

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
REGULAR MEETING
One Frank Ogawa Plaza (City Hall)
Monday, June 6, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
6:30 p.m.
Page 1



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: Regular Meeting Of Special Meeting Of March 24, 2011; May 2, 2011; And Special Meeting Of May 18, 2011
- C. Executive Director And Commission Announcements
- D. Open Forum
- E. A Staff Report And Presentations On Improving Public Access To City Records
- 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 Proposed Staff Reductions To The Public Ethics Commission
- H. A Staff Report Regarding Pending Commission Proposals

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

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Monday, June 6, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
6:30 p.m.
Page 2



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	AUG	SEPT
Complaint No. 09-15 (Supplemental)	X	
Complaint No. 10-05 (Supplemental)	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	
Sunshine Ordinance Hearings RE Public Accessibility To Records	X	X
Commission Goal Setting Meeting	X	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 3/1/10/7/10 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
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
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 directed to develop guidelines for use of City's electronic media.
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act	Commission is conducting legislative hearings in lieu of adjudication.
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 Vanderpriem	Bill Noland, Deborah Edgerly	Ongoing since 12/07	Allegations involving production of City records	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.

MINUTES OF MEETING -- DRAFT
PUBLIC ETHICS COMMISSION
SPECIAL MEETING
One Frank Ogawa Plaza (City Hall)
Thursday, March 24, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
4:00 p.m.



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 SPECIAL MEETING

A. Roll Call And Determination Of Quorum

The meeting was called to order at 4:00 p.m.

Members present: Unger, Dunning, Farnham, Baker

Members excused: Paul, Mori, Young

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

The Commission received testimony from City employees regarding their challenges and recommendations pertaining to public record requests:

Challenges:

- Due to cuts in staff and budget there are not as many people in the different departments to respond to public records requests.
- Some employees do not make public records requests a priority; there lacks an overall City directive or policy making this a priority.
- People sometimes make complex records requests simply because they do not know exactly what they are looking for.
- Personality conflicts between the public and City staff.
- Poor customer service often leads to subsequent (and avoidable) public records requests.

Opportunities:

- Improve employee training and make responding to requests a priority.
- Help people figure out what they are looking for.

MINUTES OF MEETING -- DRAFT
PUBLIC ETHICS COMMISSION
SPECIAL MEETING
One Frank Ogawa Plaza (City Hall)
Wednesday, May 18, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
6:30 p.m.



- Review and determine which documents are frequently requested and have those posted on-line.
- Make sure the website is a place where questions can be answered and having a more self-served experience.
- Improve customer service.
- Develop a clear email retention policy and communicate it often to employees.
- Review the user-friendly features of the City of Seattle's and San Jose's websites.
- Require elected officials and staff to maintain sign-in sheets, appointment books and/or calendars.

There were six speakers: Karen Boyd, Deidre Scott, Arlette Flores-Medina, Sanjiv Handa, Terry Allen, Clark Henry

C. Open Forum

There was one speaker: Sanjiv Handa

The meeting adjourned at 6:10 p.m.

MINUTES OF MEETING -- DRAFT
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.



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 6:32 p.m.

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

Members excused: Dunning

B. Approval Of Draft Minutes Of The Regular Meeting Of April 4, 2011

The Commission approved by unanimous consent the minutes of April 4, 2011.

C. Executive Director And Commission Announcements

The executive director reported that the City Council Rules Committee considered a series of proposed amendments to the Lobbyist Registration Act that the Commission had developed last year. The Committee ultimately recommended that the City Council adopt an alternative definition to the term "in-house" lobbyist from that which the Commission initially proposed. The City Council has not set a date for considering the proposed amendments.

The chair of the City Council Rules Committee has agreed to agendize a "cure and correct" of the allegations in Complaint No. 10-05 (Mix) pursuant to the Commission's request. Commission staff will report back once the Rules Committee takes action on the item.



The Commission directed staff to proceed with a special meeting on May 18 pertaining to public records if five or more Commissioners can attend and if a sufficient number of speakers can commit to the date.

The City Administrator approved a request to exempt the executive director position from the current Citywide hiring freeze. The Commission also learned that the proposed 2011-13 budget limits funding for the executive assistant position to part-time status. Commission staff will work with Commissioners Unger, Dunning and Baker on the ongoing status of both Commission positions.

