

## CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA 10 CITY HALL 10 Suite #104 10 OAKLAND 10 CA 94612

### Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



December 20, 2023

Honorable Jestin Johnson  
City Administrator  
City Hall  
Oakland, CA 94607

### **RE: Public Ethics Commission's Recommendations for Changing the Mayoral Salary-Setting Process**

Dear Administrator Johnson:

At its July 18, 2023, meeting, the City Council passed a motion directing you to bring a proposal back to the Council for a potential November 2024 ballot measure which would transfer the duties of setting the Mayor's salary from the City Council to the Public Ethics Commission (Commission or PEC). On behalf of the Commission, we are writing to express the Commission's unanimous recommendation (A) that the Commission should take on this responsibility and (B) for the criteria and process the Commission should use to do so.

Under current law, the Commission sets the salary for ten of Oakland's 11 elected officials. The Commission adjusts the salaries of the eight-member City Council every two years for inflation and adjusts the salaries of the City Attorney and City Auditor annually "to provide for competitive compensation and equitable alignment" for these officeholders. (City Charter Sections 202, 401, and 403.) In contrast, the City Council sets the salary of the Mayor every two years, "which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland." (City Charter Section 300.) Because the requirements for adjusting the Mayor's salary are established in the City Charter, any change in this process would need to be proposed by ballot measure and would require the approval of Oakland voters.

The PEC considered whether it is the appropriate body for setting the Mayor's salary and, if so, what criteria the PEC should apply for setting that salary at three separate meetings held on August 25, October 25, and December 13, 2023. The staff memos for the October 25 and December 13 meetings are attached. A recording of these meetings may be found on the PEC's website at: <https://www.oaklandca.gov/boards-commissions/public-ethics-commission/meetings>.

## Item 7 - Mayoral Salary Ballot Measure

The PEC adopted the following recommendation<sup>1</sup> for how the Commission should adjust the Mayor's salary at its December 13 meeting:

- Every two years, the PEC increases the Mayor's salary by the change in the Bay Area Consumer Price Index (CPI) over the last two years, but capped at no more than 5% over the two-year period.
- Every four years, taking effect at the start of a new mayoral term, the PEC has the discretion to instead adjust the Mayor's salary to promote greater pay equity and competitive compensation, but by no more than the rate of inflation over the past two years plus an additional 10 percent. In making a discretionary adjustment, the PEC shall consider:
  - The salaries of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions;
  - The salary of the highest-paid mayoral employee; and
  - The salary of City Department heads.
- The PEC, in its discretion, may waive or reduce a salary increase in any fiscal year in which either (a) the City Council declares that the City is facing an "extreme fiscal necessity" or "fiscal crisis or fiscal emergency,"<sup>2</sup> or (b) the GPF revenue for the current fiscal year is projected to decline.

This recommendation includes a biannual inflation adjustment for the Mayor's salary, similar to the biannual adjustment the PEC provides for the City Council, but also provides an opportunity to re-assess the salary every four years to promote pay equity and competitive compensation, similar to the process the PEC uses to adjust the City Attorney's and City Auditor's salaries. In addition, this recommendation provides the PEC with the option to waive or reduce a salary increase in years where the City is facing significant fiscal hardship and an increase may be inappropriate or unwelcome by the Mayor. Notably, under this recommendation, four-year salary reassessments would only take effect at the start of a new mayoral term, which emphasizes that the PEC's role is to determine which salary is best for the office, and not to subjectively evaluate the performance of a current officeholder.

In its review and discussion of this topic, the Commission reached consensus on the following principles, which led to its recommendation:

- The responsibility for setting the Mayor's salary should be transferred to the PEC;
- The charter should provide politically-neutral, objective criteria for the PEC to follow in setting the Mayor's salary;
- The PEC should have the discretion to waive or reduce a salary increase if either (a) the City Council declares that the City is facing an extreme fiscal necessity or a fiscal crisis or emergency, or (b) the GPF revenue for the current fiscal year is projected to be lower than it was in the last fiscal year; and

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<sup>1</sup> For ease of reading, the recommendation has been cleaned up to remove parentheticals relating to other options the PEC considered and to spell out acronyms and abbreviations. The exact text of the staff recommendation adopted by the PEC is attached to this letter.

<sup>2</sup> Council Resolution No. 89803 (Jun. 22, 2023) defines "extreme fiscal necessity" and "fiscal crisis or fiscal emergency."

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- The PEC should not adjust the Mayor's salary more frequently than once every two years.

Thank you for the opportunity to provide the Commission's perspective on this important topic, and we look forward to working with you. Please note that, under Section 603(h) of the City Charter, as recently amended by Measure W (2022), draft ballot measures affecting the Commission "shall be submitted to the Commission for review and comment, prior to ... approval of the proposed measures for the ballot by the City Council."

Should you have any questions about the PEC's recommendations please feel free to contact Executive Director Heidorn at (510) 238-3593 or [nheidorn@oaklandca.gov](mailto:nheidorn@oaklandca.gov). We look forward to partnering with you and the City Council in proposing a fair, transparent, and administrable process for setting the Mayor's salary to Oakland voters next November.

