



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon J. Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Teddy Teshome, Commission Analyst; Chris Gonzales, Commission Assistant; Simon Russell, Enforcement Chief; Treva Hadden, Ethics Investigator.

City Attorney Staff: Farrah Hussein, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEMS

4. **Approval of Commission Meeting Draft Minutes.**
 - a. December 13, 2023, Regular Meeting Minutes. ([Meeting Minutes](#))
5. **Review and Comment on a Proposed Public Safety Ordinance.** Pursuant to its



responsibility under the Charter, the PEC shall review and comment on a proposed ordinance modifying the enabling ordinances for the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, to the extent that the proposed ordinance affects the PEC's enforcement authority. ([PEC Staff Memo](#); [Public Safety Committee Supplemental Report](#); [Proposed Legislation](#); [PowerPoint Presentation](#))

6. **PEC Midcycle Budget Priorities & Letter.** The PEC will consider adopting a budget letter to Mayor Thao expressing the PEC's priorities in the upcoming midcycle budget for Fiscal Year 2024-2025. ([Draft Letter](#))
7. **Lobbyist Training Frequency & Deadlines.** The PEC will consider adopting administrative rules requiring that lobbyists take a training on the Lobbyist Registration Act every two years and setting deadlines for the completion of that training. ([Staff Memo](#); [Proposed Rule](#))
8. **Election of Officers (Chair and Vice-Chair) of the Commission.** Commissioners will have an opportunity to nominate any Commissioner to serve as Chair and Vice Chair for 2024. If more than one Commissioner is nominated for an office, each nominee may speak regarding their qualifications and interest in serving and may answer questions of Commissioners or the public (Public Ethics Commission Operations Policies, Article IV). The Commission may discuss the nominations and, when the vote is called, each Commissioner may cast a single vote for each office. ([PEC Operations Policies](#))

DISCUSSION ITEMS

9. **OPD Public Records Presentation.** Deputy Director Kiona Suttle, Acting Records Manager Nikita Williams-Pierre, and Records Supervisor Ali Banda of the Oakland Police Department will provide information on the Department's process, successes, and challenges in responding to public records requests, and answer questions from the Commission. ([PEC Letter to OPD](#); [OPD Response](#); [City Attorney's 2022 Morris et al Report](#))
10. **Discussion of Process for Adjusting City Attorney, City Auditor, and City Council Salaries.** Under the City Charter, the PEC is required to adjust the salaries of the City Attorney, City Auditor, and City Council in 2024. Executive Director Heidorn will present, and Commissioners will discuss the process and methodology for how the PEC has set these salaries in the past and possible changes to this process for this year. ([City Charter Exceptional Salary Memorandum](#); [Acting Chair's 2023 Salary Memorandum](#))



[Adjusting City Attorney Salary; 2023 Memo on Adjusting City Auditor Salary.](#)

11. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.
 - a. **Transparency and Public Records Subcommittee** (ad hoc, created March 8, 2023) - Francis Upton IV (Chair), Arvon Perteet and Alea Gage.
 - b. **Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.** (ad hoc, created August 25, 2023) - Charlotte Hill (Chair), Alea Gage and Vincent Steele. ([November 7, 2023 Minutes](#); [Calendar of Events](#))
 - c. **Charter Review Subcommittee** (ad hoc, created December 13, 2023) - Ryan Micik (Chair) and Charlotte Hill. ([Purpose Statement](#))
 - d. **Commissioner Selection Subcommittee** (ad hoc, created October 25, 2023; terminated December 13, 2023) - Ryan Micik (Chair), Francis Upton IV and Arvon Perteet. ([Termination Statement](#))

INFORMATION ITEMS

12. **Disclosure and Engagement.** Program Manager Suzanne Doran provides a year-end summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities, as well as an update on activities since the last regular Commission meeting. ([Disclosure Report](#))
13. **Enforcement Program.** Enforcement Chief Simon Russell provides a year-end summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals, as well as an update on enforcement work since the last regular Commission meeting. ([Enforcement Report](#)) ([PEC 23-31 Notice of Complaint Dismissal re: H. Dang; C. Le](#)) ([PEC 23-20 Notice of Complaint Dismissal re: S. Navarro; et al](#))
14. **Executive Director's Report.** Executive Director Nicolas Heidorn provides a year-end summary of significant PEC activities not covered in other staff reports including budget, staffing, as well as ongoing PEC legislative and policy initiatives. ([Executive Director's Report](#))
15. **Future Meeting Business.** Commissioners and staff may propose topics for action or

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Regular Commission Meeting
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discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission's business.

The following options for public viewing are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland's KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on "View"
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/86095702990>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 Webinar ID: 843 5678 2713
- **International numbers available:** <https://us02web.zoom.us/j/86095702990>

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at ethicscommission@oaklandca.gov or visit our webpage at www.oaklandca.gov/pec.

Nicolas Heidorn

1/5/24

Approved for Distribution

Date

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PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
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This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

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郵 ethicscommission@oaklandca.gov or 或致電 (510) 238-3593 或 711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ ethicscommission@oaklandca.gov or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

Item 4 - Meeting Minutes

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Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Teddy Teshome, Commission Analyst; Treva Hadden, Ethics Investigator; Chris Gonzales, Commission Assistant; Simon Russell, Enforcement Chief.

City Attorney Staff: Farrah Hussein, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Micik, Hill, Gage, Upton IV, Perteet, and Steele.

Staff present: Nicolas Heidorn, Suzanne Doran, Teddy Teshome, Treva Hadden, Chris Gonzales, Simon Russell.

City Attorney Staff: Farrah Hussein.

2. Staff and Commission Announcements.

Micik reordered the agenda to go directly from #4 (“Open Forum”) to #8c (“Commissioner Selection Subcommittee”) then back to the #5 (“Selection of New PEC Commissioner”).

Staff announced the hiring of 2 new staff members, Teddy Teshome and Treva Hadden.

3. Open Forum.

Public Comment: None.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

Upton IV noted that his name is missing the letter “t” on item #2 of the October 25, 2023 meeting minutes.

Micik moved, and Hill seconded, to adopt the October 25, 2023, special meeting minutes with the correction of Upton IV’s name.

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Item 4 - Meeting Minutes

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Ayes: Micik, Hill, Gage, Upton IV, and Steele.

Abstain: Perteet.

Noes: None.

Vote: Passed 5-0.

Public Comment: None.

Upton moved, and Perteet seconded, to approve the November 8, 2023, regular meeting minutes.

Ayes: Micik, Hill, Gage, Upton IV, Perteet, and Steele.

Noes: None.

Vote: Passed 6-0.

Public Comment: None.

8. Reports on Subcommittees and Commissioner Assignments.

c. Commissioner Selection Subcommittee (ad hoc, created October 25, 2023) - Ryan Micik (Chair), Francis Upton IV and Arvon Perteet.

Micik explained the Subcommittee's process for advancing the two finalists for the new PEC Commissioner.

5. Selection of New PEC Commissioner.

The two finalists for the PEC-appointed member to the Commission, Karun Tilak and Kevin Covarrubias, explained why they wished to serve on the Commission, their relevant skills and experiences, and the projects or issues they would like to pursue as a Commissioner. Following the finalists' introductions, Commissioners asked additional questions of the applicants.

Upton IV moved, and Steele seconded, to appoint Karun Tilak as the new PEC Commissioner for a three-year term beginning on January 22, 2024.

Ayes: Micik, Hill, Gage, Upton IV, Perteet, and Steele.

Noes: None.

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Vote: Passed 6-0.

Chair Micik noted that the mayoral appointee to the Commission is vacant and encouraged Kevin Covarrubias to apply to the Mayor for an appointment.

Public Comment: Zoram Mercado.

6. Recommendation on Setting the Mayor's Salary.

Commissioners discussed different options to potentially recommend to the City Administrator and City Council as to how the City Charter should be amended to assign the responsibilities for setting the Mayor's salary to the Public Ethics Commission.

Hill moved, and Upton IV seconded, that the PEC recommend to the City Administrator "Option C" from the staff report for how the PEC should set the Mayor's salary.

Ayes: Micik, Hill, Gage, Upton IV, Perteet, and Steele

Noes: None.

Vote: Passed 6-0.

Public Comment: None.

Perteet moved, and Gage seconded, that the PEC provide to the City Administrator a cover letter which includes the proposed principles listed in the staff report, striking the third bullet, along with the "Option C" recommendation, and that the cover letter come from the Chair and Executive Director.

Ayes: Micik, Hill, Gage, Upton IV, Perteet, and Steele

Noes: None.

Vote: Passed 6-0.

Public Comment: None.

DISCUSSION ITEMS

7. Voter Guide Design.

Executive Director Heidorn presented a draft voter guide design concept to the Commission and shared feedback received through user testing and from stakeholders. Commissioners shared feedback on the design concept.

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Public Comment: None.

8. Reports on Subcommittees and Commissioner Assignments.

- a. Transparency and Public Records Subcommittee.** (ad hoc, created March 8, 2023) - Francis Upton IV (Chair), Arvon Perteet and Alea Gage.

Upton IV updated the Commission on the Subcommittee's activities since the last commission meeting. Upton IV noted that the PEC has invited OPD to present on its public records response practices at the PEC's January 2024 meeting and that the Subcommittee had successfully applied to have graduate students with UC Berkeley's Goldman School assist the PEC in evaluating options for improving the City's transparency practices.

- b. Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.** (ad hoc, created August 25, 2023) - Charlotte Hill (Chair), Alea Gage and Vincent Steele.

Hill updated the Commission on the Subcommittee's activities since the last Commission meeting.

Micik created a new ad hoc subcommittee, the Charter Review Subcommittee, chaired by Micik and including Hill as a member. Commissioners and Deputy City Attorney Hussein discussed whether and when Micik may appoint incoming Commissioner Tilak to the Subcommittee.

Public Comment: Karun Tilak.

INFORMATION ITEMS.

9. Disclosure and Engagement.

Program Manager Suzanne Doran provided a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting.

Public Comment: None.

10. Enforcement Program.

Enforcement Chief Simon Russell provided a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals since the last Commission meeting.

Public Comment: None.

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11. Executive Director's Report.

Executive Director Nicolas Heidorn reported on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives.

Public Comment: None.

12. Future Meeting Business.

Public Comment: None.

The meeting adjourned at 9:28 p.m.



Item 5a - PEC Memo

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: January 2, 2024
RE: Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

OVERVIEW

Legislation is currently pending before the City Council that would amend the enabling ordinances of the City's civilian bodies responsible for police oversight. These bodies are the Police Commission, the Community Police Review Agency (CPRA), and the Office of the Inspector General (OIG). Most of the proposed amendments do not affect the Public Ethics Commission (PEC) and will not be considered here. However, there are some proposed amendments that affect the PEC's enforcement authority. Therefore the proposed amendments are being submitted to the PEC for review and comment prior to any City Council vote on them.¹

This report provides the following, for purposes of soliciting the PEC's comment on the proposed amendments:

1. A review of the laws that currently exist re: PEC enforcement authority over police oversight matters;

¹ This is a requirement of Oakland City Charter section 603(h), which says that prior to enacting any amendments to laws that the PEC has the power to enforce, such amendments shall be submitted to the PEC for review and comment prior to passage of those amendments by the City Council.

PEC staff notes with concern that we were not notified of this pending legislation by the City Attorney's office or any other agency. PEC staff learned of the legislation through our own coincidental review of pending City Council agendas. We urge the City Attorney's office to institute a formal practice of notifying the PEC of any proposed legislation affecting our enforcement authority in conformity with the requirements of Charter section 603(h).

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

2. A summary of the proposed amendments to those laws, and PEC’s staff analysis of them;
3. A summary of some miscellaneous issues flagged by PEC staff; and
4. PEC staff’s recommendation that the PEC vote to support the proposed legislation with some clarifying amendments.

Any comments submitted by the PEC in regard to the proposed legislation are not binding on the City Council.

PEC’S CURRENT ENFORCEMENT AUTHORITY OVER POLICE COMMISSION MATTERS

In addition to its general jurisdiction over City officials under the Government Ethics Act (which applies to the Police Commission, CPRA, and OIG officials), the PEC has enforcement authority over certain matters specific to the Police Commission. These are the following:

1. The PEC can investigate and prosecute the alleged failure of City departments (e.g. OPD) to provide files or records requested by the Police Commission or the OIG in order to carry out their legal functions (Oakland Municipal Code section 2.45.210); and
2. The PEC can investigate alleged misconduct by a Police Commissioner and refer its findings to the City Council for their decision as to an appropriate resolution, up to and including dismissal of that Commissioner (Oakland City Charter section 604(c)(10)).

Regarding allegations of Police Commissioner misconduct which the PEC is empowered to investigate (#2 above), the only definition of misconduct currently given is that Police Commissioners may be removed “for cause” (Oakland City Charter section 601(a)).²

² The same Charter section also states that a majority of members of the Police Commission may vote to remove a Police Commissioner for “conviction of a felony, conviction of a misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year except on account of illness or when absent by permission.” It is unclear whether the PEC would have the ability to investigate allegations of those sorts, because the same Charter section only says that the PEC has jurisdiction to investigate “allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter” – which merely refers to the removal of a Commissioner “for cause” by the City Council (and not by the Police Commission itself).

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

PEC staff had concerns about the current version of this law, even before it became aware of the pending amendments. For example, staff was unsure what type of conduct could be grounds for removing a Police Commissioner “for cause,” given that this is not more specifically defined in the relevant Charter section. And in terms of procedure, it was unclear whether staff could refer investigative findings directly to the City Council, or if those findings needed to be approved first by the PEC (potentially following an administrative hearing).

PROPOSED AMENDMENTS AFFECTING THE PEC’S ENFORCEMENT AUTHORITY

The proposed amendments to the Oakland Municipal Code would affect the PEC’s jurisdiction over police oversight matters in the following ways:

1. Because the proposed amendments create an entirely new chapter of the Oakland Municipal Code pertaining to the OIG (instead of the current law which incorporates the OIG’s enabling ordinances into the same chapter as the Police Commission’s enabling ordinances), the new chapter contains a provision stating that the PEC has the authority to investigate and prosecute the alleged failure of City departments (e.g. OPD) to provide files or records requested by the OIG in order to carry its legal functions. (Proposed OMC sections 2.45.210, 2.47.060) This is essentially copying the current provision regarding the PEC’s authority in these matters into the new chapter being created specifically for the OIG, and does not add or detract from the PEC’s existing authority in any substantive way.
2. It would require the Police Commission to provide an annual report to the PEC regarding Police Commissioners’ completion of workplace retaliation training. (Proposed OMC section 2.45.190(D)).
3. It gives concurrent jurisdiction over allegations of Police Commissioner misconduct to other independent investigators besides the PEC. (Proposed OMC section 2.45.040(D)).

PEC staff is supportive of the first two changes, and broadly supportive of the third, albeit with suggestions for important clarifications.

Regarding the third change (giving other agencies besides the PEC the authority to investigate alleged Police Commissioner misconduct), it is worth quoting the relevant portion of the proposed legislation:

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

Commissioners shall act in accordance with all applicable laws and policies, including the Commission’s policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City’s Office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council. (Proposed OMC section 2.45.040(D))

PEC staff supports this amendment to the extent that it clarifies the grounds upon which a Police Commissioner may be removed. We do note that this clarification also appears to expand the types of allegations that the PEC could be charged with investigating, which could expand our caseload.

Staff also believes it is desirable for allegations to be investigated by the agency with subject-matter expertise over the particular type of allegation being made. For example, it is entirely appropriate for EICRC to investigate alleged civil rights violations such as sexual or racial harassment (and it is already the PEC’s current practice to refer allegations of this sort to EICRC).

PEC staff has concerns with the legislation as-written, however, on the following grounds:

1. It does not provide any criteria for determining which type of allegations should be investigated by the PEC, by EICRC, or by any other “independent investigator”;
2. As under existing law, it still does not specify the procedure by which investigative findings will be referred to the City Council for resolution; and
3. It is unclear who can initiate complaints under this section.

All of these deficiencies may impact the fair and efficient investigation and resolution of allegations against Police Commissioners.

The need for criteria to select an investigative agency

The proposed legislation does not specify what types of allegations should be referred to the PEC versus the EICRC. More worryingly, PEC staff notes that the proposed legislation says allegations can be investigated by agencies “such as” the PEC or EICRC, which potentially opens the door to referring allegations to any agency, absent some criteria for making a referral.

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

This creates the possibility that complainants (or City officials referring a complaint) could “forum shop” for an investigative agency based upon criteria that are irrelevant or even prejudicial to the fair investigation and resolution of an allegation. For example, complainants or referring officials might be tempted to steer a complaint toward an agency or office that they believe is already sympathetic to the claim being made, sympathetic to the complainant, or hostile to the respondent. And even if complainants do not seek to “forum shop” in this way, the legislation potentially exposes investigators to accusations of this sort by respondents, because it does not contain any objective criteria by which an appropriate investigative agency will be selected.

PEC staff suggests amending the proposed language to something like the following (our added language is in red):

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator **who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation**, such as the City’s office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

The need to clarify the procedure by which findings will be referred to Council

It would be advisable to clarify the procedure by which investigative findings shall be submitted to the City Council, as well as who can make such findings. Failure to do so could impact respondents’ due process rights and expose investigative findings to costly procedural attacks.

For example, under the PEC’s Complaint Procedures (which govern how we handle all cases or complaints), all of our investigative findings must be submitted to the PEC for a vote before they become conclusive. If we were to investigate an allegation under the proposed legislation, it is unclear if we would first need to submit our findings to the PEC for their approval (per our Complaint Procedures) before we could submit them to the City Council. Furthermore, if the respondent requests a hearing before the PEC instead of stipulating to our findings, this would essentially result in two hearings on the allegations – one before the PEC, and one before the City Council. (Similar issues might arise with other investigative agencies that are required to submit their findings to a hearing officer or board for approval.)

The current version of the legislation also does not specify the respondent’s procedural rights. For example, it is unclear if respondents need to be informed of the allegations or

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

given a chance to respond before they are referred to the City Council. It is also unclear whether respondents would be compelled to cooperate with an investigation, including by producing relevant documents or testimony; or if a state of limitations exists.

Clarifying the procedure to be followed would minimize the chances of a respondent raising procedural objections that can't be easily resolved by looking to the ordinance language. PEC staff recommends adding the following language (or something similar) if the intent of the legislation is for investigative findings to be referred directly to the City Council without being reviewed by the Commission (our proposed additions are in red):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Alternatively, if the intent of the legislation is that the PEC should first adopt any findings made by PEC investigators, with the City Council merely determining an appropriate resolution based upon those factual findings, then PEC staff recommends adding the following language (or something similar) (our proposed additions are in red):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, including the procedure for making final findings of fact and determining whether any violation of this section occurred. All findings and conclusions made under this section shall be referred to the City Council for determination of an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Clarifying who can initiate a complaint

It would be helpful to clarify who can make a complaint alleging Police Commissioner misconduct for purposes of this section. For example, it is currently unclear if members of the public can submit complaints alleging Police Commissioner misconduct, or if this is limited to City staff or even just fellow Commissioners. It is also unclear if investigative agencies can initiate proactive complaints.

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

PEC staff recommends adding the following language (or something similar) to proposed legislation (our suggested additions are in red):

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

SPECIAL CONSIDERATIONS

PEC staff makes the following miscellaneous observations:

1. It may be a helpful to have a fast-track procedure for urgent matters, with the decision to fast-track a complaint being made by an independent agency with subject-matter expertise.
2. The City Attorney should confirm whether the current language of the City Charter (which cannot be amended without a ballot measure) precludes any other agency besides the PEC from investigating alleged Police Commissioner misconduct.

The need for a neutral fast-track procedure

In discussions between the PEC and the legislation’s authors, it was noted that under current conditions, PEC investigations can sometimes take a year or longer. It was also noted that the PEC does have the ability to fast-track investigations if they are deemed to be urgent and time-sensitive, but that this depends upon the PEC’s available staffing and its competing case priorities.

PEC staff shares this concern about the current length of many PEC investigations. We would note that this is primarily due to lack of adequate staff support, as well as to the complexity and sensitivity of many of the allegations we investigate (for which care must be taken not to arrive at unfounded conclusions).

Nevertheless, given the great public importance of the Police Commission’s work, it is crucial that serious allegations of Police Commissioner misconduct be resolved quickly as well as thoroughly. For this reason, staff recommends including language in the proposed ordinance that would allow for an outside contractor to be hired to conduct urgent investigations, if the PEC or other appropriate city agency (e.g. EICRC) is unable to fast-track the investigation on its own.

However, we believe it is important that the determination as to what constitutes an urgent complaint, and the decision to refer it to an outside contractor for fast-tracking purposes, should be made by the agency initially handling the complaint (e.g. PEC or EICRC). This will

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

minimize the potential for this fast-track procedure to be used or perceived as a loophole for forum-shopping or vexatious investigations.

We recommend adding the following language (or something similar) to the proposed legislation (our proposed additions are in red):

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

Legal question as to whether the Charter precludes the legislation

PEC staff notes that the current language of the City Charter (to which any pending legislation must comport) may preclude the possibility of any agency besides the PEC investigating allegations of Police Commissioner misconduct that could result in the City Council removing that commissioner for cause. The relevant Charter section (604(c)(10) reads as follows:

The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

This section makes no reference to any agency besides the PEC being empowered to investigate allegations of Police Commissioner misconduct, and could therefore be read as giving the PEC sole authority over such matters. The City Attorney may want to assess whether the proposed amendment to OMC section 2.45.040(D) is consistent with this section of the Charter, specifically whether the investigations and remedies contemplated under proposed OMC section 2.45.040(D) are of the same type as those contemplated under City Charter 604(c)(10).

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

STAFF RECOMMENDATION

PEC staff recommends that the PEC vote to do all of the following:

1. Submit a written comment to the City Council that expresses the following, pursuant to City Charter section 603(h):
 - a. PEC recommends the adoption of proposed OMC sections 2.45.190(D), 2.45.210 and 2.47.060 as-written.
 - b. PEC recommends the adoption of proposed OMC section 2.45.040(D) with the following suggested amendments:

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation, such as the City’s office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

The procedure for assessing and investigating a violation under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (Regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

- c. PEC takes no position on the rest of the legislation because it does not affect the PEC's enforcement authority.
2. Attach this memo as background information to the comment recommended in #1 above.
3. Urge the City Attorney to produce a written opinion regarding whether City Charter section 604(c)(10) precludes any agency besides the PEC from investigating allegations that could result in the City Council removing a Police Commissioner for cause.

Attachments: Proposed Legislation; Public Safety Committee staff report.



PRELIMINARY
AGENDA REPORT



DATE: November 2, 2023

FROM: Councilmember Kalb

TO: Members of the City Council and
Members of the Public

SUBJECT: Oakland Police
Commission Ordinance

Recommendation:

ORDINANCE:

(1) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE OAKLAND POLICE COMMISSION AND THE POLICE COMMISSION'S SELECTION PANEL;

(2) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.46, THE ENABLING ORDINANCE FOR THE COMMUNITY POLICE REVIEW AGENCY, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE COMMUNITY POLICE REVIEW AGENCY; AND

(3) ADDING CHAPTER 2.47 TO THE OAKLAND MUNICIPAL CODE, AN ENABLING ORDINANCE FOR THE OFFICE OF THE INSPECTOR GENERAL, TO IMPLEMENT CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO FURTHER DEFINE THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL.

Dear Colleagues and Members of the Public,

On November 8, 2016, Oakland voters approved Measure LL, adding section 604 to the City Charter and establishing: (1) a Police Commission to oversee OPD policies and procedures, and (2) the Community Police Review Agency (CPRA) to investigate police misconduct and recommend discipline.

On November 3, 2020, Oakland voters approved Measure S1, creating a civilian Office of Inspector General, and further defining the authority of the Police Commission and the CPRA. On July 10, 2018, the Oakland City Council added Chapters 2.45 and 2.46 to the Oakland Municipal Code and amended them on July 16, 2019, to support the creation of the Police Commission.

Item 5b - Public Safety Committee Supplemental Report

Now, further amendments to the Oakland Municipal Code must be made in order to ensure the effectiveness of the Police Commission, the CPRA, and the Office of the Inspector General (OIG).

A summary of the major proposed changes are as follows:

Changes to the Police Commission

2.45.010 Definitions

- The definition of Serious Incident was amended to include the initiation of any administrative investigation of the Chief of Police or the Interim Chief of Police

2.45.025 Conflict of interest

- The previous definition precluded the very type of individuals who would have the most interest and relevant experience to be on the Commission or Selection Panel. This issue is very evident currently, as OPC is short on members and the Selection Panel has been looking for a new Chair for some time.

2.45.040 Commission's Governing Policies and Rules of Procedure

- This clarifies roles and responsibilities for Commission members, who may not give direction to the CPRA Director nor the Inspector General, maintaining independence of these three agencies.
- Also specifies that Commission members must conduct themselves appropriately and with integrity in all interactions with City staff, members of the public, and each other. Complaints that any commissioner has failed to do so will be investigated by an independent investigator and may constitute grounds for reprimand, suspension, or removal by City Council.

2.45.070 Functions and Duties of the Commission

- Adds a provision specifying that "cause" for removal of the Police Chief may include a final Sustained finding of Misconduct against the Chief arising from an administrative investigation where termination is within the recommended range of discipline in the Department's Discipline Matrix.
- Adds provisions specifying "cause" for removal of the Inspector General

2.45.080 Access to Documents

- This change allows the Commission access to Department files and records including personnel files

2.45.130 Establishing Discipline Committees

- Specifies that a conflict of interest regarding a particular case, shall recuse themselves. The following are examples of potential Commissioner conflicts: a personal relationship with an individual involved in the case, participation in a discipline meeting in which the case was discussed, participation in a formal review of a case, such as Force Review Board.

2.45.190 Commissioner Training

- Recently, allegations of retaliation have come to the attention of the City Council and the public. To address these concerns, retaliation training shall be mandatory once a year and failure to participate may constitute a substantial neglect of a commissioner's duty.

2.45.220 Administrative hearing upon removal of Chief

- Upon removal of the Chief from office, for any reason by any authority within the City, the Chief shall be entitled to an administrative appeal in accordance with California Government Code section 3304(c).

Changes to the CPRA: **Item 5b - Public Safety Committee Supplemental Report**

2.46.040 Agency Director

- This change specifies that the agency director shall be in charge of creating the agency's budget. It also ensures independence and non-interference from the Police Commission.

Changes to the OIG:

2.47 Office of the Inspector General

- This change creates more independence and autonomy for the OIG from the Police Commission.
- The OIG also has expanded authority to investigate allegations against city departments for failure to provide requested files or records to the OIG.

The Office of Councilmember Dan Kalb and Councilmember Kevin Jenkins worked jointly on this ordinance in conjunction with the Oakland City Attorney's Office with input from community organizations, including the Coalition for Police Accountability. Please join us in supporting this legislation.

For questions, please reach out to: Keara O'Doherty (D1) kodoherty@oaklandca.gov and Patricia Brooks (D6) pbrooks@oaklandca.gov.

Respectfully submitted,



Councilmember Dan Kalb

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS KALB AND JENKINS

ORDINANCE:

(1) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE OAKLAND POLICE COMMISSION AND THE POLICE COMMISSION'S SELECTION PANEL;

(2) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.46, THE ENABLING ORDINANCE FOR THE COMMUNITY POLICE REVIEW AGENCY, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE COMMUNITY POLICE REVIEW AGENCY; AND

(3) ADDING CHAPTER 2.47 TO THE OAKLAND MUNICIPAL CODE, AN ENABLING ORDINANCE FOR THE OFFICE OF THE INSPECTOR GENERAL, TO IMPLEMENT CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO FURTHER DEFINE THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL.

WHEREAS, on November 8, 2016, Oakland voters approved Measure LL, adding section 604 to the City Charter and establishing: (1) a Police Commission to oversee OPD policies and procedures; and (2) the Community Police Review Agency (CPRA) to investigate police misconduct and recommend discipline; and

WHEREAS, on November 3, 2020, Oakland voters approved Measure S1, creating a civilian Office of Inspector General, and further defining the authority of the Police Commission and the CPRA; and

WHEREAS, Charter Section 604(h) authorizes the City Council to enact legislation to further the goals and purpose of Charter section 604; and

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WHEREAS, the Oakland City Council added Chapters 2.45 and 2.46 to the Oakland Municipal Code on July 10, 2018, and amended them on July 16, 2019, to support the implementation of Charter Section 604; and

WHEREAS, pursuant to charter section 604(h), the City Council finds that additional amendments to Oakland Municipal Code are necessary to further the goals and purpose of Charter Section 604.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapters 2.45 (Oakland Police Commission) and 2.46 (Community Police Review Agency) of the Oakland Municipal Code are hereby amended as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by ~~striketrough~~).

Chapter 2.45 OAKLAND POLICE COMMISSION

2.45.010 Definitions.

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section:

~~"Ad Hoc Committee" shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.~~

"Agency" shall mean the Community Police Review Agency.

~~"Appointing Authority" shall mean the Selection Panel established by section 604(c)(3) of the City Charter or the Mayor. "Appointing Authorities" shall mean both the Selection Panel and the Mayor.~~

"Chief" shall mean the Chief of Police of the Oakland Police Department.

"Commission" shall mean the Oakland Police Commission.

"Department" shall mean the Oakland Police Department.

"Misconduct" shall mean both ~~a Department sworn employee's~~ an Officer's affirmative act that violates, and/or ~~his or her~~ a failure to act in violation of, the Department's policies, procedures or directives, including without limitation the Department's Manual of Rules.

"Officer" shall mean any sworn individual employed by the Department.

"OIG" shall mean the civilian Office of Inspector General ~~created by this Chapter 2.45.~~

"Serious Incident" shall mean ~~a Department sworn employee~~ an Officer-involved shooting, death or serious bodily harm caused by the action and/or inaction of ~~a Department sworn employee~~ an Officer, in-custody death, ~~and/or the alleged~~ on-duty or off-duty criminal conduct of ~~a sworn Department employee~~ an Officer which rises to the level of a felony or ~~serious misdemeanor.~~ Serious Misdemeanor, and/or the initiation of any administrative investigation of the Chief of

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Police or the Interim Chief of Police.