D. Open Forum

There were two speakers: Sanjiv Handa; Ralph Kanz

E. Complaints

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

The Commission moved, seconded and adopted a motion to approve the proposed settlement stipulation. (Ayes: All)

There was one speaker: Sanjiv Handa

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

The Commission moved, seconded and adopted a motion to approve the proposed settlement stipulation. (Ayes: All)

There was one speaker: Sanjiv Handa

3. An Informational Staff Report Regarding Complaints Over Which The Commission Has Retained Jurisdiction

The Commission directed staff to notify the complaining parties of the Commission's intention to dismiss Complaint Nos. 03-02; 07-03; 08-04; 08-13 and 08-18 unless they can provide reasons to the satisfaction of the



Commission why the complaints should not be dismissed within 60 days of notice.

There was one speaker: Sanjiv Handa

- 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 directed staff to prepare a draft resolution providing for a CPI-only adjustment to City Council salaries for consideration at the Commission's June 6 meeting. The Commission also directed staff to include language communicating the Commission's recommendation that the City Council forego acceptance of the adjustment in light of the City's financial crisis.

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)

The Commission moved, seconded and adopted a motion to approve the April 4 proposed amendment to OCRA Section 3.12.220 and forward the proposal to the City Council for consideration with the following modification: That proposed subsection C and D be combined so that all committees shall provide notice to the City Clerk of reaching the specified thresholds regardless of whether the committee has as its primary filing officer the City Clerk. (Aye: All)

There was one speaker: Sanjiv Handa

The meeting adjourned at 9:23 p.m.

MINUTES OF MEETING -- DRAFT
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6:30 p.m.



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 SPECIAL MEETING

A. Roll Call And Determination Of Quorum

The meeting was called to order at 6:32 p.m.

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

Members excused: Paul, Baker

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

The Commission took public comment from representatives of the Berkeley Sunshine Ordinance Task Force regarding its efforts to place an initiative on the November 2011 ballot. The speakers, Dean Metzger and Roger Marquis, had the following observations and recommendations:

- There is a need to provide a prompt administrative recourse to members of the public whose requests for records have been denied.
- Local agencies should strive as much as possible to digitize records and make them available on the City's website.
- Local agencies should be discouraged in their use of the discretionary "balancing test" as a basis to withhold records from public disclosure.
- There is a growing availability of "open source" software that local agencies should use and avoid committing to long-term proprietary

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Wednesday, May 18, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
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contracts with software vendors. A new generation of software exists that permits a relatively low cost means to digitize, manage and display public records.

The Commission received a staff report that summarized existing ordinances and proposals from five local jurisdictions (San Francisco, Berkeley, San Jose, Vallejo and Milpitas). Commission staff identified eleven areas that these other ordinances and proposals address in ways that differ from the Oakland Sunshine Ordinance:

- 1) The use of an expedited hearing process to determine the public nature of a disputed document.
- 2) Protection from employment retaliation if a city official or employee discloses a public record.
- 3) Elimination of the "balancing test" as a basis for withholding records from public inspection.
- 4) Codification of court rulings that have determined information about public employee salaries and benefits to constitute public information.
- 5) Creation of an affirmative duty for cities to post commonly requested public records on local agency websites.
- 6) Creation of a citywide records index that can be used to assist members of the public make focused and specific requests for records.
- 7) Assertion of a proprietary right by the local agency to the records of an elected official that relate to the conduct of city business and to involve the city attorney's office to ensure any such records survive the transition of office.
- 8) Mandatory training of city employees on public record and open meeting law.
- 9) The mandatory attendance of city representatives at all meetings or hearings involving allegations that the local agency violated the local record or open meeting laws.

MINUTES OF MEETING -- DRAFT
PUBLIC ETHICS COMMISSION
SPECIAL MEETING
One Frank Ogawa Plaza (City Hall)
Wednesday, May 18, 2011
Sgt. Mark Dunakin Hearing Room (No. 1)
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10) A provision that the willful violation of a local sunshine ordinance constitutes "willful or official misconduct" subject to removal from office or employee discipline.

11) The adoption of administrative regulations that specify employee duties and responsibilities when responding to public records requests.

The Commission discussed and asked questions about the staff report and suggested that the Commission further explore (a) adopting an expedited hearing process for disputes involving public records that include the review of a record withheld for reasons of privilege or confidentiality; (b) making knowledge and the proper execution of public record laws a component in an employee's annual job evaluation; (c) developing effective sanctions for violating public records provisions in the Sunshine Ordinance; and (d) recommending that the City Administrator promulgate administrative instructions comparable to the City of San Jose's.

