

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Commission Meeting
Tuesday, September 4, 2012
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.



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

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

MEETING AGENDA

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**

CONSENT ITEMS¹

4. **Approval of Commission Draft Minutes.**
 - a. August 6, 2012, Special Meeting Minutes (Attachment 1)
 - b. August 23, 2012, Special Meeting Minutes (Attachment 2)
5. **Dismissal of Complaints Not in Commission Jurisdiction.**
 - a. Complaint No. 12-07 (Akopyan). Staff recommends dismissing this case, which is outside of the Commission's jurisdiction. (See Attachment 3 for complaint details.)

ACTION ITEMS

6. **Complaint/Enforcement Program.** An updated list of pending cases is included for informational purposes. Commissioners may discuss the complaint process in general and may discuss any of the complaints listed in the attached spreadsheet. (Attachment 3)
7. **In the Matter of Complaint No. 12-06, filed by Ralph Kanz on June 19, 2012.** The Commission considers staff's recommended dismissal of complaint number 12-06 on the grounds that the facts fail to support a finding that a violation occurred. (Attachment 4)

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

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PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
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8. **In the Matter of Complaint No. 10-20, filed by Sanjiv Handa on August 2, 2010.** Commission staff recommends dismissal of complaint number 10-20, in which the complainant never completed the initial filing of the complaint. (Attachment 5)

DISCUSSION ITEMS

9. **Limited Public Financing Program.** Commission staff will provide an update on the Limited Public Financing Program.
10. **Lobbyist Registration Program.** Commission staff will present the status of lobbyist registration filings as of August 31, 2012.

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

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

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

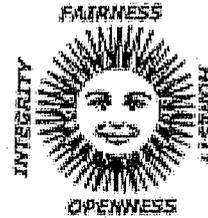
Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandnet.com/pec.


Approved for Distribution

8/24/12
Date

MEETING MINUTES
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Meeting
Monday, August 6, 2012
Sgt. Mark Dunakin, Hearing Room 1
6:30 p.m.

DRAFT



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

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

SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum

The meeting was called to order at 6:33 p.m.

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

Staff present: Whitney Barazoto and Kathleen Salem-Boyd

[To accommodate the schedule of the Commission's guest presenter, the Commission moved directly to item 5.]

GUEST PRESENTATION

- 5. City Auditor's Ethical Climate Survey.** City Auditor Courtney Ruby provided an overview of the Auditor's 2011 Ethical Climate Survey to the Commission. The City Auditor's Fraud, Waste and Abuse Prevention Program Manager Sharon Ball presented the survey's approach, administration procedure, scoring mechanism, findings, and departmental response rate.

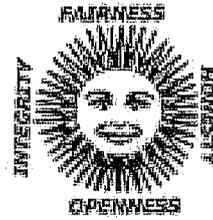
[The Commission returned to the original order of the agenda.]

2. Staff and Commission Announcements

Executive Director Whitney Barazoto announced that Commissioner Amy Dunning was appointed by the Mayor to the Civil Service Board and therefore has resigned from the Public Ethics Commission. She will not be completing the remainder of her term, which was scheduled to end in January, 2013.

MEETING MINUTES
PUBLIC ETHICS COMMISSION
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6:30 p.m.

DRAFT



Ms. Barazoto presented an update on the City Council salary adjustment resolution that the Council passed on July 17, 2012, to accept yet waive the Commission-authorized salary increase for this year (2012-13). Under the resolution, the salary increase will take effect in the next budget year.

Ms. Barazoto introduced 2 new part-time staff for the Public Ethics Commission: Matundu Makalani and Lauren Angius. Each brings a wealth of talent to the Commission and will work approximately 15 hours a week on Commission projects.

Ms. Barazoto mentioned that, in anticipation of her upcoming maternity leave, she has delegated her authority to Patrick Caceres of the Citizens' Police Review Board, effective upon the first day of her leave.

3. Open Forum

There were no speakers.

CONSENT ITEMS

4. Approval of Commission Draft Minutes

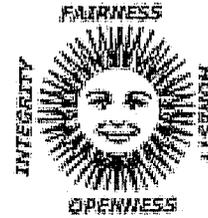
The Commission moved, seconded, and unanimously approved the July 2, 2012, meeting minutes.

