CITY OF OAKLAND
Public Ethics Commission

Andrew Wiener, *Chair*
Mario Andrews, *Vice-Chair*
Barbara Green-Ajufo
Jonathan Stanley
Alaric Degrafinried
Alex Paul
Vacancy

Daniel D. Purnell, Executive Director

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: March 2, 2009

RE: **A Staff Report And Action To Be Taken Regarding Approval Of The Commission's 2008 Annual Report**

Attached is a draft of the Commission's 2008 Annual Report. Upon Commission approval, Commission staff will circulate the report to members of the City Council, news media and other stakeholder groups, as well as post a copy to the Commission's website.

Commission staff recommends that the Commission approve the attached draft subject to any additional modifications that the Commission may choose to make.

Respectfully submitted,

Daniel D. Purnell
Executive Director

THE OAKLAND PUBLIC ETHICS COMMISSION
2008 ANNUAL REPORT

Composition

In November, 1996, the citizens of Oakland added Section 202 to the City Charter to establish the Oakland Public Ethics Commission. The Commission was created with the goal of ensuring "fairness, openness, honesty and integrity" in city government.

Membership on the Commission consists of seven Oakland residents. Three members are appointed by the Mayor and confirmed by the City Council. Four members are recruited and selected by the Commission itself. Each Commissioner may serve no more than one consecutive three-year term.

Jurisdiction And Duties

Oakland law requires the Commission to oversee compliance with Oakland's Campaign Reform Act (OCRA), conflict of interest code, code of ethics, Sunshine Ordinance, the Limited Public Financing Act, the Lobbyist Registration Act and Oakland's False Endorsement In Campaign Literature Act. Some of these ordinances grant the Commission specific powers of administration and enforcement. The citizens of Oakland have also entrusted the Commission with the authority to set the salaries for the Oakland City Council and to adjust those salaries up to five percent annually.

The Commission is authorized to conduct investigations, audits and public hearings, issue subpoenas, and impose fines and penalties to assist with its compliance responsibilities.

Organization, Staffing And Budget

The Commission currently maintains two standing committees: The Sunshine Committee, which deals with policy issues arising from the Oakland Sunshine Ordinance; and the Lobbyist Registration and Campaign Finance Committee, which devotes its time to matters involving Oakland's Lobbyist Registration Act and the Oakland Campaign Reform Act (OCRA). Both of these committees meet on an "as needed" basis.

The Commission is staffed by an Executive Director and Executive Assistant. Commission offices are located on the Fourth Floor of City Hall, One Frank Ogawa

Plaza, Oakland, CA, 94612. A website for the Commission can be accessed from www.oaklandnet.com. The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall. Its meetings are broadcast locally by KTOP, Oakland's cable television station.

In June, 2007, the Oakland City Council authorized a total budget of $291,452 for FY 2008-2009 for the Commission. The Office of the City Attorney continues to provide part-time legal support for Commission matters.

COMMISSION MEMBERS AND STAFF

The following persons served as Commissioners during 2008:

DOUGLAS LOVE **(Commission appointee)**
Term: 1/22/06 - 1/21/09

Douglas Love is an attorney specializing in healthcare related law and business litigation. Mr. Love currently serves as vice-president for Elan Pharmaceuticals, Inc. Mr. Love has previously represented several Fortune 500 companies in complex intellectual property and securities matters. He has participated in various volunteer activities, including serving on the Board of Directors of a catholic inner-city school and as a big brother in the Oakland chapter's Big Brother program. He also has served as a basketball coach at the high school level. Born and raised in Sacramento, Mr. Love is a product of Northern California's public school system. He earned his undergraduate degree from USC and his J.D. from the University of the Pacific, McGeorge School of Law.

JAY ASHFORD **(Mayoral appointee)**
Term: 1/22/06 - 1/21/09

Jay Ashford manages a group of systems engineers at Salesforce.com in San Francisco. He has been an advocate for campaign finance reform at the local, state and federal levels during the past seven years, and has served as a volunteer for the California Clean Money Campaign, California Common Cause, and the Berkeley Fair Elections Coalition. He earned his undergraduate degree in Political Economies of Industrial Societies from UC Berkeley.

