

CITY OF OAKLAND
Public Ethics Commission

Caryn Bortnick, *Chair*
Sukey Wilder, *Vice-Chair*
Ralph Kanz
Andrew Wiener
Fredericka (Ricka) L. White
Curtis Below
Douglas Love



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: February 6, 2006

RE: A Report And Action To Be Taken Regarding Approval Of The
Commission's Annual Report For 2005

Every year the Commission drafts and distributes an Annual Report that summarizes the significant activities and policy developments the Commission undertakes.

Attached for the Commission's review and comment is a draft Annual Report. The Commission is asked to approve the attached draft subject to any material comments or edits the Commission may wish to make.

Respectfully submitted,

Daniel D. Purnell
Executive Director

THE OAKLAND PUBLIC ETHICS COMMISSION 2005 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

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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, 2005, the Oakland City Council authorized a total budget of \$267,776 for FY 2005-2006 and \$279,848 for FY 2006-2007 for the Commission. As part of the citywide effort to reduce administrative costs, these amounts reflect a significant reduction in the Commission's operation and maintenance budget from the previous budget cycle. 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 2005:

PETER REINKE (Commission appointee)
Term: 4/7/02-1/21/05

Peter Reinke teaches American History and Government at the Head-Royce School in Oakland. He also serves as a director for the Heads Up Alliance, an organization that works with low-income youth of color from urban schools, and for the Clausen House, an organization that provides services to 170 developmentally disabled adults.

LILY MAYUMI KIMURA (Mayoral appointee)
Term: 1/22/02-1/21/05

Lily Mayumi Kimura has been in private law practice in the Bay Area since 1976. She specializes in family law litigation, civil litigation, and criminal misdemeanors. She is a past president of the Alameda County Bar Association and was the first Asian American female to serve in that capacity. She is an active lecturer for the California Bar, the American Bar Association and other specialty bar associations on a wide range of topics including legal ethics. Ms. Kimura earned her undergraduate degree at UC Berkeley and her J.D. at Hastings College of the Law.

ALDEN MUDGE (Commission appointee)
Term: 3/24/02-1/21/05

Alden Mudge is the director of operations and communications at the California Council for the Humanities, the independent affiliate of the National Endowment for the Humanities. Mr. Mudge co-chairs the Bay Area study section of the Commonwealth Club of California and serves on its program committee and California Book Awards jury.

KATHRYN KASCH (Commission appointee)
Term: 1/22/03-1/21/06

Kathryn Kasch is an independent consultant specializing in low-income housing development and finance. Ms. Kasch is an Oakland native who received a B.A. in Sociology from Smith College and a Master's degree in City Planning from Rutgers. She worked in government and non-profit housing agencies in Boston before returning to Oakland in 1991. Ms. Kasch has served on the Oakland Rent Board and as an alternate on the East Bay Conversion and Reinvestment Commission. She currently serves on the boards of Oakland Community Housing, Inc. and the YWCA of Oakland.

ANDREW WIENER (Mayoral appointee)
Term: 1/22/03-1/21/06

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Andrew Wiener is a trial lawyer and mediator, whose private practice focuses on employment and real estate matters. He also volunteers as an arbitrator and mediator for various public ADR programs, including the Early Settlement Program and Voluntary Early Mediation Program of the San Francisco Superior Court, the Fee Dispute Program of the Bar Association of San Francisco, and the Homeless Shelter Arbitration Project of the San Francisco Department of Human Services (for which he received a Certificate of Honor from the San Francisco Board of Supervisors, in 1998). He is also a member of the Board of Directors of the Building Education Center, a Berkeley-based non-profit organization. He earned his undergraduate degree at Brown University, and his law degree from McGeorge School of Law. A long-time soccer enthusiast, Mr. Wiener has been a coach of both boys and girls recreational and competitive youth soccer teams in the Oakland, Rockridge, Piedmont and Montclair Soccer Clubs of the Jack London Youth Soccer League, and is a licensed soccer referee.