"Serious Misdemeanor" shall mean any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or ~~a sworn employee of the Department~~ an Officer, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation of California Penal Code section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

"Subject Officer" shall mean ~~the Department sworn employee~~ an Officer who is the subject of a complaint of alleged ~~misconduct~~ Misconduct.

2.45.020 Creation of Police Commission and repeal of Citizens' Police Review Board.

Oakland City Charter section 604 has established the Oakland Police Commission. ~~Effective the sixtieth day after the City Council's confirmation of the first group of Commissioners and alternates,~~ Ordinance No. 12454 C.M.S., which created the Citizens' Police Review Board, ~~shall be is~~ repealed.

2.45.025 ~~Conflict of interest.~~ Reserved.

~~The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:~~

- ~~A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or~~
- ~~B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit which was finally resolved during within the previous year 12 months.~~

~~This Section shall not apply to the Selection Panel members already appointed prior to June 10, 2018. on the effective date of this Chapter 2.45.~~

2.45.030 Selection Panel.

- A. To the extent practicable ~~and with the exception of the first Selection Panel previously formed under City Charter section 604(e)(3),~~ the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland's diversity and who represent communities experiencing the most frequent contact with the Department.
- B. ~~With the exception of the first Selection Panel previously formed under City Charter section 604(e)(3),~~ Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.

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- D. The Selection Panel, with the assistance of the City Administrator, shall determine how to solicit candidates for the positions of Commissioner and alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City's record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel's jurisdiction and provide such communications to the City upon request.
- F. The Selection Panel shall receive training and orientation regarding City Charter section 604 on an annual basis.
- G. Each Selection Panel member shall observe no fewer than two (2) Commission meetings per calendar year.

2.45.040 Bylaws Commission's governing policies and rules of order.

- A. The Commission may shall prepare and maintain its own governing policies and rules of order bylaws to govern its operations, the management of its agendas, and the conduct of its meetings. Any such bylaws policies or rules shall be approved, or amended, by a vote of not less than five (5) affirmative votes and shall be consistent with the City Charter and all City ordinances. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.
- B. The Commission shall adopt policies for official communications and direction to Commission staff and City employees generally, as well as the Agency Director, Inspector General and Police Chief specifically. Neither the Commission Chair nor any other Commissioner shall give orders or directions to the Agency Director, Inspector General or Chief except to the extent the Commission has the authority to give such direction and has specifically delegated its authority in a Commission policy or by majority vote. Any such delegation of authority by the Commission to direct the Agency Director, Inspector General or Chief must be reasonably specific in nature and may not be a general or blanket delegation.
- C. The Commission's rules of procedure shall provide a clear process for the Commission, by a motion and a vote, to schedule items to, or remove items from, future Commission agendas in accordance with applicable law. Motions and votes to schedule or remove open-session items shall occur in open session, and motions and votes to schedule or remove closed-session items shall occur in closed session.
- D. All commissioners are public officials and are required to conduct themselves with the highest integrity and leadership in all actions. This includes conducting themselves appropriately in interactions with the public, with fellow members of the Commission, and with all City employees. Commissioners shall act in accordance with all applicable laws and policies, including the Commission's policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City's Office of

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Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

- E. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws amendments to the Commission's governing policies and rules of procedure prior to implementation.

2.45.045 Confidentiality of personnel information.

The Commission, the Agency, the OIG and their staff shall maintain the confidentiality of ~~Department sworn employee~~ Officer personnel records (as defined by California Penal Code section 832.7) as required by state and local law. Failure to maintain the confidentiality of ~~Department sworn employee~~ Officer personnel records, whether or not intentional, may subject Commission, Agency and OIG staff to discipline, up to and including termination of employment.

2.45.050 Designation of alternates as voting members.

Consistent with section 604(d)(3) of the Charter, the ~~The~~ Chair of the Commission may, in ~~his or her~~ their discretion, designate an alternate as a temporary voting member to establish a quorum if a Commissioner is absent from a meeting. ~~Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.~~

2.45.60 Background checks.

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks, which shall only include: verification of educational and employment background, and any other information that may be verified by a public records search.

~~A. Verification of educational and employment background, and any other information that may be verified by a public records search.~~

The results of the background check ~~identified in subsection A., above,~~ shall be treated as public records, and shall be considered by the ~~appropriate Appointing Authority, Mayor or Selection Panel, as appropriate,~~ prior to submitting the names of the final candidates to the City Council for confirmation.

2.45.070 Functions and duties of the Commission.

In addition to the powers and duties described in section 604 of the Oakland City Charter, the Commission shall:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law,

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including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).

- C. Review and comment on the education and training the Department provides its ~~sworn~~ employees Officers regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. The Commission shall consider whether such training is adequately funded when it reviews the Mayor's proposed budget pursuant to Charter section 604(b)(7).
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by the earlier of April 15 of each year or such other date as set by the Mayor, ~~a proposed budgets~~ for providing the education and training identified in subsection C., above the Commission, OIG and CPRA.
1. The Inspector General and Agency Director shall submit proposed budgets for the OIG and CPRA, respectively, to the Commission for inclusion in the Commission's proposal.
 2. The Commission's proposal shall be adopted by majority vote in open session after receiving and discussing recommendations from members of the public.
 3. Once budgeted by the City Council, funds and positions shall be subject to the requirements of Charter section 604(e)(6) and Municipal Code sections 2.45.100(D) and 2.46.040(G). Consistent with the Inspector General's and Agency Director's authority under Charter section 604(e)(6) to organize and reorganize the OIG and the Agency, respectively, the Commission may not direct or require the transfer, deletion, or other alteration of funds or staff positions that City Council ultimately allocates to the OIG and the Agency.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
- Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief ~~of Police~~ as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief ~~of Police~~ as aforementioned as a result of alcoholism or drug addiction; or
 - A final Sustained finding of Misconduct against the Chief arising from an administrative investigation where termination is within the recommended range of

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discipline in the Department's Discipline Matrix.

- ~~2.3.~~ Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
 - ~~3.4.~~ Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
 - ~~4.5.~~ Failure or refusal to cooperate with any investigation involving employees of the Department; or
 - ~~5.6.~~ Obstruction of any investigation of Department employee ~~misconduct~~ Misconduct or criminal activity; or
 - ~~6.7.~~ Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
 - ~~7.8.~~ A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
 - ~~8.9.~~ A material breach of confidentiality; or
 - ~~9.10.~~ Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief ~~of Police~~.
- F. ~~Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in Receive and comment on the Chief's annual report to the Commission, as required by Charter section 604(b)(8),~~ which shall include, at a minimum, the following:
1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
 3. The number of investigations completed, or otherwise closed, by IAD, and the results of the investigations, including total data on types of alleged rule violations, employee types (professional staff, police officer trainee, officer and/or supervisors), and ultimate determinations (Sustained, Not Sustained, Unfounded, Exonerated, or Administratively Closed);
 4. The number of training sessions provided to ~~Department sworn employees~~ Officers, and the subject matter of the training sessions;
 5. Revisions made to Department policies;

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6. The number and location of ~~Department sworn employee~~ Officer-involved shootings;
7. The number of Executive Force Review Board ~~or~~ and Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of ~~Department sworn employees~~ Officers disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the ~~subject officer~~ Subject Officer.

11. The number of complaints the Department failed to forward to the Agency within one business day of receipt, as required by section 604(f)(1) of the Charter, including any potential rule violation(s) identified by the Department as a result of each complaint not timely forwarded.

The Chief shall submit the annual report by the last day of April the following calendar year. By the last day of ~~March~~ December of each year, the Commission shall notify the Chief regarding any additional information requested. The Chief's annual report shall be available to the public and thus shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct ~~an~~ annual performance ~~review~~ reviews of the Inspector General, Agency Director and ~~of~~ the Chief. The Commission shall determine, and may periodically amend, the criteria for evaluating the Inspector General's, Agency Director's and the Chief's job performances by a majority vote in open session., ~~and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one (1) full year before conducting any evaluation of their job performance. No performance criteria, or any other job expectation, may be used in a performance review unless it was adopted by the Commission eleven (11) months prior to the end of the applicable review period. The Commission shall provide any new evaluation criteria or substantive revisions or additions thereto to the City's Human Resources Department for review and input regarding consistency with both City and industry standards.~~ The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's, Agency Director's or the Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary. Nothing herein shall be construed to prohibit evaluation of the Inspector General, the Agency Director or the Chief in closed session, pursuant to applicable law.
- H. Consistent with section 604(e)(6) of the Charter, have the authority to remove the Inspector General by an affirmative vote of no fewer than five members only after a finding or findings of cause. For purposes of removing the Inspector General, "cause" shall be defined as any of the following:

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1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Inspector General as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Inspector General's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Inspector General as aforementioned as a result of alcoholism or drug addiction; or
 2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Inspector General has received written warning of the neglect or violation and has failed to cure the neglect or violation within twenty (20) days; or
 3. Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
 4. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
 5. A material breach of confidentiality; or
 6. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Inspector General.
 7. Two (2) consecutive annual performance evaluations with an overall rating of less than fully effective ratings.
- ~~H.I. Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially. Regularly evaluate the sufficiency and performance of legal counsel.~~
1. The Commission shall develop and implement a performance evaluation process to assess the performance of its outside counsel. Metrics to be evaluated shall include, but are not limited to: analytical abilities, legal research/writing, public speaking, professionalism, time management, productivity, and subject matter expertise/knowledge of the law. Areas of subject matter expertise shall include, but are not limited to, if applicable: understanding of the Brown Act/Sunshine Act and parliamentary rules, public employment law, and/or policing policies/practices and police accountability.

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2. [Performance evaluations of outside counsel shall occur regularly, but no less frequently than once each calendar year.](#)
3. [The Commission shall report to the City Council regarding the performance evaluation of outside counsel.](#)
4. [If the Commission creates a staff attorney position through the Civil Service Board, in accordance with Charter sections 604\(b\)\(12\) and 604\(e\)\(7\), the Commission shall conduct performance evaluations in accordance applicable personnel rules and labor agreements.](#)

[H.J.](#) Request that the City Attorney submit ~~semi~~-annual reports to the Commission and to City Council which shall include a listing and summary of:

1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
2. Arbitration decisions or other related results;
3. The ways in which it has supported the police discipline process; and
4. Significant recent developments in police discipline.

The City Attorney's ~~semi~~-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

[J.K.](#) Provide ~~policy guidelines input~~ to the Agency Director for assistance in determining case prioritization.

[K.L.](#) Make available on its website, to the extent permitted by law:

1. The Commission's annual report;
2. The Chief's annual report;
3. The Agency's reports;
4. The Agency Director's monthly reports; ~~and~~
5. The ~~Inspector General's annual report.~~ [OIG's reports, and](#)
6. [Access to the City's public records portal](#)

No information shall be distributed [in any form, including but not limiting to](#) using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality ~~of personnel records or privilege~~, including but not limited to [confidentiality of personnel records under](#) California Penal Code section 832.7.

[L.M.](#) Direct the Agency to investigate a ~~serious incident~~ [Serious Incident](#) when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. [This does not affect the Agency's ability to investigate any complaint of misconduct, whether public or not.](#)

[M.N.](#) Review the Agency's dismissal and/or administrative closure of all complaints of ~~misconduct~~ [Misconduct](#) involving Class I offenses, including any Agency investigative

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file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.

~~N.O. Submit an annual, written report as required by Charter section 604(b)(9) to the Mayor, City Council and the public by May 30 of each year. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.~~

~~O. Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.~~

P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.

Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency, the OIG, and the Commission.

~~R. Hold at least two public hearings each calendar year to discuss potential amendments to update the Commission's rules of procedure and to ensure compliance with section 2.45.040. The Department, through the City Administrator or his or her designee, shall report to the Commission on issues identified by the Commission through the Commission's Chair. The City Administrator, or his or her designee, shall attend in person unless impracticable, and shall be prepared to discuss and answer questions regarding the issues identified by the Commission.~~

S. On behalf of the City of Oakland, have the authority to bind the City by written contract, as described in Oakland Municipal Code Chapter 2.04, for such professional, technical or scientific services as are necessary to fulfill its Charter duties. No Commission member may participate in a vote to approve a contract ~~until he or she completes prior to completing~~ the contract training described in section 2.45.190 N, ~~such training to be provided by City Administration within sixty (60) days of final passage of this section 2.45.070 S. and, thereafter, as prescribed by section 2.45.190 N.~~

~~Failure to complete contract training before participating~~ Participating in a vote to approve a contract without completing contract training, and/or ~~failure failing~~ to adhere to the requirements, procedures and policies set forth in Chapter 2.04 of the Oakland Municipal Code, may be considered "gross misconduct in office" for purposes of Charter section 604(c)(10).

The Council recognizes and acknowledges that the City may need the cooperation and assistance of Commission members to address contract disputes that arise in connection

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with contracts that the Commission approves during the tenure of such Commissioners' service as a regular or alternate member on the Commission. Each Commissioner shall have the responsibility and duty to cooperate and provide assistance to the City to address contract disputes that arise in connection with contracts that the Commission approves during his/her tenure as a regular or alternate member of the Commission.

- T. No Commissioner shall interfere with an open Agency investigation or any other administrative investigation of an Officer, except in accordance with its functions and duties as explicitly set forth in section 604 of the Charter and this Chapter.

2.45.075 Serious ~~incidents~~ Incidents.

~~Within one hundred and eighty (180) days after the effective date of this Chapter 2.45, the The~~ City Administrator ~~or their designee~~ shall ensure ~~establish~~ the Department establishes and maintains a protocol for notifying the Commission, the Agency Director and the Inspector General of ~~serious incidents~~ Serious Incidents within forty-eight (48) hours of the Chief knowing ~~or having a reasonable suspicion~~ that a ~~serious incident~~ Serious Incident has occurred, ~~or knowing of an allegation that a Serious Incident has occurred.~~ ~~For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct.~~ The City Administrator or her or his designee shall also provide a confidential status report to the ~~Chair of the~~ Commission, the Agency Director and the Inspector General within ten (10) calendar days of the date on which the ~~serious incident~~ Serious Incident occurred, and a second confidential status report ~~to the Chair of~~ the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the serious incident occurred. The City Administrator or her or his designee shall also brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all ~~serious incidents~~ Serious Incidents under investigation.

2.45.080 Access to documents

- A. The Commission shall have access to Department files and records, including personnel files, in accordance with Charter Section 604(f)(2). Commission requests for Department records shall be submitted in writing to the Captain of Internal Affairs and/or the Chief. The Department shall be responsible for responding to Commission requests for Department records in accordance with Charter section 604(f)(2).
- ~~A.B.~~ Subject to applicable law, the Commission shall have access to all Agency ~~and Department~~ files and records, with the exception of personnel records, and to all files and records of other City offices, departments or agencies that are relevant and necessary to the performance of its duties, with the exception of personnel records. Requests for access to files and records under this subsection shall be made by a majority vote of the Commission, which shall articulate a reasonable nexus to one or more of the Commission's powers and duties enumerated in Charter Section 604(b).
- C. Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City

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departments and agencies that are relevant to a ~~serious incident~~ Serious Incident. ~~Notwithstanding the foregoing, the Commission shall have access to the personnel records necessary to perform its duties described in City Charter section 604(g)(3) and in section 2.45.070 M. of this Chapter of the Oakland Municipal Code.~~

D. The Commission shall have access files and records, including personnel records, necessary to perform its duty to review the Agency's closure of certain use-of-force, sexual misconduct, and untruthfulness investigations pursuant to Charter section 604(g)(3).

E. The Commission shall have access files and records, including personnel records, necessary to perform its duty to review the Agency's dismissal and/or administrative closure of all complaints of Misconduct involving Class I offenses pursuant to section 2.45.070(M) of this Chapter.

~~C.F. The~~ Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.

~~D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties described in this Chapter 2.45.~~

~~E. The Commission and the OIG shall follow Department policies and procedures regarding the release of videotape and audio tape recordings of alleged Class I violations committed by police officers.~~

~~F.G.~~ To the extent possible, any confidential documents, files and records shall be made available to the Commissioners, the Inspector General and the Discipline Committees in electronic format on a secure server. Each individual who has access to this server shall have ~~his or her~~ their own password. Each page of any printed copies of confidential documents, records or files shall bear a watermark consisting of the name of the individual for whom the printed copies are made. All such copies must be stored in a secure place, and must be shredded when no longer needed. Upon expiration of ~~his or her~~ their term, a Commissioner must return to the City any and all copies of confidential materials that have not been shredded.

2.45.090 Meetings.

In conducting its meetings, the Commission shall comply with all requirements of the Brown Act, California Government Code section 54950, et seq., and Article II of Chapter 2.20 of the Oakland Municipal Code.

A. Consistent with City Charter section 604(d)(1), the Commission shall meet at least twice each month at an established time and place suitable to its purpose. Such meetings shall be designated regular meetings and shall be held at City Hall. If the Commission determines, by a majority vote of those present at a regular meeting, that a second regular meeting in that month is not necessary, it shall provide public notice of the meeting cancellation as required by all applicable State and local laws. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10. The Commission

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shall work with City Administration to facilitate public participation via internet platforms such as Zoom. The Commission shall report out to the public regarding the progress made in this regard at least quarterly until such remote access is established.

- B. Consistent with City Charter section 604(d)(1), at least twice each calendar year, the Commission shall hold one (1) of its regularly scheduled meetings at a location outside of City Hall. These offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code and shall include an agenda item titled "community roundtable," or something similar. The purpose of the community roundtable agenda item shall be to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.
- C. "Final Actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present. Closed sessions that are scheduled in conjunction with regular Commission meetings shall be held at the end of Commission meetings, prior to open forum and adjournment, unless holding closed session earlier is necessary to accommodate attendance by a person other than a Commissioner, Commission staff, or the Commission's outside counsel.

2.45.110 Civilian Inspector General.

- ~~A. Within one (1) year of the City Council's confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission, with the assistance of the City Administrator shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060, above, before hiring except that the results of the background check shall be submitted only to the Commission.~~
- ~~B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(e)(9) and in section 2.45.190 A. through F. of this Chapter 2.45. The Commission may propose any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.~~
- ~~C. The Inspector General shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union.~~

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- ~~D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.~~
- ~~E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, Skelly hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or Skelly hearing until he or she has completed the training identified in section 2.45.190 C.~~

~~2.45.120 Functions and duties of the Office of Inspector General.~~

~~The Commission shall advise the OIG of its priorities and the functions and duties the Commission establishes for the Office of Inspector General, which shall include, without limitation:~~

- ~~A. Preparing an annual report, summarizing the results of the annual reviews of:
 - ~~1. The Department's processes and procedures for investigating alleged Misconduct;~~
 - ~~2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of misconduct;~~
 - ~~3. The Agency's processes and procedures for investigating alleged Misconduct;~~
 - ~~4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of misconduct;~~
 - ~~5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);~~
 - ~~6. Training and/or policy issues that arise during the investigations of complaints; and~~
 - ~~7. Trends and patterns regarding use of force and Department sworn employee-involved shootings.~~~~

~~This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.~~

- ~~B. Monitoring and evaluating, on at least an annual basis, the number and percentage of sworn officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem solving, and work related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.~~
- ~~C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn Department employees.~~
- ~~D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.~~

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- ~~E. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for sworn personnel.~~
- ~~F. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).~~
- ~~G. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.~~
- ~~H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.~~

2.45.130 Establishment of the Establishing Discipline Committees.

A separate Discipline Committee will be established for each ~~Department sworn employee Officer~~ discipline or termination case. The ~~Chairperson of the~~ Commission Chair shall appoint three (3) Commission members to serve on a Discipline Committee and shall designate one (1) of these three (3) Commission members as the ~~Committee's chair~~ Chairperson. The Discipline Committees shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a ~~subject officer~~ Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.190 A. through F.
- B. Membership in the Discipline Committees shall rotate for each ~~Department sworn employee Officer~~ discipline or termination case, as determined by the ~~Chairperson of the~~ Commission Chair.
- C. All Commissioners, including Alternate Commissioners, who have satisfied the training requirements, may serve as Discipline Committee members.
- D. Any Commissioner with a conflict of interest regarding a particular case, shall recuse themselves as appropriate from serving on a Discipline Committee. The following are examples of potential Commissioner conflicts: a personal relationship with an individual involved in the case, participation in a discipline meeting in which the case was discussed, participation in a formal review of a case, such as Force Review Board.

2.45.140 Discipline.

In accordance with section 604(g)(4) of the City Charter, all ~~Department sworn employees Officers~~ shall be afforded their due process and statutory rights, including Skelly rights, as follows:

- A. With respect to ~~misconduct~~ Misconduct that is given a Class I designation pursuant to the

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Department's Discipline Policy, the Chief and the Agency Director shall include probative ~~video and/or audio recordings videotape and/or audiotape~~ from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to require the Chief and the Agency Director to provide any additional ~~videotape, audiotape~~ recordings, and/or documents (including without limitation any existing transcripts ~~of subject-officer~~ Subject Officer or witness interviews) from the Agency's and the Department's investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.

- B. The record submitted to the Discipline Committee by the Chief regarding any ~~misconduct~~ Misconduct shall include the ~~subject officer's~~ Subject Officer's history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.
- C. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the "proposed discipline"), either by agreement between the Chief and the Agency or by decision of the Discipline Committee, the Chief shall send a notice of intent to impose discipline or a notice of intent to terminate to the ~~subject officer~~ Subject Officer. Consistent with City policy and applicable law, the Department shall offer the ~~subject officer~~ Subject Officer a Skelly hearing to be conducted by an assigned Skelly officer. After completion of the Skelly hearing, the Skelly officer shall issue ~~his or her~~ a report which shall include ~~his or her~~ a recommendation regarding whether the proposed discipline should be affirmed or modified in any way.
- D. The Skelly report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the Skelly report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as "final discipline").
 - 1. If the Chief and the Agency Director agree on the final discipline, the Chief shall send a notice of discipline or notice of termination to the ~~subject-officer~~ Subject Officer.
 - 2. If the Chief and the Agency Director do not agree on the final discipline, the Skelly report shall be submitted to the Discipline Committee which shall decide the final discipline based solely on the record reviewed and considered by the Skelly Officer (which shall include the notice of intent to discipline or terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the final discipline, the Discipline Committee shall direct the Chief to send a notice of discipline or notice of termination to the ~~subject officer~~ Subject Officer.

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- E. The Skelly report shall be submitted to the Discipline Committee if the Discipline Committee decided the proposed discipline. The Skelly report shall also be submitted to the Chief and the Agency Director. The Discipline Committee shall consider the Skelly report in deciding the final discipline. After such determination, the Discipline Committee shall direct the Chief to send a notice of discipline or notice of termination to the ~~subject-officer~~ Subject Officer.
- F. After the final discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.
- G. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the final discipline, it shall return all records and information it received (if not received electronically) to the party from which it received such records and information. Members of the Discipline Committee shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, or discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection G. shall not preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.
- H. The ~~subject-officer~~ Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the ~~subject-officer~~ Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

2.45.150 ~~Establishment of other~~ Establishing additional committees.

The Commission may establish either an ad hoc or standing committee by majority vote of the Commission. Membership on a Committee shall be proposed by the Chair and ratified by a majority vote of the Commission.

The Commission must obtain City Council approval prior to the creation of any standing committee only if the committee will require additional resources. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, if any, and the costs of complying with noticing and reporting requirements resulting from its establishment. City Council approval shall not be required for creating temporary or ad hoc committees.

2.45.160 Public statements of the Commission.

The Commission may authorize one or more of its members to issue statements to the public regarding the Commission's official business, to the extent such business is not confidential or privileged under State or local law only after the statement has been approved by an affirmative vote of not less than four (4) votes in a public meeting. Commissioners may publicly discuss their

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roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

2.45.170 Election of Chairperson Electing a Commission Chair and Vice-Chair.

~~At The Commission shall elect a Commission Chair and Vice-Chair at its first regular meeting, the members shall elect a Chairperson and a Vice-Chairperson. Beginning February 1, 2019, the members shall elect a Chairperson and a Vice-Chairperson at the first regular meeting of each calendar year, and as necessary to fill a vacancy.~~

2.45.180 Staff assistance. Reserved

- ~~A. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in section 604 of the City Charter.~~
- ~~B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person under her/his jurisdiction to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.~~
- ~~C. At a minimum, the City Council shall allocate the equivalent of an additional one-half (½) of a full-time administrative position (0.5 FTE) to the City budget for the purpose of providing adequate administrative support for the Commission.~~
- ~~D. The full-time equivalent non-City Attorney legal advisor position assigned by the City Attorney after consultation with the Chair shall be divided into two (2) part-time positions: a one-half (½) or two-thirds (⅔) time position with specific responsibilities for providing legal services to the Agency related to investigations and discipline, and a one-half (½) or one-third (⅓) time position as legal advisor to the Commission. The legal advisor to the Agency and the legal advisor to the Commission shall report to the Commission. Neither the legal advisor to the Agency nor the legal advisor to the Commission shall report to or be supervised by the City Attorney or any Deputy City Attorney. Pursuant to City Charter Section 401(6), the City Attorney shall act as counsel to the Agency and the Commission in any litigation brought against either in their official capacity and shall provide legal advice only upon request of the Commission.~~

2.45.190 Commissioner training.

- A. Immediately upon appointment, each Commissioner and alternate shall familiarize themselves with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law

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Enforcement ("NACOLE").

- C. Ongoing or repeated failure to complete training within the timeframes proscribed by City Charter and/or this Section may constitute a substantial neglect of a Commissioner's duty.
- D. Each Commissioner and alternate shall complete the City's on-line training on workplace retaliation training at least once each calendar year. Commissioner and alternates shall complete the first such training within sixty days of appointment, or as soon thereafter as possible. The Public Ethics Commission shall request and receive an annual report in January of each year regarding the Commission's workplace retaliation training activity for the preceding calendar year.
- E. Within six (6) months of appointment, or as soon thereafter as possible ~~and with the exception of the first group of Commissioners and alternates,~~ each Commissioner and alternate shall receive training on:
- ~~A. — Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code;~~
 - ~~B.1. Receive training in~~ basic principles of constitutional due process and administrative hearing procedures;
 - ~~C.2. Receive training in~~ the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
 - ~~D.3. Receive briefing on~~ the negotiated settlement agreement in the case of Delphine Allen, et al. v. City of Oakland, and all related court orders for so long as they remain in effect;
 - ~~E.4. Receive information regarding~~ constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement;
 - ~~F.5. Receive training in the legal requirements of the~~ California's Political Reform Act (Cal. Gov't Code section 81000, et seq.), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, et seq.), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, et seq.);
 - ~~G.6. Receive training in open session in the legal requirements of~~ California's Meyers Miliias Brown Act (Cal. Gov't Code section 3500, et seq.) (MMBA), the Public Employment Relations Board's administration of the MMBA, the City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures, which training shall be provided by the City Administrator or their designee(s) from Human Resources and/or Employee Relations and shall occur in open session; ~~and~~
 - ~~H.7. Receive training in open session in the legal requirements of~~ California's Public Safety Officers Procedural Bill of Rights Act (Cal. ~~Gov't Code section 3300, et seq.~~), ~~and other California Code sections pertaining to peace officers' rights, which~~

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~~training shall be provided by the Agency Director and/or their designees(s) and shall occur in open session; and~~

- ~~8. City policies and procedures regarding Officer misconduct and discipline, including Relevant Department and CPRA policy and procedure.~~

~~The first group of Commissioners and alternates shall comply with the requirements of subsections A. through H. within twelve (12) months of their appointment.~~

- ~~F. In addition, within twelve (12) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:~~

- ~~I.1. Receive the training and orientation specified by section 604(c)(9) of the City Charter;~~
- ~~J.2. Participate in a Department "ride-along" and attend a police academy curriculum designed for them by the Chief after consultation with the Commission. The curriculum shall be designed so that criminal background checks will not be required for attendance;~~
- ~~K.3. Complete the Department's implicit bias training, and crisis intervention training;~~
- ~~L.4. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and~~
- ~~M.5. Receive training regarding racial equity.~~

~~The first group of Commissioners and alternates shall comply with the requirements of subsections I. through M. within eighteen (18) months of their appointment.~~

~~The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this Section and by section 604 of the City Charter. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").~~

- ~~N.6. Receive training on the City's public contracting requirements, policies and procedures for the purchase of professional, technical, and/or scientific services before the Commissioner casts a vote on any such contract, notwithstanding the six-month time frame provided for training in this Section 2.45.190 and in accord with Section 2.45.070, which provides that Commissioners must receive training on public contracting before the Commissioner votes on such contracts and that failure to do so constitutes gross misconduct in office and grounds for removal.~~

- ~~G. The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this Section and by Charter section 604. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").~~

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2.45.200 Hearings.

It shall be the sole and exclusive responsibility of the Commission to determine the order and conduct of any public hearing, consistent with applicable law.

2.45.210. Authority of Public Ethics Commission.

If ~~either the Commissioner~~ Commission ~~or the Inspector General~~ does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

2.45.220 ~~Reporting to City Council.~~ Administrative hearing upon removal of Chief

~~The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council's confirmation of the first group of Commissioners and alternates. The Commission's subsequent reports shall be submitted annually on or near the anniversary of that date.~~

Upon removal of the Chief from office, for any reason by any authority within the City, the Chief shall be entitled to an administrative appeal in accordance with California Government Code section 3304(c). Removal for the purposes of this section shall include any action that constitutes removal under the Code, including but not limited to termination.

The Chief shall have ten calendar days from service of the notice of the action constituting removal to request an administrative appeal. The request for appeal must be in writing and must be directed to, at a minimum, the Commission, the Mayor, and the City Attorney.

The administrative appeal procedure shall be as follows:

The City will retain an independent hearing officer, the cost of which shall be borne by the City. The hearing officer's assessment of the removal and findings of fact related to the same shall serve as a non-binding recommendation to the City. The hearing officer shall receive evidence solely through records, sworn declarations and argument. The parties' arguments shall be oral, except that either party may also elect to submit a closing brief following the presentation of evidence. Any evidence introduced in a closing brief not previously introduced or submitted to the arbitrator will not be considered. Closing briefs shall be submitted within twenty (30) calendar days of the close of the hearing. The hearing officer will not consider briefs submitted after the deadline. The hearing officer will finalize the evidentiary record and submit a written report rendering a non-binding recommendation to the City and, as necessary to make such recommendation, make underlying findings of fact, about the removal of the Chief, whether or not the removal decision was supported by just cause.

