

CITY OF OAKLAND

Public Ethics Commission

Introduction

The Public Ethics Commission for the City of Oakland presents this annual report to provide an overview of the Commission's significant activities in 2011. While the Commission closed 11 cases alleging violations of various campaign finance, conflict of interest, limited public financing, and open government laws, it also devoted considerable attention to developing recommendations to amend existing laws in order to better achieve the goals sought by these laws. Most notable are developing amendments to the Oakland Campaign Finance Reform Act and conducting public hearings to improve public access to City records.

Along with these accomplishments, the Commission faced significant challenges in 2011. Both of the Commission's only two staff resigned and had departed by the end of June, 2011, and one of the two positions was eliminated during development of the City's 2011-12 fiscal year budget. The Commission now has an executive director who began in April, 2012, but still retains only one budgeted position to fulfill dozens of responsibilities mandated by local law.

This report seeks to provide a snapshot of the Commission's work in 2011, as well as the challenges it faced during the second half of the calendar year. With this information, the Commission seeks your support in rebuilding its capacity and renewing its ability to ensure fairness, openness, honesty, and integrity in government for the citizens of Oakland.

Commission Purpose and Responsibilities

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.

The City Charter requires the Commission to oversee compliance with Oakland's Campaign Reform Act (OCRA), Conflict of Interest Code, City Council Code of Conduct, 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 according to the Consumer Price Index and up to five percent annually.

In 1997, the City Council adopted Chapter 2.24 of the Oakland Municipal Code, enumerating the functions and duties of the Public Ethics Commission. Generally, this ordinance reiterates the Commission's duty to oversee compliance with the above laws, and it articulates additional duties related to those laws, including the following:

- Review policies and programs relating to elections and campaigns in Oakland and report to the City Council on the impact of these policies.
- Recommend to City Council amendments to the above laws and submit a formal report to the City Council every two years concerning the effectiveness of these laws.
- Provide the City Council with an annual assessment of the Commission's staffing and budgetary needs.

- Recommend to City Council the imposition of fees to administer these laws.
- Recommend to City Council additional penalty provisions for violation of campaign financing, conflict of interest, lobbyist registration, and public ethics laws.
- Issue oral advice and written opinions regarding a person's duty to follow campaign financing, conflict of interest, lobbying, and public ethics laws.
- Create forms for reports, statements, notices and other documents related to these laws.
- Develop informational and training programs on each of the laws, including holding seminars for new officers and employees, candidates for elective office, lobbyists, and government officials regarding city, state, and federal laws.
- Prepare and distribute manuals for city officers, employees, and board and commission members to include summaries of ethics laws and reporting requirements, bookkeeping and records retention methods, instructions for completing forms, questions and answers for common situations, and information on where to go for help.

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

Commission Members

The Commission consists of seven Oakland residents who volunteer their time to participate on the Commission. 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.

During the tenure and for one year thereafter, no member of the Commission may:

- Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City;
- Seek election to any other public office; participate in, or contribute to, an Oakland municipal campaign; or
- Endorse, support, oppose or work on behalf of any candidate or measure in an Oakland election.¹

The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall, and meetings are open to the public and broadcast locally by KTOP, Oakland's cable television station.

¹ Oakland Municipal Code §2.24.050.

Current Staffing and Budget

At the beginning of 2011, the Commission was staffed by an Executive Director and an Administrative Assistant, with a total budget of \$265,750 for FY 2010-11. In June, 2011, Executive Director Dan Purnell retired after serving with the Commission for over ten years. Executive Assistant Tamika Thomas also resigned after serving since 2007 and is now working in the City Clerk's Office.

As part of major budget reductions across City government in 2011, the Commission's budget went from \$265,750 for FY 2010-11 to \$152,724 for FY 2011-12, a 43 percent cut that eliminated one FTE (full-time equivalent) employee and left only one FTE allocation. Budget amendments in January 2012 provided an increase to the Commission's budget, resulting in a total budget of \$186,336 for FY 2011-12, but still only one FTE position. The Commission's budget for FY 2012-13 will be the same, \$186,336, absent any changes made during the mid-cycle budget review in June 2012.

