

CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: June 2, 2003

RE: A Staff Report And Action To Be Taken Regarding Commission Compliance Procedures Under OCRA

I. BACKGROUND

One of the goals identified at the Commission's April 5, 2003, retreat was for the Commission to take a more proactive approach to ensure compliance with the laws over which the Commission has enforcement responsibilities.

The Commission noted that its current compliance responsibilities are largely "complaint driven." This was understood to mean that the Commission typically exercises its enforcement authority only when a formal complaint has been filed with the Commission. Several Commissioners noted disadvantages with this process, among them the potential for selective enforcement and bias. Commission staff also noted that the number and timing of complaints can have a temporary effect on staff workload and the pursuit of other Commission priorities.

As a result of the discussion, the Commission directed staff to develop a more systematic approach towards overseeing the laws over which the Commission has jurisdiction. This memorandum addresses some policies the Commission may wish to consider for compliance review under the Oakland Campaign Reform Act (OCRA).

II. DISCUSSION

A. Current Complaint Administration

Complaints are currently administered through the Commission's existing General Complaint Procedures. Under Commission procedures, any member of the

public, City employee, or the Commission itself may initiate a formal complaint. Once a complaint is filed, Commission staff undertakes a preliminary review of the allegations and presents a staff report to the Commission. Commission staff may recommend that a complaint be dismissed for one of the various reasons stated in the procedures, or that the complaint be referred to the Commission for a formal hearing and determination.

One of the unique features of the Commission's General Complaint Procedures is the provision for remediation of complaints (see Section IV). That provision states that for any complaint in which the amount at issue totals \$1,500 or less per violation, or \$5,000 in the aggregate, (or for any violation of the Sunshine Ordinance), the responding party shall have thirty days to correct any alleged violation. After demonstrating to the satisfaction of the Commission Chair that the alleged violation has been addressed, the complaint shall be dismissed.

In addition to investigating complaints, Commission staff currently monitors compliance for several laws over which the Commission has jurisdiction. Commission staff regularly reviews filings under the City's Lobbyist Registration Ordinance to ensure registered lobbyists file timely quarterly activity reports, which the Commission posts to its website and makes available for public inspection. During the March and November, 2002, elections, Commission staff reviewed candidate campaign statements as part of its administration of the Limited Public Financing Ordinance.

Commission staff anticipates it will be able to conduct a limited, yet more systematic, review of candidate campaign statements in the future to ensure compliance with the significant provisions of OCRA.

III. PROPOSED REVIEW

Beginning with the semi-annual campaign statements for the period ending June 30, 2003, Commission staff will review Oakland candidate statements to ensure compliance with the following provisions of OCRA:

- Reported contributions comply with the maximum amounts established under Sections 3.12.050 and 3.12.060 (and as adjusted for inflation).
- The name, address, occupation and employer is listed for each itemized contributor pursuant to Section 3.12.130.
- Reported expenditures do not exceed the voluntary expenditure limitations established pursuant to Section 3.12.200 for those candidates agreeing to the limitations.

In the event the contribution or expenditure limitations are reportedly exceeded, Commission staff proposes that a letter be sent to the candidate notifying him or her of the apparent violation. If the amounts at issue are within those stated under the remediation provisions of the General Complaint Procedures, or if contributor information

is omitted, Commission staff will recommend that the candidate take steps to cure the apparent violation without further action by the Commission. If the candidates cannot or will not respond to a request for remediation, or if the amounts exceed the \$1,500/\$5,000 remediation limits, Commission staff will agendaize the matter to request the Commission consider initiating a formal complaint.

It is hoped that this procedure will improve an already high degree of compliance with OCRA's provisions and reduce the need for formal complaint proceedings. Nothing in the proposed review policy reduces or restricts a person's ability to file complaints with the Commission for alleged violations.

Commission staff is aware that there are other OCRA provisions not covered under the above review policy. Limitations on staff resources prevent a more comprehensive proposal at this time, although it may be possible to add areas over time. One area that requires attention is the current restriction on contractor contributions under OCRA Section 3.12.140. This section essentially provides that no person proposing to do business with the City, Redevelopment Agency or School Board under certain contracts may contribute to an Oakland candidate between the time negotiations commence and 180 days after the contract has been executed.

For reasons beyond the scope of this memorandum, identifying contractors who may be covered under this provision is highly impractical. Commission staff hopes to address this issue at greater length in a future memorandum. It ultimately may be necessary for the City Council to amend the contractor prohibition to make its provisions easier to enforce, administer and obey. In the meantime, Commission staff has been developing a list of contractors whose proposed contracts have been agendaized for City Council approval, a key element in the contractor prohibition. This list may serve to advise candidates to make further inquiries regarding any contribution received from these sources. In addition, Commission staff is always willing to assist local candidates to determine whether a contractor is within a period of negotiation with the City.

IV. STAFF RECOMMENDATION

Commission staff recommends the Commission take public comment and provide any further direction to staff regarding the proposed review procedure.

Respectfully submitted,

Daniel D. Purnell
Executive Director