The hearing officer shall submit the report within thirty (30) calendar days of the close of the hearing; unless either party timely submits a closing brief, in which case the record shall be

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finalized and the complete report shall be delivered within sixty (60) calendar days after the close of the hearing.

The Hearing Officer shall provide the following materials to the Removing Authorities for their consideration, which shall constitute the official hearing record: (1) A summation page delineating the name of the Hearing; any and all issues set forth by the Parties during the administrative appeal hearing; a brief summary of the written report; (2) the complete written report rendering all findings and recommendations; (3) any documentary evidence, and any written briefs submitted; and (4) the cassette tape(s) of the hearing.

The hearing shall be audio-recorded by the City. Copies of the recording will be available to the appellant, upon written request, for no charge.

The hearing shall be closed to the public. The hearing officer's report and all other related or accompanying documents and materials shall remain confidential to the extent required by law.

Chapter 2.46 COMMUNITY POLICE REVIEW AGENCY

2.46.010 Definitions.

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section:

"Agency" shall mean the Community Police Review Agency.

"Commission" shall mean the Oakland Police Commission. "Department" shall mean the Oakland Police Department.

"Misconduct" shall mean both ~~a Department sworn employee's~~ an Officer's affirmative act that violates, and/or ~~his or her~~ a failure to act in violation of, the Department's policies, procedures or directives, including without limitation the Department's Manual of Rules.

"Officer" shall mean any sworn individual employed by the Department.

"Subject Officer" shall mean the ~~Department sworn employee~~ Officer who is the subject of a complaint of alleged Misconduct.

2.46.020 Creation.

Oakland City Charter section 604 has established the Community Police Review Agency.

- A. It is in the public interest to facilitate the Agency's receipt of public complaints regarding alleged ~~misconduct~~ Misconduct. Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. ~~The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location.~~ Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City's website and on the Agency's website.

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- B. Consistent with section 604(e)(1) of the Charter, the City shall allocate a sufficient budget for the Agency to perform its functions and duties.
- C. Consistent with the Agency's access to City files and records under section 604(f)(2) of the Charter, the Agency shall have direct access to records in the custody of any outside investigator retained by the City to conduct an administrative investigation of an Officer. Upon receipt, the outside investigator shall make every reasonable effort to respond to the Agency's requests for files and records within ten (10) days.

2.46.030 Functions and duties.

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the Agency's functions and duties are as follows:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged ~~misconduct~~ Misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall ~~be indicate~~ date-stamped of receipt and ~~numbered sequentially~~ be assigned an internally generated case number. A copy of the numbered and date-stamped complaint shall be provided to the complainant whenever possible and to the Department's Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a ~~subject officer~~ Subject Officer and any other ~~sworn employee of the Department~~ Officer to fully cooperate with an Agency investigation. The Chief shall order all ~~Department sworn employees~~ Officers subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. ~~Videotape~~ record the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
- F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- G. ~~In consultation with and upon the approval of the Commission,~~ Establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
- H. ~~No less than~~ At least twice ~~a~~ each calendar year and as permitted by applicable law, ~~issue~~ submit a report to the Public Safety Committee which shall include the following information:

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1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
3. The number of the Agency's pending investigations, and the types of Misconduct that is being investigated;
4. The number of investigations completed by the Agency, the results of the investigations, and the ~~amount of time~~ number of days spent on the investigations;
5. The number of ~~Department sworn employees for~~ Officers whom sustained findings of ~~misconduct~~ Misconduct were made and the level of discipline proposed;
6. The number of closed investigations which did not result in sustained findings and/or discipline of the ~~subject officer~~ Subject Officer;
7. The number of cases referred to mediation;
8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and
9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times ~~a Department sworn employee~~ an Officer failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

I. As soon as practicable, publish on its website records related to the reporting, investigation, or findings of: incidents involving the discharge of a firearm at a person by a peace officer or custodial officer and incidents in which the use of force by an Officer against a person resulted in death, or in great bodily injury, consistent with California Penal Code section 832.7(b)(1)(A).

2.46.040 Agency Director.

The Agency Director shall report to the Commission and shall be responsible for the day-to-day operations of the Agency. The Agency Director's job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency's functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
 1. The case number;
 - ~~2. The name of the complainant;~~

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- ~~3.2.~~ The initials of the investigator assigned to investigate the complaint;
 - ~~4.3.~~ The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
 - ~~5.4.~~ The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);
 - ~~6.5.~~ The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
 - ~~7.6.~~ The date of the incident that is the subject of the complaint; and
 - ~~8.7.~~ If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves uses of force, in- custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
 - ~~9.8.~~ The number of times the Department and/or a Department employee refused to comply with a written request for information, and the number of times a ~~Department sworn employee~~ an Officer refused to comply with a valid subpoena.
- E. Conducting annual job performance evaluations of all Agency staff;
- F. Responding to questions and issues raised by the public, as permitted by applicable law; and
- G. Preparing a proposed budget for the Agency. The proposed budget shall be delivered to the Commission by February 1 of each year. In addition to submitting the Agency's proposed budget to the Commission, the Agency Director may submit the proposed budget directly to the Mayor and the City Administrator by the earlier of April 1 of each year or such other date as set by the Mayor. Consistent with the Agency Director's authority to organize and reorganize the Agency and their designation as a department head under Charter section 604(e)(6), the Commission may not direct or require the transfer, deletion, or other alteration of funds and staff positions that the City Council ultimately budgets to the Agency.
- ~~G.H.~~ Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described in section 604 of the City Charter and subject to any constraints imposed by the Agency's budget.

2.46.050 Background checks.

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new ~~Agency Complaint Investigators~~ Agency staff and on the Agency Director, before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

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- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a Criminal Records Search. The results of the background checks may be used solely for the purpose of evaluating the candidates ~~for the Agency Director and for Agency Complaint Investigator~~. The results of any background checks of candidates for the position of Agency Director shall be submitted only to the Commission. The results of any background checks of candidates ~~for the position of Agency Complaint Investigator~~ staff positions shall be submitted ~~only~~ to the Agency Director.

2.46.060 Mediation Program.

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the ~~subject officer~~ Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final resolution of the complaint ~~in accordance with the Commission's established rules and procedures~~. The Chief and Agency Director shall agree upon: (1) types of cases that can be referred to mediation; (2) guidelines regarding the process, including but not limited to, confidentiality and agreement of the parties to participate. Any Commissioner, City employee, or former ~~Department sworn officer~~ shall Officer not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the ~~subject officer~~ Subject Officer and/or before any such offer is accepted.

2.46.070 Authority of Public Ethics Commission.

If the Agency does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by section 604 of the City Charter or this Chapter 2.46. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

SECTION 2. Chapter 2.47 (Office of Inspector General) of the Oakland Municipal Code is hereby added as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring).

Chapter 2.47 OFFICE OF INSPECTOR GENERAL

2.47.010 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

"OIG" shall mean the Office of Inspector General.

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"Commission" shall mean the Oakland Police Commission.

"Department" shall mean the Oakland Police Department.

"Inspector General" shall mean the Director of the OIG.

2.47.020 Creation

Oakland City Charter Section 604 has established the Office of Inspector General.

- A. Consistent with section 604(e)(1) of the Charter, the city shall allocate a sufficient budget for the OIG to perform its functions and duties.
- B. All OIG staff shall be civil service employees in accordance with section 604(e)(7) and article IX of the Charter.
- C. The Inspector General shall be subject to a background check as described in section 2.45.060, above, before hiring except that the results of the background check shall be submitted only to the Commission.
- D. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding confidentiality or privilege, including but not limited to California Penal Code section 832.7.

2.47.030 Functions and duties.

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the OIG's functions and duties are as follows:

- A. Conducting any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and any audit or review of the Department's policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City Charter section 604(b)(4), (5) and (6).
- B. Preparing a biennial report, summarizing the results of the biennial reviews of:
 - 1. The Department's processes and procedures for investigating alleged Misconduct;
 - 2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 - 3. The Agency's processes and procedures for investigating alleged Misconduct;
 - 4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 - 5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);
 - 6. Training and/or policy issues that arise during the review of completed investigations of complaints; and
 - 7. Trends and patterns regarding use of force and Officer-involved shootings.

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This biennial report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

- C. Monitoring and evaluating, on at least an annual basis, the number and percentage of Officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem-solving, and work-related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.
- D. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for Officers.
- F. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for Officers.
- G. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- H. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.

2.47.040 Civilian Inspector General.

The Inspector General's job responsibilities shall include, but not be limited to, the following:

- A. Managing all OIG audits, evaluations, inspections and reviews. Subject to Charter Section 604(f)(5), the Inspector General shall have sole discretion in deciding whether and how to conduct any OIG audit, evaluation, inspection or review, including decisions regarding timing, methodology, findings, recommendations, and reporting. In considering requests for audits, evaluations, inspections or reviews, including requests from the Mayor, City Administrator, or City Council, the Inspector General shall take into consideration the OIG's priorities, resources, and available funding.
- B. Completing the training described in City Charter section 604(c)(9) and in section 2.45.190 A through F of this Chapter 2.45 within ninety (90) days of taking office.
- C. Overseeing the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff. Subject to any duty to meet and confer with an affected union, the Inspector General shall have sole discretion in setting the operating procedures for the OIG.
- D. Reporting quarterly to the Police Commission at a public meeting on recently completed, pending, and upcoming audits, evaluations, inspections or reviews. The Inspector General may, upon mutual agreement between the Inspector General and the Police Commission, report more frequently.

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- E. Observing, or having a designee observe, Executive Force Review Boards, Force Review Boards, and, to the extent permitted by law, Skelly hearings. Attendance at such events by the OIG shall be at the Inspector General's discretion. The Inspector General shall not have any decision-making authority regarding the specific cases being heard and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or Skelly hearing until they have completed the training identified in section 2.45.190 C.
- F. Preparing a proposed budget for the OIG. The proposed budget shall be delivered to the Commission by February 1 of each year. In addition to submitting the OIG's proposed budget to the Commission, the Inspector General may submit the proposed budget directly to the Mayor and the City Administrator by the earlier of April 1 of each year or such other date as set by the Mayor. Consistent with the Inspector General's authority to organize and reorganize the OIG and their designation as a department head under Charter section 604(e)(6), the Commission may not direct or require the transfer, deletion, or other alteration of funds and staff positions that the City Council ultimately budgets to OIG.

2.47.050 Background checks.

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new OIG staff before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a Criminal Records Search. The results of the background checks may be used solely for the purpose of evaluating the candidates and shall be submitted to the IG.

2.47.060 Authority of Public Ethics Commission.

If the OIG does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.47 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the OIG as required by section 604 of the City Charter or this Chapter 2.47. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

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SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance 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.

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

Date of Attestation: _____

NOTICE AND DIGEST

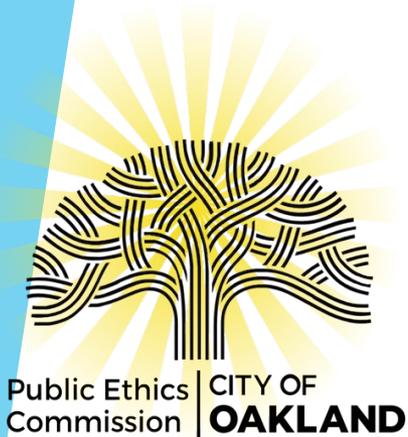
ORDINANCE:

(1) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE OAKLAND POLICE COMMISSION AND THE POLICE COMMISSION'S SELECTION PANEL; AND

(2) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.46, THE ENABLING ORDINANCE FOR THE COMMUNITY POLICE REVIEW AGENCY, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE COMMUNITY POLICE REVIEW AGENCY; AND

(3) ADDING CHAPTER 2.47 TO THE OAKLAND MUNICIPAL CODE, AN ENABLING ORDINANCE FOR THE OFFICE OF THE INSPECTOR GENERAL, TO IMPLEMENT CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO FURTHER DEFINE THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL.

This ordinance will amend Oakland Municipal Code Chapters 2.45 and 2.46, which are the enabling ordinances for the Oakland Police Commission and Community Police Review Agency, respectively, and will add Chapter 2.47, which will be the enabling ordinance for the Office of Inspector General, to implement amendments to the City Charter adopted with the passage ballot measure S1 in 2020, as well as to further define the powers and duties of the Police Commission, Community Police Review Agency, and the Office of Inspector General.



Proposed Police Comm'n Amendments re: PEC

PEC Meeting, January 17, 2024

Simon Russell, Enforcement Chief

CURRENT LAW

1. The PEC can investigate and prosecute the alleged failure of City departments (e.g. OPD) to **provide files or records** requested by the Police Commission or the OIG in order to carry out their legal functions (OMC 2.45.210); and
2. The PEC can investigate alleged **misconduct by a Police Commissioner** and refer its findings to the City Council for their decision as to an appropriate resolution, up to and including dismissal of that Commissioner (Oakland City Charter section 604(c)(10)).

PROPOSED CHANGES:

1. Move PEC authority to investigate and prosecute failure to provide files or records requested by the OIG to new OMC Chapter 2.47 (non-substantive).
2. Require the Police Commission to provide an annual report to the PEC regarding Police Commissioners' **completion of workplace retaliation training**. (Proposed OMC 2.45.190(D)).
3. Gives concurrent jurisdiction over allegations of Police Commissioner misconduct to **other independent investigators besides the PEC**. (Proposed OMC 2.45.040(D)).

Proposed OMC 2.45.040(D)

Commissioners shall act in accordance with all applicable laws and policies, including the Commission's policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City's Office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Proposed PEC amendment re: selection of investigator

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator **who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation**, such as the City's office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

Proposed PEC amendment re: procedure

Version #1 (bypassing PEC vote):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Proposed PEC amendment re: procedure

Version #2 (incorporating PEC vote):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, including the procedure for making final findings of fact and determining whether any violation of this section occurred. All findings and conclusions made under this section shall be referred to the City Council for determination of an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Proposed PEC amendment re: who can file a complaint

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

Proposed PEC amendment re: fast-track procedure

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

Legal issue flagged: City Charter 604(c)(1)

The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

Staff recommendation:

- ▶ Adopt proposed OMC sections 2.45.190(D), 2.45.210 and 2.47.060 as-written.
- ▶ Adopt proposed OMC section 2.45.040(D) with the suggested amendments.
- ▶ Attach staff memo as background.
- ▶ Urge the City Attorney to produce a written opinion regarding whether City Charter section 604(c)(10) precludes any agency besides the PEC from investigating allegations that could result in the City Council removing a Police Commissioner for cause.

January 17, 2024

Honorable Sheng Thao
Mayor
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

RE: PEC Request for Fiscal Year 2024-2025 Midcycle Budget Amendment - DRAFT

Dear Mayor Thao,

On behalf of the Public Ethics Commission (PEC), I am writing to ask that you include two amendments to the proposed Fiscal Year (FY) 2024-25 midcycle budget that are critical to the PEC's ability (1) to meet its core mission of ensuring compliance with and deterring violations of the City's ethics, anti-corruption, lobbying, and campaign finance laws, and (2) to successfully implement the City's landmark Democracy Dollars public financing program in the 2026 election cycle.

The PEC respectfully requests that the midcycle budget:

- **Add 2 FTE Investigators to address a severe enforcement backlog:** The PEC's caseload vastly exceeds its staff capacity, which has forced the Enforcement Program to place nearly two-thirds of its cases "on hold." The PEC is prioritizing for investigation only its most serious cases; however, a years-long delay in most investigations will significantly harm the Commission's ability to successfully prosecute cases and to deter intentional violations of the law. While the PEC's adequate staffing needs are significantly higher, in the very short-term the PEC needs a bare minimum of two additional Full Time Equivalent (FTE) investigators (for a total of three investigators) to keep pace with current caseload and make reasonable progress in decreasing its case backlog.
- **Add 1 FTE Ethics Analyst II beginning in January 2025 to assist with implementing the core elements of the Democracy Dollars Program:** Beginning with the 2026 election, the PEC will be mailing, tracking, processing, and redeeming Democracy Dollar vouchers sent to nearly a quarter of a million Oakland residents. Currently, the PEC has just one budgeted staffer to launch this administratively complex Program, out of the four required under Measure W (2022). The PEC will need additional senior staff to roll-out the policies, procedures, and core infrastructure of the Program well before March 2026, when vouchers will be mailed out. However, this will not be possible if these positions are not funded until July 2025 (the start of the next two-year budget cycle) and if they take several months to fill. The PEC needs at least one budgeted Ethics Analyst II beginning no later than January 2025 to ensure that person is onboarded at least six months to one year before vouchers are issued.

We are mindful that the City is projecting a tough budget year ahead and respect the difficult decisions you must make in how to allocate limited resources. The PEC has already reduced its budget by more than 50% in the current two-year Budget compared to the minimum funding levels required under Measure W, which is likely the largest proportional cut taken by any Department in this current cycle. In addition, the PEC has attempted to bring in outside resources to support its programs and lessen the burden on the General Purpose Fund; this fiscal year, the PEC pursued and was awarded \$210,000 in grant funding to hire 1 FTE to plan a broad and equitable roll-out of the Democracy Dollars Program. The above requests represent what we believe are the minimum required to run an effective enforcement program and to prepare the launch of a multi-million dollar public financing program that will receive national attention.

I. Enforcement Needs

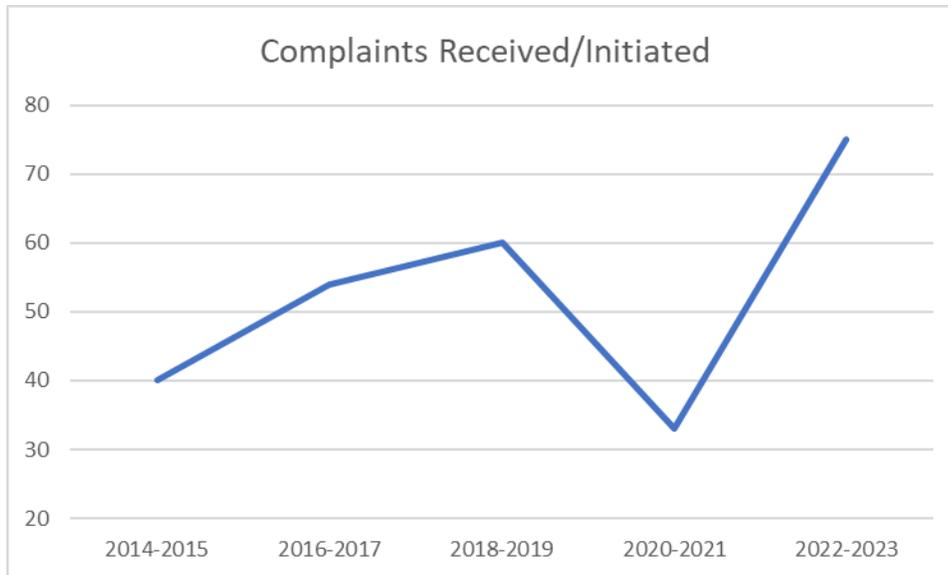
The PEC is responsible for enforcing City and some state laws relating to government ethics, campaign finance, lobbying, and transparency. This includes investigating complaints alleging bribery, conflict of interest, unregistered lobbying, and illegal campaign contributions. The prosecution and deterrence of these laws are vital for public trust in government as well as the fiscal health of the City. For example, if an employee administering government grants is involved in a decision in which they have a conflict of interest, it could jeopardize the legality of millions to tens of millions of dollars in contracts.

The PEC's current caseload vastly exceeds the Enforcement Program's staffing capacity to process complaints, investigate cases, and prosecute violations in a timely manner. As of January 1, 2024, the PEC currently has 87 active matters (not including public records mediations); however, of those, 53 (60%) have been placed "on hold" due to insufficient staff capacity to investigate the underlying violations. The PEC presently projects that most of its cases will take years to resolve at current staffing levels. However, justice delayed, it's often said, is justice denied. Older cases are harder to prosecute, because witnesses' memories fade and documentary evidence may be misplaced or destroyed; they place the City at-risk, because unpunished violations can create the appearance that there are no consequences for future violations; and they cause allegations to linger, depriving complainants and respondents of closure.

Although the pandemic and the ransomware attack contributed to the PEC's current case backlog by delaying the PEC's ability to fill a vacant investigator position, the far larger contributor to this backlog is structural. The PEC Enforcement Program's permanent staffing structure – consisting of 1 FTE Chief and 1 FTE Investigator – was set in 2014 with the passage of Measure CC and has remained largely unchanged since, even though the PEC's caseload has increased dramatically over the past decade.¹ For example, the PEC processed 40 new

¹ As the graph below demonstrates, the PEC's caseload has been steadily increasing over time, except for a brief COVID 19-related dip in complaints.

cases between 2014-15, compared with 75 new cases between 2022-2023 – a nearly 100% increase. To put this caseload in context, the PEC’s two permanent enforcement staff results in a ratio of 44 cases per staffer (based on current active caseload); by comparison, San Francisco’s Ethics Commission has a significantly more manageable 14:1 cases-to-staff ratio, which is more than three times lower than Oakland’s. In addition to the volume of cases growing, the complexity of these cases has increased dramatically over that time as well, requiring more investigatory and enforcement resources. For example, the PEC had only 1 active bribery case in 2015-2016, compared with 8 active bribery cases today (2022-2023).



Under the City Charter, the City is required to “appropriate a sufficient budget for the Public Ethics Commission to fulfill [its] functions and duties.” (City Charter Section 603(g).) To reach adequate staffing levels that align with the PEC’s actual caseload and match staffing best practices from peer jurisdictions like San Francisco, the PEC estimates it would need to hire three additional Investigators (going from 1 to 4 FTE) and one Staff Attorney to assist with new prosecutions. The PEC is currently attempting to address a small share of its staffing need through using past salary savings for temporary hiring, and has just brought on a limited duration Investigator and two part-time law clerks; however, these positions will end on June 30 and, as temporary employees, cannot be assigned complicated or longer-duration investigations, limiting their utility. Adding permanent staff in the midcycle budget is therefore critical to reversing the PEC’s backlog and making progress on high-priority cases. In the short term, adding two permanent Investigators – which includes making permanent the temporary Investigator position before it expires – are the bare minimum PEC staff estimates it would require to keep pace with incoming caseload and make some progress clearing older matters.

II. Democracy Dollars Startup Needs

The Democracy Dollars Program is a signature piece of legislation affirming Oakland’s strong commitment to a democracy that includes all peoples and communities. In 2022, the City Council unanimously voted to place Measure W on the ballot to establish the Democracy Dollars Program, which will be administered by the PEC. Oaklanders overwhelmingly approved the measure, with 74% voting in favor. Under the Program, each eligible resident will receive four \$25 vouchers (for a total of \$100) which they may contribute to qualified candidates running for the office of Mayor, City Attorney, City Auditor, City Council, or School Board. Oakland is the second jurisdiction, after Seattle, to adopt this transformational approach to public financing, which seeks to boost civic participation, especially in Oakland’s marginalized and underrepresented communities.² While Measure W called for the Program to begin with the 2024 election cycle, due to the historic deficit leading into the FY 2023-2025 Budget, the Program was postponed to the 2026 election cycle.³

Under Measure W, the City is required to provide “adequate staff necessary to properly implement the Democracy Dollars Program,” including a minimum of one Program Manager and three additional FTE positions. (City Charter Sec. 603(g).) Due to budget constraints, for this two-year budget cycle, only the Program Manager position was funded. While this position has enabled the PEC to make progress in preparing the Request for Proposal (RFP) for creating the database that will distribute, track, and accept vouchers, additional staff will be needed to assist with the roll-out of this Program ahead of the 2026 elections. The scope of the Program – which includes distributing and tracking around 1 million vouchers mailed to around 250,000 Oaklanders, verifying redeemed vouchers, and disbursing funds to candidates – is significant; fully staffing up the Commission cannot wait until months before vouchers go out without jeopardizing the implementation of the Program.

The PEC has identified two core start-up staffing needs for the Program: (A) an Outreach Specialist, to ensure the Program is designed with principles of equity and inclusion to reach all of Oakland’s diverse communities; and (B) an Ethics Analyst II, to assist with creating the policy and regulatory framework of the Program, as well as setting up the infrastructure and logistics that are crucial for launch. As to the former, the PEC was able to secure a \$200,000 grant from the Haas Jr. Foundation to hire 1 FTE Outreach Specialist for one year to help with inclusive design and outreach strategic planning. The PEC also received a \$10,000 grant, also from Haas Jr., to support a graduate student to begin initial planning to support this work.

As to the latter, the PEC is requesting that the Ethics Analyst II be funded in this midcycle budget, ideally beginning at the start of the fiscal year in July 2024, but no later than in January

² The Council Resolution placing Measure W on the ballot cited a 2020 PEC report, which found that very few Oakland residents contribute to local campaigns, and that resident contributions come disproportionately from wealthier and whiter areas of the City. The voucher program was intended to ensure that wealth is not a barrier to participation in our political process. See Public Ethics Commission, [Race for Power: How Money in Oakland Politics Creates and Perpetuates Disparities Across Income and Race](#) (September 2020).

³ Measure W only authorizes the PEC to postpone the Program for the first election cycle following the Measure’s adoption, i.e. the 2024 election cycle. (O.M.C. 3.15.050(E).)

Item 6 - Draft Letter

2025. This ensures the position is filled more than half a year (and ideally a full year) in advance of Democracy Dollars being mailed out, likely in March 2026. However, if instead the Ethics Analyst is not funded until the start of the next two year budget cycle beginning in July 2025, and if hiring takes several months, that Analyst will be in their position only a few months before vouchers go out; this would be far too late to assist with Program design and logistics, and would place the entire burden of launching this Program on one Program Manager, which is highly inadvisable and risks jeopardizing the smooth roll-out of this Program.

Thank you for considering these two critical requests as you prepare your proposed revisions to the Midcycle Budget. The PEC is at an important crossroads for two of its core programs, and we appreciate the opportunity to clearly share our agency's needs. Should you have any questions, please feel free to reach out to the PEC Executive Director Nicolas Heidorn at (510) 238-3593 or NHeidorn@OaklandCA.gov.

Sincerely,

Ryan Micik
Chair
Oakland Public Ethics Commission
RMicik@OaklandCA.gov

CC: Oakland City Council



Item 7a - Staff Memo

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon J. Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: January 3, 2023
RE: LRA Administrative Rules – Training Frequency

In November 2023, the City Council amended the Lobbyist Registration Act (LRA) to, among other changes, require that lobbyists periodically take an online training on the LRA offered by Public Ethics Commission (PEC or Commission). Lobbyists must complete the training within 60 days of the lobbyist's initial registration, and complete additional trainings in the PEC's discretion. This memo, and attached policy, proposes that returning lobbyists be required to take the PEC's training every two years.

Staff recommends that the PEC adopt the attached “Lobbyist Registration Act Administrative Rules,” requiring that lobbyist complete a training on the LRA every two years.

Background

Unlike many other cities that require local lobbyists to register and periodically report on their lobbying activities, until recently Oakland did not require that lobbyist take a training on the LRA's requirements. In August 2023, the PEC recommended that the City Council make a number of changes to the LRA, including adding a requirement that lobbyists periodically attend training sessions offered by the PEC. On November 7, 2023, the City Council unanimously adopted the PEC's proposal.

OMC 3.20.045 now provides:

3.20.045 Lobbyist training.

- A. Each local governmental lobbyist must complete a lobbyist training session offered by the Public Ethics Commission within 60 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Public Ethics Commission, at its discretion.
- B. The Public Ethics Commission shall make local governmental lobbyist training sessions available online.
- C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Public Ethics Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.
- D. The Public Ethics Commission may invalidate a registration for failure to comply with this section.

The PEC will be implementing this training requirement for the first time in 2024. The PEC is developing the online training and expects to have it ready in January 2024. To complete their initial registration,

Item 7a - Staff Memo

lobbyists will have to watch the online training video, pass a brief test on its contents, and certify that they have completed the training.

Currently, Oakland’s Municipal Code only requires that lobbyists complete the training after their “initial registration.” The PEC has not yet adopted ongoing training requirements for reregistering lobbyists. As of mid-December 2023, there are 71 registered lobbyists in Oakland, many of whom will likely re-register.

Proposal

Staff proposes that returning lobbyists be required to complete an LRA training session every two years. (Since no lobbyist has yet taken an LRA training, lobbyists who were registered in 2023 and re-register in 2024 would be required to take the training in 2024.) Returning lobbyists who reregister in January would have until March 31 to register; returning lobbyists who reregister at other times would have 60 days to complete the online training. Since most PEC lobbyists reregister in January of each year, the March 31 deadline provides a consistent deadline for the plurality of filers.

Staff believes a two-year time period will ensure lobbyists receive a regular refresher on their obligations under the LRA and remain up to date on any changes to the law or its implementing rules, while not requiring repetitive trainings and minimizing the administrative burden on staff of implementing this requirement. A once-per-two years training frequency also aligns with the ethics training requirement for City employees. Under the Government Ethics Act, city employees that file an annual Form 700 Statement of Economic Interest must take a PEC training on government ethics requirements every two years. (O.M.C. 2.25.080(A).) Similarly, State lobbyists are required to take a training on lobbying rules and ethics every two years, as are local lobbyists in Los Angeles.

Lobbyist Training Requirements for the State and Select Cities

Jurisdiction	Requirement
State	Once per two years
Los Angeles	Once per two years
San Diego	No training requirement
San Jose	No training requirement
San Francisco	Upon initial registration and at the discretion of the Executive Director
Oakland	Upon initial registration and at the discretion of the PEC

PEC Rule Adoption

Under OMC 2.24.020, the PEC’s adoption of “policies, procedures, and regulations for the conduct of its business” must be transmitted to the City Council within seven days of adoption. Within 60 days of adoption, the City Council may, by a two-thirds vote, veto those policies, procedures, and regulations. Staff will submit the proposed policy, if adopted, to the City Council.