There were three speakers: Dean Metzger, Roger Marquis, Sanjiv Handa

C. Open Forum

There was one speaker: Sanjiv Handa

The meeting adjourned at 8:15 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: June 6, 2011

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

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

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

Respectfully submitted,

Daniel D. Purnell
Executive Director

CITY OF OAKLAND
Public Ethics Commission

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



Daniel D. Purnell, Executive Director

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

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

RE: A Staff Report And 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)

I. BACKGROUND

At its regular meetings of April 4, 2011, and May 2, 2011, the Commission considered staff reports pertaining to the Commission's duty to review and adjust City Council salaries pursuant to City Charter Section 202(c).

Under Section 202(c), the Commission is required to adjust City Council salaries by the increase in the consumer price index (CPI) over the preceding year. The Commission may adjust salaries beyond the increase in the CPI up to a total of five percent. Any increase over five percent must be approved by the voters.

At the meeting of May 2, 2011, the Commission directed staff to prepare a draft resolution authorizing a City Council salary adjustment in an amount equal to the change in the CPI. It also directed staff to include language in the proposed resolution requesting that the City Council decline to accept the mandatory adjustment in light of the City's budgetary shortfall.

II. REVISED COST OF LIVING (CPI) ADJUSTMENT

As stated in the April 4, 2011, staff report, the federal Bureau of Labor Statistics calculates changes in the CPI for the San Francisco Bay Area every two months. Last month, the Bureau calculated the annual change in the CPI between April 2010, and April 2011,

inclusive. The percentage increase in the CPI for the most recent 12-month period is 2.8 percent.

III. DRAFT RESOLUTION

At its May 2, 2011, meeting, the Commission directed staff to prepare a single draft resolution authorizing a City Council salary increase based solely on the change in the CPI for the San Francisco Bay Area for the period April 2010 through and including April 2011.

Attachment 1. If adopted by the Commission, the resolution will authorize the minimum adjustment in City Council salaries required under City Charter Section 202(c).

The Commission also directed staff to include language in the draft resolution requesting that the City Council decline the salary adjustment authorized by the attached resolution due to the City's current financial condition.

IV. POLICY OPTIONS FOR AMENDING CURRENT COMMISSION AUTHORITY

Previous staff reports 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 its authority in this area and, if so, what that authority would entail. Alternatively, the Commission could decide that the authority to adjust City Council salaries is inconsistent with its other Charter-mandated duties and request the City Council to delegate that authority to some other subsidiary body better suited to make such decisions.

There is no specific timetable required for a decision on the Commission's future role in determining City Council salaries. Commission staff has advised that if the Commission seeks to retain some authority to adjust City Council salaries then it should discuss how its existing authority should be modified. If the Commission no longer wishes to retain any authority over salaries, then it should consider sending a letter similar to the draft letter considered by the Commission last year. **Attachment 2.**

Respectfully submitted,

Daniel D. Purnell
Executive Director

**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
RESOLUTION NO. 11-01
[Proposed]**



BY ACTION OF THE OAKLAND PUBLIC ETHICS COMMISSION:

WHEREAS, Oakland City Charter Section 202(c) previously authorized the Oakland Public Ethics Commission ("Commission") to establish a base salary for City Councilmembers; and

WHEREAS, after substantial study and review, the Commission took action in October, 1997, to establish a base salary for City Councilmembers in the amount of \$60,000 per year; and

WHEREAS, in March, 2004, Oakland voters amended City Charter Section 202(c) to provide that the Commission shall annually adjust City Councilmember salaries by the increase in the consumer price index over the preceding year, and that the Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent; and

WHEREAS, the current authorized salary for Oakland City Councilmembers is \$74,098 per year, and

WHEREAS, the consumer price index for the San Francisco Bay Area increased by a total of 2.8 percent between April 2010, and April 2011, inclusive; and

WHEREAS, a review of California cities demonstrates that Oakland City Council salaries are almost identical to the average salaries provided to councilmembers of the eight largest cities in California; and

WHEREAS, Oakland is facing a general fund budget shortfall estimated at \$58 million in FY 2011-2012, and at \$76 million in FY 2012-2013, based on current levels of service and revenues; and

WHEREAS, the City is contemplating layoffs, mandatory business shut-downs and reductions in critical and discretionary City services to bring the City's finances into balance;

NOW, THEREFORE BE IT

RESOLVED, that the Commission does hereby increase and adjust the salary for the office of City Councilmember by 2.8 percent effective as of the first payroll period of Fiscal Year 2011-2012 as mandated by City Charter Section 202(c); and

RESOLVED, that the Commission respectfully requests that the City Council decline to accept the salary adjustment mandated by City Charter Section 202(c) due to the significant budgetary shortfalls facing the City in Fiscal Years 2011-2013; and