ACTION ITEMS

- 6. Nomination and Election of Vice-Chair of the Commission.** Commissioner Johnson moved and Commissioner Unger seconded to nominate Commissioner Farnham as Vice-Chair of the Commission. The motion passed 5-0; Commissioner Farnham abstained.
- 7. Commission Priorities.** The Commission heard input from the public and discussed the Commission's strategic direction for the coming year. Staff provided a draft workplan to outline potential Commission goals for 2012-13. Commissioners discussed Commission needs and potential goals for the Public Ethics Commission to address over the coming year (2012-2013), including staffing, LPF Program, access to public records, Lobbyist Registration Act, enforcement, public outreach, and advice. Commissioners provided input and general direction to staff on the workplan.

MEETING MINUTES
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DRAFT



8. **Limited Public Financing Program.** Ms. Barazoto provided an update on the Limited Public Financing Program.

DISCUSSION ITEMS

9. **Lobbyist Registration Program.** Ms. Barazoto explained that Commission staff is currently reviewing lobbyist filings for the past two years and updating lobbyist registration information to be posted on the Commission's website in the coming months. Staff provided a brief update on the status of lobbyist registration filings and potential plan for an electronic lobbyist registration filing program in the future.
10. **Complaint/Enforcement Program.** An updated list of pending cases was included for informational purposes.

The meeting adjourned at 8:40 p.m.

MEETING MINUTES
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Meeting
Thursday, August 23, 2012
Hearing Room 2
7:30 p.m.

DRAFT



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

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

SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum

The meeting was called to order at 7:32 p.m.

Members present: Unger, Baker, Rivera and Kimberley.

Staff present: Whitney Barazoto and Kathleen Salem-Boyd

2. Staff and Commission Announcements

There were none.

3. Open Forum

There were no speakers.

ACTION ITEMS

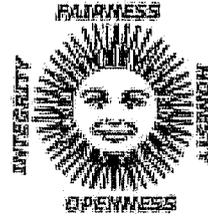
4. Limited Public Financing Program.

Executive Director Whitney Barazoto explained that, pursuant to the Limited Public Financing Act, the Commission was required to make a finding on 1) whether the amount of money in the Election Campaign Fund is adequate to provide the maximum amount of funds allowable by law to each potentially eligible candidate, and if not, then 2) how to distribute the funds on either a pro rata or other equitable basis. The Commission discussed these options, as well as whether to allocate the full 7.5 percent allowable by law to the Commission from the Limited Public Financing fund to cover anticipated costs of administering the program.

There was one speaker: Ralph Kanz.

MEETING MINUTES
PUBLIC ETHICS COMMISSION
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Hearing Room 2
7:30 p.m.

DRAFT



Commissioner Rivera moved and Commissioner Kimberley seconded the motion to allocate the full 7.5 percent to the Commission from the Limited Public Financing fund and to direct staff to prepare a cost analysis at the end of the program administration to show how much it cost the Commission to administer the 2012 program. The motion passed 4-0.

Commissioner Baker moved and Commissioner Rivera seconded the motion to make a finding that the money in the Limited Public Financing fund is not adequate to provide the maximum amount allowable under the law to participating candidates. The motion passed 4-0.

Commissioner Baker moved and Commissioner Kimberley seconded to direct staff to divide equally the remaining amount of Limited Public Financing program funds to all candidates who accept program participation by the August 30, 2012, deadline. The motion passed 4-0.

The Commission also directed staff to agendize, after program administration is complete, a future discussion of how the program can be improved, how to increase funding allocated by the City Council for the program, and whether the program is meeting the intent for which it was created.

The meeting adjourned at 8:00 p.m.

Public Ethics Commission Pending Complaints

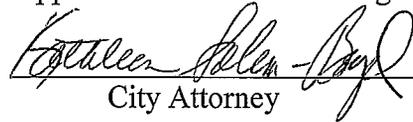
Date Rec'd	Case #	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority
8/10/12	12-07	Lilit Akopyan	Fox Theatre Management	7/28/12	Alleges respondent Theatre management staff failed to respond to a complaint by theater-goers regarding people smoking marijuana at a concert.	Complaint is pending dismissal at Sept 2012 meeting	
6/19/12	12-06	Ralph Kanz	Public Ethics Commission	5/16/12	Alleges respondent Commission's subcommittee meeting of 3 members should have been noticed under Sunshine and Brown Acts because at the time, the Commission had only five members.	Complaint is pending dismissal at Sept 2012 meeting	H/S 2
4/26/12	12-04	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente		Alleges respondent failed to report \$37,500 in payments from a campaign group tied to a lobbyist for a group competing for the Coliseum mgmt contract (alleges failure to report payment and a COI issue)	Complaint received	H/L 4
4/4/12	12-03	City Auditor/ Anonymous	Downtown Oakland Association and Lake Merritt/Uptown District Assoc.	Dec 2009 and annually thereafter	Alleges respondents failed to provide adequate public notice about discussions and decisions related to the payment of "holiday bonuses," adds that discussion of bonuses was never put on open session agenda	Complaint received	M/M 4
8/23/11	11-03	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente	June 2011	Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent	Complaint received	H/L 4
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/10/7/10 and 7/27/10	Complaint alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election (OCRA; §3.12.140)	Staff is investigating	H/L 4