MARIO ANDREWS **(Mayoral appointee)**
Term: 1/22/07 - 1/21/10

Mario Andrews has lived in Oakland since 1981. He is an attorney specializing in criminal law in the Bay Area. He served two and half terms as a Commissioner with the Oakland Citizens Police Review Board where he was the Commission Chair for 2005. He also was on the Board of Directors for the East Oakland Youth Development Center from 1996 to 2005 where he was the Chair in 1999. Mr. Andrews helped start and has been on the Board of Directors for Scholar Athletes, Inc. a non-profit sports organization since 1992. Scholar Athletes, Inc. sponsors "Slam-N-Jam" Basketball AAU teams, leagues and tournaments and has sent several dozens students to play Division I College basketball and a few to the NBA. He has a wide range of experience having been an Assistant District Attorney, investigator, teacher and police officer.

ANDREW WIENER **(Commission appointee)**
Term: 1/22/07 - 1/21/10

Andrew Wiener is a trial lawyer and mediator whose private practice primarily consists of employment and real estate litigation. He is an arbitrator, mediator or neutral on various ADR panels, including the United States District Court ADR Program, Early Settlement Program of the San Francisco Superior Court, Mediation Services Program and Fee Dispute Program of the Bar Association of San Francisco, and the Homeless Shelter Arbitration Project of the San Francisco Department of Human Services. He earned his undergraduate degree at Brown University and his law degree from the University of Pacific's McGeorge School of Law.

BARBARA GREEN-AJUFO **(Commission appointee)**
Term: 1/22/08 - 1/21/11

Barbara Green-Ajufo has been a resident of Oakland since 1964. She is an epidemiologist who has worked in public health for more than 20 years at the local and federal levels. Ms. Green-Ajufo currently works for the Alameda County Public Health Department managing the HIV/AIDS Epi Surveillance Unit, Alcohol and Drug Program and HIV/AIDS-related special epidemiologic projects. In these roles, she ensures accurate, timely reporting of HIV and AIDS cases to the State Office of AIDS, ensures HIV and HCV testing, counsels and refers individuals to alcohol and drug treatment facilities, and conducts community-based research to improve HIV and sexually transmitted disease rates. Ms. Green-Ajufo has a long-standing commitment to improving the health of women and infants. In 1995, she served as an Epidemic Intelligence Service (EIS) Officer at the Centers for Disease Control and Prevention (CDC), Atlanta, GA. Her research there focused on the roles of race, racial-esteem and racism on reproductive health outcomes and the role of race/ethnic-specific research in explaining the gap in disease disparity. She has worked as an adjunct professor, published a number of articles and presented at a number of national and international conferences on a range of topics. Ms. Green-Ajufo previously served on Berkeley Women's Health Collective Board and is a current board member of Youth Cultural Learning Center. She received a B.S. in Biological Sciences from the University of California, Irvine and has two public health degrees from the University of California, Berkeley: a Masters of Public Health (MPH) in Health Planning, Policy, and Administration and a Doctorate of Public Health (DrPH) in Epidemiology. Outside of the office, she enjoys traveling and experiencing the cultures of the world with her son and friends.

JONATHAN STANLEY **(Commission appointee)**
Term: 1/22/08 - 1/21/11

Jon Stanley currently serves as the Executive Director of the San Francisco Bay Area Water Emergency Transportation Authority (WETA). He is the former CEO of the Aircraft Carrier Hornet Foundation which operates the USS Hornet Museum in Alameda. He is a registered professional engineer and has worked for several Bay Area engineering and software firms over the past 25 years prior to joining the Museum. His past project assignments were located all across the United States and Canada. He also spent three years as a staff member of the Lawrence Berkeley Laboratory. Mr. Stanley earned his undergraduate degree at the U.S. Naval Academy followed by service as an officer in the nuclear submarine force. He also obtained a graduate degree in Nuclear Engineering from UC Berkeley. He is currently a “Blue and Gold Officer” for the Naval Academy, providing admissions counseling for potential applicants. Mr. Stanley has lived in Oakland for 28 years.