RESOLVED, that the Commission authorizes the Executive Director to make any changes to draft versions of this Resolution as directed by the Commission and to certify and issue a final version of this Resolution without further approval by the Commission.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission ("Commission") held on June 6, 2011. A quorum of the membership of the Commission was present at the meeting. A motion approving the Resolution was 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: June ____, 2011

Daniel D. Purnell
Executive Director
Oakland Public Ethics Commission

DRAFT -- FOR DISCUSSION ONLY

Honorable Members of the
Oakland City Council

Dear Councilmembers:

As you know, City Charter Section 202(c) authorizes and directs the Public Ethics Commission "to annually adjust the salary for the office of Councilmember by the increase in the consumer price index [CPI] over the preceding year." The Commission may, in its discretion, adjust salaries beyond the increase in the CPI up to a maximum of five percent annually, but any increase beyond five percent must be approved by public vote.

Since 2004 (when the current Charter language took effect), the Commission has made the following adjustments to City Council salaries:

June 2004	5 percent
June 2005	2.1 percent (CPI)
June 2006	4 percent
June 2007	5 percent
June 2008	2.9 percent (CPI)
June 2009	0.8 percent (CPI)
June 2010	1.7 percent (CPI)
June 2011	2.8 percent (CPI)

In recent years, the Commission has become acutely aware of the financial difficulties facing the City. The City Charter's requirement for the Commission to pass through a mandatory CPI adjustment frequently places the Commission, as well as the City Council, in a position that is arguably contrary to public perceptions of what is fair and what should constitute "shared sacrifice" during these difficult times.

This letter respectfully requests that the City Council take action to create and appoint a special task force for the purpose of reviewing Charter Section 202(c) and developing policy alternatives regarding future adjustments to City Council salaries. While the Commission has dutifully executed its obligations under current law, the Commission suggests that the job of adjusting City Council salaries might be more appropriately delegated to a board or panel with more expertise in setting levels of compensation. To Commission staff's knowledge, no other ethics commission in the country exercises this type of authority with respect to elected officials.

The Commission also notes that the City Charter provides different procedures for setting and adjusting compensation levels for the City's other elected officials. The task force authorization may wish to address whether to consolidate the authority for determining and adjusting compensation for all of Oakland's elected officials. While selection of the task force is wholly within the City Council's discretion, the Commission suggests that it could include former

and current elected officials, a member of the Commission, interested community stakeholders and be staffed by employees from the Office of Personnel and City Attorney.

The Commission wishes to thank the City Council for its consideration of this proposal and to express its willingness to assist in any reasonable way.

Respectfully submitted,

CITY OF OAKLAND
Public Ethics Commission

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



Daniel D. Purnell, Executive Director

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

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

RE: A Staff Report And Action To Be Taken Regarding Proposed Staff Reductions To The Public Ethics Commission

On Friday, April 29, 2011, the Offices of the Mayor and City Administrator issued a proposed budget for Fiscal Years 2011 - 2013. These offices are projecting a budget deficit in the amount \$58 million in FY 2011-2012, and \$76 million in FY 2012-2013, based on current levels of service and revenue. In an attempt to address these shortfalls, the City is contemplating new revenue sources, layoffs, mandatory business shut-downs and reductions in critical and discretionary City services to bring the City's finances into balance. The budget proposal offered three scenarios depending on whether the City can negotiate significant concessions from City employee bargaining units and obtain additional sources of revenue.

Part of the proposal under all three budget scenarios is a 50 percent reduction in the cost of funding the Commission's executive assistant position. This reduction will effectively reduce the Commission's executive assistant position to permanent part-time status.

During the past 11 years, the Commission has operated with two full-time positions: an executive director and an executive assistant. As staff has informed the Commission many times in the past, this is the smallest number of direct staff support for any comparable ethics commission in California:

San Francisco:	17 FTEs
Los Angeles:	17 FTEs
San Diego:	5 FTEs
Oakland:	2 FTEs

One of the ways in which Commission staff has managed to administer and enforce the various laws over which the Commission has jurisdiction is to hire and utilize people with exceptional talents, skills and education. With the departure of Tamika Thomas, and the possibility that any replacement may serve in a part-time capacity, Commission staff is concerned that the Commission may not be able to attract and develop the kind of assistance the Commission requires to maintain its existing service levels.

At the request of Chairperson Unger, Commission staff has prepared the attached letter for Commission consideration to be transmitted to the City Council during its deliberations on the FY 2011-13 budget. **Attachment 1**. The Commission is free to make any modifications to the letter and to direct staff to communicate it to members of the City Council.