The Commission currently is staffed by Executive Director Whitney Barazoto who joined the Commission in April 2012. Given the number of responsibilities placed on the Commission and its staff, the Commission cannot meet its full mandate with only one FTE. As a result, the Commission will need to make difficult decisions and prioritize among its responsibilities in order to accomplish the duties it deems most important and valuable to the City. Concurrently, Commission staff is working to streamline assignments, partner with other City programs, assess staffing needs, and recruit part-time workers. The Commission will communicate its projected staffing and budgetary needs to the City Council in advance of the 2013-15 budget process, as required by City ordinance.

City ordinance also specifies the Office of the City Attorney as the Commission's legal advisor to provide the Commission with legal assistance.

Public Ethics Commission Responsibilities

Oakland Municipal Code requires the City Manager to provide the Commission with staff assistance as necessary to permit the Commission to fulfill the following functions and duties:

- A. Oversee compliance with the city Campaign Reform Ordinance.
- B. Oversee compliance with the city Code of Ethics.
- C. Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.
- D. Oversee the registration of lobbyists in the city should the City Council adopt legislation requiring the registration of lobbyists.
- E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.
- F. Review all policies and programs which relate to elections and campaigns in Oakland, and report to the City Council regarding the impact of such policies and programs on city elections and campaigns.
- G. Make recommendations to the City Council regarding amendments to the city Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report to the City Council every two years concerning the effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public ethics.
- H. Set compensation for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent above the base salary as adjusted.
- I. Each year, and within the time period for submission of such information for the timely completion of the city's annual budget, provide the City Council with an assessment of the Commission's staffing and budgetary needs.
- J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.
- K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.
- L. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.
- M. Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.
- N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:
 1. Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.
 2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.
- O. Perform such other functions and duties as may be prescribed by the Oakland Code of Ethics, conflict of interest regulations, ordinances as they may be adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the city and Campaign Reform Ordinance.

(Ord. 11961 § 2, 1997)

Accomplishments in 2011

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.

In 2011, the Commission received a total of 5 complaints. This compares to 30 complaints in 2010, 16 in 2009, 20 in 2008, nine in 2007, and 23 complaints in 2006.

During 2011, the Commission closed 11 cases that were initiated in 2010 or earlier. Of these 11 cases, six alleged violations of the Oakland Sunshine Ordinance, two alleged violations of the Limited Public Financing Act, two alleged violations of the Oakland Campaign Reform Act, and one alleged a violation of the Conflict of Interest Code and California Political Reform Act (Form 700 filing requirement).

City Council Member Compensation

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" at a minimum, or up to a maximum total of five percent.

Pursuant to the requirement, the Commission on June 6, 2011, adopted a resolution to approve a 2.8 percent salary increase for the Office of City Councilmember, putting the total salary at \$76,172.62 effective as of the first pay period of FY 2011-12. The increase is required by law as it reflects the change in the CPI for the San Francisco Bay Area for the period April 2010 through April 2011.

Pursuant to Measure P, the Commission will undertake its required review of City Council salaries again in June 2012.

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 May 2011, 41 lobbyists had registered with the City representing a total of 46 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.

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.

In recent years, the Commission's Lobbyist Registration and Campaign Finance Committee held a series of special meetings to review a section-by-section analysis of OCRA and developed a comprehensive set of amendments for amending OCRA. Also, in response to a request from the City Council, the Commission in 2011 completed a review and revision of OCRA Section 3.12.220 (How And When Voluntary Expenditure Ceilings Are Lifted).

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.

In 2011, the Commission conducted a series of public hearings devoted to the subject of improving public access to City records. During the process, the Commission received input from members of the public on problems encountered while attempting to access City records, from City employees in how they administer public records requests, and from other local agencies regarding their local public records laws and programs. The result of these hearing will be a set of recommendations from the Commission to amend the Sunshine Ordinance and to assist administrative compliance with the Public Records Act.

Education and Outreach

In 2011, Commission staff conducted City-wide ethics trainings for Oakland employees who are required to file FPPC Form 700s (Statements Of Economic Interests). The training, conducted by Commission staff and representatives from the Office of the City Attorney and City Auditor, reviews state and local laws in the areas of:

- Personal Gain (bribery, theft, conflicts of interest, self-dealing in contracts);
- Perks Of Office (use of public resources, loans, gifts, honoraria);
- Transparency (open meetings, public records, whistleblower protections, the City Auditor's "Fraud, Waste and Abuse" program); and
- Fair Process (bias, incompatible offices and employment, nepotism).

