ceilings are no longer binding pursuant to this section shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050(B) and 3.12.060(B) of this Act.*
- E. The amounts of twenty thousand dollars (\$20,000.00) and ninety-five thousand dollars (\$95,000.00) provided in subsection (A), shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.200 of this chapter.*

F. Any candidate that provides false or misleading information to the City Clerk pursuant to subsection (B) with the exception of information contained in the attached writing, or any person who provides false or misleading information to any candidate on which a declaration pursuant to subsection (B) is based, shall be subject to enforcement proceedings before the Public Ethics Commission pursuant to this Chapter. No candidate shall be liable for exceeding the voluntary expenditure ceiling for reasonably relying upon information submitted by another candidate pursuant to subsection (B).

Subsection A re-states existing language but for the recently adjusted amounts of \$20,000 and \$95,000, respectively.

Subsection B contemplates that instead of the voluntary expenditure ceilings being automatically lifted upon a candidate or committee reaching the specified thresholds, candidates would be required to take an affirmative step by first submitting a declaration to the Office of the City Clerk. The declaration would require 1) a copy of a writing (which could include an FPPC Form 460) from an opposing candidate or from responsible committee representatives that informed the applying candidate that the specified threshold amounts have been reached; and 2) a statement that the independent expenditures were truly made independent from the candidate and that the candidate did not help the committee raise money for its expenditures.

Subsection C would require that the City Clerk immediately provide a copy of the declaration and the language of this section to other candidates in the same election.

Subsection D re-states existing language that candidates who file their declarations shall no longer be bound by the voluntary expenditure ceilings but could still receive contributions at the higher amounts.

Subsection E re-states existing law regarding annual CPI adjustments of the threshold amounts.

Subsection F would provide that any candidate who provides false or misleading information to the City Clerk on his or her declaration (except for information provided in the writing notifying him or her that the thresholds have been exceeded), or any candidate or committee representative that provides false or misleading information to a candidate who then relies upon that information to submit his or her declaration to the City Clerk, shall be subject to OCRA's enforcement provisions. Commission staff proposes an exception from liability for any candidate whose only basis for seeking relief from the voluntary expenditure ceilings is a previously submitted declaration from an opponent who may have exclusive access to the information provided by another candidate or committee. (For example, if a committee treasurer writes to Candidate A stating the committee has made more than \$20,000 in independent expenditures in a district race and Candidate A files a declaration based on that letter, Candidate B could submit his or her own declaration based on the same letter and not be found liable for relying upon it if the information contained in the letter was subsequently found to be false or misleading.)

The above proposal differs from the April 4 version primarily by removing the obligation of the candidate or committee which exceeds the specified thresholds to provide any notice or

information directly to the City Clerk (other than required campaign statements). The above proposal is based on the assumptions that 1) most declarations will be based on the amount of independent expenditures made rather than on the contributions or expenditures from a candidate who did not agree to the voluntary expenditure ceilings, and 2) the committee making independent expenditures will likely notify the candidate it favors by making the information known to the favored candidate in advance of any formal filing deadline. Once the favored candidate submits his or her declaration to the City Clerk, all other candidates would be free to submit a declaration based on the same information.

While unquestionably (but arguably unavoidably) more complicated, Commission staff prefers the April 4 version to the above version primarily because it asserts a duty on candidates and committees subject to the City's jurisdiction to verify the contributions they have received and/or the expenditures they have made.

Respectfully submitted,

Daniel D. Purnell
Executive Director