Staff Recommendation

Staff recommends that the Commission adopt the attached “Lobbyist Registration Act Administrative Rules.”

Attachment: Lobbyist Registration Act Administrative Rules

Lobbyist Registration Act Administrative Rules

These administrative rules implement the Lobbyist Registration Act (Chapter 3.20 of the Oakland Municipal Code).

1. **Training requirement.** A local governmental lobbyist must complete a lobbyist training session offered by the Public Ethics Commission every two years.
 - a. **Initial registration.** A local governmental lobbyist, who was not a registered lobbyist in the previous calendar year, shall complete a lobbyist training session within 60 days of registering as a local governmental lobbyist.
 - b. **Reregistration.**
 - i. A local governmental lobbyist, who was a registered lobbyist in the previous calendar year, shall complete a lobbyist training session within 60 days of reregistering, or by March 31 in the year of the lobbyist's reregistration, whichever deadline is later.
 - ii. Notwithstanding paragraph (i), if the lobbyist completed a lobbyist training session in the previous calendar year, the lobbyist shall not be required to complete a training session in the calendar year in which the lobbyist re-registered.

(Reference: 3.20.045)



**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION**

OPERATIONS POLICIES
Effective January 1, 2016

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ARTICLE I - MISSION STATEMENT

The Public Ethics Commission (Commission) ensures compliance with the City of Oakland's government ethics, campaign finance, transparency, and lobbyist registration laws that aim to promote fairness, openness, honesty, and integrity in city government. To fulfill its mission, the Commission conducts the following activities:

- A. **Lead/Collaborate** – Lead by example and facilitate city policy, management, and technological changes to further the Commission's mission.
- B. **Educate/Engage** – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the city's campaign finance, ethics, and transparency laws.
- C. **Disclose/Illuminate** – Facilitate accurate, effective, and accessible disclosure of government integrity data, such as campaign finance reporting, conflicts of interest/gifts reports, and lobbyist activities, all of which help the public and PEC staff monitor filings, view information, and detect inconsistencies or noncompliance.
- D. **Detect/Deter** – Conduct investigations and audits to monitor compliance with the laws within the Commission's jurisdiction.
- E. **Prosecute** – Enforce violations of the laws within the Commission's jurisdiction through administrative or civil remedies.

ARTICLE II - JURISDICTION, APPLICABLE LAW

The Commission was created by City Charter in 1996 (Section 202), which was amended in November 2014 (Section 202, 603) to strengthen the Commission's authority, independence and staffing. The Commission oversees compliance with the following laws:

- A. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25);
- B. The City of Oakland Campaign Reform Act (O.M.C. chapter 3.12);
- C. Limited Public Financing Act of the City of Oakland (O.M.C. chapter 3.13);
- D. Oakland Sunshine Ordinance (O.M.C. chapter 2.20);
- E. The City of Oakland Lobbyist Registration Act (O.M.C. chapter 3.20); and
- F. Oakland False Endorsement in Campaign Literature act (O.M.C. chapter 3.14).

The Commission must comply with all applicable laws, including but not limited to:

- A. Oakland City Charter, including but not limited to Sections 202 and 603;
- B. Public Ethics Commission Operations Ordinance (O.M.C. chapter 2.24);
- C. Oakland Sunshine Ordinance, the California Ralph M. Brown Act (Gov. Code sections 54950, *et seq.*) and the California Public Records Act (Gov. Code sections 6250, *et seq.*);
- D. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25); and
- E. These Operations Policies and other policies adopted by the Commission.

ARTICLE III - COMMISSION STRUCTURE AND SUPPORT

Section 1: Commission

The Public Ethics Commission is a seven-member board of Oakland residents responsible for establishing Commission policies and priorities, promoting government transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.

Acceptance of the Oath of Public Office constitutes a commissioner's sworn responsibility to the public trust. Commissioners must collectively and individually respect and honor their appointed role and strive to maintain public confidence in the Commission's role in the government of the city of Oakland.

Section 2: Executive Director

The Executive Director reports to the Chair and to the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission.

The Chair or designee must prepare a periodic, written performance review of the Executive Director subject to the review and approval by the Commission in closed session. At any time, at the request of one or more commissioners, the Chair may call and notice a closed session of the Commission to discuss the performance of the Executive Director.

Section 3: Commission Staff

The Executive Director leads and supervises Commission staff and has the authority to hire and remove employees within constraints set by the Civil Service Commission, the Personnel Department, and the Commission's budget.

Section 4: Legal Advisor

The City Attorney is the Commission's legal advisor. Any commissioner may consult informally with an attorney assigned to the Commission on any matter related to Commission business. However, a request from a commissioner for assistance requiring significant legal research, a substantial amount of time and attention, or a written response must be authorized by the Executive Director, the Chair, or by a majority vote of the Commission or one of its Committees.

Section 5: Commission Spokesperson

The spokesperson for the Commission is the Executive Director or designee, the Chair, or the Vice Chair if the Chair is unavailable.

Item 8 - PEC Operations Policies

ARTICLE IV – OFFICERS

Section 1: Election of Officers

The officers of the Commission are the Chair and Vice Chair. At the first regular meeting of each year, commissioners must elect a Chair and Vice Chair. At the meeting, a commissioner may nominate any commissioner to serve in the office of Chair or Vice Chair. If more than one commissioner is nominated for an office, each nominee may speak regarding their qualifications and willingness to serve and answer questions of commissioners or the public. The Commission may discuss the nominations and, when the vote is called, each commissioner may cast a single vote for each office.

Section 2: Chair

The Chair presides at all meetings of the Commission and is an ex-officio member of all standing committees. The Chair is accountable to the Commission as a whole in setting policy.

Section 3: Vice Chair

The Vice Chair performs the duties and responsibilities that may be delegated by the Chair. In the absence or disability of the Chair, the Vice Chair will perform the duties and responsibilities of the Chair.

ARTICLE V - COMMITTEES

Section 1: Standing and Ad Hoc Committees

It is the policy of the Commission to appoint individual commissioners to perform specific tasks or functions by serving on standing or ad hoc committees. Thus, as necessary, the Chair may create a standing or ad hoc committee, identify its purpose, appoint commissioners as members, and designate a Committee Chair.

Terms of ad hoc committees may not exceed one year. Membership on ad hoc committees may not exceed three commissioners.

Commission staff will post a list of the Commission's current committees and committee membership on the Commission's website.

Section 2: Committee Meetings

Committee meetings may be called by the Chair, the committee's chair, or by majority vote of members of the committee.

Meetings of standing committees follow the same procedures provided under Article VI, sections 3 through 7 of these Operations Policies.

Item 8 - PEC Operations Policies

Section 3: Committee Quorum

A majority of the members of a committee constitutes a quorum.

ARTICLE VI - COMMISSION MEETINGS

Section 1: Meetings: Time, Public Location, Notice

The Commission must hold regular meetings at an established time and place suitable for its purposes, and consistent with the requirements of the Brown Act and Sunshine Ordinance. Generally, regular Commission meetings are held on the first Monday of each month at 6:30 p.m., or as otherwise set forth in the published calendar and posted on the Commission's website with the proper notice. Regular meetings are held in Oakland City Hall, One Frank Ogawa Plaza in the city of Oakland, California.

Meetings scheduled for a time or place other than for regular meetings are designated as special meetings.

Written notice of regular meetings and special meetings must be provided at least 10 days or 72 hours in advance, respectively, in the manner required by Charter section 1205, the Oakland Sunshine Ordinance, and the Brown Act.

Section 2: Quorum

At all meetings of the full Commission, the presence of four (4) commissioners constitutes a quorum. (Charter section 603(d)(4).) No action can be taken on an agenda item unless at least four (4) commissioners are present. If ever during a meeting there is less than a quorum present, a motion to adjourn is appropriate; absent objection, debate can be continued, but no vote taken, except to adjourn. When a quorum exists, official action requires a majority vote of those commissioners present when the vote is called, unless otherwise provided by the Charter (e.g., for certain enforcement matters and for removal of the Executive Director).

Section 3: Public Engagement

The Commission values and encourages public input and, regarding public participation in Commission proceedings, will liberally construe the public's rights under the Brown Act and Sunshine Ordinance. The Commission proactively develops and promotes new channels for public participation in local government beyond the minimum legal requirements, for example, by utilizing new technology and social media tools to facilitate greater public access to government information and proceedings; conducting special meetings and hearings on relevant issues; collaborating with civic groups on issues and projects within the Commission's jurisdiction; and engaging in affirmative public outreach through non-traditional means.

Item 8 - PEC Operations Policies

All interested persons are encouraged to provide input or request information regarding Commission business by contacting Commission staff at (510) 238-3593 or ethicscommission@oaklandca.gov, or view information online at www.oaklandca.gov/pec.

At each regular Commission meeting, all interested persons may express their views regarding a matter within the jurisdiction of the Commission. This opportunity for comment, called “Open Forum,” will appear on each agenda. Ordinarily, each speaker may speak for up to three minutes, but the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied. The Commission may also limit the time for public comment under Open Forum to a total of 15 minutes.

At regular and special Commission or Committee meetings, all interested persons must also be allowed to express their views on any agenda item upon the Commission’s review of the item. Before taking action on any agenda item, the Commission (or Committee) must provide the opportunity for public comment on that item. Each person wishing to speak on an agenda item is permitted to speak once, for a minimum of two minutes; however, the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied.

The Commission urges the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since the public disclosure of such complaints or requests may undermine any subsequent investigation undertaken.

Section 4: Public Participation at Meetings

The agenda for each meeting must provide instructions for public participation. To encourage public participation, the Commission will employ the least formal, least restrictive procedures for public comment, so long as order is maintained.

In the event that the complexity of the issues, number of anticipated participants, or other factors suggest that greater formality is required to maintain order or protect the public’s right to participate, the Commission may utilize a more formal process (such as the “speaker card” procedure set forth in City Council Procedures Rule 12). In that case, the agenda will describe the process, including any special requirements, for public participation.

If during the course of a meeting it becomes apparent that the existing procedure for public comment is inadequate or inappropriate, the Chair may exercise his or her discretion to modify the procedure during the meeting. In that case, the Chair must state the reasons justifying the change in procedure, clearly explain how members of the public may provide comment as to each agenda item, and apply the modified process uniformly to all speakers.

Section 5: Chair

The Chair must maintain order in the chamber, has authority to refuse the floor to any person, and may limit or extend the time allocated to any speaker.

Item 8 - PEC Operations Policies

The Chair may rule a public speaker out of order if:

- A. the speaker is speaking beyond the allocated time limit;
- B. the speaker's remarks are not relevant to the agenda item or are repetitious; or,
- C. the manner, tone and content of the speaker's remarks are disruptive (disturb the peace and good order of the meeting), attack the character of individuals or are abusive (vulgar or obscene language).

The public has the right to criticize policies, procedures, programs, or services of the city, the Commission or of any other aspect of the city's or Commission's proposals or activities, or the acts or omissions of the Commission or its staff or other public employees. The Commission will not abridge or prohibit public criticism on the basis that the performance of one or more public employees is implicated. Nothing in this section confers any privilege or protection beyond that which is otherwise provided by law.

Section 6: Meeting Minutes

Commission staff will draft minutes after every regular and special Commission meeting, and every standing committee meeting, subject to approval by majority vote of the Commission or respective committee. The minutes must reflect meeting start and end time, commissioner attendance (including the absence of any commissioner for any votes taken), summary of each item, and vote (if applicable) for each item considered.

Section 7: Closed Sessions

Upon the determination by a legal advisor from the City Attorney's Office that a closed session is both authorized and appropriate under the circumstances, the Commission may call for a closed session. Appropriate notice must be given of all closed sessions.

Section 8: Recess

The Commission recesses for a period of one month each year. During this annual recess, the Chair may convene the Commission for special meetings, and the chair of a standing or ad hoc committee may convene a committee meeting.

ARTICLE VII - AGENDA REQUIREMENTS

Section 1: Agenda Preparation

Commission staff will work with the Commission Chair or standing Committee chair(s) to develop the agenda for all meetings. The agenda must be approved by the appropriate Chair and must contain a meaningful description of each item to be transacted or discussed at the Commission or committee meeting so that a person can reasonably determine if the item may affect his or her interests. The agenda also will provide instructions for public participation.

Item 8 - PEC Operations Policies

Section 2: Consent Calendar

A consent calendar is the portion of the printed agenda that lists routine matters that are expected to be non-controversial and on which there are no scheduled speakers. There will be no separate discussions on a consent calendar item unless, prior to its adoption, a request is made by a commissioner or the public, and accepted by the Commission, to remove the item from consent and consider it as a separate item.

ARTICLE VIII - VOTING

Section 1: Voting, Abstention, and Recusal

Each commissioner present at a Commission or committee meeting must vote on all matters put to a vote, unless the commissioner abstains or recuses him- or herself from a particular matter.

A commissioner wishing to abstain from a vote must state publicly the reason for abstention and move for Commission approval. If the motion passes, the abstaining commissioner must refrain from further discussion of the item and will not vote on the item.

A commissioner who has been advised by the City Attorney to recuse himself or herself from voting on an item due to a conflict of interest must recuse him or herself and leave the dais during discussion and voting on the item. A commissioner who recuses as to a particular item is not present for purposes of determining the existence of a quorum in Article VI, section 2, above.

Section 2: Voting by Proxy

Voting by proxy is prohibited.

ARTICLE IX - TREATMENT OF CONFIDENTIAL INFORMATION

In the course of their duties, commissioners may be exposed to privileged, confidential, or other information protected by law. While commissioners enjoy the full protection of the First Amendment and the public is entitled full access to public information, misuse of confidential information may have significant adverse consequences to the city, the Commission, city employees, or other individuals.

Section 1: Confidential Information

Generally, "Confidential Information," includes the following:

- A. Any information concerning a complaint that is still under preliminary review;
- B. Any communication or information provided to commissioners in preparation for, or during, a duly authorized closed session;

Item 8 - PEC Operations Policies

- C. Any communications by or from the City Attorney or any legal advisor to the Commission that reflect the legal advisor's work on behalf of the Commission, including the advisor's mental impressions, legal strategy, analysis, advice or conclusions;
- D. Non-public materials concerning pending or past litigation to which the Commission is/was a party;
- E. Information concerning Commission personnel matters, including but not limited to those concerning the hiring, performance, counseling, discipline or termination of any member or prospective member of Commission staff; or
- F. Other sensitive personal or financial information of third parties (including respondents to complaints) that would otherwise be protected by law.

Confidential Information does not include information generally available to the public or previously disclosed to members of the public, including at a Commission meeting. Nor does it include information that is required by law to be reported out of closed session.

The fact that Commission staff shares confidential information with another enforcement agency such as a District Attorney's Office, the California Fair Political Practices Commission, or the Federal Bureau of Investigation, does not render the information non-confidential.

Section 2: Prohibitions on Disclosure or Misuse of Confidential Information

Absent express authorization by the Executive Director, Chair, the Commission's legal advisor, or court order, a commissioner is prohibited from disclosing Confidential Information to any person who is not currently serving as a commissioner.

Commissioners are prohibited from using, directly or indirectly, Confidential Information for purposes other than the official business of the Commission.

If a commissioner has any doubt about a person's authorization to access Commission confidential information or is uncertain whether a particular use could constitute "misuse," the commissioner must, before disclosing or using the information, consult the Executive Director.

Section 3: Affirmative Duty to Safeguard Confidential Information

Commissioners must actively protect and safeguard Confidential Information through the use of physical and technical safeguards (e.g., strong passwords for access to electronically stored information) and secure methods of destruction, once materials are no longer needed.

A commissioner who discovers an unauthorized disclosure or misuse (potential or actual) of Commission confidential information must promptly notify the Executive Director. Similarly, a commissioner who receives a request, subpoena, or court order for disclosure of Commission confidential information must immediately notify the Executive Director.

Item 8 - PEC Operations Policies

Section 4: Term of Obligation

A commissioner's obligations pursuant to this Article do not terminate with the end of the commissioner's term of office.

ARTICLE X - PARLIAMENTARY PROCEDURE

Section 1: Robert's Rules of Order (Newly Revised) for Small Boards

The business of the Commission and its standing committees must be conducted, so far as it is practical in accordance with parliamentary rules as contained in Robert's Rules of Order Newly Revised, for Small Boards, except as modified by these rules and in accordance with the Brown Act and the Sunshine Ordinance. The City Attorney, or other person designated by the Chair and approved by the Commission, shall serve as the official parliamentarian for meetings of the Commission.

ARTICLE XI - STANDARDS OF CONDUCT

In addition to complying with the foregoing policies, each commissioner should aspire to:

A. **Actively and diligently support the mission, goals and objectives of the Commission**, for example, by thoroughly preparing for and attending Commission meetings; serving on committees; working cooperatively with Commission staff on officially-sanctioned projects; and attending civic events relevant to the Commission's purpose and jurisdiction.

B. **Preserve public confidence in commissioners' conduct, intentions, and impartiality**, for example, by fairly and objectively enforcing laws and regulations within the Commission's jurisdiction; refraining from conduct or statements that suggest personal bias; avoiding personal involvement in the investigation and prosecution of complaints (absent a recusal); and avoiding inappropriate political activity (endorsing, supporting, opposing, or working on behalf of a candidate or measure in an Oakland election).

C. **Protect the independence and integrity of the Commission**, for example, by working for the public good and not private interest in all matters related to city government; refraining from using their official positions to secure special advantages or benefits for self or others; declining to accept benefits or to participate in activities that might influence or undermine their ability to fairly and objectively discharge their Commission duties; and, if speaking to the press or public about a Commission matter, clearly explaining that the commissioner's statements reflect the personal view of the commissioner and not the view of the Commission.

D. **Set the highest example civil and efficient conduct of city government**, for example, by recommending and adopting rules and procedures that promote transparency and fair process in city government; treating the public, Commission staff, Commission legal advisors, and fellow

Item 8 - PEC Operations Policies

commissioners with dignity and fairness; and conducting the Commission's business in an efficient and timely manner.

ARTICLE XII - OPERATIONS POLICIES AMENDMENTS

As necessary, the Commission will review and amend these Operations Policies as provided by the Operations Ordinance. (O.M.C. section 2.24.070.) In so doing, the Commission must provide notice of any amendments to the City Council as required by the Public Ethics Commission Operations Ordinance.

CITY OF OAKLAND

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

Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



November 29, 2023

Darren Allison
Interim Chief
Oakland Police Department
Police Administration Building
455 7th St.
Oakland, CA 94607

RE: Requested appearance at the Public Ethics Commission’s January 17, 2024 meeting regarding public records requests made to the Oakland Police Department

Dear Interim Chief Allison:

On behalf of the Public Ethics Commission (PEC or Commission), we would like to invite you or a designee from the Oakland Police Department (OPD) to present at the Commission’s January 17 meeting to provide information on the Department’s process, successes, and challenges in responding to public records requests. The Commission will meet on January 17, 2024, at 6:30 p.m. in Hearing Room 1 at City Hall.

As you likely know, the Public Ethics Commission oversees compliance with the Oakland Sunshine Ordinance and its state equivalent, the California Public Records Act. The Sunshine Ordinance, as a supplement to state law, also authorizes the PEC to mediate between requesters seeking public records and City employees responding to their requests. In addition, under the City Charter, the PEC is required to periodically study the laws within its purview to make administrative or policy change recommendations to the City Council (City Charter Section 603(b)(2) & (7)).

As part of this responsibility, the Commission is currently engaged in a study of the City’s process for responding to records requests. In 2024, the Commission will be inviting the three departments with the largest volume of records requests to present before the Commission on their process, beginning with the Police Department, which receives more than half of the total records requests in the City. The Commission is also particularly interested in hearing how OPD’s process has changed in light of recent changes in state law regarding police records, including SB 1421 of 2019 and SB 16 of 2022, and the recent settlement regarding OPD records in *Morris et al. v. City of Oakland et al.*, Case No. 20072029 (settlement approved March 2022).

Our goals are to learn more about OPD’s capacity and challenges, discover any commonalities between City departments, and recommend changes to improve performance and capacity with regard to public records requests. We hope to partner with you to help identify any resources you

Item 9a - PEC Letter to OPD

need to address challenges and potentially find efficiencies that could be implemented to benefit OPD and the public.

To this end, the Commission would appreciate hearing from you regarding the following questions:

1. What is the department's existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester, and who supervises and supports the public records response when challenges arise?
2. Roughly how many requests come into your department each week/month/year? How does the department categorize the requests that are received for data and reporting purposes?
3. What challenges does your department face in responding to records requests? What changes, if any, have you made to improve retention or response to records requests?
4. What is the department's process for ensuring that the legal requirements are met before withholding any requested documents or redacting any information?
5. What training and support do you provide to employees with responsibilities in the department's records retention and public records response process? How is the performance of these employees measured with regard to public records retention and response? (Please note we are only requesting to know how performance is measured in general, and not any particular employee's performance.)
6. What is the department's experience using the NextRequest platform to manage and respond to public records requests? Is it working? How can it be improved?
7. How has your processing of records requests changed, respectively, with the adoption of (a) SB 1421 (2019), (b) SB 16 (2022), and (c) the Morris et al settlement? Has this made responding to requests easier, or more challenging?
8. Has the department considered providing data on the department's website about responsiveness to records requests so the public can see the level of responsiveness over time?
9. What capacity and expertise is there within OPD to review internal recordkeeping practices and technology with regard to records requests?
10. What additional information would you like to share with the Commission on this issue?
11. Please attach all reports OPD has provided to the City Council pursuant to *Morris et al*.

Thank you in advance for your cooperation with the Commission's review pursuant to its authority under the City Charter. Could you please confirm by December 15 whether you or a Department designee (and if so who) will attend the PEC's January 17 meeting? To facilitate discussion, it would be helpful if OPD could provide written responses to the questions above by January 3, 2024, so that they may be included with the agenda for that meeting.

Item 9a - PEC Letter to OPD

Please feel free to reach out if you would like to discuss these questions, or the context for the Commission's inquiry. You may contact me directly at (510) 604-1002 or nheidorn@oaklandca.gov.

Sincerely,

/s/ *Nicolas Heidorn*

Nicolas Heidorn

Executive Director

Oakland Public Ethics Commission



MEMORANDUM

TO: Nicolas Heidorn
Executive Director
Oakland Public Ethics Commission

FROM: Kiona Suttle
Deputy Director
Oakland Police Department

SUBJECT: Oakland Police Department
Public Records Request

DATE: January 2, 2024

Dear Executive Director Heidorn and Commissioners on the Public Ethics Commission:

Please find below the Oakland Police Department’s (OPD) responses to your questions regarding the Department’s Public Records Request (PRR) response process, which was posed by the Public Ethics Commission to the Department in a letter dated November 29, 2023.

Question 1. What is the department’s existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester, and who supervises and supports the public records response when challenges arise?

When a request for information is received by OPD, a member of the Records Division will review the request to determine whether it specifies identifiable records. This is done by searching for the records in various databases or contacting the respective custodian of record to determine if the record exists. Once this is determined, staff will provide the requester with a Records Determination, informing them whether disclosable responsive records have been located and, if so, whether the Department intends to produce the records. The next step is to review the records and, if necessary, redact or withhold information where appropriate. Finally, responsive records are published on the City’s NextRequest platform and made available to the requester.

Requests for information are received in several ways, including by U.S. postal mail, email, the City’s NextRequest platform, by phone, and in person. Records Division personnel are responsible for handling the initial contact, ongoing communication, and response to the requester. When challenges arise related to a request, a supervisor from the Records Division will provide support to staff. Supervisors also utilize the assistance of the Office of the City Attorney (OCA) to address challenges related to responding to requests.

Question 2. Roughly how many requests come into your department each week/month/year? How does the department categorize the requests that are received for data and reporting purposes?

On average, OPD receives approximately 800 PRRs monthly. Requests are typically categorized based on the nature of the information sought. For example, if the request is related to a police report and the associated video, this would be considered a bifurcated request and assigned to the Records Division to provide the police report and the IT Unit to provide the video.

Question 3. What challenges does your department face in responding to records requests? What changes, if any, have you made to improve retention or response to records requests?

OPD faces many challenges in responding to PRRs, including concerns about privacy, ongoing investigations, and the need to balance transparency with maintaining the integrity of sensitive information. However, the greatest challenge OPD faces when responding to PRRs is staffing. Inadequate staffing has significantly impacted the efficiency of responding to PRRs, resulting in delays, backlog accumulations, and increased response times.

In the Department's ongoing commitment to transparency and efficient public service, management has implemented several changes to enhance the retention and response to public records requests with the aim of streamlining processes, improving accessibility, and ensuring compliance with legal requirements. The Department has invested in digital technology to transition from paper-based record-keeping to electronic document management systems. This has facilitated quicker retrieval of records which reduces processing times. The Department also conducts training for staff involved in handling public records requests to ensure a consistent and standardized approach. This training includes guidance on legal requirements, response timelines, and best practices for managing sensitive information.

To enhance transparency, the Department has proactively disclosed certain types of information on the OPD website, including many Departmental General Orders, making them accessible to the public without the need for formal requests.

Question 4. What is the department's process for ensuring that the legal requirements are met before withholding any requested documents or redacting any information?

To ensure employees are well-equipped to handle PRR requests effectively, Records Division personnel receive regular training on the PRR process and the California PRA. Training covers legal requirements, best practices, and the importance of timely and accurate responses to requests for information. However, if staff are unsure of what can or cannot be released, and to ensure legal requirements are met before withholding any requested document or redacting information, they will seek guidance from the OCA.

Question 5. What training and support do you provide to employees with responsibilities in the department's records retention and public records response process? How is the performance of these employees measured with regard to public records retention and response? (Please note we are only requesting to know how performance is measured in general, and not any particular employee's performance.)

To ensure employees are well-equipped to handle PRRs effectively, Records Division personnel receive regular training on the Department's PRR process, the California Public Records Act

(PRA), and the City of Oakland Sunshine Ordinance. Training covers legal requirements, best practices, and the importance of timely and accurate responses to requests for information. However, if staff are unsure of what can or cannot be released, and to ensure legal requirements are met before withholding any requested document or redacting information, they will seek guidance from the OCA.

Employee performance is measured through several key criteria. Employees are evaluated based on their ability to gather, review, and release accurate information while ensuring that nothing is omitted or redacted inappropriately. Adherence to relevant laws and regulations governing PRRs is also a fundamental aspect of performance evaluation. This includes compliance with privacy laws, exemptions, and other legal considerations when disclosing information. Effectiveness in communicating with requesters is also assessed, including providing clear and concise explanations and updates on the status of requests. Efficiency in managing workload and processing requests is a key performance indicator that is assessed for each employee. This includes handling a reasonable volume of requests within the available resources and optimizing workflow processes for increased productivity.

Question 6. What is the department's experience using the NextRequest platform to manage and respond to public records requests? Is it working? How can it be improved?

OPD employees use the NextRequest platform daily to manage and maintain online requests. The platform is also used to communicate with requesters and upload responsive documents. Although staff regularly use NextRequest, the system has limited capabilities related to searching and redacting information, which poses significant constraints for staff who are required to use the system. It would be beneficial for the City to look at a system that offers features that include online redactions, automated fulfillment of requests, and a more efficient process for logging requests.

Question 7. How has your processing of records requests changed, respectively, with the adoption of (a) SB 1421 (2019), (b) SB 16 (2022), and (c) the Morris et al settlement? Has this made responding to requests easier, or more challenging?

Since the adoption of Senate Bill (SB) 1421 (2019) and SB 16 (2022), which granted the public the right to access records related to investigations and discipline of peace officers, all requests that fall within these categories are referred to the OCA. Staff assigned to the OCA complete these requests on behalf of OPD.

In 2020, a class action lawsuit was filed against the City of Oakland and OPD for violating the California PRA and the Oakland Sunshine Ordinance. As a result, in 2021, the City entered into a settlement agreement (Morris Settlement Agreement), with a major component of the agreement related to adopting new policies aimed at ensuring ongoing compliance with the California PRA and Sunshine Ordinance. The agreement has created additional steps and oversight to the Department's process for responding to PRRs. With the current staffing in the Records Division, there have been challenges adhering to the new process; however, once the division is fully staffed, it should lead to a more effective and efficient process for responding to requests for information.

Question 8. Has the department considered providing data on the department's website about responsiveness to records requests so the public can see the level of responsiveness over time?

Recognizing the importance of public awareness, OPD is researching how it can better educate the public about its PRR process. This includes publishing informational materials and providing resources on the Department's website and social media platforms to help requesters navigate through the process, provide information on the volume of requests received and the average amount of time it takes to complete a request so that the public can see the Department's level of responsiveness over time.

Question 9. What capacity and expertise is there within OPD to review internal recordkeeping practices and technology with regard to records requests?

The Records Division is comprised of experienced professionals with a background in records management, and employees work closely with the OCA to ensure legal compliance when responding to PRRs. However, in the coming year, staff will partner with the IT Unit to research how to leverage modern technology to enhance the speed and accuracy of responses. This will include the use of advanced software tools for document redaction and disclosure. The Department is also investing in upgrading its record management systems to facilitate quicker access to information. This will include the implementation of advanced indexing and search functionalities, enabling staff to respond to requests with greater efficiency.

Question 10. What additional information would you like to share with the Commission on this issue?

OPD remains committed to transparency and open communication, and the Department is dedicated to improving the PRR request experience for both our staff and the public.