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

12-7-10	10-30	Sanjiv Handa	Oakland Parking Division	Ongoing	Oakland Sunshine Ordinance -- Alleged failure to timely produce parking records	Staff is investigating	L/S 4
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230 -- Alleges 1) failure to include written disclosure required by OCRA and 2) failure to file late contribution and independent expenditure reports	Staff is investigating	H/M 3
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090 -- Alleges failure to report and include information regarding respondent's loans to own campaign	Staff is investigating	H/M 3
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D) -- Alleges campaign was given extension of credit of over \$1500 for more than 90 days	Staff is investigating	H/M 3
9/14/10	10-21	Jean Quan	Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee	Ongoing	OCRA violations -- Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election	Staff is investigating	H/L 4
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 -- Alleges respondent districts held meetings without notice	Complaint is pending dismissal at Sept 2012 meeting	H/S 2
7/2/10	10-16	Gwilym Martin	Joseph Yew, Finance	June 18, 2010	Sunshine Ordinance; production of records -- Alleges department failed to provide electronic copy of City's Oracle database	Staff is investigating	H/M 3
3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil	January 1, 2007 to present	Lobbyist Registration Act -- Alleges respondents failed to register as lobbyists	Staff is investigating	H/L 4

3/3/10	10-05	David Mix	Tagami Oakland City Council	3/2/10	Oakland Sunshine Ordinance – Alleges City Council Rules Committee failed to make an “urgency finding” to schedule a decision (per Section 2.20.080)	M/M 4	Staff was directed to explore settlement in lieu of hearing.
11/17/09	09-15	Anthony Moglia	Jean Quan	Ongoing	Alleges misuse of City resources by respondent by linking an officeholder website to the City website and then linking a campaign website to the officeholder site.	M/L 5	Staff was 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 – Alleges failure to provide multiple public records upon request	M/M 5	Commission conducting hearings on public access 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 -- Alleges City Council 15-minute total time limit on Open Forum comments is inconsistent with the Sunshine Ordinance, which authorizes 2 minutes per person	M/M 4	Awaiting report from City Attorney

Approved as to Form and Legality**



City Attorney

City of Oakland
Public Ethics Commission
August 10, 2012

In the Matter of)
) Complaint No. 12-06
) Filed June 19, 2012
)

I. SUMMARY OF COMPLAINT

Ralph Kanz filed Complaint 12-06 on June 19, 2012, (**Attachment 1**) alleging that the Public Ethics Commission met without posting or sending an agenda noticing a subcommittee meeting of three members at a time when the Commission had two vacancies on its seven-member board. Mr. Kanz alleges that the usual "majority" of four members, triggering the Oakland Sunshine Ordinance and state Brown Act requirements for the posting of meeting notices, should have been reduced to three because of the Commission's vacant positions at the time.

II. FACTUAL SUMMARY

Three members of the Public Ethics Commission met as an ad hoc subcommittee on May 16, 2012, to conduct interviews of new commissioner applicants to fill two vacant seats: one seat had been vacant since the beginning of the term in January 2012, and the other became vacant in April 2012, upon the resignation of Commissioner Chris Young. At the time of the interviews, the Commission had five members holding seats on the Commission's City Charter-designated seven-member board. The subcommittee meeting of three of the five sitting Commission members was not publicly noticed. The subcommittee chose two candidates for nomination to the full Commission, and the Commission publicly posted notice of the nominations in advance of its next regularly scheduled public meeting on June 4, 2012. On June 4, 2012, the Commission approved the appointment of the two nominees to the Commission by a vote of 5-0.

III. ANALYSIS

The issue is whether the Public Ethics Commission's May 16, 2012, gathering of three Commissioners as an ad hoc subcommittee constituted a "majority" for purposes of triggering a "meeting" that must be publicly noticed under the Oakland Sunshine Ordinance and the Brown Act.

