Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
February 1, 2010

In the Matter of)
) Complaint No. 09-13
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Pamela Drake filed Complaint No. 09-13 on November 9, 2009.

I. SUMMARY OF COMPLAINT

Ms. Drake filed Complaint No. 09-13 alleging that the City's Neighborhood Services Division improperly sponsored an event at which the Oakland Police Officers Association (OPOA) announced its endorsement of declared Oakland Mayoral candidate, Don Perata. ***Attachment 1.***

II. BACKGROUND

The City of Oakland's Neighborhood Services Division provides staff support for a variety of City services. One of the services is coordinating approximately 53 Neighborhood Crime Prevention Councils (NCPCs) established throughout Oakland. These NCPCs consist of community volunteers who work with the Oakland Police Department to fight crime and promote safe neighborhoods. The "Neighborhood Watch Steering Committee" is a volunteer organization that provides information to, and coordinates activities among, the many "Neighborhood Watch" groups in the City.

The Oakland Police Officers Association (OPOA) is an employee organization for members of the Oakland Police Department.

III. FACTUAL INFORMATION

In late September, 2009, Nick Vigilante, the civilian chairperson of the Neighborhood Watch Steering Committee, proposed an event to introduce Anthony Batts, the newly hired Chief of the Oakland Police Department, to members of the Oakland neighborhood policing community. Mr. Vigilante said he contacted Felicia Verdin about the event. Ms. Verdin serves as the City's community programs supervisor for the City's Neighborhood Services Division. Mr. Vigilante also contacted OPOA President Dominique Arotzarena about using OPOA offices for the event. Mr. Arotzarena told Commission staff that he liked and approved the idea. He said OPOA

occasionally hosts community events relating to police and crime-awareness activities. [1] Ms. Verdin said the Neighborhood Watch Steering Committee has also sponsored and/or hosted community events such as the one proposed in the past.

Once a date was finalized (November 5, 2009), Ms. Verdin said she mailed out approximately 600 to 700 postcard invitations to members of the Oakland community watch organizations. She also generated an email announcement of the event. ***Attachment 2.*** Approximately 100 people responded that they would attend. Ms. Verdin estimates that she spent four to five hours helping to arrange and organize the event. She said refreshments were provided by private donations and the OPOA.

Mr. Arotzarena said that he did nothing to arrange the reception other than to make the OPOA offices available. He said, "Nick [Vigilante] took care of everything." He said he did not know that Ms. Verdin or any other Oakland employee had expended any time or money arranging the reception.

Mr. Arotzarena said that about one month before Mr. Vigilante contacted him, the OPOA board of directors had voted to endorse Don Perata's candidacy for Mayor in 2010. He said the OPOA board had not decided how it was going to publicly announce its endorsement. He said he remembers calling Mr. Perata to invite him to the reception for Chief Batts. He said he told Mr. Perata that he might announce OPOA's endorsement at the event. Mr. Arotzarena said that he did not make the decision to announce OPOA's endorsement until just before the reception began. He said he recalls telling Mr. Vigilante that evening that he intended to announce OPOA's endorsement of Mr. Perata after Chief Batts was scheduled to speak. He recalls telling Mr. Vigilante that he would "keep it [the announcement] short." According to Mr. Arotzarena, Mr. Vigiliante said that he [Mr. Arotzarena] should also acknowledge that City Councilmember and Mayoral candidate Jean Quan was also in attendance at the event. Mr. Arotzarena said he told Mr. Vigilante that he did not want to turn the reception into a "political debate" and would not invite Ms. Quan to address the audience. Ms. Verdin said she learned about the pending announcement from Mr. Vigilante just before the event began.

Chief Batts spoke at the reception and promptly left. Mr. Arotzarena then addressed the audience. He said he told the audience how important it was to reduce crime in Oakland and that Oakland needed to elect candidates who would be committed to that purpose. He then announced that OPOA was endorsing Mr. Perata for Mayor. Ms. Drake contends in an email forwarded to Commission staff that Mr. Aroztarena "denounced the leadership of our city, talked about the low morale of the department and complained about the extension of the Negotiated Settlement Agreement (Consent Decree based on police misconduct), and how we now have a chance to 'turn [the city] around.'" ***Attachment 3.*** Mr. Arotzarena said that after Mr. Perata made a few

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[1] Mr. Arotzarena spoke with Commission staff voluntarily and in the presence of OPOA's attorney. His attorney told Commission staff that neither OPOA nor Mr. Arotzarena recognize the Commission's jurisdiction in this matter and that they reserve any and all rights to contest any further proceedings pursuant to this complaint.

remarks, Mr. Vigilante took the microphone to recognize Ms. Quan, who also briefly addressed the audience.

