February ~~15~~ 20, 2010

Ms Alix Rosenthal
City Attorney Office, City of Oakland
One Frank Agawa Plaza, 6th Floor
Oakland, CA 94612

Re: Public Records Request - Combs/Francisco e-mail

Ms Rosenthal:

I am in receipt of your e-mail of February 11, 2010, concerning my public records request dating back to August 21, 2008 directed to Mr. Raul Godinez (then director of public works) regarding correspondence sent or received by Ms Jocelyn Combs (item #7 of the request letter) pertaining to the Landscape and Lighting Assessment District (LLAD) Prop. 218 (majority protest) election held on or about June 17, 2008.

As you are aware I filed a complaint with the Public Ethics Commission, dated November 1, 2008, contending that the city was not completely forthcoming in providing the material requested. In particular, among many other items, the subject e-mail of this correspondence. (See footnote of my November 1, 2008 complaint letter.)

The footnote to that complaint letter clearly expressed my concern over the city's action in extracting or not providing pertinent material to the LLAD vote count. Critical information, regarding the lawfully required procedure for the counting the votes, which Combs (as the City point person for the LLAD election) was seeking from Joseph Francisco (the LLAD Election Engineer) appeared to have been purposely cut from the original e-mail response received by Combs.

My complaint, No. 08-18, was agendized for the regular Ethics Commission Meeting of April 6, 2009. In the Commission's Staff report presented at that meeting, the complaint matrix (page 5 of 12, item E-6, listed as "Specific request", following No. 13) accounts for a conversation Commission Staff had with Ms Combs regarding the "missing" e-mail.

By Staff's report it is indicated that Combs claims no knowledge of the e-mail in question, as follows:

> **"Ms Combs told Commission staff that she did not delete any emails in response to Mr. Mix's request. She further believes the answer from Francisco may have been made verbally to her."**

Months later, in the late Fall of 2009, I was informed that the mysteriously missing, or Combs professed nonexistent e-mail response from Joseph Francisco did actually exist and that it was in the possession of the City Attorney's Office. Evidently the City Attorney was examining its content for possible, "attorney client privilege". I was informed that in the event no such privileged material existed, a copy thereof would be provided to me.

When the illusive e-mail with Francisco's response to her inquiry somehow mysteriously surfaced it became clear that Jocelyn Combs' recall or memory (of the event) had miserably failed her. Or, she engaged in a cover up and conspired to hide a critical piece of information regarding - HOW THE VOTES ARE LEGALLY REQUIRED TO BE COUNTED.

It is indeed puzzling and quite conspicuous that an e-mail of this magnitude - an e-mail directed to the licensed Engineer responsible for the conduct (by state statute) of the election would come up missing. Inasmuch as the counting (weighting) of the votes is strictly

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controlled by statute, it begs the question, why hide an e-mail which would undoubtedly describe that process. Unless of course, one planned on *not* counting the votes in the precise manner required by law.

This brings us to date and your recent response of February 11, 2010. It is duly noted that you express your apologies for the delay but unfortunately we are now a year and a half (18 months) from the date of the original request and regrettably, by your refusal to provide the material requested, the issue remains unresolved.

By this letter I am once again filing this as a complaint with the Public Ethics Commission for the City's unjustified refusal to provide copies of the public records as originally requested.

Concerning your justification for refusing to provide those records and your contention that the particular record, or records, requested falls under attorney client privileged information - I respectfully disagree.

Firstly, you fail to cite any particular statute or case law for which you base your determination. But more importantly, by no stretch of the imagination is the Oakland City Attorney's Office an attorney for, or represents in any way, the private concern of Joseph Francisco or Francisco and Associates Inc. There simply is no attorney/client relationship and ergo, no "attorney client privilege".

It has long been held and maintained by your office that the City Attorney does not and may not represent any individual, business, corporation, foundation, or any other entity, public or private, contracted (or otherwise) with the City of Oakland to perform services for the City. By the City Charter alone, such representation is prohibited.

Additionally, your reasoning is bogus and not supported by fact. The record request is not pertaining to "legal advise" that Mr. Morodomi gave Francisco. (See note below) It is a request made to Combs for information received by Combs from a third party (not her attorney) outside of the City. Where Francisco obtained that information or what he based it on is of little importance. The attorney/client privilege does not extend to third parties. Additionally, Mr. Morodomi is not legally permitted to convey any legal advise to Francisco, and even if he did it wouldn't be privileged as, once again, Morodomi, nor the City Attorney's Office, represents Joseph Francisco.

In your second paragraph you note that the communication was from "city staff" (Combs) to the "City's" consultant (Francisco) and claim that the communication is therefor or thereby privileged. I don't follow - as neither is an attorney or acting as a legal representative of the other, where is the attorney/client privilege?