ALARIC DEGRAFINRIED **(Mayoral appointee)**
Term: 1/22/08 - 1/21/11

Alaric Degrafinried is a Contract Compliance Officer for the City & County of San Francisco’s Human Rights Commission (HRC). In this role, Mr. Degrafinried is responsible for implementing, monitoring, and enforcing San Francisco’s Small, Local Business Enterprise (LBE) program which forbids discrimination in contracting and mandates that economically disadvantaged businesses located within San Francisco are eligible for certification, bid/rating discounts and subcontracting opportunities when bidding on City contracts. Prior to joining HRC, Mr. Degrafinried worked as a Finance Manager for General Electric (GE), followed by two-year assignment in Haiti as a Peace Corps Volunteer. He later served a two-year Equal Justice Works Fellowship with the National Housing Law Project (NHLP) in Oakland. Mr. Degrafinried earned his undergraduate degree at the University of Colorado and his law degree from the Santa Clara University School of Law.

Commission Staff

DANIEL D. PURNELL
EXECUTIVE DIRECTOR

Daniel Purnell was hired as the Executive Director to the Oakland Public Ethics Commission in April, 2000. He is a former civil litigation attorney with a background in employment, contract, land use and environmental law. Prior to joining the California Bar, Mr. Purnell served as manager of media relations for Pacific Telesis Group and Bechtel Group, Inc. Mr. Purnell is a former Mayor and Councilmember from the City of Pinole, California.

TAMIKA THOMAS
EXECUTIVE ASSISTANT

Tamika Thomas was hired in January, 2007, as Executive Assistant to the Public Ethics Commission. She comes to the Commission with a background as a paralegal assistant for large litigation firms. Ms. Thomas was recently admitted to the California State Bar after completing her law degree at John F. Kennedy University School of Law's night program.

SIGNIFICANT ACTIVITIES DURING 2008

Lobbyist Registration

In June, 2002, the City Council adopted the "Oakland Lobbyist Registration Act." This Act requires all professional lobbyists to register with the City before attempting to influence a local governmental action on behalf of another person. It requires paid, professional lobbyists to file initial and quarterly reports with the City Clerk. The reports require disclosure of a lobbyist's clients or employer, as well as the subject of any lobbying. The Commission is responsible for administering and enforcing the Act.

As of December 31, 2008, 31 lobbyists had registered with the City representing a total of 35 registered clients. Commission staff maintains on the Commission's website a list of registered lobbyists and their clients. Quarterly reports are also posted on-line to disclose: a) the lobbyists' clients; b) the subject of governmental action lobbied upon; c) who was lobbied; 4) the client's position on the item being lobbied; 5) campaign contributions solicited by a lobbyist; and 6) employment opportunities arranged by a lobbyist.

In conjunction with its duties under the Act, the Commission publishes and widely distributes "A Guide To Lobbyist Registration" to inform the regulated community about its duties under the Act.

During 2008, the Commission's Lobbyist Registration and Campaign Finance Committee recommended to the full Commission that two additional exceptions from the definition of "lobbyist" be incorporated into the Act: One pertaining to representatives of non-profit entities which perform a public function or service on City-owned property, and another pertaining to persons whose only communication with City officials is to speak at a noticed public meeting. The Commission voted to recommend these proposed exceptions to the City Council for consideration in 2009.

Limited Public Financing Act

The Oakland City Council adopted the Limited Public Financing Act in December, 1999. The highlights of the Public Matching Fund program are:

- The City will match the first $100 of every qualified campaign contribution received and deposited within 180 days before the election. Eligible contributions must originate from donors whose residence or business is located within the City of Oakland. The maximum amount a candidate can receive is 30 percent of Oakland's voluntary expenditure ceiling for the office being sought.

- Candidates must first raise in Oakland campaign contributions an amount at least equal to 5 percent of the voluntary expenditure ceiling for the office being sought to become eligible to receive public matching funds. Once eligible, candidates are entitled to receive accelerated, lump-sum grants of matching funds.

- Matching funds are currently available only to candidates for district City Council seats.