[See attached analysis by the Oakland City Attorney's Office (**Attachment 2**). Because this complaint is about the Commission and its staff, Commission staff is deferring to the City Attorney's formal written opinion issued on August 9, 2012, to serve as the legal analysis.]

III. STAFF RECOMMENDATION

Because the subcommittee meeting of three members did not constitute a "majority" under the Oakland Sunshine Ordinance or the Brown Act, the meeting did not require public notice and therefore did not violate either the Sunshine Ordinance or the Brown Act. Commission staff recommends that the Commission dismiss Complaint No. 12-06 on the grounds that the facts fail to support a finding that a violation occurred.

Respectfully submitted,



Whitney Barazoto
Executive Director

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

City of Oakland

For Official Use Only

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 12-06

Please Type or Print in Ink and Complete this Form.

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

- The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)
- Oakland Campaign Reform Act
- Oakland City Council's Rules of Procedure/Code of Ethics
- Oakland Limited Public Financing Act
- Oakland Conflict of Interest regulations
- Oakland Lobbyist Registration Act
- Oakland False Endorsement In Campaign Literature Act
- I am/We are not sure which specific law, ordinance or regulations apply.

However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

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

Unknown dates between April 13, 2012 and June 4, 2012

The alleged violation occurred at the following place:

Oakland City Hall

Complaint 12-06-Attachment 1

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

The Public Ethics Commission met without posting an agenda or sending it to agenda subscribers claiming it was a subcommittee meeting. Both the Brown Act and the Sunshine Ordinance define a meeting as "any congregation of a majority of the members of a local body at the same time and location." At the time there were four or five members of the PEC, and the three members who met were a majority of the body.

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

Unknown

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

Pulbic Ethics Commission members and staff.

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

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

NAME: Ralph Kanz _____ PHONE NO.(Day):() _____
ADDRESS: _____ PHONE NO.(Eve.):() _____
CITY: _____ STATE: _____ ZIP: _____
FAX NO.: () _____ E-MAIL: _____

PLEASE RETURN THIS FORM TO:
Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612
Phone: (510) 238-3593
FAX:(510) 238-3315

Submit by Email

Print Form

CITY OF OAKLAND

Office of the City Attorney

Legal Opinion

TO: WHITNEY BARAZATO, EXECUTIVE DIRECTOR
PUBLIC ETHICS COMMISSION

FROM: MARK T. MORODOMI
OFFICE OF THE CITY ATTORNEY

DATE: AUGUST 9, 2012

RE: "MAJORITY" OF CITY OF OAKLAND PUBLIC ETHICS COMMISSION

I. Introduction

You have requested a formal opinion as to the following question.

II. Question Presented

If there are only five persons seated as members of the seven-member Public Ethics Commission, how many members must be in attendance to constitute a "majority" requiring public meeting notice under the state Brown Act and the Oakland Sunshine Ordinance?

III. Summary Conclusion

Four. The number required for a majority for Brown Act and Sunshine Ordinance purposes does not change when there are vacant seats on the Commission. A gathering of less than four is not a meeting of the Commission and would not require noticing as a meeting of the Commission.

IV. Analysis

Both the Oakland Sunshine Ordinance and the state Brown Act require posted notice of meetings of a legislative body. A "meeting" is a congregation of a majority of the members of the body. (Oakland Municipal Code section 2.20.030F; California Government Code section 54952.2.)¹

The number of filled seats is irrelevant to calculate the necessary number of members in attendance to constitute a majority. The California Attorney General opined that a majority of the "designated membership" constitutes a "majority". (94 Ops. Cal. Atty. Gen. 100 (2011) (Attendance of 16 members is required to convene a meeting of a 31-member board even if not all 31 seats are filled).) The number of filled or vacant seats is irrelevant, even if the large amount of vacancies hampers the board from conducting regular business.

Like many governmental councils, boards, and commissions, the SCDD [State Council on Developmental Disabilities] experiences periods during which vacant seats remain unfilled for significant lengths of time. During those periods, the Council must operate with fewer than its statutorily designated number of members. Multiple vacancies make it more difficult to assemble a quorum, and harder to achieve the purposes for which the Council was created. Since its enabling statutes do not specify a quorum for the SCDD, the Council is considering whether it might ameliorate these problems by defining its quorum as a simple majority of *non-vacant* seats on the Council.

Courts have consistently interpreted these provisions as establishing a general rule for the minimum quorum (namely, a majority of the designated membership) for deliberative bodies consisting of three or more members. We too have construed these provisions to the same effect. (Id., emphasis added.)