In addition, the training includes a segment on "ethical decision-making" for public employees.

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
- Handling Public Records Requests
- A Guide To Lobbyist Registration
- How To Apply For Public Financing
- A Guide To Oakland's Campaign Reform Act
- A Handbook For Members Of Oakland Boards And Commissions

Current Commissioners Who Served in 2011

Richard Unger (Chair)

Commission appointee 1/22/10 – 1/21/13

Richard Unger has lived in the Bay Area since 1966. He has been a home owner and with his wife has raised a family in Oakland since 1978. His three grandchildren now attend Oakland schools. Dr. Unger practices psychiatry with an emphasis on psychotherapy and consultation to non-medical practitioners and their patients about psychopharmacological treatment. He has worked in both public and private sectors and is a founding member of Bay Psychiatric Associates, a group practice in the East Bay providing inpatient psychiatric care. He is a member of the Board of Directors and has been the CFO of that organization for 14 years. He has been a consultant for psychiatric patient advocacy organizations.

Dr. Unger has an undergraduate degree from the University of Pennsylvania, a Master's degree in Bacteriology from the University of Wisconsin, a Ph.D. in Molecular Biology from the University of California at Berkeley, and an M.D. at the University of California, San Francisco. Additional interests include medical and professional ethics as well as travel, fishing, river and fishery conservation and a wide range of outdoor activities.

Aspen Baker

Mayoral appointee 1/22/11 – 1/21/14

Aspen Baker is the founder and executive director of Exhale, an award-winning, national nonprofit organization that has been operating out of downtown Oakland since its founding in 2000. An Oakland resident for over ten years, Ms. Baker was named a "Local Hero" by San Francisco's KQED for Women's History Month in 2009 and "Young Executive Director of the Year" by the Bay Area's Young Non-Profit Professional Network in 2005. She is a 2011 Emerge California Fellow, a former member of the Women's Health Leadership Network of the Center for American Progress, and a 2004 Fellow with the Women's Policy Institute of the Women's Foundation of California. Ms. Baker has been featured on T.V., radio, blogs and in print media, including *CNN Headline News*, *Fox National News*, *Ladies Home Journal*, *New York Times Magazine*, *National Public Radio*, *Oakland Local*, *Oakland Magazine*, and the *Oakland Tribune*, among others. She brings her organizing, communications and social media experience to her service on the Commission.

Born in a trailer on the beach in Southern California, Ms. Baker holds a degree in Peace and Conflict Studies from the University of California, Berkeley, and is a former bartender and a one-time Alaska resident who can land a

bush plane on a glacier. Now, Ms. Baker enjoys spending her time working with fellow citizens on creating a more fair, transparent, open and effective government for the City of Oakland.

Amy Dunning

Mayoral appointee 1/22/10 – 1/21/13

Amy Dunning serves as the Regional Director/Chief Administrative Judge of the Western Regional Office of the U.S. Merit Systems Protection Board. From 1998-2001 Ms. Dunning served as Counsel to the Commander, U.S. Naval Forces Europe, in London, United Kingdom. As the senior Navy Office of the General Counsel attorney in Europe, she provided legal services throughout Europe as well as in Bahrain. Prior to working in London, Ms. Dunning served on the legal staff of the Deputy Assistant Secretary of the Navy, as Counsel to the Director, Human Resources Operations Center. From 1993-1994, Ms. Dunning worked in the Justice Management Division of the Department of Justice representing management in cases brought by Department of Justice employees and their unions. Ms. Dunning served 8 years on active duty as a Judge Advocate with the U.S. Marine Corps, including time spent mobilized for Operation Enduring Freedom. She retired as a Colonel from the U.S. Marine Corps Reserve in January 2009.

Ms. Dunning is a native of Milwaukee, Wisconsin. She has an undergraduate degree in Political Science from the University of Missouri, a J.D. from Southern Illinois University, and an L.L.M. in Labor Law from Georgetown University. Ms. Dunning is admitted to practice law in California, Illinois, and the District of Columbia. She resides in Oakland, California, where she tutors public high school students in writing and enjoys running the trails of the East Bay Regional Park District.

