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FILED
ALAMEDA COUNTY

MAR 22 2011

CLERK OF THE SUPERIOR COURT
By *Sherris* Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

MARLEEN L. SACKS

Petitioner,

vs.

CITY OF OAKLAND

Respondent.

Case No. RG10-504741

**TENTATIVE DECISION DENYING
PETITION FOR WRIT OF MANDATE**

The merits hearing on this Amended Petition for Writ of Mandate came before the Court on March 14, 2011 and March 16, 2011. Marlene Sacks, Esq. appeared on both days for the Petitioner, In Pro Per. David Stein, Esq. appeared for Petitioner on March 14, 2011. Kevin Siegel, Esq. appeared for Respondent on both days.

The Court has considered the papers, pleadings and evidence submitted by the parties and has considered the argument of counsel. Good Cause appearing for it, the Court Tentatively DENIES the Petition in its entirety.

The Petition for Writ of Mandate on the FIRST CAUSE OF ACTION is DENIED. The provisions of Measure Y do not condition the collection of the tax on an appropriation for training academies. Neither collateral estoppel nor judicial estoppel apply. The propriety of the tax that was collected in error in July 2010 at the Oakland Airport, while raised in Petitioner's Memorandum of Points and Authorities and argued by both sides, is not an issue that was alleged in the First Amended Petition. Petitioner has filed no claim for a refund nor has she demonstrated any other basis to establish standing; moreover, she has not alleged nor demonstrated an exhaustion of administrative remedies as to this claim.

The Petition for Writ of Mandate on the SECOND CAUSE OF ACTION is DENIED. The evidence is clear that, on the date of filing the Petition, the Respondent had assigned a PSO to each of the neighborhood beats, and that there are 57 PSO officers today with at least one PSO officer in each of today's reconfigured neighborhood beats.

The Petition for Writ of Mandate on the THIRD CAUSE OF ACTION is DENIED. The evidence is clear that, on the date of filing the Petition the Respondent had deployed 6 CRT unit officers, and that there are six CRT officers deployed today.

The Petition for Writ of Mandate on the FOURTH CAUSE OF ACTION is DENIED. The 90-day statute of limitations found in OMC 1.20.101 is the applicable statute of limitations and it bars this cause of action. The determination by the City Council to award the Measure Y grant to Youth Uprising Teen Center is a quasi-judicial administrative act by the City Council. Even if it were not time-barred, the award of the Measure Y grant was not improperly done; the grant is not for professional services and it is not a public works project contract. OMC section 2.04.016 is applicable to the grant to the Youth Uprisings Teen Center as it is a grant award made from funds received by the city for that purpose under Measure Y.

The Petition for Writ of Mandate on the FIFTH CAUSE OF ACTION is DENIED. This Cause of Action is also barred by the application of the 90-day statute of limitations. Moreover, even if the Cause of Action were not barred, the contracts cited by the Petitioner fall within the broad parameters of the Measure Y prescriptions. Petitioner is not correct in the assertion that the inclusion of the term "pre-release employment skills training" as an objective that may be funded by a Measure Y grant precludes "post-release" employment skills training when that category of objective can easily fall within the Measure Y objective of "providing services and presenting employment opportunities" to "at-risk adolescents and young adults".

The Petition for Writ of Mandate on the SIXTH CAUSE OF ACTION is DENIED. The Respondent has provided the Petitioner with all the documents requested, and within the context of each request, has provided those documents in a reasonably timely manner.

The Petition for Writ of Mandate on the SEVENTH CAUSE OF ACTION is DENIED. Petitioner concedes that the Commission staff has evaluated her complaint and that the Commission reviewed her complaint. It did so at its April 7, 2010 meeting, its September 8, 2010 meeting, and its October 4, 2010 meeting. The evidence is clear that the Commission staff was fully engaged in an attempt to address the September 2009 complaint, including: the initial report of the complaint to the Commission in October 2009; the organization of and participation in a mediation process in November 2009 (which resulted in Petitioner's receipt of additional documents in December 2009 and January 2010); the receipt of supplemental complaints following the receipt of new CPRA requests, the preparation of a report (15 pages in length) to the Commission; the Commission's direction to its staff members to seek a resolution of Petitioner's complaints; and two additional occasions during which the Commission itself considered the matter. (See Purnell Declaration.)

The Petitioner's cause of action is moot, and in any event, any transgression by the Commission staff in terms of form or timing is de minimus.

Counsel for Respondent is directed to prepare and submit a Proposed Statement of Decision for the court's consideration within the time frames prescribed in CRC 3.1590.

Date: March 22, 2011

A handwritten signature in cursive script, appearing to read "Frank Roesch", written over a horizontal line.

Frank Roesch
Judge of the Superior Court

**Superior Court of California
County of Alameda**

Case No: RG10-504741

Case Name: Marleen L. Sacks vs City of Oakland


Tentative Decision Denying Petition for Writ of Mandate

DECLARATION OF SERVICE BY MAIL

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served the foregoing document by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on: March 23, 2011

**PAT SWEETEN
Executive Officer/Clerk of the
Superior Court**

By 
Imelda Guerrero, Deputy Clerk

Copy of the Tentative Decision mailed to:

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