Question 11. Please attach all reports OPD has provided to the City Council pursuant to *Morris et al.*

OPD has not provided any reports to the City Council pursuant to *Morris et al.*

Respectfully submitted,

Kiona Suttle

Kiona Suttle
Deputy Director
Oakland Police Department

Item 9c - City Attorney's 2022 Morris et al Report



CITY OF OAKLAND

AGENDA REPORT

TO: Oakland City Council

FROM: Barbara J. Parker
City Attorney

SUBJECT: Informational Report Regarding the Oakland Police Department's Compliance with the Public Records Act Class Settlement In *Scott Morris; Sarah Belle Lin; Brian Krans, Michael Katz and Oakland Privacy v. City of Oakland; Oakland Police Department; Susan Manheimer, in her official capacity; and Ed Reiskin, in his official capacity.*

DATE: July 5, 2022

RECOMMENDATION

Accept This Informational Report Regarding The Oakland Police Department's Compliance With The Public Records Act Class Settlement In *Scott Morris; Sarah Belle Lin; Brian Krans, Michael Katz and Oakland Privacy v. City of Oakland; Oakland Police Department; Susan Manheimer, in her official capacity; and Ed Reiskin, in his official capacity.*

EXECUTIVE SUMMARY

In March 2022, Judge Roesch of the Alameda County Superior Court ordered entry of a settlement in *Morris et al. v. City of Oakland et al.*, Case No. 20072029, a class action involving requests for public records held by the Oakland Police Department (OPD). Under the settlement, the City must provide reasonable, prompt estimates of when any records responsive to OPD records requests will be produced and must produce records on or before that estimated date at least 80% of the time. The City must also clear a backlog of approximately 457 pending OPD Public Records Act (PRA) requests by August 16, 2022, and a backlog of approximately 124 pending requests for OPD peace officer personnel records disclosable under S.B. 1421¹ by May 16, 2023.

¹ S.B. 1421, which took effect on January 1, 2019, requires disclosure of records related to officer-involved shootings, uses of force that result in great bodily injury or death, and certain incidents involving a finding of police officer dishonesty or sexual assault. S.B. 16, which took effect January 1, 2022, significantly expands the scope of disclosable police personnel records, which now includes certain records involving unreasonable or excessive force, failure to intervene against another officer's use of clearly unreasonable or excessive force, prejudicial or discriminatory officer conduct, and unlawful arrests and searches. For purposes of this report, the City has grouped requests made after January 1, 2022 seeking records disclosable under S.B. 16 with requests for records disclosable under S.B. 1421. These requests are collectively referred to herein as "S.B. 1421 requests."

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Item 9c - City Attorney's 2002 Morris et al Report

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The settlement requires that OPD and the City Attorney present a report to this Council regarding the City's compliance with the terms of the settlement for the first two months after the court's order.

The City is in substantial compliance with the settlement. During the first two months of settlement, March 24-May 24, 2022 (the "reporting period"), the City received about 950 new OPD PRA requests, approximately nine of which were S.B. 1421 requests. Within an average of two days from receipt of a request (or approximately two weeks for S.B. 1421 requests), the City responded by either fulfilling a request in full, closing it, or providing an estimated date for production of records. Where the City found responsive, disclosable records, it produced records on or before its estimated production date for 97% of requests—far above the 80% threshold required to secure dismissal of the case.

The City cleared approximately 38% of the non- S.B. 1421 backlog during the reporting period. This number nearly meets the 40% benchmark the parties to the lawsuit set for this period and represents significant progress. With respect to S.B. 1421 requests, the City has satisfied its obligation to produce new records every two weeks and has produced records in response to approximately 20% of its pending requests. The City's current pace should enable it to clear all, or substantially all, of its backlogged OPD PRA requests by the August 16, 2022 and May 16, 2023 deadlines.

BACKGROUND / LEGISLATIVE HISTORY

The Public Records Act, Gov. Code § 6250 et seq., requires the City to respond to requests for public records within ten days, with the possibility of taking an additional 14 days in limited circumstances. Within that time frame, the City must search for records and make a determination stating whether responsive records exist and whether responsive records will be withheld. It must produce the responsive records, with any appropriate redactions, "promptly" thereafter.

This settlement stems from a suit, *Morris et al. v. City of Oakland et al.*, brought in August 2020 by a group of journalists who alleged the City was violating its obligation to timely provide records determinations in response to OPD PRA requests and its obligation to "promptly" produce responsive records. They alleged that, when the lawsuit was filed in August 2020, there were more than 5,000 open OPD public records requests. They also alleged that the City routinely issued "boilerplate" responses to OPD records requests and extended the time to make a records determination well beyond what the Public Records Act permits.

Following substantial discovery in the first half of 2021, the parties engaged in months-long settlement negotiations and ultimately agreed to a proposed settlement approved by City Council in November 2021 through Resolution 88886. The Court preliminarily approved the settlement in December 2021. The City then notified class members of the settlement. No class member objected and only a few opted out. The judge gave final approval and certified the class on March 24, 2022.

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The most relevant terms of the settlement, for purposes of this report, are as follows:

1. Timely Records Determination

The City will send an initial records determination to requestors within 10 days of receiving a request for OPD public records (or invoke a 14-day extension within those initial 10 days for statutorily approved reasons). That initial records determination will indicate whether the request seeks disclosable public records, describe the divisions or departments contacted in the search, provide a rough quantity and description of records located, state a basis for withholding any responsive records, and provide an estimated date for producing any responsive records.

2. Prompt Records Production

The City will provide estimated dates for producing responsive OPD public records that are "prompt" within the meaning of Government Code § 6253(b). For certain categories of records, the City will set the estimated date of production as follows: (a) Crime reports (aside from homicide reports) within 15 days of receipt of the PRA request; (b) tow reports within 10 days of receipt of the PRA request; (c) CAD purges for a single incident within 20 days of receipt of the PRA request; and (d) calls for service at a single address within 20 days of the PRA request. The City must actually produce records within the time it estimates at least 80% of the time in order for the case to be dismissed.

3. Backlog Clearance.

The City will fulfill backlogged OPD PRA requests (defined as requests pending for more than 20 days prior to March 24, 2022) by August 16, 2022, except that it will fulfill backlogged requests for OPD peace officer personnel records under S.B. 1421 by May 16, 2023.

ANALYSIS AND POLICY ALTERNATIVES

During the reporting period, the City provided a records determination and/or responded to an OPD PRA request in full in an average of two days. Where it provided responsive records, it did so on or before its estimated production date for approximately 97% of requests. With respect to the backlog, the City has made significant progress and is on pace to clear all, or substantially all, of its backlogged OPD public records requests by the deadlines of August 16, 2022 for non- S.B. 1421 requests and May 16, 2023 for S.B. 1421 requests. *The City is therefore in substantial compliance with the settlement.*

Timely Records Determination

The City is meeting this requirement for both S.B. 1421 and non- S.B. 1421 OPD records requests. The City received approximately 950 OPD public records requests during the first two months of the settlement (March 24-May 24, 2022) and either (a) provided a records

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determination or (b) produced responsive records (or both) within 10 days in approximately 99% of them.²

- For the approximately 940 non- S.B. 1421 requests, the average and median number of days after the request was opened that the City sent a records determination or responded to the request in full were approximately 2 days (average) and 1 day (median).³ Under the law, the City has up to 10 days to make this determination, and up to 24 in certain circumstances.
- For the approximately 9 S.B. 1421 requests, the average and median number of days after the request was opened that the City sent a records determination were approximately 16 days (average) and 20 days (median).⁴ For every records determination that exceeded 10 days, the City invoked a statutory extension under Gov. Code § 6253(c), which permits up to 24 days for a response in enumerated circumstances, including when requests require an agency to “search for, collect, and appropriately examine a

² Following the court's final approval order in this case, the City began using a customizable records determination form for OPD PRA requests to facilitate compliance with the settlement terms and the City's reporting obligations. This records determination form was uploaded in approximately 465 of the requests received during this reporting period. For the requests in which a form was uploaded, the records determination was made within 10 days in over 99% of cases. For the requests in which a form was not uploaded, in nearly 99% of cases the City produced all responsive records, or communicated that the request would be closed for other reasons (e.g., because the request sought records held by another agency or because the requestor was no longer interested in the records), within 10 days. Since approximately May 1, 2022, the City has adopted a practice of providing records determination forms whenever a request seeks potentially disclosable records, even when those records are produced and the request is fulfilled in fewer than 10 days.

³ The above data excludes the approximately six out of 940 requests for which no records determination, production, or closure decision was provided within 10 days from the end of the reporting period (i.e., by June 3). Of those requests, two were routed to OPD in error and have since been closed. Over 99% of requests either received a records determination or were responded to in full and closed by June 3.

⁴ The data above excludes two requests that were closed based on offline communications with the requestor, a media organization with whom the City has been working to produce an exceptionally large number of OPD public records. The closed requests duplicated requests for which the media organization has opted out of this settlement. Separately, the data includes a request made by Scott Morris, a named Petitioner in the *Morris* lawsuit, seeking every disclosable peace officer personnel record under S.B. 1421 and S.B. 16 for thirteen different officers. For this request, the City promptly asked Mr. Morris to prioritize the officers and/or years he desired the City to search for first. The City then sent an initial records determination for the prioritized officers within the 24-day extended deadline, and sent additional records determinations for the remaining officers on a rolling basis through June 9, 2022. This report uses the date of the first records determination to calculate the overall average and median time for records determinations in S.B. 1421 requests. If the most recent records determination date of June 9, 2022 is used instead, the overall average rises to approximately 22 days, and the median remains 20 days.

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voluminous amount of separate and distinct records.” The City made a records determination within the extended response deadline for every S.B. 1421 request received.

Estimated Time To Produce Records

The City is meeting this requirement for both S.B. 1421 and non- S.B. 1421 requests. The City has produced responsive records on or before the estimated production date approximately 97% of the time for non- S.B. 1421 OPD public records requests and approximately 80% of the time for S.B. 1421 requests.

- For the approximately 940 non-S.B. 1421 requests, the City provided an estimated date of production of approximately 15 days from receipt of the request, on average, with a median of approximately 12 days.⁵
- The City produced records in response to approximately 555 OPD PRA requests during the reporting period. (The remainder were determined to have no responsive records, or were referred to another agency, or were closed for other reasons; approximately 35 are still open awaiting production of responsive records.) Of these 555 requests, the City produced responsive documents on or before the estimated date of production 97% of the time.
- For the S.B. 1421 requests, the City provided an estimated date of production of 45 days from receipt of the request for every request it received, excluding two cases it closed based on prior conversations with the requestor (see footnote 4).
- The City has produced all responsive records in response to 80% (four out of five) of the S.B. 1421 requests received during the reporting period that were (a) determined to have responsive records and (b) due for production during the reporting period. For the fifth request—Mr. Morris’s request for records of 13 officers—OPD completed production for nine of the officers within the 45-day estimate for production. Production of records responsive to the 4 remaining officers is ongoing.
- Overall, including both S.B. 1421 and non-S.B. 1421 requests, the City produced records within the estimated timeframe for 97% of requests.

Backlog Clearance

The City substantially met its benchmark for clearing the backlog during this reporting period and is in a solid position to clear all, or substantially all, of the backlog by the settlement deadlines.

- There were approximately 457 non- S.B. 1421 requests in the backlog as of March 24, 2022. As of May 24, the City had approximately 282 remaining requests, representing a

⁵ This estimated production date was provided on the records determination form where available (see footnote 2), or otherwise by the “due date” set on NextRequest, the City’s platform for receiving and processing PRA requests.

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clearance of approximately 38% of its backlog during this period and nearly meeting the 40% benchmark set by the parties.

- There were approximately 124 S.B. 1421 requests in the backlog as of March 24, 2022, many of which involve requests for records pertaining to many different officers and incidents. During this period the City produced approximately 521 distinct records totaling thousands of pages and approximately 52 gigabytes of audio and video material, all of which went through careful review for disclosability and redactions due to the sensitive nature of the records. The City has produced records in approximately 20% of all pending requests. The City has consistently produced new S.B. 1421 records on a bi-weekly basis.

FISCAL IMPACT

The City agreed to pay \$127,500 to opposing counsel in attorneys' fees in the *Morris* case. The City has also paid approximately \$80,000 in outside counsel fees to represent the City in the litigation. The City has also engaged outside counsel and devoted significant internal resources in both the City Attorney's Office and OPD to meet the court's deadlines for fulfilling pending PRA requests and to place the City in the best position to ensure compliance with the settlement moving forward.

PUBLIC OUTREACH / INTEREST

On November 2, 2021 the Council passed a resolution approving settlement of this case at an open public meeting. Affected class members were notified of their rights via the NextRequest platform, email, phone call, or direct mail in December 2021 and January 2022. No member of the public objected to the settlement, and only a handful of class members opted out of the settlement. The settlement contemplates public oversight of OPD's ongoing compliance via periodic reports to the court, and this report to Council.

COORDINATION

This report was developed through coordination between the City Attorney's Office and the Oakland Police Department, and using data from NextRequest.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Race & Equity: There are no race and equity opportunities associated with this report.

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ACTION REQUESTED OF THE CITY COUNCIL

There is no action requested of the City Council associated with this report. Please contact Deputy City Attorney Cynthia Stein if you have questions.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Attorney Assigned:
Cynthia Stein

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PEC Salary-Setting Duties – Relevant Charter Sections

Council Salaries (Sec. 202).

The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year.

City Attorney Salary (Sec. 401(1)).

... The salary of the elected City Attorney shall be set annually by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

City Auditor Salary (Sec. 403(1)).

... The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Item 10b - 2022 Memo on Adjusting Council Salaries



Arvon Perteet, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Ana Lara-Franco, Commission Assistant
Whitney Barazoto, Executive Director
DATE: February 25, 2022
RE: City Council Salary Adjustment as Required by Law for the March 9, 2022, PEC Meeting

Every two years, the Public Ethics Commission (PEC or Commission) is responsible for adjusting the City Councilmember salary level according to the increase in the Consumer Price Index (CPI) for the preceding two years, and for making additional salary increases as deemed necessary by the Commission.

This memorandum provides background information for the Commission to do the following:

- 1) adjust Councilmember salaries per the CPI increase as mandated by law, and
- 2) determine whether to adjust Councilmember salaries beyond the required increase up to a total of five percent per year.

Background

Oakland City Charter Section 202, as amended in 2014, requires the Public Ethics Commission to “bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years.” In addition, the Commission may adjust the salaries beyond the increase up to a total of five percent for each year, and any excess of five percent per year must be approved by the voters.

Payroll adjustments take effect on the first payroll period after the beginning of the new fiscal year, which will begin in July 2022. The Commission last adjusted the salary for City Councilmembers by the CPI increase of 7.1 percent in 2020, resulting in a total annual salary of \$97,480.55.

The table below shows salary increases approved by the Commission since 2004. Note that since 2016, PEC-authorized increases were made bi-annually as required by City Charter amendments in 2014, which moved the adjustment from every year to every two years.

City Council Salary Adjustments

Year	PEC-Authorized Increase (%)	Annual Salary with Increase (\$)¹
February 2020	7.1 (CPI for two years)	97,480.55
February 2018	6.6 (CPI for two years)	91,018.25

¹ This list reflects PEC-authorized amounts; actual salary amounts received each year may differ for each Councilmember depending on whether each member accepted the increase.

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January 2016	4.7 (CPI for two years)	85,382.97
June 2014	2.4 (CPI)	81,550.11
June 2013	2.4 (CPI)	79,638.78
July 2012	2.1 (CPI)	77,772.25
June 2011	2.8 (CPI)	76,172.62
June 2010	1.7 (CPI)	74,097.88
June 2009	0.8 (CPI)	72,859.28
June 2008	2.9 (CPI)	72,281.04
June 2007	5	70,243.94
July 2006	4	66,899.04
July 2005	2.1 (CPI)	64,326.08
June 2004	5	63,003.94

As of February 2022, every councilmember currently receives a biweekly salary of \$3,749.25 which amounts to a total of \$97,480.56 annually.²

Salary Adjustment Mandated by City Charter

The Commission is required to adjust the annual salary according to the change in the Consumer Price Index for the preceding two years. The U.S. Bureau of Labor Statistics reports that the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose metropolitan area rose 6.3 percent from December 2019 – December 2021.³ This increase of 6.3 percent since the last mandated salary adjustment would result in a new authorized annual salary for City Councilmembers of **\$103,621.82**

Additional Salary Increase Option

In addition to the required increase per CPI, the Commission has the discretion to increase City Councilmember salaries beyond the CPI up to a maximum total of 5 percent per year, for a total of 10 percent for both the CPI and the discretionary increase over the two-year period. The required CPI increase at this time is 6.3 percent for the two-year period; therefore, the Commission has discretion to approve an additional increase of an additional 3.7 percent for the two-year period as provided by the City Charter.

Recommendation

Staff recommends that the Commission issue a resolution to adjust City Councilmember salaries by the required 6.3 percent increase in the Consumer Price Index as required by law, for a total annual salary of **\$103,621.82**. Following Commission approval, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

² Salary data provided by Lorna Guice, Human Resource Systems Analyst, Senior, February 14, 2022.

³ U.S. Bureau of Labor Statistics. San Francisco Region Consumer Price Index. December 2019 – December 2021.

<https://data.bls.gov/timeseries/CUURS49BSAo>. Data accessed February 11, 2022.

Formula using raw numbers: $(\text{Current year/prior year}) - 1 \times 100 = \underline{\quad\quad\quad}\%$

Item 10c - 2023 Memo on Adjusting City Attorney Salary

Ryan Micik (Chair)

Charlotte Hill (Vice-Chair)

Alea Gage

Arvon Perteet

Vincent Steele

Francis Upton IV



Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Ana Lara-Franco, Commission Analyst
Suzanne Doran, Acting Executive Director
DATE: March 30, 2023
RE: City Attorney Salary Adjustment as Required by Oakland City Charter Section 401(1)

In November 2022, Oakland voters passed Measure X, which amended Oakland City Charter Section 401(1) to add setting the City Attorney salary level to the duties of the Public Ethics Commission (PEC or Commission). This memorandum provides background information for the Commission to adjust the City Attorney salary per the criteria specified by City Charter Section 401(1).

Background

The City Attorney is the department head for the Office of the City Attorney, oversees a staff of 79 FTE positions, and serves as counsel to the Mayor, City Council, and every department of the City, except departments designated as independent departments in the Charter.

In November 2012, November 2016, and November 2020, the voters elected the current City Attorney to serve full, four-year terms. **The City Attorney's current annual salary is \$243,618.72.** The most recent salary increase was in April 2022.

In 1998 the Oakland electorate voted to amend the Oakland City Charter and, among other things, to establish an elected City Attorney. A subsequent Charter amendment granted the Council authority to set the City Attorney's salary and established a formula to determine the range for the salary: 70 percent to 90 percent of "the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland."

In November 2022, Oakland voters passed Measure X, which amended process for setting the City Attorney's salary as follows:

The salary of the elected City Attorney shall be set annually by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion. (Oakland City Charter Section 401(1))

Analysis

Since the most recent salary increase, the City has negotiated wage increases through the collective bargaining process. The non-public safety wage increases, as opposed to Police and Fire wage

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City Attorney Salary Adjustment

March 30, 2023

increases, can be a consideration in establishing the new wage since it applies to both City Attorney employees and to other Department Heads. The Department Heads received the same wage increase through Salary Ordinance 12187 C.M.S. section 2.20, which allows the City Administrator to provide the same negotiated wage increases to unrepresented employees.

The annual salary for the Assistant City Attorneys is currently **\$260,437.44**, which exceeds the City Attorney’s annual salary **by \$16,818.72** per year.¹ The City’s compensation practice is to have a minimum of 15 to 20 percent salary differential between a department head and their highest paid direct reporting employee. For the City Attorney salary to be 15 to 20 percent above the salary of the highest direct reporting employee would be a salary between **\$299,503.06 and \$312,524.93**

In accordance with the criteria establishing the permissible salary range for the City Attorney in Charter Section 401(1), salaries for other City department heads were surveyed (see Table 1 below).

Table 1: City Department Head Salaries

Dept Head	Annual Salary
City Auditor	181,203.12
City Clerk	192,409.08
EEO & Civil Rights Director	211,293.60
Executive Director of CPRA	218,656.00
Director of Race and Equity	218,657.52
Director of Housing & Community Dev	235,620.00
Director of Human Services	235,620.00
Director of Parks & Recreation	235,620.00
Director of Planning & Building	247,390.44
Director of Workplace & Employment Stnd	247,390.44
Chief of Violence Prevention	247,390.56
Director of Animal Services	247,390.56
Director of Economic & Workforce Dev	247,390.56
Director of Human Resources Managemen	247,390.56
Director of Information Technology	247,390.56
Director of Library Services	247,390.56
Director of Transportation	247,390.56
Director of Finance	261,075.84
Director of Public Works	286,897.20
Average Salary (excluding City Attorney)	237,029.85
City Attorney	243,618.72

Based on the above data, the salary range for the Oakland Department Heads is from **\$181,203.12 to \$286,897.20**. The average annual salary for Department heads is **\$237,029.85** per year while the annual salary for the City Attorney is **\$243,618.72**.

In accordance with the criteria establishing the permissible salary range for the City Attorney in Charter Section 401(1), salaries of City Attorney’s from other California cities within the three immediate higher

¹ Salary data provided by Anjali Saxena, Payroll Manager, Finance Department. January 17, 2023

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City Attorney Salary Adjustment

March 30, 2023

and lower populations compared to Oakland were surveyed (see Table 2).

Table 2: California Cities City Attorney Salaries

City	Population*	Salary
Fresno	543,660	232,463.00
Sacramento**	518,037	331,941.00
Long Beach	460,682	318,972.00
Bakersfield	408,865	214,601.88
Anaheim**	341,245	317,407.00
Riverside	317,847	315,312.00
Average Salary		288,449.48
Oakland	424,464	243,618.72

*<https://publicpay.ca.gov/>

**maximum salary recorded. All other salaries are actual salary of the sitting City Attorney.

The above chart shows that most of the City Attorney salaries in California cities of comparable size are higher than Oakland's current salary rate. The average annual salary is **\$288,449.48** per year while the current annual salary for the City Attorney is **\$243,618.72** (84 percent of the average salary).

In addition, the survey of the salaries of City Attorneys in the Bay Area reflects that the Oakland City Attorney's salary is significantly lower as shown in Table 3 below.

Table 3: California Bay Area Cities City Attorney Salaries

City	Salary*
City of Oakland - City Attorney	243,618.72
City of Hayward - City Attorney	239,450.00
City of Berkeley - City Attorney	253,770.00
City of Mountain View - City Attorney	283,984.56
City of Alameda - City Attorney**	290,320.00
City and County of San Francisco - City Attorney	294,736.00
Port Attorney - Port Attorney	320,000.00
Alameda County - County Counsel	332,901.00
City of San Jose - City Attorney	334,335.00
City of Santa Clara - City Attorney	345,000.00
City of Fremont - City Attorney	309,750.00
Average survey Salary (excluding Oakland's)	300,424.66
* https://publicpay.ca.gov/	
**Actual salary	

The above data shows that most of the Bay Area City Attorney salaries are higher than Oakland's current salary rate. The average annual salary is **\$300,424.66** per year while the current annual salary for the City Attorney is **\$243,618.72** (80 percent of the average salary).

Recommendation

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City Attorney Salary Adjustment

March 30, 2023

Based on the above data, which relies on the criteria set forth in City Charter Section 401(1), an adjustment to an annual salary of **\$306,990.63** is recommended as it provides equity and alignment of the City Attorney's salary by adding a 15 percent differential above the highest paid subordinate attorneys and staff in the Office, is comparable to salaries of attorneys in other Bay Area cities, and accounts for the scheduled 2.5 percent negotiated wage increase for other City employees effective July 2023.²

Table 4: Comparison Summary

City Department Head - Average	\$	237,029.85
Highest Paid Employee - Salary	\$	260,437.44
Comparable-size California Cities - Average	\$	288,449.48
Bay Area Cities - Average	\$	300,424.66
Oakland City Attorney - Current	\$	243,618.72
Oakland City Attorney - Recommended Adjustment	\$	306,990.63

Scheduled wage increases under the current collective bargaining agreements with non-public safety represented employees include 2.5 percent on July 2023, 2.5 percent January 2024, 2 percent July 2024, and 2 percent March 2025. Staff recommends the Commission accounts for future increases, excluding the 2.5 percent July 2023 increase, in the annual adjustment of the City Attorney's salary.

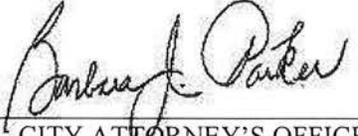
Following the Commission's determination of the adjustment amount, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

² Salary adjustment calculated as follows: Highest paid City Attorney office employee salary + 15% differential + 2.5% increase to maintain parity with scheduled wage increase for non-public safety employees effective 7/1/23.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 12 PM 1:51

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89317 C.M.S.

INTRODUCED BY COUNCILMEMBERS DAN KALB, LOREN TAYLOR,
SHENG THAO, AND NIKKI FORTUNATO BAS

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION A GOVERNMENT REFORM MEASURE THAT WOULD AMEND THE CITY CHARTER TO, AMONG OTHER THINGS:

- (1) ESTABLISH TERM LIMITS FOR COUNCILMEMBERS;
- (2) REQUIRE A MINIMUM OF TWO COUNCIL HEARINGS BEFORE CERTAIN COUNCIL PROPOSED BALLOT MEASURES ARE APPROVED FOR PLACEMENT ON THE BALLOT;
- (3) COUNT COUNCILMEMBER ABSTENTIONS AND ABSENCES AS A NO VOTE ON COUNCIL MOTIONS, RESOLUTIONS AND ORDINANCES FOR PURPOSES OF DETERMINING WHETHER MAYOR HAS AUTHORITY TO CAST A TIE-BREAKING VOTE;
- (4) CHANGE THE FORMULA FOR THE PUBLIC ETHICS COMMISSION TO SET COUNCILMEMBER SALARIES AND AUTHORIZING THE PUBLIC ETHICS COMMISSION TO SET THE SALARIES OF THE CITY AUDITOR AND CITY ATTORNEY;
- (5) ADD AND CLARIFY DUTIES OF AND PROVIDE MINIMUM STAFFING FOR THE CITY AUDITOR; AND

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION

WHEREAS, in 1968, the People adopted the Charter of the City of Oakland ("City Charter"), establishing the fundamental law of the City, including but not limited to, the City's form of government and the role of City Council, the Mayor, the City Manager, and other City officers, and

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WHEREAS, since then, the City has grown in size, complexity, and diversity; and

WHEREAS, a city's charter must promote democracy, accountability, transparency, and equity; and

WHEREAS, according to the National League of Cities, 80% of American cities have term limits for mayors and/or councilmembers; and

WHEREAS, a 2021 report by San Francisco Bay Area Planning and Urban Research Association, a nonprofit public policy organization ("SPUR") titled "Making Government Work: 10 ways City Governance Can Adapt to Meet the Needs of Oaklanders" called for term limits City Councilmembers and additional staffing for the City Auditor; and

WHEREAS, Oakland elected officials such as City Councilmembers, the City Auditor, and the City Attorney have lower salaries than several nearby California cities; and

WHEREAS, engaged residents may be more likely to be able to gain election to local office when there is an open seat as opposed to when an incumbent is running for re-election; and

WHEREAS, having two Council hearings on certain Council proposed ballot measures before the Council places such measures on the ballot will expand opportunities for public and Council engagement, discussion and vetting; and

WHEREAS, the Charter currently entitles the Mayor to cast a tie-breaking vote when the Council is evenly divided on a Council vote, yet that has been thwarted by Councilmembers abstaining; now therefore be it

RESOLVED: That the City Council finds and determines the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed amended Charter amendment text shall be as follows:

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but ~~he~~ shall have a vote on the Council if the Councilmembers are evenly divided in accordance with Section 305. The Council shall elect a President of the Council from among its members for a term of two years. The President of the Council shall serve as the presiding officer of the City Council and shall perform duties authorized by the Council's Rules of Procedure, which shall be passed by resolution in accordance with Charter section 210.

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Section 202. Council Salaries. The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year. ~~The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.~~

Section 204. Term of Office, Term Limits, Council.

Term of Office. The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1~~2~~ following their election. ~~The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993.~~ In 1990-2018 Municipal Elections ~~were~~ will be held to select City officers for four-year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992-2020 Municipal Elections ~~will be~~ were held to select City Councilmembers for four-year terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember At-Large.

Term Limits. No person shall be elected to the office of Councilmember, whether district or at-large, or any combination thereof, for more than three consecutive terms; except that a person may serve up to three consecutive terms as a district Councilmember immediately followed by up to three consecutive terms as Councilmember at-large. For purposes of determining term limits, a Councilmember who fills a partial term of more than two years shall be deemed to have filled the entire term. Terms for the office of Councilmember that commenced prior to January 2023 shall not be considered in calculating limits on consecutive terms for Councilmembers.

Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60-90 days may be allowed only for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. ~~If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible.~~ Special elections for the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120-100 days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee is may not simultaneously fill the vacancy and run as a candidate for that the office which created the vacancy and provided the appointment does not exceed 128-180 days or go beyond the date the

Item 10c - 2023 ~~Members of Adjusting City Attorney Salary~~

new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the ~~Vice Mayor~~ Council President fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the ~~Vice Mayor~~ Council President shall be entitled to return to ~~his/her~~ their seat.

Section 208. Meetings of the Council. At 11:00 a.m. on the first Monday following January 24 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each odd-numbered year, the Council shall, by resolution, elect a ~~Vice Mayor~~ Council President from among its members to serve for a ~~one~~ two-year term. The Council also shall elect, by resolution, a President Pro Tempore of the Council from among its members to serve a one or two-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

Section 221. Hearings Required for Certain Ballot Measures Proposed by the Council. Before taking a vote, the Council shall notice and consider at no fewer than two Council open session meetings that are at least 10 calendar days apart, any (1) general obligation bond, (2) new parcel tax or increase in a parcel tax, or (3) Charter amendment that the Council proposes to place on the ballot.

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the ~~Vice Mayor~~ President of the Council. Except as otherwise provided in this Section, when the ~~Vice Mayor~~ President of the Council assumes the office of Mayor upon declaration of a vacancy, they shall serve for the remainder of the unexpired term if such term is less than one year; otherwise they shall serve until the vacancy is filled as provided herein. The President Pro Tempore shall perform the duties and shall have the powers of the President of the Council during any time that the President of the Council has assumed the office of the Mayor. Whenever the period of vacancy in a Mayor's term of office is less than one year and the ~~Vice Mayor~~ President of the Council notifies the Council in writing that they do not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the Council; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to ~~60~~ 90 days may be allowed only for the express purpose of consolidating the special election with the

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next Municipal Election or Statewide Election. Special elections for the office of Mayor that take place after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting, and extended voting period.

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

(a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.