Respectfully submitted,

Daniel D. Purnell
Executive Director

DRAFT ONLY

June 6, 2011

Honorable Members Of
The Oakland City Council
Oakland, California

Dear Councilmembers:

On April 29, 2011, the Offices of the Mayor and City Administrator issued a proposed budget for Fiscal Years 2011-2013. The budget describes in clear terms the staggering financial difficulties the City faces in each of the next two fiscal years. The Oakland Public Ethics Commission ("Commission") understands and respects the very difficult financial decisions you are being asked to make.

One of the items requiring your consideration is a proposed 50 percent reduction in the funding for the executive assistant position to the Commission. This position has provided essential support services to the Commission and its executive director for the past eleven years. This letter respectfully requests you to restore full funding for that position.

Since its creation by Charter amendment in 1996, the Commission has been authorized to administer and enforce such laws as the Oakland Sunshine Ordinance, the Oakland Campaign Reform Act (OCRA), the Oakland Lobbyist Registration Act, and the Oakland Limited Public Financing Act. Pursuant to City Charter Section 202(c), the Commission also annually reviews and adjusts City Council salaries.

The Commission is staffed by two fulltime positions: An executive director and an executive assistant. These two staff positions constitute by far the lowest number of direct staff for any comparable ethics commission in the state:

San Francisco:	17 FTEs
Los Angeles:	17 FTEs
San Diego:	5 FTEs
Oakland:	2 FTEs

The Oakland Commission has the same jurisdictional scope as any of the other above-listed commissions. It administers an active complaint investigation program as well as provides ethics training for the City's 700 designated employees. Over the past decade, the Oakland Commission clearly has "done more with less" than any comparable commission in the state. The Commission fears that the proposal to reduce even one of these key support positions to part-time status will degrade the City's ability to administer and enforce its local ethics laws.

The Commission respectfully submits that the projected cost savings of approximately \$50,000 per year for each of the next two years has already been realized many times over by the efficient management of the Commission's programs and legal responsibilities during the past decade -- A time when many City departments grew in staffing and financial support. It does not appear logical or fair to apply the same "across-the-board" budget cuts to an organization that has historically operated at minimal staffing levels.

The Commission sincerely recognizes the difficult decisions before you. We hope that you will appreciate the confidence the citizens of Oakland have entrusted to this Commission by providing it with the minimum levels of staff support necessary to fulfill its legal responsibilities.

Very truly yours,

CITY OF OAKLAND
Public Ethics Commission

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



Daniel D. Purnell, Executive Director

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

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

RE: A Staff Report Regarding Pending Commission Proposals

With the pending departure of the executive director on June 30, the Commission chair requested a status report on various Commission policy proposals and complaints. With regard to these pending matters, Commission staff intends to brief the new executive director upon his or her arrival this summer and to provide whatever assistance he or she requires and requests to ensure a smooth transition into office.

I. PENDING POLICY PROPOSALS AND COMPLAINT ADMINISTRATION

A. Lobbyist Registration

In late 2010, the Commission approved a set of proposed amendments to the Lobbyist Registration Act for consideration and adoption by the City Council. The amendments were last considered in the City Council's Rules Committee on April 21, 2011. The Rules Committee afforded Commission staff and others who proposed alternative amendments (Councilmembers Brunner and Schaaf, the League of Women Voters) to discuss their positions and return at a later date for final consideration. Commission staff has had several conversations with these interested parties and has articulated the rationale for the Commission's proposals. At the time of this writing, the Rules Committee has been asked to consider the proposed amendments again at its meeting of Thursday, June 24, 2011.

B. Oakland Campaign Reform Act (OCRA)

The Commission's Lobbyist Registration and Campaign Finance Committee completed a comprehensive review of OCRA, which involved drafting a set of proposed amendments. The full Commission's review of these amendments was postponed last year in favor of its efforts to develop amendments to the Lobbyist Registration Act. Among the proposed OCRA amendments are recommendations to: 1) increase the maximum contribution limits for candidates who do not agree to voluntarily limit their campaign expenditures; 2) amend the current definition of a "broad based political committee" to be consistent with that of a "small contributor committee" under state law; 3) limit the solicitation of campaign contributions from City employees and by appointed members of City boards and commissions; 4) lower the reporting threshold for so-called "behested payments" from \$5,000 to \$1,000; 5) modify existing rules regarding so-called "contractor contributions" (aka "pay to play" provisions); 6) impose a \$600 contribution limit to legal expense funds; 7) prohibit the use of campaign and officeholder funds to pay for services provided by close family members; 8) exempt from voluntary expenditure ceilings payments for professional treasurers; 9) require disclosures on so-called "election communications"; 10) require the primary officer of a committee to certify that any independent expenditure were not made at the behest of a candidate; and 11) provide for mandatory audits of specified campaigns. The Commission is encouraged to perform a full review of these amendments.