It appears you are saying, Morodomi conveyed legal information to City staff concerning the required procedure for counting the LLAD votes (tally just the increase or the total amount) and Morodomi's advise was likewise and also conveyed to Francisco, by Morodomi, not by City staff but by Morodomi, directly to Francisco.

You then contend (if I am correctly following your reasoning) that the advise supposedly conveyed to Francisco by Morodomi is privileged because the City Attorney's Office represents Francisco as an employee (acting agent thereof) of the City of Oakland. Wouldn't that then make everyone and anyone who contracts with the City an "*agent*" of the City and thereby represented by the City Attorney's Office?

As stated above, I couldn't disagree more, the City Attorney is simply not permitted to

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represent a third party and by no stretch of the imagination is an outside contractor an employee of the City. However, your contentions raise intriguing and additional unanswered questions, as:

1) If Morodomi had previously provided the information to staff, (including Combs) as you imply by your e-mail, then why was Combs seeking it from Francisco?

2) And, if she didn't have it, why didn't she seek the information directly from Morodomi rather than second-hand from Francisco? In considering Combs was the duly assigned "point person" regarding all inquires concerning the LLAD - then why didn't she deal directly with the City Attorney's Office?

   Why go through a third party, unless of course the supposed information was provided only to Francisco, for his eyes and ears only.

3) When was this mysterious information and or advise provided by Morodomi to city staff and or Francisco? It had to have been April 22, 2008 or prior. More importantly, there is no record of the City Attorney's Office providing information or any kind of advise to any city employees or staff on or prior to April 22, 2008 pertaining to the LLAD.

However, perhaps the the bigger question is WHY? Why would Francisco, a licensed engineer and with his reputation at stake, seek or entertain advise or direction from the City Attorney's Office regarding a Prop, 218 Assessment District Election. Having conducted many of these elections throughout the state in accordance with the requirements of the controlling statute, he is clearly the expert, not the City Attorney.

Why indeed? Unless perhaps, the City Attorney was interceding, directing and dictating how the votes were to be counted (weighted) in a fashion or manner contrary to the requirements of the statute.

This of course leads to the reason or motive for redacting Francisco's response to Combs April 22, 2008 e-mail - HOW ARE THE VOTES COUNTED - TALLIED? If they were to be counted fully in accordance with the requirements of the statute - then why not say so! And, if that in fact was Francisco's response, why redact it?

On the other hand, redaction is usually used or exercised only when there is something to hide, cover up or to protect sensitive or damaging information. Otherwise, if Francisco's response does no more than convey the statutory requirements - why go to these lengths to conceal it? What is the City Attorney's Office trying to hide?

Also, please see attached letter, to Mayor Dellums, October 24, 08, describing in detail (pages 3, 4) the voter fraud the City engaged in and perpetrated in the LLAD election.

Very truly yours,

David E. Mix

Note!

In the event that Mr. Morodomi did convey any information or advise to Francisco concerning the LLAD vote, this is to be considered a public records request for copies of that material and or records pertaining thereto.

cc; Daniel Purnell, Executive Director, Public Ethics Commission

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October 24, 2008

City of Oakland
Office of The Mayor
The Honorable Ronald Dellums
One Frank Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Re: Landscape and Lighting Assessment District - Voter Fraud

Dear Mr. Dellums:

You couldn't be more wrong. Your opening remarks at the October 10, 2008 Council Budget Session (as quoted below) were beyond the pale:

"The voters of Oakland DID pass the LLAD (spoken with extreme emphasis placed on the word did) **which would have given us $12 million dollars."**

"But, the Supreme Court acted in such a manner as to deny the City of Oakland $12 million dollars."

"I applaud the residents of Oakland for having passed the LLAD - because we would not have to be here, but the Supreme Court acted in a different way."

Those comments were not only egregious but deceitful as well. In plain truth and simple language, the voters of Oakland, the residents and citizens of our fair city , unequivocally Did Not pass the LLAD.

Your comments to the contrary and the unfounded blame you hurled at the California Supreme Court, for what is clearly the City's own doing, is reprehensible. The Santa Clara County Open Space (SCCOS) ruling had little or nothing to do with the City Council pulling the plug on the LLAD. In simple truth, the LLAD failed and failed miserably. Blaming the SCCOS decision is no more than a feeble attempt to cover-up and hide what can only be described as a criminal conspiracy to defraud the public. Blaming the high court for the City's illegal vote-rigging sets a new all time low for our city government.

