Approved as to Form and Legality

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City Attorney

City of Oakland
Public Ethics Commission
December 7, 2009

In the Matter of)
) Complaint No. 08-13
) **SUPPLEMENTAL**

David Mix filed Complaint No. 08-13 on November 6, 2008. The Commission considered an initial staff report at its meeting of April 6, 2009.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 08-13 alleging that the Oakland Fire Prevention Bureau violated the Oakland Sunshine Ordinance and Public Records Act by failing to provide him with copies of records pertaining to the Oakland Wildfire Assessment District. A copy of the complaint and initial staff report is attached. ***Attachment 1.***

II. PROCEDURAL HISTORY

At its meeting of April 6, 2009, Mr. Mix told the Commission that there were additional records which he did not receive from the Fire Prevention Bureau that were responsive to his request. The Commission directed staff to work with Mr. Mix and Fire Bureau personnel to determine whether there were any additional records.

Commission staff met with Mr. Mix and Michelle Abney, the City Attorney's records coordinator, in July, 2009, to review this and other records requests Mr. Mix had made. At the meeting, Mr. Mix reiterated his request for records that could demonstrate whether an assessed parcel actually made the required payment. Mr. Mix had previously been provided with a listing of the parcels included in the Wildfire Assessment District and copies of assessment notices.

Commission staff contacted Pat Sierra of the Fire Prevention Bureau whose name appears as the "contact person" on the assessment notices. Ms. Sierra told Commission staff that she had subsequently met with Mr. Mix and explained to him 1) how the assessment notices were mailed to the parcel owners, 2) the process by which payment checks are received and logged into a speadsheet to indicate whether payment was received, 3) how the checks are then transferred to the City's Finance Department which logs the payments into the City's "Oracle" financial system and posts the revenue to the appropriate City

accounts. According to Ms. Sierra, neither the Fire Prevention Bureau nor the Finance Department makes copies of the actual checks submitted for payment. Ms. Sierra said that she explained to Mr. Mix how the City's own payments to the Fire Assessment District were accomplished by means of an "internal budget transfer" by which internal City accounts are debited and credited without an actual exchange of money. Ms. Sierra said that she provided to Mr. Mix copies of her spread sheets, the Oracle records and copies of the documents authorizing the internal budget transfers.

In a recent email to this and other City offices, Mr. Mix criticized the City's record keeping practices, in particular the City's failure to make and maintain copies of the checks submitted for payment of wildfire district assessments. ***Attachment 2.*** The Fire Prevention Bureau maintains that it is able to keep track of payments other than by retaining a copy of the check itself, and that these records have been provided to Mr. Mix. Additionally, the Fire Prevention Bureau is completing a required audit of the assessment district finances. A copy of that audit and the material audited will be provided to Mr. Mix, according to Donna Hom, chief financial officer for the Oakland Fire Department. Ms. Hom told Commission staff that there are no further documents responsive to Mr. Mix's request.

Ms. Sierra told Commission staff that the next round of annual assessments will include any delinquent assessments from prior years. Ms. Sierra told Commission staff that the Fire Prevention Bureau is not distinguishing between publicly and privately held parcels in the assessment notices. Any failure to pay, she said, will result in the assessment being referred to the City's collections unit.

III. STAFF RECOMMENDATION

Commission staff originally recommended dismissal of Complaint No. 08-13 based on Mr. Mix's representation that he had received from the Fire Prevention Bureau the records he requested. Upon further examination, Mr. Mix concluded there were additional records responsive to his request. Additional records were provided to Mr. Mix by Ms. Sierra, the City employee responsible for administering the wildfire assessment program. According to Ms. Hom, Mr. Mix will have received all the records pertaining to payments of wildfire assessments. Based on this representation, Commission staff recommends that Complaint No. 08-13 be dismissed.

Respectfully submitted,

Daniel D. Purnell
Executive Director