The Commission entered 2008 with a balance of $257,320 in the Election Campaign Fund. The nomination period for the June, 2008, election closed on March 10, 2008, with a total of eleven candidates ultimately certified to run for City Council seats in Districts One, Three, Five And Seven. Because the total amount that all candidates could potentially receive under the program exceeded the existing balance in the Election Campaign Fund, the Commission voted at its April 7, 2008, meeting to exercise its authority to "pro rate" the available amount of funds to candidates, with an amount reserved for administrative expenses. The Commission's proration of funds provided a total of $19,040 available to each potentially eligible candidate in the June, 2008, election.

A total of three candidates applied for, and were found eligible to receive, public matching funds. Total matching funds disbursed during the June, 2008 election was $30,743. The following chart summarizes matching funds received by candidates participating in the program during the June, 2008, election:

Candidate	Total Public Matching Funds Rec'd	Percent Of Matching Funds Available
Nancy Nadel, D3	$15,643	82%
Sean Sullivan, D3	$ 9,839	52%
Clifford Gilmore, D7	$5,261	28%

Commission staff did not experience any significant difficulties in administering the Act during the election. Staff prepared and distributed a detailed package explaining how to submit applications for matching funds and conducted training sessions for prospective candidates. The Office of the City Auditor has commenced compliance reviews of those candidates receiving matching funds in the 2008 election.

To help identify what influenced candidates whether to participate in the June, 2008, matching fund program, Commission staff developed and mailed to all candidates and treasurers a survey. The first part of the survey was directed to candidates and treasurers who did participate in the matching fund program. The second part was directed to all candidates and included questions pertaining to the

Oakland Campaign Reform Act (OCRA) as well as the limited public financing program. While response to the survey was limited, the results from candidates and treasurers who participated in the program are summarized as follows:

- The overall effect of the program on a candidate's ability to run an effective campaign was generally positive. The reasons provided were 1) less time devoted to fundraising, and 2) being able to fund voter outreach materials they would not otherwise have been able to afford.

- Training materials and staff assistance was described as being "helpful" to "very helpful." All participants found the process for obtaining matching funds to be "about right" for the monetary benefit provided.

The results from all candidates and treasurers (regardless of their participation in the program) are summarized as follows:

- Most candidates held more than ten fundraising events during the course of the campaign and participated in approximately ten debates or forums in which other candidates were present.

- Survey respondents were evenly split on whether the voluntary expenditure ceilings and permissible contribution amounts were either "too low" or "about right".

- Survey respondents reported that independent expenditures were made on behalf of their opponent but did not believe the independent expenditures had a significant effect on the outcome of the election.

- Responses were mixed over what parts of the matching fund program should be changed.

The Commission's Lobbyist Registration And Campaign Finance Committee is expected to review ways of improving candidate participation during 2009.

In December, 2008, the Oakland City Council adopted an ordinance transferring the sum of $226,000 from the Election Campaign Account into the City's general fund due to a projected $42 million deficit. The transfer effectively "zeroed-out" the Election Campaign Account. Members of the City Council assured Commission representatives that the money would be restored during the 2009-2011 budget process for use in the 2010 election cycle.

Oakland Campaign Reform Act (OCRA)

The Oakland Campaign Reform Act (OCRA) regulates campaign contributions and expenditures in connection with local elections. It establishes voluntary expenditure ceilings for campaigns for local office and regulates the amount persons may contribute to a local candidate. Contribution amounts depend on whether the candidate has accepted the voluntary expenditure ceilings. OCRA also regulates campaign contributions by contractors who are in the process of negotiating certain contracts with the City.

The Commission continues to publish and distribute its "Guide To The Oakland Campaign Reform Act," a section-by-section analysis for political candidates, treasurers and other interested parties. This Guide is now part of the package of materials that candidates receive when they take out nomination papers to run for Oakland office. Commission staff devotes considerable time to responding to inquiries from candidates, contributors and the public regarding the ordinance.

During 2008, the Commission's Lobbyist Registration and Campaign Finance Committee held a series of special meetings to review a section-by-section analysis of OCRA completed by Commission staff. The Committee gave specific direction to staff to begin preparing proposed amendments to the Act which the full Commission is expected to review during 2009.

Oakland Sunshine Ordinance

The Oakland Sunshine Ordinance is a local ordinance that was enacted in 1997 to supplement the California Brown Act and Public Records Act. The goal of the Sunshine Ordinance is to provide greater access to Oakland meetings and records.