Only "meetings" of a body require posted agendas. There is only a meeting if there is a majority of the designated membership congregating. The designated membership of the Commission is seven. Accordingly, a majority of the designated membership of the Commission is four.

¹ OMC Section 2.24.040 specifies that the attendance of four commissioners is a "quorum." The Sunshine Ordinance only requires noticing when there is a "majority." In this particular instance, the number required a quorum and a majority is the same.

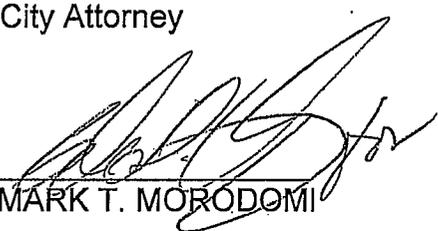
V. Conclusion

If there are less than four members of the Commission in attendance, there is no meeting of the Commission. If there was no meeting, neither the Sunshine Ordinance nor the Brown Act requires public noticing a meeting of the Commission or posting of an agenda.

Respectfully submitted,

Barbara J. Parker
City Attorney

by:


MARK T. MORODOMI

CITY OF OAKLAND
Public Ethics Commission

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



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Whitney Barazoto, Executive Director
 DATE: August 23, 2012
 RE: In the Matter of Complaint No. 10-20

Complaint number 10-20 was filed by Sanjiv Handa on August 2, 2010, alleging that various boards of directors of Oakland's Business Improvement Districts and Community Benefit Districts held meetings without posting notice under open meetings laws. (**Exhibit A**). The complaint filed on August 2, 2010 included a notation from Mr. Handa saying that it was filed "for the purpose of preserving the 60-day limitation for failure to notice meetings," along with a specific statement that "no action is requested until a supplemental complaint is filed within 30 days with specific names, dates of unnoticed meetings, etc." Mr. Handa never filed any supplemental complaint with the Public Ethics Commission. Therefore, staff suggests dismissing the complaint based on the grounds that the filing of the complaint by Mr. Handa was incomplete.

Nevertheless, Commission staff had reviewed the matter and conducted trainings on the Brown Act and Oakland Sunshine Ordinance for Business Improvement Districts as part of the Commission's ongoing training duties in 2011. Attached is a draft memorandum prepared by the previous executive director to this effect. (**Exhibit B**). It states that by June 16, 2011, staff had conducted trainings for certain districts, but had not provided trainings for the Montclair, Temescal, and Rockridge districts. The former director's suggestion was to complete trainings, or provide training materials for these remaining districts, in order to close out the case. By August 22, 2012, current Commission staff provided the training materials to the three remaining districts as a follow-up to the former director's suggested course of action. Although not required as part of the closing of this case, all districts have now received training or training materials pursuant to the plan laid out by previous Commission staff.

Recommendation

Because the initial part of the complaint filed on August 2, 2010, was never completed with a follow-up supplemental report by the complainant, staff recommends that the Commission dismiss Complaint number 10-20 at the September 4, 2012, meeting.

RECD 8/2/10
DB

City of Oakland

For Official Use Only

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 10-20

Please Type or Print in Ink and Complete this Form.

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

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

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

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

The alleged violation occurred on or about the following date(s)
Ongoing for the past several years. This complaint is filed on August 2, 2010, for the purpose of preserving the 60-day limitation for failure to notice meetings. Based on information and belief, we allege boards of directors of various Business Improvement Districts and Community Benefit Districts held meetings without posting notice under open meetings laws, and without providing notice to East Bay News Service, an agenda subscriber.

The alleged violation occurred at the following place:
Meetings on nine separate BIDs-CBDs throughout Oakland, including meetings of standing committees of such BIDs-CBDs. Pursuant to a California Attorney General's opinion, BIDs-CBDs must comply with the Brown Act. Each BID-CBD is created by formal action of the Oakland City Council.

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

Meetings of BIDs-CBDs boards, and standing committees of said boards, have held meetings. None of the nine BIDs-CBDs filed an agenda for ANY committee meeting during the 60-day period covered by this complaint. The executive directors of BIDs-CBDs are all paid employees, mostly part-time. None appear to have registered as lobbyists.

The persons you allege to be responsible for the violation(s) are:
The executive directors of BIDs-CBDs and/or board members.

No action is requested until a supplemental complaint is filed within 30 days with specific names, dates of unnoticed meetings, etc.