The numbers speak for themselves (see attached) and to use an old adage - "figures don't lie - but liars figure". An examination of the numbers immediately discloses and proves that the "people" did not pass the LLAD. Employing a little math clearly shows that only **28.4%** of the "private" property owner cast yes votes favoring the LLAD. Without question, it failed overwhelmingly and failed in no less than 10 out of the 16 voting categories.

However, even these official counts, as produced by Francisco, are deceitful. His

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vote tally purposely hides the City's vote and all the other public entities votes by burying them amongst the varied categories. It is painfully obvious that Francisco did not include a "public property" category (as is the usual practice) in his reported results. Why? Because he and the City did not want the public to see how outrageously off-balance the vote count was. Even with my "public records request" they withheld the information.

A review of the City records (official vote - tax roll CD) discloses that out of the 13 public properties assessed only five of them exercised their vote and the top three are controlled by the City - as noted below:

City of Oakland	$526,430.94
City of Oakland Redevelopment Agency	$75,510.62
Port of Oakland	$1,405,336.06
East Bay Municipal Utility District	$86,559.20
East Bay Regional Park District	$13,833.62
Total Public Property Yes Votes	**$2,107,670.07**

When the above "public" entities votes ($2,107,670.07) are removed from the equation, removed from the Yes column, the results are $1,123,362.73 for LLAD and $2,826,990.56 against - **28.4% Yes** and **71.6% No**. It is a no-brainer, the "people" **DID NOT** pass the LLAD.

It was clear from the start that without the support of key public properties (the Peralta Community College District), (the Oakland Unified School District) and (the Oakland Housing Authority) the LLAD would probably fail. The $25,000.00 dollar survey conducted in January by Strategy Research Institute (SRI) indicated as much. The survey results published by Dr. Manross (SRI Principal) indicated only a mere 47% support among residential property owners and a very low 26.5% support from commercial property owners.

His two page report is clear. As he states in his letter -- unless the City can persuade any of the three public property owners (as noted above) to vote Yes, *"...or, in a worse case scenario, persuade Peralta and the Housing Authority to vote YES and the Oakland Unified School District to NOT vote....then the proposed increase in the City's LLAD will (not) secure the requisite vote needed for being authorized."* (SRI , Manross correspondence, February 5, 2008)(emphasis added).

He closes his February 5, 2008 report and correspondence in saying:

> **"So, while I wish I could say that asking Oakland voters to support a $12 mm increase, plus a CPI (even with a sunset) is feasible....the data do NOT support this scenario."**

It is unarguable, the negative "private" property vote (residential and commercial combined) was clearly predicted by Manross. The end result, an incredibly low **28.4%** ,

even far less than what he and his $25,000.00 dollar survey predicted - this certainly is not the fault of the Supreme Court Justices.

However, even with the "public" property vote included - it would not pass. The City's phony vote tally could not possibly survive a court challenge. Not because of the SCCOS decision but foremost, because the City of Oakland, in order to obtain and assure the desired results, cheated, conspired, and blatantly ignored the requirements of the Law.

The criteria and mandate for counting and weighting the votes is clearly set forth in the California Constitution, Article XIII, Section 4 subdivision (e) :

> **"In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property."**

An identical requirement is found in the California Government Code, Article 4.6, Proposition 218 Implementation Act, Section 53753 (b):

> **"...with ballots weighted according to the proportional financial obligation of the affected property."**

And, Section 53753(e)(2)

> **"(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots, and not withdrawn, in its favor, *weighting those assessments ballots by the amount of the proposed assessment to be imposed* upon the identified parcel for which each assessment ballot was submitted."** (emphasis added).

It couldn't be clearer - votes are to be "weighted" by the full amount of the assessment. A $100.00 dollar assessment equals and requires a $100.00 dollar vote value - it couldn't be simpler.

However, with the threat of the LLAD failure, as predicted by Manross, looming on the horizon, the City came up with this utterly bizarre notion that it could ignore the above legal requirements for the "weighting" of votes and create its own tailored made version of vote weighting. The City Staff, along with the contract LLAD Engineer, Joseph Francisco, and with the blessings of the City Attorney's Office created and instituted the most unreasonable and inequitable weighting criteria known to all of assessment history.

The City's unique illegal weighting system gave all "public" parcel owners more than 250% of the value or weight of "private" property owners. Across the board, in each and every instance where the private owner was given a vote of $100.00 the "public" property got a $250.00 vote value. See actual assessment amounts below:

Zone 1 - Where private parcels (single family dwelling) were assessed at $169.36 they received a vote weight of $66.72, while public property owners received a vote valued at $169.36. (Source - Engineer's Report)

Zone 2 - Where private parcels (single family dwelling) were assessed $184.04 they received a vote weight of $72.50, while public property owners received a vote valued at $184.04. (Source - Engineer's Report)

Likewise for all the other categories, multi-family residential, commercial, condos, etc., the private property owners votes were *devalued* approximately 39.4 % or conversely, public property owners were given 2 1/2 times the vote value of private property owners. In addition to this, the Port of Oakland was given $256,370.00 in votes representing the Airport parcels of which it does not, nor has ever remitted any type of payment. Yet, with full knowledge of this, the City and Francisco chose to count them anyway. (According to Federal law, the Airport parcels are exempt).