RALPH KANZ

(Commission appointee)

Term: 1/22/04-1/21/07

Ralph Kanz has worked as a commercial fisherman for the past fifteen years, operating his fishing vessel out of San Francisco. A third generation Oakland resident Mr. Kanz's recent work has included public records research and the wholesale seafood business. He served on the board of the Friends of Sausal Creek, a group dedicated to restoring creek habitat and improving water quality in Sausal Creek which flows through Joaquin Miller and Dimond Parks. Mr. Kanz has worked on local political campaigns and been active in community affairs.

CARYN BORTNICK

(Mayoral appointee)

Term: 1/22/04-1/21/07

Caryn Bortnick is an attorney specializing in business and employment matters. Ms. Bortnick has represented diverse public and private sector clients, as well as non-profit organizations, including local governments and their agencies, special assessment districts, health care institutions, and educational organizations. Ms. Bortnick has worked with organizations to develop conflict of interest and standard of conduct policies. Prior to attending law school, Ms. Bortnick worked in financial planning, and managed investor relations for limited partnerships. Ms. Bortnick is a Coro Community Fellow. Presently, she is working to develop farmers' markets in underserved neighborhoods.

FREDERICKA (RICKA) L. WHITE

(Commission appointee)

Term: 1/22/05-1/21/08

Fredericka (Ricka) L. White, an Oakland native, currently works as a Emergency Room Medical (Clinical) Social Worker at Alta Bates Summit Medical Center – Ashby Campus in

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Berkeley, CA and a Sexual Assault Advocate for the Highland Sexual Assault Center in Oakland, CA. In addition, Ms. White is the Founder of FLW Living Well Services a sole proprietor consulting business based in Oakland, CA. Being a professionally trained Social Worker, Ricka has the skills of an administrator, community organizer, and planner. Ms. White serves as the Region C Director of the National Association of Social Workers (NASW), Board Member of the Child Abuse Listening, Interviewing and Coordination (CALICO) Center, and Board Member of the Ethnic Health Institute's End of Life Project. She is also a member of the Bay Area Association of Black Social Workers and a proud Diamond Life Member of Delta Sigma Theta Sorority, Inc. a nationally recognized organization that provides public service to the community. A graduate of San Francisco State University, Ricka received her BA in Psychology and a Master in Social Work with an emphasis in Administration and Planning.

SUKEY WILDER

(Commission appointee)

Term: 1/22/05-1/21/08

Sukey Wilder is a technical project manager who has managed computer projects in Bay Area corporations for several years. Before becoming a project manager, she taught in public high schools and co-founded a video production company. A fifth generation Oakland resident, Ms Wilder has lived in various Oakland neighborhoods (as well as the East Coast, Columbia, and Japan). She has been active in her Glenview neighborhood on city council redistricting and tree planting. Ms Wilder has been serving the community through the League of Women Voters since 1988, has held many board positions in Oakland, and is now active in the League on civil liberties issues.

CURTIS BELOW

(Mayoral appointee)

Term: 1/22/05-1/21/08

Curtis Below is a businessman working at a successful Berkeley-based software company he helped co-found. Additionally, Mr. Below has served as a legislative assistant in the California State Assembly, including time spent as a Jesse Marvin Unruh Assembly Fellow, and worked as a research analyst for Environmental Defense, specializing on environmental health risks. Mr. Below is also actively involved with the nonprofit Businesses United in Investing, Lending and Development (BUILD), mentoring students from the Lionel Wilson College Preparatory Academy. A product of California public schools, Mr. Below earned his undergraduate degree from UCLA and both a Masters of Public Policy and a Masters of Public Health from UC Berkeley.

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

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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.

**JUDITH SILVERMAN
EXECUTIVE ASSISTANT**

Ms. Silverman has been working with the Commission since October, 1999. She served as interim executive director until April, 2000. She comes to the Commission with an extensive background in law office administration and superior computer skills.

SIGNIFICANT ACTIVITIES DURING 2005

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.