(b) Recommend to the Council such measures and legislation as ~~he~~ the Mayor deems necessary and to make such other recommendations to the Council concerning the affairs of the City as ~~he~~ the Mayor finds ~~desirable~~ are in the best interest of the residents of the City.

(c) Encourage programs for the physical, economic, social and cultural development of the City.

(d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.

(e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.

(f) Serve as ceremonial head of the City.

(g) Represent the City in inter-governmental relations as directed by the Council.

(h) Provide community leadership.

(i) May cast a tie-breaking vote on any Ordinance, Resolution or Motion voted on by the Council, if the Council's vote is evenly divided. Solely for the purposes of determining whether the Mayor is eligible to cast a tie-breaking vote, abstentions and absences shall count as a "No" vote. A legally-required recusal shall not count as a "No" vote.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as the Mayor ~~he/she~~ may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be

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noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote ~~his~~ their full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which ~~he~~ the Mayor is not actively engaged and which are not in conflict with the performance of ~~his~~ the Mayor's duties and responsibilities.

Section 306. Duties of Vice Mayor-Council President. In addition to any duties specified by ordinance or by the Council's Rules of Procedure Resolution passed in accordance with Charter section 210, in the absence during the unavailability or temporary disability of the Mayor, the Vice Mayor-President of the Council shall perform the duties of the office of Mayor.

Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set annually by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Section 401(7). Endorsements, Campaigns, Campaign Contributions. During the City Attorney's tenure, the City Attorney shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Attorney, or of a City ballot measure, or be an officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to for the office a person must be a qualified elector of the State of California, a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the office shall be set by the Public Ethics Commission, which shall be not less than 70% nor

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~~more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.~~

Section 403(2). Vacancy, What Constitutes. The Office of City Auditor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after their term is to begin, dies, resigns, ceases to be a resident of the City or is absent from the City for a period of more than sixty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of the office, forfeits the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Auditor. Filing to run for the office of Mayor, Councilmember or City Attorney shall constitute a resignation from the office of City Auditor, effective on the date of filing.

Section 403(3) Vacancy, Filling of. For all vacancies occurring in the Office of City Auditor the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter.

Section 403(4) Powers of the City Auditor. The City Auditor, notwithstanding any other provision of this Charter, shall have the power and it shall be his or her the City Auditor's duty to audit the books, accounts, money and securities of all bureaus, departments, offices, agencies, including the Port Department, boards, commissions, and programs of the City, and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator ~~regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City.~~ The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct audits in accordance with Government Auditing Standards as issued by the U.S. Comptroller General.

The City Auditor shall conduct surveys, reviews, ~~and performance audits and financial audits~~ as the Auditor deems to be in the best public interest or as ~~required-requested~~ by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

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- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to Council and Mayor requests for audits and reviews.
- (8) Submitting, at a public meeting of the full City Council, a ~~quarterly~~ semi-annual report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's reports.
- (9) ~~The City Auditor shall conduct~~ Conducting periodic performance audits of each department as specified in the City budget in order to help improve government performance.
- (10) Reviewing City departments, offices, agencies, boards, commissions, and bureaus to analyze if they are managing, safeguarding and using public resources, including public funds, personnel, property, equipment and space, economically, efficiently, equitably, and effectively.
- (11) Analyzing City programs, activities, services, functions, or policies as to effectiveness and cost-effectiveness, including the identification of any causes of inefficiencies.
- (12) Reviewing and recommending to the City Administrator management adjustments in operating and administrative procedures and practices, systems and accounting internal control systems and internal management controls.
- (13) Analyzing allegations of fraud, waste, abuse or illegal acts that require further investigation to substantiate.
- (14) Publishing an annual report summarizing recent audits and recommendations.
- (15) Responding to requests from the City Administrator to provide recommendations on how to make City departments and services more effective and customer-service oriented.
- (16) Preparing an annual workplan including planned audits for the year. The City Auditor shall publish such workplan in August of each year.

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The City Auditor shall have access to inspect all records, property, equipment, and facilities within the City's jurisdiction.

Effective July 2023, the budget for the Office of the City Auditor shall be sufficient to hire at least fourteen full-time equivalent ("FTE") employees of relevant classifications. The minimum staffing budget set-aside may be suspended, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution or ordinance.

Restrictions on Running for Public Office. Filing for an elective office over which the City Auditor has audit jurisdiction will be the same as resignation, effective on the date of filing.

Endorsements, Campaigns, Campaign Contributions. During the City Auditor's tenure, the City Auditor shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Auditor, or of a City ballot measure, or be an, officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

Section 601. Boards and Commissions. The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction, meeting frequency, standards for conducting long-term planning, and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article.

Section 601(a). Except as otherwise provided for in this Charter, Mmembers of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's prior term of office.

Section 601(b). Notwithstanding any other language in this section 601, or elsewhere in the Charter, for vacancies on boards and commissions for which an ordinance specifies that Councilmembers may nominate a candidate for the Mayor's consideration, the designated Councilmember shall have 45 days from the date the vacancy occurs to recommend one or more

Item 10c - 2023 Memo on Adjusting City Attorney Salary

nominees to the Mayor in writing. Upon such nomination or the expiration of the 45-day nomination period, whichever occurs first, the Mayor shall have 90 days thereafter to submit any eligible candidate for the Council’s confirmation.

If the Mayor does not submit for confirmation a candidate to fill a vacancy within the time frames prescribed by this section 601(b), the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill the vacancy within the time frame specified in this section 601(b) and the Council does not confirm the candidate, the time frame specified in this section 601(b) shall commence anew.

For purposes of this Section 601, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's term of office.

Section 1100. Nominating Election. Except as otherwise provided for in section 1105 of this Charter, Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in June in each even-numbered year. In order to consolidate Municipal Nominating Elections with Statewide Primary Elections, the Council may by ordinance provide for a date for a Municipal Nominating Election which conforms to the date of a Statewide Primary Election.

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

PROPOSED CHARTER AMENDMENT

MEASURE ___

<p>Measure __. Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?</p>	Yes	
	No	

; and be it

22 JUL 28 PM 4:27

QUESTION

Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?

TITLE AND SUMMARY

Title: A proposed amendment to the Charter to establish term limits for members of the City Council (“Council”), require two Council hearings for certain proposed ballot measures, count Councilmember abstentions and absences as “no” votes in determining whether the Mayor may cast a tie-breaking vote at the Council, provide the Public Ethics Commission (“Commission”) discretion in setting Councilmember salaries, authorize the Commission to set the salaries of the City Auditor and the City Attorney, clarify and add to the duties of the City Auditor, and set minimum staffing for the Office of the City Auditor.

Summary:

This measure makes a number of changes to the Charter including:

Councilmember Term Limits

Members of the Council are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms.

Hearings on Proposed Ballot Measures

State law requires the Council to hold one public hearing before voting to place a measure on the ballot. This measure would require the Council to hold two public hearings before voting to place a general obligation bond, parcel tax, or Charter amendment on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts Councilmember salaries every two years based on any increases in the consumer price index (“CPI”). The Commission may also adjust their salaries above CPI increases, up to a total of five percent per year. This measure provides that the Commission would adjust the salaries every two years based on CPI increases, up to a total of five percent. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor using a specified formula. This measure provides that the Commission would set these salaries based on salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

Item 10c - 2023 Memo on Adjusting City Attorney Salary

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective office or of a City ballot measure.

City Auditor

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing for the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees.

/s/ DAVID CHIU
San Francisco City Attorney

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OFFICE OF THE CITY CLERK
OAKLAND

IMPARTIAL ANALYSIS

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Councilmember Term Limits

Members of the City Council (“Council”) are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms, except that a district Councilmember may serve up to three consecutive terms followed by up to three consecutive terms as an at-large Councilmember. Councilmember terms that began before January 2023 shall not count towards the term limits.

Hearings on Proposed Ballot Measures

State law requires the Council to hold at least one public hearing before placing a measure on the ballot. This measure would require the Council to hold at least two public hearings at least 10 calendar days apart before placing general obligation bonds, parcel taxes, or Charter amendments on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts the salary for Councilmembers every two years based on the increase in the consumer price index (“CPI”). The Commission may adjust salaries beyond the increase in CPI up to five percent per year. The voters may approve increases above five percent in a year. This measure provides that the Commission adjusts the salaries every two years based on CPI increases, up to a total of five percent for the two years. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year. The measure removes the ability of the voters to approve increases above five percent by ordinance.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor. This measure provides that the Commission would set these salaries based on the salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective officer, or of a City ballot measure.

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City Auditor

This measure specifies when the Office of City Auditor becomes vacant and a process for filling the vacancy.

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing in the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees, unless the Council determines for a given fiscal year or two-year budget cycle that the City is facing an extreme fiscal necessity.

/s/ DAVID CHIU
San Francisco City Attorney

BERKELEY CITY AUDITOR’S IMPARTIAL FINANCIAL ANALYSIS OF THE GOOD GOVERNANCE CHARTER REFORM BALLOT MEASURE

If passed by more than fifty percent of the voters, the Measure would amend the City Charter to establish term limits for councilmembers, require a minimum of two council hearings before certain council-proposed ballot measures for placement on the ballot, and count councilmember abstentions and absences as a no vote on council motions, resolutions, and ordinances to determine whether the Mayor is eligible to cast a tie-breaking vote. Further, the Measure would change the formula for the Public Ethics Commission (PEC) to set councilmember salaries, authorize the PEC to set the salaries of the City Auditor and City Attorney, and clarify the duties of and provide minimum staffing for the City Auditor.

Financial Impact

This Measure will cost the City an estimated additional \$858,199 annually in staffing costs, as detailed in the tables below.

The staffing level in the Auditor’s office will increase from 11 Full Time Employees (FTEs) to a minimum staffing level of 14 FTEs, effective July 2023. City Council may suspend the minimum staffing level for a fiscal year or two-year budget cycle, in the event of extreme fiscal necessity.

Cost Component	Current FY 2023 Budget (11 FTEs)	Estimated Additional Annual Cost (+3 FTEs)^A
Staffing	\$2,568,489	\$638,229

^A Estimate is based on FY 2023 staff salaries and benefit rates.

The measure will authorize the PEC to set the salary of the City Attorney and the City Auditor annually. These salaries may not be reduced during their terms of office, except as part of a general reduction of salaries for all officers and employees. The estimated additional annual costs in the table below are based on an assessment of salaries within both departments, salaries of department heads within the City of Oakland, and salaries of comparable positions in California cities.

Cost Component	Current FY 2023 Salary and Benefits	Estimated Additional Annual Costs (Salary and Benefits)
City Attorney	\$420,637	\$120,145
City Auditor	\$332,471	\$99,826

Limits to this financial analysis are noted below:

- Staff salaries and benefit rates may increase over time which would increase the cost to the City.
- The PEC is authorized to set the salaries for the City Auditor and the City Attorney. As such, the PEC’s methodology may vary from our estimates.
- Should a vacancy occur in the Office of the City Auditor at a time that cannot be consolidated with a municipal or statewide election, a special election may be held. As of July 2022, the County of Alameda Registrar of Voters’ costs for special elections range from \$9 to \$11 per registered voter for vote-by-mail to \$19 to \$21 per registered voter for in-person voting.

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Our independent analysis represents the best information available at the time. Actual costs may vary from these estimates.

s/JENNY WONG
Berkeley City Auditor

Item 10d - 2023 Memo on Adjusting City Auditor Salary

Ryan Micik (Chair)

Charlotte Hill (Vice-Chair)

Alea Gage

Arvon Perteet

Vincent Steele

Francis Upton IV



Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Ana Lara-Franco, Commission Analyst
Suzanne Doran, Acting Executive Director
DATE: March 30, 2023, for the April 12, 2023, PEC Meeting
RE: City Auditor Salary Adjustment as Required by City Charter Section 403(1)

In November 2022, Oakland voters passed Measure X, which amended Oakland City Charter Section 403(1) to add setting the City Auditor salary level to the duties of the Public Ethics Commission (PEC or Commission). This memorandum provides background information for the Commission to adjust the City Auditor salary per the criteria specified by City Charter Section 403(1).

Background

The City Auditor is the department head for the Office of the City Auditor and oversees a staff of approximately 13 FTE positions. In November 2018 and November 2022, the voters elected the current City Auditor to serve full, four-year terms. At present, the salary of the City Auditor is **\$181,203.12** per year. The salary of the City Auditor position was last adjusted on April 2, 2019.

In November 2022, Oakland voters passed Measure X, which amended the process for setting the City Auditor's salary as follows:

The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Analysis

Since the April 2, 2019, salary increase, the City has negotiated wage increases through the collective bargaining process. The non-public safety wage increases, as opposed to Police and Fire wage increases, can be a consideration in establishing the new wage since it applies to both City Auditor employees and to other Department Heads. The Department Heads received the same wage increase through Salary Ordinance 12187 C.M.S. section 2.20, which allows the City Administrator to provide the same negotiated wage increases to unrepresented employees.

The Assistant City Auditor is the highest paid direct report for the City Auditor. The maximum annual salary for the Assistant City Auditor position in the Office of the City Auditor currently is **\$176,219.52** per year while the annual salary for the City Auditor is **\$181,203.12**¹. The City's compensation practice

¹ Salary data provided by Anjali Saxena, Payroll Manager, Finance Department. January 17, 2023

Item 6 - Staff Memorandum

Item 6 - Memo on Adjusting City Auditor Salary

March 30, 2023

is to have a minimum of 15 to 20 percent salary differential between a department head and their highest direct reporting employee. For the City Auditor salary to be 15 to 20 percent above the salary of the highest direct reporting employee would be a salary between **\$202,652.45 and \$211,463.42.**

In accordance with the criteria for establishing the permissible salary range for the City Auditor in Charter Section 403(1), salaries for other City department heads were surveyed (see Table 1 below).

Table 1: City Department Head Salaries

Dept Head	Annual Salary
City Clerk	192,409.08
EEO & Civil Rights Director	211,293.60
Executive Director of CPRA	218,656.00
Director of Race and Equity	218,657.52
Director of Housing & Community Dev	235,620.00
Director of Human Services	235,620.00
Director of Parks & Recreation	235,620.00
Director of Planning & Building	247,390.44
Director of Workplace & Employment Stnd	247,390.44
Chief of Violence Prevention	247,390.56
Director of Animal Services	247,390.56
Director of Economic & Workforce Dev	247,390.56
Director of Human Resources Management	247,390.56
Director of Information Technology	247,390.56
Director of Library Services	247,390.56
Director of Transportation	247,390.56
Director of Finance	261,075.84
Director of Public Works	286,897.20
Average Salary (excluding City Auditor)	240,131.34
City Auditor	181,203.12

Based on the above data, the salary range for Oakland department heads is from **\$192,409.08 to \$286,897.20.** The average annual salary for a department head is **\$240,131.34** per year.

In accordance with the criteria establishing the permissible salary range for the City Auditor in Charter Section 403(1), salaries of City Auditor's from other California cities within the three immediate higher and lower populations compared to Oakland were surveyed (see Table 2 below). The majority of the identified cities do not currently have City Auditor classifications.

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March 30, 2023

Table 2: California Cities Auditor Salaries

City	Population*	Annual Salary
Fresno	543,660	NA
Sacramento	518,037	194,873.00
Long Beach	460,682	233,309.00
Bakersfield	408,865	N/A
Anaheim	341,245	N/A
Riverside	317,847	N/A
Average Salary		\$214,091.00
Oakland	424,464	181,203.12

*<https://publicpay.ca.gov/>

Based on the above data, the average annual salary for City Auditor in comparable-size California cities is **\$214,091.00** per year while the current annual salary for the City Auditor is **\$181,203.12** (85 percent of the average).

In accordance with the criteria for establishing the permissible salary range for the City Auditor in Charter Section 403(1), staff surveyed City Auditor salaries for surrounding Bay Area Cities (see Table 3 below).

Table 3: Bay Area Cities City Auditor Salaries

City	Annual Salary
City of Oakland - City Auditor	\$ 181,203.12
City of Fremont - City Auditor	NA
City of Santa Clara - City Auditor	NA
City and County of San Francisco - City Auditor	NA
Alameda County - Auditor-Controller**	\$ 244,753.60
City of San Jose - City Auditor	\$ 214,915.67
City of Alameda - City Auditor	NA
City of Hayward - City Auditor	NA
City of Berkeley - City Auditor **	\$ 176,212.14
City of Mountain View - City Auditor	NA
Average survey salary (excluding Oakland's)	\$ 211,960.47

Based on the above data, the average annual salary for City Auditor in Bay Area cities is **\$211,960.47** per year while the current annual salary for the City Auditor is **\$181,203.12** (85 percent of the average salary).

Recommendation

Based on the above data, which relies on the criteria set forth in City Charter Section 403(1), an adjustment to an annual salary of **\$213,137.51** is recommended as it provides equity and alignment of the City Auditor’s salary by adding an 18 percent differential above the highest paid subordinate

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March 30, 2023

auditor and staff salaries in the Office, is comparable to the salaries of auditors in other Bay Area cities, and accounts for the scheduled 2.5 percent negotiated wage increase for other City employees effective July 2023.²

Table 4: Comparison Summary

City Department Head - Average	\$	240,131.34
Highest Paid Employee - Salary	\$	176,219.52
Comparable-size California Cities - Average	\$	214,091.00
Bay Area Cities - Average	\$	211,960.47
Oakland City Auditor - Current	\$	181,203.12
Oakland City Auditor - Recommended Adjustment	\$	213,137.51

Scheduled wage increases under the current collective bargaining agreements with non-public safety represented employees include 2.5 percent on July 2023, 2.5 percent January 2024, 2 percent July 2024 and 2 percent March 2025. Staff recommends the Commission accounts for future increases, excluding the 2.5 percent July 2023 increase, in the annual adjustment of the City Auditor's salary.

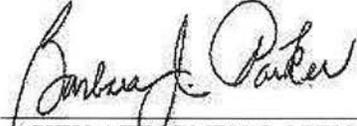
Following the Commission's determination of the adjustment amount, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

² Salary adjustment calculated as follows: Highest paid City Auditor office employee salary + 18% differential + 2.5% increase to maintain parity with scheduled wage increase for non-public safety employees effective 7/1/23.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 12 PM 1:51

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89317 C.M.S.

**INTRODUCED BY COUNCILMEMBERS DAN KALB, LOREN TAYLOR,
SHENG THAO, AND NIKKI FORTUNATO BAS**

**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING
TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION A GOVERNMENT REFORM MEASURE THAT
WOULD AMEND THE CITY CHARTER TO, AMONG OTHER THINGS:**

- (1) ESTABLISH TERM LIMITS FOR COUNCILMEMBERS;**
- (2) REQUIRE A MINIMUM OF TWO COUNCIL HEARINGS BEFORE
CERTAIN COUNCIL PROPOSED BALLOT MEASURES ARE
APPROVED FOR PLACEMENT ON THE BALLOT;**
- (3) COUNT COUNCILMEMBER ABSTENTIONS AND ABSENCES AS
A NO VOTE ON COUNCIL MOTIONS, RESOLUTIONS AND
ORDINANCES FOR PURPOSES OF DETERMINING WHETHER
MAYOR HAS AUTHORITY TO CAST A TIE-BREAKING VOTE;**
- (4) CHANGE THE FORMULA FOR THE PUBLIC ETHICS
COMMISSION TO SET COUNCILMEMBER SALARIES AND
AUTHORIZING THE PUBLIC ETHICS COMMISSION TO SET THE
SALARIES OF THE CITY AUDITOR AND CITY ATTORNEY;**
- (5) ADD AND CLARIFY DUTIES OF AND PROVIDE MINIMUM
STAFFING FOR THE CITY AUDITOR; AND**

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION
OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION,
AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO
PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION**

WHEREAS, in 1968, the People adopted the Charter of the City of Oakland ("City Charter"), establishing the fundamental law of the City, including but not limited to, the City's form of government and the role of City Council, the Mayor, the City Manager, and other City officers, and

Item 10d - Memo on Adjusting the City Auditor's Salary

WHEREAS, since then, the City has grown in size, complexity, and diversity; and

WHEREAS, a city's charter must promote democracy, accountability, transparency, and equity; and

WHEREAS, according to the National League of Cities, 80% of American cities have term limits for mayors and/or councilmembers; and

WHEREAS, a 2021 report by San Francisco Bay Area Planning and Urban Research Association, a nonprofit public policy organization ("SPUR") titled "Making Government Work: 10 ways City Governance Can Adapt to Meet the Needs of Oaklanders" called for term limits City Councilmembers and additional staffing for the City Auditor; and

WHEREAS, Oakland elected officials such as City Councilmembers, the City Auditor, and the City Attorney have lower salaries than several nearby California cities; and

WHEREAS, engaged residents may be more likely to be able to gain election to local office when there is an open seat as opposed to when an incumbent is running for re-election; and

WHEREAS, having two Council hearings on certain Council proposed ballot measures before the Council places such measures on the ballot will expand opportunities for public and Council engagement, discussion and vetting; and

WHEREAS, the Charter currently entitles the Mayor to cast a tie-breaking vote when the Council is evenly divided on a Council vote, yet that has been thwarted by Councilmembers abstaining; now therefore be it

RESOLVED: That the City Council finds and determines the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed amended Charter amendment text shall be as follows:

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but ~~he~~ shall have a vote on the Council if the Councilmembers are evenly divided in accordance with Section 305. The Council shall elect a President of the Council from among its members for a term of two years. The President of the Council shall serve as the presiding officer of the City Council and shall perform duties authorized by the Council's Rules of Procedure, which shall be passed by resolution in accordance with Charter section 210.

Item 10d - Memo on Adjusting the City Auditor's Salary

Section 202. Council Salaries. The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year. ~~The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.~~

Section 204. Term of Office, Term Limits, Council.

Term of Office. The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1~~2~~ following their election. ~~The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993.~~ In 1990-2018 Municipal Elections ~~were~~ will be held to select City officers for four-year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992-2020 Municipal Elections ~~will be~~ were held to select City Councilmembers for four-year terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember At-Large.

Term Limits. No person shall be elected to the office of Councilmember, whether district or at-large, or any combination thereof, for more than three consecutive terms; except that a person may serve up to three consecutive terms as a district Councilmember immediately followed by up to three consecutive terms as Councilmember at-large. For purposes of determining term limits, a Councilmember who fills a partial term of more than two years shall be deemed to have filled the entire term. Terms for the office of Councilmember that commenced prior to January 2023 shall not be considered in calculating limits on consecutive terms for Councilmembers.

Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60-90 days may be allowed only for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. ~~If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible.~~ Special elections for the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120-100 days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee is may not simultaneously fill the vacancy and run as a candidate for that the office which created the vacancy and provided the appointment does not exceed 128-180 days or go beyond the date the

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new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the ~~Vice Mayor Council President~~ fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the ~~Vice Mayor Council President~~ shall be entitled to return to ~~his/her~~ their seat.

Section 208. Meetings of the Council. At 11:00 a.m. on the first Monday following January 24 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each odd-numbered year, the Council shall, by resolution, elect a ~~Vice Mayor Council President~~ from among its members to serve for a ~~one~~ two-year term. The Council also shall elect, by resolution, a President Pro Tempore of the Council from among its members to serve a one or two-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

Section 221. Hearings Required for Certain Ballot Measures Proposed by the Council. Before taking a vote, the Council shall notice and consider at no fewer than two Council open session meetings that are at least 10 calendar days apart, any (1) general obligation bond, (2) new parcel tax or increase in a parcel tax, or (3) Charter amendment that the Council proposes to place on the ballot.

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the ~~Vice Mayor President~~ of the Council. Except as otherwise provided in this Section, when the ~~Vice Mayor President~~ of the Council assumes the office of Mayor upon declaration of a vacancy, they shall serve for the remainder of the unexpired term if such term is less than one year; otherwise they shall serve until the vacancy is filled as provided herein. The President Pro Tempore shall perform the duties and shall have the powers of the President of the Council during any time that the President of the Council has assumed the office of the Mayor. Whenever the period of vacancy in a Mayor's term of office is less than one year and the ~~Vice Mayor President~~ of the Council notifies the Council in writing that they do not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the Council; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to ~~60~~ 90 days may be allowed only for the express purpose of consolidating the special election with the

Item 10d - Memo on Adjusting the City Auditor's Salary

next Municipal Election or Statewide Election. Special elections for the office of Mayor that take place after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting, and extended voting period.

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

(a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.

(b) Recommend to the Council such measures and legislation as ~~he~~ the Mayor deems necessary and to make such other recommendations to the Council concerning the affairs of the City as ~~he~~ the Mayor finds desirable are in the best interest of the residents of the City.

(c) Encourage programs for the physical, economic, social and cultural development of the City.

(d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.

(e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.

(f) Serve as ceremonial head of the City.

(g) Represent the City in inter-governmental relations as directed by the Council.

(h) Provide community leadership.

(i) May cast a tie-breaking vote on any Ordinance, Resolution or Motion voted on by the Council, if the Council's vote is evenly divided. Solely for the purposes of determining whether the Mayor is eligible to cast a tie-breaking vote, abstentions and absences shall count as a "No" vote. A legally-required recusal shall not count as a "No" vote.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as the Mayor ~~he/she~~ may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be

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noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote ~~his~~ their full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which ~~he~~ the Mayor is not actively engaged and which are not in conflict with the performance of ~~his~~ the Mayor's duties and responsibilities.

Section 306. Duties of ~~Vice Mayor~~ Council President. In addition to any duties specified by ordinance or by the Council's Rules of Procedure Resolution passed in accordance with Charter section 210, in the absence during the unavailability or temporary disability of the Mayor, the ~~Vice Mayor~~ President of the Council shall perform the duties of the office of Mayor.

Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set annually by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Section 401(7). Endorsements, Campaigns, Campaign Contributions. During the City Attorney's tenure, the City Attorney shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Attorney, or of a City ballot measure, or be an officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to for the office a person must be a qualified elector of the State of California, a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the office shall be set by the Public Ethics Commission, which shall be not less than 70% nor

Item 10d - Memo on Adjusting the City Auditor's Salary

more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Section 403(2). Vacancy, What Constitutes. The Office of City Auditor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after their term is to begin, dies, resigns, ceases to be a resident of the City or is absent from the City for a period of more than sixty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of the office, forfeits the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Auditor. Filing to run for the office of Mayor, Councilmember or City Attorney shall constitute a resignation from the office of City Auditor, effective on the date of filing.

Section 403(3) Vacancy, Filling of. For all vacancies occurring in the Office of City Auditor the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter.

Section 403(4) Powers of the City Auditor. The City Auditor, notwithstanding any other provision of this Charter, shall have the power and it shall be his or her the City Auditor's duty to audit the books, accounts, money and securities of all bureaus, departments, offices, agencies, including the Port Department, boards, commissions, and programs of the City, and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct audits in accordance with Government Auditing Standards as issued by the U.S. Comptroller General.

The City Auditor shall conduct surveys, reviews, and performance audits and financial audits as the Auditor deems to be in the best public interest or as required-requested by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

Item 6 - Staff Memorandum

Item 10d - Memo on Adjusting City Auditor's Salary

- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to Council and Mayor requests for audits and reviews.
- (8) Submitting, at a public meeting of the full City Council, a ~~quarterly~~ semi-annual report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's reports.
- (9) ~~The City Auditor shall conduct~~ Conducting periodic performance audits of each department as specified in the City budget in order to help improve government performance.
- (10) Reviewing City departments, offices, agencies, boards, commissions, and bureaus to analyze if they are managing, safeguarding and using public resources, including public funds, personnel, property, equipment and space, economically, efficiently, equitably, and effectively.
- (11) Analyzing City programs, activities, services, functions, or policies as to effectiveness and cost-effectiveness, including the identification of any causes of inefficiencies.
- (12) Reviewing and recommending to the City Administrator management adjustments in operating and administrative procedures and practices, systems and accounting internal control systems and internal management controls.
- (13) Analyzing allegations of fraud, waste, abuse or illegal acts that require further investigation to substantiate.
- (14) Publishing an annual report summarizing recent audits and recommendations.
- (15) Responding to requests from the City Administrator to provide recommendations on how to make City departments and services more effective and customer-service oriented.
- (16) Preparing an annual workplan including planned audits for the year. The City Auditor shall publish such workplan in August of each year.

Item 10d - Memo on Adjusting the City Auditor's Salary

The City Auditor shall have access to inspect all records, property, equipment, and facilities within the City's jurisdiction.

Effective July 2023, the budget for the Office of the City Auditor shall be sufficient to hire at least fourteen full-time equivalent ("FTE") employees of relevant classifications. The minimum staffing budget set-aside may be suspended, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution or ordinance.

Restrictions on Running for Public Office. Filing for an elective office over which the City Auditor has audit jurisdiction will be the same as resignation, effective on the date of filing.

Endorsements, Campaigns, Campaign Contributions. During the City Auditor's tenure, the City Auditor shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Auditor, or of a City ballot measure, or be an, officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

Section 601. Boards and Commissions. The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction, meeting frequency, standards for conducting long-term planning, and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article.

Section 601(a). Except as otherwise provided for in this Charter, Mmembers of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's prior term of office.

Section 601(b). Notwithstanding any other language in this section 601, or elsewhere in the Charter, for vacancies on boards and commissions for which an ordinance specifies that Councilmembers may nominate a candidate for the Mayor's consideration, the designated Councilmember shall have 45 days from the date the vacancy occurs to recommend one or more

Item 10d - Memo on Adjusting the City Auditor's Salary

nominees to the Mayor in writing. Upon such nomination or the expiration of the 45-day nomination period, whichever occurs first, the Mayor shall have 90 days thereafter to submit any eligible candidate for the Council's confirmation.

If the Mayor does not submit for confirmation a candidate to fill a vacancy within the time frames prescribed by this section 601(b), the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill the vacancy within the time frame specified in this section 601(b) and the Council does not confirm the candidate, the time frame specified in this section 601(b) shall commence anew.

For purposes of this Section 601, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's term of office.

Section 1100. Nominating Election. Except as otherwise provided for in section 1105 of this Charter, Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in June in each even-numbered year. In order to consolidate Municipal Nominating Elections with Statewide Primary Elections, the Council may by ordinance provide for a date for a Municipal Nominating Election which conforms to the date of a Statewide Primary Election.