So, no matter which way you slice it, with a legitimate vote tally as prescribed by law, with "all" parcels weighted in an amount equal to their assessment, the Yes votes resulted in barely 41%, (without the phony airport votes, 39.7%) - the LLAD FAILED.

Now that the "whistle" has been blown, it is suddenly convenient to blame the SCCOS decision, a case that has been pending for over five years, (first filed in late 2002) simply because it just happened to be decided at an opportune time. Remarkably, the City Attorney Office has not provided a single reason or given even the slightest hint of why the SCCOS decision prompted, or more importantly, required the City Council to flush the LLAD, while at the same time claiming the vote was aboveboard and absolutely legal.

Resolution No. 81498, dismissing the LLAD, simply states:

"WHEREAS, on July, 14, 2008, the Supreme Court of California issued its decision in Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority, Case No. S136468"

Not much of an explanation there, let alone, a legal opinion.

The unabashed and unadulterated TRUTH, the City Council, the City Attorney, City Administrator's Office, Public Works Department, Joseph Francisco, along with Jocelyn Combs, Brooke Levin, and whoever else participated in the LLAD fiasco, got caught with their pants down, in lying, cheating the public, and engaging in voter fraud. Rather than chance a full bloody public disclosure of their reprehensible and illegal activity, the Council Members desperately chose to attempt a cover-up by flushing the LLAD and blaming the Supreme Court in hopes that it would all go away.

David E. Mix

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Note!

Councilwoman Jean Quan's contention that the LLAD could somehow be reinitiated is a pipe dream and foolish denial of reality. Even if the assessments could be individually re-structured, as suggested by Deputy City Attorney, Mark Morodomi, in order to meet the criteria of the SCCOS findings. The LLAD does Not, and never did have the support of the people - the voters. The recent **28.4%** vote result is dead certain proof of that. Without question, support by the voting public is the first hurdle.

City of Oakland Landscape and Lighting Assessment District

Balloting Results - May 22, 2008

Classification	Yes	No	Total	(%) Yes	(%) No
Comm'l/Ind'l Condos	**$1,841**	**$5,718**	**$7,559**	**24.4%**	**75.6%**
Churches	**$11,218**	**$31,947**	**$43,165**	**26.0%**	**74.0%**
Commercial	$592,613	$387,887	$980,500	60.4%	39.6%
Condominiums	**$74,326**	**$113,699**	**$188,025**	**39.5%**	**60.5%**
Golf Courses	$10,231	$2,497	$12,728	80.4%	19.6%
Hospitals	$19,222	$1,345	$20,567	93.5%	6.5%
Hotels	**$3,494**	**$6,682**	**$10,176**	**34.3%**	**65.7%**
Industrial	**$128,571**	**$224,293**	**$352,864**	**36.4%**	**63.6%**
Institutional	**$3,544**	**$4,613**	**$8,157**	**43.4%**	**56.6%**
Multi-Family Res.	**$155,309**	**$1,018,596**	**$1,173,905**	**13.2%**	**86.8%**
Mobile Home Parks	**$655**	**$2,669**	**$3,324**	**19.7%**	**80.3%**
Port Parcels	$1,405,336	$0	$1,405,336	100.0%	0%
Schools	**$10,233**	**$36,763**	**$46,996**	**21.8%**	**78.2%**
Single Family Res.	**$579,909**	**$918,022**	**$1,497,931**	**38.7%**	**61.3%**
Tall Buildings	$224,204	$71,828	$296,032	75.7%	24.3%
Utilities	$10,329	$431	$10,760	96.0%	4.0%

The **public** parcels are hidden under the categories below:

1) **Golf Courses** - the Yes vote represents all the City owned Golf Courses, the sole privately owned course, Sequoyah Country Club, voted No! ($10,231 City Votes - 80.4%)

2) **Commercial and Tall Buildings** - most of the City owned parcels are deceptively tucked away under these two categories. (EB MUD, City, Kaiser, and others)

3) **Hospitals** - Kaiser Permanente accounts for all of the Yes votes cast ($19,222).

4) **Port Parcels** - this is self explanatory.

5) **Utilities** - East Bay MUD (a public entity) accounts for all these Yes votes. ($10,329 votes)

East Bay Regional Parks is also hidden under "Commercial" ($13,834 votes)

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