The Sunshine Ordinance underwent several significant amendments during 2005. The initial motivation for amending the ordinance originated with a request from the Office of the City Clerk to re-define what constitutes a "software or hardware failure" for purposes of excusing some of the ordinance's deadlines for providing public notice of meetings. This proposal was combined with another proposal from the Office of the City Attorney to require the City's executive officers to provide "agenda related materials" to the City Clerk in time to meet agenda filing and posting deadlines. (A prior complaint brought before the Commission in 2004 raised the issue of whether the ordinance's filing deadlines applied to the City's executive officers.) In reviewing the proposals, the Commission added provisions re-defining what constitutes "agenda related materials" and provided a remedy in the event the City's executive officers failed to timely file their agenda related materials.

While the amendments were pending consideration before the City Council's Rules and Legislation Committee, an additional series of amendments were offered that exempted the City Auditor from the ordinance's filing deadlines and made significant changes in 1) the definition of what constitutes a "public meeting", 2) the public notice requirements for certain special meetings, and 3) the circumstances in which the ten-day City Council agenda can be amended or "supplemented." All the above-described amendments were adopted by the City Council and became effective in June, 2005.

In October, 2005, the Commission's Sunshine Committee considered a proposal from the Office of the City Attorney and a report from Commission staff pertaining to the application of the Sunshine Ordinance to local non-profit corporations. The Committee will convene in early 2006 with the goal of developing additional policy amendments pertaining to this subject.

The Commission continues to distribute its very popular guide for City employees, "How To Notice A Public Meeting And Respond To Requests For Public Information" widely throughout City government.

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

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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 also continues to systematically review of all candidate campaign statements to ensure compliance with OCRA. The purpose of this review is to encourage consistent enforcement and to reduce the number of complaints filed with the Commission. Commission staff devotes considerable time to responding to inquiries from candidates, contributors and the public regarding the ordinance.

During 2005, the Commission's Lobbyist Registration and Campaign Finance Committee held a number of meetings to review a section-by-section analysis of OCRA completed by Commission staff. The Committee will continue its work during 2006 with a goal of developing specific recommendations for amending OCRA.

Limited Public Financing Act

The Oakland City Council adopted the Limited Public Financing Act in December, 1999. The Act provides for the City to match the first \$100 of specified campaign contributions received prior to the election. Candidates must have received contributions totaling at least five percent of their voluntary campaign expenditure limit in order to qualify for the program.

The Act underwent a series of significant revisions during 2005. Based on a series of recommendations developed by the Commission during 2004, the Act now contains the following new provisions:

- 1) Matching funds are available only to candidates for district City Council seats. Candidates for School Board will become eligible only after the state terminates its administration of the Oakland Unified School District
- 2) The maximum amount a candidate may receive in matching funds was raised from 15 percent of the candidate's voluntary expenditure ceiling to 30 percent
- 3) Only contributions whose sources are located within the City of Oakland will be eligible for matching funds
- 4) Candidates are entitled to receive lump-sum payments of matching funds upon reaching specific contribution thresholds

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- 5) Run-off candidates may receive a single lump-sum grant equaling 5 percent of their voluntary expenditure ceiling but may not otherwise qualify for matching funds
- 6) Candidates must accurately and completely file campaign statements as a condition of eligibility
- 7) Contributions in the form of cash, money orders and bank checks will no longer be matched
- 8) Candidates are required to return any matching funds that were based on a contribution that was later returned to the donor

The Act was also implemented during the May, 2005, special election in City Council District Two. Called to fill the seat vacated by City Councilmember Danny Wan, the special election triggered a supplemental budget request to provide funding for the matching fund program. The City Council initially allocated \$50,000 to fund the matching fund program based on anticipated candidate participation in the special election. Shortly after the allocation was approved, a total of nine candidates qualified to have their names placed on the ballot. Because of the large number of potentially eligible candidates, Commission staff requested an additional allocation, which the City Council denied. Under the matching fund program regulations, the Commission was required to "pro rate" the amount of money available to each potentially eligible candidate. At its meeting of March 7, 2005, the Commission determined that each candidate would be entitled to receive \$5,139, after first deducting 7.5 percent for permissible administrative expenses.