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

PROPOSED CHARTER AMENDMENT

MEASURE ____

<p>Measure __. Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as "no" votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?</p>	Yes	
	No	

; and be it

Item 10d - Memo on Adjusting City Auditor's Salary

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 8, 2022 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 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 Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication 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 next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

JUL 11 2022

AYES - ~~ASHA REED, ANITA BROWN, KALB, MARIANO, REID, TAYLOR, THAO AND~~ PRESIDENT FORTUNATO BAS -5

NOES - File - 1

ABSENT -

ABSTENTION -

Excused - Grillo, Kaplan - 2

ATTEST:

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 28 PM 4:27

QUESTION

Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?

TITLE AND SUMMARY

Title: A proposed amendment to the Charter to establish term limits for members of the City Council (“Council”), require two Council hearings for certain proposed ballot measures, count Councilmember abstentions and absences as “no” votes in determining whether the Mayor may cast a tie-breaking vote at the Council, provide the Public Ethics Commission (“Commission”) discretion in setting Councilmember salaries, authorize the Commission to set the salaries of the City Auditor and the City Attorney, clarify and add to the duties of the City Auditor, and set minimum staffing for the Office of the City Auditor.

Summary:

This measure makes a number of changes to the Charter including:

Councilmember Term Limits

Members of the Council are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms.

Hearings on Proposed Ballot Measures

State law requires the Council to hold one public hearing before voting to place a measure on the ballot. This measure would require the Council to hold two public hearings before voting to place a general obligation bond, parcel tax, or Charter amendment on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts Councilmember salaries every two years based on any increases in the consumer price index (“CPI”). The Commission may also adjust their salaries above CPI increases, up to a total of five percent per year. This measure provides that the Commission would adjust the salaries every two years based on CPI increases, up to a total of five percent. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor using a specified formula. This measure provides that the Commission would set these salaries based on salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

Item 10d - Memo on Adjusting City Auditor's Salary

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective office or of a City ballot measure.

City Auditor

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing for the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees.

/s/ DAVID CHIU
San Francisco City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

IMPARTIAL ANALYSIS

22 JUL 28 PM 4: 27

Councilmember Term Limits

Members of the City Council ("Council") are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms, except that a district Councilmember may serve up to three consecutive terms followed by up to three consecutive terms as an at-large Councilmember. Councilmember terms that began before January 2023 shall not count towards the term limits.

Hearings on Proposed Ballot Measures

State law requires the Council to hold at least one public hearing before placing a measure on the ballot. This measure would require the Council to hold at least two public hearings at least 10 calendar days apart before placing general obligation bonds, parcel taxes, or Charter amendments on the ballot.

Councilmember Salaries

The Public Ethics Commission ("Commission") adjusts the salary for Councilmembers every two years based on the increase in the consumer price index ("CPI"). The Commission may adjust salaries beyond the increase in CPI up to five percent per year. The voters may approve increases above five percent in a year. This measure provides that the Commission adjusts the salaries every two years based on CPI increases, up to a total of five percent for the two years. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year. The measure removes the ability of the voters to approve increases above five percent by ordinance.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember's abstention or absence shall count as a "no" vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor. This measure provides that the Commission would set these salaries based on the salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective officer, or of a City ballot measure.

Item 10d - Memo on Adjusting City Auditor's Salary

City Auditor

This measure specifies when the Office of City Auditor becomes vacant and a process for filling the vacancy.

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing in the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees, unless the Council determines for a given fiscal year or two-year budget cycle that the City is facing an extreme fiscal necessity.

/s/ DAVID CHIU
San Francisco City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 29 AM 11:38

BERKELEY CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF THE GOOD GOVERNANCE CHARTER REFORM BALLOT MEASURE

If passed by more than fifty percent of the voters, the Measure would amend the City Charter to establish term limits for councilmembers, require a minimum of two council hearings before certain council-proposed ballot measures for placement on the ballot, and count councilmember abstentions and absences as a no vote on council motions, resolutions, and ordinances to determine whether the Mayor is eligible to cast a tie-breaking vote. Further, the Measure would change the formula for the Public Ethics Commission (PEC) to set councilmember salaries, authorize the PEC to set the salaries of the City Auditor and City Attorney, and clarify the duties of and provide minimum staffing for the City Auditor.

Financial Impact

This Measure will cost the City an estimated additional \$858,199 annually in staffing costs, as detailed in the tables below.

The staffing level in the Auditor's office will increase from 11 Full Time Employees (FTEs) to a minimum staffing level of 14 FTEs, effective July 2023. City Council may suspend the minimum staffing level for a fiscal year or two-year budget cycle, in the event of extreme fiscal necessity.

Cost Component	Current FY 2023 Budget (11 FTEs)	Estimated Additional Annual Cost (+3 FTEs) ^A
Staffing	\$2,568,489	\$638,229

^A Estimate is based on FY 2023 staff salaries and benefit rates.

The measure will authorize the PEC to set the salary of the City Attorney and the City Auditor annually. These salaries may not be reduced during their terms of office, except as part of a general reduction of salaries for all officers and employees. The estimated additional annual costs in the table below are based on an assessment of salaries within both departments, salaries of department heads within the City of Oakland, and salaries of comparable positions in California cities.

Cost Component	Current FY 2023 Salary and Benefits	Estimated Additional Annual Costs (Salary and Benefits)
City Attorney	\$420,637	\$120,145
City Auditor	\$332,471	\$99,826

Limits to this financial analysis are noted below:

- Staff salaries and benefit rates may increase over time which would increase the cost to the City.
- The PEC is authorized to set the salaries for the City Auditor and the City Attorney. As such, the PEC's methodology may vary from our estimates.
- Should a vacancy occur in the Office of the City Auditor at a time that cannot be consolidated with a municipal or statewide election, a special election may be held. As of July 2022, the County of Alameda Registrar of Voters' costs for special elections range from \$9 to \$11 per registered voter for vote-by-mail to \$19 to \$21 per registered voter for in-person voting.

Item 6 - Staff Memorandum

Item 10d - Memo on Adjusting City Auditor's Salary

Our independent analysis represents the best information available at the time. Actual costs may vary from these estimates.

s/JENNY WONG
Berkeley City Auditor

Outreach Subcommittee

(ad hoc, created August 25, 2023)

Members: Charlotte Hill (Chair), Alea Gage, and Vincent Steele.

November 7, 2023 Minutes

Attendees – Members: Commissioners Hill, Gage

Attendees – Staff: Nicolas Heidorn, Executive Director; Jelani Killings, Ethics Analyst; Simon Russell, Enforcement Chief

Discussion:

The meeting began with a review of PEC outreach efforts for Commission vacancies. Analyst Killings walked the subcommittee through the applicants by district, how they heard about the vacancy, and applicants by race. The subcommittee also looked at the results of the ad spend with Oaklandside.

The subcommittee discussed expanding their outreach tactics by, for example, sending their vacancy announcements to the listservs of NCPCs and other partners. They also discussed doing library outreach at the next meeting.

Next, Chief Russell shared the PEC's needs for enforcement resources. The subcommittee discussed the challenge of competing City priorities for funding.

The subcommittee identified the following needs from commissioners:

- A commissioner-written op-ed on the need for greater enforcement resources (January 2024)
- Support publicizing and hosting a press event (February 2024)

The PEC staff also plan to submit a formal budget letter in early 2024.

The subcommittee agreed to determine the timing and authors of the op-ed and work on a PEC events calendar outside of the meeting.

Item 11b - Calendar of Events

PEC OUTREACH EVENTS 2024

Calendar of Potential Outreach Opportunities

Staff Suggested Paid Outreach Events

Quarter	Event	Date	Cost
1	Chinatown Lunar New Year Festival	January 27-28, 2024	\$600 (2 days)
2	Friday Nights at the Oakland Museum	Returns April 2024	TBD
3	Art and Soul Festival	September 2024	\$350
4	Oaktoberfest	October 2024	\$270

Suggested Free Outreach Events

Event	Frequency
Oakland Roots & Soul Games	Seasonal (Summer/Fall)
Merchants Associations events - Rockridge, Temescal, Laurel, Jack London	Seasonal
Rotary Club (and other such clubs) meetings	Monthly
High School Government Classes	Variable
Office Hours for Council Members, School Board, City Auditor & Police Inspector General	Variable
National Night Out	Annual, First Tuesday in August
Oakland Love Life Celebration	Annual
Farmers Markets	Weekly
League of Women Voters Meeting	Monthly
Mills College Public Policy Graduate Students Meetings	
Goldman School Public Policy - Info Forums	Quarterly
Open Oakland - Open Data Day	Annual
Night Out for Safety and Liberation	Annual
Acts Full Gospel Church	Weekly
Allen Temple Baptist Church	Weekly

Purpose Statement:

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill.

A) What is the specific goal of the committee?

To review the provisions of the City Charter relating to the PEC and to recommend potential changes to those sections.

B) What is the expected deliverable and in what time period?

The Subcommittee shall present potential charter changes for the Commission's consideration within the first half of 2024.

C) What level of staff vs Commissioner work is expected?

Staff will research Oakland's current Charter provisions relating to the PEC and the charter provisions of other cities' ethics commissions, review different options for reform with the Subcommittee, and prepare a staff report for the full Commission.

Item 11d - Termination Statement

Chair's Termination Statement:

Commissioner Selection Ad Hoc Subcommittee

(Ad Hoc, created October 25, 2023, terminated December 13, 2023.)

Members: Ryan Micik (Chair), Francis Upton IV, and Arvon Perteet.

A) What was the specific goal of the committee?

To review applications for the soon-to-be vacant commissioner seat, select and interview semifinalists, and select finalists.

B) What was the expected deliverable and in what time period?

A list of up to five finalists for the commissioner seat, forwarded to the full PEC in time for the December 13, 2023 meeting.

C) What did the Commission accomplish?

Over the course of two months, the Subcommittee reviewed 17 applications for the vacant commissioner position; invited seven applicants to interview with the Subcommittee, five of whom accepted; conducted the interviews; checked references; and forwarded two finalists to the full Commission for its review and selection at the December meeting.

D) Are there any recommended next steps coming out of the Subcommittee's work?

None.

E) Are there any lessons learned or other comments to memorialize about the Subcommittee's work or process?

We scheduled two interviews/hour, with each interview scheduled to take 20 minutes. The Subcommittee Chair introduced the panel and asked the first question, and then Subcommittee members alternated asking questions. The questions were drawn from the pre-existing list of questions and were the same for each applicant.

We only forwarded two finalists to the full Commission, even though we had originally envisioned potentially forwarding three or more, because we felt that those two finalists clearly formed a top tier, and any additional finalist(s) would have no realistic chance of selection.



Item 12 - Disclosure Report

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon J. Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Program Manager
Jelani Killings, Ethics Analyst
DATE: January 3, 2024
RE: Disclosure and Engagement Monthly and 2023 Year-End Report for the
January 17, 2024, Regular PEC Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities for the past year. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Program Milestones in 2023

Compliance with Disclosure Requirements

Commission staff conducts filing officer duties as required by state and local law and aims to help candidates, lobbyists and City officials submit required disclosure reports and ensure residents can easily access campaign finance, lobbyist, and ethics-related data and information.

Campaign finance disclosure – As of December 2023, the City of Oakland had 98 active political committees required to file periodic campaign disclosure statements: 50 candidate and officeholder committees, 37 general purpose committees (a.k.a., political action committees), 4 ballot measure committees, 5 independent expenditure committees, and 2 primarily-formed candidate committees.

The November 2023 Special Election to fill the vacant OUSD District 5 School Director seat added two additional pre-election deadlines for candidates, for a total of four campaign statement deadlines this year. In all, staff processed and reviewed close to 250 campaign-related filings during 2023. Staff conducted outreach to non-filers and ended the year with all 2023 candidate committees submitting the required disclosure statements. Staff assessed \$2,720 in late fees against 13 filers in 2023.

Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#)

Supplemental Independent Expenditure Disclosure – Measure W amended the Oakland Campaign Reform Act to require that any committee or person required by state law to file a 24-hour or 10-day Late Independent Expenditure Report (FPPC Form 496) with the Public Ethics Commission also submit a supplemental independent expenditure disclosure information, including a copy of the content of the communication.

The November Special Election triggered this new disclosure requirement in August, and Commission staff developed a new online form, webpage, and targeted communications to campaign filers so that 2023 campaign filers were aware of the new requirements and could easily submit their supplemental information. Staff monitored incoming independent expenditure reports and contacted committee treasurers to encourage compliance throughout the pre-election period. Supplemental information was submitted for all independent expenditures reported for the November 2023 election.

Lobbyist Registration Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission before conducting any lobbying activity. It also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions.

As of December 2023, 72 lobbyists were registered with the City of Oakland. Staff processed and reviewed 266 quarterly lobbyist activity reports this year.

In November 2023, the Oakland City Council adopted amendments to the Lobbyist Registration Act (LRA). Notable changes to the LRA include a new annual lobbyist registration fee as well as a requirement that lobbyists take an online training provided by the Public Ethics Commission. With the addition of lobbyist registration and late fees to Oakland's master fee schedule, Commission staff developed procedures to assess and collect the new fees as lobbyists renew their registrations for 2024, including an option for lobbyists to pay their fees online through Oakland's invoice payment portal and an online application for registration fee waivers or reductions in accordance with the Commission's policies. Commission staff began work in collaboration with the IT Department to incorporate tools in the PEC's lobbyist registration app to make compliance with new requirements simple for lobbyists and easy to monitor for Commission staff. Updates will continue incrementally throughout the coming year.

An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the PEC's [Lobbyist Dashboard and Data](#) webpage.

Statements of Economic Interests – April 1 marks the annual deadline for City officials and designated employees within the City's Conflict of Interest Code to file their annual statement of economic interests (Form 700). In 2023, Staff formed a working group with representatives from the City Clerk's Office and the Department of Human Resources Management (DHRM) to improve the management of the City's Form 700 filer database. The joint effort seeks to improve compliance among required filers by sharing data among departments, issuing joint communications, and updating the City's Conflict of Interest Code. As a result of this project, DHRM now provides the PEC and City Clerk with monthly reports including a list of starting and leaving employees, the list of active employees, and who needs to file a Form 700, and the list of new employees assigned the PEC's online Government Ethics Training. PEC staff now has administrative access to the City's learning management platform NEOGOV to assign and track employee completion of ethics-related trainings.

Commission Staff also participated in two joint trainings with the City Clerk's office to train department single point of contacts (SPOCs) on their role in ensuring that employees are properly identified as Form 700 filers, monitoring compliance, assigning, and tracking compliance with mandatory Government Ethics Training, and providing information regarding revolving-door restrictions during the exit process, as well as a presentation to City Department Heads on their role in ensuring compliance.

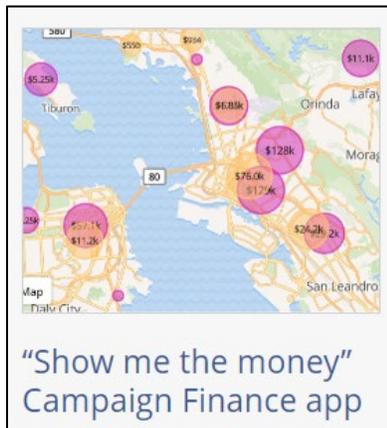
Staff conducted a compliance check of elected officials to confirm that their Form 700's were filed. In 2023, all 11 officials filed their annual statements.

Ticket Distribution Policy – Oakland's Ticket Distribution Policy ordinance adopted in May 2022 included changes to increase transparency and ensure free tickets for events provided to City officials are used for approved public purposes. In light of these changes, the IT Department decided to rebuild its Ticket Distribution (Form 802) database. In 2023, Commission staff worked with the IT project team to ensure the new database and public dashboard comply with the new ordinance.

illuminating Disclosure Data

The Commission collects, reviews, and provides public access to ethics-related data. As part of this responsibility, Commission staff works to put the information into formats that can be searched and displayed in easy-to-use data visualizations made available for public viewing. This program utilizes a collaborative transparency approach, which reaches beyond the traditional minimum of providing copies of filings to proactively sharing data in user-centered formats to invite participation and feedback.

Election Disclosure Tools



Campaign Finance – After a Special Election was scheduled to fill the vacant OUSD District 5 School Director seat, Commission staff collaborated with volunteer developers to ensure the [OpenDisclosure](#) campaign finance website was live with data for the November 2023 Special Election. With three local elections scheduled for 2023 and 2024, the project team implemented modifications allowing visitors to the website to view data for multiple upcoming elections. OpenDisclosure is a nonpartisan tool developed by civic tech group OpenOakland in partnership with Commission staff to give all Oakland residents equal access to campaign finance data.

In addition to OpenDisclosure, Commission staff also updated its [Show Me the Money](#) app to include campaign finance data submitted by candidates running in the November 2023 Special Election. [Show Me the Money](#) builds a map showing the geographic source of campaign contributions to candidates and totals donated from that location. Followers of Oakland elections can find the [Show Me the Money](#) application via links on the Public Ethics Commission website, [OakData portal](#), and links on [OpenDisclosure](#) candidate pages.

Advice and Engagement

The Commission's Engagement program seeks to ensure Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.

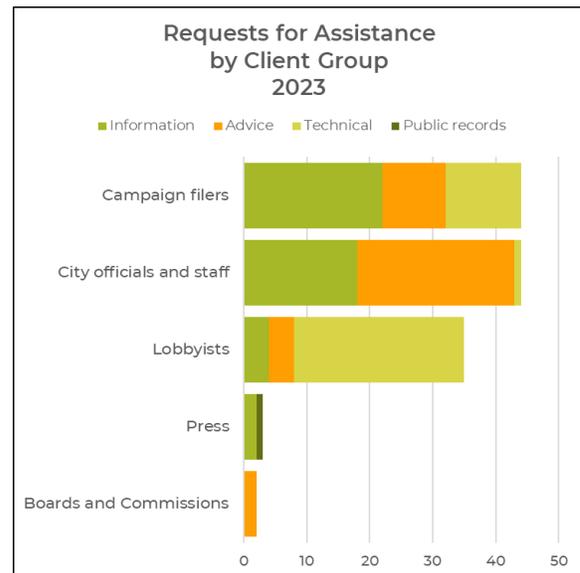
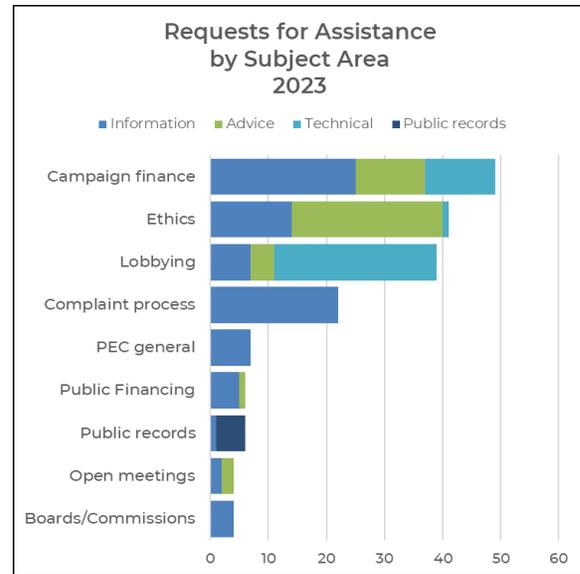
Advice and Technical Assistance – In 2023, Commission staff responded to 217 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, fielding an average 18 requests per month. Inquiries from campaign filers (26 percent) and City officials and staff (26 percent) made up the majority of requests for advice and assistance followed by lobbyists (20 percent).

Elected Officials – Commission staff continued to extend support to elected officials and their staff to support compliance with state and local ethics laws. In January 2023, staff participated in an orientation for City Councilmembers organized by Council President Bas and the City Attorney’s Office. PEC staff provided an overview of the Commission’s mission, programs, and the laws within our jurisdiction. Councilmembers were provided with a checklist of activities to complete including filing Form 700 and completing ethics training and were encouraged to schedule a time to meet with PEC staff one on one.

In addition, staff met with the offices of District 6 Councilmember Kevin Jenkins and District 7 Councilmember Treva Reid for an informal “ethics check-in.” Staff provided an overview of the Commission and its work and shared information about recent changes in both local and state ethics and transparency laws. Topics covered included gift rules, the Fair Elections Act, SB 1439 regarding limitations on campaign contributions to local elected officials from certain parties and disqualifications based on past campaign contributions, and future outreach opportunities. Outreach and informal meetings allow PEC staff to better understand the support needs of elected officials and their staff in complying with local ethics laws.

In response to questions about who is required to register as a lobbyist under the City’s Lobbyist Registration Act (LRA) and concerns that some lobbyists are meeting with elected officials without registering and disclosing their lobbying activities as required under Oakland law, Staff provided the Mayor and City Councilmembers with the PEC’s lobbyist registration brochure and a cover letter providing the registration and reporting requirements for individuals being paid to influence governmental decisions. The brochure was created as a resource to hand out when interacting with individuals that may be trying to influence any governmental or legislative decisions. Additionally, staff provided suggested text for a notice to be added to Council agendas to raise awareness of LRA requirements.

New Employee Orientation – Commission staff continued to collaborate with the Department of Human Resources Management (DHRM) to ensure that every new City employee received introductory Government Ethics training. This year, Commission staff made 11 live presentations and one video presentation reaching over 450 new employees. In addition, staff presented a live ethics training at the Oakland Parks, Recreation, and Youth Development Department’s Summer Orientation reaching 120 new employees.



Ethics Training for Form 700 Filers – In 2023, 89 employees completed the PEC’s online Government Ethics Training for Form 700 Filers via NeoGov LEARN, the City’s new online learning management system. PEC staff, in collaboration with DHRM, held two live Zoom trainings that covered all the content in the PEC’s online ethics training for Form 700 filers to provide additional opportunities to complete the requirement. Approximately 52 employees attended the live Zoom trainings.

Staff also developed a diversion training to support the Enforcement Unit’s review of Form 700 compliance utilizing the Fair Political Practices Commission’s (FPPC) Form 700 video training. The 12-minute video covers several topics including who files a Form 700, Conflict of Interest Code, filing deadlines, and disclosure requirements. Staff integrated the video recording along with a post-quiz for course completion into the City’s learning management platform NeoGov LEARN, allowing PEC staff to assign and track participation in future diversion training.

Supervisor Academy – The City’s Supervisor Academy provides training for supervisors and management level employees on City policies and procedures, internal systems, and leadership skills relating to day-to-day supervision. In 2023, Commission staff provided ethics presentations at three Supervisor Academies, reaching nearly 85 supervisor-level City employees with an overview of the Government Ethics Act and PEC services, as well as the opportunity to dive into discussions of ethical issues and scenarios and skills-based training to deal with ethical dilemmas such as gift restrictions, lobbying activity, misuse of City resources, and public records requests.

Boards and Commissions – This past year, staff provided a live introductory ethics training to the Youth Advisory Commission covering the government ethics and transparency laws. In addition, PEC staff participated in a joint effort with the Mayor’s Office, City Clerk, and City Attorney to provide a comprehensive training for City Board and Commission staff liaisons. The training covered all relevant laws and responsibilities, including Sunshine and Government Ethics Act requirements, pertaining to boards and commissions to ensure their understanding of and compliance with these laws.

Candidates and Campaigns – In addition to creating Oakland’s new Democracy Dollars public campaign finance program, Measure W also included important amendments to Oakland’s campaign finance, transparency, and lobbying rules. New contribution limits and disclaimer language required on political communications took effect January 1, 2023. During 2023, Commission staff issued multiple targeted communications to campaign filers to ensure awareness of new contribution limits and disclaimer rules. In addition, the Commission’s online resources for candidates and campaigns were updated to reflect new campaign finance rules.

Public Records Sunshine Training – In 2023, Staff added a new Sunshine Training on public records to the PEC’s on-demand training suite. The training covers the rules for receiving and responding to public records requests and is available through the PEC’s [website](#).

Mandatory Lobbyist Training – To ensure lobbyists are aware of, and comply with, city laws relating to lobbying, effective January 1, 2024, all lobbyists must complete the PEC’s lobbyist training within 60 days of the lobbyist’s initial registration. Commission staff developed the new training, which lobbyist can view online, as well as a post-training quiz.

Online Engagement

Social Media – In 2023, Commission staff continued producing monthly social media content highlighting PEC policy areas, activities, and topics of interest to specific client-groups.

Website – In 2023, Staff updated and created new website content to reflect changes to campaign finance and lobbying rules effected by Measure W and amendments to the Lobbyist Registration Act. New content included a “[What’s New](#)” webpage to summarize recent changes to laws and regulations in the PEC’s jurisdiction and a new section to highlight disclosure tools on the Commission’s homepage.

General Outreach

The Commission conducts outreach activities to ensure Oakland residents and the regulated community know about the Commission and that the Commission is responsive to their complaints and questions about government ethics, campaign finance, or transparency concerns.

Commissioner Recruitment – In 2023, Staff implemented a robust recruitment strategy to fill its Commission-appointed vacancy that included email blasts to PEC agenda subscribers and community organizations, paid advertisements in both online and printed media outlets, social media posts, and tabling at community events. A Total of 17 applications were received representing the highest number of submitted applications in the past five years.

Item 13a - Enforcement Report



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: January 3, 2024
RE: Enforcement Program Monthly and Year-End Report for the January 17, 2024, PEC Meeting

End of the Year Summary for Enforcement Matters

2023 was a challenging year for the Enforcement Unit, mainly due to staffing issues. For most of the year, Enforcement had no permanent investigators, and only intermittent support from contract staff. This was a problem that had carried over from September 2022, when the current Enforcement Chief was promoted and the only budgeted investigator position was left vacant. It was not until December 2023 (fifteen months later) that a new, permanent investigator was hired. (Our understanding is that the long delay was due to capacity issues at the Human Resources Management Department, and that other City departments were similarly impacted). In addition, until the PEC's new Executive Director came on board in May 2023, the Enforcement Chief was the only attorney on the PEC staff – a considerable problem for an office handling a number of complicated cases in a specialized area of law.

This staffing shortage was particularly ill-timed given the number and complexity of the cases on Enforcement's docket. The unexpected departure of two Executive Directors in a short period of time (one of whom had also served as the previous Enforcement Chief for a number of years) also meant that a great deal of institutional knowledge was lost. As a consequence, the current Enforcement Chief had to devote more time than anticipated to rebuilding the Enforcement Unit's internal processes, in addition to investigating and prosecuting all existing and incoming cases. The "ransomware" attack of February 2023 also meant that the Enforcement Unit was unable to access most of its electronic case files for a number of weeks.

In light of these challenges, in April 2023 the Enforcement Chief made the difficult decision to begin placing a number of matters "on hold" in order to free up limited resources for the most urgent and impactful cases. While this did allow us to make behind-the-scenes progress on significant cases, it also resulted in over half of our other cases effectively coming to a halt.

More happily, we have at long last brought on a permanent investigator as of December 2023. We will also be bringing in a temporary (six-month) investigator in January 2024, as well as two part-time law clerks (also for six-month terms). We also added an Enforcement Assistant last year, the first time the Enforcement Unit has ever had a dedicated administrative assistant (though this individual had to split their duties with other units due to unexpected turnover this autumn, and only recently resumed spending a majority of their time on Enforcement matters).

In short, the Enforcement Chief had to make a number of strategic calculations this year in light of these serious and unexpected challenges. The fruits of most of them will likely not be visible to the Commission and to the public until sometime in 2024, assuming there are no further major disruptions. These calculations were the following:

- To focus on pushing major cases “over the finish line” at the expense of many mid-level and smaller cases;
- To clarify and institutionalize Enforcement’s internal processes, which had previously been more ad hoc and informal;
- To strengthen relationships with other enforcement agencies in order to make up for lost PEC capacity;
- To “test out” tools that had previously been under-utilized by the Enforcement Unit (particularly injunctions and streamlined Form 700 enforcement) in the hopes of using them more vigorously once more staff has been hired; and
- To develop an in-depth training program and onboarding process for new Enforcement hires (particularly investigators) to promote high-quality work and staff retention, at the short-term expense of efficiency.

This end-of-year report presents a summary and highlights of the Enforcement Unit’s work in 2023 under these conditions, to the extent possible under the confidentiality requirements imposed upon our casework by the City Charter.

Clarifying and institutionalizing Enforcement’s internal processes

The Enforcement Unit has formal Complaint Procedures and Penalty Guidelines that ensure cases are handled in a manner that respects due process as well as the public’s interest in seeing the PEC’s laws vigorously and efficiently enforced. However, before 2023 the Enforcement Unit largely lacked internal procedures or manuals to govern the day-to-day

handling of its work. Instead, these processes were developed on-the-go as the result of the small Enforcement team's daily practice (and the newness of the Enforcement Unit generally, which did not exist before 2015).

With the unexpected departure of its senior leadership in 2022, the Enforcement Unit was left without much in the way of guidelines or uniform practices for its day-to-day work. While the new Enforcement Chief had some previous exposure to the Enforcement Unit's case processing practices, the lack of written manuals or consistent recordkeeping methods presented a major challenge when trying to ensure an orderly leadership transition.

Throughout 2023, the Enforcement Chief has devoted considerable time to developing and memorializing consistent practices for the Enforcement Unit's day-to-day work. While this did reduce the amount of time that could otherwise have been spent on straightforward casework, the hope was that investment in these areas would yield long-term rewards in the form of more efficient case processing, better recordkeeping and public-facing statistical information, and enduring practices that could survive staff turnover. Among the changes made were the following:

Revamped and expanded case-tracking database. We have significantly reworked our internal case-tracking system known as the Enforcement Database, in order to capture more detailed information about the nature and progression of each case. This has allowed us to provide more detailed statistical information about our overall caseload (see the table on the last page of this report); more efficiently identify prior cases that can be used as templates for newer investigations and legal analysis (thus speeding up our overall case processing); and more precisely track the progress and current status of each case. Many thanks to PEC Program Manager Suzanne Doran for her technical assistance in this effort.

