

City of Oakland

Public Ethics Commission

COMPLAINT FORM

ETHICS COMMISSION
2005 FEB 19 1:31

For Official Use Only

Stamp Date/Time Received:

Complaint Number: 05-02

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

Oakland Campaign Reform Act

Oakland City Council's Rules of Procedure/Code of Ethics

Oakland Limited Public Financing Act

Oakland Conflict of Interest regulations

Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s)

February 16, 2005

The alleged violation occurred at the following place:

Oakland City Hall

Please provide specific facts describing your complaint(Or attach additional pages as necessary.)

Facts of Complaint: The Planning Commission took action on the Agenda item "Commission Matters" without the item being noticed as an action item. Speakers during the Public Hearing on Concordia Park were not given equal time. Specifically the proponents were given more time than opponents.

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The persons you allege to be responsible for the violation(s) are:

Planning Commission and staff

Any witnesses who were involved and/or who can provide additional information: (Please indicate names and phone numbers, if available.)

Mayor Jerry Brown, Planning Commission members and staff

PLEASE NOTE:

There may be other laws that apply to the violations you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filling this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filling this complaint with Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public

NAME: Nancy S. Sidebotham PHONE NO. (Day):(510) 635-2678
ADDRESS: 6375 Hillmont Drive PHONE NO. (Eve.):(510) 635-2678
CITY: Oakland STATE: CA ZIP: 94605
FAX NO.: (510) 635-2678

E-MAIL: nannystu@pacbell.net

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

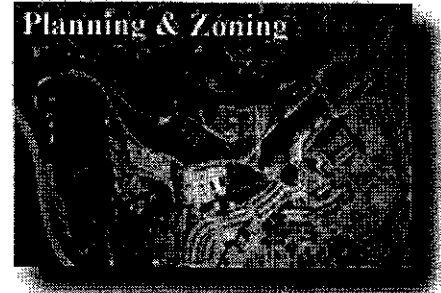
Phone: (510) 238-3593
FAX:(510) 238-3315

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Planning & Zoning
250 Frank H. Ogawa Plaza
Suite 2114



Oakland City Planning Commission
AGENDA

Mark McClure, Chair

Colland Jang, Vice Chair

Nicole Franklin

Clinton Killian

Suzie W. Lee

Michael Lighty

Anne Mudge

FEBRUARY 16, 2005

Regular Meeting

MEAL GATHERING 5:00 P.M.

Off Broadway Cafe & Catering Co., Cafe Deli, 416 15th Street

Open to the public at no charge. (Members of the public must pay for their own meals if desired. Purchase of meal is not required to attend.)

BUSINESS MEETING 6:30 P.M.

Hearing Room 1, City Hall, One Frank H. Ogawa Plaza

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Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary *prior to the convening of the meeting or prior to 8:30 p.m. for matters scheduled to be heard after 8:30 p.m.* Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

Agenda items will be called at the discretion of the Chair and not necessarily in the order they are listed on the agenda. However, a matter identified as an 8:30 p.m. item shall not be called until 8:30 p.m. or later. The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after **10:15 p.m.**, and the meeting will adjourn no later than **10:30 p.m.** unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

Please check with the Planning Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.

Staff reports for items listed on this agenda will be available by 3:00 p.m. the Wednesday, one week before the meeting, to any interested party, at the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Oakland, California 94612. **Reports are available at the Strategic Planning Division on the 3rd floor (Suite 3330), which closes at 5:00 p.m.**

Staff reports are also available on-line, generally one week prior to each meeting, at www.oaklandnet.com by searching "Frequently Visited Pages" located on the City of Oakland Homepage. Clicking on "Planning Commission Meetings" will open a menu of Planning Commission and Committee Agendas. Staff reports are available on the selected agenda by clicking on the highlighted case file number. For further information, please call **510-238-3941**. *While attending Planning Commission meetings parking in the Clay Street Garage is Free. Attendees should write Planning Commission on the back of the parking ticket.*

If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision.

ROLL CALL

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Agenda Discussion

Director's Report Fruitvale Avenue

Attachment Street Level Plans A Attachment Street Level Plans B Attachment Upper Level Plans A

Attachment Upper Level Plans B Attachment Elevation Scheme A Attachment Elevation Scheme B

Attachment Phasing Plan A Attachment Phasing Plan B Attachment Summary Scheme A
Attachment Summary Scheme B Attachment Exit Building

Committee Reports

Commission Matters Presentation by Mayor Jerry Brown Concerning a Recent Appellate Court Decision in Pocket Protectors v. City of Sacramento (124 Cal.App.4th 903). The case involves

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aesthetic impact issues under the California Environmental Quality Act (CEQA). The Mayor requests the Planning Commission's comments and thoughts about this matter.

City Attorney's Report

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

CONSENT CALENDAR

The Commission will take a single roll call vote on all of the items listed below in this section. The vote will be on approval of the staff report in each case. Members of the Commission may request that any item on the Consent Calendar be singled out for separate discussion and vote.