Sincerely,

/s/ *Ryan Micik*

Ryan Micik  
Chair  
Public Ethics Commission

/s/ *Nicolas Heidorn*

Nicolas Heidorn  
Executive Director  
Public Ethics Commission

### Attachments:

- Adopted recommendation
- Staff report for the December 13, 2023 meeting
- Staff report for the October 25, 2023 meeting

### CC:

Honorable Sheng Thao,  
Mayor of Oakland

Honorable Nikki Fortunato Bas,  
Honorable Rebecca Kaplan,  
Honorable Dan Kalb,  
Honorable Carroll Fife,  
Honorable Janani Ramachandran,  
Honorable Noel Gallo,  
Honorable Kevin Jenkins,  
Honorable Treva Reid,  
Members of the Oakland City Council

### **PEC Recommendations to the City Administrator for how the PEC Should Set the Mayor's Salary**

*Adopted by the Public Ethics Commission by a vote of 6-0 on December 13, 2023.*

- **Option C: Hybrid Option – Adjust for Inflation But Include a Periodic Review**
- Proposal Summary:
- Every two years, the PEC increases the Mayor's salary by the change in the Bay Area CPI over the last two years, but capped at 5% (similar to Option A2) but without PEC discretion to go beyond the cap.
- Every four years, taking effect at the start of a new mayoral term, the PEC has the discretion to instead adjust the Mayor's salary to promote greater pay equity and competitive compensation (same as Option B1), but by no more than the rate of inflation over the past two years plus an additional 10 percent. In making a discretionary adjustment, the PEC shall consider:
  - The salaries of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions;
  - The salary of the highest-paid mayoral employee; and
  - The salary of City Department heads.
- The PEC, in its discretion, may waive or reduce a salary increase in any fiscal year in which either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) the GPF revenue for the current fiscal year is projected to decline.

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APPROVED AS TO FORM AND LEGALITY

**DRAFT**

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION  
SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024  
GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD  
AMEND CITY CHARTER SECTIONS 300 AND 603 TO, AMONG  
OTHER THINGS:**

**(1) TRANSFER THE DUTIES OF SETTING THE MAYOR'S SALARY  
FROM THE CITY COUNCIL TO THE PUBLIC ETHICS COMMISSION  
TO BE ADJUSTED, SUBJECT TO CERTAIN CONDITIONS, ON A BI-  
ANNUAL BASIS;**

**(2) UPDATE THE CRITERIA FOR SETTING THE MAYOR'S  
SALARY TO CRITERIA SIMILAR TO THAT APPLIED BY THE  
COMMISSION IN SETTING THE CITY ATTORNEY'S AND CITY  
AUDITOR'S SALARIES; AND**

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION  
OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION,  
AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER  
LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024  
GENERAL MUNICIPAL ELECTION**

**WHEREAS**, on July 18, 2023, the City Council passed a motion directing the City Administrator to bring a proposal back to the City Council for a potential November 2024 ballot measure which would transfer the duties of setting the Mayor's salary from the City Council to the Public Ethics Commission; and

**WHEREAS**, on August 25, 2023, October 25, 2023, and December 13, 2023, the Public Ethics Commission considered whether it is the appropriate body for setting the Mayor's salary and, if so, what criteria the PEC should apply for setting that salary; and

**WHEREAS**, on December 13, 2023, the Public Ethics Commission adopted recommendations for how the Commission should adjust the Mayor's salary to promote pay equity and competitive compensation; and

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**WHEREAS,** these changes will provide politically neutral, objective criteria for the Public Ethics Committee to follow in setting the Mayor's salary that is alignment with similar processes of other City of Oakland elected officials; now, therefore, be it

**RESOLVED:** That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the City Council hereby proposes to amend Charter section 300 and 603 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through type~~; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

The people of the City of Oakland do ordain as follows:

**Section 1. Amendments to Section 300 of the Charter of the City of Oakland.** Section 300, *The Mayor*, of the Charter of the city of Oakland is hereby amended as follows with deleted text shown as ~~strike-through~~ and new text shown as underscoring:

**Section 300. The Mayor.** The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, ~~and without any additional compensation or fees provided for in Section 202 in this Charter.~~ The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland. The Mayor's salary shall be reviewed by the City Council in odd numbered years and may be adjusted by the Council as provided for herein. The Public Ethics Commission shall bi-annually adjust the salary for the Office of Mayor by the increase in the consumer price index over the preceding two years, up to a total of five percent, to take effect in the first pay period after the first Monday of January, beginning in 2027 and every two years thereafter. The Commission, in its discretion, may waive or reduce the bi-annual salary increase where the City Council has declared, in a budget resolution for the fiscal year in which the adjustment is adopted, that the City is facing an extreme fiscal necessity, fiscal crisis or fiscal emergency; or if the General Purpose Fund revenue for the current fiscal year is projected to be less than the revenue in the prior fiscal year.

In its discretion and to provide for competitive compensation and equitable alignment, every four years to take effect in the first pay period after the start of the next Mayoral term, the Public Ethics Commission may adjust the salary for the Office of the Mayor by no more than the rate of inflation over the prior two years plus an additional 10 percent. The Commission shall consider, for a four-year discretionary adjustment, the salary of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions selected by the Commission; the top of the range for the highest paid professional employee in the Office of the Mayor; and the salaries of City department heads.

**Section 2. Amendments to Section 603(c) of the Charter of the City of Oakland.** Section 603(c), *Councilmember Salary Increases*, of the Charter of the City of Oakland is hereby

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amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

- (c) ~~Councilmember-Elected Official Salaries~~ Increases. The Public Ethics Commission shall ~~set~~ adjust the salary for the Office of the Councilmember, Mayor, City Attorney and City Auditor ~~Council compensation~~ as provided for in Charter ~~S~~sections 202, 300, 401(1) and 403(1).

**SECTION 3. Severability.** If any section, subsection, sentence, clause, or phrase of this Measure is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

and be it

**FURTHER RESOLVED:** That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

CHARTER AMENDMENT TO SECTIONS 300 AND 603(C) OF THE CITY  
CHARTER  
MEASURE \_\_\_\_

Measure ____.	Yes	
	No	
[FINAL BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]		

; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

**FURTHER RESOLVED:** That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

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**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

**FURTHER RESOLVED:** That in accordance with the Election Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter amendment in the manner provided for by law and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 general municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

3351051v3/SW