In addition, the Commission last month completed a review and revision of OCRA Section 3.12.220 (How And When Voluntary Expenditure Ceilings Are Lifted). This review was requested by the City Council and is ready to be transmitted for the City Council's review and consideration. Commission staff is preparing an agenda report for the City Council on this item for submission by the new executive director.

C. Sunshine Ordinance

The Commission is currently conducting a series of public hearings on improving access to City records. Commission staff will prepare a memorandum for the new executive director and the Commission summarizing the findings from the hearings conducted to date. Pursuant to City Council Resolution No. 82908, the next hearing will consist of a public hearing on the subject of the City Clerk's proposed records management program. The Resolution requests the Commission to provide the City Council with "a summary of public comments, analyses and recommendations" pertaining to the proposed program.

The Commission's Sunshine Committee also considered a series of proposed recommendations to amend the Sunshine Ordinance's open meeting rules. Among the proposed amendments are proposals to: 1) require certain types of City Council decisions to be voted upon before 11 p.m.; and 2) create a class of so-called "urgent" special meetings requiring 48 hours' public notice, and "non-urgent" special meetings requiring the same ten days' notice as a regular meeting. The Committee also made proposals to: 3) require elected officials to maintain a public "sign-in" sheet for persons who meet with elected officials and to require the officials to maintain their public calendars on an electronic calendaring system; 4) require the City to respond to public records requests within three business days unless it determines that

additional time will be required; 5) provide for employee discipline in the event of a "willful" violation of the Sunshine Ordinance; and 6) mandatory employee training on open government laws. Commission staff recommends that the Commission review these recommendations after concluding its series of hearings on public record availability.

D. Limited Public Financing Act

Commission staff has prepared several slight modifications to the Limited Public Financing Act that are intended to improve administration and clarity. A copy of these amendments will be transmitted to the new executive director for future Commission review.

E. Citywide Ethics Training

During the past ten months, Commission staff has provided training to Oakland's designated employees in public ethics law and ethical decision-making in concert with representatives from the Offices of the City Attorney and City Auditor. Copies of the training material have been lodged with the City Attorney and City Auditor offices as well as with the Commission. Commission staff recommends that the Commission institute this training at least every two years.

F. Complaint Administration

There are currently nine complaints in various stages of active investigation and/or analysis. Commission staff intends to complete at least the factual investigations in all such complaints before departure, and will transmit all active complaint files to the Office of the City Attorney until the new executive director takes office.

Respectively submitted,

Daniel D. Purnell
Executive Director

CITY OF OAKLAND
Public Ethics Commission

Richard Unger, *Chair*
Ai Mori, *Vice-Chair*
Alex Paul
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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: June 6, 2011

RE: Supplemental Agenda-Related Material Relating To Item G On The June 6, 2011, Regular Meeting Agenda: A Staff Report And Action To Be Taken Regarding Proposed Staff Reductions To The Public Ethics Commission

Attached are copies of two City Attorney opinions dated April 25, 2006, and May 27, 2010, respectively which former Commission chair Andrew Wiener requested that the Commission consider in connection with the draft letter to the City Council regarding proposed staff reductions to the Public Ethics Commission.

cc: Agenda subscribers
Interested parties

Andrew R. Wiener
248 Monte Vista Avenue
Oakland, CA 94611
(415) 365-4002 (day)

June 1, 2011

Public Ethics Commission
c/o Daniel Purnell, Executive Director
City of Oakland – Public Ethics Commission
City Hall – Frank Ogawa Plaza
Oakland, CA

RE: June 6, 2011 PEC Meeting, Agenda Item G

Dear Mr. Purnell,

Concerning Agenda Item G for the Commission's June 6, 2011 meeting, the following specific question is raised by the City Council's proposed cut in staffing of the Public Ethics Commission:

Would a change in the Executive Assistant staff position for the Public Ethics Commission, from a full-time position to a part time (50%) position, prevent the Public Ethics Commission from carrying out its activities mandated under the City Charter?

I believe that this question can only be answered in the affirmative. The City Attorney's April 25, 2006 and May 27, 2010 legal opinions, attached hereto for the Commission's convenience, articulate the limitations of budgetary power. As applied to the Public Ethics Commission, it is important to be reminded that the Commission has the following mandated duties under Oakland City Charter Section 2.24.020:

2.24.020 - Functions and duties.