During 2008, the Commission's Sunshine Committee convened meetings to discuss and receive public comment on several potential policy areas pertaining to the Sunshine Ordinance. Those areas include expanded meeting disclosure for certain non-profit organizations, mandatory open government training for key City employees and officials, remedies for Sunshine Ordinance violations, and the development of a City-wide record retention policy.

The Committee is expected to consider specific proposals for amending the Sunshine Ordinance during 2009.

Complaint Administration

Complaints are administered pursuant to the Commission's General Complaint Procedures. Each formal complaint is reviewed by the Executive Director who conducts a preliminary investigation and produces a staff report. Each report is considered during an open public meeting at which time the Commission decides

whether to dismiss the complaint, direct further investigation, explore settlement with the respondent, or proceed to a formal administrative hearing on the merits of the complaint.

During 2008, the Commission received a total of 20 formal complaints. This nine complaints filed in 2007, 23 complaints filed in 2006, 11 complaints filed in 2005, and nine complaints filed in 2004. Of the 20 complaints filed with the Commission in 2008, there were 12 alleged violations of the Sunshine Ordinance, two alleged violations of the Lobbyist Registration Act, five alleged violation of the City's conflict of interest code, one alleged violation of the City Council's Code of Ethics. Nine complaints filed in 2008 have been settled or dismissed without further action; eleven are pending Commission review at the time of this writing.

Compensation For City Council Members

In March, 2004, Oakland voters adopted Measure P by a vote margin of 70 to 30 percent. Oakland City Charter Section 202(c) now authorizes the Public Ethics Commission to annually adjust City Council salaries "by the increase in the consumer price index over the preceding year." The Commission may also adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any annual increase beyond five percent must be approved by the voters.

At its regular meeting of June 2, 2008, the Commission adopted a resolution which approved a 2.9 percent salary increase for the Office of City Councilmember effective as of the first pay period of FY 2008-2009. The increase was based on the change in the consumer price index over the preceding year.

Pursuant to Measure P, the Commission will undertake its required review of City Council salaries again in 2009.

Ethics Training

In 2005, the Governor signed into law AB 1234. Among the law's provisions is a requirement that all local agencies that provide compensation, salary, or stipends to, or reimburse the expenses of, members of a legislative body provide ethics training to those members by January 1, 2007, and every two years thereafter.

Specifically, AB 1234 requires local agency officials to receive at least two hours of training in "general ethics principles and ethics laws" relevant to his or her public service. The "ethics laws" which must be covered include (but are not limited to):

1) laws relating to personal financial gain by public servants, including laws prohibiting bribery and conflict of interest laws;

2) laws relating to claiming the "prerequisites of office," including gift and travel restrictions, use of public resources, gifts of public funds, mass mailings and acceptance of services from transportation companies;

3) "government transparency" laws, such as financial interest disclosure and open government laws; and,

4) laws relating to "fair processes", such as bias prohibition, due process requirements, incompatible offices, competitive bidding, and nepotism.

The law also requires instruction in the field of "general ethics principles," which is not defined in AB 1234. A local agency may also provide training in "local ethics policies" as part of its curricula.

Because of this state-mandated training requirement, Commission staff developed and produced a training program for all of Oakland's elected and appointed officials subject to the new law. Commission staff continues to present this material to members of Oakland's many boards and commissions. Commission staff also participates in regular training sessions for City staff on their obligations under the City's Sunshine Ordinance.

Education, Public Outreach And Affiliations

The Commission currently maintains an active membership in COGEL, (Council on Governmental Ethics Laws), a national organization of local, state and federal ethics agencies.

The Commission's webpage, accessed through "oaklandnet.com", offers links to all legislation in the Commission's jurisdiction, past and current agendas with related materials, Commission publications, public matching funds forms, lobbyist registration forms, information on the Commissioners, and notification of recruitment for vacancies when they occur.

The Commission maintains and regularly distributes its publications of:

- How To Notice A Public Meeting And Respond To Requests For Public Information
- A Guide To Lobbyist Registration
- How To Apply For Limited Public Matching Funds
- A Guide To Oakland's Campaign Reform Act
- A Handbook For Members Of Oakland Boards And Commissions