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

PLEASE NOTE:

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

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

NAME: Sanjiv Handa PHONE NO.(Day):(_____)

ADDRESS: _____ PHONE NO.(Eve.):(_____)

CITY: _____ STATE: _____ ZIP: _____

FAX NO.: _____

E-MAIL: _____

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

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

Submit by Email

Print Form

City Attorney

City of Oakland
Public Ethics Commission
TBD, 2011

In the Matter of

)
) Complaint No. 10-20
)

Sanjiv Handa filed Complaint No. 10-20 on August 2, 2010.

I. SUMMARY OF COMPLAINT

Mr. Handa alleges that various boards of directors of Oakland's Business Improvement Districts (BIDs) and Community Benefit Districts (CBDs) held subcommittee meetings without providing public notice pursuant to the Ralph M. Brown Act and Oakland Sunshine Ordinance. **Attachment 1.**

II. BACKGROUND

Like other California cities, Oakland utilizes special assessment districts to raise revenue for use within the district for such activities as litter and graffiti abatement, security or sidewalk cleaning, and for such improvements as parking facilities and landscaping. In 1999, the City Council adopted the "Business Improvement Management District Ordinance" ("BID Ordinance") that regulates the formation, administration and dissolution of such districts.¹ Section 4.48.140 of the BID Ordinance requires the City Council to establish any district by resolution.

III. ANALYSIS

The Brown Act requires local agencies to provide the public with advance notice of all meetings convened by their "legislative bodies." The Brown Act defines a legislative body in relevant part as a ". . . board, commission, committee, or other multimember body that governs a private corporation or entity that. . . [i]s created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity." [Government Code Section 54952(c)(1)(a)]

The Oakland Sunshine Ordinance provides that "as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or

¹ There are two types of special districts: One is a "business improvement district" or "BID", and the other is a "community benefit district" or "CBD". They are functionally similar for purposes of this complaint and differ primarily in the types of property assessed.

other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.)" [O.M.C. Section 2.20.040(A)] In conformity with Section 2.20.040(A), the BID Ordinance provides:

A. *"Before adopting a resolution establishing the district, the City Council shall appoint an advisory board which shall make a recommendation to the City Council on the expenditure of revenues derived from the levy of assessments. . . The City Council may designate existing advisory boards or commissions to serve as the advisory board for the district or may create a new advisory board for that purpose. . .*

B. *Any advisory board appointed by the City Council pursuant to subsection A of this section shall comply with provisions of the Ralph M. Brown Act [citations]. [BID Ordinance Section 4.48.190]*

In Epstein v. Hollywood Entertainment District II Business Improvement District (2000) 85 Cal.App.4th 152, the court ruled that a non-profit board of directors established to administer funds from a BID was a legislative body subject to the Brown Act's open meeting provisions. The Office of the City Attorney also has long advised that the advisory boards of the various BIDs/CBDs are subject to the Brown Act.

Mr. Handa alleges in his complaint that in the sixty days prior to the filing of his complaint, none of Oakland's BIDs/CBDs had filed an agenda for any committee meetings he alleges may have been convened during this period. He states in his complaint however, that "[n]o action is requested until a supplemental complaint is filed within 30 days with specific names, dates of unnoticed meetings, etc." Mr. Handa never filed any supplemental material with the Commission in support of his complaint. Nevertheless, Mr. Handa has agreed to withdraw his complaint voluntarily if staff to Oakland's BIDs/CBDs receive training in the Brown Act and Sunshine Ordinance which Commission staff agreed to provide as part of its ongoing training duties.

On June 16, 2011, Commission staff conducted a 45-minute training session on "How To Notice A Public Meeting" for staff to the Koreatown, Laurel, Uptown, Downtown and Fruitvale BIDs. (Staff to the Montclair, Temescal and Rockridge BIDs were not in attendance and Commission staff has made arrangements to have the training materials provided to them.) The training material included providing each of the BID staffs a revised edition of the Commission's guide of the same name, a copy of which is available to the public on the Commission's website.

IV. STAFF RECOMMENDATION

Since Mr. Handa never supplemented his complaint with specific allegations of violations, there is nothing for the Commission to consider for adjudication. Commission staff recommends that the Office of the City Attorney or staff's successor follow-up with the remaining BID staff to ensure they received the training material and/or to provide additional

"live" training. Commission staff further recommends that the Commission dismiss Complaint No. 10-20 conditional upon the Montclair, Temescal and Rockridge BID staff's receipt of either "live" open meeting training and/or the training material as the Commission may direct.

Respectfully submitted,

NAME
Executive Director

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