It shall be the function and duty of the Public Ethics Commission, for and on behalf of the city, its elected officials, officers, employees, boards and commissions:

- A. Oversee compliance with the city Campaign Reform Ordinance.
- B. Oversee compliance with the city Code of Ethics.
- C. Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.

- D. Oversee the registration of lobbyists in the city should the City Council adopt legislation requiring the registration of lobbyists.
- E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.
- F. Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on city elections and campaigns.
- G. Make recommendations to the City Council regarding amendments to the city Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report to the City Council every two years concerning the effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public ethics.
- H. Set compensation for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent above the base salary as adjusted.
- I. Each year, and within the time period for submission of such information for the timely completion of the city's annual budget, provide the City Council with an assessment of the Commission's staffing and budgetary needs.
- J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.

- K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.
- L. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.
- M. Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.
- N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:
 - 1. Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.
 - 2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.

- O. Perform such other functions and duties as may be prescribed by the Oakland Code of Ethics, conflict of interest regulations, ordinances as they may be adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the city and Campaign Reform Ordinance.

Significantly, Oakland City Charter Section 2.24.080 provides:

The City Manager, or designee thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties as set forth above [Emphasis added].

Current staff should be commended for their dedication and achievements with limited resources, and the Commission should be praised in the manner in which it has prioritized its efforts when choices have had to have been made about how to allocate those resources. But as has been noted for several years, both by members of the Commission and by the public, limiting the Commission to a two-member staff has impaired the Commission's ability to fulfill its mandated duties. Cutting staff to one full time Executive Director and a half-time executive assistant position would not just constitute a further impairment, but would effectively prevent the Commission from carrying out its mandated duties.

I urge the Commission to strongly remind the City Council of its legal and ethical obligations not to disturb the current staffing level of this Commission.

Very truly yours,


Andrew R. Wiener

CITY OF OAKLAND
Office of the City Attorney
Legal Opinion

TO: PRESIDENT JANE BRUNNER AND
HONORABLE CITY COUNCIL

CC: Mayor Ronald V. Dellums; City Administrator Dan Lindheim;
Budget Director, Cheryl Taylor

FROM: City Attorney John Russo

DATE: May 27, 2010

SUBJECT: Minimum Budget Requirements for City Auditor's Office Under the Oakland
City Charter

I. INTRODUCTION

On April 25, 2006, the City Attorney's Office issued a formal legal opinion on whether the City Council must provide the City Auditor minimum funding. Budgetary matters, including fixing of the number of employees, their salaries, and their benefits, are legislative actions. The general rule is that a legislature, a city council for example, has wide discretion over purely legislative actions. However in "rare" cases judicial interference with the legislative process is justified. A city council cannot violate its own charter. "The city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter" (Scott v. Common Council, 44 Cal.App.4th 684, 690 (1996).) The Legal Opinion is attached.

On March 5, 2010, the City Auditor asked the City Attorney's Office for a formal legal opinion on at what budgetary level is the City Auditor's Office prevented from carrying out its Charter-mandated duties.

Because the City Auditor's request required an expert analysis of the level of auditing services necessary for the City Auditor to perform her Charter-mandated duties, we engaged the firm MGT of America ("MGT"), based in Sacramento. MGT is a national management consulting and performance audit firm specializing in providing services to public-sector and non-profit clients. MGT has provided services to the City's Finance and Management Agency in 2007, 2008, and 2009, and is currently providing services to the Agency. In addition, MGT has performed audits and reviews of governmental entities across the country, including the North Carolina General

Assembly and the City of San Jose. The staff that performed the expert services for the City Auditor's report were not the same staff who have or are providing services to the Finance and Management Agency.

II. QUESTION

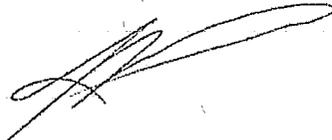
Would a cut of 15 percent from the City Auditor's budget in fiscal year 2010-11 impair the City Auditor from carrying out activities mandated under the City Charter?

III. CONCLUSION

According to MGT's report, the current budget for auditor positions in the City Auditor's Office is already below the amount necessary to carry out the minimum duties required by the City Charter. As stated in the MGT report, the analysis considered current auditing benchmarking and best practices, census population estimates to ascertain similarly sized cities, and cities with elected auditors with analogous charter mandates. Because the MGT analysis is a "snapshot" of a specific moment in the City's organizational history, the City Attorney's Office does not reach the issue of whether the previously adopted City Auditor budget violates the Charter nor does the City Attorney's Office opine that the number of positions suggested by the MGT report is an absolute, constant minimum.