Mr. Arotzarena said that after he spoke several representatives from the Mayor's Office objected to his remarks regarding the Mayor's record in addressing public safety. The Mayor's Chief of Staff Marisol Lopez told Commission staff that she personally criticized Mr. Arotzarena for using the event for a political purpose.

Mr. Arotzarena said that Chief Batts had no knowledge of OPOA's endorsement. Mr. Arotzarena said he later spoke with Chief Batts who expressed his displeasure at using the event to announce support for a local candidate. Mr. Arotzarena said he also called City Administrator Dan Lindheim who later made the following statement to the Oakland Tribune:

> "It is a violation of city policy and state law to use city resources or city work time for political purposes. . .While any group has the right to endorse whomever they choose for political office, the Oakland Police Officers Association decision to co-opt a city-sponsored community event and use it for political purposes raises serious concerns."

Following the event, Mr. Vigilante sent a "Letter of Regret" to members of the City's neighborhood watch groups who were initially invited to the event. ***Attachment 4.*** The letter states that the OPOA endorsement "had not been discussed or agreed to as part of the meeting agenda, and neither the Neighborhood Watch Steering Committee nor City staff knew about it or had control over what occurred." Ms. Drake requests that OPOA refund the cost of City staff time and mailing expenses that were incurred to promote the event.

IV. ANALYSIS

A. Applicable Law And Commission Jurisdiction

There are several state laws relevant to Ms. Drake's complaint. Penal Code Section 424(a) makes it unlawful for any "city officer" to appropriate public money or resources, without authority of law, to his or her own use or to the use of another. Government Code §8314 makes it unlawful for local officers and employees to use public resources for campaign activities or other purposes which are not authorized by law. Government Code Section 54964 prohibits an officer, employee or consultant of a "local agency" from spending local agency funds to support or oppose the approval or rejection of a ballot measure or candidate. Both Penal Code §424 and Government Code §8314 provide an exemption from its provisions for the "incidental or minimal" use of public resources.

The Commission does not have the authority to determine violations of state law. City Charter Section 202(a) provides:

> *"There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with* ***City*** ***regulations and policies*** *intended to assure fairness, openness, honesty and integrity in City government including, Oakland's Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto, and it shall set City Councilmember compensation, as set forth herein."* (Emphasis added.)

City Charter Section 202(b)(5) provides:

> *"The City Council shall* ***by ordinance*** *prescribe the function, duties, powers, jurisdiction and terms of the members of the Commission, in accordance with this Article."* (Emphasis added.)

There is nothing in the City Charter, the Commission's own enabling ordinance (O.M.C. Chapter 2.24) or any of the ordinances which the Commission is authorized to enforce that authorizes the Commission to determine the relevant provisions of law raised by Ms. Drake's complaint. Nor does the Commission have the authority to compel the OPOA to reimburse the City for City resources used to promote the event as Ms. Drake requests. Pursuant to its General Complaint Procedures, however, the Executive Director may recommend that a complaint be referred to "another governmental or law enforcement agency better suited to address the issues." [GCP Section III(B)(1)(e)]

B. Use Of City Resources For A Political Purpose

Based on the above, there is no information to support a conclusion that Ms. Verdin knew that OPOA was going to use the event to announce its endorsement of Mr. Perata. As indicated, Mr. Arotzarena did not tell Mr. Vigilante about the announcement until just before the reception began. Ms. Verdin also did not know of Mr. Arotzarena's plans while working to promote the event. It also appears that Mr. Arotzarena did not know that City time and money had been used to promote the event. He claims to have believed that the reception was an "OPOA event" at which it was appropriate to announce the organization's endorsement. Under this set of facts, there does not appear to be a basis for the Commission to make a referral to any "governmental or law enforcement agency" for an alleged violation of state law.

V. STAFF RECOMMENDATION

Commission staff recommends that Complaint No. 09-13 be dismissed on grounds that the Commission has no jurisdiction or authority to determine alleged violations of state law nor does there appear to be a material issue that could be

referred to another governmental or law enforcement agency.

Respectfully submitted,

Daniel D. Purnell
Executive Director

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