A total of six candidates applied for, and were found eligible to receive, public matching funds. Total matching funds disbursed during the District Two special election was \$28,347.00. The following chart summarizes matching funds received by candidates participating in the program during the May, 2005, election:

Candidate	Total Public Matching Funds Rec'd	Percent Of Matching Funds Available
Aimee Allison	\$5,139	100%
Paul Garrison	\$5,139	100%
Justin Horner	\$5,139	100%
Peggy Moore	\$4,991	97%
David Kakishiba	\$5,139	100%
Todd Plate	\$2,800	54%

Commission staff reviewed and processed approximately 500 checks during the special election. Review and distribution of matching fund checks during the special election were all accomplished within ten days as specified under the Act.

Commission staff experienced few administrative difficulties during the election. For the most part, candidates submitted properly documented applications for matching funds. All participating candidates completed a required training session on how to apply for

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matching funds. Commission staff also prepared and distributed a detailed package explaining how to submit applications for matching funds.

In June, 2005, the City Council authorized a total of \$222,750 to fund the matching fund program during the municipal election in June, 2006. Commission staff will again administer the program and provide a public report to the Commission following the election.

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 Commission. The reports require disclosure of a lobbyist's clients or employer, as well as the subject and frequency of any lobbying. The Commission is responsible for administering and enforcing the Act.

As of December 31, 2005, 32 lobbyists had registered with the City. 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; and, 4) the client's position on the item being lobbied.

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

One of the Commission's major policy initiatives during 2005 was a review of the Lobbyist Registration Act and the submission of a number of recommendations to amend the Act. Initiated by the Commission's Lobbyist Registration and Campaign Finance Committee, the Committee reviewed a number of other local lobbying laws and developed a number of specific amendments whose major provisions would provide:

- 1) a restriction on Oakland elected officials from acting as local governmental lobbyists for one-year after leaving office
- 2) a restriction on gifts and other forms of compensation by lobbyists to local candidates, elected officials, certain City staff, and members of their immediate families
- 3) quarterly disclosure of a lobbyist's fundraising activities
- 4) quarterly disclosure of employment relationships between lobbyists and local candidates, elected officials, certain City staff, and members of their immediate families

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- 5) the identification of the person(s) a lobbyist seeks to influence
- 6) an exemption from lobbyist registration for activities that include: a) communications involving employee contracts and agreements; and, b) responses to bids and RFP's
- 7) misdemeanor prosecution for knowing and willful violations of the Act and a one-year practice ban upon conviction

The Commission submitted the above amendments to the City Council's Rules and Legislation Committee for consideration in early 2005. Because of the attention demanded of the limited public financing program in the District Two special election, the proposed amendments were withdrawn and re-submitted in September, 2005. The Rules and Legislation Committee offered a series of modifications to the proposed amendments which the Commission began to review in November, 2005. The Commission is expected to comment upon the Rules Committee's proposed modifications and re-submit some version of its initial recommendations in early 2006.

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 2005, the Commission received a total of 11 formal complaints. This compares with nine complaints filed in 2004, 17 complaints filed in 2003, 19 complaints filed in 2002, and 43 complaints filed in 2001. Of the 11 complaints filed with the Commission in 2005, ten alleged violations of the Sunshine Ordinance and one alleged violation of the City Council's Code of Conduct.

All but one of the complaints filed in 2005 have been settled or dismissed without further action.

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.

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Previously, City Charter section 202(c) required the Public Ethics Commission to review and adjust the compensation for City Councilmembers in odd-numbered years. The Commission could increase City Council salaries by no more than ten percent over the adjusted base salary, but any percentage increase had to be approved by a public vote.

At its regular meeting of June 6, 2005, the Commission adopted a resolution which approved a 2.1 percent salary increase for City Councilmembers. 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 2006.

Ethics Training

During 2005, Commission staff presented a class as part of Oakland's Citywide Training program entitled, "A Public Employee's Guide To Ethical Decision-Making." The class introduces ethical and legal concepts essential for public employees, and applies them in a series of "real world" scenarios. The classes were well attended and have been scheduled for presentation again in 2006.

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

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- A Handbook For Members Of Oakland Boards And Commissions