As of this date, however, and based on MGT's analysis, the City Attorney's Office does conclude that any cuts in existing auditor positions would be in violation of the City Charter because further cuts would certainly prevent the City Auditor from carrying out her Charter mandated duties.

Very truly yours,



JOHN A. RUSSO

City Attorney

Attorney Assigned:

Mark T. Morodomi

CITY OF OAKLAND
Office of the City Attorney

Legal Opinion

To: Roland Smith, City Auditor
From: Office of the City Attorney
Date: April 25, 2006
RE: City Auditor Budget Cuts

I. Question

Does the Charter require the City Council to provide minimum funding for staff of the City Auditor's Office?

II. Summary Conclusion

The City Council must provide minimum funding so that the City Auditor may perform, without material impairment, his Charter mandated duties.

III. Analysis

Budgetary matters, including fixing of the number of employees, their salaries, and their benefits, are legislative actions. (Scott v. Common Council, 44 Cal.App.4th 684, 690 (1996)) The general rule is that a legislature, a city council for example, has wide discretion over purely legislative actions. (Id.; Hicks v. Board of Supervisors, 69 Cal.App.3d 228, 232; see also Scott v. Common Council, 44 Cal.App.4th 684 (1996); County of Butte v. Superior Court (Brooks) 176 Cal.App.3d 693 (1985).)

However this general rule yields to the exception that the budget cuts may not prevent the performance of a city official's duties as enumerated by a city charter. (Scott v. Common Council, supra, at 695.) The Scott court recognized that in "rare" cases judicial interference with the legislative process is justified. A city council cannot violate its own charter. The City Council, by a budgetary act, could not ignore a charter officer's charter mandated duties.

It is well settled that a charter city may not act in conflict with its charter. Any act that is violative of or not in compliance with the charter is void. The city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter (Id., internal quotations and citations omitted, emphasis added.)

In Scott, the trial court found that elimination of all of the city attorney's investigators "materially impaired" the city attorney in the performance of his charter mandated prosecutorial duties. The investigators were "absolutely necessary" for the performance of the city attorney's city charter functions. The work of the investigators was "inseparable" from the city attorney's prosecutorial function. The San Bernardino council's budgetary actions rendered the city attorney "unable to perform his statutory functions" and "eliminate[d] [the city attorney's] ability to carry out the sworn statutory and charter requirements and duty mandated by the people of this city and the State of California." (Id. at 694-695.)

The appellate court upheld the trial court and held that the city could only eliminate charter mandated duties after it had eliminated non-charter mandated programs first. (Id. at 698, fn. 11.)

Can the City Council Cut Positions in the City Auditor's Office?

Under the guidelines of Scott and Hicks, the Oakland City Council's funding of positions in the City Auditor's Office depends on a factual question: Will the reduction of positions in the City Auditor's office "prevent" or "materially impair" the City Auditor from performing his Charter mandated duties?

The City Auditor's Charter Mandated Duties

Under the Oakland City Charter, the City Auditor has wide ranging mandatory duties to review the City's financial documents:

The City Auditor shall have the power and it shall be his or her duty to *audit the books, accounts, money and securities of all departments and agencies of the City* and such other matters as the Council may request;

[T]o report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or

procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. . . .

The City Auditor *shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor.* (Charter, section 403, emphasis added.)

The Charter goes on to define that the "public interest" "shall include, but not be limited to":

(1) *Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.*

(2) *Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.*

(3) *Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.*

(4) *Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.*

(5) *Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.*

(6) *Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.*

(7) *Responding to requests for audit and reviews.*

(8) *Submitting, at a public meeting of the full City Council, a quarterly report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.*

(9) *The City Auditor shall conduct performance audits of each department as specified in the City budget. (Id.)*

Charter Section 403 includes "responding to requests for audit and review" as "in the public interest." The Charter also requires that the City Auditor perform audits "as required by the Council." Several ballot measures authored and placed on the ballot by City Council direct the City Auditor to perform an annual audit of disbursements authorized by the measures. Those measures include Measure M (Special Tax to Fund Emergency Medical Services); Measure N (Special Tax to Fund Paramedic Services); Measures O (Library Service Retention Act of 1994) and Measure Q (Library Services Retention and Enhancement Act).

So long as the City Council funds any non-Charter mandated expenditures, the City Council must provide minimum funding so that the City Auditor may perform, without material impairment, his Charter mandated duties.

Very truly yours,

John Russo
City Attorney

Attorney assigned: M. Morodomi

MTM:ww