Lloyd Farnham

Commission appointee 1/22/11 – 1/21/14

Lloyd Farnham has served as an attorney with the Enforcement Division of the U.S. Securities and Exchange Commission since 2003. During his time with the SEC, Mr. Farnham has investigated and litigated cases involving securities fraud, insider trading, and violations of corporate disclosure rules.

Mr. Farnham has an undergraduate degree from Occidental College, and a J.D. from the University of California, Berkeley, School of Law. Prior to joining the staff of the SEC, Mr. Farnham clerked for a federal district judge and spent four years practicing law at a San Francisco law firm. He and his family have lived in Oakland since 2004.

Previous Commissioners Who Served in 2011

Ai Mori

Mayoral appointee 1/22/09 – 1/21/12

Ai Mori is a staff attorney at the Court of Appeal in San Francisco. Prior to joining the Court of Appeal, she practiced employment litigation and family law and was certified by the State Bar of California as a specialist in family law. She serves on the Board of Directors of Asian Women's Shelter, a domestic violence shelter in San Francisco, and is a member of the Civil Rights Committee of the Asian American Bar Association of the Greater Bay Area. She has also volunteered as a judge at the McCullum Youth Court in Oakland.

Ms. Mori earned her undergraduate degree from the University of California, Berkeley and her J.D. from the University of California, Hastings College of the Law.

Alex Paul

Commission appointee 1/22/09 – 1/21/12

Alex Paul is an attorney and has worked for several Bay Area companies over the past 10 years. Mr. Paul has created Ethics courses that have been utilized by thousands of workers nationwide. At law school, Mr. Paul was awarded by the Dean of the law school for the highest grade given in an Ethics class. As an attorney and one that works for a public company, he is also involved in investigating Code of Conduct violations and understands the importance of compliance training and education. Mr. Paul has lived in Oakland for 7 years.

Mr. Paul holds a J.D. from the University of Notre Dame and a M.A. in business administration from the University of Illinois at Springfield.

Chris Young

Commission appointee 1/22/11 – 1/21/14

Before joining Kecker and Van Nest, Chris Young served in the Obama Administration—first in the White House under Special Counsel to the President and later in the U.S. Department of Justice as Associate Director of Intergovernmental Affairs. Prior to working in the Administration, Chris was Senior Advisor and Counsel to Mayor Kevin Johnson of Sacramento, California. Chris joined the Johnson Administration after serving as Northern California Deputy Finance Director for Barack Obama's Presidential Campaign. Chris began his law work as a litigation associate at Morrison & Foerster LLP. He spent most of his first year as one of the lead trial attorneys in *Valenzuela v. O'Connell*, a class action lawsuit challenging the constitutional integrity of the California High School Exit Exam.

During law school, Mr. Young co-founded Law Student Outreach, a traveling clinic that provided legal referral services to underserved East Bay Area communities. He served on the school's Admissions Committee and worked as a research assistant to Professors Ian Haney Lopez and Norman Spaulding. Mr. Young also served as a judicial extern to Judge Marsha Berzon on the U.S. Circuit Court of Appeals for the Ninth Circuit and Justice Joyce Kennard of the California Supreme Court. Before law school, he was a California State Senate Fellow, serving as a legislative aid to a senator and the Senate Education Committee.

Mr. Young holds a J.D. from the University of California, Berkeley School of Law, and an undergraduate degree from San Diego State University, where he earned a philosophy major and psychology minor and graduated *magna cum laude*, Phi Beta Kappa, and as valedictorian of the School of Philosophy.

Public Ethics Commission

At a Glance

Commission Meetings

The Commission meets regularly on the first Monday of every month at 6:30 p.m. and may hold additional meetings as necessary throughout the year. Meetings generally are held in Hearing Room 1 of City Hall.

Commission Office

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Current Commissioners*

Richard Unger (Chair)
Aspen Baker
Amy Dunning
Lloyd Farnham
Monique Rivera

*The Commission currently has two vacancies.

Commission Staff

Whitney Barazoto, Executive Director

Subscribe for Information

To receive meeting notices and other Commission announcements, please email the Commission at ethicscommission@oaklandnet.com or subscribe directly on the Commission's webpage accessible through the City of Oakland's website. Go to www.oaklandnet.com, click on the "Government" tab.