PUBLIC HEARINGS

The hearing provides opportunity for all concerned persons to speak; the hearing will normally be closed after all testimony has been heard. The Commission will then vote on the matter based on the staff report and recommendation. If you wish to be notified on the decision of an agenda item, please indicate the case number and submit a self-addressed stamped envelope, for each case. Planning Commission decisions that involve "major" cases (i.e., major variances, major conditional use permits) are usually appealable to the City Council. Such appeals must be filed within ten (10) days of the date of the announcement of the Planning Commission decision. If you challenge a Commission decision in court, you may be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the public hearing.

Interested parties are encouraged to submit written material on agenda items in advance of the meeting and prior to the close of the public hearing on the item. To allow for distribution to the Commissioners, staff, and the public, **25 copies of all material should be submitted.** Material submitted at least ten days prior to the meeting may be included as part of the agenda packet; material submitted later will be distributed at or prior to the meeting. To ensure that material is distributed to Commissioners, it should be received by the Commission Secretary no later than 48 hours prior to the meeting, and preferably earlier.

1.	Location:	Concordia Park; 3000 62nd Ave. (APN 038 -3188-001-07)
	Proposal:	To construct a new Girls Inc. Recreation Center including: two portable buildings (1,980 S.F.), deck, walkway, and arbor.
	Applicant:	Girls Inc. c/o Anne Phillips Architecture
	Contact Person/Phone Number:	Anne Phillips / (510) 841-7056
	Owner:	City of Oakland
	Case File Number:	CM04-264
	Planning Permits Required:	Major Conditional Use Permit for Community Assembly

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	and Community Education.
General Plan:	Urban Park and Open Space
Zoning:	Open Space (Neighborhood Park)
Environmental Determination:	Infill Exemption; CEQA Guidelines Section 15332
Historic Status:	Non-historic Property
Service Delivery District:	V – Central East Oakland
City Council District:	6
Status:	Staff Report (findings contained)
Action to be Taken:	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For Further Information:	Contact case planner Heather Klein at (510) 238-3659 or by email at hklein@oaklandnet.com

APPEALS

The Commission will take testimony on each appeal. Following testimony, the Commission will vote on the report prepared by staff. Unless otherwise noted, the decisions in the following matters are final and not administratively appealable. Any party seeking to challenge these decisions in court must do so within ninety (90) days of the date of the announcement of the final decision. If you challenge an appeal in court, you may be limited to raising only those issues raised at the appeal hearing, or in written correspondence received by the Zoning Division, Community and Economic Development Agency at, or prior to, the appeal hearing.

COMMISSION BUSINESS

Approval of Minutes:

Correspondence

City Council Actions:

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

ADJOURNMENT

By 10:30 P.M. unless a later time is agreed upon by a majority of Commissioners present.

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CITY OF OAKLAND



1 FRANK H. OGAWA PLAZA • 3RD FLOOR • OAKLAND, CALIFORNIA 94612

Office of the Mayor
Jerry Brown
Mayor

(510) 238-3141
FAX: (510) 238-4731
TDD: (510) 839-6451

February 22, 2005

RECEIVED

ADRIAN

FEB 24 2005

Honorable Ronald M. George, Chief Justice
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102-4783

CLERK SUPREME COURT

Re: *The Pocket Protectors v. City of Sacramento* (case No. C046247)
Amicus letter supporting Petition for Review (Cal. Rule of Court 28(g))

Honorable Chief Justice and Associate Justices:

On behalf of myself, as Mayor of the City of Oakland and Claudia Cappio, the Director of the Oakland City Planning Department, I write to urge that the Court grant review in the case of *The Pocket Protectors v. City of Sacramento* (December 7, 2004) 124 Cal. App. 4th 903. At its regularly scheduled meeting of February 16, 2004, the members of the Oakland Planning Commission reviewed the written opinion in *The Pocket Protectors v. City of Sacramento* and voted unanimously (one member absent) to support this request for the Court's review. I write for them as well.

The *Pocket Protectors* decision ignored the fundamental principle that courts should defer—within reason—to an elected city government's interpretation of its own land use policies. Instead, the court invoked CEQA to elevate differing opinions about the city's policies—held by the planning commission and certain protesting citizens—to a preferential level, thus triggering a full blown environmental impact report ("EIR") for what is a garden variety in-fill housing project.

The *Pocket Protectors* decision also incorrectly held that neighbors' aesthetic distaste for the city's approved lot sizes, setbacks, street width, housing style and other design matters constituted a potentially significant effect on the environment, thereby requiring preparation of an EIR rather than the more simplified Negative Declaration. This holding is in direct conflict with *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572.

Unless the *Pocket Protectors* decision is reversed, we are deeply concerned that our city's elegant density policy of in-fill development will be undermined by long delays and expensive but useless analysis—analysis paralysis. In Oakland, we use the much more practical Mitigated Negative Declaration whenever possible. Under the novel doctrine of