Tracking informal complaints. Previously we lacked a system for tracking and ensuring a response to incoming informal complaints (i.e., complaints not submitted on our formal complaint form – usually in the form of emails or phone calls). Therefore we not only lacked statistical data about these complaints (which can form a significant part of our workload), but we also were unable to verify that Enforcement was responding to – or even aware of – these incoming complaints. We now have consistent procedures in place for routing, tracking, and responding to all incoming informal complaints. Many thanks to PEC Administrative Assistant Chris Gonzales for all of his work fielding the majority of these complaints as they came in.

Memorializing case processing practices not contained in the Complaint Procedures. Our formal Complaint Procedures govern how we must process cases at a birds-eye level. In terms of day-to-day practices, however, no manuals or other written guidelines existed before 2023.

The Enforcement Chief drafted uniform standards for the processing of complaints (including informal, anonymous and proactive complaints), case file organization, evidence storage and retention, data security, and similar matters.

Recruiting and Training New Staff. To ensure high-quality hires, the Enforcement Chief developed a “skills test” for prospective investigators in order to assess their facility with interviewing witnesses and understanding the nature of the allegations that the PEC typically investigates. And to support and retain newly-hired investigators, we have developed a training and onboarding program for both the technical and the substantive aspects of the investigator’s position.

First use of our injunctive authority

An “injunction” is a court order compelling someone to do – or refrain from doing – something. While the Enforcement Unit has long had the legal authority to seek injunctions in order to compel compliance with the City’s campaign finance and ethics laws, we had never previously made use of this power.

In the fall of 2023, the Enforcement Unit decided to make use of this power for the first time, in order to compel a campaign that had failed to file its legally-required campaign finance reporting forms in advance of the November 2023 election. Enforcement’s rationale was that a mere fine for non-compliance after the election would not be an adequate remedy, since the public would still have been deprived of any information about the subject’s sources of campaign funding and expenditures when it mattered most – before the election. Happily, the subject of the proposed injunction began to comply with their legal obligations shortly after receiving a direct notice that we were about to seek a court order (and Enforcement appreciates and recognizes their eventual compliance).

While Enforcement ultimately did not need to use its injunctive power this year, the experience that we gained while preparing to do so (including templates) has made us more capable of invoking this power on shorter notice in future elections. We hope to combine this remedy with the PEC’s usual educational tools, filing late fees, and enforcement penalties to ensure that all campaigns file their legally-mandated financial reports in advance of future elections.

Pilot Program For Increased Form 700 Enforcement

As recently noted by the Alameda County Grand Jury, the City of Oakland has a longstanding problem with public officials failing to file their Form 700s. These are basically forms that City

staff and officials must file every year, listing all of their financial interests that could potentially form the basis of a conflict of interest in the execution of their City duties.

The PEC has the authority to investigate and prosecute the non-filing of these forms. The challenge has always been twofold: (1) identifying all of the non-filers in the City, particularly in light of the fact that the PEC is not the filing officer for Form 700s (and therefore does not have direct access to the relevant data); and (2) handling a caseload of non-filer matters that potentially numbers in the hundreds.

However, in late 2022 the PEC directed Enforcement and the City Clerk's office (the filing officer for Form 700s) to collaborate more consistently in monitoring and enforcing Form 700 compliance. This has resulted in the PEC getting access to data on non-filers that it did not previously possess. In addition, the PEC had earlier developed a "streamline" program for handling low-level violations such as the non-filing of a Form 700. This program had never been used on a wide scale; but with greater access to non-filer data, Enforcement felt it was in a better position to make use of this tool for purposes of fostering a Citywide culture of compliance with the Form 700 laws.

Some challenges remained. Enforcement was not sure how reliable the City's data regarding Form 700 non-filers was, due, in part, to the City not having an automated IT process for updating records of who is required to file these forms. In addition, we lacked the staff capacity to process a large number of these cases, even at the streamline level. But with an eye toward continued collaboration with the City Clerk as well as increased Enforcement staffing in 2024, we decided to run a "pilot" program of Form 700 enforcement this year (focused on senior-level City officials). Our goal was two-fold: to enlist the help of other City departments in verifying the integrity of the City's non-filer data, and to work out streamlined enforcement procedures in the Form 700 context that could be easily replicated on a larger scale in 2024 (assuming we would have more staff to implement them).

Regarding the accuracy of the City's non-filer data, we contacted every City department and asked them to verify whether the reported non-filers still worked at their department. We received responses that allowed us to verify or eliminate about 25% of the names on the list (though unfortunately, the City department with the largest amount of reported non-filers – over half of the total – has not yet responded). In addition, after Enforcement announced to the rest of the City that we would be verifying this data and prosecuting non-filers in the future, we saw a notable increase in the number of reported non-filers across the City who soon filed their late Form 700 – about 25% of the total reported non-filers in 2023 (and this percentage actually goes up if we eliminate the false positives that were contained in the total number of reported non-filers). We have also identified four senior-level City officials who

have not filed their Form 700 or responded in a timely fashion to our follow-up requests to file. We will be using the resolution of those cases as a template for resolving all Form 700 non-filers cases (regardless of seniority) in 2024.

Caseload Trends in 2023

In 2023, Enforcement staff received eighteen (18) formal complaints. Of these, four (4) have been reviewed and dismissed without proceeding to a full investigation; two (2) of them were opened for investigation; and the remaining twelve (12) have been placed on hold.

Enforcement staff also received ninety-six (96) informal complaints in 2023. Of these, sixty-seven (67) were rejected, eight (8) were assigned a complaint number and escalated to our regular intake process, and twenty-one (21) are awaiting a decision as to whether to accept or reject them.

Finally, Enforcement staff initiated thirteen (13) proactive complaints this year. Of these, three (3) are currently in Intake or under Preliminary Review, seven (7) are under investigation, and two (2) have been placed on hold.

Enforcement's processing rate for incoming, formal complaints in 2023 (meaning that preliminary review was completed, resulting either in a dismissal or the opening of an investigation) stands at 43%. This is down from last year's processing rate of 50%, which was already not an ideal number. This is attributable to our short-staffing and resulting policy of putting most non-urgent complaints on hold. It should also be borne in mind that the length of a preliminary review does not depend solely upon Enforcement staff's efforts; delays in obtaining documents or interviews from third parties are a common reason for preliminary reviews to take an extended amount of time.

By contrast, our processing rate for informal complaints in 2023 (meaning that we reviewed the complaint and determined whether or not to assign it a complaint number and proceed to our regular intake process) was 78%. This process is almost entirely within Enforcement's control. Because Enforcement did not begin tracking incoming informal complaints until late in 2022, we are unable to make a comparison with last year's processing rate.

Over the course of 2023, no cases were presented to the Commission for a monetary penalty. This was due not only to short-staffing, but also to Enforcement's decision to focus its limited resources on what we believe to be the most impactful cases – which also tend to be the most complex, and therefore take longer to bring to the Commission. While we are unable to provide specific information about ongoing cases, we anticipate making many of these

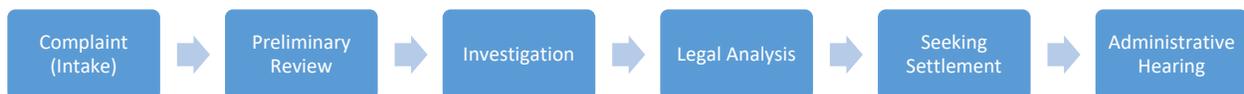
matters public in the first half of 2024, either as settlement agreements or investigation summaries (“probable cause reports” issued in advance of an administrative hearing).

We also have two (2) cases for which probable cause has been found and administrative hearings are pending. We anticipate holding those hearings (or settling those cases) by the third quarter of 2024.

In sum, the numbers above provide a downbeat picture. Short-staffing has clearly had a dramatic impact on Enforcement’s ability to resolve most cases in a timely manner. However, we are optimistic that the recent addition of a permanent investigator, and the hiring of a second (temporary) investigator and two part-time law clerks in January 2024, will allow us to begin turning some of these numbers around. In addition, the substantial work we have put into formalizing our internal procedures and beefing up training for new hires should allow us to process cases more quickly than in the past.

However, we must once again underscore the urgency of increasing Enforcement’s staff capacity if we are ever going to be able to fulfill the duties that the voters of Oakland gave us when they passed Measure CC in 2014. The efforts taken by Enforcement this year to build up our internal capacity and conserve resources for serious cases has allowed us to enter 2024 on an optimistic note; but that could easily be derailed if more resources are not forthcoming. At a bare minimum, our temporary investigator will need to become a permanent position if we are even going to be able to keep pace with incoming complaints. And only additional investigative and legal staff will allow us to make timely progress on high- and mid-level cases in the medium term, to say nothing of the numerous smaller cases that still carry an outsize impact for the complainants and respondents involved.

Overview of the Enforcement Process



The PEC’s Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City’s ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. “Formal” complaints are submitted on the PEC’s official complaint form and are signed under penalty of perjury. “Informal” complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority

of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the last Enforcement Unit Program Update submitted to the Commission on October 26, 2023, Commission staff received one (1) formal complaint, dismissed two (2) formal complaints, opened seven (7) new investigations, and completed one (1) investigation.

In the same time period, we also received twelve (12) informal complaints, of which four (4) were rejected, one (1) was assigned a complaint number and escalated to our regular intake process, and seven (7) are awaiting a decision as to whether to accept or reject them.

This brings the total Enforcement caseload to eighty-six (86) open complaints or cases: ten (10) matters in the intake or preliminary review stage, fourteen (14) matters under active investigation, six (6) matters under post-investigation legal analysis, two (2) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing.

Enforcement’s current staffing is: one (1) Enforcement Chief, one (1) permanent Investigator, and one (1) Administrative Assistant.

Case Resolutions or Submissions

Since the last Enforcement Unit Program report on October 26, 2023, the following complaints or cases have been resolved or submitted to the Commission:

1. ***In the Matter of Sofia Navarro; Steven Falk; Carroll Fife; Nikki Fortunato Bas; Noel Gallo; Kevin Jenkins; Dan Kalb; Rebecca Kaplan; Janani Ramachandran; and Treva Reid (PEC No. 23-20)***. On May 15, 2023, the PEC received a formal complaint alleging that the City Council, the interim City Administrator, and the Director of the Economic and Workforce Development Department all violated one or more laws under the PEC's jurisdiction when they allegedly awarded a lease of City-owned property without performing adequate due diligence. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC's jurisdiction. As such, we have dismissed the complaint with no further action. Complainant has been referred to the relevant City departments and/or the City Attorney's office if they wish to pursue their allegations further. **(See Attachment)**
2. ***In the Matter of Huey Dang and Chris Le (PEC No. 23-31)***. On September 22, 2023, the PEC received a complaint alleging that two employees at the Finance Department were incorrectly assessing the complainant's liability under the City's vacant property tax. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC's jurisdiction. As such, we have dismissed the complaint with no further action. Complainant has been referred to the respondents' supervisor if they wish to pursue their allegations further. **(See Attachment)**

Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
Campaign Finance	24		6	14	9	7	1	61
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2	2	1	1	11
Coordination Between Candidate And "Independent" Campaign			2	2		1		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	1	1			4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	6		2	2	3	1		14
Late Filing Of Campaign Finance Report	5			2				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			2	2	1		6
Misuse Of Campaign Funds For Personal Purposes	1					1		2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1	1	2		8
Government Ethics	46	5	15	10	3		2	81
Bribery	2		3	1	1		1	8
Financial Conflict Of Interest	3		1		1			5
Holding Incompatible Public Offices	1							1
Inaccurate Reporting On Financial Disclosure Form 700	2	1	3					6
Late or Non-Filing Of Financial Disclosure Form 700	1			8				9
Misusing Official Powers For Private Gain (Coercion/Inducement)	22	1	4	1			1	29
Misuse Of City Resources For Personal Or Campaign Purposes	10	1			1			12
Receiving An Improper Gift Based On Amount	1	1	2					4
Receiving An Improper Gift Based On Source	2	1	1					4
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1		1					2
Lobbyists							1	1
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Miscellaneous	5		3	1	3	1		13
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1			1	3	1		6
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3					5
Open Meetings & Public Records	8			1				9
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	5							5

Item 13b - PEC 23-31 Notice of Complaint Dismissal (re: H. Dang; C. Le)



ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

January 4, 2024

Gerald Cheney



Via email: 

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-31

To Gerald Cheney:

On September 22, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (# 23-31) alleging that Huey Dang and Chris Le violated one or more laws under the PEC's jurisdiction when they allegedly assessed your vacant property tax liability in a manner that you disputed.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to second-guess a City official or department's exercise of their lawful discretionary authority. The PEC can only intervene in a dispute concerning a City official's discretionary authority if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the decision-making process beyond an alleged mistake or lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But this complaint did not allege any facts of that nature.

If you wish to contest your vacant property tax assessment and/or the job performance of the employees named in your complaint, we suggest that you make a complaint directly to the Finance Department. You can contact the Director of the Finance Department, Erin Roseman, at ERoseman@oaklandca.gov or (510) 238-2026. We have already notified her of your PEC complaint and provided her with a copy.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions.

Item 13b - PEC 23-31 Notice of Complaint Dimissal (re: H. Dang; C. Le)

That meeting will be on January 17, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting at EthicsPublicComment@oaklandca.gov, and we will add them to the meeting materials.

As required by our Complaint Procedures, we are enclosing copies of similar dismissal letters that we have sent to the respondents named in your complaint.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
City Hall, 1 Frank Ogawa Plaza, Room 104 |
Oakland, CA 94612
Phone: 510.238.2213 | Cell 510.424.3200 | Fax: 510.238.3315
Email: srussell@oaklandca.gov | he/him/his
www.oaklandca.gov/pec

Enclosure: Notice of Complaint Dimissal (Huey Dang); Notice of Complaint Dimissal (Chris Le)

Item 13b - PEC 23-31 Notice of Complaint Dimissal (re: H. Dang; C. Le)



ENFORCEMENT UNIT
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TDD (510) 238-3254

January 4, 2024

Chris Le
Department of Finance
250 Frank H. Ogawa Plaza, Suite 1320
Oakland, CA 94612

Via email: CLE@oaklandca.gov

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-31

To Chris Le:

On September 29, 2023, the City of Oakland Public Ethics Commission (PEC) notified you that it had received a complaint (# 23-31) alleging that you violated one or more laws under the PEC's jurisdiction when you allegedly assessed the complainant's vacant property tax liability in a manner that the complainant disputed.

The purpose of this letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to second-guess a City official or department's exercise of their lawful discretionary authority. We have advised the complainant that any complaint or dispute regarding the methodology used to assess their tax liability should be taken up with the City department making that assessment.

The PEC can only intervene in a dispute concerning a City official's discretionary authority if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the decision-making process beyond an alleged mistake or lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But this complaint did not allege any facts of that nature.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on January 17, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and

Item 13b - PEC 23-31 Notice of Complaint Dimissal (re: H. Dang; C. Le)

no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting at EthicsPublicComment@oaklandca.gov, and we will add them to the meeting materials.

Respectfully,



SIMON RUSSELL | Enforcement Chief
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Item 13b - PEC 23-31 Notice of Complaint Dimissal (re: H. Dang; C. Le)



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TDD (510) 238-3254

January 4, 2024

Huey Dang
Department of Finance
250 Frank H. Ogawa Plaza, Suite 1320
Oakland, CA 94612

Via email: HDang@oaklandca.gov

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-31

To Huey Dang:

On September 29, 2023, the City of Oakland Public Ethics Commission (PEC) notified you that it had received a complaint (# 23-31) alleging that you violated one or more laws under the PEC's jurisdiction when you allegedly assessed the complainant's vacant property tax liability in a manner that the complainant disputed.

The purpose of this letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to second-guess a City official or department's exercise of their lawful discretionary authority. We have advised the complainant that any complaint or dispute regarding the methodology used to assess their tax liability should be taken up with the City department making that assessment.

The PEC can only intervene in a dispute concerning a City official's discretionary authority if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the decision-making process beyond an alleged mistake or lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But this complaint did not allege any facts of that nature.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on January 17, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and

Item 13b - PEC 23-31 Notice of Complaint Dimissal (re: H. Dang; C. Le)

no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting at EthicsPublicComment@oaklandca.gov, and we will add them to the meeting materials.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
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Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)



ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

October 31, 2023

Derreck Johnson
[REDACTED]
[REDACTED]

Via email: [REDACTED]

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-20

To Derreck Johnson, et al.:

On May 15, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (# 23-20) alleging that the Oakland City Council, Sofia Navarro, and Steven Falk violated one or more laws under the PEC's jurisdiction when they allegedly awarded a lease of City-owned property without performing adequate due diligence.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to enforce any due diligence requirements pertaining to the City's contracting process. Complaints or disputes regarding the methodology used to award a particular contract should be taken up with the City department that oversaw the bidding process.

The PEC can only intervene in the contracting process if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the bidding process beyond an alleged lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But your complaint does not allege any facts of that nature, nor did you respond to my effort to contact you and verify whether any such facts exist.

The complaint you filed with the PEC was also addressed to the City Attorney. The PEC is separate agency from the City Attorney's office and we do not forward complaints to them. If you want to file a claim with the City Attorney's office, you should use their claim form located online at:

Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)

<https://www.oaklandcityattorney.org/Resources/fileclaim.html>

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on December 13, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. We are also enclosing a copy of the dismissal notice that we are sending to the respondents named in your complaint, as required under our Complaint Procedures.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
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Enclosure: Notice of Complaint Dismissal (City Council); Notice of Complaint Dismissal (S Navarro)

Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)



ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
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October 31, 2023

Nikki Fortunato Bas
President, City Council
1 Frank Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Via email: NFortunatoBas@oaklandca.gov

Re: Notice of Receipt and Dismissal of Oakland Public Ethics Commission Complaint no. 23-20

To Council President Nikki Fortunato Bas o/b/o all members of the City Council:

On May 15, 2023, the City of Oakland Public Ethics Commission (PEC) received a complaint (# 23-20) alleging that the City Council violated one or more laws under the PEC's jurisdiction when it allegedly awarded a lease of City-owned property without performing adequate due diligence. A copy of that complaint is attached for your reference (personal information redacted, other than the complainant's name).

The purpose of this letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to enforce any due diligence requirements pertaining to the City's contracting process. We have advised the complainant that any complaints or disputes regarding the methodology used to award a particular contract should be taken up with the City department that oversaw the bidding process and/or the City Attorney's office.

The PEC can only intervene in the City's contracting process if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the bidding process beyond an alleged lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But this complaint did not allege any facts of that nature, nor did the complainant respond to my effort to contact them and verify whether any such facts exist.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions.

Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)

That meeting will be on December 13, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Respectfully,



SIMON RUSSELL | Enforcement Chief
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Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)



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October 31, 2023

Sofia Navarro
Director, Economic & Workforce Development Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Via email: SNavarro@oaklandca.gov

Re: Notice of Receipt and Dismissal of Oakland Public Ethics Commission Complaint no. 23-20

To Director Navarro:

On May 15, 2023, the City of Oakland Public Ethics Commission (PEC) received a complaint (# 23-20) alleging that you violated one or more laws under the PEC's jurisdiction when your Department allegedly awarded a lease of City-owned property without performing adequate due diligence. A copy of that complaint is attached for your reference (personal information redacted, other than the complainant's name).

The purpose of this letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC does not have the authority to enforce any due diligence requirements pertaining to the City's contracting process. We have advised the complainant that any complaints or disputes regarding the methodology used to award a particular contract should be taken up with the City department that oversaw the bidding process and/or the City Attorney's office.

The PEC can only intervene in the City's contracting process if there has been some violation of the laws we specifically enforce. These typically involve some corrupt element in the bidding process beyond an alleged lack of due diligence. For example, we enforce the City's laws against financial conflicts of interest, bribery, and coercion. But this complaint did not allege any facts of that nature, nor did the complainant respond to my effort to contact them and verify whether any such facts exist.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions.

Item 13c - PEC 23-20 Notice of Complaint Dismissal (re: S. Navarro; et al)

That meeting will be on December 13, 2023, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Respectfully,



SIMON RUSSELL | Enforcement Chief
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Item 14 - Executive Director's Report

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon J. Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: January 3, 2024
RE: Executive Director's Report for the January 17, 2024, PEC Regular Meeting

This memorandum provides an overview of some of the Public Ethics Commission's (PEC or Commission) more significant activities in 2023 which were not included in other program reports, including a discussion of Commission transitions, staffing and budget, and policy accomplishments over the past year. In addition, the attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023-24 for each program area.

2023 Overview

2023 was a busy year of transition and foundation-laying for the PEC, including numerous Program and policy successes, as well as some setbacks. As detailed below, much of the PEC's executive activities in 2023 were focused on responding to the unanticipated postponement of the launch of the Democracy Dollars public financing program from the 2024 to the 2026 election cycle; building up institutional and staff capacity to take on expanded duties and Programs; and securing additional resources and tools to support the PEC's Enforcement Program. The successes from last year will provide the PEC with a strong base to continue to deliver on its core mission and duties; however, resource and staffing constraints will remain a challenge entering 2024.

Commissioner Transitions

The PEC saw several Commissioners transition off of and on to the Commission in 2023. Commissioner Joe Tuman, a mayoral appointee, finished his term with the PEC on January 21, 2023. In addition, Commissioner Arvon Perteet, a Commission-appointee, will conclude his term with PEC on January 21, 2024. We're deeply appreciative of Joe and Arvon for their commitment and years of public service to the Commission and the people of Oakland!

The PEC also welcomed two new Commissioners in 2023, and selected a third Commissioner whose term begins this year. Commissioners Alea Gage and Vincent Steele were both selected in January 2023 by the PEC through its annual public recruitment process. Their terms began on January 22, 2023, and run through January 21, 2026. In addition, the PEC recruited for a third Commission-appointed vacancy in late 2023 and selected applicant Karun Tilak in December. Commissioner-elect Tilak's term will begin on January 22, 2024, and runs through January 21, 2027. Chair Ryan Micik was also re-appointed to the Commission by the City Attorney, for a new term that runs from January 22, 2024, through January 21, 2027. The PEC has one Commissioner vacancy presently, which is for the Mayor-appointed seat.

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Staffing

Last year was also a year of growth and transition for PEC staff. Longtime Commission Analyst Ana Lara-Franco left the PEC for another department. We are grateful to Ana for her excellent service and wish her the best in her next chapter.

At the same time, the Commission added several new staff last year. The Commission welcomed a new Executive Director, Nicolas Heidorn, in May of 2023. Prior to that, Suzanne Doran served as Acting Executive Director of the Commission – thank you, Suzanne, for your leadership during the transition and your continued leadership as Interim Program Manager for the PEC's landmark Democracy Dollars Program! The PEC brought on several other staff in 2023 as well, including Commission Assistant Chris Gonzales, Commission Analyst Teddy Teshome, and Investigator Treva Hadden, who have all had an immediate impact on the PEC's operations and effectiveness. The PEC is also set to welcome three limited duration staff in January 2024: two law clerks and a second investigator. Later in 2024, the PEC also anticipates backfilling the vacant Ethics Analyst III position and hiring a limited duration Democracy Dollars Outreach Specialist with a grant from the Haas Jr., Foundation.

While the PEC has moved aggressively to fill staff vacancies and use grant funding and salary savings to hire limited duration employees, the PEC nonetheless has significant staffing challenges, as outlined in greater detail in the proposed midcycle budget letter (Item 6). The most immediate challenge will be to increase staffing for the Enforcement Program to keep pace with its increasing caseload and to onboard additional staff to prepare for the launch of the Democracy Dollars Program in 2026.

PEC Retreat

In August 2023, the PEC held a strategic planning retreat to discuss the PEC's priorities for 2023-2024. The retreat, which was open to the public, provided Commissioners and staff an opportunity to review program objectives and identify projects for the PEC to work on in the years ahead.

The Executive and Policy priorities coming out of the retreat, and their current status, are as follows:

- Near Term (2023), in order of priority:
 - Work with the City Council to adopt the Limited Public Financing Program of 2024 - **COMPLETE**
 - Work with the City Council to adopt Lobbyist Registration Act Amendments - **COMPLETE**
 - Pilot a Voter Guide in the 2024 Election – **IN PROGRESS**
 - Recommend whether the PEC should set the Mayor's Salary - **COMPLETE**
 - Review City Charter provisions relating to the PEC - **IN PROGRESS**
- Mid/Long Term (2024-25), in order of priority:
 - Bi-Annual Policy Review: LRA – **NOT STARTED**
 - Strengthen Public Records/Mediation - **IN PROGRESS**
 - Build Ethics Commission Network (begin with regular meetings) - **COMPLETE**

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Public Financing

The PEC spent much of 2023 working towards the implementation of the Democracy Dollars Program, which was unexpectedly postponed to the 2026 election cycle through the City's biannual budget process. While the PEC advocated that the Program, or a pilot of the Program, launch in 2024, the postponement has given the PEC time to be more deliberate in its planning and roll-out strategy. Over the past year, the PEC has worked on developing the Request for Proposal (RFP) for the database that will be used to track, distribute, and redeem Oaklanders' campaign vouchers. At the same time, in 2023, the PEC successfully applied for \$210,000 in funding from the Haas Jr. Foundation to develop an inclusive outreach strategy for the Program's roll-out. Staff have also been developing a model voter guide to assist voters in assigning their vouchers, which the PEC hopes to pilot in the 2024 election cycle.

Because Measure W (2022), which *established* the Democracy Dollars Program, also *repealed* the City's existing Limited Public Financing Program (LPF), the City Council's decision to postpone the Democracy Dollars Program to 2026 would have left Oakland in 2024 with no public financing program for City Council District elections for the first time in two decades. To avoid this, in August 2023 the PEC proposed, and in November the City Council approved, an ordinance to re-establish a version of LPF for the 2024 election cycle only.

Other Legislation and Policies

2023 was also a particularly active policy year for the PEC in other areas as well. In addition to bringing back the LPF, the PEC either adopted or recommended to the City Council which adopted...

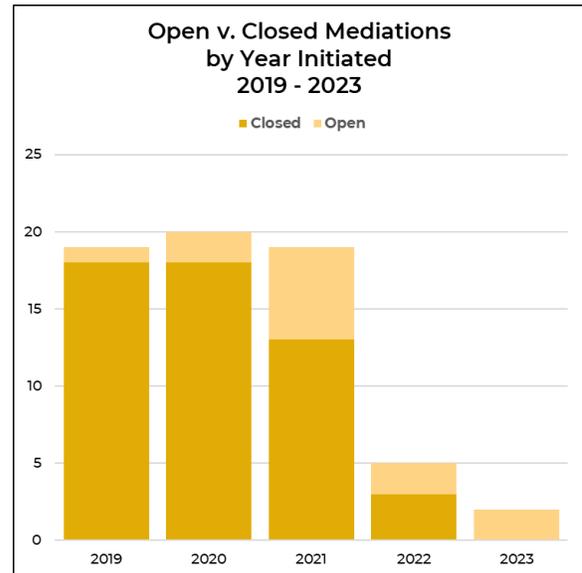
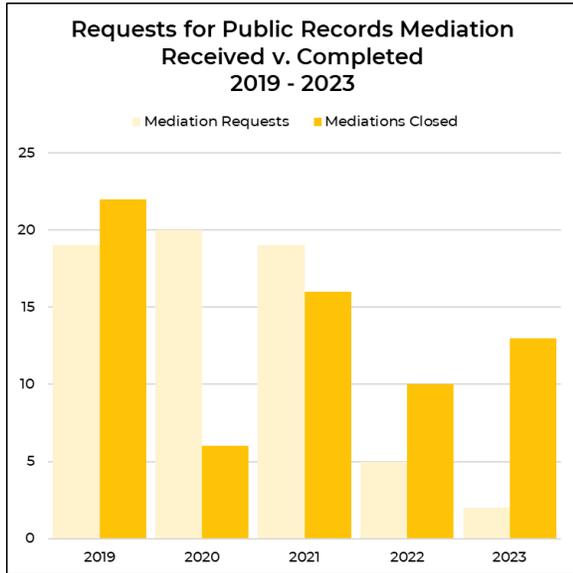
- An ordinance adding a new lobbyist registration fee;
- An ordinance modifying the lobbyist registration fee to provide a fee waiver or reduction for certain registrants and making other administrative improvements to the Lobbyist Registration Act, including requiring that lobbyists meet certain training requirements;
- Revised Complaint Procedures and Penalty Guidelines to provide a more streamlined process for assessing penalties or requiring diversion for low-level offenses of PEC-enforced laws; and
- A policy describing when and how the Executive Director will waive lobbying and campaign finance late filing fees.

In addition, the PEC adopted salaries for the City Attorney and the City Auditor for the first time in 2023, following voter-approval of Measure X in 2022, which transferred these duties to the PEC. The City Council is considering placing a measure on the ballot in 2024 to transfer the responsibility for setting the Mayor's salary to the PEC as well. Last month, the PEC adopted a recommendation for how this should be done, which has been transmitted to the City Administrator and City Council.

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Mediation Program

Finally, pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The Commission received two new requests for mediation in 2023. Thirteen mediations were completed in 2023.



Additional Attachment: Commission Programs and Priorities.

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PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (new additions in **bold**)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ✓ Lobby Registration Act amendment to incorporate new fees and waiver policy ✓ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot ✓ Mayor Salary Setting Guidance ○ Charter Review Options ○ Policy Review: Lobbyist Registration Act ✓ Ethics Commission Network ✓ Invite Department Presentations on Records Request Responses
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ul style="list-style-type: none"> ● Regular ethics training ● Information, advice, and technical assistance ● Targeted communications to regulated communities ● New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ul style="list-style-type: none"> ● Public Records mediations ● Commissioner-led public outreach ● Outreach to client groups – targeted training and compliance ● PEC social media outreach 	<ul style="list-style-type: none"> ○ Update guides and trainings to reflect Measure W and LPF changes ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ○ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools ○ Publicize how to file complaints

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Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ul style="list-style-type: none"> • Monitor compliance (campaign finance/lobbyist/ticket use) • Proactive engagement with filers • Technical assistance • Assess late fees/refer non-filers for enforcement • Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development/issue RFP ○ Updates to Ticket Distribution (Form 802) database ✓ Lobbyist App Updates ○ Public Records Performance Dashboard ○ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request ✓ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.</p>	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ✓ Expand streamline and diversion program
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity